

CHAPTER 38.

MILWAUKEE SCHOOL LAWS

38.01	Scope of chapter.	38.14	High schools; supervision.
38.015	Board of school directors; members; oath.	38.15	High schools; courses, diplomas.
38.02	Board election; date, ballots, boxes.	38.16	Report of board; school taxes.
38.03	Commission to appoint board at once; elections follow; regular or special; vacancies.	38.17	Erection of schools; bonds, popular vote on, interest rate, levy for, maximum outstanding.
38.04	Board; president, committees, absentees, temporary officers; ex officio members of commissions.	38.18	Loans for reconstruction of school buildings destroyed by fire or other casualty.
38.05	Members' responsibility; jury exemption; malfeasance; board's debt power; procedure, meetings.	38.19	Interest in contracts forbidden to board members, teachers, employees.
38.06	Board a continuing body; service of process and notice on board.	38.20	Existing terms of office to continue.
38.07	Buildings and equipment; competitive bids; contracts, deeds, leases; committee on sites and plans; district boundaries; janitorial employees.	38.21	Real estate sold; purchase of lands and improvements thereon for school purposes by instalment contracts.
38.08	Uniform textbooks and instruction; changes therein; board's governing functions.	38.22	Use of school buildings and athletic fields.
38.09	Superintendent; election, term, powers; committees on teachers, courses and books.	38.23	School laws applicable; school board's report.
38.10	Secretary-business manager of board; official bonds and sureties; school census.	38.24	Teachers' retirement fund in cities of the first class.
38.11	City comptroller; lists and statements for; audit and warrants.	38.25	Teachers' annuity extended.
38.12	Dismissal of superintendent or secretary-business manager.	38.26	Benefits of 38.24 extended to additional Milwaukee teachers.
38.13	Schools and school districts; non-residents and tuition.	38.27	Full-time qualified social center and welfare workers eligible to teachers' retirement system.
		38.28	Trade schools; pupils eligible, pay for materials, sale of products, trade schools fund.
		38.29	Provisions not applicable.
		38.30	This act amendatory of charters; repeal of conflicting laws.

38.01 Scope of chapter. This chapter applies only to cities of the first class. [1941 c. 213]

38.015 Board of school directors; members; oath. (1) The public schools in every city of the first class shall be under the management, control and supervision of a board of school directors, consisting of 15 members from the city-at-large, selected as provided in this chapter. No person holding any office in any political organization, or any lucrative city, county or state office other than a judicial office or that of notary public, shall be eligible to be a member of such board. The members of such board shall, before entering upon the duties of such office, take and subscribe to the oath of office prescribed in the constitution of this state, and shall file the same, duly certified by the officer administering the same, with the city clerk.

(2) Each member of the board shall be paid \$600 per year. The amount so payable shall be allowed and paid monthly. [1941 c. 213]

38.02 Board election; date, ballots, boxes. The board members shall be qualified voters of such city, and shall be elected as hereinafter provided at a school election to be held biennially on the first Tuesday in April, the first regular election under this chapter in any city hereafter coming under this chapter to be held on the first Tuesday in April of the year following the date in which any such city comes under this chapter. The school election shall be held at the same time and place and under the charge of the same election officials as the election of judges or other officers held on the same date; but unless the voting is by voting machines, separate ballot boxes shall be provided to receive the ballots for members of the board of school directors, which ballots shall be prepared and supplied to the election officials in the same way as other ballots are provided and supplied for other elections. At such school elections the candidates receiving the greatest number of votes for the several positions shall be declared elected. Members of the board of school directors in any city of the first class heretofore elected, as provided in chapter 459 of the laws of 1907, shall continue in office for the remainder of their respective terms. [1941 c. 213]

38.03 Commission to appoint board at once; elections follow; regular or special; vacancies. (1) Within 5 days after this chapter becomes effective in any city, the mayor, the city treasurer, the city comptroller, the city attorney and the president of the common council of such city, acting as a commission for such city, of which commission the secretary-business manager of the board of school directors or of such board of edu-

cation as such city may have, shall act as secretary, shall meet and appoint 15 members of the board of school directors.

(2) Five of the directors so appointed shall be appointed to serve from the first Tuesday of the month next following their appointment until the first Tuesday of July next following the first regular school election to be held in any city to which this chapter applies; 5 of the directors so appointed shall be appointed to serve from the first Tuesday of the month next following their appointment until the first Tuesday of July next following the second regular school election to be held in any city to which this chapter applies; and 5 from the first Tuesday of the month next following their appointment until the first Tuesday of July next following the third regular school election to be held in any city to which this chapter applies; and at the school elections to be held on the first Tuesday in April preceding the expiration of the terms of those members so appointed, their successors shall be elected by the qualified voters of such city to serve for the term of 6 years or until their successors are elected and qualified.

(3) Within 90 days after such appointees have entered upon the duties of their office the common council of such city may by resolution concurred in by a majority of the members-elect provide for a special school election to be held in such city to elect successors to such appointees; 5 of the directors so elected to be nominated and elected to succeed the 5 directors appointed for the term expiring on the first Tuesday of July next following the first regular school election to be held in such city; 5 of the directors so nominated and elected to succeed the 5 directors appointed for the term expiring on the first Tuesday of July next following the second regular school election in such city, and 5 of the directors so nominated and elected to succeed the 5 directors appointed for the term expiring on the first Tuesday of July next following the third regular school election in such city; the respective terms of office of such directors so elected at such special election shall terminate at the respective times when the terms of office of their predecessors would have terminated if no special school election had been held; in the event of such special school election, the terms of office of the directors-elect shall begin on the first Tuesday of the month next following such election. In the event such special school election be called as hereinbefore provided, it shall be held at the polling places, in the manner and under the charge of election officials, ballot clerks, inspectors, as the regular school elections to be held under this chapter; and nominations for such special election shall be made and had in like manner as provided for the regular school elections under this chapter; provided, however, that no such resolution for the calling of a special school election under this chapter shall be introduced except at a regular meeting of the council, and no action shall be taken thereon before the next regular meeting thereof, nor until such proposed resolution shall be published at least once in an official city paper, if there be one; and if there be none, in some newspaper to be designated by the council, together with a notice of the time said resolution will be considered.

(4) All vacancies in the said board resulting from any cause shall be filled by the board, a majority of the remaining members being necessary to a choice. Members so elected by the board shall serve until the first Tuesday in July following the next school election at which election the vacancies shall be filled for the unexpired terms in the same manner as members are elected for the full term provided that the members of boards of school directors or of such board of education as such city may have in office when this chapter becomes effective in any such city, shall hold their offices until the time for newly appointed members to assume their duties, as provided heretofore in this section, or until their successors so appointed are qualified, and during such period shall continue to exercise all of the rights and privileges and discharge the duties of members of the board of school directors.

(5) In cities to which the provisions of chapter 38 apply, members of the board of school directors heretofore elected as provided in chapter 459 of the laws of 1907, shall continue in office for the remainder of their respective terms. And at the school elections to be held on the first Tuesday in April preceding the expiration of their respective terms, their respective successors shall be elected for a term of 6 years or until their successors are elected and qualified as provided in subsection (2) of this section. [1941 c. 213]

38.04 Board; president, committees, absentees, temporary officers; ex officio members of commissions. (1) The board of school directors in any city hereafter coming under this chapter shall meet on the first Tuesday of the month following the first appointment of its members, and in the event of a special election on the first Tuesday of the month following such special election, and thereafter on the first Tuesday of July in each year, and on the first Wednesday of July in any year when the first Tuesday of July shall be a public holiday, and organize by the election of the proper officers. A president shall be elected by said board from its own number to serve for one year, or until his successor shall be chosen, and in his absence or during his disability the board shall elect a president pro tempore. After his election the president shall appoint standing committees, to serve

for one year. The board of school directors in any city heretofore elected and in office pursuant to chapter 459, laws of 1907, shall annually hold such organization meeting at the time hereinabove provided.

(2) The seat of any member shall be declared vacant by the board and the vacancy shall be filled by it by election in the manner hereinbefore provided, if the said member has been absent for 4 successive meetings of the board without satisfactory reason presented by him in writing.

(3) In case of the absence or inability, from any cause of any officer appointed by said board to perform the duties of his office, said board may appoint some suitable person to act in his place and stead during his absence or inability; and such person shall have and possess the same power or authority as the officer whose place he is appointed temporarily to fill.

(4) Whenever the law provides that the president of the board of school directors shall serve ex officio or otherwise as a member of the library board, museum board, historical museum board, board of trustees of the art commission, or any other board or commission, a member of the board of school directors, duly elected by said board for such purpose, may serve as said member ex officio or otherwise on any of said boards in place of the president of the school board.

(5) All elections or appointments of members and officers, authorized by law to be made by such board of school directors, shall be made by roll call vote. The records of such votes shall be entered by the secretary-business manager in the minutes and the printed proceedings of such board. [1941 c. 213]

38.05 Members' responsibility; jury exemption; malfeasance; board's debt power, procedure, meetings. (1) The members of the board shall be subject to all restrictions, liabilities, punishments and limitations prescribed by law as to members of the common council in their city, and they shall be exempt from jury duty. A majority of the members-elect of the board shall have power to dismiss from office for malfeasance any member of the board and the board shall provide by resolution the manner of hearing and disposing of complaints against a member.

(2) The board shall not in any one year contract any debt, or incur any expense greater than the amount of the school funds subject to its order.

(3) A majority of the members of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn. A majority of the whole board shall be necessary to elect any officer authorized to be elected by said board.

(4) Regular meetings of the board shall be held at least once each month at stated times to be fixed and published by the board in its rules, and special meetings may be called and held as shall be provided by the rules of the board, at which no other business shall be transacted than that specified in the notification thereof, which shall be given personally or mailed to each member at least 24 hours before the time of such meeting. When any regular meeting provided by the rules of the board shall fall on a legal holiday, such regular meeting shall be held on the next business day. [1941 c. 213]

38.06 Board a continuing body; service of process and notice on board. (1) The board of school directors is a continuing body, and any unfinished business before the board or any of its regular or special committees pending on June 30 in any year shall be considered as pending before the newly reorganized board on the first Tuesday of July in each year, and the secretary-business manager of said board shall report to the board at its annual meeting in July, after the election of the new president, items of unfinished business pending before the board as a whole, and items of business pending before committees of the board to the corresponding committees of the board newly appointed by the president after the said July annual meeting, in the absence of instructions to the contrary from the board, and matters thus reported may be acted upon by the board in the same manner and with the same effect as if the board had not been newly organized.

(2) In any action or proceeding wherein the board is a party defendant service of any summons, writ, pleading or other papers served in commencing the action or proceeding upon the president of the board and the superintendent and the secretary-business manager of the board is sufficient to constitute service upon the entire board; and it is sufficient to serve on such 3 officers any notice required by law to be served upon the board. [1941 c. 213]

38.07 Buildings and equipment; competitive bids; contracts, deeds, leases; committee on sites and plans; district boundaries; janitorial employes. (1) The board shall establish and organize so many public schools, in addition to those already established in such city, as may be necessary for the accommodation of the children of the city entitled by the constitution and laws of the state to instruction therein.

(2) The board shall erect, purchase, hire or lease buildings, improve or enlarge the same, and purchase furniture and lots for the accommodation of such public schools

of said city, and purchase, install and maintain heating systems in said schools, and contract for the carrying out of any of the purposes authorized in this chapter; provided, that when the board contemplates the doing of any work or the purchasing of any material, the estimated cost of which shall exceed \$500, said board shall advertise for proposals for doing the same, a plan or profile of the work to be done, accompanied by specifications for doing the same, or other appropriate sufficient description of the work required to be done, and the kinds or quality of material to be furnished, being first placed on file in the office of said board for the information of bidders and others. Such advertisement shall be published at least 6 days in the official paper of such city and state the work to be done and the time for doing the same, which shall be such reasonable time as may be necessary to enable the contractor with proper diligence to complete such work.

(3) All proposals shall be sealed and directed to said board and shall be accompanied by a corporate surety bond to such city in the penal sum not less than 30 per cent of the amount of the board's estimate of the cost of such work, as such board in such advertisement may direct. The board by resolution may provide that in addition to the foregoing provision the bidder shall accompany his bid with a certified or bank cashier's check equal to not less than 5 per cent or not more than 15 per cent of the amount of the bidder's estimate of the cost of said work as a guaranty that if his bid is accepted he will execute the contract and bond within the time limited by the board, and also as assurance against any carelessness, omission or mistake in preparing his bid. In lieu of such bond and check as aforesaid the bidder may accompany his bid with a certified or bank cashier's check in the amount of at least 15 per cent of his bid. In case such bidder shall fail to execute such contract and bond, or shall claim mistake or omission and refuse to execute the said contract and bond, 5 per cent of the amount of the bidder's proposal shall be forfeited to the city in lieu of performance and as liquidated damages. Whenever the advertisement calls for the performance of different kinds of work or furnishing materials, such contracts may be let in whole or in part to the lowest responsible bidder for the particular part as the board may deem to be the best interests of the city; provided, that whenever a part of any contract is let to a bidder the forfeiture shall not exceed 5 per cent of the amount of the bidder's proposal. Whenever a check is submitted in lieu of said bond, the forfeiture shall amount to not less than 5 per cent of the bidder's proposal covering the particular work or material upon which his bid is based. In case any bidder desires to bid upon all the work or the furnishing of materials contained in the advertised notice, he may furnish one surety bond or certified check to cover all work or furnishing of materials. Such board in letting any contract and in doing such work shall proceed in manner and form as is vested in the board of public works, or other public officer or officers, of such city for doing any public work and the entering into contracts therefor; and for that purpose shall possess the powers conferred by section 62.15 and may demand that bidders qualify as to responsibility and ability. Such board may reserve the right to reject any and all bids. Such contracts shall run in the name of the city, and shall be executed by the president and the secretary-business manager of the board, countersigned by the comptroller of said city; and shall be approved by the city attorney of the said city, as to form and execution.

(4) The schoolhouses and the sites on which they are situated and the sites now or hereafter purchased for school purposes and the schoolhouses thereon erected shall be the property of the city; no site shall be purchased or leased, nor shall any schoolhouse be erected without resolution duly passed by the board. Deeds of conveyance and leases shall be made to the city.

(5) The board has power to establish and define from time to time the boundaries of all common and high school districts, in such manner as it deems best calculated to promote the interests of the city, and to provide for the transportation of school children to and from any school within the city.

(6) The board has power, subject to the powers and regulations of the city service commission, to employ all engineer-janitors, janitorial assistants and helpers necessary in the schoolhouses of its city and to fix their compensation, but the principal of each school shall be custodian of all buildings and rooms occupied by the school over which he presides and shall have the general supervision over the same, and shall direct the janitorial employes thereof in relation to the keeping and care of such buildings and rooms. [1941 c. 213; 1943 c. 177]

Note: The relationship between the Milwaukee school board and engineer-janitors is that of master and servant, and the status of helpers hired by the janitors but supervised by the board is not that of employes of independent contractors but is that of employes of the board, so that 16.765 is appli-

cable, requiring that employes other than teachers be selected and their tenure and employment status determined in accordance with Milwaukee civil service laws. State ex rel. Cooper v. Baumann, 231 W 607, 286 NW 76.

38.08 Uniform textbooks and instruction; changes therein; board's governing

functions. (1) The board has power to adopt for use in the several public schools suitable textbooks, subject to the provisions of subsection (2).

(2) Said textbooks shall be uniform in the various elementary, high and special schools and when the board has adopted for use in the public schools any textbook or textbooks, the same shall not be changed for 5 years thereafter; and the board shall require that the system of instruction in the several schools under its control shall be as nearly uniform as possible, and may adopt and modify or repeal rules for its own government, and for the organization, discipline and management of the public schools, and generally adopt such regulations and measures as shall promote the good order and public usefulness of said schools; but such rules and such regulations shall not conflict with the constitution and laws of the state.

(3) Said school board shall establish in such schools under its control in grades 7B and higher grades such classes of instruction in such foreign languages as are petitioned for by parents of children attending such respective schools when such petition is signed by the parents of a sufficient number of children attending such school to form one or more classes or grades of instruction in any such foreign language at such respective school or schools. The petition of the parents of 30 or more children of like classification attending any such school for the establishment of such instruction in the specified foreign languages shall be prima facie evidence of the sufficiency as to the number of children being in attendance in any such class to establish and commence such instruction therein.

(4) In addition to the powers elsewhere granted by this chapter to the board, said board shall have power:

(a) To determine the qualifications of all persons in its employ who are eligible to membership in the public schools teachers' annuity and retirement fund established and maintained in said city, and to employ all such other persons as may be required in the operation and management of the schools, subject to the provisions of sections 16.45 to 16.765 when applicable, and to determine their qualifications, duties and compensation.

(b) To determine the manner in which, the persons to whom and the places to which, the printed proceedings of the board shall be distributed.

(c) To determine on which national, state and local legal holidays and for which educational conventions the public schools shall be closed, without deductions from the annual or monthly compensation of its employes not rendering services on such days.

(d) To determine the school calendar and vacation periods for each school year for the regular day schools, summer schools, social centers and the playgrounds, provided, that for the regular day schools which open in September and close in June the period of teaching service shall not exceed 200 days, including the holidays and convention days on which the schools are closed; and provided further, that the board may close any or all schools, or dismiss any or all classes in any school or schools, in the event of any emergency, fire, or other casualty, quarantine or epidemic.

(e) To purchase from the county in which the city is located, furniture, furnishings and equipment, manufactured in any house of correction or other institution operated and maintained pursuant to subsection (1) of section 56.16, used in the schools, and to waive the furnishings by the county or the institution of bid bonds and performance bonds otherwise required by the statutes in connection with any such purchase.

(f) To copyright under the statutes of the United States applicable thereto any book, pamphlet, bulletin or record form edited and published by or under the direction of said board.

(g) To require that any pupil attending any public school shall be enrolled on the records of the school under the proper given name and surname of the pupil at the time of birth, or as said surname is thereafter changed by a court of competent jurisdiction in any action, adoption proceeding or other proceeding.

(h) To establish and maintain from time to time in any of the schools or playgrounds under its jurisdiction, cafeterias and stores for the sale of schoolbooks, candies, refreshments and supplies, and to charge or permit the making of a charge for admission to any school, social center, or athletic entertainments and activities, under such terms and conditions as the board may prescribe; and such sales and admission charges shall not be construed to constitute the performance by said board of a proprietary function.

(i) To make as the employer agency the contributions to the city retirement system payable under the provisions of chapter 396 of the laws of 1937, in respect to its employes who are members of said system.

(j) To exclude any nonresident pupil from any special school for the deaf, blind, crippled, or mentally or physically handicapped children, in case the tuition for such pupil is payable by the town, village or city where such pupil resides, and such local municipality is in default in the payment of tuition for a period of 90 days after such tuition becomes due.

(k) To erect around any schoolhouse or playground site, or any part thereof, a fence

of materials and design approved by the board, but no such fence, or portion thereof, shall be required to exceed a height of 5 feet above the grade or level of the premises unless the board in its discretion shall determine to build such fence, or portion thereof, higher than 5 feet.

(l) To purchase automobiles, trucks and motor vehicles and motor propelled maintenance and construction equipment required for the use of any bureau, department or employe of the board without competitive bidding and without publishing notices for sealed proposals, notwithstanding the purchase price thereof may exceed \$500, when the board shall deem it to be in the best interests of the city, provided any such purchase shall be authorized by vote of at least two-thirds of the entire board.

(m) To purchase textbooks for indigent pupils whose parents, guardians or other persons having control or custody of such pupils are without means to furnish them with textbooks, provided that the indigency of such pupils shall be investigated and certified by a welfare and attendance officer; and the local governmental authority or agency administering poor relief in any such city shall reimburse any such city and board for all amounts expended by the board in the purchase of such textbooks, as provided in section 40.171; and such textbooks so furnished shall become and remain the property of the city and be subject to the disposal of the board.

(n) From time to time to make arrangements with the school boards or boards of education or other managing bodies of the schools in any city or school district in this state or any other state for the exchange of one of its teachers and his services for a teacher of any such other city or school district and his services, for a period not to exceed one school year in any case. Such agreements, among other appropriate provisions, shall provide the manner, and by which board, the salaries of any such exchange teachers shall be paid, and that any teacher regularly employed by the board under this chapter shall receive credit for such year of outside teaching service in the computation of any benefits to which he may be entitled under the provisions of section 38.24, and the manner in which the monthly reservations payable under said section shall be paid. The board in any city under this chapter shall determine the qualifications and compensation of any such outside teacher who may render services in the schools under its jurisdiction, and such outside teacher so rendering services shall be counted as a regular teacher in such city in the computation of state and county aids payable to such city. [1941 c. 213; 1943 c. 275 s. 12]

38.09 Superintendent; election, term, powers; committees on teachers, courses and books. (1) The board shall elect by roll call vote at the regular meeting preceding the expiration of the term of office of the superintendent of schools who is in the office when this chapter becomes effective, and in any city to which chapter 459 of the laws of 1907 has been effective, a person of suitable learning and experience in the art of instruction, and practical familiarity with the most approved methods of organizing and conducting a system of schools, for superintendent of schools, and said superintendent shall hold his office until July 1 next following his election, and for 3 years thereafter, except in case of removals as herein provided; and each third year thereafter the said board shall elect by roll call vote at the first regular meeting in January, a superintendent of schools as provided herein, who shall serve for the term of 3 years from July 1 next following his election, or for a term of less than 3 years in the event that a superintendent shall, during any school year in his term of office beginning July 1 and ending June 30 attain the age of 70; and any such superintendent, and any assistant superintendent, supervisor, educational department head or professional assistant to the superintendent in the employ of the board who has attained or shall attain the age of 70 years during his term of employment shall be retired by the board at the end of the school year as above defined in which he or she shall respectively attain the age of 70.

(2) The superintendent shall, under the direction of the board, have a general supervision of the public schools and of the assistant superintendents, supervisors, educational department heads and professional assistants to the superintendent, principals, vice principals and teachers in the cities aforesaid and of the manner of conducting and grading of said schools. He shall appoint, subject to confirmation by the board, such assistant superintendents, supervisors, educational department heads and such other assistants and supervisors as may be authorized by the board, but the board shall not authorize the appointment of any such officer or employe except for the performance of usual, customary and ordinary school supervisory or administrative duties. Such superintendent shall be an advisory member of every committee of the board, except at times when an inquiry into his acts or investigation of his official conduct shall be under consideration by any such committee.

(3) (a) A committee, consisting of the president of the board and 4 members of the board selected by the president, shall, on a strict basis of eligibility and fitness, cause to be examined, certificate, employ, classify, transfer and promote principals, vice principals

and teachers and employes defined as teachers and made eligible to membership in and becoming members of the teachers' retirement fund in cities of the first class by subsection (7) of section 43.50 [38.27] and high school teacher-librarians, not, however, including assistant or clerk librarians employed by the board in high school libraries, having the qualifications of teachers as provided in the statutes and prescribed by the board of school directors, pursuant to subsection (1m) of section 43.22. The action of such committee shall be subject to amendment, rejection or confirmation by the board. The superintendent shall have power to assign all principals, vice principals and teachers and to engage substitute teachers at the per diem compensation and in the manner fixed by the board, and to assign such substitutes.

(b) The president of the board and 4 members of the board, to be selected by the president, shall constitute a committee to select and determine courses of study for the schools, and textbooks to be used therein. The action of such committee shall be subject to amendment, rejection or confirmation by the board. The courses of study in the elementary schools shall include reading, writing, spelling, English, grammar and composition, geography, arithmetic, elements of agriculture and conservation of natural resources, history and civil government of the United States and of Wisconsin, physical education, physiology and hygiene, sanitation, the effects of stimulants and narcotics upon the human system, symptoms of disease and the proper care of the body, and such other branches as the board may from time to time determine, but no pupil shall be required to take instruction in any of the last 5 named courses if the parents shall file with the teacher a written objection thereto; and courses in arithmetic, the sciences, business and commerce, civics, English, languages, history, mathematics and physical training, and such other branches as the board may from time to time determine, shall be taught in the high schools. Such courses shall be offered in the several elementary and high school grades for such periods of time in any day, week or month as the superintendent shall prescribe and the committee on instruction shall approve, subject to amendment, rejection or confirmation by the board. All instruction shall be in the English language, except that the board may cause any foreign language to be taught in either the elementary or high schools.

(4) The board shall establish and maintain such special schools for the deaf, dumb, blind, crippled and for the mentally or physically disabled as may be required to accommodate pupils of school age desiring to attend school and prescribe the courses of study and the educational and other activities in such schools; and the board may employ teachers to give instruction in the homes or hospitals to pupils unable to attend the school; and the board may provide transportation for the pupils attending such special schools and provide school lunches for children under such terms as it shall determine, and the periods of instruction as shall be prescribed by the superintendent, approved by the committee on instruction, subject to amendment, confirmation or rejection by the board, and as directed by the state superintendent of schools and the crippled children division of the department of public instruction as provided in the statutes; and any such city shall be entitled to such state aids and grants for special equipment as are provided for in the statutes.

(5) The city attorney of each such city shall be the legal advisor of and attorney for the board. [1941 c. 213]

38.10 Secretary-business manager of board; official bonds and sureties; school census. The board shall appoint, as a vacancy occurs, and subject to the provisions of sections 16.45 to 16.765, some suitable person to act as secretary-business manager of the board who shall receive a salary to be fixed by such board. It shall be his duty to attend the meetings of the board, and its committees, to keep a record of the proceedings and a full and fair account of all receipts and expenditures of the board, and to do and perform such other duties as shall be required of him by said board. The secretary-business manager of the board shall, before entering upon the duties of his office, execute a bond to the city in such form and penalty and with such conditions as the board shall prescribe, with sureties to be approved by said board, which bond shall be filed in the office of the city clerk of said city; and the board may require security to be given for the faithful performance of his duties by any officer or employe of said board, in such form and amount as the board shall deem best, and may at any time require of any officer or employe additional bonds and sureties, in its discretion. The secretary-business manager of the board shall cause to be taken the annual enumeration of the children of school age in the city, required by law, and shall at the same time collect such further statistics and information relating to schools and to the population entitled to school privileges in said city as may be directed and required by the board; and the board shall appropriate annually a sufficient sum to defray all expenses in connection with the taking of said census of all persons between the ages of 4 and 20, residing in said city, and the secretary-business manager of the school board shall receive no additional compensation for such enumeration services and he shall submit to the board a detailed statement of the expenses in connec-

tion with the taking of the said census, and the same shall be audited by the board and paid out of funds provided for the support of the schools. [1941 c. 213]

38.11 City comptroller; lists and statements for; audit and warrants. (1) The secretary-business manager of the board shall within 30 days after the appointment of teachers and other salaried employes, report to and file with the city comptroller or other auditing officer of the city, a duly certified list of teachers and employes so appointed, and a statement of the time or times fixed for the payment thereof. Whenever any action is taken by the board changing the salaries of any of the officers of the board, or of any of such teachers or employes, or making a new election or appointment to any position entitling the person appointed to receive a stated salary, he shall in like manner file with such comptroller or other auditing officer a certified list and statement of all such changes and appointments. All claims and demands against the city or board shall be audited and adjusted by the comptroller or other auditing officer of such city. The secretary-business manager of the board shall furnish such comptroller or other officer a complete list of the same, together with the proper voucher, stating the character of the material or service for which the same is rendered; and before a warrant shall be issued therefor such comptroller or other officer shall countersign the same. And said secretary-business manager shall make and file with the said comptroller or other auditing officer within 20 days after each regular or special meeting of the board when salaries and accounts are voted and allowed, statements of the condition of the respective funds for the support of schools and of the financial transactions of the board during the period next preceding any such statement.

(2) No action shall be maintained against any city upon any claim arising out of the operation, conduct and maintenance of the schools until it has been presented to the board and disallowed, in whole or in part. Failure of the board to allow the claim within 60 days after it is filed with the secretary-business manager constitutes a disallowance. The secretary-manager shall serve on the claimant notice of disallowance by registered mail, and receipt therefor, signed by the claimant, shall be proof of service. The claimant may accept a portion of his claim without waiving his right to recover the balance. No interest shall be recovered on an allowed claim after an order of the board is available to the claimant. If the claimant recovers a greater sum than was allowed, he shall recover costs, otherwise the city shall recover costs. Disallowance by the board shall bar an action on the claim after 6 months following service of notice of disallowance.

(3) Whenever any such city has received and is enjoying any benefits, services or equipment for any of its schools or improvements to any of its buildings or grounds furnished under any contracts which shall have been or shall hereafter be declared as imposing no legal obligation upon such city or its board of school directors, and which contract was entered into in good faith, and imposes upon such city and its school board a moral obligation, and for which said city through its school board shall at the time be legally able to pay, such board of school directors in behalf of any such city may, by a vote of three-fourths of the members of the board, upon consideration of such moral obligation, by proper board action, authorize and direct payment of the fair and reasonable value of any such benefits, services, equipment or improvements. [1941 c. 213; 1943 c. 177]

38.12 Dismissal of superintendent or secretary-business manager. The superintendent of schools, or the secretary-business manager of the board, may be removed from office for misdemeanor in office, incompetency or inattention to the duties of his office, by a vote of two-thirds of the whole board; provided, that notice in writing of charges against him, or either of them, and of the time and place of hearing and acting upon the same shall be served upon the accused at least 5 days before the time of hearing and before any action shall be taken by the board thereon. And the accused shall, on demand, be heard by himself or counsel, and either party may produce witnesses, who shall be sworn by the president of the board and give testimony subject to the pains and penalties of perjury. [1941 c. 213]

38.13 Schools and school districts; nonresidents and tuition. (1) The board of school directors shall maintain the public schools now established in said cities, and shall establish and maintain such additional schools, elementary, high, junior high and special, as may from time to time be found necessary by it, and said board shall divide said city from time to time into elementary, high, junior high and special school districts, and said schools shall be opened to students residing within said districts, provided that any pupil residing in any such district may attend a school in another district with the written permission of the superintendent.

(2) Nonresident pupils may be admitted to any of such schools as may be within the jurisdiction and control of the said board under such regulations and upon the payment of such tuition charges as the board may reasonably establish.

(3) The board shall be obliged to admit to any of its schools nonresident pupils only

when the existing accommodations and facilities, building, classroom instruction, and equipment are sufficient for additional pupils; only children who are mentally able to carry the regular academic courses shall be admitted to any school for crippled children; if any such nonresident pupil resides in a school district which does not maintain a similar special school or class, his tuition shall be chargeable to the town, city or village of which such pupil is a resident; and if such pupil is a resident of any city, village or school district which does maintain such a special school or class, his tuition shall be a charge upon the parent or guardian of such pupil; and any such tuition shall be subtracted from the state aid allotted to any such city receiving such pupils; maintenance not exceeding 80 cents a day for each day a nonresident crippled child, obliged by physical handicap to board away from home in order to attend a regular school, attends any such school shall be granted, providing a request for such maintenance shall be made to and approved by the superintendent of public instruction. [1941 c. 213]

38.14 High schools; supervision. The high schools shall be public schools and as such under the same supervision and control in respect to location, building, leases, furniture, teachers, textbooks and course of study, and all other matters as is provided in this chapter in the case of common schools. [1941 c. 213]

38.15 High schools; courses, diplomas. The course of study in the high schools shall be liberal, and shall embrace such studies as said board and the superintendent may deem proper, and the board shall have power to grant diplomas in testimony of graduation therefrom. [1941 c. 213]

38.16 Report of board; school taxes. (1) (a) The said board shall report to the common council of the city at or before the second regular meeting of the council in October in each year, the amount of money required for the next fiscal year for the support of all public schools, including all trade schools established and maintained under section 38.28, in said city, and said common council shall levy and collect a tax upon all the property subject to taxation in said city, at the same time and in the same manner as other taxes are levied and collected by law, which, together with the other funds provided by law and placed at the disposal of the said city for the same purposes, shall constitute the general educational fund and shall be equal to the amount of money so required by the said board for school purposes, as provided in this chapter. The said board shall also report to the common council, at the same time as above, the amount of money required for the next fiscal year for the repair and keeping in order of school buildings, fixtures, and the repair of broken or worn-out furniture, the making of material betterments to school property and the purchase of the necessary additions to school sites, in accordance with the provisions of this chapter, and said common council shall levy and collect a tax upon all the real and personal property in said city subject to taxation, at the same time and in the same manner as other taxes are levied and collected, which shall constitute the repair fund and be equal to the amount of money so required by the said board of school directors for the said purposes, as provided in this chapter. Whenever the board deems it necessary by resolution adopted by two-thirds of the membership elect, to provide moneys for the purchase of school sites or for the erection of school buildings and additions to school buildings, or both, or for the remodeling of an existing building or buildings, which shall be in addition to the moneys received or which may be received from the sale of bonds, said board of school directors may send a communication to the common council of such city stating the amount of funds so needed; and upon receipt of such request from the said board said common council shall levy and collect a tax upon all property, real and personal, in such city subject to taxation in the same manner and at the same time as other taxes are levied and collected, which shall constitute the construction fund and shall be equal to the amount of money so required by the said board, for the purposes aforementioned, and such tax or taxes shall be in addition to all other taxes which the city is authorized to levy.

(b) The general educational fund taxes for the support of all schools including trade schools, so levied upon each dollar of the assessed valuation of all property in said city, subject to taxation, shall not in any one year exceed 7.3 mills on the dollar of the total assessed valuation of all such property provided, however, that the common council shall have power, notwithstanding any limitation to the contrary contained in chapter 65 of the statutes, to place at the disposal of said board of school directors annually hereafter from funds raised by the common council by tax levy or received by the common council from other sources a sum sufficient for said board to pay to the employes whose salaries are payable out of said general educational fund a cost of living bonus comparable to such bonus payable to city employes under the jurisdiction of the common council; and the repair fund taxes shall not exceed one mill upon the dollar of the total assessed valuation of all such property in such city, subject to taxation, for the repair and keeping in order of school buildings, fixtures, grounds and fences, the purchase of school

furniture and the repair of broken or worn-out furniture, the making of material betterments to school property and the purchase of necessary additions to school sites, and the construction fund taxes shall not in any one year exceed six-tenths of a mill upon the dollar of the total assessed valuation of all such real and personal property, and the said taxes for the purposes named in this section shall be in addition to all taxes provided for by law for other city purposes. The common council shall have the option (1) to levy and collect such tax equal to the amount of money requested by the board for the school construction fund, or (2) to levy and collect a tax to realize part of the money so requested and provide the remainder thereof from taxes levied and collected by the common council for its permanent improvement fund, or (3) to decline to levy and collect a construction fund tax and provide the entire amount of money so requested for such school construction fund from its said permanent improvement fund. Such school construction fund tax levy shall be reduced in any year only by the amount which the common council shall in such year provide from such permanent improvement fund.

(c) Whenever the board proposes to erect a building or to erect an addition to a building or to remodel a building, and any such proposed construction work shall involve the expenditure of \$100,000 or more, the board shall adopt a resolution specifying the site upon which the same is to be erected, the general plan and purpose of said building, and the estimated expenditure therefor, and publish notice of the adoption of such resolution one day each week for 3 successive weeks in a newspaper of general circulation in such city and file a certified copy of said resolution in the office of the city clerk of such city. Said board shall not advertise for bids or let contracts in respect to any such proposed construction work until 90 days after the date of the first publication of such notices. If within such 90 days a petition signed by the electors of such city equal in number to not less than 15 per cent of the vote cast therein for governor at the last general election shall be filed with the city clerk requesting that the resolution for such proposed construction work be referred to a vote of the electors therein, said board shall not advertise for bids or let contracts in respect to any such proposed construction work until said resolution has been voted upon favorably by a majority of those voting thereon at such election. And in the event that no such petition is filed within such 90 days the board may advertise for bids and let contracts in respect to any such proposed construction work. The preparation of any such petition shall be governed as to the use of more than a single piece of paper, the dates of signatures, the places of residence of signers, and the verification thereof, by the provisions of section 5.26; within 15 days following such filing the city clerk shall determine by examination the sufficiency or insufficiency of such petition and state his finding in a signed certificate dated and attached thereto; if the petition be found insufficient, the particulars of such insufficiency shall be set forth in the certificate, and the petition may thereupon be amended within 10 days next following the date of said certificate, by the addition of signatures or otherwise; if originally, or after amendment, such petition be found sufficient the clerk shall so state in his attached certificate and submit the same forthwith to the common council; such proposed resolution shall then be submitted by such common council without alteration to the electors of the city at the next regular election, if one be held not less than 40 days after such date, otherwise at the next succeeding regular election; but the council may by a three-fourths vote of the members elect order it submitted at a special election called for that purpose at any time prior to the next succeeding regular election; not more than one such special election shall be called in any period of 6 months; not more than 20 nor less than 5 days before the election, the city clerk shall cause such proposed resolution to be printed in at least 2, not to exceed 4, daily newspapers published in such city; if a majority of the electors voting thereon shall vote in favor of said proposed resolution, said board shall be authorized to advertise for bids and let contracts in respect to any such proposed construction work.

(d) The said general educational fund taxes shall not be used or appropriated, directly or indirectly, for any other purposes than the payment of the salaries of the superintendent of schools and his legally authorized assistants, the secretary-business manager of the school board, and legally qualified teachers whose appointments are confirmed by said board and such employes as the board may deem necessary, the necessary and current expenses of the schools, including the purchase of school supplies, apparatus, fuel, gas, electricity or electrical power, and such other school purchases and purposes as may be required for the proper maintenance and administration of the schools.

(e) Whenever territory is annexed to any such city, any teacher employed in any public school in such territory, who, at the time of such annexation, possesses the qualifications required by the rules of the board of school directors and by law for probationary or permanent appointment to a teaching position in such city, shall have the status of a regularly appointed teacher in the schools of the city, and shall be entitled to all the rights and privileges of regularly appointed teachers in such city. Time spent in teaching

in such annexed territory prior to annexation shall be credited to each such teacher as time spent in teaching in such city.

(2) All moneys received by or raised in such city for school purposes shall be paid over to the city treasurer, to be disbursed by him on the orders of the president and the secretary-business manager of said board, countersigned by the city comptroller; provided, that the president, instead of signing each order, may certify on the pay rolls furnished by the secretary-business manager to the comptroller to the fact that the amounts therein are correct as allowed by said board. The board may provide by resolution for the payment of all persons employed by said board upon monthly pay rolls, and the manner in which the same shall be certified, audited and approved, and payment made thereon, and such pay rolls shall in all cases be certified by the president and the secretary-business manager and the finance committee of said board, and countersigned by the city comptroller.

(3) The board shall annually determine and fix a schedule of salaries for all classroom teachers, not including principals and vice principals, in the common or graded schools of such city. Such schedule of salaries shall provide a minimum salary for all such teachers, not including principals and vice principals, of not less than \$1,200 for a period of teaching service not to exceed 200 days in any one year, and a minimum-maximum salary for all such teachers, not including principals and vice principals, of not less than \$2,400 for a period of teaching service not to exceed 200 days in any one year.

(4) (a) The board may annually determine and fix a schedule or schedules of salaries for all its employes other than those mentioned in subsection (3) of this section.

(b) All schedules of salaries annually fixed by the board shall be adopted for the same period and on the same year basis as the annual school budget is adopted by the board.

(5) The board shall each year at a time and place to be fixed by it, which shall be at least 5 days before making its annual report under subsection (1) (a), and prior to adopting its budget for the next fiscal year, hold a public hearing on the proposed school budget; and the board shall publish notice of such hearing in one issue of a newspaper of general circulation printed in the English language in said city, at least one week before the hearing. [1941 c. 213; 1943 c. 177, 348]

Note: Sec. 3, ch. 29, Spl. S. 1920, providing that the Milwaukee school board "shall annually determine and fix a schedule of salaries for all 'teachers' in the common or graded schools of such city" includes the principals of such schools, and the purpose of the act was to make the adoption of such a schedule mandatory. The board's resolu-

tion classifying principals in district schools according to the number of graded rooms in the schools is discussed and applied. [As amended by ch. 213, laws of 1941, the provision involved, now 38.16 (3), specifically excepts principals and vice principals.] *Peterson v. Milwaukee*, 226 W 540, 277 NW 128.

38.17 Erection of schools; bonds, popular vote on, interest rate, levy for, maximum outstanding. Whenever the board shall deem it necessary to erect buildings or additions to buildings, or to remodel buildings, or to purchase school sites, it may by a two-thirds vote of the members, send a communication to the common council of said city, at or before the second regular meeting of the council in October in each year, stating the amount of funds so needed and the purposes for which it is proposed to use the funds, and requesting the common council to submit to the voters of said city at the next election to be held in said city the question of issuing school bonds in the amount and for the purpose or purposes named; and upon receipt of such request the common council shall cause the question of the issuance of said bonds for the said school purposes to be submitted to the voters of the city at the next regular, special or other election held in the said city. The question of the issuance of said school bonds shall be submitted upon a separate ballot, or in some other manner so that the vote upon the issuance of said school bonds shall be taken separately from any other question submitted to the voters, and if a majority of the votes cast upon such bond proposition shall be in favor of the issuance of said bonds, then the common council shall cause such school bonds to be issued forthwith in the same manner as other bonds which have been properly authorized are issued, and the proper officials of the said city shall sell or dispose of said bonds in the same manner as other bonds are disposed of and the entire proceeds of the same shall be placed in the city treasury, subject to the order of said board of school directors, for the purposes named in the request for the issuance of said bonds. Said school bonds shall not bear a greater rate of interest than 6 per cent per annum, and shall be payable in 20 years from the date of their issue, one-twentieth of the principal to be payable each year, and said common council shall levy and collect a tax upon all taxable property in said city, in the same manner and at the same time as other taxes are levied and collected, which shall be sufficient to pay the interest on all school bonds outstanding, issued under the provisions of this chapter, and to pay such part of the principal of such school bonds so issued as becomes due during the next fiscal year. The amount of

such school bonds outstanding at any time shall not be greater than one per cent of the total assessed valuation of all taxable property in said city, and the tax levied to pay the interest on and the principal of said school bonds shall be in addition to the tax levied for general purposes upon all the taxable property of said city. [1941 c. 213]

38.18 Loans for reconstruction of school buildings destroyed by fire or other casualty. The common council of any such city may upon request of the board negotiate and make a loan in such amount as the board requests, for the purpose of the reconstruction of any school building destroyed, in whole or in part, in any manner and for the purpose of purchasing any equipment or supplies lost or damaged in any manner. The interest on any such loan shall not exceed 6 per cent per annum. The board shall discharge such debt in such sums per annum as may be agreed at the time of making any such loan, out of any funds at the disposal of the board. Such loan shall be an obligation of the city payable only by the board out of school funds. [1941 c. 213]

38.19 Interest in contracts forbidden to board members, teachers, employes. No member of the board during the term for which he shall have been elected or appointed and for 2 years after the expiration of such term, shall be employed by the board of school directors or by the trustees of the public school teachers' annuity and retirement fund created by section 42.55 [38.24], in any capacity for which salary or emolument is provided by said board or by such trustees. No member of the board, superintendent, assistant superintendent, secretary-business manager of the board, other assistant, teacher of any common school or high school, or janitor or other employe of the board, shall be in any wise interested in any purchase or sale of any real or personal property by the city for the use or convenience of any of the schools, and no such contract made in violation of this provision shall be valid, and any consideration paid by the city upon any such purchase or sale herein prohibited, may be recovered in an action at law in the name of the city aggrieved thereby, and any person so offending against the provisions of this chapter shall be removed from any position held by him under this chapter. [1941 c. 213]

38.20 Existing terms of office to continue. This chapter is not intended to affect the term of office or employment of any person now serving in any capacity by virtue of an appointment or contract of employment heretofore made by the school board in any such city hereafter coming under the provisions of this chapter, but such officer or employe shall continue to serve in the same capacity under the board of school directors created for the term for which he was so appointed or employed; subject, nevertheless, to be removed from such office or employment for the causes and in the manner mentioned in this chapter. Any vacancy for any cause occurring in any office subject to the provisions of this chapter shall be filled by appointment for the unexpired term. [1941 c. 213]

38.21 Real estate sold; purchase of lands and improvements thereon for school purposes by instalment contracts. (1) Whenever in any such city any real estate used for school purposes is sold, the proceeds of said sale shall not go into the general city fund, but shall become part of any fund to be applied on the purchase of real property for school purposes.

(2) The board is authorized to purchase, for school purposes, land within such city, and the improvements thereon, by written contract providing for the payment of the purchase price by instalments extending over a period not more than 5 years from the date of the contract, and for the payment of interest on the deferred instalments at a rate not exceeding 6 per cent per annum, under the conditions hereinafter provided. Such contract shall expressly provide that during the period of said contract such city shall have all the rights of an owner in fee simple with respect to the use of such lands and improvements. Such contract shall specifically provide that the interest on all deferred payments shall be paid by the board out of any funds available for school purposes under the mill limits provided by law for school purposes in such cities, but no interest shall be paid out of any moneys derived from the sale of bonds. Such contract shall have the further provision that the same may be retired at any time within the 5 years upon the payment of the entire principal by the board and when such payments are made the interest on the contract shall cease. Within 5 years the board shall pay the instalments out of any funds available for school purposes or out of any bond issues expressly authorized according to law for the purchase of sites and erection of buildings. No such contract shall be entered into until authorized by resolution of the board, which resolution shall specify the terms of purchase and have been adopted by at least three-fourths of all members of such board. All such contracts shall be in the name of the city and shall be signed, in behalf of such city, by the president and the secretary-business manager of the board and countersigned by the comptroller of such city. The amount of contracts entered into under this section shall not exceed the sum of \$50,000 in any one year. [1915 c. 201; 1921 c. 242 s. 301; 1927 c. 425 s. 112; 1927 c. 428; 1941 c. 213]

38.22 Use of school buildings and athletic fields. Upon the request of the common council of the city the school board shall grant the use of school buildings and athletic fields used in connection therewith, without charge, for such functions stated in the request such as amateur football, basketball, track, physical culture and hygiene and physical exercises, when not interfering with regular school activities on regular school days, except that such buildings shall not be used for political propaganda, lectures on atheism, or discussion or speeches subversive of the government of this country. The board shall not be required to grant more than 3 such requests in any one calendar month nor any such request for the use of any school athletic field on a Friday evening or Saturday during the months of September, October or November. No admission shall be charged any person desiring to attend such functions either as a participant or a spectator. [1941 c. 213]

38.23 School laws applicable; school board's report. The provisions of section 39.276, subsection (1) of section 40.02, section 40.14, subsection (2) of section 40.17, subsections (1), (2), (2a), (2m), (3), (4) and (7) of section 40.21, subsections (1), (2), (3), (4), (5), (6) and (7) of section 40.28, section 40.29, subsections (1m), (3), (6) and (7) of section 40.34, sections 40.345 and 40.347, subsections (2), (3), (4), (6), (7) and (8) of section 40.39, sections 40.58, 40.70, 40.73, 40.77, 40.775, 40.87, 40.89, 41.01, 41.02 and 41.03, subsections (1) to (6) of section 43.50 and subsection (1) of section 59.075 shall be applicable to boards of school directors and the schools, and to cities of the first class, and the board shall exercise the powers and perform the functions and shall be entitled to the school aids therein provided, in so far as the same are relevant to cities of the first class. The school board and the schools in cities of the first class shall be governed in all things by the general laws of the state; and by the provisions of this chapter, except as they are hereafter altered or modified by express amendments to this chapter. The board shall report to the common council annually the general proceedings and acts of said board, the number and condition of the public schools kept in said cities during the year, and the time they have severally been taught, the number and names of teachers; the number of children taught in said schools respectively; the result of the annual enumeration required by law; the extent of school accommodations in the several schools; the amount of school money raised or received during the year; distinguishing the amount received from the state fund, from the amounts derived from taxes levied by the county board of supervisors and by the common council respectively; and the amounts allowed by it against the school fund in detail, together with such other information as it may deem useful, or as the common council may require. A copy of said report shall be transmitted to the state superintendent of public instruction, and a like copy to the librarian of the state historical society in Madison. [1941 c. 213]

38.24 Teachers' retirement fund in cities of the first class. (1) **TEACHERS UNDER OLD SECTION.** The provisions of section 925—xx, heretofore in effect, fixing the amounts and conditions of payments of any assessments, refunds, and annuities thereunder, shall remain in force and shall be referred to for the purpose of determining such amounts and conditions of payments until all such payments have been made, in so far as said provisions apply to teachers in the public schools of cities of the first class who are in the service at the time this subsection takes effect in any such city, and in so far as said provisions apply to pensioners or annuitants under said section 925—xx. Every teacher in the schools of any such city where a pension system has been established at the time this subsection takes effect in any such city who desires to avail himself of the rights and benefits conferred and to assume the limitations and assessments imposed by this section, shall file a written application therefor and consent thereto, as provided in subsection (3) of this section, within three years from the first day of November in the year in which this subsection takes effect in any such city. Every such teacher who fails to file such written application and consent within the time prescribed by the provisions of this subsection shall be forever barred from coming under the provisions of this section. The filing of such application and consent by any teacher who heretofore has come under the provisions of section 925—xx, shall operate as a substitution by such teacher of the provisions of this section in lieu of the provisions of section 925—xx heretofore in effect, fixing the amounts and conditions of payments of any assessments, refunds and annuities for such teacher. Any teacher in the service at the time this subsection takes effect in any such city who had not elected to come under the provisions of section 925—xx, heretofore in effect, and who elects to come under the provisions of this section shall, within five years from the date upon which this subsection takes effect in any such city, pay as arrearages, into the annuity and retirement fund, in addition to the current monthly payments provided for in this section, a sum equal to the various payments, compounded semiannually at the rate of four per cent interest, which would have been made by such teacher if he had elected to come under the provisions of section 925—xx, heretofore in effect. Payment of such arrearages by any such teacher shall be made, within said five years, in such manner as the board of trustees may determine.

(2) **BOARD OF TRUSTEES; MEMBERS.** The president of the managing body of the schools, two female teachers, not more than one of whom shall be a principal or vice principal, two male teachers, not more than one of whom shall be a principal or vice principal, and four members of the managing body of the schools in cities of the first class, are hereby constituted a board of trustees to be known as the "Public School Teachers' Annuity and Retirement Fund Trustees." The trustees shall serve without pay, but the member who shall have been elected secretary of such board of trustees may receive such compensation for clerical duties performed in connection with the annuity and retirement fund, as said board shall determine. Said board is empowered to employ counsel, and all persons needed to perform actuarial, accounting, and clerical work necessary to the proper performance of the duties of such board, and also any physician or physicians, surgeon or surgeons, whose services may be necessary to advise said board concerning the condition of any person who applies for pension or annuity to said board of trustees. Whenever any trustee shall cease to be a member of the managing body, or a teacher in the public schools, he shall cease to be such trustee.

(3) **APPLICATION, MEMBERSHIP.** All teachers employed in the public schools of such cities at the time of the organization of said board desiring to come under the provisions of this section, shall file a written application therefor and consent thereto with the superintendent of schools, or with the clerk or secretary of the managing body of such schools, together with written authority to the managing body to deduct from each monthly salary due the applicant, the sum or sums hereinafter provided, and to pay the same regularly into the city treasury as part of said annuity and retirement fund as herein provided.

(4) **IMPLIED CONSENT.** Any person accepting an appointment as teacher, as defined in section 38.24 (19), in the regular service of such city, after this section takes effect, and serving thereunder, shall, as a part of the consideration for his employment, be conclusively presumed to have consented to the provisions of this section, but any person who shall have attained the age of 50 years before entering the service of such city as any such teacher and who shall enter such service as any such teacher after this section takes effect in any such city, shall have the option to elect whether he desires to avail himself of the rights and benefits conferred and to assume the limitations and assessments imposed by this section, and such person shall file written notice of such election with the superintendent of schools, or with the secretary-business manager of the board, within 6 months from the date of such person's appointment as teacher.

(5) **MEETING; ORGANIZATION.** When twenty-five or more teachers in such school shall have consented, a meeting of all such teachers may be called by five or more who shall designate the time and place of holding such meeting, and publish notice thereof at least once a week for two successive weeks, in a newspaper published in such city. Such teachers shall, at such meeting, elect by ballot one female teacher, who shall hold office as trustee aforesaid for a term of one year, one female teacher, who shall hold office as trustee for a term of two years, one male teacher who shall hold office as trustee for a term of one year, and one male teacher who shall hold office for a term of two years; and a majority of all the votes cast shall be necessary in each case for an election. Annually, thereafter, at a meeting duly called by the board of trustees on the last Saturday of September, one female and one male teacher shall be elected in the same manner for a term of two years.

(6) **TERMS.** At the next meeting of the managing body of the schools, after the election of such trustees, such body shall elect two of its numbers members of the said board of trustees, for a term of one year, and two for a term of two years, and annually thereafter at its first regular meeting held after the last Saturday of September, such body shall elect two of its numbers to be members of said board of trustees for a term of two years. The trustees shall hold office until their successors are elected and qualified.

(7) **QUORUM.** A majority of said board of trustees shall constitute a quorum for the transaction of business. Such board shall, within thirty days after the election of trustees, meet and organize, by the election from its members, of a president, vice president and secretary, and may adopt rules of order not inconsistent with this section.

(8) **FUNDS.** A teachers' annuity and retirement fund is hereby created in cities of the first class, and the fund shall consist of (a) endowment fund, (b) reserve fund, and (c) general fund. The endowment fund shall be made up of gifts and legacies specifically given thereto. The reserve fund shall be made up of (a) the monthly payments made pursuant to the provisions of this section by the teachers, and (b) all unexpended income for any year derived from any source. The general fund shall be made up of (a) gifts and legacies not specifically given to the endowment fund; (b) interest derived from the endowment and reserve funds; (c) moneys transferred from the reserve fund in the manner following: Immediately upon the voluntary or involuntary retirement of any teacher, whether such teacher retire with or without pension, all moneys paid by such teacher into the reserve fund shall be transferred into the general fund; (d) all moneys paid into the fund by the managing body in the manner hereinafter provided; (e) all moneys obtained

by such other methods as may be legally devised. The general fund may be drawn upon for the purposes of this section by said board of trustees. The moneys standing to the credit of any retirement fund heretofore established in cities of the first class, and consisting of gifts and legacies specifically given to any permanent or endowment fund, shall be set apart by the board of trustees as an endowment fund; and all moneys standing to the credit of said retirement fund on the thirty-first day of July, 1915, derived from any other sources, shall be set apart by the board of trustees of such retirement fund as a reserve fund.

(9) **POWERS.** (a) Said board shall have control of the annuity and retirement fund and the investment thereof, investing the same only in such securities as are authorized by law for trust funds investment as provided in chapter 320 of the statutes. No member of said board nor any person officially connected with said board, either as an employe or legal adviser thereof, shall have any financial interest in the gains or profits of, or from any investment which may be made by such board, nor shall any such person act as the agent of any other person or persons who may have any such interest concerning any such investment. Said board shall have the power to require each teacher employed in the public schools of such city to file a statement or statements in such form as such board shall direct, concerning all service rendered by such teacher, and such other information which said board shall need in the performance of its duties. The board shall receive and consider all applications for annuity under this section, shall determine the amount thereof, if not otherwise provided, and direct payment of the annuities.

(b) For the purpose of administering this section the board of trustees or any member thereof shall have power to administer oaths, to secure by subpoena, issued in the name of the board of trustees and signed by a member thereof, the attendance of witnesses and the production of books, papers and records relevant to any matter pending before the board of trustees, and to compel witnesses to answer material and relevant questions put concerning any such pending matter. Such subpoena shall be served in the manner prescribed by law for the service of a circuit court subpoena, and shall be in such form as will advise the witness of the nature of the proceedings in which he is to testify, and the place and time where and when his testimony is to be given. Each witness so subpoenaed shall receive for his attendance the fees and mileage provided for witnesses in civil cases in circuit courts. When a subpoena is issued on the initiative of the board of trustees, or a member thereof such witness fee and mileage shall be paid by the board of trustees and charged to the administration of the annuity and retirement fund. In case of failure of any person to obey the commands of any subpoena lawfully issued or the refusal of any witness to testify before the board of trustees to any matter concerning which he may be lawfully questioned, it shall be the duty of the circuit court, or any judge thereof, in the county where such board of trustees is located, on application by the board of trustees or any member thereof, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein.

(c) Such board of trustees shall have power and authority to deduct from the compensation of each full-time employe of such board who is or becomes a member of the employes' retirement system provided for in chapter 396, laws of 1937, and from every monthly payment of any such employe's compensation after chapter 396, laws of 1937, shall have become or becomes effective in any such city, the amounts certified to such board of trustees by the annuity and pension board mentioned in chapter 396, laws of 1937. Out of the funds under its control the board of trustees shall have power and authority to make public contributions to such employes' retirement system for the benefit of such board's employe members of such employes' retirement system in the amounts certified to such board of trustees by the annuity and pension board mentioned in chapter 396, laws of 1937. All such deductions and contributions made by such board of trustees shall be paid into such employes' retirement system for the purposes mentioned in chapter 396, laws of 1937. All acts of such board of trustees and its members, officers, agents and employes in making any such deductions, contributions and payments prior to the time this paragraph takes effect in any such city are ratified and confirmed.

(10) **TREASURER.** The city treasurer shall be the custodian of said annuity and retirement fund, and shall make payments therefrom; he shall keep the books of account concerning such fund, in such manner as may be prescribed by said board of trustees, which books of account shall always be subject to the inspection of the board of trustees, or any member thereof, and any contributing teacher. He shall furnish to said board of trustees a bond in such amount as the said board may designate, which bond shall indemnify the said board of trustees against any loss which may result from any action or failure to act on the part of such custodian or any of his agents. All fees and charges incidental to the procuring and giving of such bond shall be paid by said board of trus-

tees. The city attorney of such city shall act as the legal advisor of and attorney for the board in all matters referred to him by the board, except as the board may otherwise direct.

(11) COLLECTION OF FUND. (a) Except as otherwise provided in paragraph (b) of this subsection, beginning with the monthly payment of teachers' salaries in November, after the first meeting of the board of trustees the managing body of such schools shall reserve from the salary of each teacher who has come under the provisions of this section, and from every monthly payment thereafter, the sum of two dollars for the first ten years of service, the sum of three dollars for the next five years of service, and thereafter the sum of four dollars, and shall pay the sum so reserved into the annuity and retirement fund. Any teacher in the service at the time paragraph (b) of this subsection takes effect in any such city, and from whose salary reservations or deductions are made in accordance with the provisions of this paragraph, may, on or before the first day of November in the year following the year in which paragraph (b) of this subsection takes effect in any such city, elect in writing to have the managing body of such schools reserve from the salary of such teacher the amounts provided for in paragraph (b) of this subsection, and whenever such election is made by any such teacher, the granting of an annuity to such teacher under this section shall be governed by and contingent upon the provisions of paragraph (b) of subsection (14) of this section. Whenever any such teacher shall make such election, any refunds to any such teacher under the provisions of this section shall be governed by paragraph (b) of subsection (16) of this section. Except as provided in subsection (1) of this section, every teacher employed in the public schools of any such city at the time this section shall have become operative in any such city, and who shall not have come under its provisions on or before the first day of November, 1917 (in the case of public school teachers of any such city in which a public school teachers' annuity and retirement fund shall have been heretofore established), or, on or before the expiration of two years after this section shall have become operative in such city (in the case of public school teachers of any such city in which this section may hereafter become operative), shall be forever barred from coming under the provisions of this section.

(b) Beginning with the first monthly payment of teachers' salaries after the first day of September in the year in which this paragraph takes effect in any such city, the managing body of such schools shall reserve from the salary of each teacher who enters the teaching service after this paragraph takes effect in any such city, and from the salary of each teacher who has come under the provisions of this paragraph after this paragraph takes effect in any such city, and from every monthly payment thereafter, the sum of four dollars for the first ten years of service, the sum of six dollars for the next five years of service, and thereafter the sum of eight dollars, and shall pay the sum so reserved into the annuity and retirement fund. After written election, as provided by paragraph (a) of this subsection, by any teacher to have reservations from such teacher's salary made in accordance with the provisions of this paragraph, beginning with the first monthly payment of any such teacher's salary after such election, the managing body of such schools shall reserve from the salary of each such teacher, and from every monthly payment thereafter, the sum of four dollars for the first ten years of service, the sum of six dollars for the next five years of service, and thereafter the sum of eight dollars, and shall pay the sum so reserved into the annuity and retirement fund. The granting of an annuity to any teacher from whose salary reservations are made in accordance with the provisions of this paragraph, shall be governed by and contingent upon the provisions of paragraph (b) of subsection (14) of this section, and the payment of any refunds to any such teacher, under the provisions of this section, shall be governed by the provisions of paragraph (b) of subsection (16) of this section.

(12) PAYMENT OF ANNUITIES. (a) All applications or claims for annuity or for refund of contributions, and proofs in support of any such claim, shall be made to the board of trustees in such manner and form as the board of trustees may prescribe or deem sufficient, and the board of trustees may make reasonable rules and regulations for making, hearing and determining claims and for carrying into effect the provisions of this section. The city treasurer, upon order or warrant of the board of trustees, shall pay out of said annuity and retirement fund, in monthly payments, to each retired teacher an annuity in such sum as such retired teacher shall be entitled to and as shall have been determined by said board of trustees, in accordance with the provisions of this section.

(b) A teacher who has taught twenty-five years in public schools, at least fifteen of which must have been served in the public schools of a city to which this section applies, upon filing with the board of trustees proper application, sufficient proofs of teaching service, the date of retirement therefrom, compliance with the provisions of this section with respect to required contributions, and a certificate of incapacity for teaching service sworn to by his attending physician and by a physician employed by the board of trustees, and upon determination by the board of trustees that such teacher presumably is incapacitated permanently for teaching service, shall be paid an annuity of six hundred dollars.

(c) For every additional year of service over 25, a teacher, entitled to an annuity under the provisions of this section, shall be paid an additional sum of \$40 a year; but every such additional year of service shall have been rendered in the public schools in such city of the first class, and in no case shall any pension or annuity exceed the sum of \$1,200 a year, provided, that said additional sum of \$40 a year and said maximum sum of \$1,200 a year shall be applicable only to teachers who retired from service on June 23, 1931 and thereafter, or who shall hereafter retire from service, and in respect to whom monthly salary reservations have been made in the amounts as provided in paragraph (b) of subsection (11) of section 38.24.

(d) A teacher who has taught fifteen years or more in the public schools in any such city, and who has become incapacitated for teaching service and has paid the amount of fifteen years' contribution or more, upon filing with the board of trustees proper application, sufficient proofs of teaching service, temporary cessation from active teaching service for six months preceding application, compliance with the provisions of this section with respect to required contributions, and a certificate of such incapacity sworn to by his attending physician and by a physician employed by the board of trustees, and upon determination by the board of trustees that such teacher presumably is incapacitated temporarily for teaching service, may be allowed and paid, six months after he has ceased, temporarily, active teaching service, and for the duration of such incapacity, a proportionate annuity, the amount of which, to be determined by the board of trustees, shall be, as nearly as practicable as many twenty-fifths of six hundred dollars as the years of teaching service of such teacher in the public schools in said city are a part of twenty-five, and such annuity shall cease when the incapacity ceases. Should such incapacity become permanent and should such teacher retire from the teaching service of such city, the board of trustees, upon its determination that such teacher has retired and presumably is incapacitated permanently for teaching service, may allow and cause to be paid to such teacher a proportionate annuity, which shall be, as nearly as practicable, as many twenty-fifths of six hundred dollars as the years of teaching service of such teacher in the public schools in said city are a part of twenty-five.

(e) A teacher who has taught fifteen or more years and less than twenty-five years in public schools, at least fifteen of which must have been served in the public schools of a city to which this section applies, and who shall have attained the age of sixty-five years, having paid the full amount of contribution for each year of such teaching service in public schools, upon filing with the board of trustees proper application, sufficient proofs of age, teaching service, the date of retirement therefrom, and compliance with the provisions of this section with respect to contributions, shall be allowed and paid a proportionate annuity which shall be, as nearly as practicable, as many twenty-fifths of six hundred dollars, as the years of teaching service of such teacher in public schools are a part of twenty-five.

(f) Upon certification by the superintendent of schools, if any, and the managing body of such schools, by its proper officers, to the board of trustees that a teacher who has come under the provisions of this section presumably is mentally or physically incapacitated permanently for teaching service, and has been retired from teaching service because of such incapacity, and upon filing with the board of trustees by such school officers sufficient proofs in support of such teacher's incapacity, length of teaching service, and compliance with the provisions of this section with respect to contributions, the board of trustees shall allow and cause to be paid to such teacher an annuity the amount of which shall be, as nearly as practicable, as many twenty-fifths of six hundred dollars as the years of teaching service of such teacher are a part of twenty-five.

(g) On the application of any teacher coming under the provisions of this section, and having complied therewith, said board of trustees shall retire such teacher provided he has been engaged in the work of teaching in public schools for a period aggregating thirty-five years, twenty of which shall have been in the public schools of such city and such teacher shall be entitled to receive and be paid the annuity provided for in paragraphs (b) and (c) of this subsection.

(h) On the application of any teacher coming under the provisions of this section who has complied therewith and is sixty-five years of age, said board of trustees shall retire such teacher provided he has been engaged in the work of teaching for a period aggregating twenty-five years in public schools, fifteen years of which shall have been in the public schools in the said city, and such teacher shall be entitled to receive and be paid the annuity provided for in paragraphs (b) and (c) of this subsection.

(i) In determining the teaching service record and the amount of annuity payable under this section to an applicant who, at the time of applying for an annuity under this section, is entitled to any benefit, absolute, contingent or otherwise, under the provisions of sections 42.20 to 42.54, or under the provisions of any teachers' annuity and retirement plan of any other state, territory, nation, province, or governmental subdivision thereof,

no credit shall be allowed or given by the board of trustees to such applicant for teaching service performed outside of a city to which this section applies for which outside teaching service such applicant is entitled to any benefit, absolute, contingent or otherwise, under the provisions of any other teachers' annuity and retirement plan as hereinbefore specified. The provisions of this paragraph shall not affect any rights acquired under this section prior to the taking effect of this paragraph in any such city.

(j) Computation and payment of annuities granted under the provisions of paragraphs (d) and (f) of this subsection shall be made on the proportionate basis therein provided for teaching service of less than twenty-five years only. For teaching service of twenty-five years or more, computation and payment of annuities granted under the provisions of said paragraphs (d) and (f) shall be made as provided in paragraphs (b) and (e) of this subsection.

(k) Any teacher, as defined in section 38.24 (19), heretofore or hereafter coming under the provisions of this section who has attained or shall attain the age of 70 years shall be retired by the board at the end of the school year in which the said teacher has reached the age of 70, and the school year under this section shall be deemed to begin on July 1 in any year and end on June 30 of the following year. When so retired under the provisions of this paragraph, a teacher who has taught 15 or more years in public schools, at least 15 of which must have been served in the public schools of a city to which this section applies, and who has paid the full amount of contributions for each year of such teaching service in public schools, upon filing with the board of trustees proper application, sufficient proofs of age, teaching service, the date of retirement therefrom, and compliance with the provisions of this section with respect to the contributions, shall be allowed and paid an annuity computed on the proportionate basis provided in paragraph (e) of this subsection for teaching service of less than 25 years and on the basis provided in paragraphs (b) and (c) of this subsection for teaching service of 25 years or more.

(l) In determining the teaching service record and computing the amount of annuity payable under this section the board of trustees shall credit each applicant for annuity with time absent on leave from teaching duty while serving in the military or naval forces of the United States, or in any auxiliary branch thereof, or in the merchant marine, or in overseas service of the American Red Cross or in the overseas service of any United Service Organization, during any war, or during a period officially proclaimed to be a national emergency or limited national emergency; and said board of trustees shall credit each applicant for annuity, serving as aforesaid, with a sum equivalent to the total amount which would have been reserved from and after September 16, 1940 from the salary of such applicant for payment into the annuity and retirement fund if such applicant's teaching duties had not been interrupted by such service, upon proof of such service being furnished to the board.

(13) UNIFORMITY. All annuities granted by the board of trustees under the provisions of this section shall be uniform in amount except as otherwise provided herein, and shall be computed from the first day of the month next following the date of retirement of the annuitant from teaching service in such city, except that the temporary incapacity annuity provided for in paragraph (d) of subsection (12) of this section shall be computed from a date six months after such annuitant temporarily has ceased active teaching service. No annuity, except the temporary incapacity annuity provided for in paragraph (d) of subsection (12) of this section, shall be paid to any person until such person shall have retired from teaching service in the public schools to which this section applies, and all applications for annuity and proofs in support thereof shall be filed with the board of trustees within one year after the applicant retires from teaching service in such city, except that the temporary incapacity annuity provided for in paragraph (d) of subsection (12) of this section may be applied for, allowed and paid as therein provided before the recipient thereof has retired from teaching service in such city. No teacher shall be deemed to have retired from teaching service until such teacher shall have resigned from his position, or the managing body of the schools of such city legally shall have caused such teacher's name to be stricken from the official list of teachers.

(14) WHEN PAYABLE. (a) No annuity shall be paid to any teacher from whose salary reservations have been made in accordance with the provisions of paragraph (a) of subsection (11) of this section until such teacher shall have contributed to the annuity and retirement fund the following sums: Two hundred dollars for the first ten years of service, one hundred fifty dollars for the next five years of service, and forty dollars for each and every succeeding year of service.

(b) No annuity shall be paid to any teacher from whose salary reservations have been made in accordance with the provisions of paragraph (b) of subsection (11) of this section until such teacher shall have contributed to the annuity and retirement fund the following sums: Four hundred dollars for the first ten years of service, three hundred dol-

lars for the next five years of service, and eighty dollars for each and every succeeding year of service.

(c) No teacher shall be required to pay into such fund for more than forty years. An annuity may be applied for by a contributing teacher and may be granted or allowed by the board of trustees prior to the retirement of the applicant from teaching service, but no annuity shall be paid until all requirements of this section shall have been complied with by the applicant.

(15) INFORMATION TO BE FURNISHED BOARD. It shall be the duty of the managing body in charge of the public schools of any such city to notify the board of trustees, in writing, on the first day of each month, of the employment or appointment of any new teacher or teachers, and of all discharges, dismissals, suspensions, and resignations from the service, and all deaths which shall have occurred in the teaching corps during the preceding month, and such written notification shall state the dates upon which any such event or events shall have occurred. The officers and heads of departments of said managing body of such schools are hereby charged with the duty of supplying to said board of trustees, without any charge or expense to said board of trustees, all information requested by said board of trustees concerning any employe under the charge of or supervision of such officers, heads of departments, or such managing body, which such information such board of trustees shall need in the performance of its duties, and all employes of such managing body are charged with the duty of promptly supplying such information for the purposes of said board of trustees.

(16) REFUND OF CONTRIBUTIONS. (a) Any contributing teacher from whose salary reservations have been made in accordance with the provisions of paragraph (a) of subsection (11) of this section who shall retire voluntarily or involuntarily from the service, not being in receipt of an annuity, shall be entitled to receive one-half of the total amount paid by him into said fund, and in case of the death of any such contributing teacher, his heirs or legatees shall be entitled to receive one-half of the total amount paid by such teacher into said fund, upon application therefor and upon proof of death of said contributing teacher, and establishment of said claim to the satisfaction of said board of trustees.

(b) Any contributing teacher from whose salary reservations shall have been made in accordance with the provisions of paragraph (b) of subsection (11) of this section, and who shall retire voluntarily or involuntarily from the service, not being in receipt of an annuity, shall be entitled to receive the total amount paid by him into said fund, and in case of the death of any such contributing teacher, his heirs or legatees shall be entitled to receive the total amount paid by such teacher into said fund, upon application therefor and upon proof of death of said contributing teacher, and establishment of said claim to the satisfaction of said board of trustees. In case of the death of an annuitant who has contributed to said fund the amounts provided for in paragraph (b) of subsection (11) and paragraph (b) of subsection (14) of this section prior to the time when such annuitant shall have received as annuity, in monthly payments, an aggregate amount equal to the amount paid into said fund by said annuitant, the heirs or legatees of said deceased annuitant shall be entitled to receive an amount equal to the difference between the amount paid into said fund by said annuitant and the amount paid to said annuitant, as annuity, during said annuitant's life, upon application therefor and upon proof of death of said annuitant and establishment of said claim to the satisfaction of said board of trustees.

(17) EXECUTION; EXEMPT FROM. All annuities granted under the provisions of this section shall be exempt from taxation, and from execution, attachment and garnishment process, and no annuitant shall have the right to transfer or assign his annuity.

(18) PROBATION PERIOD. All elections or appointments of teachers in such cities shall be on probation, and after successful probation for three years, the election or appointment shall be permanent, during efficiency or good behavior, provided that teachers having taught three years or more in cities to which this section applies shall be deemed to have served their term of probation. No teacher who has become permanently employed as herein provided by reason of three or more years of continuous service, shall be discharged, except for cause upon written charges, which shall after ten days' written notice thereof to such teacher, upon such teacher's written request, be investigated, heard and determined by the board of school directors, whose action and decision in the matter shall be final.

(19) TEACHER DEFINED. The term "teacher" in this section shall include all superintendents, principals, supervisors, welfare workers and attendance officers, high school teacher-librarians, not, however, including assistant or clerk-librarians employed by the board in high school libraries, having the qualifications of teachers as provided in the statutes and prescribed by the board of school directors, pursuant to subsection (1m) of section 43.22 of the statutes of 1939, and employes defined as teachers and made eligible to membership and becoming members of the teachers' retirement fund by subsection (7)

of section 43.50 [38.27], continuous substitute teachers made eligible to membership and becoming members of the teachers' retirement fund by chapters 53 and 312 of the laws of 1935, and regular instructors employed in the public schools of such cities, but nothing herein contained shall affect the election, appointment or tenure of the superintendent, assistant superintendents or special supervisors.

(20) FISCAL REPORT AND ESTIMATES. (a) The board of trustees of the annuity and retirement fund, shall report to the managing body of the schools of such city at or before the first meeting of said managing body, in July of each year, the amount of money required for the next fiscal year for the payment of annuities legally granted by such board of trustees, and for the payment of other necessary and current expenses. Such report shall set forth the estimated income of said annuity and retirement fund for the next fiscal year, and the additional amount required and it shall be the duty of said managing body to set aside from the general fund for the support of the schools in such city, an amount which shall be sufficient to cover the said excess, and such managing body, shall annually pay into the annuity and retirement fund, a sum not less than the amount paid into said fund the preceding year by the teachers.

(b) But in any year during which the amount paid into said annuity and retirement fund under the provisions of section 71.26 shall be equal to or in excess of the amounts required to be set aside and paid into said fund by said managing body under the provisions of paragraph (a) of this subsection, said managing body shall not be required to set aside and pay into said annuity and retirement fund the amounts provided for in said paragraph (a). If the amount paid into said annuity and retirement fund under the provisions of section 71.26 shall, in any year, be less than the amounts required to be set aside and paid into said annuity and retirement fund by said managing body under the provisions of paragraph (a) of this subsection, said managing body shall only be required to set aside and pay into said annuity and retirement fund an amount which, when added to the amount paid into such annuity and retirement fund under the provisions of section 71.26, shall be equal to the amounts required to be set aside and paid into said annuity and retirement fund by said managing body under the provisions of said paragraph (a).

(21) TEACHERS IN ANNEXED TERRITORY. (a) Whenever territory heretofore has been or is annexed to or consolidated with any city to which this section applies, any teacher employed in any public school in such territory who shall have acquired or shall acquire the status of a regularly appointed teacher in the public schools of the city to or with which such territory shall have been or is annexed or consolidated, shall be entitled to the rights and privileges provided for in this section upon complying with the provisions of this section. As to such teachers, for the purpose of qualifying for an annuity under this section, time spent in teaching in such territory prior to the annexation or consolidation thereof shall be considered as time spent in teaching in such city, except that the provisions of paragraph (i) of subsection (12) of this section shall apply to such teachers.

(b) No teacher mentioned in paragraph (a) of this subsection shall be required to comply with the provisions of section 42.40 after the effective date of such annexation or consolidation nor, as to such teachers, shall the provisions of sections 42.41 to 42.44 be applicable or effective after the effective date of such annexation or consolidation.

(22) WITHDRAWALS FROM STATE RETIREMENT FUND BY TEACHERS EMPLOYED IN MILWAUKEE. (a) A member of the state retirement system who ceases to be employed in a school or school system to which the state retirement law applies and who becomes employed in a school or school system to which this section applies may, while so employed in a school or school system to which this section applies, elect in writing, filed with the state annuity and investment board, to withdraw the accumulation of such member's deposits in the state retirement system.

(b) When the election mentioned in paragraph (a) of this subsection shall have been made and the member making such election shall have filed with the state annuity and investment board a full and complete discharge and release of all right, interest or claim on the part of such member under the state retirement law, such board shall determine the amount of the accumulation of such member's deposits as of June thirtieth in the year in which such election is made, and shall certify such determination to the secretary of state. The amount so certified shall be paid from the retirement deposit fund to the withdrawing member in the manner provided in section 42.48. [1931 c. 299, 359; 1935 c. 553; 1937 c. 160; 1939 c. 22, 117; 1939 c. 513 s. 10; 1941 c. 213 s. 27; 1943 c. 309]

Note: Teacher could not complain of her discharge during three-year probationary period arising from a policy of board not to employ married women as probationary teachers. (Subsection (18)) State ex rel. Schroeder v. Board of School Directors, 225 W 444, 274 NW 301.

The period of substitute teaching does not count as a part of the three-year period of probation teaching provided for by the

statutes. (Subsection (18)) Blau v. Milwaukee, 232 W 197, 285 NW 347, 286 NW 874, 287 NW 594.

Ch. 299, Laws 1931, amending 42.55 (12) (c) and creating (12) (j), applies only to teachers who were then in actual service, who thereafter on retirement would be entitled to the benefits of the increase by reason of the amendment, in view, among other things, of sec. 7, ch. 476, Laws 1931,

providing that the new matter contained in ch. 299, Laws 1931, shall apply only to annuitants the first monthly payments of whose annuities are made after the effective date of ch. 299. State ex rel. Teweles v. Pub. S. T. A. & R. F. Trustees, 235 W 385, 291 NW 775.

Section 42.55 (12) (k), created by ch. 160, Laws 1937, (now 38.24 (12) (k)) provides that any teacher "coming under the provisions of this section" who has attained or who shall attain the age of 70 years shall be retired. That means that every teacher in the public schools of a city of the first class should be retired at the age of 70, no matter when the teacher came under 42.55. Subsection (18) (originally enacted by ch. 510, Laws 1909) merely prescribing that appointments of teachers, after successful probation for 3 years, shall be permanent during efficiency or good behavior and until discharged for cause, does not possess the essentials of a contract, but only grants a gratuity and the declaration of a public

policy in relation to teachers' tenure, and hence ch. 160, Laws 1937, amending the tenure statute by creating (12) (k) does not impair any obligation of contract. Morgan v. Potter, 238 W 246, 298 NW 763.

Annexation of school district to city of Milwaukee was not delayed by failure to adjust assets and liabilities as required by 66.03. Where annexation took effect prior to commencement of school year and school in such annexed territory was operated by city of Milwaukee as part of its school system, and teachers (who, prior to annexation, had entered into contracts with school district No. 6 to teach in schools of that district) taught entire school year in said school, supervised and directed by proper school officers of city and their salaries were paid by such city, such teachers were teachers in schools of city of Milwaukee and not in the schools of school district No. 6, and such teachers were not under state retirement law, but were under Milwaukee teachers' retirement law. 20 Atty. Gen. 781.

38.25 Teachers' annuity extended. The provisions of section 42.55 [38.24] of the statutes, together with the rights and benefits conferred and subject to the limitations and assessments imposed by said section, shall be applicable to all persons who at the time of the passage of this act [June 22, 1923] are pensioners or annuitants under section 925—*xx* (as in effect prior to the passage of chapter 591, laws of 1921) in the same manner, to the same extent and with like effect as said section 42.55 is applicable to teachers in the public schools of cities where a pension system was established at the time said chapter 591, laws of 1921, took effect; provided that every such pensioner or annuitant who desires to avail himself of the rights and benefits conferred and to assume the limitations and assessments imposed by said section 42.55, shall, not later than one year from the first day of November in the year in which this act takes effect, file a written application and consent thereto with the superintendent of schools, or with the clerk or secretary of the managing body of such schools, and shall within said time pay into the city treasury such sum as shall be necessary in order to comply with the provisions of subsection (14) of said section 42.55. [1941 c. 213 s. 28]

38.26 Benefits of 38.24 extended to additional Milwaukee teachers. (1) (a) Any teacher employed continuously for 3 or more school years in substitute teaching service in the public schools to which section 38.24 is applicable in any such city who, at the time this section takes effect in any such city, shall not have come under the provisions of section 38.24, or any person employed by or under the jurisdiction of the board to which section 38.24 is applicable who is defined, designated or classified by law as a teacher under the jurisdiction of any such board and who, at the time of the enactment of any such law so defining, designating or classifying teacher status, shall not have come under the provisions of section 38.24, may file with the secretary-business manager of the board a written application and consent, subscribed by such teacher, to come under the provisions of section 38.24 in the manner and upon the conditions prescribed in this subsection, and shall be eligible to membership in the teachers' retirement fund.

(b) Each such teacher who files the written application and consent mentioned in paragraph (a) of this subsection at the same time shall file with such secretary-business manager a written statement, subscribed by such teacher, setting forth the total number of years of teaching service of such teacher in public schools outside a school or school system to which section 38.24 applies and the place where and the years in which such outside teaching service was performed, for which such outside teaching service such teacher claims credit in the computation of any annuity payable under the provisions of section 38.24.

(c) Within 30 days after the filing of any such written application and consent mentioned in said paragraph (a), such secretary-business manager shall transmit written notice thereof to the board of trustees mentioned in subsection (2) of section 38.24 together with the written statement required to be filed under the provisions of paragraph (b) of this subsection, and also a written statement setting forth the total number of years of teaching service of such teacher in public schools to which section 38.24 applies, as shown by the records of the board of school directors in such city.

(d) The period of continuous teaching service of any teacher mentioned in said paragraph (a) shall not be deemed to be or to have been interrupted by reason of any temporary cessation or suspension of any class or teaching work in any such school or school system, or by regular vacation periods or holidays or by transfer or assignment from one position or school to another within such school system.

(2) (a) Filing of the written application and consent and the statement of outside teaching service mentioned in subsection (1) of this section by any such teacher within

the time specified in paragraph (a) thereof, shall extend to such teacher the rights and benefits conferred by section 38.24 and, in the case of any such teacher who heretofore has come under the provisions of section 925-xx of the statutes of 1919, shall operate as a substitution by such teacher of the provisions of section 38.24 in lieu of the provisions of said section 925-xx.

(b) In the cases of all such teachers who consent to come under the provisions of section 38.24 in the manner prescribed in this section, the board shall make monthly reservations from the salaries or the per diem substitute compensation in accordance with the provisions of paragraph (b) of subsection (11) of section 38.24, beginning with the first monthly payment of such salary or compensation to any such teacher after such teacher shall have filed the written application and consent mentioned in paragraph (a) of subsection (1) of this section. The amounts of the initial and subsequent reservations so made from the salary or compensation of any such teacher, shall be determined by the number of years of teaching service of such teacher in public schools as shown by the records of the board in such city and the statement required to be filed in accordance with the provisions of paragraph (b) of subsection (1) of this section.

(3) (a) In addition to the initial and subsequent monthly reservations and payments so specified to be made and paid, each teacher who consents to come under the provisions of section 38.24 in the manner prescribed in this section shall, within 5 years from September 1 in the year in which his written application and consent are filed, pay into the annuity and retirement fund all arrearages in assessments, and interest on such arrearages. Payment of such arrearages and interest, within the time designated, shall be made by each such teacher in such manner and at such times as may be determined by the board of trustees mentioned in subsection (2) of section 38.24, provided, however, that any high school teacher-librarian, any employe in the department of adult education and recreation, and any continuous substitute teacher, eligible to, and who has heretofore been admitted into membership in the teachers' retirement system under the provisions of subsection (1m) of section 43.22 and subsection (7) of section 43.50, of the statutes of 1939, and of chapters 53 and 312 of the laws of 1935, shall not be required to pay interest on the arrearages in assessments, including prior service arrearages, as defined in paragraphs (a), (b) and (c) of this subsection (3) of this section. The board of trustees shall refund to any such persons any amounts of interest heretofore paid into the fund by any of them.

(b) As used in this section the term "arrearages in assessments" means the total of the various payments required to be made in accordance with the provisions of paragraph (b) of subsection (11) and paragraph (b) of subsection (14) of section 38.24 for each month and year of teaching service in public schools prior to the school month for which the initial monthly reservation from salary or compensation is made after the filing of the written application and consent mentioned in subsection (1) of this section by any such teacher mentioned therein, less the sum total of the principal amounts any such teacher has paid into any annuity and retirement fund under section 925-xx of the statutes of 1919. The periods for which payment of any such arrearages shall be made by each such teacher, and the amounts of such arrearages, shall be determined by the board of trustees mentioned in subsection (2) of section 38.24.

(c) In the case of any such teacher who consents to come under the provisions of section 38.24 in the manner prescribed in this section, all arrearages in assessments, for any period of teaching service in public schools prior to September 1 in the year in which paragraph (b) of subsection (11) of section 42.55 [38.24(11)(b)] became or becomes effective in any such city, shall be deemed and known as "prior service arrearages", shall be computed without interest to said latter date, except only in respect to persons who became or who were members under section 925-xx of the statutes of 1919, and with interest for such excepted persons, and the amount thereof, so computed and determined, shall be deemed to be the principal amount of arrearages accrued and payable as of said latter date by any such teacher as and for "prior service arrearages". Each school year yearly amount of all other arrearages in assessments for any period of teaching service in public schools subsequent to the date hereinbefore mentioned in this paragraph shall be deemed to have accrued and shall become payable by such teacher on September 1 immediately following the school year in which the monthly salary or compensation reservations thereof would have been made, as prescribed in paragraph (b) of subsection (11) of section 42.55 of the statutes of 1937, if such teacher had been under the provisions of said section 42.55 during such school year.

(4) (a) Except as otherwise provided in this section, required payments as a condition precedent to the receipt of an annuity and the refund of contributions under section 38.24 shall be governed, respectively, by the provisions of paragraph (b) of subsection (14) and paragraph (b) of subsection (16) of section 38.24 in the cases of all such teachers who consent to come under the provisions of that section in the manner prescribed in this

section. In addition to the required payments specified to be made by the provisions of paragraph (b) of subsection (14) of section 38.24, each such teacher who consents to come under the provisions of section 38.24 in the manner prescribed in this section shall pay interest on arrearages, except as provided in paragraph (a) of subsection (3) of this section. Any such interest, so paid by any such teacher, shall not be refunded, nor shall any such interest be a part or portion of any refund under the provisions of paragraph (b) of subsection (16) of section 38.24.

(b) Interest on "prior service arrearages", when payable, shall be computed and be payable from the accrued date of such "prior service arrearages", as determined and fixed in paragraph (c) of subsection (3) of this section, to the date of payment of such "prior service arrearages." Interest on all other arrearages in assessments, when payable, shall be computed and be payable upon each school year yearly amount thereof to the date of payment thereof from the September 1 immediately following the school year in which the monthly salary or compensation reservations thereof would have been made if such teacher had been under the provisions of section 42.55 of the statutes of 1937 during such school year. All arrearages in assessments upon which interest is required to be computed and paid under the provisions of this section, and all such interest, shall be compounded semiannually to the date of payment thereof at the rate of 4 per cent per annum from the respective dates when such arrearages are made payable under the provisions of this section.

(c) March 1 and September 1 in each year shall be the dates of payment mentioned in paragraph (b) of this subsection for the payment of arrearages and any interest payable. Any such arrearages and interest payable and not paid on any such date of payment shall bear interest computed as provided in said paragraph (b), until the next succeeding date of payment.

(5) No annuity shall be paid to any such teacher who consents to come under the provisions of section 38.24 until such teacher has paid into said annuity and retirement fund the amounts, both principal and interest, if any, prescribed in this section. [1935 c. 53, 312, 444; 1937 c. 340; 1941 c. 213]

Note: See note to 38.24, citing *Blau v. Milwaukee*, 232 W 197, 285 NW 347, 286 NW 874, 287 NW 594.

38.27 Full-time qualified social center and welfare workers eligible to teachers' retirement system. All full-time social center, community house, adult education, or recreation directors, instructors or other employes employed by the board of school directors, who possess the qualifications required by law and the rules of the board for employment as teachers and as such directors, instructors or other employes employed as hereinabove provided in such city, shall have the status, rights and privileges of regular teachers and shall be and are regular instructors within the meaning of that term as used in subsection (19) of section 38.24. [1937 c. 340; 1941 c. 213]

38.28 Trade schools; pupils eligible, pay for materials, sale of products, trade schools fund. (1) In any such city the board of school directors may establish, conduct and maintain schools for the purpose of giving practical instruction in the useful trades, and continue in operation any such schools existing at the time this section becomes effective in such city; and the board in any such city to which chapter 459 of the laws of 1907, as amended, was applicable, may establish, conduct and maintain one or more such trade schools in addition to those in existence in such city at the time this section becomes effective therein; and the board may purchase the proper machinery, tools and equipment, and employ sufficient teachers and other necessary employes in said schools.

(2) Such schools shall be known as senior trade schools and junior trade schools. Separate trade schools may be established, conducted and maintained for girls only, and for boys only, or for both girls and boys; until otherwise determined by the board, only pupils who have completed the eighth grade in any accredited school whose graduates are eligible to admission to any of the high schools in any such city shall be admitted to the senior trade schools. Only pupils who have attained the age of 14 years or have completed at least 6 grades in the elementary schools shall be admitted to the junior trade schools.

(3) During the remainder of the calendar or budget year in which this section takes effect in any such city, the existing senior and junior trade schools in any such city shall be supported and maintained respectively by funds heretofore raised and appropriated for such schools respectively.

(4) For 1942 and annually thereafter the funds required for the support and maintenance of said senior and junior trade schools shall be included in the general educational fund provided for in paragraphs (a), (b) and (d) of subsection (1) of section 38.16 with other funds provided and placed at the disposal of said city for such purposes.

(5) The pupils in such trade schools may be required by the board to pay the cost of all materials consumed by them in their work, or in lieu thereof the board may establish

a fixed sum to be paid by each student in any course, which sum shall be sufficient to cover the cost of materials to be consumed by pupils in any course; and the board may in its discretion dispose of any articles made or manufactured in such trade schools and the proceeds thereof shall be paid into the trade school fund. [1941 c. 213]

38.29 Provisions not applicable. Sections 41.05 and 41.06 do not apply to cities of the first class. [1941 c. 213]

38.30 This act amendatory of charters; repeal of conflicting laws. This chapter is amendatory of the charters of the various cities to which it applies or may hereafter become applicable, and any provision of said charters inconsistent herewith is hereby modified, amended or repealed by this chapter to the extent necessary to give full force and effect to the provisions and intent hereof. All acts or parts of acts contravening the provisions of this chapter are hereby repealed. [1941 c. 213]