

each claim. When an official is charged by law with the duty of drawing and issuing checks, he may delegate to assistants ministerial work connected therewith if done under his direction. 26 Atty. Gen. 130.

A city treasurer who fails to keep separate accounts of school funds as required by 40.57, Stats. 1939, may be punished for malfeasance but state aid may not be withheld because of violation of 40.57. 27 Atty. Gen. 82.

120.55 History: 1967 c. 92; Stats. 1967 s. 120.55.

Legislative Council Note, 1967: Based on s. 40.811 (2). [Bill 353-S]

120.56 History: 1967 c. 92; Stats. 1967 s. 120.56; 1969 c. 105.

Legislative Council Note, 1967: Based on s. 40.813 (1). [Bill 353-S]

120.57 History: 1967 c. 92; Stats. 1967 s. 120.57.

Legislative Council Note, 1967: Sub. (1) based on s. 40.821. Many of the changes were made so that sub. (1) would contain general language to which new sub. (3) could apply. Sub. (2) like s. 40.823.

Sub. (3) is new and states that subs. (1) and (2) can be used in a joint city school district. [Bill 353-S]

120.58 History: 1967 c. 92; Stats. 1967 s. 120.58.

Legislative Council Note, 1967: Revises s. 40.807 (4a) (b) and (c). [Bill 353-S]

The term "school property" in 40.807 (4a) (b), Stats. 1961, includes all school assets, tangible and intangible, and tuition payable to a city previously operating under the city school plan becomes payable to the unified school district. *Racine v. Unified School Dist.* 24 W (2d) 521, 129 NW (2d) 246.

120.70 History: 1967 c. 92; Stats. 1967 s. 120.70.

Legislative Council Note, 1967: This section is new and specifies the type of school district to which this subchapter applies. [Bill 353-S]

120.71 History: 1967 c. 92, 313; Stats. 1967 s. 120.71.

Legislative Council Note, 1967: Sub. (1) cross refers to the section containing the provisions of present s. 40.095 (1) and (2) relating to the creation and reorganization of a unified school district and completes the list of appropriate sections providing for the establishment of unified school districts. It also restates s. 40.807 (4a) (a).

Sub. (2) like s. 40.095 (4). [Bill 353-S]

120.72 History: 1967 c. 92; Stats. 1967 s. 120.72.

Legislative Council Note, 1967: First sentence restates s. 40.095 (3) (a) (last part of 1st sentence and 2nd sentence).

The 2nd sentence clarifies that a unified school district may change the number of school board members under s. 120.02 (1) [present s. 40.26 (2)].

The 3rd sentence specifies the applicability of s. 120.02 (2) [present s. 40.26 (8)], which

presently applies by its general language to unified school districts. [Bill 353-S]

120.73 History: 1967 c. 92; Stats. 1967 s. 120.73.

Legislative Council Note, 1967: Sub. (1) (a) (1st sentence) revises s. 40.095 (3) (c) and is based in part on s. 40.095 (3) (a) (1st sentence). Sub. (1) (a) (last sentence) combines and revises s. 40.095 (3) (d) (4th and 5th sentences).

Sub. (1) (b) (1st sentence) revises s. 40.095 (3) (d) (1st sentence). Sub. (1) (b) (2nd sentence) based on ss. 40.095 (3) (a) (3rd sentence), 40.095 (3) (d) (last sentence) and 40.27 (6) (b). Sub. (1) (b) (3rd sentence) is new and clarifies the method of election to fill unexpired terms.

Sub. (1) (c) based on s. 40.095 (3) (e).

Sub. (2) based on s. 40.095 (3) (d) (2nd, 3rd, 6th and 7th sentences). The deadline for filing declarations of candidacy is specified and the type and frequency of notice to be given is set forth. [Bill 353-S]

120.74 History: 1967 c. 92; Stats. 1967 s. 120.74.

Legislative Council Note, 1967: Sub. (1) based on s. 40.095 (3) (a) (last sentence).

Sub. (2) revises s. 40.095 (3) (f) (1st sentence).

Sub. (3) revises s. 40.095 (3) (b).

Sub. (4) restates s. 40.095 (3) (f) (last sentence). [Bill 353-S]

120.75 History: 1967 c. 92, 313; Stats. 1967 s. 120.75; 1969 c. 301.

Legislative Council Note, 1967: First sentence identical to s. 40.095 (3) (a) (1st part of 1st sentence).

Second and third sentences based on s. 40.095 (5) (1st and 2nd sentences).

Fourth sentence states specifically a duty of the school district clerk.

Fifth sentence based on s. 40.819 (1).

Sixth sentence like s. 40.095 (5) (last sentence). [Bill 353-S]

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Breen v. Kahl*, 296 F Supp. 702.

A unified school district is authorized to enter into a deferred use plan transaction with the U.S. Dept. of Health, Educ. and Welfare for acquisition of a site for future school buildings. 51 Atty. Gen. 48.

High school authorities' power to expel students for wearing long hair. 1969 WLR 303.

120.76 History: 1969 c. 490; Stats. 1969 s. 120.76.

CHAPTER 121.

School Finance.

121.01 History: 1967 c. 92; Stats. 1967 s. 121.01.

Legislative Council Note, 1967: Combines and restates ss. 40.66 and 40.69. [Bill 353-S]

121.02 History: 1967 c. 92; Stats. 1967 s. 121.02; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Based on s. 40.67. Sub. (1) (d) also includes the substance of s. 40.71 (7) (b) (last sentence). A

requirement for compliance with present s. 40.23 (2) is deleted (see 2nd NOTE following s. 120.23). Sub. (2) (intro.) also includes s. 40.71 (2) (a) (4th sentence). Sub. (2) (e) includes the last phrase of s. 40.70 (7) (a).

Sub. (2) (d) 4 is based on the latter part of present s. 40.67 (2) (g) 2. Present departmental interpretation is that this provision requires instruction in only one of the 3 fields. Present s. 40.46 (3) [118.01 (3)] requires that "physical instruction and training shall be provided for all pupils in conformity with the course of instruction in physical education prescribed by the state superintendent." In view of this general directive, all school districts fulfill the requirement that they teach one of the 3 subjects. Thus, the teaching of music and art was in no way encouraged under this subdivision, which appears to be contrary to the legislative intent. Therefore, the reference to physical education is deleted and the subdivision is rewritten to clearly require the teaching of either music or art for receipt of integrated aid. [Bill 353-S]

Aid paid to an integrated district which was determined to have been invalidly created cannot be expended by the integrated district nor by any of the separate school districts purportedly integrated. *Joint School Dist. v. Security State Bank*, 4 W (2d) 405, 90 NW (2d) 389.

121.03 History: 1967 c. 92; Stats. 1967 s. 121.03.

Legislative Council Note, 1967: Based on s. 40.71 (6) (a) (1st sentence). [Bill 353-S]

121.04 History: 1967 c. 92; Stats. 1967 s. 121.04.

Legislative Council Note, 1967: Based on s. 40.71 (2). [Bill 353-S]

121.05 History: 1967 c. 92; Stats. 1967 s. 121.05; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Makes statutory the requirement for the filing of a fall report which is, in fact, required now by the department and which is used as the basis for state aid computations. The information to be contained in the report is specified in present s. 40.70 (4). [Bill 353-S]

121.06 History: 1967 c. 92; Stats. 1967 s. 121.06; 1969 c. 276 s. 590 (1).

Legislative Council Note, 1967: Sub. (1) restates s. 40.68.

Sub. (2) based on a requirement contained in present ss. 39.02 (27) and 40.35 (8). [Bill 353-S]

On limitation on indebtedness see notes to sec. 1, art. XI.

121.07 History: 1967 c. 92; 1967 c. 209 ss. 9, 10 and 19; 1967 c. 313; Stats. 1967 s. 121.07; 1969 c. 154; 1969 c. 276 s. 589 (1) (a); 1969 c. 501.

Legislative Council Note, 1967: This section sets forth the essential elements basic to the state aid formula. Although rearranged and restated, the provisions in this section are based on present law and departmental interpretations. The purpose of this section is to combine in one section these essential elements, so that the description of each need not

be repeated in each of the sections relating to the aid formula.

Sub. (1) based on s. 40.70 (1). Since state aid is presently computed using the number of pupils enrolled and teachers employed as of the 3rd Friday in September, an obsolete provision for a cumulative computation of average daily membership is deleted. Par. (c) expresses a limitation presently contained in each state aid provision. An unnecessary prohibition against counting 4-year olds in computing pupils enrolled is deleted.

Sub. (2) revises s. 40.70 (2) and the meaning of "teacher" is spelled out.

Sub. (3) revises s. 40.70 (3) and deletes a redundant reference to state superintendent approval of the teacher-pupil ratio.

Sub. (4) defines a term which is used repeatedly in the state aid formula.

Sub. (5) based on s. 40.70 (4). It preserves and clarifies the 1965 act (ch. 261, laws of 1965) which placed the determination of state aids on a current basis.

Sub. (6) describes the cost figure which the department presently uses in computing state aid. The last sentence restates s. 40.71 (11) as it relates to state aid.

Sub. (7) brings together in one subsection the valuations guaranteed by the state in each of the different classes and types of school districts.

Sub. (8) defines an element used in the state aid formula. The department compares the required operating levy rate, computed on net operating cost and guaranteed valuation, with the actual levy rate, computed on actual tax levy and equalized valuation, and uses the lower as the mill levy rate in computing state aid for each school district. This subsection states specifically this procedure. [Bill 353-S]

121.08 History: 1967 c. 92; Stats. 1967 s. 121.08.

Legislative Council Note, 1967: Based on s. 40.70 (5) (a) which is considerably shortened and simplified because standard terminology was developed in s. 121.07 for use throughout this subchapter. That portion of s. 40.70 (5) (a) 2 relating to 2- and 3-teacher unit school districts is deleted because the present guaranteed valuation makes these provisions obsolete. [Bill 353-S]

State common school equalization aid as provided in 40.87, Stats. 1947, cannot be paid to a school district where in the previous year a tax of 2 mills on its full valuation had been voted and certified to the town clerk but without fault of the school district the tax was not levied or collected, even though the school district would otherwise be entitled to such aid. 38 Atty. Gen. 280.

121.09 History: 1967 c. 92; Stats. 1967 s. 121.09.

Legislative Council Note, 1967: Based on ss. 40.70 (5) (c) and 40.71 (6) (c) which are considerably shortened and simplified because standard terminology was developed in s. 121.07 for use throughout this subchapter. [Bill 353-S]

121.10 History: 1967 c. 92, 313; Stats. 1967 s. 121.10; 1969 c. 154.

Legislative Council Note, 1967: Based on s. 40.70 (5) (b) and departmental interpretation. [Bill 353-S]

121.11 History: 1967 c. 92; 1967 c. 209 ss. 9 and 19; Stats. 1967 s. 121.11; 1969 c. 154.

Legislative Council Note, 1967: Based on s. 40.70 (7) which is considerably shortened and simplified because standard terminology was developed in s. 121.07 for use throughout this subchapter. The specific requirements which must be met by an elementary, integrated aid district were moved to s. 121.02 (2). [Bill 353-S]

121.12 History: 1967 c. 92; 1967 c. 209 ss. 10 and 19; Stats. 1967 s. 121.12; 1969 c. 154.

Legislative Council Note, 1967: Based on s. 40.71 (6) (b) which is considerably shortened and simplified because standard terminology was developed in s. 121.07 for use throughout this subchapter. The specific requirements which must be met by a union high, integrated aid district were moved to s. 121.02 (2), where it is made clear that the in-service training requirement applies to these districts. [Bill 353-S]

121.13 History: 1967 c. 92; 1967 c. 209 ss. 9, 10 and 19; 1967 c. 313; Stats. 1967 s. 121.13; 1969 c. 154.

Legislative Council Note, 1967: Based on s. 40.70 (6) which is considerably shortened and simplified because standard terminology was developed in s. 121.07 for use throughout this subchapter. [Bill 353-S]

121.14 History: 1967 c. 92; Stats. 1967 s. 121.14; 1969 c. 154 s. 377; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Based on s. 40.99 (5). The present departmental requirement that a separate annual report of summer classes be filed is specifically stated. Since all school districts now receive state aid based on current year statistics, the method of computing state aid for summer classes is considerably shortened and simplified to reflect present departmental practice. [Bill 353-S]

121.15 History: 1967 c. 92; 1967 c. 291 s. 14; Stats. 1967 s. 121.15; 1969 c. 55; 1969 c. 154 s. 377; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Revises s. 40.71 (12). [Bill 353-S]

121.16 History: 1967 c. 92; Stats. 1967 s. 121.16; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Revises s. 40.73. [Bill 353-S]

121.17 History: 1967 c. 92; Stats. 1967 s. 121.17.

Legislative Council Note, 1967: Sub. (1) (a) restates s. 40.71 (6) (a) (last sentence). Sub. (1) (b) based on part of first sentences in s. 40.71 (7) (a) and (b).

Sub. (2) based on s. 40.71 (7) (a). Sub. (3) revises s. 40.71 (7) (b).

Obsolete reference to "common schools" deleted, since the requirements apply to all school districts. [Bill 353-S]

40.71 (7), as amended in 1959, does not pro-

hibit paying of state aids for 1959-1960 to a school district paying salaries meeting previous standards and which were prescribed by contracts made prior to the amendment. 49 Atty. Gen. 53.

121.18 History: 1967 c. 92; Stats. 1967 s. 121.18; 1969 c. 154.

Legislative Council Note, 1967: Based on s. 40.71 (4) and states specifically departmental procedures followed in approving school district budgets. [Bill 353-S]

121.19 History: 1967 c. 92; Stats. 1967 s. 121.19.

Legislative Council Note, 1967: Restates s. 40.71 (2a). [Bill 353-S]

121.20 History: 1967 c. 92; 1967 c. 291 s. 14; Stats. 1967 s. 121.20; 1969 c. 154 s. 377.

Legislative Council Note, 1967: Revises s. 40.71 (8). [Bill 353-S]

121.21 History: 1967 c. 92; 1967 c. 291 s. 14; Stats. 1967 s. 121.21.

Legislative Council Note, 1967: Revises s. 40.71 (3). [Bill 353-S]

121.51 History: 1967 c. 92, 313; Stats. 1967 s. 121.51; 1969 c. 154, 501.

Legislative Council Note, 1967: Sub. (1) restates s. 40.52. Sub. (2) is new. Present law makes occasional reference to "other governmental agency" in the material covered by this subchapter. This definition is designed to make unnecessary the repeated use of such a phrase and to clarify that when county handicapped children's education boards and co-operative educational service agencies provide transportation they are covered by this subchapter. [Bill 353-S]

121.52 History: 1967 c. 92, 313; Stats. 1967 s. 121.52; 1969 c. 276 s. 589 (1) (a); 1969 c. 500 s. 30 (3) (d).

Legislative Council Note, 1967: Restates and rearranges s. 40.53 (7). Sub. (1) (a) restates s. 40.53 (7) (a). Sub. (1) (b) restates s. 40.53 (7) (c). Sub. (2) based on s. 40.53 (7) (b) (1st and 2nd sentences), and makes it clear that both drivers of publicly owned and operators of privately owned vehicles used for transportation of public school pupils shall be under contract with the school board. Sub. (3) (a) based on s. 40.53 (7) (b) (3rd, 4th and 5th sentences) and specifies that the driver of a privately owned school bus must submit the physical examination report to the school board. It further specifies that the bus driver cannot have tuberculosis. Sub. (3) (b) restates s. 40.53 (7) (b) (9th sentence). Sub. (3) (c) restates s. 40.53 (7) (b) (6th, 7th and 8th sentences). The driver of a school district-owned school bus is covered under new s. 118.25. Sub. (4) restates s. 40.53 (7) (d). [Bill 353-S]

121.53 History: 1967 c. 92; Stats. 1967 s. 121.53; 1969 c. 62, 312; 1969 c. 500 s. 30 (3) (g).

Legislative Council Note, 1967: Sub. (1) based on s. 40.57 (1) and (2). Sub. (2) based on s. 40.57 (3), and adds a requirement that the policy also cover the transportation of au-

thorized chaperones and all school district officers and employees. Sub. (2) (b) makes it clear that only the Wisconsin school for the deaf can procure insurance for travel beyond the stated limit. This is consistent with the grant of authority in s. 121.54 (7) (a) 3. Sub. (3) restates s. 40.57 (4). Sub. (4) based on s. 40.57 (5) and clarifies that a school board procuring an insurance policy must file a certificate of insurance with the motor vehicle department. Sub. (5) (a) restates s. 40.57 (7). Sub. (5) (b) restates s. 40.57 (9). Sub. (6) based on s. 40.53 (9). Present s. 40.57 (6) deleted because *Holytz v. City of Milwaukee* 17 Wis. (2d) 26 (1962), rendered this provision meaningless. [Bill 353-S]

40.345, Stats. 1939, has no application to local vocational agriculture teachers who are required to do supervised practice work out in farm communities and who are paid a flat allowance for use of their cars and who occasionally transport pupils enrolled in their classes to visit the farm projects. 28 Atty. Gen. 376.

40.345, Stats. 1949, specifies insurance requirements, but neither grants authority nor imposes a duty to transport. The provision that the district must pay for liability insurance is not rendered unconstitutional by the provision that such insurance must cover a school bus transporting public school pupils even though pupils of a parochial or other public school are riding on the bus at the same time. 38 Atty. Gen. 582.

121.54 History: 1967 c. 92, 313; Stats. 1967 s. 121.54; 1969 c. 62, 154, 213, 316.

Legislative Council Note, 1967: Throughout this section material is deleted which was made obsolete by the requirement that all territory be in a high school district.

Sub. (1) based on s. 40.55. The new cross references are not identical to present cross references, but are intended to clearly indicate the provisions of law which do not apply to pupils who reside in cities. The bodies which may authorize transportation for such pupils are specifically enumerated.

Sub. (2) based on s. 40.53 (1) and incorporates ch. 68, laws of 1967.

Sub. (3) revises s. 40.53 (2). The last sentence is new and clarifies that the compulsory insurance requirements apply to transportation for handicapped children. "Handicapped children" is substituted in this subsection for "disabled children," to be consistent with uniform language established in ch. 115, subch. IV of this act. The 2nd and 3rd sentences of present s. 40.53 (2) transferred to s. 121.53 (2) (b).

Sub. (4) based on s. 40.99 (2).

Sub. (5) based on s. 40.53 (3).

Sub. (6) restates s. 40.53 (3m).

Sub. (7) revises s. 40.53 (4) and inserts "authorized chaperones" and school district officers and employees. See note to s. 121.53 (2).

Sub. (8) based on s. 40.56 (2). [Bill 353-S]

On transportation of school children see notes to sec. 23, art. I.

In view of the history of the statute, the provision of 40.34 (1), Stats. 1927, that the school board shall provide transportation for all school children residing over 2 miles from

the schoolhouse, is mandatory. *Hein v. Luther*, 197 W 88, 221 NW 386.

40.344, Stats. 1941, relating to the transportation of high school pupils and the purchase and use of school buses for specified purposes, and the powers of school boards in relation thereto, controls and limits the use of school buses, and must be strictly complied with in order to bring a particular transportation of pupils within the statute, so far as the imposition, on a city, of tort liability for such transportation as a "municipal business" is concerned. *Huettner v. Eau Claire*, 243 W 80, 9 NW (2d) 583.

Under 40.475 (3), Stats. 1945, the school board may provide transportation for high school students and obligate the district to pay therefor, notwithstanding the annual district meeting voted against furnishing transportation. *Van Ness v. Rindle*, 252 W 181, 31 NW (2d) 168.

The safety and welfare motivations which impelled enactment of the transportation statutes have express legislative limitations, the statutes containing no mandatory provision for transporting any child, regardless of his residence, who lives less than 2 miles from his school (public or private), except statutory provisions for handicapped children or hazardous routes. *Cartwright v. Sharpe*, 40 W (2d) 494, 162 NW (2d) 5.

40.53 (4), Stats. 1963, which states in pertinent part that a school district may (itself) provide transportation (or provide therefor by contract with a common carrier) for students in connection with extracurricular school activity, makes it discretionary and not obligatory as to whether the school district furnishes such transportation. *Lofy v. Joint School Dist. No. 2*, 42 W (2d) 253, 166 NW (2d) 809.

121.54 (2), Stats. 1967, contains 3 requirements for transportation of children to parochial or private schools: (1) the school must be 2 or more miles from the student's residence; (2) it must be either within the school district or not more than 5 miles beyond its borders; and (3) it must be "the nearest available private school which the pupil may reasonably choose to attend". The third requirement is separate and apart from the geographical limitations set forth in the statute, and is a necessary element to trigger the obligation of the school district to furnish transportation. *State ex rel. Knudsen v. Board of Education*, 43 W (2d) 58, 168 NW (2d) 295.

Mentally handicapped children may be transported to private schools or centers by the school district, but not by the county handicapped children's education board. 56 Atty. Gen. 305.

121.55 History: 1967 c. 92, 313; Stats. 1967 s. 121.55; 1969 c. 154; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Restates s. 40.53 (5) and (6). [Bill 353-S]

40.16, Stats. 1923, is a beneficent statute and must be liberally construed. It does not require, as a condition for compensation for transporting pupils, 100% consecutive attendance, or the physical presence in the conveyance of the parent or guardian. Nor is the right to compensation defeated by a failure to see that one's children attend school as required by law, nor by transporting 5 children

in an open single-seat buggy in a sparsely settled community. *Andrews v. School Dist.* 183 W 255, 197 NW 813.

Under 40.16, Stats. 1925, a parent who has transported his children to school is not entitled to recover for the service rendered if there was no written contract relative to compensation. *Schaut v. Joint School Dist.* 191 W 104, 210 NW 270.

The provisions of 40.53 (5) (b), Stats. 1953, for appeal to the state superintendent of schools when the district board and the parents cannot agree on the amount of compensation for transportation furnished by the parents, does not apply where the board has denied the obligation on the ground that the distance from home to school was less than 2 miles. *Gandt v. Joint School Dist.* 4 W (2d) 419, 90 NW (2d) 549.

A school district is justified in refusing to pay a father for transportation of his children where the automobile was driven by a son who was not a licensed driver. 12 Atty. Gen. 201.

A bus transporting school groups engaged in extracurricular activities to or from a school or school district, though not under written contract with said school, school district, or municipality, must comply with school bus regulations prescribed by the motor vehicle department. 41 Atty. Gen. 227.

121.56 History: 1967 c. 92, 313; Stats. 1967 s. 121.56.

Legislative Council Note, 1967: Based on s. 40.53 (8), and deletes materials made obsolete by the requirement that all territory be in a high school district. [Bill 353-S]

40.53 (8), Stats. 1957, puts control of the bus routes within the discretion of the school board, and action of the annual district meeting cannot control the action of the school board in the matter. *State ex rel. Miller v. Joint School Dist.* 5 W (2d) 16, 92 NW (2d) 232.

121.57 History: 1967 c. 92, 313; Stats. 1967 s. 121.57.

Legislative Council Note, 1967: Revises and rearranges s. 40.54, and deletes material made obsolete by the requirement that all territory be in a high school district. [Bill 353-S]

Under 40.16 (4), Stats. 1919, a school board may contract to pay for the board of pupils who are boarded by their mother at a temporary domicile which has been established for that purpose near the school and remote from their permanent home. 10 Atty. Gen. 79.

"Boarded and lodged" under 40.34 (4), Stats. 1931, must be in a home of some person who furnishes the board and lodging to the child, and not in leased premises where children cook their own meals and do their own housekeeping. 20 Atty. Gen. 1215.

121.58 History: 1967 c. 92; 1967 c. 291 s. 14; 1967 c. 313; Stats. 1967 s. 121.58; 1969 c. 276 s. 589 (1) (a); 1969 c. 331.

Legislative Council Note, 1967: Sub. (1) is based on a report requirement contained in s. 40.56 (1) (1st, 2nd, 3rd and 4th sentences) and deletes obsolete material.

Sub. (2) (a) based on s. 40.56 (3).

Sub. (2) (b) restates s. 40.53 (2) (2nd and 3rd sentences).

Sub. (3) based on s. 40.56 (4), and deletes material made obsolete by the requirement that all territory be in a high school district. The scope of this subsection is extended to include state aid payment for house rental. The last sentence of present s. 40.56 (4) is deleted because it is unnecessary.

Sub. (4) based on s. 40.99 (3), and affirmatively states the report requirement. The filing date is changed to reflect existing departmental requirements.

Sub. (5) restates s. 40.56 (1) (5th and 6th sentences).

Sub. (6) restates s. 40.56 (5).

Present s. 40.56 (2a) deleted because it was made obsolete by the requirement that all territory be in a high school district. [Bill 353-S]

40.16 (4), Stats. 1925, making the decision of the state superintendent as to the character and sufficiency of school transportation final, does not confer on him authority to exercise judicial power and determine controversies in regard to the legal rights of the parties. *Schaut v. Joint School Dist.* 191 W 104, 210 NW 270.

121.76 History: 1967 c. 92; Stats. 1967 s. 121.76.

Legislative Council Note, 1967: Sub. (1) revises s. 40.70 (1).

Sub. (2) is new. Both definitions are necessary. Because of changes made by the 1965 legislature, "pupil in average daily membership" has meaning only for the purpose of computing tuition. (See s. 121.82.) [Bill 353-S]

121.77 History: 1967 c. 92, 313; Stats. 1967 s. 121.77; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Sub. (1) restates and rearranges s. 40.65 (1) and s. 40.91 (1) and (2) (1st and part of 2nd sentences). Sub. (1) specifically states that the requirement that high school shall be free to resident school age persons also applies to elementary schools.

Sub. (2) revises s. 40.91 (4) (d) and makes the filing requirement applicable to both elementary and high school tuition. [Bill 353-S]

For cases and opinions on tuition liability under earlier forms of statute provisions, see notes to Wis. Annotations, 1950, sec. 40.21.

A child is not excluded in all cases from attending a public school at a different place from that of the residence of his parent. Where a child of school age is sent or goes into a school district with the primary purpose of securing a home with a particular family he is entitled to attend school therein free of charge. But if the primary purpose of so going is to enjoy the advantages of the school he must pay tuition, though there be some other incidental purpose to be subserved while attending school therein. *State ex rel. School Dist. v. Thayer*, 74 W 48, 41 NW 1014; *State ex rel. Smith v. Board of Education*, 96 W 95, 71 NW 123.

Where a 16-year old boy was emancipated by his father so that he might continue his education, he could thereafter become a "resident" of a school district other than that in which the father lived so as to be admitted to a high school therein, tuition free. *Kidd v. Joint School Dist.* 194 W 353, 216 NW 499.

A nonresident student has no greater rights

than a resident student, and if he cannot keep up with the work and becomes a drag on the class, may be dealt with the same as a resident student. 5 Atty. Gen. 814.

A grandmother who moves into a village from a town for the purpose of allowing her granddaughter, who is a member of her family, to attend the ninth and tenth grades of a first-class graded school, and who has no present intention of leaving the village, is a resident of the village. The town from which the grandmother came is not liable for the granddaughter's tuition to the village. 8 Atty. Gen. 289.

A person residing in a free high school district cannot enter a free high school of another district after finishing the course offered in his own, and have his tuition paid by the town, village or city of his residence. 11 Atty. Gen. 562.

Children of school age may, for school purposes, have residence apart from that of their parents. A municipality in which they so reside must pay tuition to the district high school which the children attend, where such high school is outside the district in which the children reside. (Stats. 1931) 21 Atty. Gen. 117.

A minor who has been put on probation and placed in a home in a school district, not primarily for the purpose of attending school in that district, has residence for school purposes in such district and the school board has no right to deny him privileges of the school for not paying tuition. 22 Atty. Gen. 149.

A child placed in a foster home has residence where located, for school purposes. Such child may attend high school in the district where located free of charge but where he attends high school out of the district where located tuition is chargeable as for any other nonresident pupil. 22 Atty. Gen. 191.

A boy 18 years of age who has graduated from high school may return to the same high school for work in different subjects from those he has taken previously and his home town must pay his tuition. 23 Atty. Gen. 218.

A child placed in a home by the board of control from the state public school at Sparta has residence for school purposes in the municipality where the home is located, even prior to expiration of the usual probationary period. 25 Atty. Gen. 410.

The fact that a widow and child live in Milwaukee indefinitely so that the widow may receive care and treatment during protracted ill health, with intention to return to the city of former residence when health permits does not constitute the child a resident of Milwaukee for school purposes, and such child is entitled to free attendance at high school in the city of former residence. 26 Atty. Gen. 579.

Where a pupil is of school age, the town is required to pay nonresident tuition for graduate work in a high school, even though the student has completed a 4-year high school course in such school and the town has paid tuition therefor. 26 Atty. Gen. 584.

A child placed in a home by the state department of public welfare after having been committed to a state public school has residence for school purposes in the district in which such home is located and is entitled to

attend a school of such district tuition free. 29 Atty. Gen. 87.

Tuition of non-Indian children residing on an Indian reservation not located in any municipality is to be paid in the same manner as tuition of pupils residing elsewhere in the county. 38 Atty. Gen. 613.

121.78 History: 1967 c. 92; Stats. 1967 s. 121.78.

Legislative Council Note, 1967: Sub. (1) revises s. 40.654 (2). Sub. (2) revises and combines ss. 40.65 (3) (d) and (4) and 40.91 (2) (part of 2nd sentence and 3rd, 4th and 5th sentences). This subsection combines the elementary and high school out-of-state tuition provisions into a single subsection. Reference to a compact in present s. 40.65 (3) (d) which was never implemented is deleted and the session law relating to the compact (ch. 573, laws of 1955) is repealed by this act. [Bill 353-S]

121.79 History: 1967 c. 92; 1967 c. 291 s. 14; 1967 c. 313; Stats. 1967 s. 121.79; 1969 c. 154 ss. 306m, 306r, 377.

Legislative Council Note, 1967: Based on s. 40.655. [Bill 353-S]

Parents of white children residing on an Indian reservation must either send their children to available schools on the reservation or pay tuition to schools off the reservation. 10 Atty. Gen. 379.

Children of school age residing in the tuberculosis sanatorium at Wales are privileged to attend school in the district in which the institution is located. 11 Atty. Gen. 292.

Children of school age who are inmates of a child welfare agency home may not be excluded from public schools of the district in which such institution is located. 20 Atty. Gen. 666.

The term "children's home," as used in 40.21 (2a), Stats. 1935, means an institution, agency, person, association or corporation engaged in the business of caring for children, and the term includes a licensed welfare agency but does not include a foster home. 25 Atty. Gen. 46.

Boys committed to the Norris Foundation are in a children's home but children of employes are not. 25 Atty. Gen. 726.

Children placed in a private home by the department of public welfare after having been committed to a state public school have residence for school purposes in the municipality in which such home is located, notwithstanding the fact that more than 4 children, not all of whom are related as brother and sister, have been placed in a single home. Such home is not a children's home and the state is not liable for tuition of such children under 40.21 (2a), Stats. 1939. 30 Atty. Gen. 155.

121.80 History: 1967 c. 92; Stats. 1967 s. 121.80.

Legislative Council Note, 1967: Restates s. 40.657. [Bill 353-S]

Tuition is not payable by a county under 40.657, Stats. 1965, to a district in which the county institution is located. 54 Atty. Gen. 39.

121.81 History: 1967 c. 92; Stats. 1967 s. 121.81.

Legislative Council Note, 1967: Sub. (1) based on s. 40.654 (1). Sub. (2) based on s. 40.905 (4). [Bill 353-S]

In proceedings to compel a district school board to admit plaintiff's child to the district's elementary school, an order which assumed that the plaintiff and her child might be nonresidents of the district, but nevertheless commanded the defendant to accept the child as a pupil without precedent written agreement by the parent to pay nonresident tuition at the legal rate, as required by 40.654, Stats. 1953, and leaving compensation to the discretion of the court instead of as established by 40.65 (3), was in excess of the jurisdiction of the court, since the court had neither discretion nor jurisdiction to compel the district to accept pupils on other than statutory terms. *Smuda v. Jefferson Dist. School Board*, 267 W 84, 64 NW (2d) 249.

Failure of a school board to enter into a contract does not defeat the right of a district to institute action on an implied contract for tuition. 13 Atty. Gen. 556.

121.82 History: 1967 c. 92, 313; 1967 s. 121.82.

Editor's Note: The changes made by ch. 313, Laws 1967, are based on the substantially altered method of computing tuition enacted by ch. 45, Laws 1967.

Legislative Council Note, 1967: Sub. (1) (a) based on s. 40.65 (2). Sub. (1) (b) based on s. 40.65 (3) (intro.) to (c).

Sub. (2) based on s. 40.91 (4) (a). Section 40.91 (4) (b) and (c) and (5) deleted, because the provisions were made obsolete by the requirement that all territory be in a high school district.

Sub. (3) restates s. 40.71 (11) as it applies to tuition. [Bill 353-S]

121.83 History: 1967 c. 92; Stats. 1967 s. 121.83.

Legislative Council Note, 1967: Based on s. 40.99 (4). A single method of computing tuition payments for both elementary and high school grades is set forth. Although substantially revised and consolidated, the new language employs the same procedure contained in present s. 40.99 (4). [Bill 353-S]

121.84 History: 1967 c. 92; Stats. 1967 s. 121.84; 1969 c. 154 s. 377; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Sub. (1) (a) restates s. 40.905 (1). Sub. (1) (b) restates s. 40.905 (2). Sub. (1) (c) like s. 40.905 (3) (last sentence). Section 40.905 (3) (1st sentence) was deleted, because only those pupils enrolled on the 3rd Friday of September are counted in computing state aid payments.

Sub. (2) revises s. 40.91 (3).

Sub. (3) based on s. 40.70 (8), the provisions of which were substantially consolidated and shortened. [Bill 353-S]

CHAPTER 126.

Grain Warehouses.

Revisor's Note, 1945: Section 1 of ch. 443, Laws of 1945, reads; "The revision of ch. 126

of the statutes does not change the law. It changes the language but does not change the meaning." [Bill 321-S]

126.01 History: 1905 c. 19 s. 1; Supl. 1906 s. 1747—1; 1923 c. 291 s. 3; Stats. 1923 s. 126.01; 1945 c. 443; 1969 c. 111, 276.

Revisor's Note, 1945: "The city of Superior" recurs very often. To save words there is added the clause: "Superior" means "the city of Superior." The last sentence is from 126.10. "Flaxseed" comes from old section 126.54. [Bill 321-S]

A company which conducts a private warehouse not in Superior may not be declared a public warehouse by the grain and warehouse commission because it issued warehouse receipts to itself for convenience in dealing with its parent corporation. 19 Atty. Gen. 544.

126.025 History: 1969 c. 111; Stats. 1969 s. 126.025.

126.035 History: 1969 c. 111; Stats. 1969 s. 126.035.

On exercises of police power see notes to sec. 1, art. I; and on delegation of power see notes to sec. 1, art. IV.

Sec. 1747-b, Stats. 1923, providing for the supervision of weighing and inspection of grain, applies to the loading and unloading of grain in Superior, irrespective of the fact that it is shipped in from points outside the city or is to be shipped out of the city. 12 Atty. Gen. 303.

The grain and warehouse commission is authorized by 126.05 (1) Stats. 1939, to weigh all grain received in Superior for milling or storage, or milled or stored in Superior, or bought or sold in Superior, regardless of whether it is kept in a public warehouse, and also to weigh grain shipped from public warehouses. 29 Atty. Gen. 111.

126.045 History: 1969 c. 111; Stats. 1969 s. 126.045.

126.06 History: 1969 c. 111; Stats. 1969 s. 126.06.

126.07 History: 1905 c. 19 s. 7; Supl. 1906 s. 1747—7; 1911 c. 663 s. 315; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.07; 1945 c. 443; 1969 c. 111.

126.08 History: 1905 c. 19 s. 8; Supl. 1906 s. 1747—8; 1923 c. 291 s. 3; Stats. 1923 s. 126.08; 1945 c. 443; 1969 c. 111 s. 25.

126.09 History: 1905 c. 19 s. 9; Supl. 1906 s. 1747—9; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.09; 1945 c. 443; 1969 c. 111 s. 25.

126.10 History: 1905 c. 19 s. 10; Supl. 1906 s. 1747—10; 1911 c. 663 s. 315; 1923 c. 291 s. 3; Stats. 1923 s. 126.10; 1945 c. 443; 1969 c. 111.

126.11 History: 1905 c. 19 s. 11; Supl. 1906 s. 1747—11; 1923 c. 291 s. 3; Stats. 1923 s. 126.11; 1945 c. 443; 1969 c. 111.

126.12 History: 1905 c. 19 s. 12; Supl. 1906 s. 1747—12; 1923 c. 291 s. 3; Stats. 1923 s. 126.12; 1945 c. 443.

126.13 History: 1905 c. 19 s. 13; Supl. 1906