Where officers were lawfully in a licensed tavern and had a right to inspect the licensed premises under 139.06, to determine whether the law relating to beverage taxes was being complied with, their seizure of slot machines in operation on the licensed premises was valid although without search warrant and although the inspection of the premises may have been made because of an anonymous letter stating that slot machines were being operated there; hence the seized machines were admissible in evidence in a prosecution for possession and operation of slot machines in violation of 348.07, Stats. 1941. State v. Hoffman, 245 W 367, 14 NW (2d) 146.

Certain slot machines, which were on the premises in a separate locked room adjacent to the room where other slot machines were in operation, and which, although not set up for operation, could have been set up at any time and were in condition to be operated, were properly seized as being kept for gambling purposes. State v. Hoffman, 245 W 367, 14 NW (2d) 146.

A cigar machine which delivers one cigar for a nickel, with a chance of delivering more, is a gambling device. 1908 Atty. Gen. 286.

The use of cane racks, doll racks and shooting galleries is not gambling when the skill of the player determines the result. 1912 Atty. Gen. 256.

A slot machine designed to indicate the number of coupons or chips that it will deliver, in addition to a package of gum, on the next operation, but paying no coupons or a different number on successive operations, is none the less a gambling device, because the player gambles on the chance of gain in subsequent operations rather than the first; its use violates sec. 4529, Stats. 1921. 11 Atty. Gen. 23, 759.

The "corn game", otherwise designated as "bingo", practically the same as "keno", is a gambling game. 12 Atty. Gen. 369 and 472.

A slot machine giving packages of mints and also 2 chips indicated at the time a nickel is played is a gambling device, since the operator gambles on what the machine will pay the second time and when chips are played he gambles on the number of chips. 16 Atty. Gen. 56.

A slot machine set up in the principal room of a soft drink parlor where business is being done, if not in working condition, is a slot machine within the contemplation of 348.07, Stats. 1929; the proprietor is violating said section unless he has informed those who frequent his place that the same is out of working condition. 18 Atty. Gen. 499.

Pinball games described in the opinion are gambling devices whether a prize is paid by the owner of the establishment or automatically by machine. 24 Atty. Gen. 536.

The so-called game of "Hollywood" appears to be within the scope of 348.07, Stats. 1935. 26 Atty. Gen. 119.

A pinball machine containing no pay-off device, played solely for amusement and not actually used for gambling purposes, is not a gambling device under 348.07 or 348.09, Stats. 1941. 30 Atty. Gen. 300.

A pinball machine containing no pay-off device whereby coins or tokens are emitted but which through its own internal mechanism awards free play upon making a certain score is a gambling device per se, since the right to replay the machine is a "thing of value". (25 Atty. Gen. 731 overruled in view of Milwaukee v. Burns, 225 W 296.) 30 Atty. Gen. 470.

A device known as "Telequiz", an electrical coin-operated machine which asks the player 5 questions and gives him a period of time in which to select which of 6 proposed answers to each question is correct, is lawful if used solely for amusement, but if prizes are paid for high scores it violates 348.07 (1), 348.09 and 176.90, Stats. 1947. If it contains an automatic pay-off device its sale or possession with intent to sell is also prohibited under 348.07 (2). Guessing contests are games of chance. 37 Atty. Gen. 126.

The game of "Money-Pitch" cannot safely be declared lawful as a game in which the results are not left to chance. 37 Atty. Gen. 456.

Shuffleboard is a game of skill and does not violate 348.07 or 348.09, Stats. 1949. 38 Atty. Gen. 340.

The device known as "Hollycrane" appears to be a gambling device and slot machine within the meaning of 348.07, 348.09, and 176.90, Stats. 1949. 38 Atty. Gen. 377.

A gum ball machine occasionally ejecting trinkets instead of gum is a gambling device within the purview of 348.07 and 348.09, Stats. 1949. 38 Atty. Gen. 470.

A game or device known as "Crib-A-Dice" is not a gambling device within the meaning of 348.07, Stats. 1949, unless actually used for gambling. 38 Atty. Gen. 493.

945.06 History: 1969 c. 252; Stats. 1969 s. 945.06.

945.07 History: 1955 c. 696; Stats. 1955 s. 945.07.

945.08 History: 1955 c. 696; Stats. 1955 s. 945.08.

945.10 History: 1955 c. 696; Stats. 1955 s. 945.10.

945.12 History: 1957 c. 231; Stats. 1957 s. 945.12.

CHAPTER 946.

Crimes Against Government and Its Administration.

946.01 History: 1955 c. 696; Stats. 1955 s. 946.01.

946.02 History: 1955 c. 696; Stats. 1955 s. 946.02.

946.03 History: 1955 c. 696; Stats. 1955 s. 946.03.

Editor's Note: On enforcement of state sedition statutes as affected by the Smith Act (18 USC, sec. 2385) see Pennsylvania v. Nelson, 350 US 497, and Upham v. Wyman, 360 US 72.

946.04 History: 1955 c. 696; Stats. 1955 s. 946.04.

946.05 History: 1955 c. 696; Stats. 1955 s. 946.05; 1967 c. 241.

946.06 History: 1955 c. 696; Stats. 1955 s. 946.06.

To constitute a violation of sec. 4575h, Stats. 1913, the representation must be in the form of the flag. A combination of colors representing the stars and stripes, unless also in the form of the flag, does not offend against the law. 4 Atty. Gen. 233.

Sec. 4575h, Stats. 1917, prohibits printing of a flag as part of an advertisement, including an advertisement of the flag itself. 7 Atty. Gen. 91.

A proposed trade-mark submitted for registration, simulating the national shield in form and design, although not in color, and with the word "American" superimposed upon it, would violate 348.479, Stats. 1929. 20 Atty. Gen. 379.

Use of an emblem containing a picture of an U.S. flag in the background, in connection with Citizenship Day, does not violate 348.479, Stats. 1939. 28 Atty. Gen. 598.

946.06 prohibits the printing of the U. S. flag as part of an advertisement, including an advertisement of the sale of the flag itself. 48 Atty. Gen. 71.

946.10 History: 1955 c. 696; Stats. 1955 s. 946.10.

The statute refers to corrupt bargains and sale of offices, and not to an arrangement between a sheriff and one appointed by him as a deputy, made at the time of such appointment, that the appointee shall do all the business of the sheriff at a particular place and receive as his own all the fees and emoluments of such business. Addington v. Sexton, 17 W 327.

See note to sec. 22, art. I, citing State v. Zillman, 121 W 472, 98 NW 543.

Where a matter was before the common council a bribe accepted by an alderman for its influence on his official action constitutes an offense under sec. 4475, Stats. 1898, even though the action taken by the common council would have been illegal. Murphy v. State, 124 W 635, 102 NW 1087.

The receiving of a promise to pay money in the future is an offense under sec. 4475. Schutz v. State, 125 W 452, 104 NW 90.

An indictment for offering a bribe in connection with the sale of municipal property is not defective for failure to allege that the municipality owned the property to be sold. The crime consists in offering the bribe with the intention of influencing official action and it is not material whether the purchaser would have acquired title as the result of such sale. Schulz v. State, 135 W 644, 113 NW 428.

An offer by the holder of an executory contract for street paving to furnish a construction company material therefor at a less price than that quoted by manufacturers, made for the purpose of inducing a member of the common council, who was also interested in the construction company, to withdraw his official opposition to such executory contract, and carried out by concessions as to price, is within the condemnation of sec. 4475. McMillan v. Fond du Lac, 139 W 367, 120 NW 240.

The evidence in a prosecution against a sheriff for bribery, disclosing that a series of payments was made by 2 certain tavern keepers to a deputy sheriff after the defendant's election as sheriff and paid by such deputy to the defendant, and that such tavern keepers kept their taverns open without interference by the defendant during hours when by law they were required to be closed, and that this was known to the defendant and his deputies, was sufficient to support a conviction under 346.06 (1), Stats. 1951, for corruptly receiving money under an understanding that the defendant's action in his official capacity should be thereby influenced. State v. Jensen, 262 W 464, 55 NW (2d) 377.

In a prosecution against a town constable for accepting a bribe to use his influence in procuring a trailer-camp license from the town board for the payor of the bribe, the evidence failed to prove that an application for a trailer-camp license was pending before the board at the time of the alleged bribery or, as required in order for the alleged bribery to constitute an offense under 346.06 (1), Stats. 1951, that the matter of a trailer-camp license was one which might come or be brought before the constable "in his official capacity," or that the constable had any official duty in respect to the granting of such licenses. State v. Hibicke, 263 W 213, 56 NW (2d) 818.

The essence of the offense of bribery of officers is the corrupt bargain. If payment is made to the officer for the purpose of influencing his conduct in respect to matters which may come before him in his official capacity, it is immaterial to the guilt of the payor whether or not the official's conduct was actually influenced or whether or not the purpose of the bribe was fulfilled. State v. Sawyer, 266 W 494, 63 NW (2d) 749.

See note to sec. 8, art. I, on limitations imposed by the Fourteenth Amendment, citing State v. Alfonsi, 33 W (2d) 469, 147 NW (2d) 550, and State v. Hutnik, 39 W (2d) 754, 159 NW (2d) 733.

An evil or corrupt motive must be shown under 946.10 (2) and the jury must be so instructed. State v. Alfonsi, 33 W (2d) 469, 147 NW (2d) 550.

946.11 History: 1955 c. 696; Stats. 1955 s. 946.11.

Where a city official is the employe of a railroad company, sec. 4552a, Stats. 1921, prohibits the use of a pass by his wife if such pass is obtained at his request or for his advantage. The circumstances under which a pass may be used by a public official who is also a railroad employe depend entirely on the nature of duties imposed upon him by the railroad company. 11 Atty. Gen. 470.

A public officer cannot legally use a pass, even though employed by a railroad company, except in the performance of his duties as such employe. 1908 Atty. Gen. 448 and 823; 1910 Atty. Gen. 569; 1 Atty. Gen. 468 and 470; 2 Atty. Gen. 705; 5 Atty. Gen. 779; 8 Atty. Gen. 202; 13 Atty. Gen. 406.

946.12 History: 1955 c. 696; Stats. 1955 s. 946.12.

An indictment for making a false return to process which the defendant was required to serve must allege wherein the return was false. Tibbals v. State, 5 W 596.

Where constables united to extort a sum of money as a condition of discharging a search

warrant and obtained the money, they were guilty of extortion under sec. 4550, Stats. 1898, it was not necessary that the search warrant should have been valid. Hanley v. State, 125 W 396, 104 NW 57.

Where an official having discretion in a matter acts on his judgment in good faith, although erroneously, such acts are not corrupt within the meaning of 348.28 and likewise the taking of no action in his discretion, if error, is not "neglect," within the meaning of 348.29. State ex rel. Schwenker v. District Court, 206 W 600, 240 NW 406.

A superintendent of a state school who certified 22 monthly payrolls to the board of control carrying a salary for a teacher that he knew was not then in the state's employ violated 348.33. United States F. & G. Co. v. Hooper, 219 W 373, 263 NW 184.

On the tests which are to be applied in determining whether the acts charged against the secretary of the public service commission constitute malfeasance in office see State ex rel. Dinneen v. Larson, 231 W 207, 284 NW 21, 286 NW 41.

The evidence, as well as being sufficient to sustain a conviction for embezzlement of county funds, was sufficient to sustain a conviction for malfeasance in office by making false entries in official books of account, the element of felonious intent being sufficiently proved also as to the latter offense, if necessary thereto, a point not determined. State v. Davidson, 242 W 406, 8 NW (2d) 275.

Where the evidence showed that a sheriff dismissed or refused to refer to the district attorney drunken driving complaints made by a deputy after the arrest and that he knowingly permitted a night club to operate in violation of law, his conviction was proper. State v. Lombardi, 8 W (2d) 421, 99 NW (2d) 829.

It is the duty of a district attorney to prosecute paternity cases, and if he charges therefor he is guilty under sec. 4549g, Stats. 1915. 6 Atty. Gen. 21.

A wilful failure of town supervisors to keep highways in repair and refusal to appoint a superintendent of highways are violations of sec. 4550, Stats. 1921. 10 Atty. Gen. 877.

Members of the board of a school district who wilfully fail to levy a tax for the maintenance of the school, where such tax has not been provided for by the electors, are guilty of violation of sec. 4550. 12 Atty. Gen. 290.

A mayor of a city having a population of 5,000 or more who fails to appoint a city sealer of weights and measures is guilty of violating provisions of sec. 4550. 12 Atty. Gen. 328.

City officials whose duty it is to properly relieve and take care of indigent persons may be prosecuted under 348.29, Stats. 1927, if they refuse or wilfully neglect to perform such duties. 17 Atty. Gen. 147.

Voting salary and accepting it by city councilmen contrary to an explicit statute is an offense under 348.28, Stats. 1929. 19 Atty. Gen. 133.

A notary public is criminally liable for making a false certificate of acknowledgment of a deed over the telephone, although he believed that such party had actually executed a deed. 19 Atty. Gen. 626.

Expenditure of public money by town officers upon a resolution passed at a town board meeting to expend money on a private right-of-way is unlawful and 348.28 applies. 25 Atty. Gen. 434.

A city treasurer who fails to keep separate accounts of school funds as required by 40.57, Stats. 1937, may be punished for malfeasance under 348.28. 27 Atty. Gen. 82.

946.13 History: 1955 c. 696; Stats. 1955 s. 946.13; 1961 c. 644; 1967 c. 190; 1969 c. 259, 468.

Where a municipal judge who was given power by a county board to rent a room for his court rents his own property, the contract is absolutely void under sec. 4549, Stats. 1898. Quayle v. Bayfield County, 114 W 108, 89 NW 892.

Sec. 4549, Stats. 1913, covers cases in which an officer of the town conveys property to the town as well as cases where such conveyance is made by other individuals. Menasha W. W. Co. v. Winter, 159 W 437, 150 NW 526.

The transportation of a town board by one member to and from their meetings is not the purchase or sale of property or things in action, nor a contract, proposal or bid in relation thereto, within the prohibitions of sec. 4549, Stats. 1913. But to allow and pay with town funds for such transportation is an "other act in their official capacity * * * not authorized or required by law," and is punishable as such. State v. Cleveland, 161 W 457, 152 NW 819, 154 NW 980.

Where a town chairman at the request of the other members of the town board advanced money to pay bounties on gophers, hawks and crows, the town being out of funds, but discounted the certificates issued therefor sufficiently to reimburse himself for the interest on the money which he borrowed for that purpose, the certificates were not invalidated by secs. 4549 and 4550. Blaser v. Vanden Heuvel, 164 W 98, 159 NW 735.

A sale to a town by its chairman of articles needed and used by it was a violation of sec. 4549, Stats. 1913, even though it saved the town inconvenience, was made in good faith and without solicitation, and none of the articles had been or could be returned. Arbuthnot v. Kelley, 165 W 362, 162 NW 168.

Municipal officers have no right to enter into municipal contracts in which they are privately interested, directly or indirectly. Accordingly, a salaried employe of a corporation was disqualified to participate, as a member of a municipal commission, in the letting of a sewer contract; and the commission was justified in treating such corporation, although the lowest bidder, as an incompetent bidder, and in letting the contract to another bidder. Edward E. Gillen Co. v. Milwaukee, 174 W 362, 183 NW 679.

Public office is taken cum onere and public officers are subject to prescribed penalties for failure to comply with prescribed duties. There can be no good faith, in law, for the letting of a contract and the payment of money by city officers in a manner forbidden by the charter. But equity will refuse to compel a restoration of the money paid where there had been no intentional wrong, no taint of fraud, the procedure was open and unconcealed, the contractor supplied a public necessity and the

city was in full enjoyment of it. Ellefson v. Smith, 182 W 398, 196 NW 834.

It is malfeasance in office under secs. 61.33 and 4549, Stats. 1921, for a village trustee to be interested directly or indirectly in a sale of village property. Ryan v. Olson, 183 W 290, 197 NW 727.

See note to 83.015, citing Henry v. Dolen, 186 W 622, 203 NW 369.

A cost-plus contract, containing a maximum cost price, with a city for erecting school buildings, creates the relation of owner and contractor, rather than that of principal and agent, and hence sec. 4549, Stats. 1919, is not applicable to such contract. Bauman v. West Allis, 187 W 506, 204 NW 907.

A contract of a corporation, whose treasurer and general manager and superintendent were respectively clerk and treasurer of a school district, to furnish materials to a contractor for the erection of a high school building within the district, is void and unenforceable. Bissell L. Co. v. Northwestern C. & S. Co. 189 W 343, 207 NW 697.

A note signed by the town chairman, who was also a stockholder of the bank which held the loan and which had as its sole consideration the renewal of a prior loan, is absolutely void. Swiss v. United States Nat. Bank, 196 W 171, 218 NW 842.

That a county supervisor was a stockholder in a company contracting to furnish supplies to a county was no defense in the county's action on a bond securing performance of the contract. Washington County v. Groth, 198 W 56, 223 NW 575.

348.28 is construed as not making it an offense for an officer, agent or clerk of the state or of a municipality to have a pecuniary interest in the purchase or sale of property unless the purchase or sale is made by, to or with him in his official capacity or employment, or in some public or official service. State v. Bennett, 213 W 456, 252 NW 298. See also 24 Atty. Gen. 180.

The purchase of a bank building for use as a city hall was void because of participation in the purchase by a city clerk who held a disqualifying interest within the meaning of the statute by virtue of ownership of stock in the bank from which the purchase was made. Qualified members of the council who did not know of the clerk's disqualification did not render themselves personally liable to reimburse the city for the illegal disbursements. The city clerk could not avoid the liability to reimburse the city on the ground that his action was in good faith but he was liable to reimburse the city for the amount illegally disbursed. His responsibility was several so that recovery from him in the action by a taxpayer for reimbursement was authorized, although his liability was shared by other officers who were not parties. Reetz v. Kitch, 230 W 1, 283 NW 348.

A contract is void if an alderman is an employe of the contractor, even if only a clerk, and even if he does not vote on the awarding of the contract. Employment of an alderman by a son of the contractor does not void the contract in the absence of proof of bad faith or a connection between the employment and the award. Heffernen v. Green Bay, 266 W 534, 64 NW (2d) 216.

A person appointed by a town board as a so-called financial agent to assist in issuing and handling the sale of municipal bonds was a lawfully appointed "agent," or at least a de facto agent or servant, of the town, acting in his official "employment," so as to be subject to prosecution under 348.28 (1), Stats. 1949, for allegedly bringing about the sale of the bonds at a noncompetitive price to a corporation of which he was the controlling stockholder, and it was not necessary that the indictment against him should also allege that he acted in his "official capacity" or in a "public or official service." The word "official" characterizing the employment, as used in 348.28 (1), should not be construed in the limited sense of pertaining only to the acts of those technically known as officers but should be construed in the sense of pertaining to an office, position or trust. State ex rel. Stock v. Kubiak, 262 W 613, 55 NW (2d) 905.

The amendment to 348.28 (2), Stats. 1949, by ch. 365, Laws 1949, providing that such section shall not apply to any "officer" of the town who is a member of a firm or an officer or stockholder of a corporation purchasing any bond or security of such town "provided the sale . . . is made to the highest bidder and such public officer has no duty to vote on the issuance thereof," does not extend the stated exemption to agents and employes, nor permit them to violate their trust by engaging in transactions resulting in financial loss to the town or to use their position in such a manner as to permit a corporation controlled by them to obtain securities of the town at a price lower than might be received on competitive bidding. State ex rel. Stock v. Kubiak, 262 W 613, 55 NW (2d) 905.

Contracts by the county highway committee for purchases from a business enterprise in which the county highway commissioner had an interest is void. 19 Atty. Gen. 58.

A mayor of a city who is a stockholder in a bank that, as highest bidder, purchased bonds from the city is liable under 348.28, Stats. 1931, being interested in a contract with the city. But the city clerk, who is cashier but not a stockholder in the bank, is not liable. 21 Atty. Gen. 626.

A district attorney may receive rent money paid by city poor relief officers for the support of indigent tenants living in his house. 22 Atty. Gen. 139.

A person who has been hired by a county highway committee to work on a road as a local patrolman may qualify as a member of county board and retain that job. 22 Atty. Gen. 308.

An alderman selling gas to the city and repairing city vehicles violates 348.28 and may be punished, although his office is not thereby vacated. 24 Atty. Gen. 210.

A member of a local vocational school board may sell articles to the city. 24 Atty. Gen. 243.

Whether a village official may sell to the village other services than those required by his office depends upon whether his individual interest is in opposition to his official position. A village official generally may not sell supplies to a village relief department in excess of a stipulated amount per year. 24 Atty. Gen. 422.

A president of a village is not violating 348.28 by being an employe of a utility owned by the village. 24 Atty. Gen. 519.

Purchase of tax certificates by a county board member as agent for another does not violate 348.28. 24 Atty. Gen. 666.

Purchase of tax certificates by town and school district officers does not violate 348.28. 25 Atty. Gen. 295.

A member of a county board employed on salary by his father, a general contractor, is guilty of malfeasance if he sells material to the county amounting to several hundred dollars a year. 25 Atty. Gen. 308.

A contract which is not void under 348.28 at the time it was entered into between a village and corporation does not become void because a stockholder of said corporation becomes a member of the village board prior to complete performance of the terms of the contract. 26 Atty. Gen. 444.

A dentist who is a member of a county board may not perform services for the indigent, whose bill is ultimately paid out of appropriations by the county board. 28 Atty. Gen. 58.

A member of a county board may not work as a county highway employe. 28 Atty. Gen. 522.

When a county is on the system of county poor relief a county supervisor may not furnish goods or services to relief clients in excess of the statutory exemption. The attempted distinction sought to be drawn between civil and criminal aspects of statute in 24 Atty. Gen. 312, 315, is unsound in the light of Reetz v. Kitch, 230 W 1, 283 NW 348. 28 Atty. Gen. 669.

See note to 74.50, citing 29 Atty. Gen. 197.

A member of a county board who is not a member of the county highway committee may sell land to the county without violating 348.28 if the purchase is made by the highway committee. 29 Atty. Gen. 415.

A county board member who sells gasoline and oil to the county in excess of the stipulated amount per year is guilty of malfeasance even though he acted as agent for another and the transaction was without corrupt intent on his part. 34 Atty. Gen. 430.

348.28 is applicable to members of the board of curators of the state historical society and said board may not make a contract with one of its own members for printing society publications. 35 Atty. Gen. 368.

A county board member and a corporation of which he is a stockholder are not disabled, by 348.28, from contracting with a city-county union airport commission created under 114.14 (2). 36 Atty. Gen. 202.

Under 348.28 (2), a town board member may work for the town to obtain credit on his taxes not in excess of $300 in any one year. 36 Atty. Gen. 366.

A member of the board of trustees of county institutions may, without violating 348.28, sell insurance on county buildings to the county when approval of such contract is vested in the county board. 36 Atty. Gen. 404.

An administrative officer by retaining his connection with and accepting a salary from a corporation which is supervised by his department does not by that fact alone violate 348.28. 36 Atty. Gen. 551.

The members of the town board are prohibited from working as employes of a telephone utility owned by the town. 38 Atty. Gen. 141.

Where a municipality enters into an agreement with a member of its own airport commission in the furtherance of an airport project being prosecuted under 114.32 and 114.33, Stats. 1949, under circumstances resulting in the conviction of the member of the airport commission for violation of 348.28, such agreement is null and void and the city has no liability thereunder, and accordingly cannot qualify for reimbursement from state and federal funds. 39 Atty. Gen. 114.

A person who accepts compensation as fire chief while a member of the common council does not violate 348.28. 39 Atty. Gen. 421.

Where a committee, pursuant to authorization delegated under 75.35 (2) (d), sells tax deeded land or standing timber thereon, the county board retaining no right to ratify or confirm the sales but merely approving an annual report of the committee which does not list individual sales, 348.28 does not prohibit a county board member who is not a member of the committee from purchasing land or timber. 40 Atty. Gen. 416.

If more than $1,000 is involved in any year, 348.28, Stats. 1951, prohibits employment by a school district of a member of a county school committee as a school bus operator. 40 Atty. Gen. 433.

See note to sec. 1, art. IV, on the public-purpose doctrine, citing 42 Atty. Gen. 133.

A county board supervisor is not eligible for employment by a county department of public welfare. 46 Atty. Gen. 215.

946.13 does not prohibit a school board from hiring members of a town board as school bus drivers even where their salaries as such bus drivers exceed $1,000 per year. 52 Atty. Gen. 66.

A school board may not hire a member's wife if the board member participates in making the contract, either privately as his wife's agent or publicly as a member of the board, unless the situation is such that he receives no benefit, direct or indirect, from his wife's earnings. 52 Atty. Gen. 367.

A county board member may not purchase timber from the county unless all contracts involved totalled less than $1,000 per year. 56 Atty. Gen. 46.

946.14 History: 1955 c. 696; Stats. 1955 s. 946.14.

946.15 History: 1955 c. 696; Stats. 1955 s. 946.15; 1961 c. 614; 1965 c. 617; 1967 c. 276 s. 39; 1969 c. 87.

Legislative Council Note, 1969: The municipal justice no longer has jurisdiction over the collection of claims, therefore, all references to him are deleted, mainly by repealing sub. (1) and (3) of this section. As recreated, this section is substantially the language of the present introductory paragraph and sub. (2). [Bill 9-A]

946.16 History: 1955 c. 696; Stats. 1955 s. 946.16.

946.18 History: 1955 c. 696; Stats. 1955 s. 946.18.

946.31 History: 1955 c. 696; Stats. 1955 s. 946.31.

If an attorney makes a verification of a pleading without having reasonable grounds for believing and without believing that all the material averments thereof are true, he may be convicted of perjury. Taylor v. Robinson, 26 W 545.

Assignment of perjury cannot be laid upon traverse of the fact of prejudice. Bachmann v. Milwaukee, 47 W 435, 2 NW 543.

Where an affidavit was made to show that the affiant was entitled to vote, an information which alleged that "such affidavit became and was material to an inquiry then pending before H. K., he being then and there a notary public," etc., does not show that such officer had anything to do with any inquiry or proceeding whatever, or had anything to do with the affidavit, except to administer the oath to affiant and attach his jurat thereto. State v. Lloyd, 77 W 630, 46 NW 898.

The offenses defined by sec. 4471, R. S. 1878, are distinct; and, hence, a sufficient description of the action or proceeding in which subornation of perjury is charged to have been committed is an essential part of the information. Its omission is the omission of matter of substance, and not of mere form, because the punishment depends upon the fact. Thompson v. State, 89 W 253, 61 NW 565.

It must be directly and positively alleged that the accused was sworn and testified; an allegation that, "being lawfully required to depose to the truth on his oath legally administered, * * * and being then and there required to testify," he did "wilfully and corruptly commit the crime and offense of perjury," etc., is not sufficient. Brown v. State, 91 W 245, 64 NW 749.

Perjury is committed by a witness who knowingly fabricates details in order to strengthen his credibility. Hanscom v. State, 93 W 273, 67 NW 419.

The official certificate of a notary, with proof of the authenticity of his and the affiant's signatures, is prima facie proof of the proper execution of an affidavit; and in a prosecution for perjury based thereon evidence that the oath was never actually administered must be strong and convincing to authorize the court to take the case from the jury. Komp v. State, 129 W 20, 108 NW 46.

A verification of a pleading in a civil action corruptly made will support a charge of perjury. Lappley v. State, 170 W 356, 174 NW 913.

In a prosecution for perjury, against the defendant who testified falsely before the grand jury that a slot machine in his possession had not been out of his house, but where there was evidence that the machine had been out of his possession and had been used in a tavern, the jury should have been instructed that it must find beyond a reasonable doubt that the defendant knew that the machine was used for gambling or that the person who took it had intended to so use it. State v. Evans, 229 W 405, 282 NW 555.

In a prosecution for perjury before a grand jury under 346.01, Stats. 1951, testimony of the grand jury foreman and of the defendant himself, that the defendant was sworn, were not mere conclusions of law by such witnesses but were statements of ultimate fact which, without more, constituted the necessary proof that the defendant gave his testimony before the grand jury under oath; it not being required that the state then prove each of the separate items which together constituted such ultimate fact, the burden of going forward then shifted to the defendant and it was incumbent on him, if he wished to contest the ultimate fact, to show that the formalities of a legally recognized oath were lacking. State v. Jensen, 262 W 464, 55 NW (2d) 377.

Where the untruth of the defendant's statement on a material matter was established and his explanation was rejected and the statement was under oath in a judicial proceeding, the elements of perjury in violation of 346.01 were proved and the judgment on the verdict of guilty must be affirmed. State v. Jensen, 262 W 464, 55 NW (2d) 377.

Neither the crime of perjury nor false swearing can be premised on an affidavit presented to the governor to influence his action on a pending application for a requisition. 4 Atty. Gen. 839.

946.32 History: 1955 c. 696; Stats. 1955 s. 946.32.

In proceedings to probate a will, a witness who testifies before the subscribing witnesses have been sworn is guilty if he testifies falsely. Stetson v. State, 204 W 250, 235 NW 539.

Making a false application for a hunting license constitutes an offense under sec. 4471a, Stats. 1919. 10 Atty. Gen. 64.

A person swearing falsely to a material fact in an affidavit properly administered is guilty of false swearing under 346.02, Stats. 1933. 24 Atty. Gen. 145.

946.40 History: 1955 c. 696; Stats. 1955 s. 946.40.

The service rendered by a citizen who is called upon by an officer is rendered to the public and the officer is not bound to pay for it; if he makes payment the county is not liable to reimburse him. McCumber v. Waukesha County, 91 W 442, 65 NW 51.

946.41 History: 1955 c. 696; Stats. 1955 s. 946.41; 1957 c. 242.

The word "resist" properly describes opposition by direct, active and quasi-forcible means, and forbidden acts must be directed against the officer himself. Mere threats do not come within the statute, but threats with present ability and apparent intention to execute them probably do. State v. Welch, 37 W 196.

Resistance to posse comitatus is resistance to the officer who called it out. The particular acts of resistance need not be stated. Bonneville v. State, 53 W 680, 11 NW 427.

Force directed against an officer engaged in the performance of a duty, designed to prevent performance of the duty, is resistance under the statute. State v. Goyins, 252 W 77, 30 NW (2d) 199.

See note to 939.30, citing Teske v. State, 256 W 440, 41 NW (2d) 642.

Since the central idea of an arrest is the

taking or detaining of a person by word or action in custody so as to subject his liberty to the actual control and will of the person making the arrest, a person who resists either the "taking" or the "detaining" is resisting arrest. State v. Christopher, 44 W (2d) 120, 170 NW (2d) 803.

946.42 History: 1955 c. 696; Stats. 1955 s. 946.42; 1957 c. 359; 1959 c. 574; 1959 c. 641 s. 42; 1969 c. 187; 1969 c. 392 s. 78r.

Where a person confined in the state's prison escapes therefrom, he may be recaptured and returned thereto without any new sentence or additional sentence under secs. 4490 and 4494, Stats. 1898. In re McCauley, 123 W 31, 100 NW 1031.

A defendant cannot claim intoxication as a defense negating intent at a hearing on coram nobis where he did not mention it at the original hearing. Also, escape is a continuing offense and even if he was intoxicated he is guilty if he failed to return as soon as sober. Parent v. State, 31 W (2d) 106, 141 NW (2d) 878.

A convict who, while out on a writ of habeas corpus ad testificandum, escaped is guilty of escape from prison. 3 Atty. Gen. 244.

See note to 971.19, citing 6 Atty. Gen. 97.

A prisoner in the state reformatory who has been placed out on parole, and who escapes and leaves the state, is guilty of the crime of escape within the contemplation of 346.40 (1), Stats. 1925. 15 Atty. Gen. 432.

A person who escapes after being placed out under contract to work may be punished under 346.45 (2), Stats. 1931. 20 Atty. Gen. 1174.

A prisoner who is unlawfully permitted to go outside the jail enclosure to work without a guard and who escapes without force does not break prison and cannot be prosecuted under 346.45, Stats. 1951. 41 Atty. Gen. 219.

946.43 History: 1955 c. 696; Stats. 1955 s. 946.43; 1965 c. 312.

946.44 History: 1955 c. 696; Stats. 1955 s. 946.44.

A person imprisoned and aiding in the escape of other prisoners is liable to the penalty prescribed in sec. 12, ch. 167, R. S. 1858. Oleson v. State, 20 W 58.

Where a prisoner has effected an escape, one who removes handcuffs from the escaped prisoner is not guilty of violating 346.34, Stats. 1939. 29 Atty. Gen. 310.

946.45 History: 1955 c. 696; Stats. 1955 s. 946.45.

Courts of record have no power in criminal cases to review their judgments and impose lighter sentences, either during the term or afterwards, after execution of the original sentence has commenced. A sheriff discharging a prisoner pursuant to such void court order is guilty of negligent escape under 346.36. (If the sheriff discharges the prisoner under a court order which he knows to be void he is probably guilty of voluntary escape under 346.35.) 32 Atty. Gen. 228.

An officer who permitted a prisoner to leave the jail enclosure to work without a guard is guilty at least of negligently allowing escape under 346.36, Stats. 1951. 41 Atty. Gen. 219.

946.46 History: 1955 c. 696; Stats. 1955 s. 946.46.

946.47 History: 1955 c. 696; Stats. 1955 s. 946.47.

946.48 History: 1957 c. 46; Stats. 1957 s. 946.48.

946.49 History: 1969 c. 255; Stats. 1969 s. 946.49.

946.61 History: 1955 c. 696; Stats. 1955 s. 946.61; 1969 c. 252.

946.62 History: 1955 c. 696; Stats. 1955 s. 946.62.

No offense is committed under 346.50, Stats. 1937, unless there is some attempt at disguise. 27 Atty. Gen. 618.

946.63 History: 1955 c. 696; Stats. 1955 s. 946.63.

The defendant's confessions, properly admitted in evidence in a prosecution for unlawfully concealing issue of the defendant's body which if born alive would be an illegitimate child (351.24, Stats. 1949), established the corpus delicti, as well as the defendant's guilt, as against a contention that, in order to sustain a conviction, the state was required to establish the corpus delicti independent of the confessions. Potman v. State, 259 W 234, 47 NW (2d) 884.

946.64 History: 1955 c. 696; Stats. 1955 s. 946.64; 1969 c. 252.

946.65 History: 1969 c. 252; Stats. 1969 s. 946.65.

946.67 History: 1955 c. 696; Stats. 1955 s. 946.67.

The defense that a note was given to compound a felony is not available unless the felony is confessed or a prosecution therefor is begun before the note is made. Catlin v. Henton, 9 W 476.

A finding that the payee of a note received it upon a corrupt agreement to compound a felony is not warranted by evidence that the maker thereof told an accommodation maker that the latter's signature was wanted to prevent the payee from making him trouble for embezzlement. Johnston H. Co. v. McLean, 57 W 258, 15 NW 177.

If the evidence in an action upon a note tends to show that the consideration thereof was in part an agreement to discontinue a prosecution against a third party for embezzlement the jury should be instructed that if such discontinuance was to any extent the consideration for the note it was void, though it was also given in settlement for a debt. Fernekes v. Bergenthal, 69 W 464, 34 NW 238.

The defense of a want of consideration may be set up although the maker of the note and the person accused deny the commission of the felony charged; and this may be done although the threats to prosecute were not made directly to the maker, if they are made to the accused with the intention on the part of the accuser that they shall be communi-

cated to the maker and they are so communicated. Schultz v. Catlin, 78 W 611, 47 NW 946.

The defense that notes were given to avoid prosecution for crime cannot be sustained without allegation or proof that at the time the notes were given a criminal prosecution was pending against the defendant, or that he was in fact guilty of any criminal offense. Rueping L. Co. v. Watke, 135 W 616, 116 NW 174.

946.68 History: 1955 c. 696; Stats. 1955 s. 946.68.

Under 348.60 (1), Stats. 1947, it is illegal to use a form for collecting debts that simulates legal process and it is immaterial that the form in question contains words to the effect that it is not a legal process. 38 Atty. Gen. 61.

946.69 History: 1955 c. 696; Stats. 1955 s. 946.69.

A conviction in the municipal court for impersonating an assistant fire chief of the city of Ripon in violation of 346.49, Stats. 1949, is set aside for failure of proof that an assistant fire chief of that city is a public officer. State v. Hackbarth, 256 W 545, 41 NW (2d) 594, 42 NW (2d) 358.

There can be no accessory to the offense of assuming to be an officer, for that crime is but a misdemeanor. A person conspiring with and aiding another in assuming to be an officer and in arresting a third person and extorting money for his release, sharing money, may be guilty of the common-law crime of false imprisonment, common-law conspiracy, concealing offense for money, extortion, or accessory to extortion. 21 Atty. Gen. 27.

946.70 History: 1955 c. 696; Stats. 1955 s. 946.70.

946.71 History: 1955 c. 696; Stats. 1955 s. 946.71; 1967 c. 226.

Sec. 4587b does not refer to children living at home with their parents, but to children that have been "committed" to some custody by a legal commitment. Meyers v. State, 167 W 278, 167 NW 255.

See note to 940.31, citing 4 Atty. Gen. 802.

946.72 History: 1955 c. 696; Stats. 1955 s. 946.72.

946.73 History: 1955 c. 696; Stats. 1955 s. 946.73.

See note to 46.03, citing 46 Atty. Gen. 280.

946.74 History: 1957 c. 171; Stats. 1957 s. 946.74.

946.75 History: 1961 c. 107; Stats. 1961 s. 946.75.

946.76 History: 1969 c. 255; Stats. 1969 s. 946.76.

946.80 History: 1969 c. 150; Stats. 1969 s. 946.80.

CHAPTER 947.

Crimes Against Public Peace, Order and Other Interests.

947.01 History: 1955 c. 696; Stats. 1955 s. 947.01; 1969 c. 73.

Defendant could be convicted of vagrancy as a "common drunkard," though he was intoxicated only in his own home, and not in a public place. Pollon v. State, 218 W 466, 261 NW 224.

348.35, Stats. 1949, does not merely prohibit offensive language but makes it an offense to use such language or to engage by acts in disorderly conduct tending to the result described. The term "disorderly conduct" embraces all such acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or by acts. Teske v. State, 256 W 440, 41 NW (2d) 642.

See note to 975.06, citing Wood v. Hansen, 268 W 165, 66 NW (2d) 722.

See note to sec. 8, art. I, on limitations imposed by the Fourteenth Amendment, citing State v. Givens, 28 W (2d) 109, 135 NW (2d) 780.

The catchall clause in 947.01 (1), Stats. 1963, prescribing "otherwise disorderly conduct" (following the specific enumeration of 6 types of affirmative conduct—all of which tend to disrupt good order and to provoke a disturbance) is construed as connoting conduct of a type not previously mentioned but similar thereto. State v. Givens, 28 W (2d) 109, 135 NW (2d) 780.

The fact that abusive language is directed to a policeman and is not overheard by others does not prevent it from being a breach of the peace, but a police officer cannot provoke a person into a breach of the peace and then arrest him without a warrant. Lane v. Collins, 29 W (2d) 66, 138 NW (2d) 264.

See note to sec. 8, art. I, on limitations imposed by the Fourteenth Amendment, citing State v. Zwicker, 41 W (2d) 497, 164 NW (2d) 512.

947.01, Stats. 1965, does not imply that all conduct which tends to annoy another is disorderly conduct; only such conduct as unreasonably offends the sense of decency or propriety of the community is included. State v. Zwicker, 41 W (2d) 497, 164 NW (2d) 512.

To call a person a "slob" is abusive language, tending to promote a breach of the peace. 5 Atty. Gen. 695.

Services conducted by "Holy Rollers" are no violation of our criminal laws. A missionary of such church supported by one of his disciples is not a vagrant. 12 Atty. Gen. 29.

Wisconsin's disorderly conduct statute. Garvey, 1969 WLR 602.

947.015 History: 1965 c. 180; 1965 c. 433 s. 118; Stats. 1965 s. 947.015.

947.02 History: 1955 c. 696; Stats. 1955 s. 947.02.

947.03 History: 1955 c. 696; Stats. 1955 s. 947.03.

947.04 History: 1955 c. 696; Stats. 1955 s. 947.04.

947.045 History: 1957 c. 577; Stats. 1957 s. 947.045.

947.047 History: 1961 c. 384 ss. 2, 3; 1961 c. 621 s. 28; Stats. 1961 s. 947.047; 1967 c. 224.