

ture of its power, cannot substitute its judgment for that of the zoning authority in the absence of statutory authorization. This rule applies not only to the necessity and extent of zoning but also to rezoning, classification, establishment of districts, boundaries, uses, and to the determination of whether or not there has been such a change of conditions as to warrant rezoning. *Buhler v. Racine County*, 33 W (2d) 137, 146 NW (2d) 403.

59.97 sets forth a limitation which exhausts the significance of the fact of the neighbors' protests and renders such fact an improper ground upon which to determine action or nonaction in reference to zoning. *Buhler v. Racine County*, 33 W (2d) 137, 146 NW (2d) 403.

Provisions of a county zoning ordinance applicable to automobile wrecking yards were construed in *Racine County v. Flourde*, 38 W (2d) 403, 157 NW (2d) 591.

Various aspects of the zoning law are discussed in 20 Atty. Gen. 751.

Where a county zoning ordinance permits signs of only a certain type in a district, the published record of nonconforming uses should contain a description of the land upon which nonconforming signs are located, unless the county under 59.95 (7) (d) enforces issuance of building permits or other devices. 28 Atty. Gen. 626.

A county board may not designate town clerks as its officers or agencies through which building permits required under a zoning ordinance should be secured. The county board cannot designate town chairmen as such agencies except through their appointment upon a county board committee created pursuant to 59.06. 35 Atty. Gen. 137.

A county has no power to regulate by zoning ordinances premises within the territorial limits of any city or village. 37 Atty. Gen. 621.

A county zoning ordinance adopted pursuant to 59.97 (2) may be amended only by the county board. No recommendation or report by the county park commission or rural planning board is required. There must be 10 days' published notice of any proposed change and a hearing for persons interested upon notice published 3 times during the 10 days preceding the hearing. The hearing may be held by the county zoning committee when authorized by the county board. 38 Atty. Gen. 186.

A town board may rescind its previous attempted approval of a proposed county zoning ordinance relating to the location or boundaries of districts if such rescinding action is taken prior to the adoption of the ordinance by the county board. 38 Atty. Gen. 572.

An ordinance to repeal an existing county zoning ordinance is not valid unless it complies with the requirements of 59.97 for the amendment of such an ordinance. 42 Atty. Gen. 91.

A county must use the method of amending a zoning ordinance set forth in 59.97 (3), and any ordinance establishing a different method is void. 43 Atty. Gen. 73.

See note to 59.07 (49), citing 46 Atty. Gen. 148.

Revision of an existing county zoning ordinance can be accomplished only by amendment pursuant to 59.97 (3). Towns may adopt the amendatory ordinance only in the

manner provided in 59.97 (3) (g). 48 Atty. Gen. 65.

On approval of county zoning ordinances by town boards, prior to the amendatory legislation of 1965, 1967 and 1969, see 53 Atty. Gen. 214.

Control of land use to protect and promote growth of recreational value of northern areas. *Waite*, 42 MLR 271.

Procedures in obtaining exceptions, variances and amendments. *Hagman*, 33 WBB, No. 2.

Effect of restrictive covenants on zoning. *Church*, 1963 WLR 321.

**59.971 History:** 1965 c. 614; Stats. 1965 s. 59.971; 1969 c. 276 s. 588 (12).

**59.99 History:** 1927 c. 408; Stats. 1927 s. 59.99; 1943 c. 292; 1947 c. 120; 1949 c. 74; 1953 c. 61, 240; 1955 c. 651; 1957 c. 24; 1963 c. 212; 1965 c. 153, 252, 433.

**59.997 History:** 1935 c. 332; Stats. 1935 s. 59.997; 1951 c. 261 s. 10; 1965 c. 19, 252; 1965 c. 666 s. 22 (1).

## CHAPTER 60.

### Towns.

**60.01 History:** R. S. 1849 c. 12 s. 1, 5; R. S. 1858 c. 15 s. 1, 5; R. S. 1878 s. 773; Stats. 1898 s. 773; 1919 c. 551 s. 2; Stats. 1919 s. 60.01.

On exercises of police power see notes to secs. 1 and 13, art. I; on taking private property for public use see notes to sec. 13, art. I; on legislative power generally see notes to sec. 1, art. IV; on uniform town and county government see notes to sec. 23, art. IV; on the rule of taxation see notes to sec. 1, art. VIII; on property taken by municipality see note to sec. 2, art. XI; on limitation of indebtedness and direct annual tax to pay debt see notes to sec. 3, art. XI; on acquisition of lands by the state and subdivisions see notes to sec. 3a, art. XI; on election or appointment of statutory officers see notes to sec. 9, art. XIII; on eminent domain see notes to various sections of ch. 32; on general property taxes see notes to various sections of ch. 70; on taxation of forest crop land see notes to 77.01-77.16; on laying highways see notes to various sections of ch. 80; on town highways see notes to various sections of ch. 81; on miscellaneous highway provisions see notes to various sections of ch. 86; on intoxicating liquor licenses see notes to 176.05; on recovery of municipal forfeitures see notes to 288.10; and on powers of state and local authorities over traffic regulation see notes to various sections of ch. 349.

A town may lease buildings for town purposes, as for holding elections and town meetings. *Beaver Dam v. Frings*, 17 W 398.

An action on a town treasurer's bond may be brought by the supervisors in the name of their office. *Cairns v. O'Bleness*, 40 W 469.

An action by one town against another is properly brought as town of A. v. town of B. *Pine Valley v. Unity*, 40 W 682.

When the term "municipal corporation" is used in a statute it must be taken in the strict constitutional sense unless it is clear that it was intended to be used otherwise. A town may not purchase and hold tax certifi-

cates. *Eaton v. Manitowoc County*, 44 W 489.

A town must be composed of contiguous territory. *Chicago Northwestern R. Co. v. Oconto*, 50 W 189, 6 NW 607.

An Indian reservation may be included within town boundaries. *Schriber v. Langlade*, 66 W 616, 29 NW 547, 554.

The neglect of a town for several years to elect officers and discharge its usual functions does not relieve it from liability for debts previously contracted. When it resumes such functions its liability may be enforced, though it take this action under a special law. *Schriber v. Langlade*, 66 W 616, 29 NW 547, 554.

If an action is maintainable at all to restrain a city from maintaining an isolation hospital in a town it must be brought by the town. *Buckstaff v. Oshkosh*, 92 W 520, 66 NW 707.

A town is not liable for the value of work done under an ultra vires contract, the contractor knowing that no power existed to so contract. *Beyer v. Crandon*, 98 W 306, 73 NW 771.

A town having power to borrow only for particular purposes and in a prescribed manner was liable on implied contract for moneys borrowed for general purposes, and used for the benefit of the town. *Thomson v. Elton*, 109 W 589, 85 NW 425.

Where a defendant in an action by a town has enjoyed the benefit of the contract sued on, he cannot rely on the defense of ultra vires. *Beloit v. Heineman*, 128 W 398, 107 NW 334.

A town has no power to employ an attorney by the year. *State ex rel. Thompson v. Welbes*, 129 W 639, 109 NW 564.

A town has only the powers and liability provided by statute. It is a quasi-corporation. *Mulvaney v. Armstrong*, 168 W 476, 170 NW 652.

A town has only such powers as are conferred on it by statute or necessarily implied therefrom. *Milton Junction v. Milton*, 263 W 367, 57 NW (2d) 186.

Towns are political subdivisions and governmental agencies of the state. A town is denominated a quasi-municipal corporation as distinguished from a municipal corporation, although in a generic sense a town is sometimes referred to as a municipality. *Milwaukee v. Met. Sewerage Comm.* 268 W 342, 67 NW (2d) 624.

A town has only such powers as are conferred on it by statute or are necessarily implied therefrom, and the officers of a town have only such powers as are conferred on them by statute. *Pugnier v. Ramharter*, 275 W 70, 81 NW (2d) 38.

The statutes grant no authority to expend money from the town treasury for charitable purposes, and hence contributions to charitable agencies were illegal as being beyond the power of the town or the town board to make, even though for a public purpose. *Pugnier v. Ramharter*, 275 W 70, 81 NW (2d) 38.

The annexation of territory in a town to a city is not invalid for dividing the town into 4 noncontiguous areas. *Blooming Grove v. Madison*, 275 W 342, 81 NW (2d) 721.

The word "town," like other words in the statutes, is normally to be construed according to common and approved usage, and such usage gives the word the connotation of a

governmental subdivision operating as a going concern under the form of town government prescribed by ch. 60, not including areas previously withdrawn by annexation or incorporation and no longer governed by the town government; and even if a town affected by annexation may continue to have some underlying existence to its original boundaries, this has no effect on such common usage, and has no substantial bearing on the meaning of 66.02 with respect to the requirement of contiguity in a town-city consolidation. *Brown Deer v. Mliwaukee*, 2 W (2d) 441, 86 NW (2d) 487.

Where a municipal corporation having power to acquire property for some purposes, but not for others, takes it for an unauthorized purpose (i.e., as a condition of granting relief) the transfer is not void but vests title in the corporation, which may be questioned only by the state, a taxpayer, or some person authorized to represent the inhabitants of the municipality. *Polanski v. Eagle Point*, 30 W (2d) 507, 141 NW (2d) 281.

See notes to 62.11 (5), citing *Clark Oil & Refining Corp. v. Tomah*, 30 W (2d) 547, 141 NW (2d) 299.

Electors of a town cannot use surplus funds derived from utility taxes, tavern and cigarette licenses for payment of county and state taxes. Attempted authorization by referendum does not give such power. 26 Atty. Gen. 88.

**60.015 History:** 1961 c. 677; Stats. 1961 s. 60.015.

**60.02 History:** R. S. 1849 c. 112 s. 54; R. S. 1858 c. 15 s. 60; R. S. 1878 s. 780; Stats. 1898 s. 780; 1919 c. 551 s. 3; Stats. 1919 s. 60.02; 1967 c. 276 s. 39.

The organization of a county which is not divided into towns, ipso facto constitutes its territory a single town. *Cathcart v. Comstock*, 56 W 590, 14 NW 833.

**60.025 History:** 1959 c. 259; Stats. 1959 s. 60.025.

**60.03 History:** R. S. 1858 c. 15 s. 5; R. S. 1878 s. 774; Stats. 1898 s. 774; 1919 c. 551 s. 3; Stats. 1919 s. 60.03.

**60.04 History:** R. S. 1849 c. 12 s. 67; R. S. 1858 c. 15 s. 76; R. S. 1878 s. 775; Stats. 1898 s. 775; 1919 c. 551 s. 3; Stats. 1919 s. 60.04.

**60.05 History:** 1852 c. 429 s. 2; R. S. 1858 c. 13 s. 28 sub. 1, 29; R. S. 1858 c. 13 s. 33; 1859 c. 166; 1866 c. 95; 1868 c. 92 s. 1; 1868 c. 138, 170; R. S. 1878 s. 670 sub. 1, 671, 673, 674; 1879 c. 190 s. 1; 1881 c. 73; 1882 c. 11, 226; 1883 c. 54, 287; 1885 c. 334; 1887 c. 106; 1889 c. 464; Ann. Stats. 1889 s. 670 sub. 1, 671, 673, 674, 960g; Stats. 1898 s. 671, 672, 673; 1899 c. 253 s. 1; Supl. 1906 s. 671a; 1909 c. 62, 74; 1913 c. 773 s. 28; 1919 c. 551 s. 4; 1919 c. 702 s. 43, 80; Stats. 1919 s. 60.05; 1921 c. 396 s. 4; 1925 c. 298; 1955 c. 10; 1957 c. 311.

On powers of county boards over organization, boundaries, etc., of towns see notes to 59.07 (22).

The proceedings must substantially comply with the requirements of the statute. *Smith v. Sherry*, 54 W 114, 11 NW 465.

The legislature may divide counties into towns and provide for their organization. *Chicago & Northwestern R. Co. v. Langlade County*, 56 W 614, 14 NW 844.

When nearly 20 years have elapsed after territory has been attached to another town, every presumption is in favor of the regularity of the proceedings; and after acquiescence for that period irregularities will be disregarded. *Sherry v. Gilmore*, 58 W 324, 17 NW 252.

The validity of an order changing boundaries cannot be questioned in a collateral proceeding, it seems, unless it was made without authority. *Schriber v. Langlade*, 66 W 616, 29 NW 554.

An ordinance dividing a town cannot be called in question after 2 years from its date under the provisions of sec. 671, R. S. 1898. *Spooner v. Minong*, 104 W 425, 80 NW 737.

From the complaint in an action brought to recover on certain town orders it appeared, among other things, that the board of Oconto county detached territory from the defendant towns and organized therefrom the town of W., which, by a proceeding in the circuit court for that county, was dissolved. The town orders in question were duly issued after the town of W. had organized, elected officers, and levied its taxes. After the dissolution of the town of W. the defendant towns resumed ownership, possession and control over the territory detached from each. Held, on demurrer to the complaint, that the town of W. became a de facto town, even though there might have been a failure to comply with the law in some particular which prevented it from becoming a town de jure. The vacation of the ordinance creating the town by the circuit court in direct proceedings for that purpose being subsequent to the issuing of such orders, the obligation to pay the same devolved on the defendant towns. *Gilkey v. How*, 105 W 41, 81 NW 120.

It appears that, in ch. 253, Laws 1899, the legislature intended to make a complete and harmonious system by which a vote of the electors interested is essential to the power of the board to vacate a town. *State ex rel. Jensen v. Yankee*, 120 W 573, 98 NW 533.

The provisions regarding division of a town do not apply to the change of boundaries of towns. No vote of electors of territory affected by detaching a part of one town and adding to another is necessary, unless it leaves the area of the town less than 36 sections. *State ex rel. Rosander v. Lippels*, 133 W 211, 113 NW 437.

The provision of ch. 54, Laws 1883, requiring that a direct attack only shall be made recognizes the general rule of the common law, and prevents the collateral questioning of the corporate existence of a town after years of corporate action. *Bardon v. Land & R. I. Co.* 157 US 327.

A county board may not vacate a town without a vote of the electors of that town. If such unauthorized action was taken it could constitutionally be validated by the state legislature. 29 Atty. Gen. 115.

60.05 (3), Stats. 1951, allows towns to be divided into subdivisions of less than 36 sections of land provided the number of electors and assessed valuation conform to statutory requirements. 42 Atty. Gen. 135.

**60.06 History:** 1905 c. 21 s. 1; Supl. 1906 s. 775a to 775e; 1909 c. 88; Stats. 1911 s. 775a to 775f; 1913 c. 299; 1919 c. 551 s. 5; Stats. 1919 s. 60.06; 1921 c. 70, 461; 1923 c. 302; 1923 c. 307 s. 4; 1925 c. 298; 1947 c. 143; 1951 c. 229; 1961 c. 457; 1965 c. 252; 1969 c. 241.

Under 60.06, Stats. 1959, a resident freeholder is a person who owns a freehold interest in lands situated in the proposed town and who is a domiciliary thereof. Once a signature has been affixed to the original petition, it cannot be withdrawn after such petition has been filed with the court, unless fraud or duress can be shown; likewise, no signatures may be added after the original petition is filed with the court. Any counterpetition seeking to withdraw the signature of a signer made before the filing date of the original petition, or a counterpetition, which seeks to prove any other evidentiary fact relevant to the sufficiency of the original petition, must meet the same formal verities required of the original petition. The sole issue to be determined by the court is whether or not the petition is sufficient to meet the statutory requirements. *In re Town of Spread Eagle*, 17 W (2d) 200, 116 NW (2d) 165.

A paper signed by some of the petitioners which did not contain the required items was incomplete and the signatures cannot be considered even though the paper was attached to a proper petition before filing. *In re Town of Spread Eagle*, 20 W (2d) 487, 122 NW (2d) 440.

**60.065 History:** 1955 c. 343; Stats. 1955 s. 60.065; 1961 c. 33; 1965 c. 252; 1967 c. 26.

**60.07 History:** R. S. 1849 c. 12 s. 6, 20; R. S. 1858 c. 15 s. 6, 20; 1859 c. 7; R. S. 1878 s. 782; Stats. 1898 s. 782; 1915 c. 385 s. 32; 1919 c. 551 s. 6; Stats. 1919 s. 60.07; 1925 c. 347; 1931 c. 26; 1965 c. 666; 1969 c. 414.

**Legislative Council Note, 1965:** Sub. (2) is based on ss. 6.04 (3), 10.53 (1), (2), (3) and (5), but posting is deleted. [Bill No. 755-A]

Where no statutory direction is given the general rules of parliamentary law, so far as they are applicable, should be observed and enforced in conducting the business of a town meeting. *State ex rel. Bruce v. Davidson*, 32 W 114.

**60.08 History:** R. S. 1849 c. 12 s. 9, 10; R. S. 1858 c. 15 s. 9, 10; R. S. 1878 s. 784; Stats. 1898 s. 784; 1919 c. 551 s. 6; Stats. 1919 s. 60.08.

The words "whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor," are flexible in their meaning, and necessarily addressed to the good judgment of the board; hence it was not material that the records did not show or that the trial court did not find that it was impossible or inconvenient to hold the meeting at the established place. The same was true concerning the objection that it did not appear that the place to which it was adjourned was the "nearest convenient place" for holding the meeting. In respect to the proclamation of adjournment, the purpose of requiring it is to inform electors who might be then present and who might not otherwise know of what had tran-

spired. The object of such proclamation is similar to the object of the requirement to station a constable or other proper person at the place where the meeting was so opened to notify such electors as might subsequently arrive of the place to which the meeting had been adjourned. There being nothing in the record to show that any elector of the town was kept from the meeting by reason of any want of proclamation or the failure to station a person at the courthouse, the town meeting was valid. *Wisconsin C. R. Co. v. Ashland County*, 81 W 1, 50 NW 937.

**60.09 History:** R. S. 1849 c. 12 s. 11; R. S. 1858 c. 15 s. 11; R. S. 1878 s. 785; Stats. 1898 s. 785; 1919 c. 551 s. 6; Stats. 1919 s. 60.09.

**60.10 History:** R. S. 1849 c. 12 s. 12; R. S. 1858 c. 15 s. 12; R. S. 1858 c. 15 s. 14; 1859 c. 7; R. S. 1878 s. 786; Stats. 1898 s. 786; 1919 c. 551 s. 6; Stats. 1919 s. 60.10.

**60.11 History:** R. S. 1849 c. 12 s. 13, 15; R. S. 1858 c. 15 s. 13, 15; R. S. 1878 s. 787; Stats. 1898 s. 787; 1919 c. 551 s. 6; Stats. 1919 s. 60.11.

**60.12 History:** R. S. 1849 c. 12 s. 16; R. S. 1858 c. 15 s. 16; R. S. 1878 s. 788; 1897 c. 250; Stats. 1898 s. 788; 1915 c. 385 s. 34; 1919 c. 551 s. 6; Stats. 1919 s. 60.12; 1963 c. 368.

"Any other lawful business" relates solely to the general powers of towns and does not affect acts conferring special powers and providing for their exercise at the annual town meeting. *Dullanty v. Vaughn*, 77 W 38, 45 NW 1128.

The town records must show that the request for the submission of the question of issuing bonds for the purpose of raising money to build a town hall was made in accordance with applicable statutory requirements. An allegation in a complaint in an action to restrain the issuance of such bonds that "it does not appear" that the request was thus made is good. *McVichie v. Knight*, 82 W 137, 51 NW 1094.

The matter of building a town hall may be considered at a special town meeting. *Lewis v. Eagle*, 135 W 141, 115 NW 361.

Work to be let or otherwise undertaken pursuant to a vote taken at a special town meeting must be particularly designated in the resolution or proposition on which the electors vote at the meeting. *Handlos v. State Line*, 233 W 145, 288 NW 748.

Taxes for highway and bridges voted at special town meetings, held on Labor Day, are not for that reason invalid. 2 Atty. Gen. 84.

A town may vote to change the polling place at a special town meeting. 5 Atty. Gen. 333.

**60.13 History:** R. S. 1849 c. 12 s. 16, 17, 18; R. S. 1858 c. 15 s. 16, 17, 18; R. S. 1878 s. 788, 789; 1897 c. 250; Stats. 1898 s. 788, 789; 1903 c. 309; Supl. 1906 s. 789; 1915 c. 385 s. 34; 1919 c. 551 s. 6; Stats. 1919 s. 60.13; 1937 c. 269; 1965 c. 252.

If the officer who posts the notice acts fairly according to his best judgment, the courts will not inquire whether or not he selected the most public places. *Sauerhering v. Iron Ridge & M. R. Co.* 25 W 447.

A notice of a special town meeting which states that it was made upon the request of

voters of the town and for the purpose of giving direction to the supervisors is sufficient to indicate that the meeting was to be held in the town. A failure of the clerk to record the request would not vitiate the election. *State ex rel. Mitchell v. Decatur*, 58 W 291, 17 NW 20.

The full 15 days' notice must be given. *Hubbard v. Williamstown*, 61 W 397, 21 NW 295.

A notice is fatally defective if it states that the special town meeting will be held at the several voting places of the town, there being more than one such place. A notice of more than the maximum time is as defective as if it had been for less than the minimum time. It is also fatally defective if it is not signed by the town clerk as such, if there is nothing in the notice to show that the person who signed it was town clerk. *McVichie v. Knight*, 82 W 137, 51 NW 1094.

The notice of a special town meeting need not state the hour of such meeting, but it is advisable to state the hour. 24 Atty. Gen. 478.

**60.14 History:** R. S. 1849 c. 12 s. 21; R. S. 1858 c. 15 s. 21; R. S. 1878 s. 790; Stats. 1898 s. 790; 1919 c. 551 s. 6; Stats. 1919 s. 60.14.

**60.15 History:** R. S. 1849 c. 12 s. 30, 31; R. S. 1858 c. 15 s. 35, 36; R. S. 1878 s. 792; Stats. 1898 s. 792; 1919 c. 551 s. 7; Stats. 1919 s. 60.15.

**60.16 History:** R. S. 1849 c. 12 s. 19, 23; R. S. 1858 c. 15 s. 19, 23; R. S. 1878 s. 793; Stats. 1898 s. 793; 1919 c. 551 s. 8; Stats. 1919 s. 60.16.

Where the town clerk's record of an annual town meeting showed that a motion was made and seconded, but did not show what became of it, and showed that such meeting was held on April 5th, when the law required it to be held on April 3d, parol evidence was held admissible to show that the motion was put and carried and that the meeting was in fact held on April 3d. *Grimm v. Bayfield County*, 174 W 43, 182 NW 466.

**60.17 History:** R. S. 1849 c. 12 s. 25, 32; R. S. 1858 c. 15 s. 25, 37; R. S. 1878 s. 795; Stats. 1898 s. 795; 1911 c. 298; 1919 c. 551 s. 8; Stats. 1919 s. 60.17.

It is not required that the town meeting be kept open one hour after the close of business to permit a motion for reconsideration to be made. *Lewis v. Eagle*, 135 W 141, 115 NW 361.

The failure of the town chairman to announce the purpose of the meeting and the order of business does not invalidate the meeting. 2 Atty. Gen. 542.

**60.18 History:** R. S. 1849 c. 12 s. 1 to 3; 1858 c. 54 s. 1; R. S. 1858 c. 15 s. 1 to 4; R. S. 1858 c. 19 s. 19, 22; 1867 c. 127 s. 1; 1867 c. 166 s. 1; 1867 c. 167 s. 1; 1868 c. 174 s. 1, 3, 5; 1869 c. 88; 1872 c. 91, 129; 1872 c. 184 s. 3; 1874 c. 33; 1874 c. 255 s. 1 to 4; 1876 c. 299, 374; R. S. 1878 s. 776; 1883 c. 292; 1885 c. 347; 1887 c. 69; Ann. Stats. 1889 s. 776a, 819a; 1895 c. 293 s. 2; 1895 c. 385; 1897 c. 235; Stats. 1898 s. 776; 1899 c. 325 s. 1; 1903 c. 439 s. 2; 1905 c. 13 s. 1; Supl. 1906 s. 776; 1907 c. 32, 239, 552; 1907 c. 676 s. 17; 1909 c. 77,

235, 243; 1911 c. 173; 1911 c. 337 s. 2; 1911 c. 599; 1915 c. 336; 1915 c. 385 s. 43, 44, 45; 1915 c. 409; 1917 c. 234, 465; 1919 c. 261; 1919 c. 264 s. 2, 3; 1919 c. 407; 1919 c. 518 s. 1; 1919 c. 551 s. 9; 1919 c. 702 s. 44, 44a, 45; Stats. 1919 s. 60.18; 1921 c. 91; 1921 c. 112 s. 1; 1921 c. 576 s. 11; 1921 c. 590 s. 82; 1923 c. 108 s. 82; 1923 c. 231 s. 2; 1923 c. 274 s. 7; 1923 c. 448 s. 98, 98b; 1927 c. 473 s. 15; 1933 c. 47, 325; 1935 c. 151; 1935 c. 550 s. 8, 402; 1939 c. 108, 195; 1943 c. 90, 231, 259; 1945 c. 31; 1947 c. 223; 1949 c. 474; 1953 c. 313, 382; 1955 c. 169, 200; 1957 c. 23, 248, 610; 1959 c. 259; 1961 c. 336; 1963 c. 5; 1969 c. 276 s. 588 (1).

On election of officers see notes to 60.19; on powers of town boards see notes to 60.29; and on powers of state and local authorities over traffic regulations see notes to various sections of ch. 349.

1. Raising money.
2. Actions.
3. Police regulations.
4. Indebtedness.
5. Town bonds.
6. Buildings.
7. Sale of property.
8. Town board acts as village board.
9. Town orders.

#### 1. Raising Money.

The electors may empower a committee to either repair or build a bridge, and, without voting a definite sum, direct the expense of such improvement to be assessed and collected with the next annual town tax. *Rockwood v. Woodford*, 25 W 443.

Under the general powers conferred by sec. 776, R. S. 1878, the electors may vote to allow a stated sum in settlement of a claim for the support of a pauper although no previous notice had been given that such claim would be presented or acted upon. *Tuttle v. Weston*, 59 W 151, 17 NW 12.

The town meeting adopted a resolution authorizing the supervisors to use their own judgment in repairing the abutments of a bridge or to remove it to another place; at a subsequent special meeting the owners of the abutments made a proposition, which was accepted, to sell them to the town. A written contract was made between the owners and supervisors, pursuant to the action of the special meeting. The supervisors built a bridge upon the abutments and orders were issued to pay the builders. These facts were reported to the next town meeting and approved by it. Soon after the bridge was built the abutments were washed out because of defective construction. Held, in an action to recover for the abutments, that the resolution of the first annual meeting did not authorize their purchase; the action of the special meeting was invalid because sufficient notice of the meeting was not given; there was no ratification of the supervisors' contract at the second annual meeting. *Hubbard v. Williamstown*, 66 W 551, 29 NW 393.

The authority to raise money for cemetery purposes given by sec. 1440, R. S. 1878, is not exclusive. Under this subsection the electors of a town may vote to raise money for such purposes. *Hixon v. Oneida County*, 82 W 515, 52 NW 445.

The collection of a tax will not be restrained because the sum voted was a lump one for all town purposes. *Chicago & N. W. R. Co. v. Forest County*, 95 W 80, 70 NW 77.

Sec. 776, Stats. 1917, confers no power to establish a system of town drains. The words "other charges and expenses of the town" in this subsection mean only other lawful charges and expenses. Town moneys unlawfully expended in surveying and laying out an unauthorized drainage system can be recovered from the town officers concerned in such expenditure, even though the expenditure was sanctioned in advance by a town meeting, and approved afterward by a like vote. *Humboldt v. Schoen*, 168 W 414, 170 NW 250.

See note to 60.01, citing *Pugnier v. Ramharter*, 275 W 70, 81 NW (2d) 38.

It is no objection to the levy of taxes for road purposes by the electors that they are upon the entire property in the town, and that a designated portion of the gross sum so levied is to be used and applied in and for the benefit of each road district, nor that such districts are not composed of contiguous territory. *Griggs v. St. Croix County*, 27 F 333.

Under this subsection a town may levy a total tax in excess of one per cent of assessed valuation when excess is for the purpose of paying off old indebtedness. 22 Atty. Gen. 1021.

#### 2. Actions.

Suing out a writ of certiorari to review the proceedings of commissioners of equalization is the commencement of an action, and the writ should not be allowed upon the relation of a town unless the application therefor was authorized by the electors. *State ex rel. Manitowoc v. County Clerk of Manitowoc County*, 59 W 15, 16 NW 617.

In respect to the institution, prosecution or defense of all actions not within sec. 819, R. S. 1878, the vote of the electors seems to be necessary. The provisions of that section embrace cases where the right of recovery is clear and relate to the funds and property of the town. Sec. 776(2) appears to relate to cases where the town may or may not have an interest and be a necessary party and where the event of suit might be uncertain. *Fox Lake v. Fox Lake*, 62 W 486, 22 NW 584.

A writ of mandamus issued upon the relation of a town will be quashed if it does not appear that the person or officer who applied for it was directed to do so by the electors. *State ex rel. Baraboo v. Sauk County*, 70 W 485, 36 NW 396.

The obstruction of a highway is not an injury to any property of the town, and an action to recover damages therefor and to restrain the continuance thereof cannot be maintained unless the electors authorized its institution under sec. 776, R. S. 1878. *Woodman v. Bohan*, 91 W 36, 64 NW 323.

As sec. 819, R. S. 1878, directs the supervisors of a town to prosecute breaches of official bonds, it is not necessary that such an action be authorized by vote of electors. *Cady v. Bailey*, 95 W 370, 70 NW 285.

See note to 66.029, citing *Town of Madison v. City of Madison*, 269 W 609, 70 NW (2d) 249.

### 3. Police Regulations.

No other penalties can be imposed for a violation of the bylaws than the statute authorizes. *Miles v. Chamberlain*, 17 W 446.

An action to recover damages for obstructing a highway, and to perpetually enjoin the defendant from further interfering with travel on the same, cannot be maintained without authority from the town meeting. *Woodman v. Bohan*, 91 W 36, 64 NW 323.

The legislature did not regard it as unlawful for animals to be at large upon the highways, and left it to the towns to prohibit them from running at large. *Fox v. Koehnig*, 190 W 528, 209 NW 708.

See note to 174.05, citing *State v. Mueller*, 220 W 435, 265 NW 103.

See note to 101.60, citing 55 Atty. Gen. 231.

### 4. Indebtedness.

The power conferred by sec. 776(5), R. S. 1878, is limited to obligations which are extraordinary in their nature and require provision for their payment at some future period. *Tuttle v. Weston*, 59 W 151, 17 NW 12.

A town board has no power to borrow money except as authorized at the town meeting; and it has no power to borrow under a resolution adopted by a town meeting purporting to authorize borrowing from a designated bank but prescribing neither the amount nor the rate of interest. A town board has power to act only at a meeting attended by all or at a meeting of which all members were duly notified. Mere acquiescence by the members, separately, in the borrowing of money by the chairman does not validate the act. *State Bank v. Washington*, 184 W 124, 197 NW 933.

### 5. Town Bonds.

To justify the issuance of bonds the antecedent proceedings must be strictly according to the statute, and the jurisdiction of the town board to issue the bonds must appear on the records of the town; and no presumptions can be indulged in favor of the officers that they performed their duties. *McVichie v. Knight*, 82 W 137, 51 NW 1094.

### 6. Buildings.

While 60.18 (9), Stats. 1923, vests in the voters a large discretion as to the kind of building, and permits a design that will, incidentally, make it adaptable to purposes of recreation as well as town business, such power is not limited by the provisions of 43.49 and 43.51. *First Wisconsin Nat. Bank v. Cawaba*, 183 W 220, 197 NW 1013.

### 7. Sale of Property.

Property paid for by voluntary subscription and deeded to a town for monumental purposes was "donated" to, and required to be held by, the town for special purpose within the statute prohibiting sale under such circumstances. The town's deed to a railroad company of land the town was unauthorized to sell must be canceled. *Matson v. Caledonia*, 200 W 43, 227 NW 298.

### 8. Town Board Acts As Village Board.

Where the board of a town containing an unincorporated village, which became a city, and an ordinance of the latter granted and

confirmed to the water company all the rights and franchises which the town board attempted to confer upon it, the town ordinances became valid as a part of the city ordinance, being within the scope of its charter, and, upon acceptance, became a contract between the corporation and the city. *Ashland v. Wheeler*, 88 W 607, 60 NW 818.

Where a town voted to establish water-works, and the board constructed a system, the failure of subsequent town meetings to renew the authority of the board to levy a tax for paying the operating expenses of the works or a part of the indebtedness incurred for them did not render a tax levied by the board for such purposes inequitable. *Hixon v. Eagle River*, 91 W 649, 65 NW 366.

Where a town meeting adopted a resolution stating that the town should exercise and have conferred upon it all powers relating to villages and conferred upon village boards by ch. 61, it was sufficient to allow the town board to exercise such powers. *Bennett v. Nebagamon*, 122 W 295, 99 NW 1039.

The last federal census is prima facie proof that a town contains the population disclosed thereby and may be received to prove that it contains the population required; but such proof may be rebutted by other competent evidence. *Menasha W. W. Co. v. Winter*, 159 W 437, 150 NW 411.

Sec. 776 (13), Stats. 1915, does not authorize town boards to exercise the powers relating to improvement of streets conferred upon villages by secs. 905 and 906. *Gertz v. Vaughn*, 163 W 557, 158 NW 298.

Under the provisions of 60.29 (6) and (13), Stats. 1929, empowering town boards to designate and cause to be recorded the boundaries of unincorporated villages and to exercise the powers of village boards when authorized by resolution of the town meeting, 70.23 and 70.65, providing for separate assessment of land within unincorporated villages, 62.06 (1) with 61.01, defining an unincorporated village, and 61.34 (23), authorizing village boards to provide for street lighting, a town board had power to levy a general tax on the property within an unincorporated village for the installation and maintenance of street lights without notice to the property owners. *Paul v. Greenfield*, 202 W 257, 232 NW 770.

A town board which, pursuant to 60.18 (12), Stats. 1931, was authorized by the electors of the town to exercise the powers relating to villages and conferred on village boards by ch. 61, had the power, under 61.34 (18), empowering village boards to prohibit drunkenness, and 61.34 (27), empowering village boards to enact ordinances for the government and good order of the village and to suppress vice and immorality, to enact an ordinance prohibiting the sale of intoxicating liquors; the sale of intoxicating liquors being illegal under then existing laws, and the ordinance not being in conflict with any then existing state regulations on the subject. The penalty provided by the ordinance of not less than \$50 nor more than \$200 was within the power of the town board under 60.18 (12) and 61.34 (28). *Bloomington Grove v. McSherry*, 213 W 404, 251 NW 444.

A town was not authorized, by action taken at a special town meeting, to expend public

funds for acquiring land and moving buildings in connection with the widening of a county highway in an unincorporated village in the town, where, among other things, no town meeting had conferred on the town board the powers of a village board, and no petition for such sidewalks had been filed by a majority of the abutting owners. *Handlos v. State Line*, 233 W 145, 288 NW 748.

An ordinance enacted by a town with village powers, prohibiting the drilling of a well in the town with a casing in excess of 6 inches in diameter, and prohibiting (subject to an exception) the commercial sale or use of water from wells in the town other than on the premises in the town from which the water is removed, together with certain related provisions in a zoning ordinance, are invalid as being beyond the authority of the town under the home-rule amendment, and under 60.18 (12), 61.34, 66.066 (1a) and 144.03, Stats. 1955, as applied against a city which proposes to drill wells on land purchased from private landowners in the town and to transmit the water therefrom to the city to supplement the city's water supply. *Fond du Lac v. Empire*, 273 W 333, 77 NW (2d) 699.

A town zoning ordinance adopted by a town board exercising powers of a village board under 60.18 (12), 61.35 and 62.23, Stats. 1947, which prohibited filling stations in a commercial zone unless approved by the board of appeals, is invalid where the only guideline provided was the "promotion of the public health, safety, convenience, prosperity or general welfare". An ordinance prohibiting filling stations adopted after petitioners had initiated proceedings to compel issuance of a permit is invalid. *State ex rel. Humble Oil & Ref. Co. v. Wahner*, 25 W (2d) 1, 130 NW (2d) 304.

Authorization to a town board under 60.18 (12), Stats. 1951, to exercise the powers relating to villages and conferred on village boards by ch. 61, does not include the power to annex territory. 40 Atty. Gen. 409.

#### 9. Town Orders.

Town orders do not bear interest unless the voters so declare. *Mueller v. Cavour*, 107 W 599, 83 NW 944.

**60.181 History:** 1925 c. 353; Stats. 1925 s. 60.181.

**60.182 History:** 1925 c. 353; Stats. 1925 s. 60.182.

**60.183 History:** 1925 c. 353; Stats. 1925 s. 60.183.

**60.184 History:** 1925 c. 353; Stats. 1925 s. 60.184.

**60.19 History:** R. S. 1849 c. 12 s. 38, 39; R. S. 1858 c. 15 s. 6, 44; 1861 c. 179; 1868 c. 130 s. 13; 1868 c. 174 s. 2; 1869 c. 175 s. 4; 1871 c. 128 s. 1; 1875 c. 16; R. S. 1878 s. 808; 1889 c. 165; Ann. Stats. 1889 s. 808, 808a; 1895 c. 103; Stats. 1898 s. 808; 1899 c. 97 s. 1; Supl. 1906 s. 808; 1915 c. 604 s. 16; 1917 c. 437; Stats. 1917 s. 808, 808a; 1919 c. 551 s. 10; Stats. 1919 s. 60.19; 1921 c. 238; 1929 c. 262 s. 8; 1931 c. 296 s. 2; 1939 c. 513 s. 15; 1943 c. 173, 575; 1945 c. 219; 1949 c. 482;

1951 c. 423, 686; 1953 c. 382; 1959 c. 259; 1963 c. 5, 375; 1969 c. 317, 356, 433.

**Revisor's Note, 1963:** Deletes provision for towns in Milwaukee county and preserves general town authority. The last sentence of the new (2) is no longer necessary. The old (2) (b) is stricken because it is covered by the old (4) which is renumbered to be (2). No change is intended as to the general town authority. [Bill No. 43-S]

On election or appointment of statutory officers see notes to sec. 9, art. XIII; and on eligibility for office see notes to sec. 3, art. XIII, and notes to 66.11.

The offices of town supervisor and member of the legislature are compatible. 7 Atty. Gen. 642.

The offices of town chairman and commissioner of a drainage district are compatible. 14 Atty. Gen. 136.

The offices of deputy state oil inspector and supervisor of a town are compatible. 14 Atty. Gen. 152.

Irregularity in a town election, i.e., town supervisors acting as inspectors of election and town clerk acting as one of clerks of election at election where they were candidates for election, does not, in absence of fraud, affect the legality of an election. Officials are acting in violation of law and may be criminally prosecuted for their illegal acts. 14 Atty. Gen. 186.

The office of town chairman is not incompatible with the position of emergency fire warden. 23 Atty. Gen. 229.

**60.195 History:** 1959 c. 259; Stats. 1959 s. 60.195.

**60.20 History:** R. S. 1849 c. 12 s. 39, 40; R. S. 1858 c. 15 s. 45, 46; R. S. 1878 s. 809; Stats. 1898 s. 809; 1919 c. 362 s. 15; 1919 c. 551 s. 11; Stats. 1919 s. 60.20; 1945 c. 23; 1967 c. 276 s. 39.

The failure of a supervisor to qualify creates a vacancy, and he cannot be compelled to perform any official act. *Carpenter v. Beloit*, 21 W 280.

Failure of a town treasurer to qualify within 5 days did not affect the liability of a surety on his official bond, since a surety will not be permitted to impeach the title of his principal. *Knox v. Fidelity & Cas. Co.* 184 W 104, 197 NW 733.

A complaint, which alleged that the relator was elected town chairman, that the certificate of election was issued to the respondent, that both wholly failed to qualify for or to claim the office within 10 days of the election, and that the town board had appointed the respondent to said office, fails to state a cause of action. The failure of the relator to claim the office within the time limited therefor rendered the office vacant. *State ex rel. Duesing v. Lechner*, 187 W 405, 204 NW 478.

Where the town clerk neglects to give a bond until June 28th and upon tender thereof on that date the town board refuses to approve the same and appoints another town clerk, such other is the de jure officer. 4 Atty. Gen. 600.

**60.21 History:** R. S. 1878 s. 810; Stats. 1898 s. 810; 1919 c. 551 s. 11; Stats. 1919 s. 60.21.

The omission of the chairman to formally approve the treasurer's bond does not affect the liability of the sureties on it. *Omro v. Kaime*, 39 W 468.

A bond otherwise in accordance with sec. 810, R. S. 1878, is good though it runs to the supervisors and is payable to them or their successors. *Platteville v. Hooper*, 63 W 381, 23 NW 581.

A surety on a town treasurer's bond is liable for the embezzlement of the town's money subsequent to the execution of the bond, though such moneys came into the treasurer's hands prior to that time. Where a deficiency for one term is made up with money received during the next term the surety for the latter term is liable. *Knox v. Fidelity & Cas. Co. of N.Y.* 184 W 104, 197 NW 733.

**60.22 History:** R. S. 1849 c. 12 s. 43, 44; R. S. 1858 c. 15 s. 49, 50; R. S. 1878 s. 811; Stats. 1898 s. 811; 1919 c. 362 s. 37; 1919 c. 551 s. 11; Stats. 1919 s. 60.22; 1921 c. 238; 1943 c. 173, 575.

A town supervisor holding office until his successor is elected and qualified, who assumes to act as superintendent of highways without the written appointment required by sec. 1229, Stats. 1915, does not thereby vacate his office and become an "employee" of the town within the meaning of the workmen's compensation act. *Wonewoc v. Industrial Comm.* 178 W 656, 190 NW 469.

**60.225 History:** 1897 c. 287 s. 97; Stats. 1898 s. 925f; 1919 c. 691 s. 61; Stats. 1919 s. 61.53; 1943 c. 66 s. 6; Stats. 1943 s. 60.225; 1967 c. 276 s. 39.

**60.23 History:** R. S. 1849 c. 12 s. 41, 42; R. S. 1858 c. 15 s. 47, 48; R. S. 1878 s. 812; Stats. 1898 s. 812; 1919 c. 551 s. 12; Stats. 1919 s. 60.23.

**60.28 History:** R. S. 1849 c. 12 s. 47, 48, 85; R. S. 1849 c. 15 s. 75; R. S. 1858 c. 15 s. 53, 54; R. S. 1858 c. 18 s. 102; 1861 c. 70; R. S. 1878 s. 818; Stats. 1898 s. 818; 1919 c. 551 s. 14; Stats. 1919 s. 60.28; 1967 c. 276 s. 39.

**60.29 History:** R. S. 1849 c. 12 s. 55, 58, 59; R. S. 1858 c. 15 s. 61, 64, 65; R. S. 1878 s. 819; 1881 c. 19; 1883 c. 114, 147; 1885 c. 463; Ann. Stats. 1889 s. 818a, 819, 819b, 834a; 1897 c. 201; Stats. 1898 s. 819; 1901 c. 302 s. 1; 1905 c. 306 s. 1; Supl. 1906 s. 819; 1907 c. 55; 1913 c. 622; 1917 c. 245; 1919 c. 261, 380; 1919 c. 551 s. 15; 1919 c. 702 s. 46, 47, 48, 49; Stats. 1919 s. 60.29; 1921 c. 112 s. 1; 1921 c. 195; 1923 c. 82, 295; 1923 c. 307 s. 6; 1925 c. 70, 133, 152; 1927 c. 109, 197, 247; 1929 c. 71, 224, 225, 248; 1931 c. 58, 215, 310, 400; Spl. S. 1931 c. 1 s. 3; 1933 c. 97, 218, 292, 293; 1933 c. 435 s. 2; 1935 c. 82, 87, 156, 254; 1935 c. 550 s. 8, 403; 1939 c. 251, 309; 1943 c. 229, 259, 407; 1945 c. 156, 225, 275, 429, 547; 1947 c. 206, 362, 550; 1949 c. 587; 1951 c. 297 s. 1, 2; 1951 c. 329, 643; 1953 c. 109; 1955 c. 134, 149, 311, 330, 366; 1955 c. 651 s. 19m; 1957 c. 23, 60, 97, 132; 1959 c. 92, 263, 505, 628; 1961 c. 139, 325; 1963 c. 5, 430, 466; 1965 c. 178, 238, 252, 403; 1967 c. 26; 1969 c. 5; 1969 c. 276 ss. 583 (1), 588 (1), 589 (2) (a); 1969 c. 385; 1969 c. 500 s. 30 (2) (d), (e).

On powers of town meetings see notes to

60.18; on establishment of town sanitary districts see notes to 60.30, et seq.; on auditing of accounts see notes to 60.32, et seq.

1. Charge of town affairs.
2. Legal advice, other help.
3. Charge of actions.
4. Collect demands due town.
5. Police.
6. Powers like village boards.
7. Town without fire protection liable for fire fighting service.
8. Water mains and sewers in populous counties.
9. Fire department, employ, housing equipment.
10. Bank depository.
11. Acquire lands for streets.
12. Distribution of forest crop income.

#### 1. Charge of Town Affairs.

Supervisors may defend an action against the town or take an appeal therein without direction from electors. *Haner v. Polk*, 6 W 350.

Supervisors can bind the town by waiving a departure from the strict terms of a contract. *Colby v. Franklin*, 15 W 311.

One supervisor can recover of the town for materials furnished and work done for it at the request of the other members. *Putnam v. Rubicon*, 32 W 498.

A single member of the board cannot make a contract which will bind the town. To effect that result the supervisors must act as a board. *Deichsel v. Maine*, 81 W 553, 51 NW 880.

See note to 60.01, citing *Pugnier v. Ramharter*, 275 W 70, 81 NW (2d) 38.

A town board may lawfully appropriate money to a local board of health to pay the cost of inoculating people of the town against communicable disease. 24 Atty. Gen. 76.

In the absence of proceedings for establishment of a town sanitary district a town board is without authority to provide for a preliminary engineering survey for public waterworks and sewerage systems intended to serve only a portion of the town. Where proceedings to establish such district have been commenced, preliminary engineering expenses are to be borne by the district, if formed, otherwise by the petitioners under 60.303 (4). 27 Atty. Gen. 314.

A town board has no power to prohibit or regulate hunting, this power being vested in the conservation commission under 29.174. (18 Atty. Gen. 511, written before enactment of 29.174, is no longer applicable to the extent that it is inconsistent herewith.) 27 Atty. Gen. 705.

A licensed tavern operator is not ineligible to serve on a town board nor is a town board member ineligible to be licensed. A member so circumstanced may pass upon neither his own application for a license nor any other application for a license. 28 Atty. Gen. 228.

#### 2. Legal Advice; Other Help.

Under 60.29 (3) a town board has the power to determine the need, and it can employ an attorney for a period of time at a salary payable monthly. The record, kept and signed by the town clerk, of the minutes of a meeting



of a town board showing the adoption of a resolution that the present town attorney be retained for the ensuing term of 2 years on the same basis as the last term, was no more than a memorandum evidencing a purpose of the town board to make a contract of the nature stated, and did not constitute a signed written contract, and it was not a memorandum of a contract "signed by the party to be charged," in this case the town board, as required by the statute of frauds, 241.02 (1), for the validity of an agreement that by its terms is not to be performed within one year from the making thereof. *McCaffrey v. Lake*, 234 W 251, 290 NW 283.

Under 60.29 (3) a town board had authority to appoint a person as "financial agent" of the town to work in co-operation with the town attorney and board in issuing and handling the sale of municipal bonds. *State ex rel. Stock v. Kubiak*, 262 W 613, 55 NW (2d) 905.

A town board may employ and pay an auditor and an attorney when the board in its discretion determines in good faith that the services of an auditor are necessary or desirable, and in the exercise of such discretion municipal officers are not personally liable for such expenses. *Grob v. Nelson*, 8 W (2d) 8, 98 NW (2d) 457.

Town boards have power to employ experts, through the state tax commission, to audit town accounts. 6 Atty. Gen. 462.

### 3. Charge of Actions.

The board may defend an action brought against the town or take an appeal therein without being specially authorized. *Haner v. Polk*, 6 W 350.

A town board may, without authority from electors, bring an action to recover from a village therein moneys received for licenses. *Fox Lake v. Fox Lake*, 62 W 486, 22 NW 584.

Every reasonable presumption will be made in favor of the regularity of the proceedings of the town board in adjusting claims against the town. *Hixon v. Oneida County*, 82 W 515, 52 NW 445.

The authority of the board to institute and prosecute actions in the cases within this section is mandatory; hence they may maintain an action on an official bond without direction from the electors. *Cady v. Bailey*, 95 W 370, 70 NW 285.

No action can be maintained to compel the turning over of funds in the hands of a town treasurer until a demand has been made therefor. *Stinnett v. Noggle*, 148 W 603, 135 NW 167.

Town boards have power to adjust damages to highways; a settlement with a power company for present and future damages to a highway entered into by the town board and fully performed, extinguished any further liability of the company. *Dekorra v. Wisconsin River P. Co.* 188 W 501, 205 NW 423.

See note to 66.029, citing *Town of Madison v. City of Madison*, 269 W 609, 70 NW (2d) 249.

### 4. Collect Demands Due Town.

The town board should proceed to recover money paid out illegally. 23 Atty. Gen. 350.

### 5. Police.

A town board may appoint a policeman, under this section, who has powers of a policeman in villages and may gather evidence against violators of criminal law. 12 Atty. Gen. 425.

### 6. Powers Like Village Boards.

In holding and owning real estate for public use the authorities of a municipality act as trustees for the public, and as such trustees, in exercising the public functions of the municipality, they can deal with public property only by devoting it to public use. The action of a town board in attempting to grant a right to a private person to lay and maintain a steam pipe across a lot owned by the town attempts to confer a right in the nature of an easement and to devote the lot to a merely private purpose wholly unrelated to any municipal purpose and is void. *Lakeside Lumber Co. v. Jacobs*, 134 W 188, 114 NW 446.

When authorized by a town meeting, pursuant to 60.29 (13) and 60.18 (12), Stats. 1937, town boards therein referred to may prohibit slot machines and pin ball games as potential gambling devices. 26 Atty. Gen. 585.

### 7. Town Without Fire Protection Liable for Fire Fighting Service.

See note to sec. 1, art. IV, on delegation of power, citing *Rockwood Volunteer Fire Dept. v. Kossuth*, 260 W 331, 50 NW (2d) 913.

In 60.29 (18m) the legislature intended that the statute should apply to the services of a voluntary, unincorporated fire department as well as to an incorporated fire department, whether or not its organization, equipment, etc., complied with the provisions of 213.08 and 201.59 (3). An organized and active, although unincorporated, town volunteer fire department, which owned considerable equipment and qualified for the return of 2 per cent of the town fire insurance premiums under 201.59 (3), was a fire department contemplated by 60.29 (18m), so as to be entitled thereunder to compensation for fire-fighting services rendered in a town which had not provided for fire protection. *Rudolph Volunteer Fire Dept. v. Rudolph*, 260 W 362, 50 NW (2d) 915.

### 8. Water Mains and Sewers in Populous Counties.

A contract, made in furtherance of proceedings initiated under 60.29 (8), under which contract a town agreed only to assess the property benefited by the construction of a sanitary sewer and pay the money collected from the assessed property owners to the contractor, did not create a direct liability on the town but required the town only to pay the contractor out of the money collected from the assessed property owners. *Wenzel & Heno Construction Co. v. Wauwatosa*, 227 W 26, 277 NW 624.

### 9. Fire Department, Employ, Housing Equipment.

Under 60.29 (20) (b), (c), a town board had the power to appropriate money for an incorporated, joint volunteer fire department, organized by private individuals pursuant to

authority of 213.05 for the sole purpose of providing fire protection in a designated area of 2 contiguous towns, and had the power to levy a tax on the property in that part of such area within the town to reimburse the town, as against a contention that the town board could appropriate money only for a fire department directly organized by the town under the provisions of 60.29 (18). *Tonn v. Strehlau*, 265 W 250, 61 NW (2d) 486.

Under the provisions of 60.29 (20) (b) construed together with the provisions of 60.29 (20) (c), the town board had the power to make a direct appropriation to a joint volunteer fire department to cover the cost of acquiring firefighting equipment, as against a contention that the town board was limited by the statute to entering into a contract for fire protection with such fire department. *Tonn v. Strehlau*, 265 W 250, 61 NW (2d) 486.

#### 10. Bank Depository.

A town treasurer is not liable for deposited public funds lost through failure of the depository bank designated by the town board under the powers conferred by 60.29 (25), Stats. 1931, which expressly provides immunity from such liability, notwithstanding the board required no security of the depository, the statutes being construed as vesting discretion in the board as to whether security shall be required. *Lakeland v. Bekkedal*, 209 W 636, 245 NW 682.

Under 60.29 (25), Stats. 1923, it is mandatory upon the town board to designate a depository for town moneys. 13 Atty. Gen. 236.

All moneys collected by the treasurer should be deposited in the bank designated by the town board. 16 Atty. Gen. 496.

#### 11. Acquire Lands for Streets.

60.29 (27) implies that the procedure of village boards must be followed. *Handlos v. State Line*, 233 W 145, 288 NW 748.

#### 12. Distribution of Forest Crop Income.

See notes under 59.20 referring to distribution of national forest income.

**60.295 History:** 1933 c. 88; Stats. 1933 s. 60.295.

**60.30 History:** 1935 c. 12; Stats. 1935 s. 60.30; 1943 c. 380; 1949 c. 367.

On exercises of police power see notes to secs. 1 and 13, art. 1.

Where resolutions and other proceedings of a town board of a town in a metropolitan sewerage district, relating to the construction of a sanitary sewer, showed on their face that no notice was ever given to the plaintiffs that a special tax was to be imposed against their property or that they might be heard as to the amount thereof, and showed that there was no compliance with applicable statutory provisions, the special assessment was void for want of jurisdiction to impose it. *Boden v. Lake*, 244 W 215, 12 NW (2d) 140.

60.30, et seq., do not require a record to be kept of the proceedings for the establishment of a sanitary district by the town board; and in the absence of such a record, it must be presumed that the board acted on sufficient evidence to sustain its findings, there being nothing to indicate the contrary in the record.

It is not necessary to the validity of the organization of the town sanitary district that the benefits shall exceed the cost of the improvement. *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

Under 60.30 (1) a district for the installation of storm sewers can be created for an area which includes a smaller sanitary district which had installed sanitary sewers, if there are no conflicting interests. Several districts in the same town may each borrow up to 5 per cent of their assessed value without violating the constitutional debt limitation. *Fort Howard Paper Co. v. Town Board*, 266 W 191, 63 NW (2d) 122.

**60.301 History:** 1935 c. 12; Stats. 1935 s. 60.301.

**60.302 History:** 1935 c. 12; Stats. 1935 s. 60.302; 1965 c. 614.

**60.303 History:** 1935 c. 12; Stats. 1935 s. 60.303; 1945 c. 33; 1947 c. 230; 1959 c. 588; 1965 c. 252, 614; 1969 c. 276 ss. 313, 588 (6); 1969 c. 366 s. 117 (2) (a).

60.303 (3) is satisfied by a finding that the property within the boundaries of the proposed district as a whole will be benefited; and if all the property within the boundaries of the proposed district is in the watershed and the proposed improvement may serve it, the property of the district as a whole is benefited and the town board, if it makes the other necessary findings, may organize the district; the "benefit" meant by the statute is the promotion of the public health, comfort, convenience, necessity, and public welfare, rather than a benefit to each parcel of land within the district. A sanitary district cannot be organized unless the town board finds that the public health, comfort, convenience, necessity, and public welfare, will be promoted thereby. The matter of benefits which may accrue to the several parcels of land within a proposed town sanitary district does not arise on the hearing before the town board for the organization of the district, although a question with respect to benefits to each parcel may arise after the district is organized and when assessments are to be levied. *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

The acquisition of jurisdiction by the town board to consider a petition for the annexation of other territory in the town to the existing sanitary district of the town, without the necessity of such petition containing the signatures of property owners in the existing sanitary district, would not deny such property owners a voice in the matter, since, after the filing of the petition, the town board must arrange for a hearing, giving public notice thereof, at which time all interested property owners may be present and offer objections, criticisms, or suggestions. *Fort Howard Paper Co. v. Ashwaubenon*, 9 W (2d) 329, 100 NW (2d) 915.

**60.304 History:** 1935 c. 12; Stats. 1935 s. 60.304.

The provision that a party aggrieved by any act of the town board in establishing a town sanitary district may bring an action

"to set aside the action of the board," authorizes the court to modify such order by eliminating property from the district. The power delegated to the board to establish a town sanitary district is legislative in its character and hence cannot be delegated to a court. Unless otherwise provided by statute, the jurisdiction of the court is limited in the review of legislative orders to inquire whether the statute under which the legislative body acted is valid, whether the legislative body proceeded in accordance with the provisions of law and within its jurisdiction, and whether the legislative body acted arbitrarily, capriciously, or oppressively. If the town board acted without evidence sufficient to support its findings, it acted "arbitrarily." Fixing the limits of a sanitary district is within the discretion of the town board, which discretion the court has no power to review by changing the boundaries of the proposed district in an action to set aside the action of the board, the power of the court in such an action being limited to setting aside the order of the board, or affirming it, in toto. *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

If no action is taken within 20 days under 60.304, Stats. 1937, to set aside the action of a town board establishing a sanitary district, a finding of the board that 60% of the landowners signed the petitions is conclusive and not subject to attack. 27 Atty. Gen. 642.

**60.305 History:** 1935 c. 12, 522; Stats. 1935 s. 60.305; 1945 c. 564; 1947 c. 558; 1955 c. 659, 680; 1957 c. 97; 1961 c. 198; 1965 c. 666 s. 22 (20), (25), (35), (36) and (38).

Town sanitary district commissioners may not work for a district and receive compensation in addition to their salaries fixed by the town board and neither they nor the town board can allow them traveling expenses. 35 Atty. Gen. 158.

**60.306 History:** 1935 c. 12, 522; Stats. 1935 s. 60.306; 1941 c. 266; 1945 c. 33, 564; 1947 c. 362; 1949 c. 265; 1965 c. 252, 614; 1967 c. 244.

**60.307 History:** 1935 c. 12, 522; Stats. 1935 s. 60.307; 1945 c. 564; 1949 c. 470; 1965 c. 252; 1969 c. 311.

**60.308 History:** 1935 c. 12; Stats. 1935 s. 60.308; 1945 c. 33.

**60.309 History:** 1935 c. 12; Stats. 1935 s. 60.309; 1937 c. 30; 1947 c. 566; 1957 c. 132; 1965 c. 252.

A district may levy special assessments to cover the cost of a water storage tank even though it confers a general benefit on all property in the district; it may impose a lower assessment on properties already receiving service and may assess even properties zoned agricultural where no immediate service is planned. *Duncan Dev. Corp. v. Crestview San. Dist.* 22 W (2d) 258, 125 NW (2d) 617.

**60.31 History:** 1951 c. 301; Stats. 1951 s. 60.31; 1967 c. 26.

**60.315 History:** 1955 c. 603; Stats. 1955 s. 60.315; 1961 c. 33; 1963 c. 506; 1965 c. 252, 307; 1965 c. 614 s. 57 (1); 1965 c. 625 s. 31; 1969 c. 276 ss. 314, 588 (6).

**60.316 History:** 1965 c. 307; Stats. 1965 s. 60.316.

**60.32 History:** R. S. 1858 c. 15 s. 79, 80; 1878 c. 99; R. S. 1878 s. 820; Stats. 1898 s. 820; 1909 c. 20; 1919 c. 551 s. 19; Stats. 1919 s. 60.32; 1941 c. 15; 1965 c. 617; 1967 c. 276 s. 39.

A town chairman who has received for the use of his town money appropriated by the county board for highway purposes is liable to the town therefor; and it is no defense that he has expended it for the use of the town for the purpose for which it was appropriated, if he has done so otherwise than under the direction of the town board and has not rendered an account thereof to such board. *Remington v. Ward*, 78 W 539, 47 NW 659.

**60.33 History:** R. S. 1849 c. 12 s. 71; R. S. 1858 c. 15 s. 80 to 82; R. S. 1878 s. 821; 1882 c. 113; Ann. Stats. 1889 s. 821; Stats. 1898 s. 821; 1911 c. 477; 1917 c. 553 s. 2; 1919 c. 551 s. 20; Stats. 1919 s. 60.33; 1935 c. 246, 553 s. 2; 1945 c. 348; 1947 c. 364; 1963 c. 5; 1965 c. 252.

The claim of the tax commission for services in making the audit, from which the charge for each day or hour and the expenses could be ascertained, sufficiently complied with 60.33, Stats. 1923. *Evenson v. State*, 186 W 312, 202 NW 849.

The duties of members of the town board as the town board of audit are quasi-judicial, not merely ministerial in nature, and, as such, they are not liable in their private capacities for their honest errors in performance. *Grob v. Nelson*, 8 W (2d) 8, 98 NW (2d) 457.

**60.34 History:** R. S. 1849 c. 12 s. 72; R. S. 1858 c. 15 s. 83; R. S. 1878 s. 822; Stats. 1898 s. 822; 1919 c. 551 s. 20; Stats. 1919 s. 60.34.

A settlement between the town and its officers is not ratified by reading the report required by 822, R. S. 1878. Notwithstanding settlements, if officers, by a mistake or otherwise, wrongfully retain public money in their hands, they may be proceeded against therefor at any time thereafter, upon discovery of the facts, within the statute of limitations. *Cady v. Bailey*, 95 W 370, 70 NW 285.

The authority of a committee terminates with the adjournment sine die of the town meeting. 3 Atty. Gen. 578.

**60.35 History:** R. S. 1849 c. 12 s. 73; R. S. 1858 c. 15 s. 84; 1877 c. 286; 1878 c. 290; R. S. 1878 s. 823; Stats. 1898 s. 823; 1899 c. 85 s. 1; 1899 c. 325 s. 2; Supl. 1906 s. 823; 1907 c. 264; 1919 c. 551 s. 20; Stats. 1919 s. 60.35; 1959 c. 400.

An order issued without authority, though payable to bearer and signed by the chairman and countersigned by the clerk, is void. *Hubbard v. Lyndon*, 28 W 674.

A complaint in an action upon a town order regularly signed and countersigned, and which purports on its face to have been issued for a demand against the town, need not allege that the claim of the payee was audited by the town board or that the order was issued by its authority. Orders payable "out of any moneys in the town fund not otherwise appropriated," are payable out of the general fund, and a complaint in an action thereon need not allege that there are

moneys in the hands of the treasurer out of which they could be paid. *Brown v. Jacobs*, 77 W 29, 45 NW 679.

In the absence of a statute authorizing the establishment of a separate road fund town orders drawn thereon are payable out of the town's general fund. *Marvin v. Jacobs*, 77 W 31, 45 NW 679.

Sec. 823, Stats. 1898, as amended, is intended to prevent the incurring of an indebtedness by a town in excess of the amount levied by the electors and the general power to purchase property found in sec. 1223, is not sufficient to change the provision of this section. *Indiana R. M. Co. v. Lake*, 149 W 541, 136 NW 178.

**60.36 History:** R. S. 1878 s. 824; 1881 c. 240; 1882 c. 163; Ann. Stats. 1889 s. 824, 929a; Stats. 1898 s. 824; 1917 c. 553 s. 2; 1919 c. 551 s. 20; Stats. 1919 s. 60.36.

An action cannot be brought against a town for materials and labor until the claim has been presented. *Putnam v. Rubicon*, 32 W 498.

A claim to recover a tax illegally assessed and collected, for which an action lies under sec. 1164, R. S. 1878, is within sec. 824, R. S. 1878, and must be presented for allowance. *Wright v. Merrimack*, 52 W 466, 9 NW 390; *Chicago & Northwestern R. Co. v. Langlade*, 55 W 116, 12 NW 357.

A complaint in an action to recover for injuries caused by a defective highway must allege that a claim was filed with the town clerk. *Wentworth v. Summit*, 60 W 281, 19 NW 97.

A claim by a town which has become liable by virtue of orders issued by another town must be filed with the clerk of the latter town before an action can be brought upon it. *Schriber v. Richmond*, 73 W 5, 40 NW 644.

A complaint which alleges that the claim sued upon had been filed with the town clerk to be laid before the board of audit, and that the annual town meeting next after the filing thereof was held in said town more than 10 days prior to the commencement of the action, is good. *Paulson v. Pelican*, 79 W 445, 48 NW 715.

The provisions of this chapter do not control the claim of one town against another for the support of poor persons. Sec. 1514, R. S. 1878, makes special provisions for such a case. *Etrick v. Bangor*, 84 W 256, 54 NW 401.

If a claim has been filed plaintiff need not prove its disallowance. *Althouse v. Jamestown*, 91 W 46, 64 NW 423.

The fact that a claim is filed under sec. 824, R. S. 1878, by a person injured on a highway before the notice required by sec. 1339 is given is immaterial. *Groundwater v. Washington*, 92 W 56, 65 NW 871.

The filing of the claim is in all cases a condition precedent to any liability on the part of the town; but the court is not deprived of jurisdiction to try the action if the parties consent, though objection may be taken at the trial. *Benware v. Pine Valley*, 53 W 527, 10 NW 695. But see *Bradley v. Eau Claire*, 56 W 168, 14 NW 10.

The objection cannot be taken for the first time in the supreme court. *Bigelow v. Washburn*, 98 W 553, 74 NW 362.

Plaintiff cannot recover in an action against the town any greater sum than he claimed in

the statement filed with the clerk. *Conrad v. Ellington*, 104 W 367, 80 NW 456.

Claims on implied contracts and quasi-contracts must be presented as in case of all other claims. *State ex rel. Board of School Directors v. Nelson*, 105 W 111, 80 NW 1105.

In an action for personal injuries received in an accident on a town highway, a compliance with 60.36 and 60.33 as to filing a verified claim or statement with the town clerk, was a condition precedent to recovery, and, on failure of the plaintiff to allege and prove compliance with the statute, objections to the complaint by demurrer, then by motions for nonsuit, for directed verdict, and for judgment, were timely and should have been sustained. *Stone v. Langlade*, 181 W 104, 193 NW 980.

Although the second of 2 causes of action in a complaint against a town does not state a cause of action for either money had and received or upon an account stated, because there is no allegation that the claim was filed with the town officials, yet each count is held, as against a demurrer and as a matter of pleading, to state a cause of action upon a note. *United States Nat. Bank v. Swiss*, 196 W 176, 218 NW 845.

See note to 81.15, on nature of liability, citing *Firemen's Ins. Co. v. Washburn County*, 2 W (2d) 214, 85 NW (2d) 840.

Although a municipal corporation may be held directly liable by a materialman, who has supplied materials to a principal contractor with whom the municipality has entered into a public contract, if the municipality has failed to obtain a bond from the principal contractor to protect subcontractors as required by 289.16 (1), Stats. 1955, nevertheless, the provision of 60.36 that no action on any claim for which a money judgment only is demandable shall be maintained against any town unless a statement of such claim shall have been filed with the town clerk, is applicable thereto. *Smith v. Pershing*, 10 W (2d) 352, 102 NW (2d) 765.

**60.37 History:** 1867 c. 167 s. 2, 4; 1869 c. 99 s. 1; 1873 c. 114; R. S. 1878 s. 825; Stats. 1898 s. 825; 1907 c. 83; 1911 c. 663 s. 72; Stats. 1911 s. 825, 825m; 1919 c. 551 s. 22; Stats. 1919 s. 60.37; 1927 c. 122.

Monuments set under sec. 825, Stats. 1898, are presumptively correct. *Wollman v. Ruhle*, 104 W 603, 80 NW 919.

**60.38 History:** 1867 c. 167 s. 5; 1876 c. 15; R. S. 1878 s. 826; Stats. 1898 s. 826; 1919 c. 551 s. 23; Stats. 1919 s. 60.38.

The provisions of 60.18 (8) and 60.37, Stats. 1921, do not contemplate the making, filing, or recording of any plat of the survey. 11 Atty. Gen. 626.

**60.39 History:** 1873 c. 114 s. 2; R. S. 1878 s. 827; Stats. 1898 s. 827; 1919 c. 551 s. 23; Stats. 1919 s. 60.39.

**60.40 History:** 1919 c. 702 s. 51; Stats. 1919 s. 60.40.

**60.41 History:** R. S. 1858 c. 15 s. 121; 1862 c. 62; R. S. 1878 s. 828; Stats. 1898 s. 828; 1919 c. 551 s. 25; Stats. 1919 s. 60.41.

**60.42 History:** 1867 c. 167 s. 3; R. S. 1878

s. 829; Stats. 1898 s. 829; 1919 c. 551 s. 25; Stats. 1919 s. 60.42.

**60.43 History:** 1852 c. 197 s. 23; R. S. 1858 c. 15 s. 68, 69; R. S. 1878 s. 830; Stats. 1898 s. 830; 1919 c. 551 s. 27; Stats. 1919 s. 60.43.

The fact that a town clerk, through ignorance of the law which requires that school taxes voted at a special district meeting should be collected by the clerk and treasurer thereof, went on and carried out the taxes on his roll as he would have done if they were voted at an annual meeting, does not constitute a breach of his bond. *Alvord v. Barrett*, 16 W 175.

**60.44 History:** R. S. 1849 c. 12 s. 64; R. S. 1858 c. 15 s. 73; R. S. 1878 s. 831; Stats. 1898 s. 831; 1919 c. 551 s. 27; Stats. 1919 s. 60.44.

**60.45 History:** R. S. 1849 c. 12 s. 60 to 63, 66; R. S. 1849 c. 38 s. 3, 4; R. S. 1849 c. 88 s. 276; 1854 c. 80 s. 43, 44; R. S. 1858 c. 15 s. 23, 43, 52, 66, 67, 71, 72, 75, 85; R. S. 1858 c. 18 s. 102; R. S. 1858 c. 23 s. 45, 46; R. S. 1858 c. 45 s. 3, 4; R. S. 1858 c. 120 s. 244, 245; 1859 c. 166 s. 1; 1863 c. 62 s. 6; 1863 c. 155 s. 57, 58; 1865 c. 71; 1872 c. 43 s. 2; R. S. 1878 s. 463, 467, 832; 1882 c. 143; 1882 c. 72 s. 2; 1883 c. 114; 1883 c. 298 s. 3; 1889 c. 156, 518; Ann. Stats. 1889 s. 463, 467, 834a, 2319h; 1895 c. 266 s. 9; 1897 c. 354; Stats. 1898 s. 463, 467, 832; 1907 c. 185, 322; 1913 c. 448; 1917 c. 578 s. 5; Stats. 1917 s. 832, 832m; 1919 c. 362 s. 11; 1919 c. 551 s. 28; Stats. 1919 s. 60.45; 1923 c. 152 s. 95; 1929 c. 525 s. 2; 1931 c. 289; 1935 c. 550 s. 404; 1955 c. 134; 1965 c. 458; 1967 c. 276 s. 39; 1967 c. 313 s. 53.

A certificate recited that the town clerk had compared the document with the original on file in his office and that it was a true and correct transcript. The copy contained an indorsement which purported to state the time of filing, with a copy of the signature of the clerk who filed it. Neither this signature nor that to the certificate had a seal attached, and there was no other proof that the original mortgage or any copy of it was ever filed. The certificate was sufficient evidence. *Smith v. Waggoner*, 50 W 155, 6 NW 568.

The clerk is bound to keep a record of all licenses granted by the town board. *Hepler v. State*, 58 W 46, 16 NW 42.

The clerk is the proper officer with whom to file claims against the town; and when the board of audit is not in session claims presented to him are properly filed. *Parish v. Eden*, 62 W 272, 22 NW 399.

A clerk, if neither qualified nor acting, cannot be a clerk in any sense. *Mariner v. Waterloo*, 75 W 438, 44 NW 512.

The offices of town clerk and county treasurer are compatible. 5 Atty. Gen. 786.

The offices of town clerk and treasurer of a graded school district are compatible. 23 Atty. Gen. 605.

The offices of town clerk and town health officer are compatible. 24 Atty. Gen. 344.

A town clerk is not authorized by statute to keep records of the town outside of his office in the town. 26 Atty. Gen. 330.

The offices of town clerk and school district clerk are compatible. (22 Atty. Gen. 43, overruled). 27 Atty. Gen. 549.

The offices of town clerk and commissioner

of a metropolitan sewerage district are compatible. 37 Atty. Gen. 6.

**60.46 History:** 1859 c. 16 s. 1, 2; R. S. 1878 s. 833; Stats. 1898 s. 833; 1919 c. 551 s. 30; Stats. 1919 s. 60.46.

**60.47 History:** R. S. 1849 c. 38 s. 8; R. S. 1858 c. 45 s. 8; R. S. 1878 s. 834; 1889 c. 518; Ann. Stats. 1889 s. 834, 2319b; Stats. 1898 s. 834; 1919 c. 551 s. 30; Stats. 1919 s. 60.47; 1925 c. 115, 306; 1929 c. 525 s. 2; 1931 c. 289 s. 2.

**60.48 History:** R. S. 1849 c. 12 s. 76; R. S. 1858 c. 15 s. 87; 1861 c. 151 s. 14; R. S. 1878 s. 835; Stats. 1898 s. 835; 1919 c. 551 s. 31; Stats. 1919 s. 60.48; 1929 c. 164.

The treasurer is liable where he has collected a larger amount than was due; and it makes no difference that in his annual settlement the supervisors charged him only with the amount which he should have collected. *Bullwinkel v. Guttenberg*, 17 W 583.

The treasurer is liable for failure to pay over to the county treasurer the amount due the county as shown by the tax warrant delivered to him, notwithstanding a discrepancy between that and the tax roll. *Stahl v. O'Malley*, 39 W 328.

The treasurer is liable for money lost while deposited in a bank without legal authority, and it is no defense that he made the deposit with proper care and diligence. *Omro v. Kaime*, 39 W 468.

The omission of the chairman to formally approve the treasurer's bond does not relieve him or his sureties from liability thereon. Where a treasurer succeeds himself his sureties on the first bond will be liable for a sum illegally collected by him during his first term and not afterwards paid over. *Cairns v. O'Bleness*, 40 W 469.

A treasurer's bond is good though it runs to the supervisors and is payable to them. *Platteville v. Hooper*, 63 W 381, 23 NW 581.

A treasurer is liable independently of the bond and upon that as well; an action may be brought upon either liability and upon the bond without joining the sureties. *Cady v. Bailey*, 95 W 370, 70 NW 285.

**60.49 History:** R. S. 1849 c. 12 s. 75, 77, 78; 1854 c. 80 s. 43; R. S. 1858 c. 15 s. 86, 88, 89; R. S. 1858 c. 23 s. 36, 45, 95; 1863 c. 155 s. 56, 133; 1874 c. 46; R. S. 1878 s. 468, 836; 1897 c. 81, 354; Stats. 1898 s. 468, 836; 1901 c. 119 s. 1; Supl. 1906 s. 468; 1917 c. 178 s. 2; 1917 c. 578 s. 5; Stats. 1917 s. 836, 836m; 1919 c. 551 s. 32; Stats. 1919 s. 60.49; 1933 c. 435 s. 3; 1951 c. 407; 1959 c. 92; 1967 c. 313 s. 53.

The protection which the law affords to ministerial officers acting in obedience to process fair and regular on its face, issued from a court of competent jurisdiction, is extended to such officers in the collection of taxes. *Sprague v. Birchard*, 1 W 457.

A treasurer who has not been able to collect all the taxes called for by his warrant is entitled, after paying the state tax, to retain the amount specified in his warrant for town taxes and pay to the county treasurer only the balance. *Winchester v. Tozer*, 24 W 312.

The treasurer must execute the warrant of the clerk as he receives it; he has no author-

ity to investigate or correct errors. *Stahl v. O'Malley*, 39 W 328.

The treasurer's return of delinquent taxes must be verified by affidavit, else the county treasurer has no authority to sell the land. *Cotzhausen v. Kaehler*, 42 W 332.

One who offers to pay taxes on his land may rely on the treasurer's statement that none are charged against it on the roll. *Gould v. Sullivan*, 84 W 659, 54 NW 1013.

No action can be maintained to compel the turning over of funds in the hands of a town treasurer until a demand has been made there for. *Stinnett v. Noggle*, 148 W 603, 135 NW 167.

Where school taxes were erroneously assessed and collected against town property, the town could not, on behalf of taxpayers, recover money paid over to a high school district. *Town v. Eagle River Joint Union F.H.S. Dist.* 211 W 470, 248 NW 420.

The offices of town treasurer and school director are compatible. 10 Atty. Gen. 740.

A town treasurer may not withhold tax money due a school district under 60.49 (6), Stats. 1931, for the purpose of paying operating expenses of the town. 21 Atty. Gen. 407.

The offices of school district treasurer and town treasurer are incompatible. 22 Atty. Gen. 293.

**60.51 History:** 1856 c. 410 s. 2 to 5; R. S. 1858 c. 15 s. 91 to 94; R. S. 1878 s. 838; Stats. 1898 s. 838; 1919 c. 551 s. 33; Stats. 1919 s. 60.51; 1965 c. 20.

**60.52 History:** 1852 c. 410 s. 6; R. S. 1858 c. 15 s. 95; R. S. 1878 s. 839; Stats. 1898 s. 839; 1919 c. 551 s. 33; Stats. 1919 s. 60.52.

**60.53 History:** R. S. 1849 c. 12 s. 79, 80; R. S. 1858 c. 15 s. 96, 97; R. S. 1878 s. 841; Stats. 1898 s. 841; 1919 c. 551 s. 35; Stats. 1919 s. 60.53.

Upon a bond conditioned to pay to the persons entitled thereto all such sums as the constable might be liable to pay by reason of or on account of any summons, execution or other process or proceeding which should be delivered to him for collection, and for all moneys which should come into his hands as such constable, neither he nor his sureties are liable to a person whose property has been taken under an execution against a third person. The rule under such bonds is different from that which applies to sheriff's bonds, the constable's bond not being so broad in its terms as the sheriff's. *Taylor v. Parker*, 43 W 78.

**60.54 History:** R. S. 1858 c. 15 s. 98, 99; R. S. 1858 c. 29 s. 5; R. S. 1878 s. 842; Stats. 1898 s. 842; 1919 c. 551 s. 35; Stats. 1919 s. 60.54; 1955 c. 134; 1959 c. 105; 1967 c. 276; 1969 c. 87.

A constable is not authorized to serve a circuit court summons and complaint in his official capacity. *Zielica v. Worzalla*, 162 W 603, 156 NW 623.

A constable has authority to serve a criminal warrant outside of his county and is entitled to fees therefor. 1904 Atty. Gen. 433.

**60.55 History:** R. S. 1849 c. 131 s. 12, 25; 1852 c. 425 s. 2; R. S. 1858 c. 133 s. 17, 30; 1869 c. 60 s. 1; 1876 c. 147; 1877 c. 202 s. 2;

R. S. 1878 s. 843; 1897 c. 121; Stats. 1898 s. 843; 1899 c. 351 s. 16; 1919 c. 551 s. 35; Stats. 1919 s. 60.55; 1959 c. 105; 1963 c. 6; 1967 c. 276 s. 39.

A constable making an arrest under a warrant issued by a justice of the peace, and retaining the custody of the prisoner until he is released as prescribed by law, is entitled to the fees allowed to other officers for like services. The provision prescribing fees for attending at the command of a justice refers only to such attendance by special order. *Cutts v. Rock County*, 58 W 641, 17 NW 636.

A constable is entitled to mileage for pursuing a person in flight for whom he has a warrant, even though the fugitive has not been arrested. 5 Atty. Gen. 245.

Constables are entitled to reimbursement for meals furnished tramps while in their legal custody and the county board cannot legally adopt a resolution refusing to allow such claims. 5 Atty. Gen. 350.

A constable is entitled to tax mileage only for a trip actually made; mileage should be apportioned among the cases in which service was made on the same trip. 10 Atty. Gen. 67.

A constable is not entitled to mileage under 59.55 (10), Stats. 1941, for arresting a person without a warrant and conveying him to the county jail for safekeeping pending the issuance of a warrant, but is entitled to mileage for a round trip subsequently made to a jail to serve a warrant. He is entitled under 59.55 (22) to his necessary and actual disbursements, if any, in transporting a prisoner to the county jail without a warrant, provided a warrant is later issued; if he uses his own automobile for such purpose he may be reimbursed only for the cost of gasoline and oil allocable to such trip. A person so arrested is a "prisoner" within the meaning of 59.55 (22). A constable is not entitled to any reimbursement for traveling to remove an auto from a highway after arresting a driver thereof, since this section makes no provision therefor and a constable takes his office cum onere. 30 Atty. Gen. 488.

**60.555 History:** 1947 c. 391; Stats. 1947 s. 60.555.

**60.56 History:** R. S. 1849 c. 131 s. 13; R. S. 1858 c. 133 s. 18; R. S. 1878 s. 844; 1881 c. 145; Ann. Stats. 1889 s. 844; Stats. 1898 s. 844; 1919 c. 551 s. 36; Stats. 1919 s. 60.56.

**60.60 History:** 1856 c. 98; R. S. 1858 c. 15 s. 112; 1869 c. 71; 1870 c. 18; R. S. 1878 s. 850; 1913 c. 256, 438; Stats. 1913 s. 850, 850a; 1919 c. 551 s. 41; Stats. 1919 s. 60.60; 1921 c. 322; 1939 c. 126; 1947 c. 364; 1949 c. 237; 1951 c. 670; 1957 c. 324; 1959 c. 259, 374; 1963 c. 5, 375.

On prohibition of private interest in public contract see notes to 946.13.

Supervisors cannot charge the town with the expense of transporting themselves to and from their meeting. The use of town funds to pay for such expense is a violation of sec. 4549, Stats. 1915. *State v. Cleveland*, 161 W 457, 152 NW 819, 154 NW 980.

60.60 (1) does not either expressly or impliedly authorize the payment of an increase in salary for any town officer to be paid on a retroactive basis. *Pugnier v. Ramharter*, 275 W 70, 81 NW (2d) 38.

This section does not prohibit payment of compensation to a town assessor who is paid by the day for his work as assessor, and on other days receives a per diem for his work as town superintendent of highways. 11 Atty. Gen. 391.

Town officers who are required to be present at a town meeting are not entitled to compensation for acting as election officials at the same time. Such officers are entitled to pay for acting as election officials at primary and general elections when they do not have any duty to perform as town officers. 13 Atty. Gen. 647.

A town officer acting in more than one official capacity and receiving an annual salary for each violates this section. A town officer compensated on a per diem basis by statute may not be placed on an annual salary basis. 17 Atty. Gen. 291.

A salary fixed by resolution at the annual town meeting takes effect at once and is applicable to town officers elected on the same day. 22 Atty. Gen. 353.

Town board members illegally receiving compensation or reimbursement may be prosecuted under 348.28, Stats. 1923, or sued in a civil action to declare them trustees of money so received. 23 Atty. Gen. 770.

**60.61 History:** 1870 c. 18 s. 1; R. S. 1878 s. 851; Stats. 1898 s. 851; 1911 c. 110; 1919 c. 60; 1919 c. 551 s. 42; Stats. 1919 s. 60.61; 1921 c. 196; 1929 c. 107; 1935 c. 118; 1949 c. 482; 1951 c. 686; 1963 c. 5; 1969 c. 433.

**Revisor's Note, 1963:** Deletes reference to towns in Milwaukee county. The exception in the last line is broadened to cover all appointive assessors; the exception was created at a time when only civil service was provided for and was not amended when 60.19 (4) was created in 1951 to provide for appointment on a non-civil service basis. [Bill 43-S]

A town meeting cannot reduce the compensation of the assessor below the minimum fixed by this section. 11 Atty. Gen. 673.

A town assessor is entitled only to such compensation as is fixed according to law. A town meeting may fix the compensation of the assessor without express limitation as to amount. If not fixed by a town meeting it may be fixed by the town board in certain towns. 25 Atty. Gen. 273.

**60.62 History:** 1874 c. 255 s. 4 to 6; R. S. 1878 s. 779; Stats. 1898 s. 779; 1919 c. 551 s. 43; Stats. 1919 s. 60.62.

Power to purchase a town hall is not conferred by a vote to raise money to build the same. 1908 Atty. Gen. 973.

**60.63 History:** 1925 c. 242; Stats. 1925 s. 60.63; 1957 c. 699.

**60.64 History:** 1925 c. 242; Stats. 1925 s. 60.64; 1957 c. 663.

Only town boards in Milwaukee county and town boards which have been granted powers of village boards pursuant to 60.18 (12) may provide for installation of storm and sanitary sewers in areas which are located neither within a town sanitary district nor within an unincorporated village. 32 Atty. Gen. 380.

**60.65 History:** 1913 c. 410; Stats. 1913 s.

819e; 1917 c. 214; Stats. 1917 s. 819e, 819f; 1919 c. 551 s. 18; 1919 c. 702 s. 50; Stats. 1919 s. 60.31; 1923 c. 108 s. 102 to 105; 1927 c. 429; Stats. 1927 s. 60.31, 60.315; 1939 c. 476; Stats. 1939 s. 60.31; 1941 c. 40; 1951 c. 301 s. 1; Stats. 1951 s. 60.65; 1957 c. 699; 1963 c. 5.

On exercises of police power see notes to secs. 1 and 13, art. I.

Under sec. 1545a, Stats. 1917, a town cannot by general taxation pay for building side and crosswalks in an unincorporated village within its boundaries. *McGowan v. Paul*, 141 W 388, 123 NW 253.

**60.68 History:** 1927 c. 339; Stats. 1927 s. 60.68.

A town board would have no right to take any action, by virtue of 60.68, Stats. 1947, which would interfere with the powers and duties of the conservation commission, under applicable provisions of ch. 29, to protect beaver. 37 Atty. Gen. 367.

**60.70 History:** 1927 c. 514; Stats. 1927 s. 60.70; 1967 c. 224.

**60.71 History:** 1931 c. 168; Stats. 1931 s. 60.71; 1957 c. 132.

**60.72 History:** 1941 c. 202; Stats. 1941 s. 60.72; 1943 c. 558; 1953 c. 146, 570; 1955 c. 615; 1963 c. 5; 1967 c. 57; 1969 c. 276 s. 588 (9); 1969 c. 366 s. 117 (1) (j), (2) (a).

In order to transport garbage into a town and there dispose of the same a resident of a city must first secure a permit under 60.72 (1), Stats. 1941, notwithstanding that the city has a permit so to do and that the city owns a dumping ground located in the town. 31 Atty. Gen. 303.

Under 60.72 (1), Stats. 1953, the state board of health is not required to obtain the approval of the town board before approving a site for municipal dumping, regardless of when the municipality acquired the land. 43 Atty. Gen. 289.

**60.74 History:** 1947 c. 224; Stats. 1947 s. 60.74; 1951 c. 468; 1953 c. 61; 1955 c. 149; 1965 c. 252; 1969 c. 433.

On exercises of police power see notes to secs. 1 and 13, art. I; on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03; on planning and zoning authority of counties see notes to 59.97; on village planning and zoning authority see notes to 61.35; on city planning and zoning authority see notes to 62.23; and on mobile home parks see notes to 66.058.

A town zoning ordinance, purporting to be for purposes of creating districts for the location and use of buildings and lands for "trade, industry, residence, or other purposes," but actually creating a residential district of the entire area of the town regardless of its character, subject only to the admission of nonobjectionable and nonobnoxious industries and trades with the approval of the town board, when most of the area still is used for farming, and there are areas suited for the development of industry, not residences, is invalid as arbitrary, unreasonable, violative of the rules governing proper classification, and failing to provide any standards to guide the board in admitting industries or trades. *Hobart v. Collier*, 3 W (2d) 182, 87 NW (2d) 868.

## CHAPTER 61.

## Villages.

Where the town had knowledge that the defendants planned to purchase and use their property as a salvage yard and zoned the entire town as residential with the sole purpose of preventing such use, such exercise of the zoning power was unreasonable, arbitrary, and beyond the purpose of the zoning law, especially in view of 66.052. *Hobart v. Collier*, 3 W (2d) 182, 87 NW (2d) 868.

Where claimed use of certain premises for a trailer camp prior to enactment of a town zoning ordinance placing premises in a residential zone was unlawful and in violation of an existing and valid town trailer-camp ordinance, the owner of the premises acquired no vested rights in and to the use thereof as a trailer camp on the theory that it was a valid nonconforming use. *David A. Ulrich, Inc. v. Saukville*, 7 W (2d) 173, 96 NW (2d) 612.

A town zoning ordinance passed in noncompliance with the empowering statute is invalid. *State ex rel. Ryan v. Pietrzykowski*, 42 W (2d) 457, 167 NW (2d) 242.

The notice required for a public hearing specified in 60.74 (2), Stats. 1949, is the same for the original ordinance as for an amendment. If, as a consequence of a hearing, substantial changes in the proposed ordinance or amendment are proposed, another public hearing on those proposed changes is necessary. 39 Atty. Gen. 292.

Procedures for enacting town zoning ordinances and amendments are discussed in 47 Atty. Gen. 220.

Procedures in obtaining exceptions, variances and amendments. *Hagman*, 33 WBB, No. 2.

**60.75 History:** 1947 c. 224; Stats. 1947 s. 60.75.

**60.756 History:** 1949 c. 495; Stats. 1949 s. 60.756; 1957 c. 610.

**60.80 History:** 1899 c. 124 s. 1; Supl. 1906 s. 959-81; 1907 c. 458; 1911 c. 136; 1917 c. 216; 1919 c. 523; Stats. 1919 s. 959-81, 959-114; 1921 c. 396 s. 6, 10; Stats. 1921 s. 66.04 (1), (5); 1923 c. 102; 1937 c. 291; Stats. 1937 s. 66.04 (1), (5), 66.42; 1939 c. 107; Stats. 1939 s. 66.04 (1), (3a), (5); 1953 c. 245 s. 8; Stats. 1953 s. 60.80.

**60.81 History:** 1955 c. 500; Stats. 1955 s. 60.81; 1957 c. 525; 1961 c. 33; 1965 c. 666 s. 22 (2); 1969 c. 276 s. 590 (1).

**Editor's Note:** The legislative proposal which led to the enactment of ch. 500, Laws 1955, creating 60.81, was discussed by the attorney general in an opinion published in 44 Atty. Gen. 151. A proposed amendment was considered by the attorney general in an opinion published in 56 Atty. Gen. 154.

In an action to enjoin an allegedly defective referendum on the incorporation of a town as a city, the adjoining city of Milwaukee, petitioning to intervene and be interpleaded, was not a necessary party. Even if the city of Milwaukee would be a proper party to the instant action, its interpleader would lie in the sound discretion of the trial court. *Schatzman v. Greenfield*, 273 W 277, 77 NW (2d) 511.

**61.187 History:** R. S. 1849 c. 52 s. 73 to 76; R. S. 1858 c. 70 s. 73 to 76; 1872 c. 188 s. 78, 79; R. S. 1878 s. 924, 925; 1880 c. 55; Ann. Stats. 1889 s. 925; 1895 c. 100; 1897 c. 287 s. 90, 91; Stats. 1898 s. 924, 925; 1915 c. 385 s. 28; 1917 c. 671 s. 20; 1919 c. 691 s. 65, 66; Stats. 1919 s. 61.56, 61.57; 1921 c. 393; 1947 c. 388; Stats. 1947 s. 61.187; 1957 c. 525; 1965 c. 666 s. 22 (8); 1969 c. 276 s. 590 (1).

**61.189 History:** 1897 c. 287 s. 98; Stats. 1898 s. 925g; 1915 c. 385 s. 29; 1919 c. 249; 1919 c. 691 s. 67; Stats. 1919 s. 61.58; 1921 c. 242 s. 13a; 1937 c. 300; 1943 c. 66; 1947 c. 113, 388; Stats. 1947 s. 61.189; 1957 c. 525; 1959 c. 261; 1961 c. 33; 1969 c. 276 s. 590 (1).

On the creation of a city out of a preexisting village, the territory of the village formerly joined with part of an adjoining town as a joint school district becomes severed from the district, and passes under the jurisdiction of the city school board. *State ex rel. Joint School Dist. v. Sweeney*, 103 W 404, 79 NW 420.

The two methods by which a village may become a city are (a) to organize as a city under the city-manager plan pursuant to 64.01-64.15, Stats. 1965, or (b) to proceed under 61.189. The statutory requirements set forth in 61.189 (2), as to notice and conduct of village elections of mayor and aldermen and the requirement for certifying the results thereof to the secretary of state and the filing of a description of the legal boundaries of the proposed city, must be fulfilled before the latter has any power to issue a certificate of incorporation, and compliance therewith is essential before a municipality may be governed by ch. 62. *Bleck v. Monona Village*, 34 W (2d) 191, 148 NW (2d) 708. See also: 13 Atty. Gen. 600 and 26 Atty. Gen. 533.

**61.19 History:** R. S. 1849 c. 52 s. 18, 19; R. S. 1858 c. 70 s. 18, 19; 1872 c. 188 s. 23, 28, 29, 36, 76; 1874 c. 319; R. S. 1878 s. 875; 1885 c. 374 s. 1; 1889 c. 16; Ann. Stats. 1889 s. 875; 1897 c. 287 s. 28; Stats. 1898 s. 875; 1907 c. 398; 1911 c. 11; Stats. 1911 s. 875, 875m; 1915 c. 210; 1917 c. 78; 1919 c. 362 s. 25; 1919 c. 691 s. 18; Stats. 1919 s. 61.19; 1931 c. 296 s. 2; 1933 c. 187 s. 4; 1939 c. 513 s. 16; 1943 c. 173, 575; 1945 c. 86; 1963 c. 6; 1965 c. 20, 617; 1969 c. 433.

On election or appointment of statutory officers see notes to sec. 9, art. XIII; and on eligibility for office see notes to sec. 3, art. XIII, and notes to 66.11.

The deputy clerk acts as clerk in case of a vacancy. 4 Atty. Gen. 957.

**61.191 History:** 1961 c. 677; Stats. 1961 s. 61.191.

**61.195 History:** R. S. 1878 s. 920; 1897 c. 287 s. 87; Stats. 1898 s. 920; 1915 c. 385 s. 27; 1919 c. 691 s. 60; Stats. 1919 s. 61.52; 1937 c. 416; 1939 c. 152; Stats. 1939 s. 61.195; 1965 c. 20, 617.

**61.197 History:** 1939 c. 152; 1939 c. 515 s. 6; Stats. 1939 s. 61.197; 1965 c. 273; 1967 c. 276 s. 39; 1969 c. 317.