

15.46 History: 1967 c. 327; Stats. 1967 s. 15.46.

15.461 History: 1967 c. 327; Stats. 1967 s. 15.461; 1969 c. 157; 1969 c. 276 ss. 608, 610; 1969 c. 392 s. 84r; 1969 c. 424, 469, 500.

15.463 History: 1967 c. 327; Stats. 1967 s. 15.463; 1969 c. 157, 500.

Editor's Note: In connection with ch. 500, Laws 1969, see 57 Atty. Gen. 105.

15.467 History: 1967 c. 327; Stats. 1967 s. 15.467; 1969 c. 392 s. 85.

15.49 History: 1967 c. 327; Stats. 1967 s. 15.49.

15.491 History: 1967 c. 327; Stats. 1967 s. 15.491; 1969 c. 276.

15.497 History: 1967 c. 327; Stats. 1967 s. 15.497; 1969 c. 437.

15.55 History: 1967 c. 327; Stats. 1967 s. 15.55.

15.551 History: 1967 c. 327; Stats. 1967 s. 15.551; 1969 c. 276.

15.555 History: 1967 c. 327; Stats. 1967 s. 15.555.

15.56 History: 1969 c. 384; Stats. 1969 s. 15.56.

15.58 History: 1967 c. 327; Stats. 1967 s. 15.58.

15.581 History: 1967 c. 327; Stats. 1967 s. 15.581.

15.587 History: 1967 c. 327; Stats. 1967 s. 15.587.

15.64 History: 1967 c. 327; Stats. 1967 s. 15.64.

15.641 History: 1967 c. 327; Stats. 1967 s. 15.641; 1969 c. 276 ss. 85, 594 (4), 613 (2).

15.643 History: 1967 c. 327; Stats. 1967 s. 15.643; 1969 c. 175; 1969 c. 276 s. 594 (4), (5).

15.67 History: 1967 c. 327; Stats. 1967 s. 15.67.

15.671 History: 1967 c. 327; Stats. 1967 s. 15.671; 1969 c. 276.

15.677 History: 1969 c. 276; Stats. 1969 s. 15.677.

15.70 History: 1967 c. 327; Stats. 1967 s. 15.70; 1969 c. 276.

15.701 History: 1967 c. 327; Stats. 1967 s. 15.701; 1969 c. 259 s. 27 (1); 1969 c. 276.

15.707 History: 1967 c. 327; Stats. 1967 s. 15.707; 1969 c. 276.

15.73 History: 1967 c. 327; Stats. 1967 s. 15.73; 1969 c. 337.

Editor's Note: A predecessor statute (sec. 1966y, Stats. 1911) was construed by the supreme court in *Ekern v. McGovern*, 154 W 157, 142 NW 595.

15.731 History: 1967 c. 327; Stats. 1967 s.

15.731; 1969 c. 71 s. 3; 1969 c. 144, 158; 1969 c. 255 s. 65; 1969 c. 276, 337; 1969 c. 339 s. 27; 1969 c. 392 s. 84g.

15.76 History: 1967 c. 327; Stats. 1967 s. 15.76.

15.761 History: 1967 c. 327; Stats. 1967 s. 15.761; 1969 c. 144; 1969 c. 158 s. 106; 1969 c. 276, 424.

15.79 History: 1967 c. 327; Stats. 1967 s. 15.79; 1969 c. 276.

A member of the public service commission is not required to be an elector at time of appointment or to qualify for office, but is required only to be a resident of Wisconsin while holding office. 20 Atty. Gen. 43.

15.791 History: 1967 c. 327; Stats. 1967 s. 15.791; 1969 c. 259 s. 26 (3); 1969 c. 276.

15.82 History: 1967 c. 327; Stats. 1967 s. 15.82.

15.821 History: 1967 c. 327; Stats. 1967 s. 15.821; 1969 c. 276.

15.825 History: 1967 c. 327; Stats. 1967 s. 15.825.

15.85 History: 1967 c. 327; Stats. 1967 s. 15.85.

15.851 History: 1967 c. 327; Stats. 1967 s. 15.851; 1969 c. 71 s. 3.

15.88 History: 1967 c. 327; Stats. 1967 s. 15.88.

15.881 History: 1967 c. 327; Stats. 1967 s. 15.881; 1969 c. 276.

15.91 History: 1967 c. 327; Stats. 1967 s. 15.91.

15.911 History: 1967 c. 327; Stats. 1967 s. 15.911; 1969 c. 276.

15.915 History: 1967 c. 327; Stats. 1967 s. 15.915.

15.94 History: 1967 c. 327; Stats. 1967 s. 15.94.

15.941 History: 1967 c. 327; Stats. 1967 s. 15.941; 1969 c. 276.

15.947 History: 1967 c. 327; Stats. 1967 s. 15.947; 1969 c. 154 s. 376.

CHAPTER 16.

Department of Administration.

16.001 History: 1959 c. 228 s. 37; Stats. 1959 s. 16.001.

16.002 History: 1959 c. 228 s. 37; Stats. 1959 s. 16.002; 1969 c. 276.

16.003 History: 1959 c. 228 s. 37; Stats. 1959 s. 16.003; 1961 c. 645; 1965 c. 496; 1969 c. 276 ss. 99, 100, 101.

16.004 History: 1939 c. 30; Stats. 1939 s. 15.17, 15.18; 1947 c. 9 s. 10a; Stats. 1947 s. 15.52, 15.53; 1959 c. 228 s. 16, 37; 1959 c. 659 s. 12; Stats. 1959 s. 16.004; 1961 c. 316; 1969 c. 276 ss. 102, 103, 582 (8).

See note to 1.056, citing 29 Atty. Gen. 381.

16.007 History: 1955 c. 98, 652, 669; Stats. 1955 s. 15.94; 1957 c. 97; 1959 c. 228 s. 62, 66; 1959 c. 659 s. 11; 1961 c. 146; 1963 c. 21; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1967 c. 327; Stats. 1967 s. 16.007; 1969 c. 276 ss. 104, 105, 106, 582 (7); 1969 c. 392 s. 87 (6).

16.008 History: 1969 c. 374; Stats. 1969 s. 16.008.

Editor's Note: In connection with this section see 58 Atty. Gen. 25.

16.01 History: 1929 c. 465 s. 2; Stats. 1929 s. 16.01; 1931 c. 424 s. 2; 1933 c. 159 s. 4; 1939 c. 513 s. 4; 1941 c. 321; 1951 c. 319 s. 231; 1959 c. 228 s. 39, 40.

On legislative power generally see notes to sec. 1, art. IV.

Rights of state employes under the civil service law are conferred by act of the legislature, and what the legislature may give in this respect it may take away. The court has nothing to say with respect to the policy of the civil service law, all questions of public policy being primarily for the legislature. State ex rel. Anderson v. Barlow, 235 W 169, 292 NW 290.

A state agency cannot enter into contractual agreements with private agencies to furnish services normally performed by civil service employes. 55 Atty. Gen. 246.

16.02 History: 1905 c. 363 s. 1; Supl. 1906 s. 990-1; 1911 c. 663 s. 121; 1917 c. 306 s. 2; Stats. 1917 s. 16.01; 1919 c. 365 s. 2; 1929 c. 465 s. 2; Stats. 1929 s. 16.02; 1931 c. 24 s. 2; 1949 c. 373; 1959 c. 228 s. 41; 1959 c. 659 s. 76; 1961 c. 645; 1965 c. 249 s. 79; 1969 c. 276 ss. 107, 108, 582 (6).

16.04 History: 1905 c. 363 s. 5; Supl. 1906 s. 990-5; 1907 c. 256; 1909 c. 436; 1911 c. 663 s. 121; 1913 c. 772 s. 28; 1917 c. 306 s. 4; Stats. 1917 s. 16.03; 1929 c. 465 s. 2; Stats. 1929 s. 16.04.

16.05 History: 1905 c. 363 s. 7; Supl. 1906 s. 990-7; 1911 c. 363 s. 121; 1913 c. 772 s. 28; 1917 c. 306 s. 5; Stats. 1917 s. 16.04; 1919 c. 365 s. 3; 1929 c. 465 s. 2; Stats. 1929 s. 16.05; 1937 c. 169; 1941 c. 321; 1949 c. 52; 1959 c. 228 s. 42, 43, 44, 62, 67; 1959 c. 463; 1959 c. 660 s. 2; 1959 c. 662; 1961 c. 645; 1965 c. 66 s. 7; 1965 c. 249 s. 79; 1969 c. 276 ss. 110, 111.

On delegation of power see notes to sec. 1, art. IV.

The state personnel board has no power to direct the state hospital superintendent to employ or reemploy any particular person; the power of the personnel bureau is limited to submission of names of 3 persons receiving highest grades on examination for selection to fill vacancies or new positions created by board of control. Berg v. Seaman, 224 W 263, 271 NW 924.

An amended rule relating to the layoff of state employes under civil service, adopted by the personnel board under 16.05 did not become effective when it was approved by the governor pursuant to 16.05, but became effective pursuant to 227.03, Stats. 1947. McCann v. Personnel Board, 255 W 321, 38 NW (2d) 480.

A state agency could constitutionally make relinquishment of the right to run for partisan political office a condition of public employment. Wisconsin State Employees Asso. v. Natural Resources Board, 298 F Supp. 339.

The rule-making power of the state personnel board under 16.05 extends to vacations, despite 16.275 (2), provided that such rules are incidental to administration of statutory provisions relating to vacations and not in conflict therewith. 29 Atty. Gen. 266.

On the effect of the state employment relations act (ch. 612, Laws 1965) upon the administration of ch. 16, see 47 Atty. Gen. 37.

16.055 History: 1939 c. 263; Stats. 1939 s. 16.055; 1943 c. 275 s. 5; 1943 c. 490; 1957 c. 582; 1969 c. 276.

16.06 History: 1969 c. 154; Stats. 1969 s. 16.06.

16.08 History: 1905 c. 363 s. 8, 14; Supl. 1906 s. 990-8, 990-14; 1917 c. 306 s. 7, 8; Stats. 1917 s. 16.07, 16.08; 1921 c. 240, 243; Stats. 1921 s. 1317m-2 sub. (2) last sentence; 1923 c. 108 s. 125; 1923 c. 293; 1929 c. 81 s. 2; 1929 c. 465 s. 2; Stats. 1929 s. 16.08, 16.09; 1931 c. 424 s. 1, 2; 1935 c. 113; 1941 c. 321; 1943 c. 276; 1943 c. 552 s. 2; 1947 c. 476; 1951 c. 457; 1953 c. 61 s. 2; 1955 c. 276; 1955 c. 385 s. 56; 1957 c. 582; Stats. 1957 s. 16.08; 1959 c. 228 s. 62; 1959 c. 463, 659 s. 13; 1961 c. 676; 1965 c. 38; 1965 c. 66 s. 7; 1965 c. 76, 249; 1965 c. 433 ss. 4, 121; 1967 c. 21, 50, 81; 1967 c. 291 s. 14; 1969 c. 154; 1969 c. 158 s. 106; 1969 c. 276 ss. 596, 602 (1), 603 (2), 610; 1969 c. 424 s. 27.

The statutes regulating classified and unclassified personnel, vacation credit earned, payment in lieu thereof, serving in 2 unclassified positions simultaneously, and payment of compensation are discussed in 52 Atty. Gen. 79.

16.09 History: 1967 c. 219; Stats. 1967 s. 16.09; 1969 c. 276.

16.10 History: 1905 c. 363 s. 2; Supl. 1906 s. 990-2; 1911 c. 663 s. 121; 1917 c. 306 s. 10; Stats. 1917 s. 16.10; 1919 c. 365 s. 3; 1925 c. 38 s. 2; 1929 c. 465 s. 2; 1933 c. 159 s. 5; 1965 c. 249 s. 79.

16.105 History: 1925 c. 38 s. 2; Stats. 1925 s. 16.10 (3); 1929 c. 465 s. 2; Stats. 1929 s. 16.105; 1941 c. 321; 1943 c. 519; 1945 c. 293; 1947 c. 9 s. 31; 1947 c. 331; 1949 c. 373, 386; 1951 c. 727; 1955 c. 652 s. 3; 1957 c. 582 s. 4, 10; 1959 c. 228 s. 62, 71; 1959 c. 463, 619, 662; 1961 c. 277, 574, 645; 1963 c. 6, 224; 1965 c. 434, 592; 1967 c. 21, 43, 291; 1969 c. 95, 154, 245; 1969 c. 276 s. 585 (2).

Civil service laws are not intended to prevent good faith reorganization with a view to securing greater efficiency, but there is a rule that a new classification under civil service cannot be created by giving a new title to a position involving the same duties. The reason for such rule is that such a change in name only, with no change in duties, indicates bad faith in creating the new position. State ex rel. Thein v. Milwaukee, 229 W 12, 281 NW 653; Unger v. Gregory, 249 W 161, 23 NW (2d) 480.

When a state position under civil service is reallocated to a higher grade by the director

of personnel and personnel board under authority of this section to establish grades and classifications, the person who theretofore occupied the position may occupy it thereafter only by complying with the statutes and rules respecting promotions or original appointments. If the position is reallocated downward by the director of personnel and personnel board, it has the effect of abolishing the position theretofore held by the employe and he may be given the choice of accepting a position in the lower classification if he is eligible or of being certified to another position in a higher classification if one is available and he is eligible, but if there is no such high classification his only choice is to accept a position in the lower grade or to terminate his services. *Peters v. Personnel Board*, 254 W 227, 35 NW (2d) 924.

Civil service specifications are not applicable to 2 engineers of the industrial commission formerly exempt from civil service until the bureau of personnel establishes classifications and salary ranges for such engineers. The bureau of personnel has no legal right to refuse to certify to the secretary of state increased salaries granted employes formerly exempt from civil service whose positions have not yet been classified. 18 Atty. Gen. 626.

Employes in the classified service who voluntarily waived portions of salary during depression cannot now recover the portion waived even though they received less than minimum salary levels set by the bureau of personnel. 25 Atty. Gen. 263.

Recommendations for revision of salary schedules need not be completed prior to organization of the joint finance committee at a regular session of the legislature. 35 Atty. Gen. 309.

The personnel director may reallocate a position from one classification to another upon compliance with the rules of the personnel board but if the position is reclassified upward, incumbent may not occupy the higher position without compliance with the statutes and rules relating to promotion. Neither reallocation nor promotion can be effected retroactively. 36 Atty. Gen. 317.

It is not mandatory under 16.105 (2) (d) that an employe receive a merit increase at the end of his probationary period. 38 Atty. Gen. 427.

The classification and compensation plan is established by the director of bureau of personnel with approval of joint committee on finance. Within limits of existing appropriations and revenues merit increases may be granted in advance of adoption of the budget bill. 54 Atty. Gen. 63.

16.106 History: 1967 c. 291; Stats. 1967 s. 16.106.

16.11 History: 1905 c. 363 s. 10; Supl. 1906 s. 990—10; 1907 c. 256; 1911 c. 663 s. 121, 122; 1913 c. 534; 1917 c. 306 s. 11; Stats. 1917 s. 16.11; 1919 c. 175; 1919 c. 365 s. 3; 1929 c. 465 s. 2; 1935 c. 223; 1939 c. 253; 1941 c. 321; 1955 c. 29; 1957 c. 582 s. 5; 1959 c. 228 s. 62, 65; 1959 c. 508; 1959 c. 659 s. 14; 1961 c. 645; 1965 c. 249 s. 79.

16.12 History: 1905 c. 363 s. 11; Supl. 1906 s. 990—11; 1911 c. 663 s. 121; 1917 c. 306 s. 12;

Stats. 1917 s. 16.12; 1919 c. 365 s. 3; 1929 c. 465 s. 2; 1931 c. 424 s. 2; 1959 c. 228 s. 65; 1965 c. 249 s. 79.

16.12 (1), Stats. 1937, is mandatory, and an applicant for one examination who, by mistake, takes an examination for a different position may not be certified for the latter position; neither may he be certified for a position for which he did file an application if he failed to take an examination for that position. 27 Atty. Gen. 221.

16.13 History: 1905 c. 363 s. 11; Supl. 1906 s. 990—11; 1911 c. 663 s. 121; 1917 c. 306 s. 12; Stats. 1917 s. 16.13; 1929 c. 465 s. 2; 1929 c. 516 s. 1; 1931 c. 424 s. 2; 1959 c. 463, 508, 660 s. 3; 1961 c. 645; 1963 c. 6; 1969 c. 366 s. 117 (2) (c).

The law does not prohibit certification of a person under parole from one of the penal institutions of the state, but the board may refuse to examine or certify for public service one who is under parole from a penal institution. 12 Atty. Gen. 250.

16.14 History: 1905 c. 363 s. 26; Supl. 1906 s. 990—26; 1917 c. 306 s. 13; Stats. 1917 s. 16.14; 1929 c. 465 s. 2.

The only question before a board on order of removal of employe is whether reasons assigned in removal order are, on their face, sufficient and are not religious or political. The board must determine that there has been no delinquency or misconduct before certification can be made without examination in case of discharged civil service employe. Investigation may be conducted concerning matters touching enforcement of civil service law and rules and regulations prescribed thereunder; if any attorney other than attorney general appears as prosecutor it must be under appointment made by governor; the board may permit appearance of attorney in defense of one adversely affected. Three proceedings—(1) inquiry into religious or political matters in connection with inquiry to determine right of employe to remain or be placed on eligible list, (2) general inquiry to determine whether law has been violated in removal for religious or political reasons, (3) inquiry to determine whether order of removal is valid on its face, must be carried on separately. 13 Atty. Gen. 238.

16.15 History: 1905 c. 363 s. 25; Supl. 1906 s. 990—25; 1911 c. 663 s. 121; 1917 c. 306 s. 14; Stats. 1917 s. 16.15; 1919 c. 365 s. 3; 1929 c. 465 s. 2; 1965 c. 249 s. 79.

16.17 History: 1905 c. 363 s. 15, 17; Supl. 1906 s. 990—15, 990—17; 1911 c. 663 s. 121; 1917 c. 306 s. 16, 19; Stats. 1917 s. 16.17, 16.20 (3); 1919 c. 365 s. 3; 1929 c. 465 s. 2; 1931 c. 424 s. 2; 1933 c. 159 s. 6; 1935 c. 137; 1941 c. 166, 321; 1951 c. 727; 1957 c. 582 s. 7, 10; 1959 c. 228 s. 65; 1959 c. 463; Stats. 1959 s. 16.17; 1961 c. 645; 1965 c. 249 s. 79.

Where an employe of the tax commission continued to work and receive her pay after the enactment of ch. 412, Laws 1939, her service after the enactment, but before the effective date of the abolition of the tax commission and the creation of the new department, was not a part of any "probationary period" in the newly created department. *State ex rel.*

Anderson v. Barlow, 235 W 169, 292 NW 290.

The power of the bureau of personnel is not exhausted upon fixing the original term of eligibility at less than 3 years, the aggregate eligibility not to exceed 3 years. 20 Atty. Gen. 383.

16.17 (2), Stats. 1937, relating to extended eligibility under the civil service law, does not apply to a person on leave of absence, except where tenure is terminated by abolishing position during leave, in which case reinstatement rights begin to run as of date of separation from service rather than from expiration of time set in leave of absence. The bureau of personnel is not obligated to return an employe to an analogous position where his classification has been abolished while he was on leave of absence. 27 Atty. Gen. 129.

16.18 History: 1905 c. 363 s. 16; Supl. 1906 s. 990—16; 1911 c. 663 s. 121; 1917 c. 90; 1917 c. 306 s. 17; Stats. 1917 s. 16.18; 1919 c. 18; 1919 c. 365 s. 3; 1927 c. 136; 1929 c. 72; 1929 c. 465 s. 2; 1931 c. 424 s. 2; 1937 c. 280; 1941 c. 321; 1947 c. 465; 1957 c. 582 s. 10; 1959 c. 228 s. 67; 1961 c. 437, 645; 1965 c. 249 s. 79; 1967 c. 66; 1969 c. 276 s. 611.

Veterans' preference points are to be added only to the final or composite grade of the applicant. *Beghin v. Personnel Board*, 28 W (2d) 422, 137 NW (2d) 29.

In order to qualify for a veteran's preference under 16.18 (1) a veteran's service must have occurred during the period from December 7, 1941, to December 31, 1946, or within the period from June 27, 1950, to July 27, 1953. 45 Atty. Gen. 81.

16.19 History: 1905 c. 363 s. 18; Supl. 1906 s. 990—18; 1911 c. 663 s. 121; 1917 c. 306 s. 18; Stats. 1917 s. 16.19; 1929 c. 465 s. 2; 1931 c. 424 s. 2; 1941 c. 321; 1957 c. 582 s. 10; 1959 c. 228 s. 63; 1961 c. 645.

16.20 History: 1905 c. 363 s. 17; Supl. 1906 s. 990—17; 1913 c. 534; 1917 c. 306 s. 19; Stats. 1917 s. 16.20; 1929 c. 465 s. 2; 1931 c. 424 s. 2; 1933 c. 159 s. 6; 1957 c. 582 ss. 8, 10; 1959 c. 228 s. 65; 1959 c. 463, 619.

16.21 History: 1937 c. 181 s. 5; Stats. 1937 s. 16.21; 1959 c. 228 s. 62; 1959 c. 463; 1959 c. 659 s. 15; 1967 c. 291 s. 14; 1969 c. 276 ss. 114, 582 (14).

16.22 History: 1905 c. 363 s. 9; Supl. 1906 s. 990—9; 1911 c. 663 s. 121; 1917 c. 306 s. 22; Stats. 1917 s. 16.23; 1929 c. 465 s. 2; Stats. 1929 s. 16.22; 1931 c. 424 s. 2; 1941 c. 321; 1957 c. 582 s. 10; 1959 c. 463; 1961 c. 645; 1965 c. 434.

Under ch. 16, Stats. 1939, an employing officer may at will or pleasure dismiss an employe having probationary status. 28 Atty. Gen. 34.

16.23 History: 1905 c. 363 s. 19; Supl. 1906 s. 990—19; 1911 c. 448; 1911 c. 664 s. 75; 1917 c. 306 s. 23; Stats. 1917 s. 16.24; 1929 c. 465 s. 2; Stats. 1929 s. 16.23; 1931 c. 424 s. 2.

In contemplation of provisions relating to reinstatement, leave of absence is synonymous with vacation. 3 Atty. Gen. 105.

Abolishing an oil inspection district to which a deputy oil inspector has been assigned

does not automatically discharge him from service. When a district is abolished and an inspector discharged according to law he may be reinstated in any vacant or newly created district within a year. 17 Atty. Gen. 303.

Under 16.23 (2) reinstatement rights of employe under civil service law extend only during year immediately following his last permanent employment, temporary employes not being included in that statute. 26 Atty. Gen. 422.

Eligibility of persons on reinstatement lists under 16.23 (2) dates from time of separation from service. 27 Atty. Gen. 129.

16.24 History: 1905 c. 363 s. 22; Supl. 1906 s. 990—22; 1911 c. 663 s. 121; 1917 c. 306 s. 24; Stats. 1917 s. 16.25; 1919 c. 365 s. 3; 1929 c. 465 s. 2; Stats. 1929 s. 16.24; 1931 c. 424 s. 2; 1935 c. 204, 520; 1941 c. 321; 1943 c. 428, 541; 1945 c. 230; 1949 c. 39; 1957 c. 582 s. 9, 10; 1959 c. 228 s. 63; 1959 c. 463; 1959 c. 660 s. 4; 1965 c. 249 s. 79.

The power to remove is an incident of the power to appoint a public official for an indefinite term, in the absence of any provision of law to the contrary. Office is not property and the right to hold office is not a vested right. The power to remove is an administrative, not a judicial, function. While it is a judicial function to determine whether the cause for which an officer has been removed is a just cause, and is neither religious nor political within the meaning of sec. 22, ch. 363, Laws 1905, it is an administrative function to determine whether facts exist creating the alleged just cause; and a determination that a just cause exists will not be reviewed by the courts in the absence of a showing that the removing officers acted arbitrarily or in bad faith. *State ex rel. Wagner v. Dahl*, 140 W 301, 122 NW 748.

Abolishing of the office of state supervisor of inspectors of illuminating oils by ch. 461, Laws 1933, did not abolish the office of deputy inspector of illuminating oils or remove the person holding the latter office when the act went into effect. Therefore a new appointment or the filing of an oath or bond by an existing deputy inspector was not necessary, and he was not an original appointee holding temporarily, but a permanent appointee by virtue of his prior appointment and qualifications, and subject to removal only for just cause, not political, and upon notice, under the civil service law. *State ex rel. Nelson v. Henry*, 216 W 80, 256 NW 714.

An employe discharged without cause is entitled to reinstatement notwithstanding a subsequently effective discharge, since discharge could not operate retroactively. *State ex rel. Tracy v. Henry*, 219 W 53, 262 NW 222.

Just cause for the discharge of an employe cannot be founded upon a political or religious reason, but must be based upon other considerations. In a mandamus proceeding to compel the state treasurer to reinstate a discharged oil inspector, wherein it appeared that the treasurer in the notice of discharge had assigned reasons constituting just cause for the discharge, the trial court, on properly finding as a matter of fact that just cause existed for the discharge, should have closed the inquiry and dismissed the petition, regardless

of evidence as to secret motives of the treasurer in making the discharge. State ex rel. Nelson v. Henry, 221 W 127, 266 NW 227.

"Reinstatement" of employe means reinstatement in position from which he was removed. Berg v. Seaman, 224 W 263, 271 NW 924.

Where the state treasurer notified an employe that he was discharged, and the employe did not reply within the time allowed therefor by statute, a subsequent denial of the charges which were sent to the bureau of personnel did not cure the employe's failure to reply within the time allowed. State ex rel. Tracy et al. v. Levitan, 228 W 136, 279 NW 620.

In a mandamus proceeding to compel compliance with an order of the bureau of personnel, made after hearing, to restore the relator to the position from which he had been discharged, the defendants' return to the alternative writ, merely attacking the findings and determination of the bureau as unwarranted and contrary to the facts, stated no defense, it being assumed in the mandamus proceeding that the bureau conducted such hearing as the statute provides, and the findings and order of the bureau not being subject to collateral attack or review by the courts in the mandamus proceeding. State ex rel. Fess v. MacKenzie, 236 W 602, 296 NW 61.

The personnel board has power either to sustain the action of an appointing officer discharging an employe or to reinstate the employe, but where the board has held the required public hearing and has sustained the action of the appointing officer and dismissed the employe's appeal, the board has no power subsequently to grant a rehearing, reconsider the matter, and reinstate the employe. Baken v. Vanderwall, 245 W 147, 13 NW (2d) 502.

Where a state employe under civil service has been demoted by his appointing officer, and had received the appointing officer's notice of his reasons for the demotion, and knew that the resulting change in position carried with it a change in classification, the subsequent formal notice of reclassification from the bureau of personnel, which, instead of stating the appointing officer's reasons for the demotion, stated that the transfer of the demoted employe to a different position was occasioned by the return of another state employe from military service, did not affect the demotion nor operate to extend the time within which the demoted employe could appeal to the personnel board from the demotion. Odau v. Personnel Board, 250 W 600, 27 NW (2d) 726.

This section does not prevent reclassification of positions. Peters v. Personnel Board, 254 W 227, 35 NW (2d) 924.

Ch. 16, Stats. 1949, does not provide that any findings of fact shall be made by the personnel board in support of its decision on appeal, but the provisions of 227.13 (relating to administrative procedure and review) require such findings. Bell v. Personnel Board, 259 W 602, 49 NW (2d) 889.

An employe who was absent for an extended period, but whose time off without pay was intermixed with leave time so that she was never absent on leave without pay for more than one month under the rules,

cannot complain that on her next extended absence she was not treated the same way where she had not applied for a leave without pay. Jabs v. State Board of Personnel, 34 W (2d) 245, 148 NW (2d) 853.

The personnel board, which has ordered reinstatement of discharged employe, is without power to enforce its order by court action. This can be done in action commenced by employe. 25 Atty. Gen. 268.

Where the state board of personnel reinstates employe its determination cannot be collaterally attacked through failure to honor pay roll certified in accordance with order of reinstatement if procedural requirements as to filing of appeal and holding of hearing provided for by statute governing reinstatement are complied with. 33 Atty. Gen. 172.

16.25 History: 1905 c. 363 s. 23; Supl. 1906 s. 990—23; 1911 c. 663 s. 121; 1917 c. 306 s. 25; Stats. 1917 s. 16.26; 1929 c. 465 s. 2; Stats. 1929 s. 16.25; 1941 c. 321; 1959 c. 228 s. 65; 1965 c. 66 s. 7.

16.26 History: 1905 c. 363 s. 23; Supl. 1906 s. 990—23; 1911 c. 663 s. 121; 1917 c. 306 s. 25; Stats. 1917 s. 16.27; 1929 c. 465 s. 2; Stats. 1929 s. 16.26; 1933 c. 159 s. 7; 1961 c. 645.

16.27 History: 1905 c. 363 s. 24; Supl. 1906 s. 990—24; 1911 c. 663 s. 121; 1917 c. 306 s. 26; 1917 c. 671 s. 2; Stats. 1917 s. 16.28; 1919 c. 365 s. 3; 1929 c. 465 s. 2; Stats. 1929 s. 16.27; 1931 c. 424 s. 2; 1949 c. 197; 1959 c. 228 s. 62; 1965 c. 218; 1969 c. 276 s. 582 (5).

The director of personnel is required to determine whether or not persons are "employed" before issuing a certificate pursuant to this section. Employes appearing in court or before administrative tribunal in matters relating to their employment should not be removed from pay roll on days they are so occupied. 36 Atty. Gen. 90.

A department of state government was without authority to agree to furnish transportation to a civil service employe to and from place of employment outside the city limits, where the bureau of personnel had not included provision for such transportation within the salary plan pursuant to 16.105, Stats. 1949. Any such agreement is unenforceable as to the provision for such transportation. 39 Atty. Gen. 106.

16.274 History: 1949 c. 377; Stats. 1949 s. 16.274.

See notes to sec. 26, art. IV, on salary change, citing 38 Atty. Gen. 445.

16.275 History: R. S. 1858 c. 10 s. 17, 26; 1859 c. 63; 1876 c. 341; 1877 c. 111 s. 2; 1878 c. 214; R. S. 1878 s. 141; 1897 c. 355; Stats. 1898 s. 141, 169c; 1909 c. 430; 1911 c. 385, 657; 1911 c. 663 s. 2, 3; 1913 c. 772 s. 108; 1915 c. 604 s. 9, 25, 26; 1917 c. 622 s. 57; Stats. 1917 s. 14.59; 1919 c. 567; 1929 c. 465 s. 2; 1929 c. 474; Stats. 1929 ss. 14.59, 16.275; 1931 c. 424 s. 2; 1937 c. 153, 218; 1939 c. 70, 535; 1941 c. 102, 164; 1945 c. 365, 433, 505; 1947 c. 331, 614; 1949 c. 630; 1951 c. 586, 678, 727; 1953 c. 61; 1955 c. 51, 509; 1957 c. 97, 553, 671; 1959 c. 26, 228 ss. 63, 67; 1959 c. 463; 1961 c. 271, 282, 645; Stats. 1961 s. 16.275; 1963 c. 436; 1965 c. 81; 1965 c. 666 s. 22; 1967 c. 26, 335; 1969 c. 245.

Hours when offices of departments of state government are required to be kept open under the provisions of this section is for accommodation of the public, and has no reference to time when employes may work in offices. There is no law prohibiting heads of departments from putting on 2 or more shifts of employes working during different hours. 13 Atty. Gen. 211.

Ch. 153, Laws 1937, is not retroactive, and does not accumulate unused sick leave prior to its effective date. Sick leave may be allowed by bureau of personnel even though employe has not accumulated unused time, but not to exceed 60 days in year. 26 Atty. Gen. 332.

Where a department head grants vacations and thereafter, during period of vacation, the department goes out of existence, employe is nevertheless entitled to receive pay for vacation so allowed him. 28 Atty. Gen. 249.

Employes engaged on an hourly or per diem basis are not excluded from the mandatory vacation with pay provisions. 29 Atty. Gen. 402.

Employes of a department of state government which ceased to exist by operation of law may be compensated for unused vacation leave of absence accrued at the date when such department went out of existence. 38 Atty. Gen. 364.

16.275 (1) applies only to offices and office workers, as distinguished from museums, libraries and similar services. Its application is not limited to a single office for each department, nor to offices in the state capitol and office building. An office conducted in an institution, or in connection with a field service, is not excluded from the application of 16.275 (1) unless the characteristics of its operation otherwise identify it with institutional or field service operation rather than with administration. 38 Atty. Gen. 497.

Under 16.275 (4) a state employe shall be allowed military leave of absence with pay during his 2 weeks' reserve encampment; under 16.276 he shall be allowed leave of absence without pay while serving the 6 months' active duty required by his reserve program. 48 Atty. Gen. 58.

See note to 16.08, citing 52 Atty. Gen. 79.

16.276 History: 1945 c. 433, 506; Stats. 1945 s. 16.276; 1949 c. 641; 1951 c. 719; 1959 c. 228 s. 62, 63; 1959 c. 350; 1961 c. 660; 1969 c. 158 s. 106.

16.277 History: 1953 c. 201; Stats. 1953 s. 16.277.

16.28 History: 1905 c. 365 s. 32; Supl. 1906 s. 990—32; 1911 c. 663 s. 121; 1917 c. 306 s. 27; Stats. 1917 s. 16.29; 1919 c. 365 s. 3; 1929 c. 465 s. 2; Stats. 1929 s. 16.28; 1931 c. 424 s. 2; 1959 c. 228 s. 63; 1965 c. 249 s. 79.

16.285 History: 1965 c. 319; Stats. 1965 s. 16.285.

16.29 History: 1905 c. 363 s. 6; Supl. 1906 s. 990—6; 1911 c. 663 s. 121; 1917 c. 306 s. 28; Stats. 1917 s. 16.30; 1919 c. 365 s. 3; 1929 c. 465 s. 2; Stats. 1929 s. 16.29; 1941 c. 321; 1961 c. 645; 1965 c. 66 s. 8; 1965 c. 249 s. 79.

The purpose of this section is to prevent

evasion of civil service laws and no person employed contrary to such laws is entitled to be paid out of the usual funds allotted to a position. In event of such evasion the appointing official is personally liable to the appointee. However, where the appointment is made by one having no authority to act as appointing officer for such position, no cause of action arises under this section. Sullivan v. Baker, 217 W 306, 258 NW 617.

16.30 History: 1929 c. 465 s. 2; Stats. 1929 s. 16.30.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing Wisconsin State Empl. Asso. v. Wisconsin Nat. Resources Board, 298 F Supp. 339.

16.301 History: 1905 c. 363 s. 27; Supl. 1906 s. 990—27; 1911 c. 663 s. 121; 1917 c. 306 s. 30; Stats. 1917 s. 4548m; 1919 c. 365 s. 4; 1925 c. 4; Stats. 1925 s. 348,267; 1955 c. 696 s. 239; Stats. 1955 s. 16.301; 1965 c. 249 s. 79.

16.302 History: 1905 c. 363 s. 30; Supl. 1906 s. 990—30; 1911 c. 663 s. 121; 1917 c. 306 s. 32; Stats. 1917 s. 4548o; 1919 c. 365 s. 5; 1925 c. 4; Stats. 1925 s. 348,269; 1955 c. 696 s. 241; Stats. 1955 s. 16.302; 1965 c. 249 s. 79.

The provision vacating offices upon conviction cannot apply to offices created by the constitution. State ex rel. Buell v. Frear, 146 W 291, 131 NW 832.

16.303 History: 1905 c. 363 s. 31; Supl. 1906 s. 990—31; 1911 c. 663 s. 121; 1917 c. 306 s. 33; Stats. 1917 s. 4548p; 1925 c. 4; Stats. 1925 s. 348,27; 1955 c. 696 s. 242; Stats. 1955 s. 16.303.

16.305 History: 1953 c. 278; Stats. 1953 s. 16.305; 1959 c. 228 s. 62, 67; 1965 c. 66 s. 8; 1965 c. 535; 1969 c. 276.

16.31 History: 1961 c. 262, 667; Stats. 1961 s. 16.31; 1965 c. 171, 655; 1969 c. 276 ss. 117, 118, 603 (2).

16.32 History: 1963 c. 390; Stats. 1963 s. 16.32; 1965 c. 434; 1967 c. 26.

16.40 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.04; 1931 c. 33 s. 1; 1943 c. 93; 1945 c. 34, 165, 586; 1947 c. 9; 1949 c. 382, 397, 643; 1951 c. 511; Stats. 1951 s. 15.04, 15.041; 1957 c. 53, 547, 672; Stats. 1957 s. 15.04; 1959 c. 228 s. 6, 66; 1959 c. 657 s. 6; 1959 c. 659 s. 16; Stats. 1959 s. 16.40; 1961 c. 33; 1965 c. 66 s. 8; 1965 c. 249 s. 78; 1969 c. 276 ss. 582 (16), 590 (1), 598 (1).

16.41 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.05; 1947 c. 9 s. 9; 1949 c. 397; 1951 c. 511; Stats. 1951 s. 15.042, 15.05; 1957 c. 53; Stats. 1957 s. 15.05; 1959 c. 228 s. 6, 62; Stats. 1959 s. 16.41; 1965 c. 66 s. 8; 1969 c. 276 s. 582 (16).

16.42 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.06; 1947 c. 9 s. 31; 1949 c. 178; 1953 c. 29; 1957 c. 53; 1959 c. 228 s. 6, 62; Stats. 1959 s. 16.42; 1969 c. 276 s. 582 (16).

16.43 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.07; 1947 c. 9 s. 31; 1959 c. 228 s. 6; Stats. 1959 s. 16.43; 1969 c. 276 s. 582 (16).

16.44 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.08; 1947 c. 9 s. 31; 1959 c. 228 s. 6, 62; Stats. 1959 s. 16.44; 1969 c. 276 s. 582 (16).

16.45 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.09; 1951 c. 333; 1957 c. 53; 1959 c. 228 s. 6; Stats. 1959 s. 16.45.

16.46 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.10; 1947 c. 9 s. 31; 1957 c. 53; 1959 c. 228 s. 6, 7, 8, 62; Stats. 1959 s. 16.46; 1969 c. 276 s. 582 (16).

16.461 History: 1965 c. 410; Stats. 1965 s. 16.461; 1969 c. 276 s. 582 (16).

16.47 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.11, 15.12; 1933 c. 140 s. 3; 1949 c. 228, 397, 639; Stats. 1949 s. 15.11; 1951 c. 7, 333; 1953 c. 49; 1957 c. 53; 1959 c. 228 s. 9, 10; Stats. 1959 s. 16.47; 1963 c. 16, 553; 1969 c. 154.

Creation of statutes covering the sale of land and improvements by the department of public welfare and appropriation of proceeds to the department for acquisition of replacements does not violate constitutional prohibitions and is not in conflict with 16.47 (2). 52 Atty. Gen. 39.

16.48 History: 1949 c. 228; Stats. 1949 s. 15.12; 1953 c. 49; 1957 c. 53; 1959 c. 228 s. 10; Stats. 1959 s. 16.48.

16.49 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.13; 1957 c. 53; 1959 c. 228 s. 10; Stats. 1959 s. 16.49.

16.50 History: 1929 c. 97 s. 2; Stats. 1929 s. 15.14; 1947 c. 9 s. 10; 1949 c. 20; 1957 c. 53; 1959 c. 228 s. 10, 11, 62; Stats. 1959 s. 16.50; 1963 c. 553; 1969 c. 276 s. 582 (16).

Trustees of the state library, the revisor of statutes, state bar commissioners and the board of circuit judges are excepted from provisions of 15.41 (1), Stats. 1929. 18 Atty. Gen. 447.

The director of the bureau of management, department of administration, has power to order reduction of expenditures by all state departments out of the general fund to meet estimated revenues, but cannot allocate segregated funds to equalize reductions. The board of government operations has more restricted powers. 52 Atty. Gen. 193, 226.

16.51 History: 1947 c. 9 s. 11; Stats. 1947 s. 15.15; 1949 c. 397; 1957 c. 53, 610; 1959 c. 228 s. 12, 62, 66; 1959 c. 659 s. 17; Stats. 1959 s. 16.51; 1963 c. 232; 1965 c. 401; 1969 c. 366 s. 117 (2) (b).

The director of budget and accounts is expressly authorized by 15.15 (4), Stats. 1947, to direct and superintend collection of moneys belonging to the state which have been paid out without authority of law. 38 Atty. Gen. 398.

16.52 History: R. S. 1849 c. 9 s. 21; R. S. 1858 c. 10 s. 29; R. S. 1878 s. 149; Stats. 1898 s. 149; 1917 c. 622 s. 36; Stats. 1917 s. 14.40; 1947 c. 9 s. 3, 12 to 14; Stats. 1947 s. 14.40, 15.16 to 15.19; 1949 c. 20, 382, 397, 639; Stats. 1949 s. 15.16; 1951 c. 319 s. 5; 1953 c. 30, 319; 1957 c. 53, 547, 672; 1959 c. 228 s. 12, 62, 66; Stats. 1959 s. 16.52; 1965 c. 50; 1965 c. 66 s. 7; 1967 c. 291 s. 14; 1969 c. 154; 1969 c. 276 s. 582 (16); 1969 c. 364.

16.525 History: 1907 c. 303; Stats. 1911 s. 169e—1; 1917 c. 622 s. 61; Stats. 1917 s. 14.63;

1947 c. 472; 1955 c. 385 s. 6; Stats. 1955 s. 20.959; 1959 c. 659 s. 79; 1965 c. 218; Stats. 1965 s. 16.525; 1969 c. 276.

16.53 History: R. S. 1849 c. 9 s. 20; 1856 c. 53 s. 1; 1857 c. 61 s. 1, 11; R. S. 1858 c. 10 s. 27, 28, 37; 1859 c. 144; 1860 c. 8 s. 1; 1860 c. 238 s. 1, 2; 1860 c. 274 s. 1 to 3; 1862 c. 47 s. 1, 2; 1864 c. 417; 1866 c. 3 s. 1; R. S. 1878 s. 145 to 148; 1895 c. 171; Stats. 1898 s. 145 to 148; 1901 c. 433 s. 4; Supl. 1906 s. 169j; 1907 c. 616; 1909 c. 9, 523; Stats. 1911 s. 145, 146, 146m, 147, 148, 169j; 1917 c. 238, 448; 1917 c. 622 s. 30 to 35; 1917 c. 628 s. 8; Stats. 1917 s. 14.31 to 14.39; 1929 c. 97 s. 4; 1931 c. 230; 1933 c. 345; 1935 c. 163, 398; 1939 c. 262; 1943 c. 93; 1947 c. 9 s. 3; 1949 c. 179 s. 1; 1949 c. 397 s. 13 to 18; Stats. 1949 s. 15.18, 15.195; 1951 c. 231; 1953 c. 61 s. 1, 2; 1955 c. 10 s. 8; 1955 c. 98, 652; Stats. 1955 s. 15.18; 1957 c. 4, 53, 141; 1957 c. 610 s. 4, 5; 1957 c. 672; 1959 c. 39, 228 s. 12, 62, 66; 1959 c. 303; Stats. 1959 s. 16.53; 1965 c. 50; 1969 c. 276 ss. 582 (4), (16), (17), 602 (1); 1969 c. 366 s. 117 (2) (b); 1969 c. 392 ss. 4g, 87 (9); 1969 c. 498.

On jurisdiction of the supreme court see notes to sec. 3, art. VII; on credit of the state see notes to sec. 3, art. VIII; and on actions against the state see notes to 285.01.

"Auditor" signifies an officer whose duty it is to examine and certify accounts against the state and keep an account between it and the treasurer. If the secretary of state, as auditor, allows a proper claim his action is not subject to review, whether he allows too much or too little; but the question whether the claim is a proper one against the state may be reviewed on mandamus. State ex rel. Crawford v. Hastings, 10 W 518.

The supreme court has jurisdiction to restrain the drawing of warrants in favor of a state officer, and to determine whether the statute under which they are to be drawn is valid. If a statute or the constitution definitely fixes the amount of an officer's compensation, the secretary of state, as auditor, has nothing to do but to draw his warrant for the amount; but whenever the expenditures or services are indefinite and uncertain they must necessarily be audited, and this can only be done on proper vouchers or proofs. State ex rel. Raymer v. Cunningham, 82 W 39, 51 NW 1133.

An act appropriating money to defray the expense of the legislative investigation which requires the expense to be audited by the secretary of state on the certificates of the chairman of the committee does not confer auditing authority on the chairman of the committee. State ex rel. Rosenhein v. Frear, 138 W 173, 119 NW 894.

The provision in the soldiers' bonus law, ch. 667, Laws 1919, giving the service recognition board charge of the general scheme of payments and authorizing such board to adopt rules for the administration of the fund, the ascertainment and selection of the beneficiaries, and the determination of the amounts to which they are entitled, does not avoid the necessity for a later audit. State ex rel. Atwood v. Johnson, 170 W 218, 175 NW 589.

An outgoing state officer or employe whose term or period of employment is on the basis of the political year, as on the first Monday of January, is not entitled to any salary for any

part of that month. 1904 Atty. Gen. 114, 116.

The state treasurer need not go beyond the audit of the secretary of state as to the validity of claims for salary if submitted in proper form and he is not responsible if such claim for salary is improper except where salaries are paid out under an invalid or unconstitutional act. 9 Atty. Gen. 32.

A university official in charge of traveling team is not entitled to reimbursement for theatre tickets purchased for football team during a delay en route, since it was not an expense "necessarily incurred in the performance of duties required by the public service." 9 Atty. Gen. 106.

A claim filed in the office of the secretary of state claiming damages against the state on account of alleged misconduct, negligent or tortious acts of its officers or agents cannot be allowed, since payment for such claim is not authorized by law. 13 Atty. Gen. 603.

Expenditures for personal medical and hospital expenses, though necessary, while traveling in performance of duties required by public service, are not entitled to audit. 16 Atty. Gen. 771.

In absence of a rule on the subject by the board of dental examiners, all vouchers for payment of money should be signed by the secretary-treasurer and president of the board. 19 Atty. Gen. 623.

Men holding positions vacated by discharge of certain oil inspectors under the civil service law are entitled to pay of office. Where 2 groups of deputy oil inspectors covering single district request pay for given period, only one group is entitled to pay of such office. Secretary of state is advised not to audit these accounts without an order of court directing which group should be paid. 24 Atty. Gen. 510, 511.

The constitutionality of an appropriation for reimbursement of expenses of litigation having been challenged by a taxpayer, doubts should be resolved in favor of the state and audit of the appropriation refused until its validity has been judicially determined, especially where it appears that the objection is not merely capricious and fanciful. 26 Atty. Gen. 410.

The secretary of state is fully protected in auditing payment of salary to a de facto state officer. 28 Atty. Gen. 555.

The state is not liable for services rendered to it in absence of contract or compliance with the civil service law and no such claim should be compromised or audited. The state is not liable for damages arising out of negligent acts of its officers or agents and no such claim should be compromised or audited. 31 Atty. Gen. 312.

The state department of public welfare is charged with the performance of functions which in the discretion of the department may properly necessitate the employment of a public relations man, and his travel expenses incurred in such publicity work and in editing a departmental magazine used to publish information contemplated by statute should be allowed where the expense voucher shows, pursuant to this section, that such expenses were necessarily incurred in the performance of duties required by the public service. 34 Atty. Gen. 121.

16.535 History: 1969 c. 498; Stats. 1969 s. 16.535.

16.54 History: 1931 c. 279; Stats. 1931 s. 14.205; 1933 c. 401; Stats. 1933 ss. 14.205, 101.34; 1935 c. 459; 1937 c. 6 s. 16; 1945 c. 505; 1947 c. 495; Stats. 1947 ss. 14.205, 101.34, 101.345; 1951 c. 424; Stats. 1951 ss. 14.205, 15.20, 101.34, 101.345; 1955 c. 385 s. 6; 1959 c. 228 ss. 2, 13, 71; Stats. 1959 ss. 16.54, 101.34, 101.345; 1967 c. 226; 1969 c. 154 ss. 32, 285; Stats. 1969 s. 16.54.

The governor may, under 101.34, Stats. 1945, accept provisions of a congressional act making federal funds available for operation of employment offices and authorize the industrial commission to operate employment offices under such conditions. 35 Atty. Gen. 135.

The governor has authority to accept a grant of federal funds for educational purposes, and such funds can be expended lawfully under 20.21 (10), relating to moneys received by the state from the United States for educational purposes, only in accordance with the purposes of the grant. 40 Atty. Gen. 6.

This section does not authorize the creation by executive order of a commission to administer federal funds for higher education. 53 Atty. Gen. 60.

16.545 History: 1965 c. 660; Stats. 1965 s. 16.545; 1969 c. 154.

16.55 History: 1957 c. 547; Stats. 1957 s. 15.205; 1959 c. 228 s. 13, 66; Stats. 1959 s. 16.55.

16.58 History: 1947 c. 9 s. 18; Stats. 1947 s. 15.22; 1947 c. 300, 472; 1949 c. 178, 382, 463, 633, 639; 1951 c. 724; 1955 c. 356; 1957 c. 389, 526; 1959 c. 135 s. 1, 4; 1959 c. 228 s. 14, 62, 66; 1959 c. 444, 659 s. 8; 1959 c. 660 s. 1; 1961 c. 191; 1963 c. 479; 1965 c. 66 s. 8; 1965 c. 163; 1965 c. 249 s. 78; 1965 c. 432 s. 6; 1965 c. 433, 659; Stats. 1965 s. 16.58; 1967 c. 26; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 336 s. 176; 1969 c. 366 s. 117 (2) (d); 1969 c. 500 s. 30 (2) (e).

A request for an audit by the town meeting is not binding on the tax commission. When an audit is made under 73.03 (14), Stats. 1921, the commission acts in one of 2 ways. When the town board makes the request it is the "duty" of the commission to act. In the absence of such request, the commission may act upon its own motion, in its discretion. The request of the town meeting for an audit serves merely as a suggestion or as information to the commission, and it may act thereon as it deems best. The claim of the commission for services in making the audit from which claim the charge for each day or hour and the expenses could be ascertained, sufficiently complies with 60.33; and although the claim was verified by a person who did not describe himself as an agent or officer of the commission, the presumption of regularity obtains, as the claim was filed by the commission. *Evenson v. State*, 186 W 312, 202 NW 849.

The obligation of the town to pay the expenses of an audit under 73.03 (14), Stats. 1921, is in no way dependent upon whose motion or initiative the audit was made. The

town meeting has no authority in this matter. 11 Atty. Gen. 280.

A county board may provide for an annual audit of books by enactment of an ordinance as well as by resolution. 28 Atty. Gen. 367.

16.60 History: 1967 c. 115; Stats. 1967 s. 16.60; 1969 c. 392 s. 87 (9).

16.70 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.26; 1947 c. 9 s. 20; Stats. 1947 s. 15.54; 1949 c. 27; 1959 c. 228 s. 18, 19, 62; Stats. 1959 s. 16.70; 1967 c. 106.

16.71 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.28; 1931 c. 33 s. 3; 1931 c. 67 s. 151; 1943 c. 442; 1947 c. 9 s. 20; Stats. 1947 s. 15.56; 1959 c. 228 s. 21, 62; 1959 c. 659 s. 18, 19, 20; Stats. 1959 s. 16.71; 1967 c. 106; 1967 c. 291 s. 14.

The provisions of the Robinson-Patman law are not applicable to the state in its purchases. 26 Atty. Gen. 142.

The fair labor standards act of 1938 does not apply to the state in purchasing materials through the bureau of purchases. 27 Atty. Gen. 743.

16.72 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.29; 1943 c. 442; 1947 c. 9 s. 20; Stats. 1947 s. 15.57; 1959 c. 228 s. 21, 62; 1959 c. 659 s. 21; Stats. 1959 s. 16.72.

16.73 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.31; 1947 c. 9 s. 20; Stats. 1947 s. 15.58; 1959 c. 228 s. 21, 62; 1959 c. 659 s. 21; Stats. 1959 s. 16.73; 1967 c. 106.

16.74 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.32; 1947 c. 9 s. 20; Stats. 1947 s. 15.59; 1949 c. 397, 607, 643; 1959 c. 228 s. 21; 1959 c. 659 s. 22; Stats. 1959 s. 16.74; 1965 c. 429; 1967 c. 106.

16.75 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.33; 1931 c. 33 s. 3; 1933 c. 159 s. 3; 1943 c. 442; 1945 c. 223; 1947 c. 9 s. 20; Stats. 1947 s. 15.60; 1951 c. 710; 1953 c. 94; 1955 c. 10, 50, 592; 1957 c. 42; 1959 c. 144, 228 s. 21, 62; 1959 c. 659 s. 23; Stats. 1959 s. 16.75; 1961 c. 532; 1965 c. 252; 1967 c. 106; 1969 c. 259.

On stationery and printing see notes to sec. 25, art. IV; and on public works see notes to 62.15.

Where a contract for furnishing services to the state has been entered into pursuant to 16.75 (1), Stats. 1939, and it develops during performance that specifications in original contract did not fully cover all services to be required by the state, the contract may be modified by mutual consent without re-advertising for new bids, provided the subject matter and general scope of the contract remains essentially the same and there is no collusion. Surety bond for faithful performance of contract should be modified so as to cover changes in the original contract. 29 Atty. Gen. 131.

16.76 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.34; 1931 c. 67 s. 152; 1947 c. 9 s. 20; Stats. 1947 s. 15.61; 1959 c. 228 s. 21, 62; 1959 c. 659 s. 24; Stats. 1959 s. 16.76; 1965 c. 412; 1967 c. 106; 1969 c. 392 s. 87 (26).

16.765 History: 1959 c. 540; 1959 c. 641 s. 2;

Stats. 1959 s. 16.765; 1965 c. 66 s. 9; 1965 c. 439 s. 6; 1969 c. 276 ss. 120, 584 (1) (b), (3); 1969 c. 392 s. 87 (27).

16.77 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.35; 1947 c. 9 s. 20; Stats. 1947 s. 15.62; 1959 c. 228 s. 21; Stats. 1959 s. 16.77; 1969 c. 276 s. 582 (16).

16.78 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.36; 1947 c. 9 s. 20; Stats. 1947 s. 15.63; 1959 c. 228 s. 21, 62; 1959 c. 659 s. 25; Stats. 1959 s. 16.78.

16.79 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.37; 1931 c. 33 s. 3; 1931 c. 45; 1935 c. 535; 1937 c. 181 s. 4; 1947 c. 9 s. 20; 1947 s. 15.64; 1951 c. 710 s. 3, 4; 1955 c. 10, 532; 1957 c. 547; 1959 c. 228 s. 21, 62; 1959 c. 659 s. 26; Stats. 1959 s. 16.79; 1963 c. 451; 1965 c. 66 ss. 7, 8; 1967 c. 106; 1969 c. 55.

16.80 History: 1907 c. 88; 1907 c. 676 s. 3; Stats. 1911 s. 376m; 1913 c. 773 s. 15; Stats. 1913 s. 376m, 376n; 1917 c. 453 s. 6, 8; Stats. 1917 s. 44.08, 44.09; 1947 c. 316; 1949 c. 208; 1951 c. 457 s. 8, 9, 9a; Stats. 1951 s. 44.08; 1957 c. 547; Stats. 1957 s. 15.65; 1959 c. 161, 228 s. 21; 1959 c. 659 s. 27; Stats. 1959 s. 16.80; 1961 c. 567; 1963 c. 219, 397; 1967 c. 26; 1967 c. 211 s. 20; 1969 c. 276 ss. 121, 582 (7), (11), (16), 596, 609; 1969 c. 364; 1969 c. 392 ss. 84, 87 (14).

Scrip and warrants of the territory and state of Wisconsin no longer needed as public records may be disposed of by the committee on public records by delivery to the state historical society. 37 Atty. Gen. 260.

The committee on public records operating under this section does not have power to decrease time for retention of public records prescribed in other sections of the statutes. No state public records may now be destroyed without the approval of the committee on public records. 37 Atty. Gen. 315.

County public records are not subject to the control of the committee on public records. 37 Atty. Gen. 330.

16.81 History: 1957 c. 547; Stats. 1957 s. 15.655; 1959 c. 228 s. 21, 64; Stats. 1959 s. 16.81; 1969 c. 276 ss. 122, 582 (11); 1969 c. 392 s. 87 (26).

16.82 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.39; 1947 c. 9 s. 20; Stats. 1947 s. 15.66; 1951 c. 710; 1955 c. 10; 1959 c. 228 s. 21, 64; Stats. 1959 s. 16.82; 1961 c. 532; 1963 c. 465; 1967 c. 106.

16.825 History: 1967 c. 191; Stats. 1967 s. 16.825; 1969 c. 276.

16.83 History: 1967 c. 183, 217, 327; Stats. 1967 s. 16.83; 1969 c. 276 ss. 124, 125, 126.

16.835 History: R. S. 1848 c. 9 s. 26; 1854 c. 71; R. S. 1858 c. 10 ss. 8, 17, 26, 38, 70; 1859 c. 63; 1876 c. 341; 1877 c. 111 s. 2; 1878 c. 214; R. S. 1878 ss. 129, 141, 152, 167; 1880 c. 257; Ann. Stats. 1889 ss. 129, 141, 152, 167; Stats. 1898 ss. 129, 141, 152, 167; 1909 c. 430; 1911 c. 385, 657; 1911 c. 663 ss. 2, 3; 1913 c. 772 ss. 42, 108; 1915 c. 587; 1915 c. 604 s. 9; 1917 c. 14 s. 4; 1917 c. 622 s. 7; Stats. 1917 s. 14.08; 1969 c. 276 s. 13; Stats. 1969 s. 16.835.

16.84 History: 1967 c. 106; Stats. 1967 s. 16.84; 1969 c. 55; 1969 c. 276 ss. 596, 603 (2).

Policemen appointed by the state chief engineer under 15.77 (5), Stats. 1929, may arrest offenders both on the capitol grounds and beyond those grounds. 18 Atty. Gen. 550.

16.845 History: 1949 c. 447; Stats. 1949 s. 14.85; 1955 c. 385 s. 6; Stats. 1955 s. 20.929; 1965 c. 50; 1965 c. 66 s. 9; Stats. 1965 s. 16.92; 1967 c. 106; Stats. 1967 s. 16.845.

16.85 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.77; 1931 c. 33 s. 3; 1935 c. 535; 1943 c. 442; 1945 c. 181, 297; 1947 c. 359; 1951 c. 397; 1953 c. 61 s. 9; 1953 c. 518; 1957 c. 547; 1959 c. 228 s. 24, 25, 26, 27, 62, 65; Stats. 1959 s. 16.85; 1961 c. 191 ss. 3, 106; 1961 c. 622, 645; 1963 c. 6; 1965 c. 659; 1965 c. 695 s. 24 (3); 1967 c. 106; 1969 c. 241; 1969 c. 276 ss. 582 (16), 590 (1), 605; 1969 c. 364; 1969 c. 366 s. 117 (2) (a); 1969 c. 392 s. 87 (26), (30); 1969 c. 500 s. 30 (2) (e).

16.855 History: 1969 c. 497; Stats. 1969 s. 16.855.

16.86 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.78; 1947 c. 359; 1959 c. 228 s. 29; Stats. 1959 s. 16.86.

16.87 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.79; 1943 c. 334; 1949 c. 27; 1959 c. 228 s. 29, 62; 1959 c. 519, 659 s. 9; Stats. 1959 s. 16.87; 1969 c. 276 s. 582 (16).

Engineering surveying services are, but land surveying services are not, "engineering service" within the meaning of 16.87. 49 Atty. Gen. 70.

16.88 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.80; 1947 c. 359; 1959 c. 228 s. 29; Stats. 1959 s. 16.88; 1969 c. 392 s. 87 (26).

16.89 History: 1929 c. 468 s. 2; Stats. 1929 s. 15.81; 1947 c. 359; 1959 c. 228 s. 29, 62; Stats. 1959 s. 16.89; 1969 c. 276 s. 582 (16); 1969 c. 364.

16.90 History: 1931 c. 67 s. 151; Stats. 1931 s. 15.83; 1947 c. 359; 1949 c. 262; 1957 c. 568; 1959 c. 228 s. 31, 32, 62; Stats. 1959 s. 16.90; 1965 c. 66 s. 8; 1969 c. 276 s. 582 (16).

16.91 History: 1931 c. 67 s. 151; Stats. 1931 s. 15.84; 1957 c. 568; 1959 c. 228 s. 33, 62; Stats. 1959 s. 16.91; 1969 c. 276 s. 582 (16).

16.93 History: 1929 c. 378; 1935 c. 71; Stats. 1937 s. 15.72, 15.74; 1939 c. 371; 1947 c. 9 s. 23; Stats. 1947 s. 15.90, 15.91; 1951 c. 294; 1953 c. 77; Stats. 1953 s. 15.90; 1959 c. 475; 1963 c. 577; 1967 c. 40, 327; Stats. 1967 s. 16.93; 1969 c. 154.

Editor's Note: In an opinion rendered in 1957 (46 Atty. Gen. 131) the attorney general advised the assembly that under the existing statutes neither the bureau of engineering nor the state chief engineer could validly contract with the city of Madison regarding control by the city of motor vehicle parking on the capitol side of streets surrounding the capitol square.

16.94 History: 1915 c. 493; Stats. 1915 s. 4444m; 1925 c. 4; Stats. 1925 s. 343.462; 1955 c. 696 s. 115, 116; Stats. 1955 s. 15.93; 1959 c. 659 s. 81; 1965 c. 66 s. 6; 1967 c. 327; Stats. 1967 s. 16.94; 1969 c. 276 s. 585 (1); 1969 c. 392 s. 87 (9).

16.95 History: 1967 c. 211; Stats. 1967 s. 16.95.

CHAPTER 17.

Resignations, Vacancies, and Removals From Office.

17.01 History: 1919 c. 362 s. 1 to 10; Stats. 1919 s. 17.01; 1965 c. 19, 20.

Editor's Note: Extensive revisor's notes giving the history and purpose of the act creating sections of this chapter are contained in the Wis. Annotations, 1930.

The resignation of a city officer is not effective until presented to the person or board designated by statute, but when so presented it requires no acceptance. 11 Atty. Gen. 706.

17.02 History: 1919 c. 362 s. 11; Stats. 1919 s. 17.02; 1959 c. 343; 1967 c. 276 s. 39.

17.025 History: 1969 c. 422; Stats. 1969 s. 17.025.

17.03 History: 1919 c. 362 s. 12 to 15; Stats. 1919 s. 17.03; 1929 c. 113; 1949 c. 566; 1955 c. 242; 1957 c. 536; 1959 c. 259.

An officer elected for a full term may signify in writing his refusal to qualify before the expiration of the time given for that purpose, and thereupon the office becomes vacant. State ex rel. Finch v. Washburn, 17 W 658.

The changes made by an apportionment of assembly districts did not create a vacancy in the office of a member of the county board although the person holding it ceased to reside in the district which he was elected to represent. State ex rel. Gill v. Milwaukee County, 21 W 443.

If the oath of office is not filed with the proper officer there is a vacancy. State ex rel. Lutfring v. Goetze, 22 W 363.

An officer who absconds and is a fugitive from justice is incapable of discharging the duties of his office. Washington County v. Semler, 41 W 374.

A city charter declared that persons elected to city offices should enter upon the duties of such offices on a day named, but further provided that "when any such officer shall refuse or neglect, for 10 days after notice of his election or appointment, to qualify and enter upon the discharge of the duties of his office, the office shall be deemed vacant". Under such charter provision, if the person elected has his legal disability removed before the close of the "10 days after notice of his election" (though that may be after the day previously named), he is then entitled (having otherwise qualified) to enter upon and hold the office. State v. Trumpf, 50 W 103, 6 NW 512.

A judge appointed to fill a supposed vacancy is a judge de facto, and a person sentenced by him as a convicted criminal has no right to a discharge on that ground. State v. Bloom, 17 W 521; Laver v. McGlavin, 28 W 364; Chicago & N. W. R. Co. v. Langlade County, 56 W 614, 14 NW 844.

The wilful and unjust refusal of the officer required to approve the official bond of a person elected or appointed to office to give it his approval cannot affect such person's right to the office or create a vacancy therein. State ex rel. Ackerman v. Dahl, 65 W 510, 27 NW 343.