

# WISCONSIN STATUTES

## CHAPTER I.

### Sovereignty and Jurisdiction of the State.

**1.01 History:** R.S. 1849 c. 1 ss. 2, 3; R. S. 1858 c. 1 ss. 2, 3; R. S. 1878 s. 1; 1889 c. 215; Ann. Stats. 1889 ss. 1, 1a; Stats. 1898 s. 1; 1915 c. 382 s. 1; Stats 1915 s. 1.01; 1965 c. 66 ss. 6, 8.

On the state boundary see notes to sec. 1, art. II and on jurisdiction on rivers and lakes see notes to sec. 1, art. IX.

All Wisconsin laws have effect in all parts of the state and upon all persons, unless the laws are local or private. *State v. Doxtater*, 47 W 278, 2 NW 439.

The power of the state over navigable waters within its boundaries is limited to reasonable police regulations deemed necessary to preserve the common right of navigation, including the right to take ice for domestic use or sale. It cannot sell water, ice or fish. *Rossmiller v. State*, 114 W 169, 89 NW 839.

Sovereign authority is vested in the people and exercisable through 3 co-ordinate agencies, executive, legislative and judicial; each within its particular jurisdiction answerable only to the people, but outside thereof subject to the jurisdiction of the other co-ordinate departments. *Ekern v. McGovern*, 154 W 157, 142 NW 595.

When the United States acquires land within a state without the consent of the state for purposes other than those stated in par. 17, sec. 8, art. I, U. S. Constitution, the United States does not obtain exclusive jurisdiction; to vest exclusive jurisdiction in the United States even over lands in Indian country within a state a cession of such jurisdiction by the state is essential, and where there is neither consent nor cession by the state, the United States is only a proprietor of the land, and the state's jurisdiction is unimpaired except that it may not interfere with the performance of the functions of the U. S. government for which the land was acquired. *State v. Shepard*, 239 W 345, 300 NW 905.

**1.02 History:** 1867 c. 49; 1871 c. 153; R. S. 1878 ss. 2, 4; Stats. 1898 ss. 2, 4; 1903 c. 170 ss. 1, 2; Supl. 1906 ss. 2a, 2b; 1911 c. 21 s. 1; 1913 c. 773 s. 2; 1915 c. 382 s. 2; Stats. 1915 s. 1.02; 1917 c. 335 s. 7; 1935 c. 231; 1953 c. 548, 549.

**Editor's Note:** Questions concerning the exercise of governmental jurisdiction within areas acquired by the U. S. government were considered by the attorneys general in a series of opinions published as follows: 16 Atty. Gen. 671; 22 Atty. Gen. 758; 25 Atty. Gen. 605; 27 Atty. Gen. 452; 31 Atty. Gen. 281; 32 Atty. Gen. 191; and 40 Atty. Gen. 122. See also *Jurisdiction Over Federal Areas Within the States*; Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States (U. S. Govt.

Printing Office, Washington, D. C., 1956) and relevant statutes and cases of subsequent dates.

**1.03 History:** 1867 c. 49; 1871 c. 153; R. S. 1878 ss. 2, 4; Stats. 1898 ss. 2, 4; 1903 c. 170 ss. 1, 2; Supl. 1906 ss. 2a, 2b; 1911 c. 21 s. 1; 1913 c. 773 s. 2; 1915 c. 382 s. 2; Stats. 1915 s. 1.03; 1923 c. 7.

A court order directing the sale of the property of a judgment debtor is legal process. *In re O'Connor*, 37 W 379.

The legislature cannot abdicate jurisdiction over territory within the state except where the lands are purchased by and the title vested in the federal government for the purposes contemplated by its constitution. And as to places so occupied, state jurisdiction to enforce laws and punish crimes continues until state authority is extinguished by congress. *In re O'Connor*, 37 W 379.

In the absence of any federal statute or treaty to the contrary, a state court has jurisdiction of an action on contract brought by a white man against an Indian belonging to a tribe and a particular reservation. *Stacy v. LaBelle*, 99 W 520, 75 NW 60.

The title to the premises occupied by the National Home for Disabled Volunteer Soldiers is not in the United States, but is vested in a corporation created by act of Congress, and the state retains its jurisdiction over the territory embraced therein. (*In re O'Connor*, 37 W 379, cited.) *Mallory v. Wheeler*, 151 W 136, 138 NW 97.

Under federal statutes, state courts are without jurisdiction to entertain prosecution of an Indian, having tribal relations and residing on a reservation, for the crime of statutory rape committed within the limits of the reservation on an Indian woman having tribal relations and residing on the reservation. *State v. Rufus*, 205 W 317, 237 NW 67.

Ch. 275, P. & L. Laws 1867, ceding to the United States "jurisdiction" over several tracts of land for the purpose of establishing and maintaining a soldiers' home, does not give the federal courts exclusive jurisdiction, the purpose of the act not requiring it, but only jurisdiction concurrent with that of the state. *In re Kelly*, 71 F 545.

On a transfer to the United States of a site for a federal building, the governor may not give the certificate of consent to the acquisition, until proof is made that the deed conveys the fee unincumbered. 11 Atty. Gen. 266.

On a transfer to the United States of a site for federal building, the governor may not give the certificate of consent to acquisition until plat of property transferred is presented with application. 20 Atty. Gen. 94.

**1.031 History:** 1967 c. 142; Stats. 1967 s. 1.031.

**1.035 History:** 1925 c. 170; 1925 c. 454 s. 1; Stats. 1925 s. 1.035; 1931 c. 61; 1969 c. 276 s. 588 (1).

Condemnation by the U. S. government after consent given by this section is valid. *United States v. 2,271.29 Acres*, 31 F (2d) 617.

**1.036 History:** 1929 c. 409; 1933 c. 159 s. 36; Stats. 1933 s. 1.036.

**Editor's Note:** The basic legal structure relied upon by the U. S. government for protection of migratory birds comprises the following: convention of August 16, 1916, between the United States and Great Britain for the protection of migratory birds; *Missouri v. Holland*, 252 U. S. 416; convention of February 7, 1936, between the United States and Mexico for the protection of migratory birds and game mammals; and ch. 7, title 16, U. S. Code.

The state has not ceded to the U. S. government jurisdiction over the area known as "the Necedah migratory waterfowl refuge" under either 1.056 or 1.036, or otherwise. 28 Atty. Gen. 259.

Under the last clause of 1.036, "it would appear clear that the state of Wisconsin acting through its conservation commission has full jurisdiction and authority over the Horicon marsh insofar as such jurisdiction is not incompatible with any regulations issued by the Congress or the secretary of the interior acting under proper delegated authority". 42 Atty. Gen. 274, 275.

**1.04 History:** 1867 c. 49; 1871 c. 153; 1903 c. 170 s. 3; Supl. 1906 s. 2c; 1915 c. 382 s. 2; Stats. 1915 s. 1.04.

**1.05 History:** 1874 c. 291 s. 1; R. S. 1878 s. 3; Stats. 1898 s. 3; 1915 c. 382 s. 3; Stats. 1915 s. 1.05.

**1.055 History:** 1925 c. 411; Stats. 1925 s. 1.055; 1927 c. 461; 1929 c. 457; 1933 c. 272; 1933 c. 491 s. 1; 1965 c. 66 s. 7; 1969 c. 276 s. 588 (1); 1969 c. 392 s. 87 (13).

This section supersedes 24.09, Stats. 1935, to the extent that it is inconsistent therewith, and commissioners of public lands are authorized to sell public lands to the U.S. government for national forests under 1.055 without complying with provisions of 24.09, relating to sale at public auction. 26 Atty. Gen. 210.

**1.056 History:** 1935 c. 375; Stats. 1935 s. 1.056; 1969 c. 392 s. 87 (16).

The state has not ceded to the U.S. government jurisdiction over the area known as "the Necedah migratory waterfowl refuge" under either 1.056 or 1.036, or otherwise. 28 Atty. Gen. 259.

Under this section, the conservation commission is charged with administration of Central Wisconsin Conservation Area, which is owned by the U.S. government and leased to the state on long-term lease. Income from the area must be deposited in the state treasury under 25.29 and may be expended under 20.20. Statutes relating to powers and duties of director of division of departmental research and director of purchases do not grant any powers of reviewing discretion of the conservation commission in making expenditures of income from the area in accordance with terms of lease. 29 Atty. Gen. 381.

**1.06 History:** 1879 c. 38; Ann. Stats. 1889

s. 3a; Stats. 1898 s. 3a; 1915 c. 382 ss. 4, 5; Stats. 1915 s. 1.06.

**1.07 History:** 1877 c. 116, 210; R. S. 1878 s. 98; 1881 c. 280; Ann. Stats. 1889 s. 98; Stats. 1898 s. 98; 1915 c. 382 s. 6; Stats. 1915 s. 1.07.

**1.08 History:** 1913 c. 111; 1915 c. 382 s. 7; Stats. 1915 s. 1.08.

**1.09 History:** 1836 Act. No. 11, s. 1; 1917 c. 566 s. 3; Stats. 1917 s. 1.09.

**1.10 History:** 1949 c. 218; Stats. 1949 s. 1.10; 1955 c. 18; 1957 c. 147, 209, 672; 1959 c. 170.

## CHAPTER 2.

### Division of the State Into Counties, and Their Boundaries.

**2.01 (intro. par.) History:** R. S. 1849 c. 2 s. 1; R. S. 1858 c. 2 s. 1 (intro. par.); R. S. 1878 c. 2 s. 5 (intro. par.); Stats. 1898 s. 5 (intro. par.); 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (intro. par.).

County boundaries can be changed only by act of the legislature. 37 Atty. Gen. 495.

**2.01 (1) History:** 1848 p. 168; 1849 c. 77; R. S. 1849 c. 2; 1855 c. 28; 1856 c. 130; R. S. 1858 c. 2; R. S. 1878 s. 5 sub. 1; Stats. 1898 s. 5 sub. 1; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (1).

**2.01 (2) History:** 1860 c. 211; 1866 c. 146; 1869 c. 116; R. S. 1878 s. 5 sub. 2; 1883 c. 47, 74; Ann. Stats. 1889 s. 5 sub. 2; 1893 c. 8, 150; Stats. 1898 s. 5 sub. 2; 1903 c. 303 s. 1; Supl. 1906 s. 5 sub. 2; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (2).

**2.01 (3) History:** 1859 c. 191; 1860 c. 235; 1863 c. 106; 1869 c. 75; 1874 c. 248; R. S. 1878 s. 5 sub. 3; Stats. 1898 s. 5 sub. 3; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (3).

**2.01 (4) History:** 1845 c. 52; 1849 c. 77; R. S. 1849 c. 2; 1854 c. 10; 1858 c. 2; 1860 c. 211; 1866 c. 146; 1869 c. 116; R. S. 1878 s. 5 sub. 4; Stats. 1898 s. 5 sub. 4; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (4).

**2.01 (5) History:** 1836 No. 28; 1841 No. 38 s. 8; 1841 No. 40 ss. 13, 14; R. S. 1849 c. 2; R. S. 1858 c. 2; R. S. 1878 s. 5 sub. 5; Stats. 1898 s. 5 sub. 5; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (5); 1919 c. 702 s. 1; 1943 c. 177; 1965 c. 267; 1967 c. 243.

**2.01 (6) History:** 1853 c. 100; 1854 c. 1; 1857 c. 16; R. S. 1858 c. 2; R. S. 1878 s. 5 sub. 6; Stats. 1898 s. 5 sub. 6; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (6).

**2.01 (7) History:** 1856 c. 94; R. S. 1858 c. 2; 1864 c. 462, 466, 479; P. & L. 1866 c. 466; 1869 c. 162; P. & L. 1872 c. 18; 1874 c. 248; R. S. 1878 s. 5 sub. 7; 1883 c. 172; Stats. 1898 s. 5 sub. 7; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (7).

**2.01 (8) History:** 1836 No. 28; 1841 No. 40 s. 13; 1842 p. 74; 1848 p. 80 s. 4; R. S. 1849 c. 2; 1850 c. 84; R. S. 1858 c. 2; R. S. 1878 s. 5 sub. 8; Stats. 1898 s. 5 sub. 8; 1915 c. 382 s. 10; Stats. 1915 s. 2.01 (8).