

CHAPTER 60.

TOWNS.

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60.01 Corporate powers. Each organized town is a body corporate and empowered to sue and be sued; to purchase, take and hold real and personal property for public uses and convey and dispose of the same; and to make all contracts necessary and convenient for the exercise of its corporate powers and any order for the sale or disposal of its corporate property which the inhabitants thereof may deem expedient. It shall be designated in all actions and proceedings by its name as "Town of . . ."

Note: Electors of town cannot, by referendum vote, authorize use of surplus funds derived from utility taxes, tavern and cigarette licenses for payment of county and state taxes. 26 Atty. Gen. 88.

60.02 County, when a town. Whenever any organized county shall not be divided into towns it shall, for the purposes of town government, be considered as one town, and may elect town officers, including justices of the peace, at the same time and in the same manner as they are elected in towns, whose powers and duties shall be the same as town officers and justices in other towns.

60.03 Conveyances to towns. All real and personal estate conveyed or which shall be conveyed to any town or to the inhabitants thereof, or to any person for the use of the town or its inhabitants, shall be deemed the property of such town; and all such conveyances shall have the same force and effect as if they had been made directly to the town by name.

60.04 Sale of realty. Whenever any real estate belonging to a town shall be sold in pursuance of any order of the town the conveyance thereof shall be executed by the town clerk in his official capacity, under his hand and seal, and such conveyance, duly witnessed and acknowledged, shall convey to the grantee therein named all the right, title, interest and estate which the town may then have in and to the real estate so conveyed.

60.05 Organization of new towns, division, dissolution. (1) **CONDITION, NOTICE.** When fifty or more freeholders, residents of any town, and at least one-third of the electors thereof, shall petition the county board to divide, or to dissolve such town, and shall, at least twenty days before the next annual meeting, file a copy of such petition with the town clerk, he shall, at least ten days before such town meeting, give notice that the question of division, or of dissolution, as the case may be, of such town will be voted upon by ballot at such meeting, by posting, upon the question of division, notice thereof, showing the manner in which it is proposed to divide such town, in four public places in each proposed subdivision thereof, and upon the question of dissolution, notice thereof in four public places in such town.

(2) **VOTE HOW TAKEN; DUTY OF TOWN CLERK.** The ballot upon the question of division shall contain the words "For Division" and "Against Division." The electors residing in each proposed subdivision shall vote separately. The ballot upon the question of dissolution shall contain the words "For Dissolution" and "Against Dissolution." If a majority of the votes cast in either subdivision shall be in favor of division, or if a majority of the votes cast upon the question of dissolution shall be in favor thereof, the town clerk shall certify the fact to the county clerk, and thereupon the county board shall have power to divide or dissolve such town accordingly.

(3) No town shall be divided so as to constitute or leave any town, not having seventy-five electors, and real estate valued at the last preceding assessment at two hundred thousand dollars or more, or less than thirty-six sections in area.

(4) **VALIDITY; HOW TESTED; WHEN PRESUMED.** The validity of the proceedings to constitute or divide any town shall not be questioned in any manner, except by certiorari, or proceeding brought directly for that purpose by the proper officer or some person owning taxable property in any such town within one year from the date of the order constituting or dividing such town, and every town which shall have exercised the powers and functions of a town for a period of one year shall be conclusively presumed to have been duly organized.

(6) **PLAT AND RECORD.** Whenever any county board shall organize a new town or alter the boundaries of any town, they shall cause a plat and record thereof to be made by the county clerk, specifying the name and boundaries of such town, which plat and record shall be kept in the office of such clerk.

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

60.06 Organization of towns in special cases. (1) **REQUISITE CONDITIONS.** Any government township, or any contiguous territory, being part of any town or towns, equal in area to more than one government township and to not more than two government townships, lying within the same county, having at least seventy-five resident freeholders or homesteaders, at least forty of whom are electors who have resided within such territory for at least one year prior to the verification of the petition referred to in this section, and an assessed valuation of at least two hundred thousand dollars, according to the last preceding assessment, may be organized into a town, where the remaining area of any town of which such proposed town forms a part is not less than thirty-six square miles, and has not less than seventy-five resident electors and an assessed value of not less than two hundred thousand dollars, according to the last preceding assessment.

(2) **PETITION; PUBLICATION.** A petition signed by a majority of the electors and a majority of the resident freeholders and homesteaders of proposed town showing the existence of facts entitling such territory to be organized as a town and containing an accurate description of such territory, the name of the town or towns of which it forms a part, the names of the electors, and the proposed name of the new town verified by at least three signers, shall be presented to the circuit court, or the presiding judge thereof, of the county in which such territory is located, who shall thereupon by order fix the time and place for the hearing of the petition by said court, and direct that a copy of the petition and order be served upon the clerk of the town or towns of which such territory forms a part, at least twenty days before the hearing, and that notice of such hearing be published once a week for three successive weeks in a newspaper designated as most likely to give notice to the people of such territory. No formal answer to the petition need be filed.

(3) **EXPENSE; HEARING.** The court shall hear any elector or taxpayer of such territory, or of any town of which such territory is a part who may appear at the hearing and

may adjourn the hearing from time to time and refer any issue of fact. The fees and expenses of the referee shall be fixed and apportioned by the court after the trial of any such issue and paid by the town or towns of which such territory is a part as apportioned thereto by the court.

(4) **ORDER CREATING.** If the court after such hearing shall find the facts necessary for the organization of such territory into a town, it shall enter an order creating such territory into a town under the name proposed in the petition and providing for the place of holding the first annual meeting. The clerk of court shall immediately file certified copies of such order with the secretary of state and the county clerk.

(5) **INDEBTEDNESS; APPORTIONMENT OF.** The credits and indebtedness as between the town so created and the town or towns of which it was formerly a part shall be apportioned according to the provisions of section 66.03.

(6) **REMAINDERS OF OLD TOWN.** Whenever the remaining territory of any town out of which a new town is organized, shall be divided into 2 detached parts by the organization of the new town, that part thereof with the least number of electors shall be attached to and become a part of the new town. [1947 c. 143]

60.07 Annual town meeting. There shall be an annual town meeting of each town on the first Tuesday of April at which all business shall be transacted which is by law required or permitted to be transacted at such meeting; no notice of holding any annual town meeting need be given. The hour for holding succeeding annual town meetings may be fixed at any such meeting. Any annual or special town meeting may be held in the town or in any village or city within or adjoining the town. [1931 c. 26]

60.08 Adjournment from place to place. Whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor the town board of inspectors or a majority of them, after having assembled at or as near as practicable to such place and opened the meeting, and before receiving any votes, may adjourn such meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the meeting. Upon such adjournment the board of inspectors shall cause proclamation thereof to be made and shall station a constable or some other proper person at the place where such meeting was opened to notify all electors arriving at such place that the meeting has been adjourned and the place to which it has been adjourned.

60.09 Adjournment from time to time. Any annual or special town meeting may be adjourned to any other day and from time to time for the purpose of transacting any business of the town except for the election of town officers.

60.10 First meeting in new town. The first town meeting in any newly-organized town shall be held on the day of the annual town meeting next after its organization; but if the inhabitants of any such town shall fail to hold their first town meeting on the day of the annual town meeting any three qualified voters of such town may call a town meeting for such town at any time thereafter by posting up notices thereof at not less than three public places therein at least ten days previous to the holding of such meeting.

60.11 First meeting; proceedings. The qualified electors present at such first town meeting between the hours of nine and ten o'clock in the forenoon shall choose one of their number as chairman, two others as inspectors and one as clerk, who shall severally take and subscribe the oath required of inspectors and clerks of general elections; such oath may be administered by the chairman chosen to the other inspectors and clerk, and either of the other inspectors may thereafter administer the oath to the chairman. They shall thereupon conduct the proceedings of such meeting; and the electors shall possess the same powers as at other annual town meetings.

60.12 Special town meetings. Special town meetings may be held for the purpose of transacting any lawful business which might be done at the annual meeting, on a request being made to the town clerk in writing signed by twelve qualified voters of such town specifying in such request the purposes for which such meeting is to be held. No matter voted upon or decided at any such special town meeting shall be acted upon in any subsequent special town meeting held in such town prior to the time for holding the next annual town meeting.

Note: 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 146, 233 NW 748.

60.13 Notice of special town meetings. The town clerk with whom any such request shall be left shall record the same and immediately cause notices to be posted up in three of the most public places in the town, giving at least fifteen days' and not more than twenty days' notice of such meeting. Such notices shall specify particularly the purposes

for which such meeting is to be held and if there be a newspaper printed in such town he shall publish a copy of such notice therein at least five days before the time appointed for such meeting. [1937 c. 269]

Note: Notice of special town meeting is advisable to state the hour. 24 Atty. Gen. need not state hour of such meeting, but it 478.

60.14 Who to preside. The chairman of the town shall be chairman of the town meetings when present, but if absent one of the other supervisors of the town shall serve as chairman; but if no one of the supervisors be present the qualified electors at such meeting may choose a chairman.

60.15 Chairman's powers. The chairman of each town meeting shall regulate its proceedings, decide all questions of order and make public declaration of all votes passed; he shall possess authority to enforce obedience to his lawful requirements; and if any person at such meeting shall conduct himself in a disorderly manner, and after notice from the chairman shall persist therein, the chairman may order him to withdraw from the meeting, and on his refusal may order any constable or other person to take him into custody until the meeting shall be adjourned. He shall have the same authority to preserve order and enforce obedience as is possessed by the inspectors of election at a general election.

Note: Office of town chairman is not incompatible with position of emergency fire warden. 23 Atty. Gen. 229.

60.16 Clerk of meeting. The town clerk shall be clerk of such town meetings and keep faithful minutes of the proceedings and a correct poll list containing the names of all persons voting thereat; but if he be absent then such person as shall be appointed by the inspectors shall act as clerk of such meetings. The minutes of the town meeting shall be subscribed by the clerk and filed in the office of the town clerk within five days after such meeting.

60.17 Order of business. At the opening of every town meeting the chairman thereof shall state the business to be transacted and the order in which such business will be entertained; and no proposition to vote a tax, except for the relief of the poor and for defraying the necessary town charges, shall be acted upon out of the order of business as stated by the chairman, and no reconsideration of any vote shall be had at any town meeting unless it be taken by a majority vote within one hour from the time such vote shall have been passed, or, if taken later than one hour, unless it be sustained by a number of votes equal to a majority of all the names entered on the poll list at such election up to the time the motion therefor shall be made. All other questions upon motions at a town meeting shall be determined by a majority of the electors voting.

60.18 Powers of town meeting. The qualified electors of each town shall have power at any annual town meeting by vote:

(1) **RAISING MONEY; LIMITATIONS.** To raise money for the repair and building of roads or bridges, or either; for the support of the poor and defraying all other charges and expenses of the town, not exceeding in the aggregate, exclusive of taxes for schools and liabilities theretofore lawfully incurred and not including income taxes in the treasury, one per centum of the assessed valuation of such town for the preceding year as equalized by the town board of review; except that an additional sum not exceeding one-fourth of one per centum of said valuation may be raised for the repair of highways and bridges.

(2) **ACTIONS.** To direct the institution and defense of all actions in which the town is a party or interested; to employ all necessary agents and attorneys for the prosecution or defense of the same, and raise such sums of money for that purpose as they may deem proper.

(3) **POLICE REGULATIONS.** To make orders and by-laws for the management of all the affairs of the town conducive to the peace, welfare and good order thereof; to restrain drunkenness or disorderly conduct, to restrain cattle, horses, sheep, swine and other animals from going at large on the highways; to provide for the impounding and sale of any animals so going at large contrary thereto, and to fix penalties for the violation of said orders and by-laws, not exceeding ten dollars for any one violation thereof; to enact the rules, regulating and prohibiting the propelling, moving or using of any traction engine or other traction vehicle upon the highways during the seasons of the year when such propelling, moving or using thereof will cause unusual damage to the highway.

(4) **NOTICE; PUBLICATION OF.** No order or by-law shall take effect before the same shall be published by posting up copies in three of the most public places in the town; and such by-laws and orders, when so published, shall be binding upon all persons coming within the town as well as upon the inhabitants thereof, and shall be in force until altered or repealed at some subsequent town meeting.

(5) **INDEBTEDNESS.** To direct the compromise or settlement of any legal indebtedness, outstanding bonds or other obligations, or of any suit or controversy existing against such town, and to provide how the money necessary for that purpose shall be raised, and for that purpose may authorize the town board to issue the bonds or obligations of such town.

(6) **DESTITUTE SOLDIERS.** To raise money for the support of destitute soldiers and their families, not exceeding one hundred fifty dollars for any one person, to be expended under the direction of the town board.

(7) **TOWN BONDS.** To authorize the town board to issue town bonds in the manner and for the purposes provided by law.

(8) **LANDMARKS.** To provide for the erection of landmarks at section corners and quarter stakes when notice of proposed action shall have been previously given as required by law for holding special town meeting.

(9) **BUILDINGS.** To raise money to purchase, lease or build a town hall or other building for the use of the town, or to unite the same with the money of any corporation or society doing business or located in such town, for the purpose of building, leasing or purchasing such hall or building; but no such vote shall be taken except by ballot nor unless a request in writing signed by at least twelve freeholders of such town shall have been delivered to the town clerk twenty days before the holding of such meeting, asking that such proposition be submitted to a vote of the electors of the town at such town meeting, and setting forth the amount of money which they desire shall be raised by the town for that purpose and whether the same shall be raised by a direct tax or the issue of bonds, and if the proposition be to issue bonds it shall state the denomination thereof, the time and place of the payment of the principal and interest, and the manner in which and by whom the same shall be negotiated; and if to be raised for the purpose of uniting the same with the money of some corporation or society, the name of such corporation or society; nor unless the town clerk shall have given notice as is required in the case of a special town meeting that such proposition would be voted upon at such meeting. Whenever the voters of any town shall have voted money to purchase, lease or build a town hall in the manner provided by law, the board of supervisors of such town or towns are authorized to accept in the name of the town, any contributions offered of money, labor or locations.

(10) **SALE OF PROPERTY.** To authorize the town board to sell and convey any real or personal property belonging to the town not donated to and required to be held by the town for a special purpose.

(11) **ACQUIRING WOOD LOT.** To authorize the town board to acquire by purchase or otherwise a sufficient tract of land to be used, preserved and reforested as a wood lot, under regulations approved by the state conservation commission; and to authorize the sale of said tract.

(12) **TOWN BOARD TO EXERCISE POWERS OF VILLAGE BOARDS; WHEN.** To direct, by resolution, the town board in towns having a population of not less than 500, and having therein, one or more unincorporated villages, and the town board in towns contiguous to the limits of any city, to exercise all powers relating to villages and conferred on village boards by chapter 61 of the statutes, except such power, the exercise of which would conflict with the statutes relating to towns and town boards. Any such resolution heretofore adopted pursuant to existing law or hereafter adopted pursuant to this law, shall remain in force until rescinded.

(13) **TOWN ORDERS.** To determine the rate of interest, if any, town orders shall draw, which shall not be more than 8 per cent per annum.

(14) **PURCHASE OF LAND ACCESS TO WHICH MAY BE COSTLY.** To authorize the purchase of any lands within such town lying in such a position that the cost to the town of constructing and maintaining roads, bridges and other means of access thereto will in the near future exceed the purchase price of such lands; and to provide how the money necessary for such purchase shall be raised, and to authorize the town board to issue bonds or obligations of such town in an amount not exceeding such purchase price.

(15) **WATER FRONTS, GROVES, OUTLOOKS, HISTORIC SITES AND WOOD LOTS.** To authorize the town board to acquire by gift, grant, devise, donation, purchase or condemnation or otherwise a sufficient tract or tracts of land for the reservation for public use of river fronts, lake shores, picnic groves, fine outlooks from hilltops or places of special historic interest and to use and maintain as a wood lot and to preserve and reforest the same under regulations approved by the state conservation commission. The sale of such wood lot may be authorized or directed in like manner. The town board may maintain or erect and maintain dams within such tracts used or intended to be used for public recreational purposes and to that end may acquire the necessary rights and in the name of the town prosecute proceedings to obtain permission to maintain or erect and maintain such dams.

(16) CONTROL OF INSECT PESTS, ETC. To appropriate money for the control of insect pests, weeds, or plant or animal diseases within the town. The town clerk shall within ten days notify the department of agriculture and markets at the state capitol of such appropriation.

(17) TOWN WOOD LOTS, ACQUISITION, USE. To authorize the town board to acquire by purchase or otherwise, land with wood thereon, for the purpose of supplying wood and employment to the unemployed in the town; to purchase necessary tools or equipment to improve the land, and to thereafter sell such land.

(18) BAND; MUSICAL ENTERTAINMENTS. To provide for the organization, equipment, and maintenance of a municipal band or for the employment of another band to give concerts and musical entertainments in the town.

(18m) RECREATION AUTHORITY. To levy a tax for the purposes specified in section 66.527.

(19) POLICE AND FIRE COMMISSION. (a) To authorize the town board of any town in counties having a population of 500,000 or more to establish a board of police and fire commissioners, consisting of 5 citizens as provided for cities under section 62.13 and with the same powers and privileges; or upon petition of the electors of any such town as provided for cities pursuant to section 10.43, which shall be applicable to towns as defined herein for such specific purposes only, or upon a vote of the electors thereunder, the town board shall establish a board of police and fire commissioners consisting of 5 citizens as provided for cities of the second and third class under section 62.13 with the same powers and privileges; the members of such boards shall be appointed by the town board for terms of 1, 2, 3, 4 and 5 years respectively, provided, however, that upon the expiration of said original terms, the terms of each commissioner shall be 5 years. The members shall have been residents of the town for at least 2 years prior to appointment and shall receive no salary.

(b) In carrying out the provisions of this subsection, the following words used in section 62.13 shall have the following meanings:

1. "City" means "town".
2. "Council" means "town board".
3. "Mayor" means "chairman of the town".
4. "Comptroller" means "town clerk".
5. "City treasurer" means "town treasurer".

(c) The full-time members of the police or fire department who have been in continuous full-time service in such department for 5 years or more at the time a board of police and fire commissioners is duly appointed under the provisions of this subsection shall automatically and without examination become members of such department and shall be entitled to pension benefits in accordance with the provisions of section 62.135 for all prior full-time service rendered, subject only to removal for causes provided by law.

(d) Until duly authorized as provided by section 62.13 (6) (b), any board of police and fire commissioners duly appointed under the provisions of this subsection shall have none of the powers provided in section 62.13 (6) (a).

(20) ADVANCE PAYMENT ON SCHOOL DISTRICT TAX LEVY. To authorize and direct the town treasurer to pay out of any funds available the balance due any common school district on its tax levy after settlement by the local treasurer under section 74.03 (5) (d). When payment is made to any school district pursuant to this subsection the amount otherwise payable to such school district under section 74.03 (9) (f) shall be retained by the town treasurer for the use of the town. [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]

Note: A town was not authorized, by action taken at a special town meeting, to expend public funds for the installation of ornamental street lighting along a county highway in an unincorporated village, where no town meeting had conferred on the town board the powers of a village board, and it did not appear that the proposed lighting was necessary to facilitate travel on the highway. *Handlos v. State Line*, 233 W 145, 288 NW 748.

A town board which, pursuant to 60.18 (12), was authorized by the electors of the town to exercise the powers relating to villages and conferred on village boards by ch. 61, Stats., had the power, under 61.34 (18), empowering village boards to prohibit drunkenness, and 61.34 (27), Stats. 1931, 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), Stats. 1931. *Blooming Grove v. McSherry*, 213 W 404, 251 NW 444.

Under (1) town may levy total tax in excess of one per cent of assessed valuation when excess is for purpose of paying off old indebtedness. 22 Atty. Gen. 1021.

Neither town board nor annual town meeting has authority to order and pay for assessor's plat. 25 Atty. Gen. 345.

60.181 Town park commission. The qualified electors of each town may at any annual town meeting by vote provide for a town park commission consisting of seven mem-

bers. Such commissioners shall be appointed by the town board in writing, and such appointments shall be filed with the town clerk. The term of each member shall be the seven years next following the first day of July of the year in which his appointment is made and until the appointment and qualification of his successor, except that the first seven members shall be appointed respectively for such terms that on the first day of July in each of the seven years next following the year in which they are appointed the term of one member will expire. After such original appointments one commissioner shall be appointed annually in the month of June to succeed the member whose term will expire on July first then next following. Each of said commissioners shall take and file the official oath.

60.182 Commission, organization, powers. (1) Within thirty days after their appointment and qualifications the said commissioners shall convene at the town hall and perfect an organization; and thereupon such park commission shall have the usual powers of such bodies in addition to those hereinafter enumerated, shall use a common seal, make by-laws and choose annually from its members all necessary officers.

(2) It may also appoint such other agents and employes as may be necessary to carry out its functions, and may remove them at pleasure, and make all rules and regulations concerning its work.

(3) The town board shall provide suitable offices where the maps, plans, documents and records of the commission shall be kept, subject to public inspection at all reasonable hours and under such reasonable regulations as it may prescribe.

60.183 Park planning, report to town meeting. The commission shall make a thorough study of the town with reference to making reservations of lands therein for public uses and laying out ample open spaces, parks, highways, roads and boulevards; make plans and maps of a comprehensive town highway and park system; gather such information in relation thereto as it may deem expedient; and report the same to the town meeting within two years from the date of its organization. It shall make such other reports, from time to time, as may be requested by the town board.

60.184 Park supervision and control, and acquisition. The said commission shall have charge and supervision of all lands heretofore or hereafter acquired by the town for park or reservation purposes, and shall have power:

(1) To lay out, improve, maintain and govern all such parks and open spaces; to lay out, grade, construct, improve and maintain highways, roads, parkways, boulevards and bridges therein or connecting the same with any other park or open spaces or with any municipality, using such methods and materials as it may deem expedient; to determine and prescribe building lines along the same; and to make rules for the regulation of the use and enjoyment thereof by the public;

(2) To accept, in the name of the town, grants, conveyances and devises of land and bequests and donations of money to be used for park purposes;

(3) To acquire, in the name of the town, by purchase, land contract, lease, condemnation, or otherwise, with the approval and consent of the town board, such tracts of land or public ways as it may deem suitable for park purposes; but no land so acquired shall be disposed of by the town without the consent of said commission, and all moneys received for any such lands, or any materials, so disposed of, shall be paid into a town park fund.

60.19 Election of officers. Biennially, in the odd-numbered years, at the annual town meeting there shall be elected in each town the following officers, viz.: 3 supervisors, one of whom shall be designated on the ballots as chairman, a town clerk, a treasurer, an assessor (2 or 3, if the town board at their last meeting before such election shall have so ordered), so many constables, not exceeding 3, as shall have been ordered by the last preceding annual town meeting. In all counties which contain a population of not less than 500,000 such election shall be held biennially on the first Tuesday in April in the even-numbered years, and town officers shall hold office for 2 years. No person not an elector of the town shall hold any town office, and no person shall hold the offices of treasurer and assessor at the same time. [1931 c. 296 s. 2; 1939 c. 513 s. 15; 1943 c. 173, 575; 1945 c. 219]

60.20 Notice of election; official oath. Within 5 days after the election of any town officer the town clerk shall transmit a notice thereof to the person elected, unless he voted at the meeting; and every person elected or appointed to any town office, except justices of the peace, shall, within 5 days after his election or appointment, or notification thereof, if required, take and file the official oath. The neglect to file such oath, or an official bond when required, within the time prescribed therefor shall be deemed a refusal to serve in such office. [1945 c. 23]

60.21 Official bonds. Every official bond required of a town officer shall be in such sum, when no other provision is made, as shall be fixed by the town board therefor, and if none be fixed, then in the sum of the bond of the last incumbent of the office; shall have at least two sufficient sureties to be approved by the chairman in writing thereon, and whenever the town board shall deem any bond insufficient they may require an additional bond to be made and filed in a sum, and within a time not less than ten days, to be fixed by them.

60.22 Term of office. Every town officer elected at an annual meeting shall hold his office for 2 years, and until his successor is elected and qualified. [1943 c. 173, 575]

60.225 Town officers residing in new villages. Any town officer, except justices of the peace, who shall reside within the territory embraced within any village hereafter organized, shall continue to be such town officer and discharge all the duties thereof until ten days after the next annual town meeting in said town unless his successor shall have sooner qualified. [1943 c. 66]

60.23 Failure to give bond or to act. If any person elected to a town office, of whom an oath or bond is required, shall enter upon the duties of such office before he shall have filed such oath or bond he shall forfeit not less than ten nor more than fifty dollars; and if any person so elected, except he be unable from disease or other infirmity to discharge the duties of such office, shall refuse or neglect to serve therein he shall forfeit ten dollars, unless he shall have served in some town office for the term next preceding such election and shall have given written notice of refusal to the town clerk within the time prescribed for filing his oath.

60.24 Continuance of justices in newly organized towns. When a new town is organized, if there be one or more justices of the peace residing therein, they shall be deemed justices thereof and hold their offices according to their respective terms; and thereafter the number of justices shall be as provided in section 60.57. [1945 c. 86]

60.25 Terms decided by lot. The town clerk, within six days after the election of justices of the peace in any such new town, shall give notice in writing to the justices elected to meet at such time and place as shall be specified in the notice for the purpose of determining by lot the terms of office of such justices, which notice shall be given not less than six nor more than twelve days previous to the time appointed therein for such meeting.

60.26 Same. At the time and place so appointed the town clerk shall cause to be written on separate pieces of paper as nearly alike as practicable the numbers one, two, or so many of each such number as shall correspond to the vacant terms of office to be supplied, and fold them up as nearly alike as practicable and deposit them in a box, and the persons so elected justices shall each severally draw one of said pieces of paper if present; and if any shall have neglected to attend or shall refuse to draw, then some elector of the town selected by the clerk shall draw in his stead; and each such justice shall hold his office for such number of years as shall be designated by the number so drawn by or for him.

60.27 Certificate of result. The town clerk shall make duplicate certificates of such drawing and the result thereof, one of which shall be filed and recorded in his office and the other he shall transmit to the clerk of the circuit court of the county.

60.28 Refusals to serve; temporary disability. If the treasurer-elect refuses to serve or the office becomes vacant, or if he shall be unable for any cause to perform his official duties, the town board shall forthwith appoint a treasurer for the remainder of such term; and such appointment shall not exonerate the former treasurer or his sureties from any liability incurred. If the incumbent of any other town office, except that of justice of the peace, shall from any cause be unable to perform his official duties, the town board may appoint a suitable person to discharge the duties of such office until the disability is removed. The appointee shall file an oath of office and give the like bond required of the officer in whose place he is appointed and within the time hereinbefore prescribed.

60.29 Town boards; powers. The supervisors of each town shall constitute a board to be designated the "Town Board of . . ." any two of whom shall constitute a quorum, except when otherwise provided by law, and the chairman may administer oaths and affidavits in all matters pertaining to the affairs of the town. Meetings of the board shall be held in the town or in any village or city within or adjoining the town. Such board is empowered and required:

(1) **CHARGE OF TOWN AFFAIRS.** To have charge of all the affairs of the town not by law committed to other officers.

(1m) PUBLIC CONTRACTS. To let pursuant to the provisions of section 66.29 all public contracts, as defined in section 66.29 (1) (c), the estimated cost or amount involved of which shall exceed \$500. Provided, however, the town board may determine that any class of public work or any part thereof shall be done directly by the town without submitting the same for bids. The town board may also enter into arrangements with its county to do any type of work without the requirement of competitive bidding regardless of the amount involved. County highway departments are authorized to enter into such agreements on a cost basis.

(2) ORDERS ON TREASURY. To draw all orders for the payment of money out of the town treasury for purposes allowed by law, except for the support of schools.

(3) LEGAL ADVICE, OTHER HELP. To procure legal advice when needed in the conduct of town affairs and employ counsel for that purpose; also such stenographic, clerical and expert help as may from time to time be necessary in the conduct of the affairs of the town and the promotion of the financial welfare; to enter into the necessary contracts for the performance of such services; and to determine the qualifications, including the residence of the persons so employed.

(4) CHARGE OF ACTIONS. To have charge of all actions to which the town is a party.

(5) COLLECT DEMANDS DUE TOWN. To demand payment into the town treasury of all penalties and forfeitures recoverable by the town, and all damages suffered by the town by breaches of official bonds, by injuries to its property or by other injuries; and, in case of failure to comply with such demand, to bring and prosecute proper actions or proceedings to recover the same.

(6) BOUNDARIES OF UNINCORPORATED VILLAGE. To designate and cause to be recorded by the town clerk the boundaries of any unincorporated village located within the town.

(7) VILLAGE POLICE. To appoint, when the public good requires it, not exceeding three policemen, one superintendent of police and one night watchman, for service in the village.

(8) POLICE. To appoint policemen, a superintendent of police and a night watchman for service at any other place in the town when needed to protect persons or property or to preserve order at any assemblage for moral, religious or educational purposes.

(9) BY-LAWS, PUBLICATIONS. To adopt by-laws, when needed, to regulate the conduct of policemen, superintendents of police and night watchmen and to restrain drunkenness, disorderly conduct and the careless use of firearms; and fix a penalty not exceeding ten dollars for each violation thereof; but such by-laws shall be published in the manner prescribed for the publication of by-laws adopted by town meetings and shall have the same effect as such by-laws.

(10) FIREPROOF SAFE. To purchase a fireproof safe for the use of the town clerk whenever chattel mortgages securing the payment of one thousand or more dollars are filed with such clerk.

(11) LIGHTING HIGHWAYS. To provide, by contract or otherwise, for the lighting, when necessary to facilitate public travel, of the principal improved highways of the town, and of bridges located thereon.

(12) MANUALS FOR OFFICERS. To purchase for the use of town officials such handbooks or manuals relating to their powers and duties as the board shall deem of material assistance to such officers in the performance of their duties.

(13) POWERS LIKE VILLAGE BOARDS. To exercise powers relating to villages and conferred on village boards when lawfully authorized so to do by resolution of the town meeting adopted pursuant to subsection (12) of section 60.18.

(14) FAKERS. To suppress mountebanks.

(15) BILLIARDS, BOWLING, ETC. To suppress, or license and regulate the keeping of billiard tables, pool tables, pigeonhole tables and bowling alleys for hire or gain, the term of any such license not to extend beyond the date of the next town meeting, fix the license fee, and to revoke any such license for cause, and any person operating without a license or violating any regulation made by the town board shall forfeit to the town not exceeding fifty dollars nor less than ten dollars, or, in default of payment thereof, be imprisoned in the county jail for a term not exceeding six months.

(16) WATER MAINS, AND SEWERS OF ADJOINING MUNICIPALITY. To grant to any adjoining city or village permission, in the extension of its water or sewerage systems, subject to the rights of abutting property owners, to lay and maintain water mains and sewers in any street or highway in the town, and no abutting property owner who is permitted to connect with and use any such water main shall be deprived of the use thereof, except as to the use of water for nonpayment of water charges, without the consent of the town board.

(18) FIRE DEPARTMENT, FIRE LIMITS, EXPLOSIVES, FIREWORKS, FIREARMS, FIRE WARDENS. (a) To establish a fire department or fire departments in any town or any part

of the town, or join the town or a part thereof with a neighboring town, group of towns, parts of towns, cities or villages in establishing a joint fire department or joint fire departments, and to join the town or a part thereof with a group of towns, parts of towns, cities or villages in the joint acquisition and ownership of fire fighting equipment and to appropriate the proportionate share of such town or part or parts of a town of the cost of purchasing and maintaining such equipment, when authorized by resolution adopted at any town meeting; to appoint the officers and members thereof, and prescribe and regulate their duties; to provide such compensation for the members of the fire department or departments as the town board may determine; to purchase workmen's compensation insurance covering such firemen; to provide protection from fire by the purchase, use and maintenance of fire engines and other necessary apparatus for the extinguishment of fire and by the erection and construction of cisterns and reservoirs; to erect fire engine houses; to enter into agreements with any town, group of towns, part of a town, city or village in which a fire department is established, or with any fire association, corporation or individual for the maintaining, housing and manning of the fire fighting equipment of such fire department or fire departments; and to levy tax upon all real and personal property in the town, or that part of the town receiving protection from such equipment or jointly owned equipment for the purpose of purchasing and maintaining or manning the same; to compel the inhabitants of the town to aid in the extinguishment of fire, and to pull down and raze such buildings in the vicinity of fire as shall be directed by them or any 2 of them who may be at the fire, for the purpose of preventing its communication to other buildings; to establish fire limits or the limits within which wooden or other combustible buildings shall not be erected; to require the owners or occupants of buildings to provide and keep suitable ladders and fire buckets which shall be appurtenances to the realty and exempted from seizure and forced sale; and after reasonable notice to such owner or occupant and refusal or neglect by him to procure and deliver the same to him, and in default of payment therefor, to levy the cost thereof as a special tax upon such real estate, to be assessed and collected as other taxes in such town; to regulate the storage of gun powder and other dangerous materials; to require the construction of safe places for the deposit of ashes; to regulate the manner of putting up stove pipes and the construction and cleaning of chimneys; to prevent bonfires and the use of fireworks, and firearms in the town or any part thereof; to authorize fire wardens, at all reasonable times to enter and examine all dwelling houses, lots, yards, inclosures and buildings of every description in order to discover whether any of them are in a dangerous condition and to cause such as may be dangerous to be put in safe condition.

(b) Whenever such fire department is established for a part only of a town, or becomes part of a joint fire department under paragraph (a), the cost or proportionate part of the cost of purchasing, maintaining and manning the fire fighting equipment of such fire department shall be paid by the town out of the general fund and the town board shall thereupon levy a tax upon all real or personal property in that part of the town receiving protection from such equipment, in order to reimburse said town.

(18m) TOWNS WITHOUT FIRE PROTECTION LIABLE FOR FIRE FIGHTING SERVICE. Any town failing to provide under subsection (18) or otherwise for a fire department and fire fighting apparatus and equipment for extinguishing fires in such towns shall be liable for the services of a fire department in fighting fire and appearing to fight fire in such town upon request.

(19) WATER MAINS, SEWERS, MILWAUKEE COUNTY. The town board of every town in counties having a population of one hundred and fifty thousand or more are hereby authorized upon petition of two-thirds of the property owners in any block, or of two-thirds of the owners of property fronting or abutting upon any street or portion of street, to build and construct water mains and sewers along the street or streets on which such blocks or property abut or front, and to assess property abutting and fronting upon such streets for the cost thereof.

(20) FIRE DEPARTMENT, EMPLOY, HOUSING EQUIPMENT. (a) The supervisors of any town may make deposit and payment out of the general fund to any city or incorporated village in said county or in an adjoining county to secure and pay for fire department service in said town, and for the prevention and extinguishment of fires as may be necessary and proper, and in connection therewith may contract for or purchase fire extinguishing apparatus, which may be housed in such city or village and may be manned by its fire department. If the governing body of such city or village gives its approval, the town may, instead of contracting for fire protection with such city or village, contract for such protection with any private corporation or individual equipped to furnish the same.

(b) Whenever, upon petition of two-thirds of the resident freeholders of a contiguous district described in such petition, of any town to the town board of such town that such

district desires fire protection from a nearby city, village or town department, specifying the kind of protection desired and the amount that such protection will cost yearly, such town board shall contract with the council of such city, the board of such village or the board of such town as specified in such petition, and such contract shall be executed by resolution of both governing bodies. The town board shall yearly appropriate and pay to such village, city or town the sum agreed upon for such protection and shall yearly levy a tax upon all the real and personal property in said contiguous district in order to reimburse said town; and any such village, city or town is hereby authorized to enter into such contract.

(c) Any town, part of a town or persons residing therein may join with a neighboring town, part of a neighboring town, city or village in establishing and maintaining a joint volunteer fire department or in obtaining fire service from any corporation, association or individual equipped to furnish adequate protection; the proportionate expense of establishing and maintaining such joint volunteer department, or contract for such service shall be paid as provided in paragraph (b) by each town or part of a town, city or village which has joined in the establishing of the department or contracting for such service.

(d) The town board of any town may enter into agreements with any neighboring town, part of a town, or any neighboring city or village, or with any joint fire department, created under section 60.29 (18) (a), firemen's association, corporation, or individual equipped to furnish adequate fire protection, for obtaining fire protection service for any town, or part of a town; to make payment out of the general fund of the town of the cost thereof; and to levy a tax upon all the real and personal property of that part of the town receiving protection under such agreement sufficient to reimburse the town for the cost thereof.

(21) OFFICERS HAVE POWERS OF VILLAGE OFFICERS. Each officer appointed under the provisions of this section shall possess and may exercise all the powers possessed by the same officer in villages incorporated under general law.

(22) PEST AND DISEASE PREVENTION. When an emergency arises within a town due to insect pests, weeds, or plant or animal diseases, and when it is the judgment of the board that the delay incident to calling a special town meeting would result in severe injury to the general welfare, to appropriate not to exceed one hundred dollars from the town treasury for the control of such insect pests, weeds, or plant or animal diseases. The town clerk shall within ten days notify the state department of agriculture at the state capitol of such appropriation.

(23) NAME STREETS, NUMBER HOUSES, MILWAUKEE COUNTY. (a) The town board of every town in counties having a population of two hundred and fifty thousand or more may name or change the name of any street, and may compel the owners and occupants of all houses, stores or other buildings to number the same in such manner as the board may from time to time prescribe.

(b) Such town board is authorized to make the necessary expenditures for the purpose of carrying out the provisions of this subsection.

(24) OFFICE HELP, MILWAUKEE COUNTY. The town board of every town in counties having a population of one hundred fifty thousand or more, and maintaining an office of the town clerk, may employ clerical or stenographic help in the work in such office.

(25) BANK DEPOSITORY. To designate the bank or banks where the money belonging to the town shall be deposited. When the money is deposited in such depository in the name of the town, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the town treasury.

(26) STREET IMPROVEMENTS, SPECIAL ASSESSMENTS. (a) The town board of any town may cause any highway, street or alley, or any part thereof, to be graded, paved or otherwise improved, including the construction of curbs and gutters, upon a petition therefor in writing signed by at least a majority of all the owners of real estate bounding both sides. If such highway, street or alley abuts on platted property the board shall assess benefits and damages against such platted property in the manner provided in sections 61.40 to 61.42, and there is imposed upon the towns all of the powers vested in villages under said sections, and all of the duties by said sections imposed upon village boards or villages, their several committees, village clerk, village treasurer and street commissioner, shall be performed in such towns by the town boards, the town clerks, town treasurers and the superintendent or superintendents of highways thereof; and where notice is required to be published thereby, and there shall be no newspaper published in said town, such notices shall be given by posting five copies thereof in five public places in said town.

(b) Whenever a contract is let or is about to be let for the grading, paving or other improvement of any highway, street or alley, the total assessments levied to defray the costs thereof, and also each individual assessment may be divided into equal instalments of not more than ten in number, and for the purpose of anticipating the collection of any assessments it shall be lawful and the town board is hereby authorized to issue bonds payable out of such instalments in the manner provided in section 62.21.

(c) There is imposed upon all towns in which under the provisions of this section, highways, streets or alleys are to be graded, paved or otherwise improved, all of the powers vested in cities under section 62.21, and all of the duties by such section imposed upon the common council and board of public works, mayor, city clerk and city treasurer, shall be performed by the town board, town chairman, town clerk and town treasurer, and such bonds shall be signed by the town chairman and attested by the town clerk; and where notice is required to be published thereby, and there shall be no newspaper published in said town, such notices may be given by posting five copies thereof in five public places in said town.

(27) ACQUIRE LANDS FOR STREETS. To acquire land to lay out and open, change, widen or extend any street, lane or alley and to exercise all powers relative thereto as are conferred on village boards by chapter 61 of the statutes.

(28) STREET IMPROVEMENTS, ASSESSMENTS, MILWAUKEE COUNTY. The town board of every town in counties having a population of two hundred and fifty thousand or more may cause the whole or any part of any street, highway or alley located therein to be graded, paved, macadamized or otherwise improved, including the construction of curbs and gutters, water and sewer mains and service pipes, or either, and levy special assessments therefor in the manner provided in chapter 61 of the statutes for villages located in similar counties but without any petition therefor as mentioned in subsection (26).

(29) LAKE IMPROVEMENTS BY TOWN. The town board of any town may cause improvements to be made in any lake situated in such town. The expense of such work or improvement may be paid in whole or in part by the town or by the property to be benefited thereby as the town board may determine, but in no case shall the amount assessed to any parcel of real estate exceed the benefits accruing thereto by such improvement. Or whenever there is presented to the town board of any town a petition in writing signed by at least a majority of the owners of riparian property on any lake situated in said town, praying that said lake be improved as set forth in said petition, the town board shall make or cause to be made such improvements and shall assess benefits and damages against such riparian property in the manner provided in subsection (26) of this section, and the provisions of said subsection, so far as applicable, shall govern.

(30) IMPROVEMENTS IN VILLAGE. Whenever the town board may have been authorized by resolution of the town meeting adopted pursuant to subsection (12) of section 60.18 of the statutes to exercise the powers relating to villages and conferred on village boards, and it shall in the exercise of such powers determine to provide in any unincorporated village in said town any convenience or public improvement, including the lighting of streets, then the cost thereof shall be assessed upon all property within the boundaries of the unincorporated village, and that all assessments heretofore made upon the property in any unincorporated village and for any such convenience and improvement, including the lighting of the streets, shall be valid, provided the town meeting of any such town shall have adopted a resolution pursuant to subsection (12) of section 60.18 of the statutes authorizing the town board to exercise all powers relating to villages and conferred on village boards.

(31) TOWN BOARD MAY BRING ACTIONS. The town board of any town is authorized to institute an action to test the validity of an ordinance attaching or detaching its territory or a part thereof to or from any town, village or city, and any expense incurred by the town board, its agents, attorneys or representatives in such action or proceedings shall be paid by the town.

(32) EXCHANGE TOWN TAXES FOR COUNTY LANDS. The town board is empowered to authorize the town treasurer to exchange the town delinquent real estate tax credit existing with the county for county-owned lands.

(33) TOWN LOANS TO SCHOOL DISTRICTS. The town board of any town may loan money to the board of any school district operating under the district system within the town in such sums as are needed to meet the immediate expenses of maintaining the school of such district, and such district board may borrow accordingly and give their note therefor. No such loans shall be made to extend beyond the thirtieth day of August nor in an amount exceeding one-half of the estimated receipts as certified by the state superintendent of schools and the local school clerk, at a rate of interest to be determined by the town board.

(34) **BOOKS FOR INDIGENT PUPILS.** The town board of any town may furnish free text books to indigent pupils from the town who attend either high school or vocational school in other municipalities.

(35) **MOTOR BOATS.** To regulate or prohibit by ordinance the use, traffic and noise of motor boats on any inland lake or river, during such hours when noises are disturbing to the public or inimical to public safety, morals and health.

(36) **POLICE AND FIRE DEPARTMENTS.** When a board of police and fire commissioners is duly appointed pursuant to section 60.18 (19), to proceed by ordinance or resolution to establish a police department and a fire department or either of them, to provide for the housing and equipment thereof, to designate the members thereof, including rank, duties, number and compensation and to regulate such departments except as otherwise provided by statute.

(37) **RETIREMENT; ELECTION.** The town board of any town may, by ordinance adopted by a majority of the members thereof, and ratified by the electors at a referendum vote taken by written or printed ballots at a regular or special town meeting, elect to be included in, and be subject to, the provisions of the Wisconsin retirement fund established by sections 66.90 to 66.919 and elect the prior service credit rate which shall be applicable to all employes of such town included as of the effective date.

(38) **CUTTING OF WEEDS TO PREVENT FIRES.** The town board of every town in counties having a population of 500,000 or more may require by ordinance that the owner or owners of any lands located in such town shall cut any weeds, grasses or other growth, not defined as noxious weeds in section 94.20, for the purpose of preventing fires, and in the event of the failure of such owner or owners to comply with the provisions of such ordinance after receiving such notice as may be provided therein, the board may proceed to have the same cut and assess the costs incurred in so doing, against such lands the same as are other special taxes. [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, 550 s. 8, 403; 1939 c. 251, 309; 1943 c. 229, 259, 407; 1945 c. 156, 225, 275, 429, 547; 43.08 (2); 1947 c. 206, 362, 550]

Note: Under the provisions of (6) and (13), empowering town boards to designate the boundaries of 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; and said provisions do not contravene sec. 31, art. IV, Const., nor sec. 1, Amendm. XIV, United States Const. *Paul v. Greenfield* 202 W 257, 232 NW 770.

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 (25) of this section, 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. *Lake-land v. Bekkedal*, 209 W 636, 245 NW 682.

A contract, made in furtherance of proceedings initiated under subsection (19), 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 & Henoch Construction Co. v. Wauwatosa*, 227 W 26, 277 NW 624.

A town was not authorized, by action taken at a special town meeting, to expend public funds for the construction of sidewalks along a county highway in an unincorporated village, where 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. Subsection (27) implies that the procedure of village boards, must be followed. *Handlos v. State Line*, 233 W 145, 288 NW 748.

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 two 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 it 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.

Town attorney is not public officer. Town board should proceed to recover money paid out illegally. 23 Atty. Gen. 350.

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

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

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

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

Licensed tavern operator is not ineligible to serve on town board nor is town board

member ineligible to be licensed. Member so circumstanced may pass upon neither his own application for license nor any other application for license. 28 Atty. Gen. 228.

60.295 Street name changed by board. The town board may whenever it may deem necessary, change the name of any street in the township not located in an incorporated village therein. [1933 c. 88]

60.30 Town sanitary districts; definition, purposes. (1) Town sanitary districts may be created for the purpose of purchasing, establishing or constructing surface or storm water sewers, drainage improvements, sanitary sewers, or a system or systems of waterworks, sewerage, garbage or refuse disposal or all of such improvements or any combination thereof, within a town or towns or portions thereof; and to that end may sue and be sued. The definitions in section 144.01 are applicable hereto. The term "sewerage" as used in sections 60.30 to 60.309 shall be considered a comprehensive word, including all constructions for collection, transportation, pumping, treatment and final disposition of sewage.

(2) Town sanitary districts may be created, governed and maintained as hereinafter provided in any town, towns or part thereof, provided that no such town sanitary district shall include any territory included within an incorporated village or city at the time of organization of such district. The fact that any of such territory shall be contained in a metropolitan sewerage district or contained in any other district shall not operate to preclude the valid organization of such town sanitary district, it being the intention of the legislature to permit auxiliary sewer construction by such town sanitary districts, in addition to the main sewers and intercepting sewers constructed or to be constructed by such metropolitan sewerage districts. [1935 c. 12; 1943 c. 380]

Note: 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, 60.301, 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. *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

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. 60.30 to 60.309 authorize the organization of town sanitary districts in the exercise of police power. *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

60.301 Town board may establish sanitary district. The town board of any town in this state is vested with jurisdiction, power and authority when the conditions stated in subsection (3) of section 60.303 are found to exist, to establish town sanitary districts. Where the proposed district is in more than one town, the town board of the town containing the largest assessed valuation of taxable property within the proposed district shall have jurisdiction. [1935 c. 12]

60.302 Petition. (1) **WHO TO MAKE.** Before any town board shall establish a district as heretofore authorized, a petition requesting such establishment shall be filed with the town clerk, addressed to the town board and signed by at least sixty per cent of the persons owning real estate or the owner or owners of at least sixty per cent of the land, within the limits of the territory proposed to be organized into such district.

(2) **AMENDMENTS, PRESUMPTIONS.** No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the town board may at any time permit the petition to be amended in form and substance to conform to the facts, by correcting any errors in such petition. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed prior to the time of the hearing of the first petition, and shall be considered the same as though filed with the first petition. Every such petition shall be presumed to have been signed and executed by the persons whose signatures appear thereon, until proof to the contrary shall have been made.

(3) **CONTENTS.** The petition shall set forth: (a) the proposed name of said town sanitary district; (b) the necessity for the proposed work; (c) that the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of such district and that the property to be included therein will be benefited by such establishment; (d) the boundaries of the territory to be included in the proposed work; and (e) a general outline of the proposed improvement.

(4) **VERIFICATION, PLAT.** The petition shall be verified by one of the petitioners, and shall be accompanied by a plat or sketch indicating the approximate area and boundaries of the district.

(5) **BOND.** At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed by the petitioners,

with security approved by the town board, sufficient to pay all the expenses connected with the proceedings in case the town board refuses to organize the district. If at any time during the proceedings the town board shall deem the bond first executed to be insufficient, it may by order require the execution of an additional bond within a time fixed, but not less than ten days from the date of such order. Upon failure of the petitioners to execute the same, the petition may be dismissed by the town board. [1935 c. 12]

60.303 Hearings, time, notice, boundaries, approval, limitations. (1) Upon receipt of the petition the town board shall arrange a hearing to be held not later than thirty days from the date of presentation of the petition, at which time all interested property owners may be present and offer objections, criticisms or suggestions to the necessity of the proposed district as outlined and to the question whether their property will be benefited by the establishment of such district. Any person wishing to object to the organization of such district may, before the date set for the hearing, file his objections to the formation of such district with the town clerk.

(2) Notice announcing the hearing, the time and place thereof, and stating the boundaries of the proposed district, shall be posted in at least three public places within the proposed district for not less than ten days prior to the hearing, or given by at least two publications in a newspaper of general circulation in the proposed district, published in the county in which the district or some part thereof is located. Such publications shall be one week apart, and the first publication shall be not less than ten days prior to the date set for said hearing.

(3) Upon the hearing, if it shall appear to the town board after consideration of all objections, that the petition is signed by the requisite owners of real estate as provided in subsection (1) of section 60.302, and that the proposed work is necessary, and that the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of such district, and the property to be included in the district will be benefited by the establishment thereof, the town board, by formal order, shall declare its findings and shall establish the boundaries and shall declare the district organized and give it a corporate name by which in all proceedings it shall thereafter be known, and thereupon the district shall be a body corporate with the powers of a municipal corporation for the purposes of carrying out the provisions of sections 60.30 to 60.309.

(4) If the town board finds that the territory set out in the petition should not be incorporated into a town sanitary district, it shall dismiss said proceedings and tax the cost against the signers of the petition. If the district is established, certified bills covering the reasonable cost and disbursements of the petitioners may be presented to the commissioners hereinafter provided for and paid out of the funds of the district.

(5) The state board of health shall be notified of the hearing to be held for the creation of such district, by mailing notice addressed to same, such notice to be deposited in the mail not less than ten days prior to the date set for such hearing, and said state board of health shall be represented at the hearing and shall advise with the town board.

(6) Should it appear to the town board at said hearing that other territory not included in the original petition should be included within the town sanitary district, the property owners in such additional territory shall be duly notified in like manner as provided in connection with the original hearing on the organization of such district, and a subsequent hearing shall be held at the time and place fixed by the town board. In establishing the town sanitary district, the town board shall eliminate territory represented in the petition, if it shall find that such territory will not be benefited by the establishment of the district.

(7) A copy of the order by the town board establishing such town sanitary district shall be filed with the secretary of the state board of health, and a copy shall be filed with the register of deeds in the county or counties in which the district is situated. In counties having a population in excess of 250,000, the register of deeds shall provide an index for such orders and shall number such orders in consecutive numerical order and in such counties the register of deeds shall be entitled to a fee of 50 cents for each such filing.

(8) Additions and alterations to any such district may be made in the manner provided for the creation of such a district. [1935 c. 12; 1945 c. 33; 1947 c. 230]

Note: 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 being 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.

60.304 Review. Any party aggrieved by any act of the town board in the establishment of a town sanitary district may bring action in the circuit court of the county in which his lands are located, to set aside the action of the board, within twenty days after final determination by said board. Unless action is so taken within such period, the determination by the town board shall be conclusive. [1935 c. 12]

Note: 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 trial court to set aside the order of the board in a proper case but does not authorize 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." *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

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 this section to set aside action of board establishing sanitary district, finding of board that 60 per cent of landowners signed petition is conclusive and not subject to attack. 27 Atty. Gen. 642.

60.305 Commissioners, appointment, qualifications, terms, pay. When a town sanitary district shall have been established in territory lying within 2 or more towns, the town board of the town containing the largest assessed valuation of taxable property of the district therein, shall within 60 days after the effective date of this section appoint or provide for an election for the purpose of selecting 3 town sanitary district commissioners. Commissioners shall be appointed or elected for a term of 2 years and shall be reappointed by the town board or elected at the regular town election. If the commissioners have been appointed and a change to election of the commissioners be requested by a petition submitted to the town board of the town containing the largest assessed valuation of taxable property in the district, the petition to be signed by at least 10 per cent of the qualified electors of the district, the designated town board shall call a special election for the proposed election of commissioners within 60 days from the date of receipt of the petition. Any vacancy may be filled by appointment for the remainder of the unexpired term. The salary, if any, of the commissioners shall be fixed by the town board. Where all the territory of a town sanitary district lies within one town, the town board may by a two-thirds vote constitute itself as ex officio the commissioners of the town sanitary district. In the event the town board does not constitute itself as ex officio the commissioners of the town sanitary district, then such town shall at once provide for appointment or election of 3 sanitary commissioners as provided in this section. All sanitary district commissioners shall be property owners and residents of the sanitary district, except that where the sanitary district is composed primarily of summer resort property only one of the commissioners is required to be a resident of the district. [1935 c. 12, 522; 1945 c. 564; 1947 c. 558]

Note: Town sanitary district commissioners may not employ themselves to 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.

- 60.3051 [Renumbered section 60.302 by 1927 c. 473 s. 16]
- 60.3052 [Renumbered section 60.303 sub. (1) by 1927 c. 473 s. 16]
- 60.3053 [Renumbered section 60.304 by 1927 c. 473 s. 16]
- 60.3054 [Renumbered section 60.303 sub. (2) by 1927 c. 473 s. 16]
- 60.3055 [Renumbered section 60.305 by 1927 c. 473 s. 16]
- 60.3056 [Renumbered section 60.306 by 1927 c. 473 s. 16]
- 60.3057 [Renumbered section 60.307 by 1927 c. 473 s. 16]
- 60.3058 [Renumbered section 60.308 by 1927 c. 473 s. 16]
- 60.3059 [Renumbered section 60.309 by 1927 c. 473 s. 16]

60.306 Commission; powers, duties. (1) The town sanitary district commission shall have charge of all affairs of the town sanitary district. Such commission shall organize by electing one of its members president and another secretary, and may provide a corporate seal of the town sanitary district. The secretary shall keep a separate record of all proceedings and minutes of meetings and hearings. The secretary shall at the end of each fiscal year, such year to correspond with the fiscal year of the town in which the sanitary district is located, submit to such town board a report showing a complete audit of the financial transactions covered by this fiscal period and the report shall be incorporated in the annual report of the town containing the largest assessed valuation of taxable property in the district. The treasurer of the town having

the largest assessed valuation of taxable property within the district shall act as treasurer of the district, and shall furnish such additional bond as the commission may require. Where the town board constitutes the sanitary district commission the chairman of the town shall act as president and the town clerk shall act as secretary.

(2) The commission shall project, plan, construct and maintain in such district a system or systems of waterworks, garbage or refuse disposal or sewerage, including sanitary sewers, surface sewers or storm water sewers, provide chemical treatment of waters for the suppression of swimmer's itch, algae and other nuisance-producing aquatic growths, or all of such improvements or any combination thereof necessary for the promotion of the public health, comfort, convenience or public welfare of such district, and such commission is authorized to enter into contracts and take any or all proceedings necessary to carry out such powers and duties and make rules and regulations relating to sanitation.

(3) The commission shall levy, on or before the first day of October in each year, a tax upon all the taxable property in the district, for the purpose of carrying out the provisions and performing duties required under sections 60.30 to 60.309, provided that the amount of any such tax in excess of that required for maintenance and operation and for principal and interest on bonds shall not exceed, in any one year, one mill on each dollar of the assessed value of all taxable property in the district, and shall certify in writing to the clerks of the several towns having territory in such district, the total amount of tax assessed against the taxable property in each such municipality lying in whole or in part within the district.

(4) The commission may provide an office, fix and collect charges for garbage disposal, and collect water rentals in the manner provided by law which charges and rentals shall constitute a general fund for the operation and maintenance of the garbage or waterworks systems the same as for any public utility.

(5) Any such town sanitary district may proceed under section 66.076 to establish sewer rentals or sewerage service charges for all or any of the purposes provided under said section together with all subsequent amendments thereto, and all provisions of section 66.076 so far as applicable shall apply to such town sanitary districts. [1935 c. 12, 522; 1941 c. 266; 1945 c. 33, 564; 1947 c. 362]

60.307 Powers to borrow money and issue bonds. (1) Every such district may issue bonds for the construction or extension of surface or storm water sewers, drainage improvements, sanitary sewers, or a system or systems of waterworks, sewerage, garbage or refuse disposal, or all of same or any combination thereof, or for the purpose of procuring rights of way or appurtenances. The commission in any such district about to issue bonds shall adopt a resolution stating the amount of the proposed issue, the purpose or purposes of said issue and such other and further information as the commission may deem necessary or useful.

(2) Every such resolution shall be offered and read at a meeting of the commission at which all the commissioners are present, and shall be published in a newspaper having a circulation within said district and published within the county in which such district is established, such resolution to be published not less than twice during the 30 days next following such reading, and the commission shall cause copies of such resolution to be posted in not less than 3 public places within such district for a period of 30 days next following such reading, and in order to be effective such resolution shall be passed at a meeting of the commissioners at which all members are present. No such resolution shall be finally passed within a period of 10 days from the first publication or the date of posting thereof. When any such resolution shall be passed, it shall be recorded by being copied at length in a record book kept for that purpose.

(3) Such resolution shall be submitted to a vote of the electors of said district, if within thirty days after the recording thereof there shall be filed in the office of the secretary of the commission a petition requesting said submission, signed by electors numbering at least ten per cent of the votes cast for governor in the district at the last general election. When any such petition shall have been filed, the commission shall call a special election for the purpose of submitting the resolution for the proposed bond issue to the electors of the district for approval, and shall designate the polling place or places and direct the secretary of the commission to give notice thereof as hereinafter provided. Such notice of election shall be posted in three public places in the district not less than ten days prior to the date of the election. The proceedings in connection with said special election shall conform as near as may be with the provisions in subsection (5) of section 67.05 of the statutes, together with all subsequent amendments thereto. The votes shall be counted by the inspectors and a return made thereof to the commission, which shall canvass the results of such election and certify the results thereof to the clerks of the several towns having

territory within such district, and such certificates shall be filed in the official town records of such towns.

(4) The commission shall, at the time of or after the adoption of said resolution, and before the issuance of any of the contemplated bonds, levy by resolution a direct annual tax sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity.

(5) After the issue of said bonds, the commission shall, on or before the first day of October in each year, certify in writing to the clerks of the several towns having territory in such district, the total amount of such tax to be raised by each such municipality, and upon receipt of such certificate the clerk of each such town shall place the same on the tax rolls, to be collected as other taxes are collected, and such moneys, when collected, shall be paid to the treasurer of such district.

(6) Every bond so issued by a town sanitary district shall be a negotiable instrument, payable to bearer, but may be registered as to principal, and shall mature in a period not exceeding twenty years from date thereof and bear interest at a rate not to exceed six per cent per annum. It shall contain a statement of the value of all of the taxable property in the district according to the last preceding assessment thereof for state and county taxes, the aggregate amount of the existing bonded indebtedness of such district, and that a direct annual irrepealable tax has been levied by the district sufficient to pay the interest thereon when it falls due and also to pay and discharge the principal thereof at maturity.

(7) The bonds shall be executed in the name of the town sanitary district, by the president and secretary, and shall be sealed with the seal of the district, provided that such district has a seal. The bonds shall be negotiated and sold, or otherwise disposed of, for not less than par and accrued interest, by the commission, and such negotiation and sale or other disposition may be effected by disposition from time to time of portions only of the entire issue, when the purpose for which the bonds have been authorized does not require an immediate realization upon all of them.

(8) Any such town sanitary district, when in temporary need, is authorized to borrow money pursuant to the provisions and limitation applicable to cities of section 67.12 of the statutes, together with all subsequent amendments thereto.

(9) Any such town sanitary district, in lieu of levying a direct annual irrepealable tax for the express purpose of paying the interest on such bonds and of discharging the principal thereof at maturity, is authorized to borrow money and issue mortgage bonds in the manner provided by subsection (10) of section 198.14. [1935 c. 12, 522; 1945 c. 564]

60.308 Validation of town sanitary districts. (1) Whenever any town board, by resolution entered upon its records, created a district before March 16, 1935 for the purpose of sanitary improvements and described the territory included therein, pursuant to a petition reciting that it is signed by 60 per cent of the persons owning real estate not used for agricultural purposes, and constituting 60 per cent of the land area within the proposed district, such district and the proceedings had in connection with the organization thereof are hereby legalized and validated, and it is expressly found and determined that such district is for the promotion of the public health, comfort, convenience, necessity and public welfare, and that the property included therein is benefited by the formation thereof. From and after March 16, 1935, such district shall be subject to and shall operate under sections 60.30 to 60.309, and commissioners shall be appointed to carry out the provisions of said sections in the manner hereinbefore provided.

(2) All election proceedings before said date in such district for the authorization and issuance of bonds for the purpose of constructing improvements of a sanitary nature, within the district, such bonds being payable from ad valorem taxes levied on the taxable property within the district, are hereby legalized and validated, provided the same do not exceed any constitutional debt limitation, and the commission of such district appointed and acting, or to be appointed under sections 60.30 to 60.309 shall, without further referendum, complete the issuance and delivery of such bonds pursuant to the provisions of sections 60.30 to 60.309, and such bonds, when delivered to the purchaser and paid for at a price of not less than par and accrued interest to date of delivery, shall constitute the legal and binding obligations of such town sanitary district, payable from ad valorem taxes against all of the taxable property in such district. [1935 c. 12; 1945 c. 33]

60.309 Special assessments. (1) Special assessments for the purpose of carrying out the provisions and performing duties required under sections 60.30 to 60.309, may be levied by the commissioners in the following manner:

(a) Upon approval and filing of the plans for any improvement within the limits of a sanitary district, the commissioners thereof shall upon proper estimates determine the entire cost of the work to be done.

(b) The commissioners shall then examine the entire area to be improved and severally and separately consider each parcel of real estate therein and determine the benefits to each of said parcels and make assessments thereagainst in an aggregate amount equal to the determined cost of the work to be done. Such assessments shall be made in accordance with section 62.18 (9) (a).

(c) The commissioners shall file in the office of the town clerk a report of the assessments so made. Notice shall be given by the commissioners that such report is open for review at the town office and shall be so continued for a space of 10 days after the date of such notice and that on a day named therein, which shall not be more than 3 days after the expiration of said 10 days, said commissioners will be in session to hear all objections that may be made to such report.

(d) Such notice shall be published in a newspaper of general circulation within the sanitary district at least once and shall be made at least 5 days prior to the date of hearing as aforesaid.

(e) At the time specified for hearing objections to said report, said commissioners shall hear all parties interested who may appear for that purpose and may review, modify and correct said report as they deem just and at the conclusion of said hearing shall make a final determination of said assessments.

(f) When a final determination of assessments has been made, the secretary of the commissioners shall publish a notice in a newspaper of general circulation within the sanitary district that a final determination has been made once in each week for 2 successive weeks.

(g) If the owner of any parcel of land affected by such determination feels himself aggrieved thereby, he may, within 20 days after the date of such determination appeal therefrom to the circuit court of the county in which said sanitary district is located by causing a written notice of appeal to be served upon the secretary of the sanitary district and by executing a bond to the sanitary district in the sum of \$500 with 2 sureties or a bonding company to be approved by the secretary of the commissioners, conditioned for the faithful prosecution of such appeal and all costs that may be adjudged against him. The secretary of the commissioners in case such appeal is taken shall make a brief statement of the proceedings had in the matter and shall transmit the same with all papers in the matter to the clerk of the circuit court. Such appeal shall be tried and determined in the same manner as cases originally commenced in said court.

(2) The commissioners of any sanitary district may provide that special assessments as heretofore levied may be paid in annual instalments, not more than 10 in number, in the manner provided in section 66.54 (7).

(3) For the purpose of anticipating the collection of special assessments payable in instalments under this section, the commissioners of the sanitary district may issue special assessment improvement bonds as provided in section 66.54.

(4) All special assessments heretofore levied by town sanitary districts and all special assessment improvement bonds heretofore issued by town sanitary district commissioners in accordance with this section are hereby validated.

(5) The powers conferred upon town sanitary district commissions by sections 60.30 to 60.309, inclusive, shall be supplementary to any other powers conferred by law upon towns in which sanitary districts exist, or upon the town boards of such towns. [1935 c. 12; 1937 c. 30; 1947 c. 566]

Note: There is no constitutional doubt as to the validity of 62.18 (9) (a), Stats. 1945, which provides for a linear-foot assessment, and which is incorporated by reference in 60.309 (1), Stats. 1945, authorizing the levy-

ing of special assessments by a town sanitary district. *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

60.31 Sidewalks. (1) The town board may cause sidewalks to be constructed upon a petition of a majority of the owners of frontage on either side of any part of a highway who own one-half or more of the frontage of property abutting upon that portion of the highway on which it is proposed to build such sidewalks and may cause any sidewalk to be repaired or replaced without any petition pursuant to the provisions of section 61.43. The provisions of said sections are made applicable to towns except that the superintendent of highways shall serve the required notice upon the abutting property owners.

(2) Any person residing in any town may build and construct sidewalks along the line of any street or highway, of any suitable material, not exceeding eight feet wide, upon premises owned or occupied by him, and keep the same in repair; and any person who shall pile timber, wood, posts or lumber, or lead or drive any team or animal, or place any offal upon, or otherwise obstruct the travel on any sidewalk built as aforesaid or otherwise, or wilfully injure the same shall be liable to a fine of two dollars for every such offense, and shall also be liable to the owner thereof for all damages. Whenever the public

convenience or safety requires any such sidewalk to be repaired, the board of supervisors shall give written notice to the parties owning the property in front of which such sidewalk is laid, if known and residing in said town, and if unknown or not residents thereof, shall post written notices in three or more public places in said town requiring such repairs to be made, and also prescribing that unless such sidewalk therein specified be repaired, to the satisfaction of such board within three days thereafter, they will repair the same at the expense of the property; and if the same be not in such time repaired, the board shall repair it and certify to the town clerk the cost of the repairs, together with a description of the property in front of which the repairs are made, and said town clerk shall add such cost to the next tax roll, opposite to the description of said property, and the said cost shall be collected as other taxes.

(3) If any sidewalk be built in a town in front of farming property to connect a village with a railroad station or wharf, such sidewalk shall be maintained and kept in repair by the town board, and the board is hereby authorized to assess the expense thereof as a part of the highway tax in their town.

(4) In any town situated in any county having a population of three hundred thousand or over, whenever public convenience or safety requires that any sidewalk in such town, whether constructed of wood, cinders, concrete, brick, stone or of any other material whatsoever, be repaired, the same may be rebuilt and the defective sidewalk removed and replaced with cinder sidewalk, in lieu of other material, at the option of such town board of supervisors. In exercising the powers herein conferred the supervisors shall follow the procedure established by subsection (2), as to notice, the making of repairs, the certifying to the town clerk of the cost thereof, and the adding of such cost by such town clerk to the next tax roll, opposite to the description of property returned. Such cost shall be collected as other taxes.

(5) The town board of any town located in a county having a population in excess of three hundred thousand, may, by a two-thirds vote of its members, adopt the provisions of section 61.43, and thereafter the construction of sidewalks in such town shall be governed by the provisions of said section.

(6) Any such town board is authorized to direct the superintendent of the highways to carry out the provisions of section 61.43, and the annual town meeting may authorize such board to carry out the provisions of subsection (5) of said section.

(7) The town board of any town located in a county having a population in excess of 500,000, may keep the sidewalks of such town clear of snow and ice in all cases where the owners or occupants of abutting property fail to do so, and the expense of so doing may be shown for each piece of property and included in a statement to the town clerk who shall extend such charge as a special tax on the next tax roll. The town may also impose a fine or penalty for neglecting to keep sidewalks clear of snow and ice. [1939 c. 476; 1941 c. 40]

60.315 [Renumbered section 60.31 (5), (6) by 1939 c. 476]

60.32 Auditing accounts; meetings for; vacancies in board. The town board shall meet on the second Tuesday next preceding the annual town meeting and also on the first Tuesday of December, and at such other time or times as they shall deem necessary to audit and settle all charges against the town and if the 3 supervisors be not present the chairman, or in his absence, either of the other supervisors attending, shall call one or more justices of the town to act instead of the absent supervisor or supervisors, and if any such vacancy cannot be filled by reason of there being no legally qualified justice or justices of the peace in said town, then said vacancy may be filled by selecting a qualified elector or electors thereof. And said elector or electors if so chosen shall take and file the usual oath of office, so as to make a board of audit composed of 3. No such special meeting shall be held unless notice of the same shall be given to each supervisor at least 2 days prior to the time fixed therefor, and none but supervisors shall act on the board of audit at such special meetings. [1941 c. 15]

60.33 Duties of board of audit. It shall be the duty of such board of audit:

(1) To examine and audit the accounts separately of each town officer authorized by law to receive or disburse money for all moneys received and disbursed.

(2) To examine and audit every account, or demand for which a money judgment only is demandable, presented against the town, and to indorse thereon the amount allowed and disallowed, stating the items; and no allowance shall be made on any account which does not specifically state each item, with the date, amount and nature thereof separately. Such statement shall be verified by the affidavit of the claimant, his agent or attorney and filed with the town clerk; and no such claim against any town shall be acted upon or considered by any town board unless such statement shall have been so made and filed.

(3) To examine into the character and circumstances of every other demand presented against the town which they are not authorized to audit, and in their report give a summary thereof, with such recommendation as they think fit.

(4) To draw up a report stating in detail the items of account audited and allowed, the nature of each and the person to whom allowed; the same in respect to accounts disallowed, and also setting forth a statement of the fiscal affairs of the town, with an estimate of the sum necessary to be raised for the current expenses for the support of the poor or for any other authorized purpose for the ensuing year, and adding such recommendations as they may see fit, and to cause a sufficient number of copies of said report to be typewritten, multigraphed or printed to insure a reasonable distribution thereof in the town, or in lieu thereof, to cause such report to be published in a newspaper which is published within the county and which has a general circulation in the town.

(4a) In towns located in counties having a population of 500,000 or more, the report required under subsection (4) shall not be required to specify in detail the several amounts paid to officers and employes of the town, and in lieu thereof said report shall contain a statement showing the names of the several officers and employes and the total amount paid to each for services during the fiscal year, with a designation of the title of the office or position held by such person. [1935 c. 246, 553 s. 2; 1945 c. 348; 1947 c. 364]

60.34 Report to be read. Such report shall be produced and publicly read by the town clerk at the next ensuing town meeting; and the whole or any portion of such report may be referred, by the order of such meeting, to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

60.35 Numbering and contents of town orders. (1) The amount of any account audited and allowed by the town board shall be paid by the town treasurer on the order of the board signed by the chairman and countersigned by the clerk, and all orders issued to any person or persons by the town board for any sum due from such town shall be receivable in payment of town taxes in said town. But no order shall be signed or issued for the disbursement of any money of such town until the tax for the payment of such order shall have been voted by the electors of such town or until the town board shall have authorized the issue of such order; and no town board shall authorize the issue of any order in a sum exceeding the amount which the town is authorized to appropriate for the purpose for which such order is issued. Any person whose claim has been allowed in part may receive the order drawn for the part so allowed without prejudice to his right of action against such town, as to the part disallowed.

(2) Each order shall be numbered consecutively as drawn, and state the purpose for which said order was issued, the fund against which said order was drawn, the amount appropriated to such fund, and the amount of said appropriation remaining in excess of the total sum drawn against such fund at the time of the issue of said order.

(3) If the electors at the last preceding town meeting shall have voted in favor of having town orders draw interest, the clerk of said town shall, in drawing said orders, plainly state upon the face of said orders the rate of interest fixed by vote of the electors as aforesaid and the said orders shall draw interest at the rate named until the first day of March following the date of issue and shall continue to draw interest thereafter if presented for payment to the town treasurer during the month of March succeeding the date of issue and payment of said order refused by said treasurer.

(4) At the time of paying any town order or receiving the same in payment of taxes, the town treasurer shall indorse upon the back of said order date of paying or receiving the same the amount allowed as interest, which interest may be considered as a portion of the current expenses of said town.

(5) No interest bearing town order hereafter issued shall be sued upon for the purpose of securing judgment against the town upon the same unless such order shall have been presented to the town treasurer for payment during the month of March preceding the beginning of such action and payment of said order refused by said treasurer.

(6) Every supervisor, chairman or clerk violating the provisions of this section shall forfeit not less than twenty-five nor more than one hundred dollars.

Note: For liability of towns, town treasurers and their bondsmen upon orders drawn in favor of school districts for tuition collected by the town treasurer, see note to section 40.47, citing *First Nat. Bank v. York*, 212 W 264, 249 NW 513.

60.36 Filing claims; demand on order. No action upon any claim or cause of action for which a money judgment only is demandable, except upon town orders, bonds, coupons or written promises to pay any sum of money, shall be maintained against any town unless a statement or bill of such claim shall have been filed with the town clerk to be laid before the town board of audit, nor until five days after the adjournment of the next

regular meeting of the board of audit thereafter. No action shall be brought upon any town order until the expiration of thirty days after a demand for the payment of the same shall have been made; and if an action is brought contrary to this provision and the defendant does not appear and proof of such demand be not made, judgment shall not be entered thereon, and if it is entered it shall be absolutely void.

60.37 Landmarks. Whenever a town meeting shall have lawfully ordered the erection of landmarks the town board shall procure a sufficient number of monuments of stone or other durable material, each not less than three feet in length and six inches square, and either all dressed, with perpendicular sides and a square, flat top having engraved therein a cross formed by lines connecting the corners of said top, or having engraved on the top of such as shall be set at section corners the number of each section for which such monument forms a landmark in figures, and those set for quarter posts " $\frac{1}{4}$ S.," as the board shall order; or, when authorized by resolution adopted by the town meeting, of three inch iron pipes not less than one-quarter inch in thickness, and three feet long, either galvanized or coal charred to prevent rust, and having screwed to the top thereof a flat plate likewise engraved, with a suitable plate or anchor at the lower end, and shall also contract with the county surveyor or any competent surveyor for the survey of all the sections of said town and the erection of such monuments, at such corners in said town as the board shall order; each to be set two and one-half feet in the ground, except when in highways, when the top shall be made even with or below the surface. Such surveyor shall, before the signing and delivery of such contract, give a bond to the town in the sum of three thousand dollars, with sufficient sureties to be approved by the board, conditioned that he will make a correct and true survey of all the sections in said town and cause landmarks to be set permanently at the section and quarter-section corners as established by United States survey, and faithfully perform such work and the duties imposed upon him according to law.

60.38 Minutes of survey; location of landmarks. Such surveyor shall make in all cases a certificate setting forth correct and full minutes of the survey, and giving exact bearings and distances of each monument from each other monument nearest it on any line in such town; and such statement shall be recorded in the office of the register of deeds. Such landmarks shall in all cases be set on section corners and quarter posts established by the United States survey; but if there be a clerical error or omission in the government field notes or the bearing trees, mounds or other locating evidences specified therein be destroyed or lost, and there be no other reliable evidence by which said corners can be identified, said surveyor shall re-establish said corners under the rules adopted by the general government in the survey of the public lands. Such surveyor shall, in all cases, set forth such action in his certificate of the survey.

60.39 Location of section corners. Whenever any section corners upon the public highways cannot be identified the town board may, without previous vote of the town meeting, have such corners located by a competent surveyor and cause landmarks similar to those above provided for to be erected at such corners so established.

60.40 Relocation and perpetuation of section corners. All expense and cost incurred under and pursuant to section 59.63 shall be apportioned by the town clerk and collected as therein directed.

60.41 Landmarks evidence. All landmarks set under authority of the provisions of the preceding sections shall be presumptively deemed to be at the section and quarter-section corners, as originally established by the United States survey, at which they respectively purport to be set.

60.42 Expense, how paid. In case any town shall vote in favor of the erection of permanent landmarks the town board shall ascertain the amount of money requisite for such purpose and deliver a statement of such amount to the town clerk, who shall add said amount to the other amounts to be raised for town purposes for the current year, and insert the same in the tax roll, and it shall be collected and paid into the treasury in like manner as other town taxes.

60.43 Town clerk's bond. Every town clerk shall execute and file an official bond.

60.44 Deputy; duties. Each town clerk may appoint a deputy for whom he shall be responsible, who shall take and file the official oath, and in case of the absence, sickness or other disability of the clerk shall perform his duties and receive the same compensation unless the town board shall appoint a person to act as clerk.

60.45 Duties of clerk. It shall be the duty of the clerk:

(1) To act as clerk of all town meetings, perform all the duties of clerk of election and keep faithful minutes of all the proceedings, and record such minutes and enter at

length every order, resolution or direction and all rules and regulations made by the meeting in the book of town records; and if in his absence another person shall have acted in his stead, to record the minutes taken by him of the proceedings.

(2) To transmit to the county clerk within ten days after any town meeting a certified statement of all town officers elected at the same, showing the post-office address of the chairman, treasurer, assessor and town clerk, and promptly to notify him of any subsequent changes in either of said last-named offices, and to notify the persons elected when required by section 60.20.

(3) To forthwith notify the county treasurer of the appointment by the town board of any town treasurer.

(4) To transmit to the clerk of the circuit court, immediately after the election or appointment of any justice of the peace in his town, a written notice, stating the name of each such justice and the term for which he was elected or appointed, and when to fill vacancy, who was the last incumbent of the office, and likewise the name of every constable after he shall have qualified.

(5) To record every request for any special vote or any special meeting, and to properly post the requisite notices thereof as required by law.

(6) To post up, in at least three of the most public places in the town, fair copies of all by-laws made by the town, and enter over his hand in the town records, in connection with such by-laws, the time when and the places where the same were posted.

(7) To act as clerk of the town board, to keep and record faithful minutes of their proceedings, and to enter at length every vote, order, direction, resolution or regulation made by the board or by the supervisors in their official capacity, and to file all accounts audited by the board or allowed at town meeting and enter a statement thereof in the book of records.

(8) To furnish to the town board of audit at the annual meeting every statement received from the county treasurer of money paid to the town treasurer and all other information respecting the fiscal affairs of the town in his possession, and all accounts, claims and demands against the town filed with him.

(9) To have the custody and to safely keep all accounts, oaths of office, bonds, chattel mortgages, if not transferred to the register of deeds' office, records, files, papers and property received from his predecessor or other persons and required by law to be deposited in his office, and all books, records and papers of the town not otherwise provided for by law, and to deliver all the same to his successor; and if the town board has provided a fireproof safe for his use, to keep therein all bonds, records, chattel mortgages, if not transferred to the register of deeds' office, books, papers and documents in his custody as clerk which the capacity of such safe will permit, and securely lock such safe at all times when it is not necessary that it be unlocked, and for each failure to so use and lock the same he shall forfeit to the town not less than ten dollars nor more than one hundred dollars; he shall also permit any person with proper care to examine any such books, records and papers and make and certify a copy of any thereof when required, on payment of his fees therefor.

(11) To demand and obtain the official books and papers of any justice of the peace when his office shall become vacant and his successor be not elected or appointed and qualified, or when any justice of the peace shall die, and dispose of the same as required by law.

(12) To post copies of the report of the town board to the annual town meeting on the morning of the day of such meeting in three public places as convenient as possible for the examination thereof by the electors.

(13) To read to the people assembled at the annual town meeting, at the time fixed for the transaction of town business, the provisions of these statutes relating to the protection of life and property against forest fires, and relating to the destruction of noxious weeds as required by section 94.20.

(14) To report to the county superintendent within ten days after his election or appointment his name and post-office address, and likewise the name and post-office address of each district clerk within ten days after the same are filed in his office.

(15) To record such description of school districts, and such orders concerning the organization, alteration or dissolution thereof as shall be made by the town board.

(16) To make and keep in his office a map of the town, showing the exact boundaries of all the school districts therein as appear from the records on file, and when a new district is formed to make and furnish a map thereof to the district clerk.

(17) To apportion the school money collected by the town and that received from the state for the several school districts of the town on the third Monday of March each year,

or as soon as the same shall be collected or received by the town treasurer, to the several districts and parts of districts within the town as provided in these statutes.

(18) To make and transmit on or before the first day of August in each year, to the county or district superintendent of the county or district in which his town is situated two copies of a report, stating the whole number of school districts separately set off within the town, and the number of parts of joint districts in which the schoolhouses belonging thereto are located in his town.

(19) To issue licenses, when granted by the town board, upon the presentation to him of the town treasurer's receipt for the prescribed fee.

(20) To perform the duties required in Title II respecting elections; in Title VI, respecting public instruction; and Title XI, respecting highways, bridges and drains, and such other duties as may be required by law. [1931 c. 289; 1935 c. 550 c. 404]

Note: Offices of town clerk and treasurer to keep records of town outside of his office of graded school district are compatible. 23 in town. 26 Atty. Gen. 330. Atty. Gen. 605. Offices of town clerk and school district clerk are compatible. 22 Atty. Gen. 43 is officer are compatible. 24 Atty. Gen. 344. overruled. 27 Atty. Gen. 549. Town clerk is not authorized by statute

60.46 Delivery of papers to clerk of new town. When a new town is organized embracing any part of an old town the clerk of the new town shall receive all the papers and files removable and copy all records, papers and files not so removable, in the office of the clerk of such old town, which belong or pertain to such new town or any of the inhabitants thereof or lands therein; and the clerk of such old town shall deliver such papers and files and shall certify such copies; and the same, being deposited in the office of the clerk of the new town, shall have the same effect as if originals and originally filed there.

60.47 Clerk's fees. Every town clerk shall be entitled to receive from any person requiring his services the following fees therefor viz.:

For recording any mark or brand, twelve cents.

For giving a certificate thereof, the same.

For making copies of any records or papers or any part thereof, when required, seven cents for each folio and twelve cents for a certificate that the same is a correct copy of said record or papers or the part thereof required. [1931 c. 289 s. 2]

60.48 Town treasurer's bond. Every town treasurer shall execute and file an official bond which may be furnished by a surety company as provided by section 204.07 in a sum to be fixed at not less than the whole amount of money estimated to come into his hands during his term.

60.49 Duties of treasurer. It shall be the duty of the town treasurer:

(1) To receive and take charge of all moneys belonging to the town or which are required by law to be paid into the treasury, and to pay the money of the town only upon the lawful order of such town or of its officers, duly made pursuant to law.

(2) To preserve all books, papers and property appertaining to or filed in his office.

(3) To keep a true itemized account of all moneys whatsoever received by him upon any account by virtue of his office and of the disbursement thereof, and to exhibit such account and all moneys in his custody or under his control as such treasurer, and to make oath, if so required, that such moneys are the funds of the town, and deliver all his vouchers to the town board of audit at its annual meeting.

(4) To collect and pay over taxes, making return of delinquents, and to perform all the duties appertaining thereto required of him by title ten.

(5) To apply for and receive from the county treasurer all moneys apportioned for the use of common schools in his town and to pay the same, together with all moneys collected in the town for the support of the schools, to the treasurers of the districts entitled to receive them upon the order or apportionment of the town clerk.

(6) To pay to the district treasurer on demand all school district taxes raised in each district and collected by him, and the amount of all school district taxes returned to the county treasurer of his county as delinquent, whenever the same shall have been paid to him by said county treasurer or whenever he shall receive credit from the county treasurer for such delinquent tax or any part thereof on account of any demand or claim due from such town to such county.

(7) To certify to the town clerk on or before the second Monday of March in each year the amount of school money in his hands to be apportioned by said clerk, and immediately upon the receipt of any money from the school fund income to certify the same to the said clerk for apportionment.

(8) To make and forward on the second Monday of June in each year to the clerk of each school district, in whole or in part in his town, a certified statement of the amount of money paid by the town treasurer during the year next preceding to such district treas-

urer, specifying the date and amount of and the account upon which each such payment was made.

(9) If the county treasurer shall neglect or refuse to pay over the school money which by law should be paid to the town treasurer, he shall commence and prosecute an action on the official bond of such county treasurer for the recovery of such money.

(10) To perform all the duties required of him in title six, relating to public instruction.

(11) To make the statements required in section 60.51 and perform all other duties required by law.

(12) To deposit immediately upon receipt thereof the funds of the town in the name of the town in the public depository designated by the board. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the town treasury. [1933 c. 435 s. 3]

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

Town treasurer may not withhold tax money due school district under (6) for purpose of paying operating expenses of town. 21 Atty. Gen. 407.

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

60.50 [Repealed by 1931 c. 232]

60.51 Statements as to receipts. Every town treasurer shall, on the Saturday next preceding the annual session of the county board, make out in duplicate a written statement of the whole amount of moneys received by him as treasurer during the year preceding that day which he has paid or ought by law to pay to the county treasurer, showing particularly the several amounts thereof, the dates and persons or officers respectively, when and from whom received and for what the same was so paid to him; also showing the amounts which he has paid the county treasurer and the dates thereof. He shall also at the expiration of his term of office, or whenever he shall vacate the same, make the like statement of such moneys received and payments made of which he has not previously filed such a statement. He shall verify by affidavit or officially certify all such statements to be true and correct and to contain the full amount of moneys so by him received during the period of time included therein and immediately file the same with the town clerk. One of each such statements shall be annually taken by the chairman or supervisor who shall attend the county board and filed at the time of the annual session thereof with the county clerk.

60.52 Penalty. Every town treasurer who shall refuse or neglect to make and file any such statement as required in the preceding section shall forfeit not less than twenty nor more than two hundred dollars, one-half for the benefit of the prosecutor.

60.53 Constables' bonds. Every constable shall execute and file an official bond.

60.54 Constables' duties. The constable shall be a ministerial officer of justices of the peace, and it shall be his duty:

(1) To serve within his county any writ, process, order or notice, and execute any order, warrant or execution lawfully directed to or required to be executed by him by any court or officer.

(2) To attend upon sessions of the circuit court in his county when required by the sheriff.

(3) To inform the district attorney of all trespasses on public lands of which he shall have knowledge or information.

(4) To perform the duties required in chapter 66, prohibiting the sale of liquors to Indians.

(5) To impound cattle, horses, sheep, swine and other animals at large on the highways in violation of any duly published order or by-law adopted at an annual town meeting.

(6) To cause to be prosecuted all violations of law of which he has knowledge or information.

(7) To perform all other duties required by any law.

60.55 Fees. Constables may receive the following fees:

(1) For serving a warrant or other writ, not otherwise provided for, on each person named therein, twenty-five cents.

(2) For a copy of every summons delivered on request or left at the place of residence of the defendant, twelve and a half cents.

- (3) For serving a subpoena or summons on each person named therein, twelve and a half cents.
- (4) For serving an attachment, fifty cents.
- (5) For each copy of an attachment, twelve and a half cents.
- (6) For each copy of inventory of property seized on attachment, twelve and a half cents.
- (7) For issuing summons on garnishee, twenty-five cents.
- (8) For copy of any affidavit or other paper not otherwise enumerated, per folio, ten cents.
- (9) For posting up each notice, twelve cents.
- (10) For each mile actually traveled, going and returning to serve any process or to give or to post up notices, ten cents; but he shall serve all process and papers in any one action which may then be in his hands for service, which can be served at the same time and upon all persons upon whom service is required, who can be served in the same journey; and he shall be entitled to one mileage for the greatest distance actually traveled to make such service and no more.
- (11) For committing to prison, thirty-seven cents.
- (12) For summoning a jury, fifty cents.
- (13) For writing a list of jurors, twelve cents.
- (14) For attending on a jury, twenty-five cents.
- (15) For attending at the command of a justice of the peace on the trial of a cause before him, fifty cents for each half day, which, in a criminal case, shall include his services as custodian of the defendant.
- (16) On all sums made on execution and paid over, charged upon the defendant, five per cent.
- (17) For notifying a plaintiff of a service of a warrant or summons or attachment returnable in three days, twelve cents.
- (18) For serving every writ in an action for the recovery of personal property, fifty cents.
- (19) For summoning and swearing appraisers and taking appraisalment, fifty cents.
- (20) For taking and approving sureties in any case, twenty-five cents.
- (21) For impounding live stock such fees as the order or by-law providing therefor shall prescribe.

(22) He shall also receive all his necessary disbursements actually made for board and conveyance of prisoners, to be settled by the county board; and when any person accused of any criminal offense shall escape his custody or pursuit, without fault or negligence of the constable, and the district attorney shall certify that such pursuit was necessary and proper, the county board may, in their discretion, on being satisfied by proof that such escape was not the result of the carelessness or negligence of the constable, allow a fair compensation for the time and necessary expense incurred in such pursuit. He shall keep his office in the town, village or city in and for which he was elected or appointed; and any constable who shall keep or open an office without the limits of such town, village or city shall receive no fees for any service by him performed during the period for which he holds his office contrary to the provisions hereof.

Note: Constable is not entitled to mileage under (10) for arresting person without warrant and conveying him to county jail for safe-keeping pending issuance of warrant, but is entitled to mileage for round trip subsequently made to jail to serve warrant. He is entitled under (22) to his necessary and actual disbursements, if any, in transporting prisoner to county jail without warrant, provided warrant is later issued; if he uses his own automobile for such purpose he may be reimbursed only for cost of gasoline and oil allocable to such trip. Person so arrested is "prisoner" in meaning of (22). Constable is not entitled to any reimbursement for traveling to remove auto from highway after arresting driver thereof, since 60.55 makes no provision therefor and constable takes his office cum onere. 30 Atty. Gen. 488.

60.555 Constable abolished, cities of first class. The office of constable is abolished in cities of the first class. The duties of the constable in such cities shall be performed by the sheriff of the county in which the city is located. Any constable in a city of the first class now holding office shall remain in office until his term expires. [1947 c. 391]

60.56 Acting constable; no fees, when. When the services in the last section mentioned are performed by any other person except a party to the action, the same fees shall be allowed as constables are entitled to receive and no more. No constable shall serve or execute any summons, writ or process in any action or proceeding wherein he is agent or attorney for the plaintiff or interested in the collection of the claim sought to be recovered, nor recover any costs, fees or expenses nor shall any costs or fees be taxed for any services rendered in violation of the provisions of this section.

60.57 Justices; number; terms. There shall be one justice of the peace in each town elected at the annual town meeting in every odd-numbered year. Any town board

may by ordinance provide for additional justices to be elected in odd-numbered years and the board may change the number of or abolish such additional offices. No reduction in the number of justices shall deprive any justice of his office. Their term of office shall be 2 years from the first Monday of May next following such town meeting; provided, that in all counties which contain a population of 500,000 or more no justices of the peace shall be elected in the odd-numbered years, except to fill vacancies, and that in the even-numbered years 2 justices of the peace shall be elected for the term of 2 years. [1945 c. 86]

60.58 Justice's official oath and bond. (1) **TIME OF FILING.** Every justice of the peace, elected for a full term, shall on or before the first Monday of May, next succeeding his election, and every justice elected or appointed to fill a vacancy, shall within ten days thereafter, or after notice thereof, if required to be given, take and file the official oath prescribed in subsection (1) of section 256.02, and shall also, within the same time, execute and file an official bond with two or more sufficient sureties, to be approved by the chairman or any two of the supervisors.

(2) **COPY OF BOND, WHERE FILED.** The clerk of the circuit court shall within ten days after the filing with him of said oath and bond, execute and mail to the clerk of the town, city or village, wherein such justice of the peace was elected, a certified copy of said bond, which certified copy shall be filed by said town, city or village clerk, and preserved in his office, and the same shall be presumptive evidence of its execution by such justice and his sureties.

60.59 When justice may qualify after prescribed time. In all cases when any person shall be duly elected justice of the peace, but shall fail to qualify within the time prescribed by law on account of necessary absence from the county or of being sick, he may qualify as such justice at any time within six months from the time of his election, if the vacancy occasioned by his failure to qualify shall not have been filled as by law provided, by taking and filing with his oath of office and bond a further oath that he did not qualify within the time prescribed by law for the reason only that he was sick or absent from the county; and he may thereupon enter upon and exercise the duties and functions of such office during the residue of the term for which he was so elected.

60.60 Compensation of town officers. The compensation of town supervisors and town treasurer shall be \$4 per day unless a different sum per day is fixed by the annual town meeting. In lieu of per diem compensation the annual town meeting may fix a salary for the town supervisors and the town treasurer. Supervisors of towns situated in counties having a population of not less than 300,000, shall be paid such salary as shall be fixed by the electors at the annual town meeting, not to exceed \$2,400 per annum, which shall be in lieu of compensation per diem. The clerks of the polls and town clerks shall be entitled to a compensation of \$3 per day, and at the same rate for parts of a day actually and necessarily devoted by them to the service of the town and in the discharge of any of the duties of their respective offices required of them by law, unless a different compensation shall have been fixed by the annual town meeting. No town officer shall be entitled to pay for acting in more than one official capacity or office at the same time. [1939 c. 126; 1947 c. 364]

Note: Salary of town officers fixed by resolution at annual town meeting takes effect at once and is applicable to town officers elected on same day. 22 Atty. Gen. 353. Members of town board are not entitled to compensation for services in connection with promoting C. W. A. projects nor to traveling expenses. Town board members illegally acquiring compensation or reimbursement may be prosecuted under 348.28 or sued in civil action to declare them trustees of money so received. 23 Atty. Gen. 770. Chairman and other town supervisors may not collect wages for work upon town highways. 24 Atty. Gen. 203.

60.61 Compensation, town assessors. In all towns in counties having a population of two hundred and fifty thousand inhabitants or upwards, and in all towns having an assessed valuation of four million dollars or more, town assessors shall be paid such compensation for their services as may be allowed them by the annual town meeting. In all other towns such compensation if not fixed by the annual town meeting shall be not less than three nor more than five dollars per day. [1935 c. 118]

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

60.62 Erection and control of buildings. Whenever any town shall have legally voted in favor of raising money for the purpose of purchasing or building a town hall or other buildings for the use of such town, the town board shall have power to make all necessary contracts for the purchase or building of the same, and shall have the care, control and management of the same when purchased or built; and whenever any town shall have legally voted in favor of uniting the money of the town with the money of any other

corporation or society for such purpose, the town board shall enter into a written contract with such corporation or society to pay all extra expense by reason of such building being built larger or more expensive for the benefit of such corporation or society, and provide that in any case said corporation or society shall pay one half the cost of such building; and such town board shall not in either case incur any liability on the part of the town for such building in excess of the sum voted for that purpose. The supervisors and town clerk of such town and three directors or trustees of such corporation or society shall be a board of directors, who shall have the control and management of such building, make all contracts for the purchase or erection thereof, and all rules and regulations as to the occupancy, keeping in repair and insurance of the same. The town board shall, if the vote was to raise the money by tax, cause the sum so voted to be levied and collected as other town taxes; and if the vote was to raise the money by issuing the bonds of the town, then said town board shall have power to issue and negotiate such bonds in the manner set forth in the resolution adopted for that purpose.

60.63 Waterworks; special assessments for deficiency. (1) When the electors of any township shall, as provided by law, have ordered or authorized the building and construction of a waterworks system, and the town board shall, pursuant to such authorization, have ordered the laying of any water main or lateral, forming part of such system owned by the town, the town board shall, before laying the same, in any case where the funds available for the construction of the same authorized by general taxation or bond issue shall be officially determined by such town board to be insufficient to complete such construction, make an assessment upon the property benefited as provided in this section.

(2) The board shall assess against the several lots, parts of lots or parcels of land which abut upon the proposed line of any water main, or which may be contiguous to and used in connection with any such lot or parcel of land, such sum as the board shall determine such lot or parcel of land will be specially benefited thereby, not exceeding one-half of the cost of furnishing and laying a water main of not more than six inches in diameter.

(3) No lot or parcel of land shall be assessed for more than one water main laid in the same street or alley.

(4) Before a water service lateral is laid the town board shall assess as special benefits against the lots, parts of lots or parcels of land to be served by any such lateral a sum equal to the average cost of laying such lateral.

(5) Whenever any lot or parcel of land shall be subdivided by sale or contract or by use or occupation in severalty, after the assessment of special benefits as herein provided, said town board may, after ascertaining such facts, at any time before the special assessment shall have been entered in the tax roll, make an equitable apportionment of the benefit taxed against such lot or parcel of land among the different subdivisions thereof.

(6) The town board shall file in the office of the town clerk a schedule of the assessments so made, and thereupon such proceedings shall be had before the town board as are required with respect to assessments on account of street improvements under section 62.16 of the statutes and the provisions of said section, so far as applicable shall apply to the assessments made pursuant to this section, including the provisions made relating to the remedy by appeal from the final determination of the board.

60.64 Waterworks; construction cost, payment. (1) When any contract is let for street improvements, for the construction of any sanitary sewer or sewage works, or surface or storm water sewers, or the laying of any water or heat main or lateral, or the laying or repair of any sidewalk, and such work or a portion thereof is chargeable to the real estate to be benefited thereby, it may provide that the amount so chargeable may be paid with certificates against the parcels of real estate so benefited, or special improvement bonds or the proceeds of the sale of such bonds, or that payment may be in part made in certificates or in part in special improvement bonds or the proceeds of the certificates or special improvement bonds.

(2) All the provisions of section 62.20 and section 62.21 of the statutes, relative to payment for public work and special improvement bonds issued therefor in cities shall apply to towns, so far as applicable thereto, and the town board shall have all powers therein conferred, and to perform all duties assigned to boards of public works in cities, and the town clerk and town treasurer shall perform all duties therein assigned to the city clerk and city treasurer respectively.

Note: 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 town sanitary district nor within unincorporated village. 32 Atty. Gen. 380.

60.65 [Renumbered section 66.09 by 1921 c. 396 s. 82]

60.66 [Repealed by 1933 c. 436 s. 17]

60.67 [Repealed by 1933 c. 436 s. 16]

60.68 Obstructions in nonnavigable waters. Whenever any nonnavigable creek or other nonnavigable stream becomes obstructed so that the natural flow of water along the same is prevented, the supervisors of the town in which such obstruction is located may at the expense of the town remove such obstruction, and in so doing may enter upon any land or lands necessary to be entered upon for the carrying out of such purpose.

60.70 Rubbish in roads. Any person who throws or deposits any weeds, sod, brush, cans, machinery or other waste or rubbish in any highway located in any town, without the written permission of the town board, shall, upon conviction, be punished by a fine of not to exceed fifty dollars or by imprisonment in the county jail not to exceed thirty days.

60.71 Reassessments in towns in Milwaukee county. The provisions of sections 75.56 to 75.61 of the statutes, relating to reassessments of special assessments, shall apply also to towns in counties having a population of five hundred thousand or more. [1931 c. 168]

60.72 [Repealed by 1935 c. 213 s. 5]

60.72 Garbage dumping regulated. (1) No person or municipality shall transport any garbage, rubbish or other refuse into or within any town for the purpose of dumping or otherwise disposing of the same until such person or municipality shall have first secured a permit so to do from the town board. This section shall not apply where the city or village owns its own dumping or disposal ground and confines its dumping or disposal to such grounds; provided, that ownership of such grounds was acquired by the city or village prior to June 1, 1943 and provided, that such disposal shall be conducted in a sanitary manner satisfactory to the state board of health.

(2) Any person or municipality who shall violate any provision of this section shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment. [1941 c. 202; 1943 c. 558]

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

[60.73 Stats. 1945 repealed by 1947 c. 206]

60.74 Zoning power. (1) (a) Any town in any county not having adopted a county zoning ordinance as provided by section 59.97 may by ordinance regulate, restrict and determine the areas within which agriculture, forestry and recreation may be conducted, the location of roads, schools, trades and industries, the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, size of yards, courts and other open spaces, the density and distribution of population, and the location of buildings designed for specified uses, and establish districts of such number, shape and area as may be necessary for such purposes, and may also establish set-back building lines, and may further regulate, restrict and determine the areas in and along or in or along natural watercourses, channels, streams and creeks in which trades and industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted, and may adopt an official map or maps which will show thereon such areas, outside the limits of incorporated villages and cities, as the town board of such town may deem best suited to carry out the purposes of this section. For each such district, regulations may be imposed designating the location, height, bulk, number of stories and size of buildings and other structures, percentage of lot which may be occupied, the size of yards, courts and other open spaces, and density and distribution of population, and the trades, industries or purposes that shall be included or subjected to special regulations and designating the uses for which buildings may not be erected or altered; except that a town board may not proceed as provided in this section without having first petitioned the county board, at any regular or special meeting to adopt a county zoning ordinance as provided by section 59.97 and the county board having failed or refused at that meeting to direct its county park commission or rural planning board to proceed as provided by section 59.97 (2); or, in the event such directions to proceed have been given, and the report of the county park commission or rural planning board and the tentative ordinance pursuant thereto shall not have been presented to the county board within one year, or if so presented shall not have been approved by the county board at its next meeting thereafter, or if so approved by the county board and subsequently approved by a town board as to the lands affected by the ordinance within the town, the county board shall fail to adopt the ordinance. The provisions of this subsection shall be applicable in every respect to regulating and restricting trailer camps or tourist camps or both.

(b) Any such town board may by ordinance regulate, restrict and determine the location, height, bulk, number of stories and size of buildings and other structures and

objects of natural growth, in any territory in the town in the vicinity of any airport owned by such town or privately owned, and may divide such territory into several areas and impose different restrictions with respect to each area which restrictions may be applicable to the entire town or only a portion thereof. In the exercise of its power under this paragraph, the town board may, by eminent domain, remove or alter any buildings, structures or objects of natural growth which are contrary to the restrictions imposed in the area in which they are located, except railroad buildings, bridges or facilities, provided that railroad telegraph, telephone and overhead signal system poles and wires shall not be exempt from the operation of this section.

(2) If such town has a town park commission organized as provided by law, such commission shall recommend boundaries of such districts and appropriate regulations and restrictions to be imposed therein. If the town has no town park commission, the town board may appoint a town zoning committee of 5 members to perform the duties of the town park commission under this section. The town park commission or zoning committee shall first formulate a tentative report and shall hold public hearings thereon before submitting a final report to the town board. After such final report is submitted, and the ordinance pursuant thereto adopted, the town board may from time to time alter, supplement or change the boundaries or regulations contained in such ordinance in the manner herein set forth, but not less than 15 days' notice of any such proposed changes shall first be published in the official newspapers for publication in the town, or if there be none, then in the county, and notices be posted in at least 3 public places in the town. A hearing shall be granted to any person interested, at a time and place to be specified in the notice. Each notice shall be published at least 3 times during the 15 days prior to the date of hearing.

(3) In case a protest against a proposed amendment, supplement or change be presented, duly signed and acknowledged by the owners of 20 per cent or more of the frontage proposed to be altered, or by the owners of at least 20 per cent of the frontage immediately in the rear thereof, or by the owners of at least 20 per cent of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed unless recommended by a majority vote of the town park commission or town zoning committee.

(4) The town board shall prescribe such rules and regulations as it may deem necessary for the enforcement of the provisions of all ordinances enacted in pursuance of this section. Such rules and regulations and the districts, set-back building lines and regulations specified in subsection (1) shall be prescribed by ordinances which shall be designed to promote the public health, safety and general welfare. Such ordinances shall be enforced by appropriate fines and penalties. Compliance with such ordinances may be also enforced by injunctive order at the suit of such town or the owner or owners of real estate within the district affected by such regulation. Such ordinances shall not prohibit the continuance of the use of any building or premises for any trade or industry for which such building or premises are used at the time such ordinances take effect, but the alteration of, or addition to, any existing building or structure for the purpose of carrying on any prohibited trade or new industry within the district where such buildings or structures are located may be prohibited.

(5) The powers herein granted shall be liberally construed in favor of the town exercising them, and this section shall not be construed to limit or repeal any powers now possessed by any such town.

(6) (a) Immediately after the publication of a town zoning ordinance, it shall be the duty of the board of supervisors of such town to cause to be made a record of the present use of all buildings and premises used for purposes not in conformity with the regulations of the district in which such buildings and premises are situated, such record to contain the names and addresses of the owner or owners of such nonconforming use, and of any occupant other than the owner, the legal description or descriptions of land and the nature and extent of land use. Such record shall be published for 3 successive weeks in a newspaper having general circulation in the town. Within 60 days after such final publication, upon presentation of proof to the town board, errors or omissions may be corrected in such record. On expiration of such 60-day period such record shall be filed in the office of the town clerk and a certified copy thereof in the office of the register of deeds. Such record shall constitute prima facie evidence of the extent and number of nonconforming uses existing at the time the ordinance became effective. Errors or omissions in such record shall be corrected by the town board upon the petition by any citizen or by the board on its own motion. Its decision in such matters shall be final.

(b) The town clerk shall furnish to the town assessor, immediately after the filing of the record of nonconforming uses, a record of the nonconforming uses lying within the

town. After the assessment of the following year and after each succeeding assessment thereafter the town assessor shall file a written report certified by the board of review with the town clerk listing all nonconforming uses which have been discontinued between the assessment periods. If a nonconforming use has been discontinued any future use of such building, land or premises shall be in conformity with the provisions of the ordinance regulating land uses in the district. The town clerk shall record discontinued nonconforming uses as soon as reported by the assessors.

(c) The provisions of this subsection shall not apply to those towns issuing building permits as a means of enforcing the zoning ordinance or of checking nonconforming uses or to towns which have instituted other devices for this purpose.

(7) Town boards, except in counties having a population of 500,000 or more, granted village powers by resolution adopted pursuant to section 60.18 (12) shall have power to adopt town zoning ordinances in the manner provided in section 61.35 notwithstanding any provision of this section or section 60.75. [1947 c. 224]

60.75 Adjustment board; appointment; powers and duties. (1) The town board may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of section 60.74 may provide that such board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(2) The board of adjustment shall consist of 3 members, who shall be appointed by the town board, but not more than one supervisor shall be a member of the board of adjustment, for terms of 1, 2 and 3 years, respectively, dating from the first day of the month next following the appointment. Successors shall be appointed or elected in like manner at the expiration of each term and their terms of office shall be 3 years in all cases and until their successors are appointed or elected. The members of the board shall all reside within the town. The board shall choose its own chairman. The town board may compensate the members of such board. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) The town board shall adopt rules for the conduct of the business of the board of adjustment, in accordance with the provisions of any ordinance or ordinances adopted pursuant to section 60.74. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the town board. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(4) Boards of adjustment under town zoning ordinances shall have the powers and duties provided for boards of adjustment by section 59.99 and shall carry out their duties in the manner provided for boards of adjustments by section 59.99. [1947 c. 224]