

outside the state without the consent of the treasurer, and if it does, the state treasurer is no longer responsible for them. 47 Atty. Gen. 94.

25.20 History: 1931 c. 67 s. 153; Stats. 1931 s. 25.20.

25.21 History: 1927 c. 536 s. 1, 2; Stats. 1927 s. 20.24; 1931 c. 67 s. 45; Stats. 1931 s. 25.21; 1933 c. 140 s. 4; 1945 c. 20; 1953 c. 61 s. 2; 1969 c. 276 s. 602 (1).

On the school fund see notes to sec. 2, art. X.

25.22 History: 1927 c. 536 s. 1, 2; Stats. 1927 s. 20.24; 1931 c. 67 s. 46; Stats. 1931 s. 25.22.

25.23 History: 1927 c. 536 s. 1, 2; Stats. 1927 s. 20.24; 1931 c. 67 s. 47; Stats. 1931 s. 25.23; 1935 c. 263; 1937 c. 49; 1939 c. 513 s. 5; 1943 c. 373; 1945 c. 367; 1965 c. 189.

25.235 History: 1917 c. 14 s. 61; Stats. 1917 s. 20.36 (1); 1931 c. 67 s. 78; Stats. 1931 s. 25.235; 1951 c. 247; 1965 c. 433.

Editor's Note: In State ex rel. Owen v. Donald, 160 W 21, 151 NW 331, secs. 250 and 251, Stats. 1915, from which 25.235, 25.24 and 25.25 were in part derived, were declared to be still in force and never superseded; and ch. 367, Laws 1897, ch. 450, Laws 1903, ch. 364, Laws 1905, and all other acts and parts of acts, insofar as they were in conflict with said sections, were declared to be invalid.

On internal improvements see notes to sec. 10, art. VIII; and on the school fund see notes to sec. 2, art. X.

25.25 History: 1917 c. 14 s. 61; Stats. 1917 s. 20.36 (3); 1931 c. 67 s. 80; Stats. 1931 s. 25.25; 1945 c. 20; 1953 c. 61 s. 2; 1965 c. 163; 1967 c. 43; 1969 c. 276 s. 602 (1).

25.26 History: 1917 c. 14 s. 66; Stats. 1917 s. 20.39 (1); 1931 c. 67 s. 82a; Stats. 1931 s. 25.26.

25.27 History: 1917 c. 14 s. 66; Stats. 1917 s. 20.39 (3); 1931 c. 67 s. 83; Stats. 1931 s. 25.27.

25.28 History: Stats. 1915 s. 172-73; 1917 c. 14 s. 50; 1917 c. 662 s. 3; 1917 c. 671 s. 38; Stats. 1917 s. 20.30; 1921 c. 459 s. 3; 1923 c. 412; 1925 c. 53; 1929 c. 491 s. 3; 1931 c. 67 s. 58; 1931 c. 470 s. 1; Stats. 1931 s. 25.28; 1943 c. 404; 1945 c. 274; 1947 c. 600; 1951 c. 511; 1953 c. 204; 1955 c. 324; 1957 c. 533; 1961 c. 652; 1965 c. 250; 1967 c. 92 s. 22; 1967 c. 204; 1969 c. 158 s. 106; 1969 c. 331 s. 62.

25.29 History: 1917 c. 668 s. 7; 1917 c. 676 s. 4; 1917 c. 678 s. 5; Stats. 1917 s. 20.205; 1921 c. 181 s. 2; 1923 c. 162; 1925 c. 391 s. 2; 1929 c. 420 s. 3, 4; 1931 c. 67 s. 39; Stats. 1931 s. 25.29; 1939 c. 234; 1951 c. 480; 1953 c. 52; 1955 c. 362; 1957 c. 653; 1961 c. 349; 1963 c. 345, 400; 1963 c. 517 s. 1; 1965 c. 276; 1967 c. 302; 1969 c. 276 s. 588 (4).

25.30 History: 1925 c. 129; 1925 c. 445 s. 2; Stats. 1925 s. 20.207; 1931 c. 67 s. 42; Stats. 1931 s. 25.30; 1935 c. 448; 1947 c. 9 s. 31; 1947 c. 563; 1953 c. 425; 1961 c. 622; 1963 c. 400; 1969 c. 276 s. 588 (4).

25.31 History: 1919 c. 649 s. 7; 1919 c. 702 s. 2; Stats. 1919 s. 20.17 (14) (e); 1931 c. 67 s. 30; Stats. 1931 s. 25.31; 1943 c. 93; 1945 c. 158; 1969 c. 366 s. 117 (2) (b).

25.36 History: 1949 c. 627; Stats. 1949 s. 25.36; 1953 c. 540, 681; 1955 c. 10, 353; 1957 c. 350; 1959 c. 11; 1961 c. 513; 1963 c. 326; 1965 c. 247; 1967 c. 291 s. 14; 1969 c. 48; 1969 c. 276 s. 591 (1).

25.39 History: 1951 c. 527 s. 3; Stats. 1951 s. 25.39; 1953 c. 441 s. 4; 1953 c. 568; 1959 c. 628; 1959 c. 659 s. 47; 1961 c. 191; 1965 c. 247.

25.40 History: Stats. 1963 s. 20.420 (91); 1965 c. 396, 591; Stats. 1965 s. 25.40; 1967 c. 291 s. 14; 1969 c. 154 s. 377; 1969 c. 276 s. 582 (17); 1969 c. 336, 392; 1969 c. 500 s. 30 (2) (e), (3) (g).

CHAPTER 26.

Protection of Forest Lands.

26.01 History: 1917 c. 282 s. 2; Stats. 1917 s. 26.01; 1969 c. 276 s. 588 (4); 1969 c. 392.

On internal improvements see notes to sec. 10, art. VIII; and on the conservation act see notes to 23.09.

26.03 History: 1949 c. 252; Stats. 1949 s. 26.03; 1957 c. 164, 447, 672; 1963 c. 80; 1969 c. 140.

"Forest or wild land area" is defined in 31 Atty. Gen. 162.

26.04 History: 1949 c. 252; Stats. 1949 s. 26.04.

26.05 History: 1949 c. 252; Stats. 1949 s. 26.05; 1955 c. 696 s. 5.

See note to sec. 8, art. I, on limitations imposed by the Fourteenth Amendment, citing State v. Biller, 262 W 472, 55 NW (2d) 414.

26.06 History: 1949 c. 252; Stats. 1949 s. 26.06; 1955 c. 696 s. 5a; 1965 c. 252; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (4); 1969 c. 392 s. 87 (13).

Where lumber unlawfully cut from school land before its sale by the state has been seized by the commissioners, a person who holds the certificate of the subsequent sale of the land, though not himself the trespasser, is not entitled to obtain the lumber and full title to the land by bidding at a sale of the lumber the amount due the state on the land, together with the expenses of seizure and sale; nor is he entitled to mandamus to compel the sale. State ex rel. Smith v. Commissioners, 19 W 237.

26.07 History: R. S. 1858 c. 20 s. 127; 1866 c. 56 s. 3; 1867 c. 138 s. 1; R. S. 1878 s. 245; Stats. 1898 s. 245; 1917 c. 282 s. 9; Stats. 1917 s. 26.07.

26.08 History: R. S. 1849 c. 24 s. 51; R. S. 1858 c. 28 s. 70; R. S. 1878 s. 194; Stats. 1898 s. 194; 1917 c. 282 s. 10; Stats. 1917 s. 26.08; 1949 c. 474; 1969 c. 276 s. 588 (2), (4).

26.09 History: 1905 c. 264 s. 20; Supl. 1906 s. 1494-60; 1911 c. 663 s. 229; 1917 c. 282 s. 12; Stats. 1917 s. 26.09; 1949 c. 252; 1969 c. 392 s. 87 (13).

Editor's Note: Cases decided under 331.18,

repealed by ch. 252, Laws 1949, which prescribed the highest market value between cutting and trial as the measure of damage, will be found in the Wis. Annotations, 1930. See also *Jeske v. Hotz Mfg. Co.* 238 W 116, 297 NW 357.

Wilfulness is not essential to the recovery of double damages, and proof of intent or wilful trespass is not required but only proof of unauthorized cutting. *Swedowski v. Westgor*, 14 W (2d) 47, 109 NW (2d) 549.

Recovery of double damages for conversion of timber. 39 MLR 64.

26.10 History: 1917 c. 282 s. 13; Stats. 1917 s. 26.10; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (2), (4).

26.11 History: 1927 c. 29 s. 1, 3; Stats. 1927 s. 26.11; 1937 c. 432; 1951 c. 488; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (4).

26.11 (1), Stats. 1941, contemplates that equipment for fire fighting is to be acquired by contract whenever possible and is to be commandeered only when absolutely necessary in emergency. Equipment to fight forest fires may be rented under authority of 26.11 (1) and (4). Insurance on rented equipment may be carried with the state insurance fund. The state is not liable for negligent acts of its officers or agents in operating commandeered equipment. 31 Atty. Gen. 181.

26.12 History: 1927 c. 29 s. 1, 3; 1927 c. 541 s. 3; Stats. 1927 s. 26.12; 1931 c. 128; 1939 c. 280; 1951 c. 77; 1953 c. 218; 1955 c. 221 s. 21; 1957 c. 332; 1965 c. 252, 331; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (4); 1969 c. 392 s. 87 (7).

A complaint alleging an offense under 26.12 (5), Stats. 1931, is insufficient unless it alleges statutory exceptions which are part of the same section and are constituent elements of the crime. 21 Atty. Gen. 876.

26.13 History: 1927 c. 29 s. 1, 3; Stats. 1927 s. 26.13; 1969 c. 276 s. 588 (4).

In the absence of statutory authority counties may not assist towns in paying board and transportation of fire fighters. Counties cannot require towns to furnish compensation insurance for county employees. 25 Atty. Gen. 532.

26.14 History: 1927 c. 29 s. 1, 3; Stats. 1927 s. 26.14; 1933 c. 203; 1935 c. 102; 1937 c. 56; 1943 c. 330; 1947 c. 152; 1949 c. 262, 591; 1957 c. 56; 1961 c. 316; 1967 c. 29 s. 2; 1967 c. 276; 1969 c. 276 s. 588 (4).

When men are called on and compelled to work in putting out fires at the request of a state forest ranger, the conservation commission must allow them some compensation, and, if the commission refuses to pay, the state is liable to compensate the men for the reasonable value of their work up to the maximum limit of the statute. *Rosenbluth v. State*, 222 W 623, 269 NW 292.

Under 26.14 (7b) the intentional, unjustified, and unexcused setting of a fire fully responds to the requirement that the fire be set wilfully and maliciously, and it is not necessary, in order to constitute the offense, that the person setting the fire be motivated by ill will or spite. *Allport v. State*, 9 W (2d) 409, 100 NW (2d) 812.

Expense incurred by state fire wardens in putting out fire or assisting therein can be apportioned to the county. Compensation and expenses of such emergency fire warden, as well as compensation and expenses of those whom he may employ to assist him, are to be paid by state and by county. 14 Atty. Gen. 436.

26.14 (3) covers repair bills for damage to rented equipment. 31 Atty. Gen. 181.

Municipalities are liable to the state conservation commission for the costs of fire suppression. 38 Atty. Gen. 472.

Railroad corporations are responsible for the costs of fire suppression for all fires either wilfully or negligently set on their right-of-ways. 45 Atty. Gen. 17.

26.15 History: 1905 c. 264 s. 9; Supl. 1906 s. 1494—49; 1911 c. 601; 1917 c. 282 s. 18; Stats. 1917 s. 26.15; 1927 c. 29 s. 2.

26.18 History: 1905 c. 264 s. 15; Supl. 1906 s. 1494—55; 1911 c. 663 s. 227; 1917 c. 282 s. 22; Stats. 1917 s. 26.18; 1967 c. 29 s. 1; 1969 c. 255.

26.19 History: 1905 c. 264 s. 16; Supl. 1906 s. 1494—56; 1911 c. 663 s. 227; 1917 c. 282 s. 23; Stats. 1917 s. 26.19; 1927 c. 29 s. 2.

26.20 History: 1905 c. 264 s. 17; Supl. 1906 s. 1494—57; 1909 c. 119; 1911 c. 494; 1911 c. 664 s. 100, 107; 1917 c. 282 s. 24; Stats. 1917 s. 26.20; 1967 c. 29 s. 1, 2; 1969 c. 276 s. 588 (4); 1969 c. 392 s. 87 (32), (35).

Under 26.20 (1) the requirement of the "most practicable protection" against the escape of sparks and fire does not render the statute void for uncertainty. *Legro v. Carley*, 159 W 534, 150 NW 985.

Although this section does not apply to the defendant county in the sense that it could be sued for a penalty for failure to conform to its provisions, it does prescribe a standard of care which users of engines are required to observe as a matter of law. *Necedah M. Corp. v. Juneau County*, 206 W 316, 237 NW 277, 240 NW 405.

26.205 History: 1923 c. 211; Stats. 1923 s. 26.205; 1927 c. 29 s. 2; 1969 c. 276 s. 588 (4).

26.21 History: 1905 c. 264 s. 18; Supl. 1906 s. 1494—58; 1911 c. 663 s. 228; 1917 c. 282 s. 26; Stats. 1917 s. 26.21; 1967 c. 29 s. 2.

The word "negligence" is qualified or modified by its association with the words "wilfulness" and "malice" and means negligence with an element of wilfulness or malice, in other words, gross negligence. *Bonnell v. Chicago, St. P., M. & O. R. Co.* 158 W 153, 147 NW 1046.

The owner of property exposed to fire that may spread from another's to his own land is guilty of contributory negligence, if, knowing the existence of the fire, he fails to make proper and timely efforts to extinguish it while it is still subject to control. *Pribonic v. Fulton*, 178 W 393, 190 NW 190.

26.22 History: 1905 c. 322 s. 1; Supl. 1906 s. 210b; 1917 c. 282 s. 26a; Stats. 1917 s. 26.22; 1969 c. 276 s. 588 (4).

26.30 History: 1955 c. 250, 652; Stats. 1955 s. 26.30; 1957 c. 626; 1961 c. 316; 1965 c. 252;

1967 c. 26 s. 94; 1967 c. 291 s. 14; 1969 c. 276 ss. 185, 583 (1), 588 (3), (4); 1969 c. 392 s. 87 (7).

CHAPTER 27.

Public Parks and Places of Recreation.

27.01 History: Stats. 1915 s. 1494t-3m, 1494t-3n, 1494t-4, 1494t-5; 1917 c. 262 s. 2; Stats. 1917 s. 27.01; 1919 c. 91, 194; 1919 c. 558 s. 1, 2; 1919 c. 702 s. 10; 1921 c. 26, 312; 1921 c. 422 s. 49; 1923 c. 335; 1925 c. 104, 404; 1925 c. 445 s. 3; 1927 c. 434, 495; 1929 c. 126, 127, 190, 331; 1929 c. 530 s. 3; 1931 c. 67 s. 155; 1931 c. 79 s. 3; 1931 c. 254 s. 1; 1935 c. 112, 288, 383; 1937 c. 257; 1947 c. 549; 1949 c. 360; 1951 c. 457; 1959 c. 379; 1961 c. 608; 1967 c. 110; 1969 c. 276 ss. 186, 588 (3), (4), 596; 1969 c. 407.

On the conservation act see notes to 23.09.

The power granted to the conservation commission by 27.01 (2) (g) to lease parts or parcels of state park land or grant easements thereto is not restricted to leases for park purposes only. State ex rel. Evjue v. Seyberth, 9 W (2d) 274, 101 NW (2d) 118.

The conservation commission may adopt rules excluding peddlers and itinerant vendors from state parks. 5 Atty. Gen. 565.

The conservation commission has authority to acquire for state park purposes the life estate in lands, the fee in which has already been acquired for such purposes. 5 Atty. Gen. 782.

The conservation commission has no power to grant a right of way for a railroad over a state park. 6 Atty. Gen. 68.

Conveyances to the state of lands for park purposes should not conflict with the terms of statutes relating to state parks. 7 Atty. Gen. 260.

The conservation commission has no power or authority to enter into a contract by which it or the state becomes subject to liability for negligence. 10 Atty. Gen. 756.

A concessionaire at a state park whose lease with the state permits him to sell beer is subject, nevertheless, to licensing provisions imposed by the municipality in which the park is located. 30 Atty. Gen. 297.

The conservation commission as an administrative agency of the state has not been delegated full power of the state to develop parks and improve them with dams and artificial lakes. The commission's power extends at most to incidental dam construction. 36 Atty. Gen. 264.

The conservation commission has statutory power to lease park land owned by the state in fee for the purpose of constructing a radio and television transmission tower. The attorney general cannot determine the adequacy or inadequacy of the consideration; that is a question that can be decided only by a court of competent jurisdiction. 46 Atty. Gen. 257.

27.011 History: 1959 c. 379; Stats. 1959 s. 27.011; 1969 c. 392 s. 87 (16).

27.012 History: Stats. 1917 s. 4442m, 4442n; 1919 c. 146 s. 1, 2; Stats. 1919 s. 26.03 (4), (5); 1947 c. 549; Stats. 1947 s. 27.012; 1955 c. 10, 696; 1965 c. 424, 625; 1969 c. 276.

27.015 History: 1919 c. 693; 1919 c. 702 s.

68c; Stats. 1919 s. 1458—11; 1923 c. 152 s. 187; Stats. 1923 s. 97.17; 1929 c. 479 s. 1, 3; 1935 c. 550 s. 194; Stats. 1935 s. 27.015; 1943 c. 229; 1947 c. 281; 1957 c. 97; 1959 c. 228 s. 68; 1965 c. 19; 1967 c. 29 s. 1; 1969 c. 276 ss. 583 (1), 588 (4); 1969 c. 392.

A county rural planning committee established under 97.17, Stats. 1931, is abolished by creation of a county park commission under 27.02. 20 Atty. Gen. 1051.

Counties may acquire and maintain park properties, and may authorize the construction, operation and maintenance of public fee golf courses on county-owned land. 27 Atty. Gen. 710.

27.015 (7) (f), Stats. 1947, relating to rural planning does not impliedly amend statutes relating to distribution of highway allotments to counties but merely places all roads in county parks under county board police regulation. 36 Atty. Gen. 547.

See note to 27.03, citing 44 Atty. Gen. 333.

A county which has no county park commission has power under 59.07 (1), Stats. 1955, acting through its rural planning committee pursuant to 27.015 (10), to lease lands for park purposes and to construct improvements thereon. 46 Atty. Gen. 168.

27.02 History: 1907 c. 250; Stats. 1911 s. 1787o—1; 1913 c. 454; Stats. 1913 s. 697—68; 1917 c. 262 s. 3; Stats. 1917 s. 27.02; 1919 c. 264 s. 1; 1919 c. 362 s. 34; 1919 c. 558 s. 3; 1919 c. 702 s. 11; 1939 c. 301; 1953 c. 547; 1957 c. 119.

A county board cannot by resolution change the statutory power of the chairman under 27.02 (1), Stats. 1933, to name members of the county park commission. 24 Atty. Gen. 338.

An alderman may be a member of a county park commission. 25 Atty. Gen. 698.

See note to 59.15, citing 52 Atty. Gen. 69.

27.03 History: 1907 c. 250; Stats. 1911 s. 1787o—1; 1913 c. 454; Stats. 1913 s. 697—69; 1917 c. 262 s. 4; Stats. 1917 s. 27.03.

Under 27.015 (7) (f) and 27.03 (2), Stats. 1955, the county park commission is authorized to employ personnel to promote recreational activities at parks supervised by the commission. If the county board wishes to establish a recreational program extending beyond the limits of the parks, this may be done under 59.07 (26) and 59.87. 44 Atty. Gen. 333.

27.04 History: 1907 c. 250; Stats. 1911 s. 1787o—2; 1913 c. 454; Stats. 1913 s. 697—70; 1917 c. 262 s. 5; Stats. 1917 s. 27.04; 1925 c. 442 s. 1; 1967 c. 29 s. 4.

27.05 History: 1907 c. 250; 1909 c. 352; 1911 c. 663 s. 331; Stats. 1911 s. 1787o—3, 1787o—3a, 1787o—3b; 1913 c. 454; Stats. 1913 s. 697—71; 1917 c. 262 s. 6; Stats. 1917 s. 27.05; 1919 c. 613; 1923 c. 300; 1927 c. 225 s. 1; 1927 c. 248; 1939 c. 191; 1947 c. 378; 1949 c. 105, 456; 1967 c. 29 s. 2; 1969 c. 240.

27.05 (3) does not deprive the county board of power to institute and prosecute proceedings to acquire lands for flowage purposes in maintaining a dam constructed by the county for park purposes. Vaudreuil Lumber Co. v. Eau Claire County, 239 W 538, 2 NW (2d) 356.

See note to 114.11, on local airports, citing