

## CHAPTER 40.

## SCHOOL DISTRICTS.

- 40.01 Classification of public schools and definitions.  
 40.02 County school committee.  
 40.025 General provisions relating to reorganization.  
 40.03 School district reorganization.  
 40.04 School committee functions.  
 40.05 Local governing bodies to advise.  
 40.055 State superintendent to advise.  
 40.06 School districts; creation, alteration, dissolution.  
 40.07 Consolidation of common school districts by referendum.  
 40.08 Dissolution of district by neglect to keep school.  
 40.09 Creation of joint school districts between states.  
 40.10 High school; how established in common school district.  
 40.11 Joint high school district; established by common districts.  
 40.12 Union high school district; established.  
 40.14 Attachment to union high school district.  
 40.15 Union high school districts, dissolution.  
 40.16 Joint ownership of school building.  
 40.18 School district; validation; lost records.  
 40.19 Partial annexation of school district by Milwaukee.  
 40.20 Common school district meetings; notice, time, conduct.  
 40.21 Referendum.  
 40.22 Powers of annual district meeting.  
 40.23 Duties of district meeting.  
 40.24 Powers of special district meeting.  
 40.25 District officers and board; election, term.  
 40.26 Optional number of board members.  
 40.27 Optional board election procedure.  
 40.28 District board; meetings, reports.  
 40.29 District board; duties.  
 40.30 District board; powers.  
 40.301 Gifts and grants.  
 40.305 School building corporations.  
 40.31 Claim against district, enforcement.  
 40.33 Duties of director.  
 40.34 Duties of treasurer, bond.  
 40.35 Duties of clerk.  
 40.40 Teachers' contracts.  
 40.41 Renewal of teachers' contracts.  
 40.42 Security in employment for teachers in populous counties.  
 40.43 Teachers' certificates and licenses.  
 40.435 Discrimination as to teachers prohibited.  
 40.44 Age of pupils; register; teacher's report.  
 40.45 School month; holidays; special observance days.  
 40.46 Curriculum.  
 40.47 Flag; first aid; fire drill.  
 40.48 Textbooks; lists, sale.  
 40.49 Uniform textbooks for county.  
 40.50 Textbooks censored.  
 40.51 Exclusion on account of religion, nationality or color a misdemeanor.
- 40.52 "School bus" defined.  
 40.53 Transportation.  
 40.54 Board and lodging or house rental in lieu of transportation.  
 40.55 City option.  
 40.56 Transportation and lodging; payment of costs; state aids.  
 40.57 Compulsory insurance on school busses.  
 40.58 Inspection of school busses prior to sale, penalty.  
 40.60 Marking school zones.  
 40.61 Safety zones.  
 40.62 School ground fences.  
 40.63 School safety patrols.  
 40.65 Tuition; elementary schools.  
 40.654 Nonresident tuition; written agreement.  
 40.655 Tuition paid by state.  
 40.657 County to pay tuition.  
 40.66 State aid for public schools, purpose.  
 40.67 State aid district.  
 40.68 Valuation determined and certified.  
 40.69 Property tax relief.  
 40.70 State aids, computation.  
 40.71 State aids, miscellaneous provisions.  
 40.73 Aid to counties maintaining institutions having schools.  
 40.74 Annual report of district clerk.  
 40.77 Compulsory school attendance.  
 40.78 Truancy.  
 40.79 Aid for poor school children.  
 40.80 City school plan.  
 40.801 City is a school district.  
 40.803 City school board.  
 40.805 School board election, second class cities.  
 40.807 Government of reorganized city school district.  
 40.809 School board, powers and duties.  
 40.811 City school funds; construction work.  
 40.813 City school building sinking fund; school budget and tax.  
 40.815 Taxation of attached territory.  
 40.817 Disbursements of city school funds.  
 40.819 City superintendent of schools; powers, duties, eligibility.  
 40.821 City technical schools.  
 40.823 Evening and part-time college classes.  
 40.825 City school board proceedings; publication.  
 40.827 Salaries for board members.  
 40.85 High school district meetings and elections; call, notice, conduct.  
 40.86 Powers of high school district meetings.  
 40.87 High school board; election, terms, powers.  
 40.88 High school taxes.  
 40.89 Course of study in high schools.  
 40.90 High school; admittance.  
 40.91 High school tuition.  
 40.92 District superintendent.  
 40.93 School officers not to be book agents.  
 40.94 Forfeitures enforced by voter.  
 40.95 Penalty.  
 40.98 School conservation camps.

**Revision Committee Note, 1953:** The meaning of the 1951 statutes revised by this bill (ch. 90, Laws 1953) is not intended to be changed unless the new language shows clearly an intent to make a change. (See 370.001 (7), Stats.) (Bill 1-S)

**40.01 Classification of public schools and definitions.** (1) **PUBLIC SCHOOLS.** Public schools are the elementary and high schools supported by public taxation.

(2) **GRADES.** The educational work of the public schools is divided into 12 grades (besides kindergarten) which are numbered from one to 12 beginning with the lowest. The first 8 are the elementary grades. The last 4 are the high school grades. A common school is an elementary school. A school in which only the seventh to ninth, or seventh to tenth grades, inclusive, are taught is a junior high school; one in which only grades 10,

11 and 12 are taught in a senior high school. This classification is not a limitation of the character of work or the studies that may be carried on in either the elementary or the high schools.

(3) DISTRICTS. The territorial unit for school administration is the school district. School districts are classed as common school districts, union high school districts, and city school districts. A joint school district is a school district whose territory is not wholly in one municipality. Board means school district board or other body in charge of the schools of any district. Basic aid district and integrated aid district mean districts which meet the requirements set forth in s. 40.67 and refer to classification for aid purposes only.

(4) NAME. Each school district shall be known by number and by the name of the municipality or municipalities in which it lies.

(5) DISTANCE. The distance between home and school shall be measured from building to building along the usually traveled route.

(6) VOTERS OR ELECTORS. (a) Whenever this chapter indicates that an action may be taken by a percentage of voters or electors in an area, that percentage shall be based on the number of electors who voted for governor at the last general election in that area.

(b) If that area does not coincide with a municipality (or part thereof) for which election statistics are kept, such number shall be determined as follows:

1. Set up the area of the district (in square miles) in a ratio to the area of the municipality in which it lies;

2. Set up the required number within the district (the unknown number) in a ratio to the vote for governor at the last general election in the municipality within which the district lies. Now find the required number by making this ratio proportional to the area ratio.

(c) The above plan may be expressed as a formula:

$$\frac{\text{Square miles in district}}{\text{Square miles in municipality}} \cdot \frac{\text{Required number (X)}}{\text{Vote for governor in municipality}}$$

(d) If a district is in more than one municipality, the above plan shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are kept.

(e) If the application of the above plan requires, in any area, that an action be taken by more than one-half of the electors in the area, the action of such one-half shall be sufficient.

(7) SCHOOL YEAR. "School year" means the time commencing with July 1 and ending with the next succeeding June 30.

(8) SCHOOL TERM. "School term" means the time commencing with the first day and ending with the last day that the schools of a district are in operation for attendance of pupils in a school year.

(9) SESSION. "Session" means the time during a school term that the schools of a district are operated for the attendance of pupils.

(10) REORGANIZE, REORGANIZATION OR REORGANIZING. "Reorganize", "reorganization" or "reorganizing" as applied to school districts mean any alteration, dissolution, consolidation or creation of a school district.

(11) REORGANIZED DISTRICT OR PROPOSED REORGANIZED DISTRICT. "Reorganized district" or "proposed reorganized district" means:

(a) When an order or proposed order attaches territory to a school district only the territory in the district to which the territory is attached or proposed to be attached and the territory attached thereto by such order or proposed order.

(b) When an order or proposed order consolidates the territory of 2 or more school districts, then only the territory so consolidated by such order or proposed order.

(c) When an order or proposed order creates a new district or proposed new district, then only the territory comprising such new district or proposed new district.

(d) In no instance the territory remaining in any district from which territory is detached by an order or proposed order.

(12) REORGANIZATION AUTHORITY. "Reorganization authority" means any officer, committee, agency, school district board, board of education, town board, village board, city council, electors, or any group or combination thereof, which is empowered by statute to authorize or make orders of school district reorganization.

(13) SCHOOL DISTRICT AFFECTED. "School district affected" means the entire territory of any school district or school districts.

(a) From which any territory is detached;

(b) To which any territory is attached;

- (c) Any territory of which is included in a newly created district;  
 (d) Any territory of which is included in any consolidation.

(14) CITY, VILLAGE OR TOWN AFFECTED. "City, village or town affected" means any city, village or town which has, lying within it, all or part of a school district affected.

**History:** 1953 c. 90; 1957 c. 536, 672.

**Revision Committee Note, 1953:** Definition of "district," "district schools," "rural districts," "ungraded school," "grade teacher," "parents" and "rural school" are omitted as unnecessary. "Municipality" is omitted because defined in 370.01. Minimum age for admission is moved to new 40.44. New (4) is from the second sentence of old 40.30 (1) (a). (Bill 1-S)

**40.02 County school committee.** (1) CREATION, MEMBERSHIP. (a) In each county, there shall be a county school committee of 6 county residents. The county board shall appoint 2 members for 3-year terms at its annual November meeting. Three members shall be residents of cities or villages and 3 shall be residents of towns, except that in counties having a population of 500,000 or more, 6 members shall be appointed at large, but no more than one member shall be a resident of any one town, village or city.

(b) If there be one city within the county, at least one of the city-village members shall be a resident of that city. If there are 2 or more cities, at least 2 of the city-village members shall be residents of cities. If there is no city or village in the county, all members shall be residents of towns, but not more than one member shall be from any one town. Not more than 2 members of the committee may be members of the county board. Each term commences January 1 after appointment. All members shall serve until their successors have qualified. The county superintendent shall serve as secretary to the committee but shall not be entitled to vote.

(2) VACANCIES. Any vacancy shall be filled by appointment by the chairman of the county board for the remainder of the unexpired term, subject to confirmation by the county board at its next succeeding meeting. Upon failure of the county board to approve of an appointment made by the chairman of the county board, the board shall appoint a successor to fill the vacancy for the balance of the unexpired term. Resignations shall be made in writing to the secretary of the county school committee, who shall immediately report the same to the county board. If a member is not appointed for a full term to fill a vacancy, the state superintendent shall appoint.

(3) NOMINATION OF COMMITTEE MEMBERS. The education committee of the county board, or if no such committee exists, a committee designated by the chairman of the county board, shall nominate candidates for the county school committee. Such nominations shall be made at least 30 days before the meeting of the board at which the appointments are made. Persons nominated shall have a recognized interest in and understanding of, and sympathy for the problems of public education.

(4) COMPENSATION. Each member of the committee shall receive per diem, as fixed by the county board, of not less than \$4 nor more than \$8 per day for each day he attends a meeting of the committee, mileage at the rate of 6 cents per mile for each mile traveled in going to and returning from the place of meeting by the most usual traveled route and other necessary expenses.

(4a) EXPENSES. The costs of the preparation, service, posting and publication of notices required of the secretary of the committee shall be paid out of the appropriation to the county school committee.

(5) JOINT COMMITTEE. If territory to be affected by a proposed order of a county school committee lies in 2 or more counties the county school committees of said counties shall act as a joint committee. The secretaries shall arrange the time and place of the first meeting. If the joint committee cannot agree, they shall appoint an additional member. The additional member shall be a resident of the state but not a resident of either county affected. If the joint committee cannot agree upon an additional member within 30 days after their initial joint meeting, the secretaries shall immediately notify the circuit court judge within whose jurisdiction the largest portion of the counties involved lies, and he shall appoint an additional member within 15 days.

**History:** 1953 c. 90, 229, 599, 631; 1955 c. 122; 1957 c. 201, 320, 536, 672.

**Revision Committee Note, 1953:** The material in old 40.303 is divided among 3 new sections. New 40.02 covers the creation and membership of the committee; new 40.03 covers the method of making school district reorganization; and new 40.04 covers 2 miscellaneous duties of the committee. Temporary provisions in 40.303 are repealed. In (1) the material on initial appointments is taken out, and a provision for continuing appointments inserted. The case of a county with no incorporated places is provided for. The last sentence of new (2) is from old (3). New (3) is amended to allow nominations of more persons than the number to be appointed. The amendment of new (4) recognizes that the county superintendent is not a member of the committee. In new (5) the secretaries of a joint committee are given power to call the first meeting. (Bill 1-S)

Ch. 501, Laws 1949, provides for election of a complete new county school committee of 6 members. "Shall be residents of cities" means that more than one city is to be represented on the committee where there is more than one city in the county. 38 Atty. Gen. 576.

Where the members of committee travel

in car driven by one of members, each member is entitled to 6 cents per mile for each mile traveled in going to and returning from the place of meeting by the most usual traveled route. 39 Atty. Gen. 130.

Delegation of power to county school committee to authorize increases in tuition under 40.91 (5) (a), and in charges for transportation under 40.56 (2) is probably constitutional. 40 Atty. Gen. 194.

Membership on county school committee is not incompatible with employment as a bus operator by a school district in the county, but if more than \$1,000 is involved in any year, 348.28 prohibits such employment. 40 Atty. Gen. 433.

Where union free high school district covers territory lying within a county, dissolution thereof does not require joint ac-

tion with county school committee of adjoining county, by virtue of the fact that it covers a portion of the territory of a common school district whose boundaries include territory in the adjoining county. 42 Atty. Gen. 70.

Proposal to detach territory entirely in one county from a school district entirely within that county and attach it to a school district in an adjoining county requires joint action of the school committees of both counties. 42 Atty. Gen. 77.

Provisions in (3) for nominations of candidates for the county school committee are directory, and failure to make such nominations prior to the meeting at which the county board makes appointments does not render such appointments invalid. 43 Atty. Gen. 84.

**40.025 General provisions relating to reorganization.** (1) JURISDICTION; ACQUISITION, CONTINUANCE AND LOSS THEREOF. (a) Jurisdiction of a reorganization authority, other than the state superintendent, to make orders of school district reorganization under s. 40.03, 40.06, 40.07, 40.12, 40.14, 40.15 or 40.807 is acquired upon the filing of a petition or the giving of notice of a public hearing when a reorganization authority acts upon a resolution adopted upon its own motion.

(b) Jurisdiction of the state superintendent to act under any provision of this chapter on a school district reorganization is acquired upon the filing with him of a notice of appeal or other documentary material upon which any provision of this chapter authorizes him to so act.

(c) Jurisdiction, when acquired as prescribed in pars. (a) and (b), continues until the reorganization authority disposes of the matter before it, unless lost as provided in par. (d). When the making of a reorganization order is pending before a reorganization authority or such order has been made, any other reorganization proceeding or order made by that or any other reorganization authority, after jurisdiction has been acquired as provided in par. (a) or (b) and prior to the going into effect of an order made and filed pursuant thereto, pertaining to all or any part of the territory included in the order, is void.

(d) Jurisdiction acquired pursuant to par. (a) is lost:

1. Upon failure of the reorganization authority to substantially comply with the procedural steps required by law to be taken by it prior to the issuance and filing of an order of school district reorganization;

2. Upon the making of an order denying the reorganization proposed by a petition or a resolution, provided that until the expiration of 30 days after the mailing, as provided in sub. (5), of such an order made by town or village boards or city councils, acting alone or jointly, which denies a reorganization proposed by a petition, no other reorganization order shall be made and no other reorganization proceedings commenced, pertaining to all or any part of the territory included in said proposed reorganization, and any such other order made or other proceeding commenced is void;

3. Upon taking of formal action denying the reorganization proposed by a petition or a resolution and the failure to make and file, as required by sub. (5), an order to such effect within 10 days after such action, provided that until the expiration of 30 days following the date of such action by town or village boards or city councils, acting alone or jointly, which denies a reorganization proposed by a petition, no other reorganization order shall be made and no other reorganization proceedings commenced, pertaining to all or any part of the territory included in said proposed reorganization, and any such other order made or other reorganization proceeding commenced, is void;

4. Upon certification by a school district, town, village, city or county clerk or a county election commission of a referendum vote of nonapproval;

5. Upon the taking effect of an order of reorganization made by the reorganization authority;

6. Upon failure of town or village boards or city councils, acting alone or jointly, to make an order of reorganization within 60 days following the giving of notice of a public hearing upon a resolution proposing such reorganization;

6a. Upon failure of town or village boards, or city councils, acting alone or jointly, to make an order of reorganization within 60 days following the filing of a petition therefor, provided that until the expiration of 90 days after the date of the filing of such petition no other reorganization order shall be made and no other reorganization proceeding commenced, pertaining to all or any part of the territory included in the reorganization proposed by such petition, and any such other order made or other reorganization proceeding commenced, is void;

7. Upon failure of county school committees, acting alone or jointly, to make an

order of reorganization within 90 days following the giving of notice of a public hearing upon a resolution proposing such reorganization;

7a. Upon failure of county school committees, acting alone or jointly, to make an order of reorganization within 90 days following the filing of a petition proposing such reorganization;

8. Upon the perfection of an appeal pursuant to this chapter.

(e) No territory shall be detached from a district unless by the same order it is included in another district, or included with other territory in the creation of a new district, but this limitation shall not apply to territory detached from a union high school district when such territory is already in another school district which operates 12 grades or more. No territory shall be detached from a district which operates high school grades unless by the same order it is attached to another district which operates high school grades, or a state graded school. No territory shall be detached from a union high school district so as to make parts of the district noncontiguous.

(f) No common school district shall be created having less than \$150,000 of assessed valuation.

(2) NOTICE OF PUBLIC HEARINGS ON REORGANIZATION OF SCHOOL DISTRICTS. (a) All publication, posting and service of notice of a public hearing on a proposed reorganization required by s. 40.03 shall be made by the secretary of the county school committee or the secretary of the joint county school committee at least 10 days before the date of hearing. Such notice shall be in writing, shall state the hour, day and place of such hearing, and shall be served upon the clerk of each school district affected by the proposed reorganization. Pursuant to s. 40.01 (14) the secretary shall also serve notice upon the clerk of each town, village or city affected by the proposed reorganization and upon the county superintendent of schools of any county (other than that of the secretary) in which any school district affected by the reorganization lies. Such service may be either by personal service or by registered mail with return receipt requested. The secretary shall also mail a copy of such notice to every other member of the board of each school district, town and village and the council of each city, affected by the proposed reorganization. The secretary shall also post notice of such hearing in 4 or more public places in each school district affected and shall cause notice thereof to be published once in at least one newspaper which has general circulation in the school districts affected by the proposed reorganization, all not less than 10 days before the date of such hearing. When all other requirements of notice have been complied with, the presence of an official at a hearing waives the required service upon or mailing to him of notice thereof.

(b) Notice required by s. 40.06 shall be made by the town, village or city clerk who is designated therein to give such notice. Publication and posting shall be made and notice shall be served or mailed as provided in par. (a) with the words "town clerk", "village clerk" or "city clerk" substituted for "secretary of the county school committee" in each instance. The waiver provision set forth in par. (a) shall also apply.

(3) CONTENT OF ORDER. Every reorganization order shall state the districts from which any territory is detached and describe such territory, indicate the territory included within the reorganized district, number the reorganized district, name the same according to the municipalities in which it is located, and when it creates a new district, designate the number of school board members to be elected in accordance with s. 40.26 or 40.803. Every order creating a new district which holds an annual meeting shall fix the time and place for the first district meeting and the county superintendent with whom the order is filed shall give notice thereof in the manner provided for giving notice of an annual district meeting.

(4) EFFECTIVE DATE AND VALIDITY. Every reorganization order shall state the date on which it is to take effect, which date shall not be more than one year from the day it is filed in accordance with sub. (5) nor less than 30 days from the date it is mailed to the proper officials by the county superintendent of schools following the filing thereof as provided in sub. (5). Such order shall be presumptive evidence of the facts recited therein and of the validity of all proceedings preliminary thereto.

(5) FILING ORDERS; RUNNING OF TIME PERIOD; STAY OF ORDERS. A certified copy of any order made under ss. 40.03, 40.06, 40.07 to 40.09, 40.11, 40.12, 40.14, 40.15 and 40.807 shall be filed within 10 days with the county superintendent of the county in which the reorganized district lies. The county superintendent, upon receipt of the order, shall immediately place thereon the date upon which the same was received, and within 5 days after receipt thereof, shall send by registered mail a certified copy thereof together with a certification of the date of mailing of the same to the clerk of each school district and of each town, village or city affected and to the state superintendent. When the territory of a reorganized district lies in more than one county the order shall be filed with the county superintendent of the county in which the major portion of the area of the reorganized

district lies and said county superintendent shall mail certified copies thereof as hereinbefore provided and also to the county superintendent of all the other said counties. The appeal and referendum period shall run from the date the certified copies of the order are mailed by the county superintendent to the officials hereinbefore mentioned. An appeal taken from any order shall stay said order until the appeal has been determined and the result of the final determination made and filed. A referendum petition or resolution shall stay an order until the result of the referendum has been certified by the school district clerk, municipal or county clerk or the county election commission to the county superintendent of schools. When the results of a referendum election have been canvassed the proper clerk shall certify the same to the county superintendent of schools with whom the order was filed. Such superintendent shall notify all the officials who received a copy of the order of the results of the referendum.

(6) **ELECTIONS.** The city clerk shall arrange for the election of a board of education pursuant to s. 40.803 for any new district created which is to operate under s. 40.80. In creating any other new district, a reorganization order may direct the election of officers by the election procedure in s. 40.27 (1) to (6). The clerk of the town, village or city in which the greatest number of electors reside shall act as clerk of the election and declarations of candidacy shall be filed with him. He shall cause notice of the election to be given as provided by the statutes which govern municipal elections. Such clerk shall have charge of the election and provide all necessary materials and equipment to conduct the same in a manner similar to that used for conducting municipal elections. The cost of conducting such election shall become a charge upon the new school district, and the board of such new district, upon taking office, shall pay all costs of such election upon claims duly filed.

(7) **FAILURE TO ACT.** Any failure of any officer to perform a mandatory duty imposed upon him by this section shall not affect the validity of any order otherwise lawfully made, but such officer shall be subject to the provisions of s. 946.12.

(8) **AID APPORTIONMENT.** During the pendency of an appeal or a referendum, apportionment of school aids shall be made to the school districts involved in such orders on the same basis as they would have been apportioned if the order had not been issued.

**History:** 1953 c. 90; 1955 c. 681; 1957 c. 536, 672.

See note to 66.02, citing *Brown Deer v. Milwaukee*, 274 W 50, 79 NW (2d) 340.

**40.03 School district reorganization. (1) ORDER.** Upon the filing of a petition of an elector residing in the area of a proposed reorganized district or upon a resolution adopted upon its own motion, the county school committee may order the reorganization of school districts within the county, subject to the referendum provisions of sub. (6). The secretary of the committee shall set a date for a public hearing on the proposed reorganization which shall be held not more than 30 days after the filing of the petition or the date on which the committee ordered such a hearing when the committee initiated the proceedings, at a place within the district proposed to be reorganized or within a reasonable distance of such district. Notice in writing of the time and place of the hearing shall be given as provided in s. 40.025 (2). Within 30 days after the hearing on any proposed plan of reorganization and before the making of any order thereon, the committee shall hold a conference on the proposed order of reorganization with the school boards of the districts involved. The committee action taken shall represent the decision reached at this conference and an order conforming therewith shall be made within 10 days and filed with the county superintendent as provided in s. 40.025 (5).

(4) **FIRST MEETING.** The secretary shall call the first annual meeting of any common or union high school district created by a school committee order and shall cause notice to be posted and published as are notices for annual meetings. The committee chairman, a member designated by him, or an elector of the reorganized district designated by him shall preside until a chairman of the district meeting is elected.

(5) **APPEAL.** Any person aggrieved by an order may appeal therefrom to the circuit court of any county in which any territory of the reorganized district lies, by serving written notice of such appeal stating specifically the grounds upon which it is based, upon the county superintendent with whom the order was filed and filing such notice with the clerk of the court to which the appeal is taken, all within 30 days after the date of mailing of such order. The county superintendent on whom the notice is served shall send notice of such appeal to the secretaries of all other county school committees of counties in which any school district affected lies, the clerks of all towns, villages, cities and school districts affected and to the state superintendent by registered mail within 5 days after notice of appeal was served on him. Service of the notice of appeal and filing of said notice with the clerk of the court shall constitute perfection of the appeal. Each school district clerk shall forthwith post such notice of appeal in 4 public places in the district.

(6) REFERENDUM. (a) If within 30 days after the date of mailing of any committee order of school district reorganization as provided in s. 40.025 (5), a petition signed by a sufficient number of the qualified electors of the territory included in the reorganized district is filed with the county clerk, or with the clerk of the county having the largest assessed valuation in said district when it lies in more than one county, requesting a referendum election on the order, such order shall not become effective until it has been approved at such election by both a majority vote of the electors residing within the reorganized district territory which lies in towns and unincorporated villages voting at such election and by a majority vote of the electors residing within the reorganized district territory lying in all cities and incorporated villages voting at such election. A sufficient number of petitioners is 500 of the electors residing in the reorganized district; or 10 per cent of such electors, residing in the cities and incorporated villages, or 10 per cent of such electors residing in the territory outside the cities and incorporated villages. The county school committee or a joint committee may upon its own motion, within 30 days after the mailing of its order, provide for the holding of a referendum election upon an order issued by it. As an alternative to making and filing the foregoing petition the common council of any city affected by an order of a committee may, by resolution adopted within 30 days after the order is mailed, demand the holding of a referendum election upon such order.

(b) The petition, resolution or order demanding a referendum shall be filed with the county clerk of the county having the largest equalized valuation in the proposed district. The referendum election shall be called by the county clerk; it shall be set for a date not more than 30 days from the time the petition, resolution or order for a referendum is filed, except that, if a spring election or general election is to be held within 90 days from the time of filing, such referendum election shall be held on the date of the spring or general election. The clerk shall cause notice of the purpose, time and place of holding such election and the hours of opening and closing of the polls to be published at least twice, one week apart, in a newspaper or newspapers of general circulation in the territory involved in the reorganization, if there are any, and if there are none, he shall post or cause to be posted such notices at least 15 days before the date set for such election in at least 3 public places in each of the school districts involved in the reorganization.

(c) Electors shall vote at the polling place at which they would be required to vote at a general election except when the municipal clerk deems it feasible to accommodate all of the voters at other polling places. In such case, he shall inform the county clerk or the county election commission thereof immediately upon his being notified by the county clerk that a referendum election will be conducted, and the county clerk shall thereupon include in the advertising only those polling places where the referendum election will be conducted. The election officials shall be selected by the governing body of the municipality where the polling place is located. Each municipality shall compensate the election officials and shall provide the necessary ballot boxes and voting booths. Such elections shall be held and conducted and the votes cast thereat counted, canvassed and the results returned to the county clerk as at general elections as provided in ch. 6.

(d) The county clerk or the county election commission, as the case may be, shall provide for the printing and distribution of ballots and other election supplies at county expense. The form of the ballot provided shall correspond as near as may be with form "D" annexed to s. 6.23. In the case of a reorganized district which overlaps county lines, the election shall be conducted and the vote counted and canvassed in each county separately, but a tabulation of the vote in each county shall be forwarded to the county clerk of the county having the greatest equalized valuation within the reorganized district for a final consolidated tabulation and determination of the result.

(e) When a reorganized district includes territory in more than one county, the county clerk of the county having the largest equalized valuation within the reorganized district shall be responsible for conducting the referendum but the cost of ballots and other election supplies shall be borne by each of the counties in such proportion as the equalized valuation of the property in each county or portion thereof that is affected by such referendum bears to the total equalized valuation of the property in the reorganized district.

(f) The cost to the county for compliance with the requirements of pars. (c) and (d) shall be ascertained by the county clerk and certified for payment by the county clerk to the clerk of the school district or several school districts in the county concerned in said referendum in such proportion as the equalized valuation in each such district bears to the total equalized valuation of the property lying within such reorganized district, and the same shall be paid by the school district boards to the county from any funds not otherwise appropriated. When necessary, such charge shall be included in the succeeding budget and become part of the next school district tax levy.

(7) CITIES OF FIRST CLASS. In cities of the first class notice of hearing provided for in sub. (1) shall be served upon the secretary-business manager of the board of school

directors, who shall cause it to be published 2 times in a daily newspaper or newspapers published in such city not less than 10 days before such hearing; no notices need be posted; in lieu of the call for the first annual district meeting provided in sub. (4) the county school committee shall make a written demand upon the county clerk to issue a call for the election of a board of school directors for any newly created school district of which such city shall by creation, alteration or consolidation become a part, at the time and in the manner as the legislature may hereinafter prescribe; any referendum election held pursuant to sub. (6) shall be called and held in such manner and at such time and upon such notice and under the auspices of the board of election commissioners created and maintained under s. 10.01, as the legislature shall hereinafter prescribe, provided, that the electors shall have 90 days after the date of issuance of any order of the committee in which to file the required petition; and the referendum shall not be held prior to 40 days after the filing of such petition or prior to 40 days from the time the committee by its own motion shall provide for such referendum, and provided that no such referendum shall be held at any time other than on a regular election date in April or November in any year.

(8) **EFFECT OF DISAPPROVAL.** If the proposed order is not approved by the referendum, the committee may not within one year reconsider the first plan but may with the advice of local school boards prepare a second plan of reorganization and within one year from the date of the first referendum election order the establishment of a reorganized district or districts; such order shall be subject to the same referendum provisions as the first reorganization order. If the second referendum does not approve the order, the county school committee, with the advice of the local school boards, shall continue its work, issue orders and provide for further referendums on its own motion or as provided in sub. (6) so long as the need for reorganization continues to exist, but after the second referendum, at least one year shall elapse between referendums.

(9) **VALIDATION OF SCHOOL DISTRICTS.** (a) All school districts created, altered or consolidated pursuant to this section by order of the legally constituted county school committees in each of the counties of this state, where such order was issued prior to December 31, 1951, are hereby validated and legalized in all respects as though they had been duly and legally established and created in the first instance.

(b) All acts and proceedings of such school districts, and of the electors and officers thereof, for the issuance and sale or authorization of bonds within the constitutional debt limitation and for purposes authorized by ch. 67 including the levy and collection of taxes therefor, are hereby validated and legalized in all respects, notwithstanding any irregularity or omission in such acts and proceedings.

(c) Paragraphs (a) and (b) shall not apply in any case where the order of the county school committee has been disapproved at a valid referendum held under s. 40.303 (8) or (14), statutes of 1951, and the school district involved has not thereafter exercised the rights and privileges of a school district for a period of 4 months, or where litigation questioning the validity of the organization of a school district is pending in any court of the state on March 27, 1953, or where a petition for a referendum has been filed pursuant to said sub. (8) and such referendum has not been held prior to March 27, 1953.

**History:** 1951 c. 246, 422, 664; 1953 c. 13, 90, 102, 491, 540, 599, 611; 1955 c. 310; 1957 c. 536.

**Note:** Chapter 536, section 26, Laws 1957, provides that ch. 536 shall not apply to any reorganization made under s. 40.03 to 40.15 upon a petition filed or a resolution for reorganization adopted prior to August 18, 1957.

**Revision Committee Note, 1953:** In new (1) the time of taking effect of the order is clarified; at the end is inserted a new provision to permit the committee to designate a larger board than 3 where it thinks appropriate. Five were permitted by old 40.07 (9) (b) (first sentence). In new (4) a temporary chairman for the first meeting is provided for. The number of petitioners is related to the definition in new 40.01 (6). In new (6) (b) a provision is added that the petition demanding a referendum be filed with the county clerk. This was probably implied by the old law. If there are several counties involved, it will be filed with the county having the largest equalized valuation. New (6) (e) is amended to provide that the cost of election shall be borne proportionately by the counties involved instead of equally. The sentence dealing with malfeasance is deleted because covered by 348.29. The function of the Milwaukee board of school directors is moved from old (4) (f) to new 40.05. New (8) is from old (8) (a). (Bill 1-S)

Electors of the school districts affected by the dissolutions and reorganizations have a sufficient interest to entitle them to test by certiorari the validity of the acts result-

ing in the reorganized district. State ex rel. Oelke v. Doepke, 260 W 493, 51 NW (2d) 10. As used in 40.303 (14) (Stats. 1947) providing for a referendum election, the term "school year" means the period during which school is taught or teaching operations are conducted, and not the year beginning July 1 and ending June 30. State ex rel. Oelke v. Doepke, 260 W 493, 51 NW (2d) 10.

In 40.303 (14) (a) (Stats. 1951), enacted by ch. 501, Laws 1949, effective July 23, 1949, authorizing the holding of a referendum election to approve any order of a county school committee creating or altering school districts entered after August 26, 1947, and prior to July 1, 1949, and providing that any such order entered within such dates "shall not become effective" unless approved by a majority vote of the electors in such referendum, the quoted language does not make such an order void from the beginning in case of an unfavorable referendum but only makes the order ineffective after the date of the referendum without impairing the prior validity of the order. In re Joint Union Free High School Dist. 262 W 126, 54 NW (2d) 40.

Under (5), the appeal must be taken



within 30 days after the issuing and recording of the order, and cannot be taken at some later date after the referendum. *School Dist. v. Burnett County School Committee*, 262 W 484, 55 NW (2d) 874.

An order of a county school committee reorganizing certain school districts, and providing that the reorganization "shall not take effect until the end of the school year in 1951," was within the terms of 40.303 (4) (b) (Stats. 1951) in fixing the effective date of the order and was sufficiently definite in that respect, the end of the school year being an event in a given community generally recognized, and the certainty of it being readily determined. *State ex rel. School Dist. v. Burnett County School Committee*, 262 W 483, 55 NW (2d) 874.

(6) (a) gives the right to vote at a referendum election on an order of a county school committee, reorganizing school districts, only to persons within the reorganized district and not to persons outside thereof. *State ex rel. School Dist. v. Burnett County School Committee*, 262 W 483, 55 NW (2d) 874.

Under the provision authorizing an appeal to the circuit court from any order of a county school committee creating, altering, consolidating or dissolving school districts, within 30 days following the issuing and recording of such order, there is no trial de novo nor review of the wisdom or advisability of the order in the circuit court, but such right of appeal was intended by the legislature to embrace attacks on jurisdictional defects in the proceedings leading to the order, or the exceeding by the committee of its statutory powers, and such statutory method of appeal is the exclusive remedy to review such proceedings, so that jurisdictional defects in the proceedings may not be raised by certiorari. *Perkins v. Peacock*, 263 W 644, 58 NW (2d) 536.

In construing any statutory right of appeal from decisions or orders of public officers or administrative agencies, it is necessary to determine whether the legislature intended such right of appeal to be the exclusive remedy of an aggrieved person irrespective of whether there might be a jurisdictional defect in the proceedings leading up to the making of the order or official action attacked, or whether the public officers or agency making the order exceeded their statutory powers. Even in those cases wherein the supreme court has construed a statutory right of appeal as being intended by the legislature to be the exclusive remedy for reviewing jurisdictional defects in procedure, there may be exceptional cases where such right of appeal would be inadequate for such purpose and certiorari might lie, such as where statutory notice was not given and the aggrieved party did not receive actual notice until the time for appeal had expired. *Perkins v. Peacock*, 263 W 644, 58 NW (2d) 536.

On an appeal under (5) from an order of a joint county school committee denying a petition for the detachment of territory from a certain school district and attachment to another, where the committee had been served with notice of the appeal as required by the statute, and had participated without objection in the proceedings before the court, and had acquiesced in respect to the issue as it was framed and considered by the court, the committee was not entitled to notice other than that which was given in respect to the claim of the petitioners and in regard to the call of the case for hearing in the court. It was within the jurisdiction of the circuit court to inquire as to whether a ruling of the committee, on which the order was based, was erroneous and therefore an abuse of discretion, and to make a determination of the matter. *Endeavor-Oxford Union F. H. S. Dist. v. Walters*, 270 W 561, 72 NW (2d) 535.

A majority of the committee constitutes a quorum and may lawfully act, and a majority vote of the quorum is decisive. *Endeavor-Oxford Union F. H. S. Dist. v. Walters*, 270 W 561, 72 NW (2d) 535.

When the circuit court changes an order of the committee on appeal, the corrected order is not effective until the following

July 1. *Endeavor-Oxford Union F. H. S. Dist. v. Walters*, 270 W 561, 72 NW (2d) 535.

With reference to a charge that the provision of (1) that notice in writing of the time and place of hearing shall be served on the clerks of the school districts affected was not complied with, the burden of proof rested on the parties making the charge. *Joint School Dist. v. Waupaca, etc., County S. Committee*, 271 W 100, 72 NW (2d) 909.

A challenge to the validity of an order of a joint county school committee, based on a claim that various required statutory notices relating to hearing and order did not state the full and correct legal names of the school districts involved, is rejected where no specified form of notice of the meetings of the committee nor of its order was prescribed by statute, the forms employed were sufficient to apprise all interested persons of the time, place, and purpose of the meetings and of the substance of the order, and there was no showing that any interested person was misled by the abbreviation of the legal names of the school districts involved. *Joint School Dist. v. Waupaca, etc., County S. Committee*, 271 W 100, 72 NW (2d) 909.

An appeal to the circuit court under (5) is regarded, not as a retrial of the petition for detachment and attachment, but as an original proceeding to review merely an illegal exercise of power or abuse of discretion on the part of the committee, and on such appeal the court is concerned only with questions as to whether the committee has exceeded or abused its power. *Joint School Dist. v. Waupaca, etc., County S. Committee*, 271 W 100, 72 NW (2d) 909.

(6) (a) does not offend against the equal-protection clause of the 14th amendment on the ground of being unreasonable, unjust, arbitrary, and discriminatory in classifying cities having a large population with villages having a relatively smaller population, and in classifying unincorporated areas into a separate group. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

The right of a member of a school committee to continue to function in relation to his office may be tested only in quo warranto proceedings and, until his title to the office is divested by proper authority, his continuing official actions are deemed valid. An appeal to the circuit court under (5) is not a quo warranto proceeding and, although extrinsic evidence of a judgment in quo warranto proceedings is admissible on such appeal, evidence other than the record in a quo warranto proceeding respecting qualifications of the committee members is inadmissible in proceedings on such appeal. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

As used in (1), the term "alteration" connotes "detachment" and "attachment," and thereunder such a committee may detach part of one school district and attach it to another district. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

A county school committee, or joint committee, possesses the power under (1) to order the creation, alteration, consolidation, or dissolution of school districts within its jurisdiction, and where different conclusions as to where the lines of a district should be may be drawn from the evidence submitted, the conclusions adopted by the legislative body cannot be interfered with. The duty of forming and altering school districts is purely municipal and administrative, and has no respect whatever to personal or property rights. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

In an appeal to the circuit court under (5) from an order of a county school committee, or joint committee, relating to the reorganization of school districts, the court's sole function is to determine whether there was jurisdiction and whether there was an unlawful abuse of power. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

An order of a joint county school committee which dissolved 5 common school dis-

tricts, detached a portion of a joint district, and attached to and consolidated with an existing city school district all of the territory so dissolved and detached, merely altered an existing district by enlargement, and did not "create" a new district within the meaning of (1). *Funke v. Joint County School Committee*, 271 W 439, 73 NW (2d) 579.

A town, which contained school district territory included in an order of a joint county school committee relating to the reorganization of school districts, was not a "person aggrieved" within the meaning of (5). *Greenfield v. Joint County School Committee*, 271 W 442, 73 NW (2d) 580.

Where the circuit court held that an unfavorable referendum on an order of county school committees dissolving school districts and creating a consolidated school district was valid, the effectiveness of such consolidation order was canceled by virtue of 40.303(14) (a), Stats. 1949, and the area of an affected school district reverted to its former status, so that it again became an independent district which, while the judgment was still unreversed, could take measures permitted to school boards and authorized by the electors of such district, and so that those who dealt with such district in reliance on its apparent status, such as persons from whom it borrowed money for school-operating purposes, were protected by the judgment. *Slabosheske v. Chikowske*, 273 W 144, 77 NW (2d) 497.

(1) places a petition for the attachment and detachment of territory within the discretion of the county school committee, and the committee need not hold a public hearing unless it decides to grant the petition. *Gerbitz v. Joint County School Committee*, 274 W 396, 80 NW (2d) 377.

Although (5) provides that if the county school committee refuses or neglects to issue an order when petitioned to do so, then any person aggrieved may appeal to the circuit court, and that the court shall not remand the proceeding but shall issue its own order, such statute does not authorize a trial de novo nor empower the court to substitute its judgment on the merits for that of the committee, but such statute intends that the judicial review on appeal shall cover only questions of jurisdiction and unlawful abuse of power, including action taken by the committee under a mistaken view of the law. *Gerbitz v. Joint County School Committee*, 274 W 396, 80 NW (2d) 377.

The county school committee has authority to detach a single farm from one school district and to add it to another. A petition for referendum signed only by electors from the district from which land is detached does not require a referendum. 39 Atty. Gen. 39.

The duty of determining the sufficiency of a petition to invoke an election is upon the county clerk. The sufficiency of the percentage of signatures of electors from territory outside cities and villages to invoke an election must be based upon the total of electors in all such territory within the district as reorganized, including not only such territory as is to be added by the particular order in question but all such territory previously within the district. The period allowed by statute for the filing of a petition for referendum may not be changed

because of erroneous advice from any public official respecting the statutory requirements. 39 Atty. Gen. 251.

A county clerk may not call a referendum pursuant to a petition filed after the statutory period for filing has expired. 39 Atty. Gen. 277.

County school committee's order under (4) (b) [40.03 (1)] is not issued within the meaning of (8) (a) [40.03 (6) (a)] until the order has been filed as provided in (13) [40.03 (3)]. 39 Atty. Gen. 316.

The procedure for an appeal from an order of a county school committee should follow that outlined in *School Dist. v. Callahan*, 237 W 560. 39 Atty. Gen. 349.

The county school committee is not precluded from entering an order under (4) [40.03 (1)] by lack of consent of the school boards of the districts involved. Where territory formerly comprising a city school district is affected by an order of the county school committee under 40.303 [40.03] the board of education for future operation of the district is to be provided under 40.07 [40.26] if the order results in such a reorganization as to abolish the city district; or under 40.52 [40.803] if it merely results in alteration of the existing city district. The authority of the county school committee under 40.303 [40.03] to alter and consolidate districts includes power to annex one district to another. A city involved in a school district consolidation order issued under 40.303 (4) [40.03 (1)] retains title to schools owned by it until divested in the manner provided by 66.03. 39 Atty. Gen. 414.

For attorney general's opinions on provision of 1951 statutes requiring committee to file a county educational plan, see 40 Atty. Gen. 382; 40 Atty. Gen. 436; 41 Atty. Gen. 100.

County school committee has power to enter a single order consolidating several common school districts by creating a new common school district comprising the territories thereof and creating a high school district composed of all the territory thereof. Referendum on such order should provide for submission of the 2 matters separately. 41 Atty. Gen. 94.

Order of county school committee denying petition to dissolve a school district is not subject to referendum under (6). An order of county school committee dissolving a school district, but making no disposition of the territory thereof, would not effect a reversion of the territory to the old districts out of which the district was previously created. 41 Atty. Gen. 307.

Orders by county school committees under 40.03 are subject to provisions in 40.06 (1) that no territory shall be detached from a district unless attached to another and no district shall be created with less than \$150,000 valuation. 43 Atty. Gen. 219.

Detachment of territory from a common school district by county school committee order under 40.03 does not effect a transfer to the district of attachment, where, prior to July 1 next succeeding such order, the district from which the detachment was ordered was consolidated with other districts to form a new common school district under 40.07. 44 Atty. Gen. 54.

Provisions for special voting in referendums upon county school committee orders in Milwaukee county would be unconstitutional. 44 Atty. Gen. 139.

See note to 40.12, citing 44 Atty. Gen. 229.

#### 40.04 School committee functions. The county school committee shall:

(1) Determine the amount to be allowed in excess of the established maximum on claims for transportation of nonresident high school students as provided in s. 40.56 (2).

(2) Approve all school bus routes established by the several school districts or municipalities of the county.

**History:** 1953 c. 90, 599.

**40.05 Local governing bodies to advise.** The board of any town or village and the council or commission of any city of the second, third and fourth class shall, within 30 days after receipt of a written request from a county school committee, advise and make recommendations to the committee in writing concerning any proposed reorganization of any

school district which lies in their respective municipalities. In cities of the first class, the board of school directors shall give such advice and recommendations.

**History:** 1953 c. 90; 1957 c. 536.

**40.055 State superintendent to advise.** The state superintendent shall advise and consult with the several county school committees. If in his opinion any school district or districts should be created, altered, consolidated or dissolved, he may make his recommendations to the county school committee or committees of the county or counties within which the territory affected is situated.

**History:** 1953 c. 90.

**40.06 Reorganization of school districts.** (1) **POWER; PUBLIC HEARING.** Upon the filing of a petition by an elector residing in a school district affected with the clerk of a town, village or city affected or upon adoption of a resolution upon its own motion, the board of any town or village affected or the council of any city of the second, third or fourth class affected may, by order, reorganize school districts. Before any reorganization order is made a public hearing shall be held on the proposal. The clerk of the town, village or city with whom a petition is filed or the clerk of the town, village or city the governing body of which adopts a resolution proposing a school district reorganization, shall fix a date for a public hearing within 30 days of the date of filing the petition or of the date of the adoption of the resolution and give notice thereof as provided in s. 40.025 (2).

(2) **JOINT ACTIONS OF BOARDS.** When a petition is filed or a resolution is adopted for the reorganization of a school district, as provided in sub. (1), and any territory of the proposed reorganized district comprises all or part of a school district affected by such reorganization which lies in more than one town, village or city, the boards of all such towns and villages and the councils of all such cities in which any territory of any school district affected lies shall act jointly thereon; the concurrence of a majority of each board or council is necessary to a valid order. The meeting of the several boards and councils to conduct a public hearing shall be called by the clerk of the town, village or city with whom the petition is filed or whose board or council adopted the resolution for a proposed reorganized district and said clerk shall give notice thereof as provided in s. 40.025 (2) (b).

(3) **APPEAL.** (a) Any person aggrieved by an order made under this section may appeal to the state superintendent within 30 days following the date of mailing of such order as provided in s. 40.025 (5). If action adverse to the making of an order of reorganization is taken by town or village boards or city councils, whether acting alone or jointly, at or following a hearing upon a petition for such reorganization, any person aggrieved by such adverse action may appeal to the state superintendent within 30 days following the date of such action. If no order of reorganization is filed within 60 days after the filing of a petition therefor any person aggrieved may appeal to the state superintendent within 90 days after the filing of the petition and such appeal may be taken notwithstanding any other provision for appeal in this paragraph. No appeal hereunder to the state superintendent may be withdrawn.

(b) After determining the appeal the state superintendent shall make an order affirming, modifying or reversing the order appealed from, or if the appeal is taken when no reorganization has been ordered the state superintendent may make such orders as he deems proper under the circumstances. The state superintendent shall make his order within 120 days of the date of taking of an appeal and forthwith file a copy thereof as provided in s. 40.025 (5). Failure of the state superintendent to make an order on appeal within said 120 days shall operate as a denial of the appeal.

(c) Any person aggrieved by any order of the state superintendent issued under this section may appeal therefrom to the circuit court of any county in which any territory of the reorganized district lies. A written notice of appeal stating specifically the grounds upon which said appeal is based shall be served on the state superintendent and filed with the clerk of the court all within 30 days from the date certified copies of his order are mailed as provided in s. 40.025 (5). Such service and filing thereof shall constitute perfection of the appeal.

(4) **REFERENDUM.** If within 30 days after the mailing of an order made and filed by a reorganization authority pursuant to this section, a petition for a referendum signed by a sufficient number of electors as provided by s. 40.03 (6) (a) is filed as therein provided, the same shall be held and conducted in accordance with s. 40.03 (6).

**History:** 1951 c. 707; 1953 c. 90; 1957 c. 536.

**Revision Committee Note, 1953:** The new phrase in (1) "upon its own order" was always implicit since any board member as an individual could file with the board. The implication in (2) that the state superintendent on his own motion may change districts is avoided by striking the clause in the first sentence. Since the 1947 amendments, the superintendent has not exercised this function. His power is expressed in new 39.02 (22). The addition to (3) is to make clear that municipal boards may initiate action without petition. In (6) the words "voting at the last gubernatorial

election" are not needed because new 40.01 (6) governs; "In the proposed district" is added to limit the petitioners to the same area as the electors. (Bill 1-S)

Ch. 228, Laws 1939, struck out in 40.30 (1) (Stats. 1937) the word "common," and (1) thereafter authorized the creation or alteration of high school districts as well as others, so that a county school committee could enlarge the area of an existing high school district under the power granted to it by 40.303 (4), Stats. 1947, to create or alter school districts "subject to the conditions set forth in 40.30 (1)." In re Joint Union Free High School Dist. 262 W 126, 54 NW (2d) 40.

The term "territory affected by a proposed order" refers not only to the area actually detached from one school district and attached to another, but includes also the area contained in both school districts, so that, if the school district resulting from such detachment and attachment is comprised of territory lying in 2 different municipalities, any future alteration of such school district, pursuant to 40.06, requires the concurrence of the municipal boards of

both municipalities. Where a joint city school district, created by a county school committee under 40.03, was comprised of territory lying within 2 towns, a village, and a city, the subsequent action of the village board of the village and the town board of one of the towns, acting together under 40.06, and withdrawing their respective territories and creating a new school district, was void in the absence of concurrence by the remaining 2 municipal boards. State ex rel. West Allis v. Dieringer, 275 W 208, 81 NW (2d) 533.

The creation or alteration of a school district under 40.303 [40.03] does not prevent later alteration under 40.30 [40.06]. 39 Atty. Gen. 302.

See note to 40.03, citing 43 Atty. Gen. 219.

A union high school district may be created under 40.06 (1), without prior approval of map required by 40.12 (1), and without certificate of establishment required by 40.12 (4) (c), and no certificates of authority to operate a high school from the state superintendent is required. 46 Atty. Gen. 118.

**40.07 Consolidation of common school districts by referendum.** (1) When 10 per cent of the electors, in each of 2 or more school districts, petition therefor, the school board shall meet at a time and place designated by the school board of the most populous district, to fix a time for an election to determine whether the districts shall be consolidated. The election shall be not less than 2, nor more than 4 weeks from the date of their meeting. Such election shall be called for 8 p.m., at the regular places for holding the district meeting. The district clerks of the respective districts shall give notice of the election as notices of annual school district meetings are given. The elections shall be conducted by the school officers of the respective districts, and the vote shall be by ballot. The school officers shall, within 3 days, report the result of the elections in their respective districts to the clerk of the district in which the meeting to fix the time of the election was held. The several school boards, one week after the election, shall meet at said place, shall canvass the returns and shall file a report of the results with the county superintendent and the state superintendent.

(2) If a majority of the votes cast in each district is in favor of consolidation, the school districts shall be consolidated into a single school district, and the several school boards, at the time of canvassing the returns shall make an order creating a new district comprised of the area of the former districts and file the same as provided in s. 40.025 (5).

(3) When a consolidated school district is organized, the school districts out of which it was formed shall cease to exist, and the title to all property and the assets of every nature of such several school districts shall thereupon become vested in the consolidated school district, and claims and obligations and contracts of said several school districts shall become the claims and obligations and contracts of such consolidated district. The consolidated district shall conduct the schools theretofore maintained and conducted by the several districts until such time as the consolidated district shall have made new provisions therefor.

**History:** 1953 c. 90, 599; 1957 c. 536.

See note to 40.03, citing 44 Atty. Gen. 54.

**40.08 Dissolution of district by neglect to keep school.** (1) Except as otherwise provided in this subsection, if a district for 2 or more successive years neglects to operate a school for its children as required by law, it shall be attached to a district or districts that do operate a school or schools, by referendum pursuant to the provisions of s. 40.07, by county school committee pursuant to the provisions of s. 40.03, or by municipal board action pursuant to the provisions of s. 40.06. If orders of attachment of any such district to an operating district have not been issued pursuant to s. 40.03, 40.06 or 40.07 prior to or within 30 days after June 30, 1955, or within 30 days after any such district becomes subject to this section, whichever is later, orders attaching such districts to operating districts shall be issued by the county school committee having jurisdiction under s. 40.03 prior to August 30, 1955, or prior to August 30 of any year in which such a district becomes subject to attachment. Notwithstanding the provisions of s. 40.025 (4), orders by the county school committee issued under this subsection shall take effect upon being filed as provided in s. 40.025. The state superintendent shall notify the school district clerks of districts which are subject to the provisions of this section and shall notify the clerks of the municipalities in which all parts of such districts lie and the secretaries of the county school committees of the counties in which these districts lie within 60 days of the date on which the districts become subject to this section. However, only during the period ending June 30, 1957 any district which does not operate a school and which is

contiguous to a city operating under a city school plan or which is adjacent to such contiguous district, is authorized to and shall arrange for the attendance of its pupils at the elementary grades of some other district on a nonresident tuition basis and provide transportation to and from such school by the methods provided in s. 40.53 (5) for all its pupils who reside 2 miles or more from the school of such other district that they attend, and may use such funds on hand as have been raised or appropriated for operation and maintenance or levy taxes to pay for such tuition and transportation and to reimburse parents for any such tuition or transportation they have paid or furnished. If a district fails so to do during said period its pupils may attend the elementary grades at the nearest available school of another district or the school which is certified by the county superintendent having jurisdiction as more feasible for them to attend and such district of residence shall be liable to the district whose schools such pupils attend for the nonresident tuition and cost of transportation said district is required to provide, or to the parents of such children for any such tuition or transportation they have paid for or furnished. The school board of a district to which any territory is attached or consolidated therewith shall levy and collect a special tax against the property in the territory attached thereto or consolidated therewith for such amount as is payable for tuition and transportation, at the time of such attachment or consolidation, by the district in which such territory so attached or consolidated was located prior thereto, in the proportion that the valuation of the territory attached hereto or consolidated therewith bears to the total valuation of the district in which such territory was located prior to such attachment or consolidation. This amendment shall operate retroactively to and including May 15, 1953.

(2) If the territory of the dissolved district is attached to more than one district, then the assets and liabilities of the dissolved district shall be apportioned by the board to the receiving districts, as provided in s. 66.03.

(3) (a) Section 40.03 (6) shall not apply to orders issued by the county school committees pursuant to this section.

(b) If an order issued by the county school committee or by municipal boards pursuant to this section is voided by a circuit court the nonoperating district designated in the order of the court shall arrange for the attendance of its pupils in the elementary grades of some other district or districts on a nonresident tuition basis and provide transportation to and from such school by the methods provided in s. 40.53 for all of its pupils who reside 2 miles or more from the school of such other district or districts that they attend, and may use such funds on hand as have been raised or appropriated for operation and maintenance or levy taxes to pay for such tuition and transportation, until a valid order has been issued. The county school committee shall in such cases issue new orders within the succeeding year.

**History:** 1953 c. 90, 127, 599, 629; 1955 c. 341; 1957 c. 97, 699.

**Note:** Sec. 5, ch. 573, Laws 1955, provides that pending the approval of the interstate compact on public school administration, "the provisions of s. 40.08 of the statutes relating to the abolition of nonoperating school districts shall not apply to any school district which provides for the education of all its pupils at an out-of-state school." The 2-year provision in (1) does not in-

clude nonoperation prior to the effective date of such amendment. 42 Atty. Gen. 185. Requirement in 40.03 (1) that nonoperating school district be attached to an operating district does not apply to districts which do not operate a school on account of a contract under 37.10 or 41.42. 44 Atty. Gen. 59.

**40.09 Creation of joint school districts between states.** (1) **AUTHORITY.** Upon approval by the state superintendent, the county school committee of any county or the municipal board of any municipality in Wisconsin bordering on the boundary of Wisconsin and an adjoining state, may by joint action with bodies authorized to do so by the laws of such adjoining states, issue and file orders of creation of joint school districts comprised of territory lying in Wisconsin and in such adjoining states and by such order provide for the operation of either elementary grades or high school grades, or for both elementary and high school grades by such districts. Such orders may be subject to a referendum election as provided by s. 40.03.

(2) **GOVERNMENT.** (a) The order creating the district shall fix the date, time and place of holding the first annual meeting of the district and shall provide for a board of 7 members. Thereafter the district annual meeting shall be held on the corresponding date, time and place. The annual meeting will elect a chairman and secretary and shall elect the officers of the district by ballot. The 3 candidates receiving the highest number of votes shall hold office for 3 years; the 2 candidates receiving the next highest number of votes shall hold office for 2 years and the 2 candidates receiving the next highest number of votes shall hold office for one year. The elected candidate shall file statements of acceptance of office with the county superintendents of the counties concerned within 5 days after the election.

(b) Vacancies caused by reason of failure to qualify, death, removal of residence from the district, resignation, removal from office or for any other reason shall be filled by the remaining members of the board. Members so appointed shall serve for the unexpired remainder of the term. The board shall be vested with the powers and charged with the duties of common school district boards that are provided in the statutes of both states. The board shall contract in writing with teachers who possess the legal qualifications required by either state.

(3) **TAX LEVY.** The taxes for the maintenance, operation, transportation and capital expenditures of such school district shall be apportioned between the areas in each state in accordance with the full or equalized valuation of the identical types of taxable property in each state, and shall not exceed the legal maximum in the state with the lower maximum. The tax levy shall be apportioned within the portion of the district within each state by the municipal officials thereof in accordance with the requirements of that state.

(4) **STATE AIDS.** For the purposes of computing and apportioning state aids to such districts, each state shall consider that portion of said district lying within its boundaries as an independent school district and compute and apportion the aids accordingly.

(5) **IRRECONCILABILITY OF STATUTES.** In case of the irreconcilability of the statutes of both states regarding any matter not covered herein, the school board of the interstate district shall, in co-operation with the county superintendent of each county in which territory of the district is located, consider the problem and make recommendations to the state superintendents of the states involved. The latter shall review the recommendations and reach an agreement which shall be submitted to the board and shall be spread on the minutes of the school board of such district and shall constitute the effective regulation until the next meeting of the legislatures of the states involved. The legislatures shall review the regulation as an amendment to this section, and it shall continue in effect only if approved by both legislatures.

**History:** 1951 c. 267; 1953 c. 90.

**40.10 High school; how established in common school district.** (1) Any common school district having an assessed valuation of \$2,500,000 or more may establish a high school if at least 75 persons of school age, residents of the district, give evidence, satisfactory to the state superintendent, that they are prepared and desire to attend a high school.

(2) The question of establishing such a school may, and upon the written petition of 10 per cent of the electors shall, be submitted by the school board to an annual or a special meeting, upon written resolution therefor proposed for adoption.

(3) Notice of such proposal, embodying the resolution, shall be given by the district clerk in the manner provided for giving notice of a district meeting.

(4) The vote on such proposal shall be taken by ballot. The ballots shall be "For High School" and "Against High School." If the resolution is adopted, the clerk shall report the resolution and the action thereon to the state superintendent for his approval. If he approves, he shall issue a certificate of establishment of a high school, otherwise he shall veto the proposal.

(5) In all school districts wherein a high school has been established, pursuant to this section, the district board shall be the high school board.

(6) An authorization for the establishment of a high school shall become void unless such school functions within 3 years from the date of the election.

(7) A common school district which maintains a high school may discontinue such school by submitting the proposal therefor to the electors in the manner that the establishment of such school was submitted, but a two-thirds vote shall be necessary to effect a discontinuance.

(8) The state superintendent may, after investigation, discontinue any high school if he is satisfied that such discontinuation is for the best interests of the taxpayers of the district and of the students of such high school.

**History:** 1953 c. 90.

**40.11 Joint high school district; established by common districts.** (1) In case 2 or more common school districts propose to jointly establish a high school, action shall be taken by each district as in the case of the establishment of such school by a single district.

(2) Within 6 days after the proposal is voted on, the school boards of the districts shall meet in joint session and canvass the returns and certify the results to the state superintendent. If the proposal is adopted by each district, and such action meets the approval of the state superintendent, he shall issue an order creating a union high school district comprising the territory of said common school districts and file the same as provided in s. 40.025 (5); otherwise he shall, within 30 days, notify the clerk of each district which participated and the county superintendent that the proposal is disapproved.

(3) If a high school district is created all procedure subsequent to the issuance of said certificate shall be governed by s. 40.12; and the officers of the high school district and their election and term of office shall be as provided in that section.

**History:** 1953 c. 599; 1956 c. 536.

**40.12 Union high school district; established.** (1) A union high school district may be established in any territory with an assessed valuation of \$2,500,000 or more. At the time of filing the petition mentioned in subs. (2) and (3), the petitioners shall submit to the state superintendent, to the clerk of each town, village or city and to the county superintendent of each county in which territory comprising such proposed district lies, a legal description and map of the territory proposed to be included in the district. Except as to such districts established by the county school committee pursuant to s. 40.03 (1), no election on the establishment of such district shall be held in such territory unless the state superintendent, after considering all relevant factors, has approved the same as a proper district to provide high school education. A copy of such description and map, with the approval of the state superintendent indorsed thereon, shall be submitted to the clerk of each town, village and city and to the county superintendent of each county within which territory comprising such proposed district lies.

(2) If the territory is entirely in one municipality, the question of establishing such district shall be submitted to the voters of such territory, whenever a petition, signed by 10 per cent of the electors of the territory, is filed with the municipal clerk praying for the submission of such question. The clerk shall, at once, set a time for the special election, and shall give 10 days' notice thereof by posting the notice in 6 different places in such territory, or by publishing such notice in a newspaper published therein, once each week for 2 successive weeks immediately prior to the election. The election shall be conducted and the votes canvassed as in the case of local elections. A majority of all the votes cast shall determine the result.

(3) If the territory is in more than one municipality the petition may be presented to any municipal clerk and he shall, within 5 days after receipt of said petition, notify the other clerks of the receipt of such petition, and shall set a date and place for a meeting with them to fix the time and place for holding the election. Said clerks shall meet accordingly and fix the time and place for holding such election and shall give notice thereof. Unless a city or village is included, the election shall be noticed for the entire territory proposed to be included in the district, and shall be conducted by the town board of the town in which the election is held.

(4) (a) If the proposed district contains a village or city the election for such village or city shall be held in the village or city. The election for the town territory may be held in a village or city or at any other convenient place. The election for the village or city shall be conducted and the votes canvassed in the manner provided for village or city elections; and the election for the town territory shall be conducted and the votes canvassed in the manner provided for town elections. If the outlying territory is in more than one town, the election for the part in each town shall be conducted separately.

(b) The ballots shall be provided by the clerks and shall be so printed as to plainly indicate how the electors may vote. The proposal is not adopted unless a majority of the electors voting in the territory outside of the villages or cities and a majority of the electors voting in the villages or cities shall vote for the establishment of a high school district.

(c) The result of the election shall be certified at once by the election officers to the clerks of the respective towns, villages or cities; and if the proposal is adopted, the result shall be certified to the state superintendent by the said clerks, within 6 days after the election. The state superintendent shall make an order creating a union high school district comprised of said territory and file it as provided in s. 40.025 (5).

(5) If an existing school district is included in the new union high school district territory, on the establishment of the union high school district such existing high school district shall cease to exist, and the property and liabilities thereof shall become the property and liability of the new district.

(6) The tuition of pupils who reside in territory comprising a newly created union high school district and outside of districts operating high schools shall continue to be the liability of the municipality or municipalities of their residences as provided in s. 40.91 until such time as the newly created district shall have provided adequate building facilities for its needs.

(7) The territory comprising a newly created union high school district shall continue to furnish high school opportunity on the same basis and under the same conditions as prevailed prior to the creation of such district until such time as adequate building facilities are provided by the new high school district. The boards of the newly created high school districts shall perform all of the duties pertaining to the negotiation of loans for buildings, letting of contracts for construction of new buildings, noticing and conducting meetings of the district for the purpose of securing authorization of loans for building

purposes and all other necessary powers and duties delegated by statute to union high school district boards.

(8) The petition for any referendum on the establishment of a union high school district may request that the ballot for such referendum contain provision for voting on the question of organizing a union high school district and the endorsement of a location for the school.

**History:** 1953 c. 90, 507, 599, 611, 631; 1955 c. 569; 1957 c. 536.

See note to 40.02, citing 42 Atty. Gen. 70.

Requirements in 40.12 (1) and (4) (c) of approval of state superintendent of establishment of a high school district is inapplicable to creation of a high school district by county school committee order under 40.03. Where applicable such approval is not of the regularity of procedure but as to the need and feasibility of such district. 44 Atty. Gen. 229.

**40.14 Attachment to union high school district.** Territory not in a district which operates a high school but adjoining a union high school district may be attached thereto in the following manner:

(1) A petition therefor describing the territory shall be presented to the board of such high school district signed by 10 per cent of the electors in such adjacent territory.

(2) If the high school board approves the petition, the matter shall be submitted by said board to a meeting of the electors of said territory held at the regular place of holding the annual meeting of the high school district or some other convenient place, at 8 p.m. on the date set by said board, which shall be within 30 days from the date of approval of the petition by the board. The clerk of said high school district shall give at least 10 days' notice of said meeting, embodying therein the date, time and place of the meeting and the proposal to be submitted, by posting copies thereof in at least 8 public places in said territory. Said meeting shall be conducted by the officers of the high school district in the manner of conducting a meeting of the school district. The vote on the proposal shall be taken by ballot, which ballot shall contain a description of the territory to be attached by section and portions of sections, and the question on the ballot shall be "Shall the territory herein described be attached to the.....school district?"

Yes  No

If a majority of the electors voting at said meeting are in favor of attachment, said territory shall be attached and the board of the high school district shall make an order to that effect and file the same as provided in s. 40.025 (5), but such order shall not be made effective during a school term.

**History:** 1953 c. 90; 1955 c. 261; 1957 c. 536.

**40.15 Union high school districts, dissolution.** (1) Any union high school district may be dissolved as provided in this section.

(2) A petition signed by 10 per cent of the electors in such district shall be filed with the district clerk, requesting that an election be called to vote on the question of dissolution.

(3) Said clerk shall, within 5 days after receipt of such petition, fix the date and give 10 days' notice of the time and place of holding such election, by posting copies thereof in at least 8 public places in such district and by publication in a newspaper of general circulation in the district. The election shall be held in the high school building, if possible.

(4) The clerk shall prepare a sufficient number of ballots on which shall be printed "For Dissolution

and "Against Dissolution .

(5) The polls at such election shall be open at 1 p.m. and closed at 8 p.m., and the officers of such election shall be the district clerk and 2 other persons to be selected by the school board.

(6) The election shall be conducted and the votes counted and canvassed as in the case of town elections.

(7) If two-thirds of the votes cast at such election are for dissolution, the result shall be at once certified to the state superintendent and he shall make an order dissolving such district as of July 1, following such election, and file the same as provided in s. 40.025 (5).

(8) Such dissolution shall have the effect of transferring the property, assets and liabilities of the high school district to the common school districts which were, in whole or in part, embraced in the high school district; and shall be awarded, apportioned and distributed subject to and in the manner provided by s. 66.03, as far as the same is applicable.

**History:** 1953 c. 90; 1957 c. 536.

**Revision Committee Note, 1953:** News-changed from 7 to 8, to harmonize with paper publication is required for better other school election provisions. (Bill 1-S) notice. The hour for closing the polls is

**40.16 Joint ownership of school building.** The electors of any union high school district and the electors of any common school district, included within the union high school district, may direct their respective school boards to join in the erection and maintenance of a school building or buildings for housing the high school and the common



school. Where such agreement has been entered into, the principal of the high school shall be the administrative head of both schools.

**History:** 1953 c. 90; 1957 c. 536.

**40.18 School district; validation; lost records.** (1) If a district has exercised the rights and privileges of a school district for a period of 4 months, no appeal or other action attacking the legality of the formation of such district, either directly or indirectly, shall be taken.

(1a) This section shall be liberally construed to effect the legislative purpose to validate and make certain the legal existence of all school districts in the state of Wisconsin, however created or reorganized, and to bar every right to question the existence thereof in any manner and to bar every remedy therefor notwithstanding any and all defects and irregularities, jurisdictional or otherwise, after the expiration of such 4-month period except where some action or proceeding has been commenced within such 4-month period.

(2) If the order creating a school district and the record thereof is lost or destroyed, the order may be restored, filed and recorded by the same authority and procedure as an original order of like character would be presently made, filed and recorded and shall be presumptive evidence of the regularity of all prior proceedings pertaining thereto, of the legality of the formation of such district, of the boundaries thereof and of the loss or destruction of the record of its formation. Parties aggrieved by any order made under this section may appeal to the state superintendent within 30 days.

**History:** 1953 c. 90, 368; 1957 c. 536.

**40.19 Partial annexation of school district by Milwaukee.** (1) When any city of the first class has annexed a portion of a school district and such annexation does not include the site of the school building or buildings of such school district, the district board and the board of school directors of such city may enter into an agreement to permit the school children in the area annexed to continue to attend the district school, and such board of school directors of the city of the first class shall thereupon pay tuition to the school district for their education according to s. 40.65 (3).

**History:** 1953 c. 442; 1957 c. 195.

**40.20 Common school district meetings; notice, time, conduct.** (1) The annual meeting in all common school districts shall be held on the second Monday of July, at 8 p. m., but a different hour may be fixed by an annual meeting for the next annual meeting.

(2) The first school meeting in any district shall be considered an annual meeting.

(3) The clerk shall give at least 6 days' notice of the annual meeting by posting notices therefor in 4 or more public places in the district; he shall give like notice for any adjourned meeting, if the adjournment is for more than one month; but no annual meeting shall be deemed illegal for want of notice.

(4) Special meetings to transact any business within the powers of the annual district meeting shall be called by the clerk, or, in his absence, by the director or treasurer, on the written request of 5 electors, or may be called by the board on its own motion, and notice thereof, specifying particularly the business to be transacted, shall be given in the manner prescribed for noticing the annual meeting. If the request for such special meeting includes any subject beyond the power of the district meeting to transact, the clerk shall reject such subject and notify each elector signing the request.

(5) If a newspaper is published in the school district, the notice of a district meeting shall be given by publication in such newspaper by printing the notice in 2 successive issues, the last of which shall be not more than 8 days nor less than one day before the day of the meeting. The special meeting, if no hour is fixed in the notice, shall be held at 8 p. m. Proper newspaper publication of the notice of a district meeting shall be in lieu of posting.

(6) If any person offering to vote at a district meeting is challenged, the chairman shall state to the person challenged the qualifications of a voter, and if such person declares that he is a voter, and if such challenge is not withdrawn, the chairman shall tender to him the following oath or affirmation: You do solemnly swear (or affirm) that you are an actual resident of this school district and that you are qualified, according to law, to vote at this meeting. Every person taking such oath or affirmation shall be permitted to vote, but if he refuses to take such oath or affirmation his vote shall be rejected.

**History:** 1953 c. 90.

Common school district meeting may not be legally called under 40.20 (4) for purpose of requiring a special audit by the auditing committee appointed under 40.23 (1), and state department of audit is not required to audit books of school district under 40.30 (1), whether requested to do so by the school board pursuant to petition made to it, or otherwise. 40 Atty. Gen. 108. The electors at an annual school district

meeting may change the hour of the day but not the date specified in (1) for holding the next annual meeting. The suggestion is made that it might be desirable to call a special meeting of the school district to correct the irregularities which resulted from holding an annual school district meeting at a time not authorized by law. 42 Atty. Gen. 30.

**40.21 Referendum.** If a petition signed by 100 electors in any common school district asking that a referendum be held on a special subject or item of business is filed with the district clerk at least 30 days prior to the day when the district officers are elected, the clerk shall incorporate such referendum subject or item of business in his notice of election or notice of the annual meeting. He shall prepare the proper ballot to permit voting on such referendum subject.

**History:** 1958 c. 90.

**40.22 Powers of annual district meeting.** The annual common school district meeting may:

(1) **CHAIRMAN AND CLERK.** Elect a chairman; in the absence of the clerk, elect some person to act in his stead.

(2) **ADJOURNMENT.** Adjourn, from time to time.

(3) **ELECT SCHOOL BOARDS.** Except as provided in s. 40.27 (8) elect a director, treasurer and clerk, by ballot; a majority of the votes shall be necessary for a choice.

(4) **BUILDING SITES.** Designate sites for district schoolhouse or teacherages and provide for the erection thereon of suitable buildings or for the lease of suitable buildings for a period not exceeding 20 years with annual rentals as fixed by the lease.

(5) **TAX FOR SITES, BUILDINGS, MAINTENANCE.** Vote a tax to purchase or lease suitable sites for school buildings, to build, rent, lease or purchase schoolhouses or teacherages or outbuildings, and to furnish, equip and maintain the same, which tax may be spread over as many years as may be required to pay any obligations authorized or approved at such meeting, including payment of rentals due in future years under any lease then authorized.

(6) **TAX FOR TRANSPORTATION VEHICLES.** Vote a tax to purchase, operate and maintain transportation vehicles and finance contracts for the use and services of such transportation vehicles and to purchase liability insurance for the same.

(7) **TAX FOR OPERATION, LIMITATION.** Vote a tax for the operation of the school, but the total tax voted in any year shall not exceed 20 mills of the last state equalized valuation of the taxable property in the district, unless the district maintains a high school, in which case the tax limit shall be 25 mills of such valuation, except that in integrated districts as classified in s. 40.67, the tax voted in any year for school operation shall not exceed 15 mills of such equalized valuation. Limitations established by this subsection shall apply only to levies for operation of the schools, exclusive of capital outlay and debt service.

(8) **SALE OF PROPERTY.** Authorize and direct the sale of any property belonging to the district. If the school site or other lands to be abandoned were acquired or are held upon condition that they revert to the prior owner when no longer used for school purposes, the board shall sell the buildings or move them to another site within 8 months after the buildings cease to be used for school purposes or the site ceases to be maintained as a district playground or park.

(9) **PAY DEBTS.** Vote a tax as necessary to discharge any debts or liabilities of the district.

(10) **RECREATION AUTHORITY.** Vote a tax for the purposes specified in s. 66.527.

(11) **FREE TEXTBOOKS.** Authorize the board to furnish free textbooks for use in the school; such authorization shall continue in effect until revoked by a subsequent annual meeting.

(12) **SCHOOL YEAR, 9 MONTHS MINIMUM.** Determine the length of time the school shall be taught during the current year (not less than 9 months) but if the meeting does not so determine the board shall determine the same.

(13) **CONTROL OF LEGAL PROCEEDINGS.** Direct and provide for the prosecution or defense of any action or proceeding in which the district is interested.

(14) **SALARIES OF BOARD MEMBERS, LIMITATION.** Vote annual salaries to the members of the board; the salary to the treasurer and the director shall not exceed \$100 each and the salary to the clerk shall not exceed \$125 in school districts which operate schools having 2 departments or less. In districts having more than 3 board members the salary of the additional members shall not exceed that of the director or the treasurer. Limitations herein set forth shall not apply to districts operating schools having more than 2 departments. In districts which do not operate schools the salaries of the treasurer and directors shall not exceed \$20 each and the salary of the clerk shall not exceed \$25.

(14a) **REIMBURSEMENT FOR EXPENSES AND LOSS OF PAY BY BOARD MEMBERS.** Authorize payment of actual and necessary expenses of a board member when traveling outside the district in the performance of his duties, and reimbursement of a board member for actual loss of earnings, but not to exceed \$15 per day, when required by his duties as

such member to be absent from his regular employment. No payment shall be made under this subsection unless authorized by the annual or special common school district meeting after such expense or loss is incurred.

(15) **SCHOOL LUNCHESES.** Direct the board to furnish hot lunches to the pupils of the district and appropriate funds for that purpose.

(16) **NURSES AND DENTISTS.** In counties containing less than 500,000 population authorize the board to employ public health nurses and licensed dentists and vote a tax for that purpose.

(17) **SCHOOL BUILDING SINKING FUND.** (a) Vote a tax for the purpose of creating a sinking fund for the purpose of financing all current and future capital expenditures for paying all current bonded indebtedness for capital expenditures. All money raised through taxation or otherwise collected pursuant to this subsection shall be deposited by the district treasurer in a separate fund to be designated as a sinking fund, and such money shall not be used for any other purpose except as provided by s. 67.11 (1), or be transferred to any other fund except by authorization by a two-thirds majority vote of the total number of residents of the district who are eligible to vote at a school district meeting.

(b) If the tax in par. (a) is levied by a district operating an elementary school, each district of residence which pays tuition to an operating district shall pay in addition the sum of \$15 per pupil enrolled from such district of residence in addition to the tuition fees provided in s. 40.65 (3), such \$15 to be deposited and expended as provided in par. (a).

(c) If the tax in par. (a) is levied by a district operating a high school, that portion of the county outside the operating district shall pay to such district in lieu of the 2 per cent item for building and equipment costs provided for in s. 40.91 (4) (a) \$15 per non-resident pupil enrolled in addition to the tuition fees therein provided, to be deposited and expended as provided in par. (a).

(18) **AUDIT.** Authorize and direct an audit of the books and affairs of the district either by private auditors or by the department of state audit.

(20) **AGREEMENTS WITH BUILDING CORPORATIONS.** Authorize the school board to make agreements with school building corporations under s. 40.305.

**History:** 1951 c. 207, 272, 311, 525, 734; 1953 c. 90, 182, 441, 620; 1955 c. 79, 222; 1957 c. 60, 117.

A person otherwise regularly elected to a school district office at an annual meeting which was not held on the date specified by law may be a de facto officer of the district. The fact that money was borrowed by a school district pursuant to action taken at an annual meeting not held on the date specified by law does not necessarily preclude recovery of the amount loaned. 42 Atty. Gen. 30.

Except where there is specific provision therefor, suspended school districts may not levy taxes or expend funds for nonresident tuition or transportation, and the parents of children therein will be required to pay for or furnish the same. [See 40.08 (1).] 42 Atty. Gen. 185.

**40.23 Duties of district meeting. (1) AUDITING COMMITTEE.** Each annual common school district meeting shall elect one elector of the district to be a member of the auditing committee. At the 1953 meeting or at the first meeting of a new district 3 committeemen shall be elected, for one, 2- and 3-year terms, respectively. Thereafter the term shall be 3 years. The committee shall examine all accounts, books, vouchers, money and property of the district before the next annual meeting and report their findings in writing to that meeting. Upon failure of the meeting to elect any member of the auditing committee, or in event of a vacancy, the director of the district board shall appoint such member.

(2) **ADDITIONAL SCHOOL ROOM.** If any school district having a one-room school-house has an average yearly attendance of more than 40 pupils, the next annual meeting shall provide an additional room and an additional teacher. On failure to comply with this subsection the district shall forfeit the right to share in the apportionment of the public school fund income.

**History:** 1953 c. 90; 1955 c. 304.

**40.24 Powers of special district meeting.** Special district meetings have the powers of the annual meeting except the power to elect officers. Not more than 2 special meetings shall be held in any year following the annual meeting to consider or act upon the same subject, except that in counties having a population of 500,000 or more, not more than 4 special meetings shall be held in any year following the annual meeting to consider or act upon the same subject. No tax shall be voted at a special meeting unless notice is given as provided in s. 40.20 (3) or (5). The amount proposed to be voted shall be mentioned in the notice. The electors at a special meeting may vote a less amount than that stated in said notice but not a greater amount.

**History:** 1953 c. 90, 599.

**40.25 District officers and board; election, term.** The officers of the common school district shall be a director, treasurer and clerk. They shall be electors of the district, and shall hold their respective offices for 3 years and until their successors have been elected or appointed and qualified. At the first election of officers, the clerk shall be chosen for a term to expire on the second Monday of July following, and the treasurer for a term to expire one year later, and the director for a term to expire 2 years later than that of the clerk. The officers elected shall be notified thereof by the clerk of the meeting within 5 days thereafter. A person elected and notified shall, within 10 days after his election, execute and file the official oath. The director, treasurer and clerk shall constitute the board of the district, unless the board is enlarged according to s. 40.26.

**History:** 1953 c. 90, 599.

**40.26 Optional number of board members.** (1) Any school district may have a school board comprised as follows:

(a) Any school district with a population of 500 or more may have either 3 or 5 school board members.

(ab) Any school district regardless of population which is coterminous with a town and which operates one or more schools may have either 3 or 5 school board members.

(b) Any school district operating grades one through 12 may have either 3, 5 or 7 school board members.

(c) Any school district containing a city of the second, third or fourth class and operating schools with grades one through 12 may have a school board of 3, 5, 7 or 9 members.

(2) When a petition signed by 100 electors to change the number of school board members is filed with the district clerk at least 30 days prior to the day when the district officers are elected in a common school district or union high school district, he shall incorporate into his notice of the annual or special district meeting or referendum as provided in s. 40.21 a statement that at such meeting or referendum the question of changing the number of school board members as requested in the petition will be voted upon. A majority of the ballots cast shall determine the question. If such question is to be determined at a meeting at which an officer is to be elected it shall be determined before the election. When a special meeting of the school district or referendum adopts a resolution to increase the number of board members of the district pursuant to this subsection, such new members shall be elected at the next election of school board members and their terms shall go into effect on the second Monday of July.

(3) If a school district votes to increase the number of school board members the school district clerk or city clerk shall before the next election of the school board members put into effect a plan, providing:

(a) The number of school board members thereafter to be elected each year, distributing the number as evenly as possible.

(b) The number of vacancies to be filled in the first election for one, 2 and 3 years and thereafter to be filled for 3 years.

(c) An allocation of the successful candidates to the one, 2- and 3-year terms to be filled in the first election, the 3-year terms to be filled by the candidate or candidates receiving the highest number of votes, the 2-year terms by the candidate or candidates receiving the next highest number of votes and the one-year terms by the successful candidate or candidates receiving the next highest number of votes.

(d) In case of a tie vote in the election of school board members, the election shall be determined by lot and the loser by lot shall become next in order of election if additional positions on the board are to be filled.

(e) The tenure of members whose terms have not expired shall not be affected.

(4) After the first election each member of the board shall be elected for a term of 3 years, and until his successor is elected or appointed and qualifies. Said board at its first regular meeting shall elect new officers of the board from among its members as follows for a term of one year: a director, a clerk and a treasurer. All members of such board shall be officers of the district, and the compensation of the director, clerk, treasurer and other members of the board shall be the amount fixed at each annual district meeting for the ensuing year. All members shall be chosen from the district at large except as hereinafter enumerated.

(5) If the municipal board or boards are satisfied that the territory comprising a newly created school district contains a population of 500 or more it may, upon creating the order for a new district, direct that a district board of 5 members be elected; the state superintendent, acting under the authority of s. 40.06, may likewise in his order creating a new district containing a population of 500 or more direct that a board of 5 members be elected. When a 5-member board is elected either at a district meeting or at an election held pursuant to the provisions of this section, the 5 members shall be elected for terms as follows: The 2 candidates receiving the highest vote shall serve for a term expiring 2 years after the next annual meeting, the 2 receiving the next highest vote for a term ex-

piring one year after the next annual meeting, and the candidate receiving the next highest number of votes for a term expiring the second Monday in July following. Thereafter each member shall be elected for a term of 3 years and until his successor is elected and qualifies. The board shall organize and elect officers as provided in sub. (4). The municipal board or boards shall prepare a plan for allocating candidates to terms, as provided in sub. (3).

(6) Whenever any school district with more than 3 school board members votes to reduce the number of members on the school board, one less school board member shall be elected annually thereafter until the total number of school board members is reduced to the approved number, but not less than one shall be elected each year.

(7) If a county school committee in its order creating a school district designates a board of 5, 7 or 9 members, it shall prepare a plan for allocating candidates for terms as specified in sub. (3).

**History:** 1953 c. 90, 599; 1955 c. 241, 295, 578.

**Revision Committee Note, 1953:** Old (1a) that if the meeting decides to increase the (c) is deleted because covered by new (1) number of board members, they can be (c). The sentence is added in new (2) so elected at the meeting. (Bill 1-S)

**40.27 Optional board election procedure.** (1) When a petition signed by 100 electors in any common school district asking that the district officers be chosen at an election is filed with the district clerk at least 30 days prior to the annual meeting date, the clerk shall incorporate, in his notice of the annual district meeting a statement that such election will be held and shall within 3 days after filing of such petition, publish notice of the filing of such petition in 4 public places in the school district or in a newspaper having general circulation in the district; and stating when the polls will be open on the annual meeting day. Such election shall be held annually thereafter, unless the electors shall by resolution adopted pursuant to a petition requesting a return to the former procedure of electing district officers or a change to another date provided by law, filed as hereinbefore provided, determine otherwise. If in such petition or in any separate petition a request is made for more than one polling place, the board shall provide polling places to the number requested, not exceeding the number of election precincts in the district.

(2) The election shall be held in the place fixed for holding the annual school meeting.

(3) The election shall be by ballot, and suitable ballot boxes shall be provided. The provisions of ss. 11.54 to 11.68 shall apply to this election so far as applicable. In counties having a population of 500,000 or more, the polls shall be open from 1 p. m. to 8 p. m.; in other counties the polls shall be open from 3 p. m. to 8 p. m. and may be open from 1 p. m. to 8 p. m. Failure to specify the time and the place in the notice shall not invalidate the election.

(4) The board may establish such additional polling places for the election of board members as it deems necessary. Whenever practical, such polling places shall be established in the building where the annual school meeting is held. The board shall provide for an official ballot for the election of board members upon which shall be printed only the name of each person who files with the district clerk, a written declaration of his candidacy at least 20 days prior to the date of such election. The school board shall cause notice to be published at least 10 days previous to the closing date for filing such declarations stating clearly the conditions which must be met for filing. Election ballots shall be arranged to permit names to be written in. The clerk shall have the ballots prepared.

(5) The school board shall act as inspectors of such election, and shall appoint 2 clerks who shall make and keep duplicate lists of the electors voting at such election. A plurality shall elect. In counties having a population of 500,000 or more the board may appoint 5 or more persons who shall act as inspectors, clerks and tellers. The inspectors and clerk shall be paid \$3 each; except that in counties having a population of 500,000 or over, they shall be paid \$8 each.

(6) Immediately after the polls are closed, the ballots shall be counted and the results declared. All ballots, as soon as counted, shall be sealed in the ballot box and kept for 60 days by an inspector who was not a candidate at the election.

(7) Recounts shall be conducted under the direction of the school board using the procedure followed under general election laws as nearly as possible.

(8) In counties having a population of 500,000 or more, any school district may at an election called and held as provided in this section, if a majority of those voting approve, determine to elect its officers on either the first Tuesday of April or the second Monday of July. After such determination such election shall be held annually thereafter on the date so fixed and until the electors shall determine otherwise. All of the pertinent provisions of this section shall apply to such elections; but if the date of election is fixed for the first Tuesday of April, the hours of opening and closing of the polls, the polling places and the officers of election shall be the same as for the village election held on said day and the election officers shall serve without compensation additional to that provided by the village. When the school district election is conducted jointly with the village elec-

tion pursuant to this subsection and where registration of voters is required for the election of village officers, the same requirements shall also apply to the voting for school district officers and provision may be made for identifying those electors of the municipality qualified to vote on school matters. In such joint elections voting machines may be used. The term of office of officers so elected prior to the second Monday of July shall begin on the second Monday of July following said election.

(9) Any school district maintaining a school offering instruction in grades one through 12 and containing within its boundaries a city of the second, third, or fourth class, or village, or any union high school district, may adopt the method provided in sub. (8) for the election of its school board, but such election shall be held on the first Tuesday in April. At such elections the electors of the district shall vote at the polling place where they normally vote for state, local and judicial officers, and the election officials for state and local elections shall serve.

(10) When, in any school district the boundaries of which are coincident with the limits of a city of the fourth class, a petition signed by 100 electors is filed with the district clerk at least 30 days prior to the day when the district officers are elected asking that thereafter the school district officers be chosen at the regular spring election, the district clerk shall forthwith notify the city clerk thereof and the city clerk shall incorporate such information in the notice of the regular spring election. Candidates for school district offices shall thereafter be nominated and elected as are other city officials, until 100 electors by signed petition request a different procedure.

**History:** 1953 c. 90, 599; 1955 c. 245; 1957 c. 97, 428.

**Revision Committee Note, 1953:** In new the provision for a primary is stricken since (4) "in such counties" is stricken because it is a difficult procedure in the time allotted, the subsection was amended by ch. 466, Laws ted, and seems a needless expense. (Bill 1945, to make it apply to all counties and 1-S)

**40.28 District board; meetings, reports.** (1) The board of the common school district shall meet at least 4 times during the year at such times and places as the board shall determine. A meeting of the board may be called by 2 members by serving on the other member a written notice of the time and place of such meeting at least 24 hours before such meeting. A meeting may be held, without notice, when all members are present and consent.

(2) The board shall meet before the annual district meeting to carefully examine the accounts of the treasurer and make a full and itemized written report of all receipts and expenditures since the last annual meeting, and of the amount in the hands of the district treasurer, the amount of the deficit or bills payable, if any, for which the district is liable; the amount necessary to be raised by taxation for the support of the school for the ensuing year; and of the amount required to pay the interest or principal of any debt due during the year and to provide the budget report required by s. 65.90. The reports shall be presented and read at the annual district meeting. The district clerk shall copy such reports with the action taken thereon, and all other proceedings of the meeting in full, in the district record book.

(3) The proceedings of all school boards, except in cities of the first class and except school boards included in s. 40.825 including a statement of all receipts and expenditures, shall be printed and published within 30 days after the annual school meeting in a newspaper having a general circulation in the school district or in such manner as the board shall direct.

**History:** 1953 c. 90.

**Revision Committee Note, 1953:** Amendments are to give board more discretion as to time and place of meeting. (Bill 1-S)

**40.29 District board; duties.** (1) Subject to the authority vested in the district meeting and to the authority and possession specifically given to other officers, the school district board shall have the possession, care, control and management of the property and affairs of the district.

(2) The board shall keep the buildings and grounds in good repair, suitably equipped and in safe and sanitary condition at all times.

(3) The board shall keep the buildings and equipment amply insured. If there are no funds in the school treasury sufficient to pay the premium the board may execute a note for that purpose.

(4) The board shall provide and maintain enough suitable and separate toilets and other sanitary facilities for both sexes at each school.

(5) The board shall file an inventory of the district property annually.

(6) Upon the written application of one-half of the electors of the district, the board shall allow the use of the school buildings or grounds for the free discussion of public questions, so far as such use shall not, in the opinion of the board, interfere with the prime purpose of the buildings or grounds.

(7) Where the citizens of any community are organized into a nonpartisan, nonsectarian, nonexclusive association for the discussion of public questions, or for the promotion of public health, by instruction in physical culture and hygiene or by physical exercises, the board shall grant to such association the use of the schoolhouse or other public property which is capable of being used in the work of such association (when not being used for their prime purpose), shall provide (free of charge) light, heat and janitor service, when necessary, and shall make such other provisions as may be necessary for the free and convenient use of such buildings or grounds by such organization, at such times as the organization shall designate. All such gatherings shall be free to the public.

(8) If any district has not voted a tax sufficient to maintain its school for the term of 9 months during the ensuing year, the board shall, on the third Monday of November, determine the sum necessary to be raised to maintain such school, and the clerk shall forthwith certify to the municipal clerk the amount so fixed, and he shall assess the same and enter it in the tax roll as other district taxes are assessed and entered.

(9) If the equalized valuation of one of the municipalities or of a portion of one of the municipalities that comprises a part of a joint school district is reduced in any one year to an amount below its equalized valuation of the previous year by reason of the destruction or removal of all or a portion of the property of a part of the freeholders with a resulting increase in the taxes of the remaining freeholders which is in an excessive ratio to the total taxes levied by the joint school district, the school district board shall refund to the taxpayers whose taxes have been so increased and who have paid such increased taxes the amount of the increased taxes so paid. The provisions of this subsection shall apply only to taxes of 1949, 1950 and 1951.

(10) The board shall provide and maintain a mail box for each school located on or near a rural mail route.

(11) Every district board shall designate the bank or banks where the money belonging to the school district shall be deposited. When the money is so deposited in the name of the school district, the treasurer and his bondsmen shall not be liable for such losses as are defined by s. 34.01 (6). The interest shall be paid into the school district treasury.

(12) The board shall visit the school, examine into its condition, advise with the teacher in regard to the instruction, government and progress of the pupils, and exercise general supervision over the school.

(13) The board shall provide books and school supplies for indigent children residing in the district.

(14) The board of any school district whose expenditure for current operation and maintenance for the year just concluded has exceeded \$25,000 or any school district entitled to receive state aids of over 50 per cent of the total receipts for that year or where the excess state aid is required because of the 15, 20 or 25 mill tax limitation under s. 40.22 (7) shall, at the close of each fiscal year, authorize an audit of the school accounts pursuant to s. 40.30 (1) or employ a licensed accountant for the purpose of making an audit of the school accounts and certifying the results and conclusions of such audit. The cost of the audit shall be paid out of school district funds.

**History:** 1951 c. 270; 1953 c. 90, 599; 1957 c. 37.

The duty to keep the school buildings and grounds in good repair and in a "safe" condition is imposed by (2) on the school board and not on the individual members of the board; the liability, if any, to third parties for injuries sustained as the result of a failure to perform such duty is not a personal liability of the individual members of the board. *Meyer v. Carman*, 271 W 329, 73 NW (2d) 514.

**40.30 District board; powers.** (1) The district board may request the department of state audit to audit the books of the school district, to install a system of accounts and to advise and make recommendations concerning existing systems of accounts and to pay for the same as provided in s. 15.22 (12) (d).

(2) The board may grant the request of any responsible inhabitant of the district to use the schoolhouse for such public meetings as will, in the judgment of the board, aid in disseminating intelligence and promoting good morals. The applicant shall be primarily, and the members of the board secondarily, liable to the district for any injury done to any property and for any expense incurred in consequence of any such use of the schoolhouse.

(3) The board may grant the use of the schoolhouse for lectures, entertainments and school exercises held under the auspices of and for the benefit of the school, and permit an admission fee to be charged.

(4) The board may provide for the free use of such property for such other civic, social and recreational activities that do not interfere with the prime use thereof; the use of school buildings shall not be granted for public dancing, over the written protest of a majority of the electors of the district, or if a resolution against public dancing in the schoolhouses shall have been adopted at the annual meeting.

(5) Except in cities of the first class the school board of any school district which holds an annual district meeting, after being authorized to do so by the electors of any

such meeting, and the school board or board of education of any other school district, in its discretion, may grant the use of school buildings and school grounds to any responsible organization for public meetings to which an admission price is demanded, and to charge for such grant or use such sums as may be fixed by the school board or the board of education by a majority vote of the board members taken at a regular or special board meeting, all sums so received to be accounted for and paid into the school treasury to constitute part of the general fund and to be used for the benefit of the schools.

(6) Any school board may provide free lectures on educational subjects, in the school buildings, in public library buildings or in other suitable places, and provide for the further education of the adult residents of the district. The board may purchase books, stationery, charts and other things necessary to conduct said lectures and may designate some person to manage such lectures.

(7) The board may provide for, establish and maintain nursery schools for children under 4 years of age under such rules and regulations as it may prescribe. The board may accept and receive federal funds for such purpose and expend such funds in conformity with the purposes and requirements thereof. The board may require and charge a reasonable fee for attendance in such schools in order to sustain the project but may waive such charge or fee or any portion thereof to any person who is unable to make such payment. The school district shall not be entitled to additional state aid for the operation and maintenance of a nursery school.

(8) The boards of common school districts, high school districts and city school districts are authorized to apply for, receive and expend moneys made available to them by any act of congress for agricultural, vocational or military training or for enlargement of educational facilities including teaching staff or for school lunch programs.

(9) The board may furnish lunches to the pupils and pay for same out of district funds. The board may charge pupils and employes for the cost of school lunches.

(10) The district board in counties containing less than 500,000 population may employ public health nurses and licensed dentists. The work of such public health nurses and licensed dentists shall be under the supervision of the local and state boards of health.

(10m) (a) The district board shall, as a condition of entering or continuing employment, except in cities of the first class, require a physical examination including a chest X-ray or tuberculin test, of every school employe of the district. If the reaction to the tuberculin test is positive then a chest X-ray shall be required. Additional physical examinations shall be required thereafter at intervals determined by the board. A chest X-ray or tuberculin test shall be required at least once every 3 years; if the reaction to such tuberculin test is positive then a chest X-ray shall be required. The employe shall be examined by a licensed physician in the employ of or under contract with the district. If no such physician is employed or under contract, the examination shall be made by any licensed physician selected by the employe. Such physical examinations, chest X-rays or tuberculin tests shall not be required of any such employe who files with the board an affidavit setting forth that he depends exclusively upon prayer or spiritual means for healing in accordance with the teachings of a bona fide religious sect, denomination or organization and that he is to the best of his knowledge and belief in good health and that he claims exemption from health examination on such grounds. Notwithstanding the filing of such affidavit if there is reasonable cause to believe that such employe is suffering from an illness detrimental to the health of the pupils, the board may require such health examination of such employe sufficient to indicate whether or not such employe is suffering from such an illness. No employe shall be discriminated against by reason of his filing the aforementioned affidavit. The physician making such examination shall prepare a report of his examination upon a standard form prepared by the state board of health and the department of public instruction. Such report shall be retained in the physician's files and he shall make confidential recommendations therefrom to the board and to the employe on a form prepared by the state board of health and the department of public instruction. The recommendation form shall contain space for a certificate that the person is free from tuberculosis in a communicable form. The cost of such examinations, including X-rays and tuberculin tests, shall be paid out of district funds.

(b) For the purpose of par. (a) a "school employe" is defined as anyone employed by the board of education of the school district who comes in contact with children or who handles or prepares food for children while they are under the supervision of school authorities.

(c) The district board in counties containing less than 500,000 population may require periodic health examinations of school children, by licensed physicians, under supervision of local and state boards of health, and may pay the cost of such examinations out of district funds.

(d) Whenever health examinations or physical examinations made under this section



include the testing of vision, such examinations of vision may be made by a licensed optometrist. Forms used therefor shall so provide.

(11) If school district buildings are destroyed or if a qualified teacher cannot be obtained or if there is any other emergency which makes it impossible to conduct school within the district, the school board may, on its own order, provide for the educational needs of the district on a tuition basis, provided that the county superintendent of schools shall have first made a written finding of fact that such an emergency exists, stating the nature thereof. In addition to other requirements, no state aid shall be paid to any such suspended district until a copy of such finding of fact has been filed with the state superintendent. For a period of 2 years districts which suspend their schools under this subsection shall be eligible to receipt of state and county aids in the same amounts that they would be eligible to receive had they operated their schools.

(12) When the enrollment of a district increases to a number in excess of 30 pupils per room, the district board may on its own order provide for the education of a portion of the pupils on a tuition basis. The tuition shall be paid out of school district funds in accordance with s. 40.65 (3). For a period of 2 years after making such order a district shall continue to be entitled to aids on the same basis as though all children of school age included in such order residing in the district had been enrolled in the school of such district; provided the superintendent of public instruction upon the recommendation of the county superintendent may extend this period, from year to year, if he is satisfied on the basis of evidence presented to him that the district is unable because of constitutional limitations on debt to provide sufficient funds for the construction of additional school buildings, or that integration of the district with adjoining districts under the provisions of s. 40.03 of the statutes is being contemplated. Thereafter such district shall not be eligible for or receive aids until sufficient school building facilities are provided in the district to properly accommodate all of the resident children eligible to attend the school of such district.

(13) The boards of common school districts, high school districts and city school districts may transfer to the state historical society under s. 44.09 title to any school records deemed by said society to be of permanent historical interest which are no longer needed for the proper administration of the affairs of the school district.

(14) The boards of common school districts, high school districts and city school districts are authorized to enter into agreements, including leases for a term not exceeding 50 years, with the state or any department or agency thereof for the purchase, operation and maintenance of land, buildings and equipment for educational purposes. An agreement made by a city school district must be approved by the city council.

(15) The board may purchase necessary books and stationery for keeping the records and for doing the business of the district in an orderly manner, and such equipment, books, school apparatus and heating and ventilating apparatus, as may be approved by the state superintendent or by the county superintendent for the use of schools, not exceeding \$600 in any one year, from any funds not otherwise appropriated, and such school books as in their judgment may be needed by pupils whose parents are not able to furnish the same. Said limitation of \$600 in any one year shall not apply to school boards in districts maintaining a high school and at least one graded school.

(16) The board may exchange any teacher employed by it for a teacher of any school district of any other state or country. No such exchange shall be for a longer period than one year, and any teacher of this state, so exchanged, shall be deemed to have taught during said period in the school district by which she was employed; and shall be assessed, for the benefit of the state teachers retirement system, the full amount which would have been assessed against her had she actually taught in such district.

(17) The board may make rules for the organization, gradation and government of the schools, such rules to take effect when signed by a majority of the board and filed with the clerk; may suspend any pupil not to exceed 3 days for noncompliance with such rules or those of the teacher made with its consent; may expel any pupil whenever it shall find him guilty of persistent refusal or neglect to obey the rules and become satisfied that the interests of the school demand his expulsion. Upon ordering the expulsion of a pupil by the board the school district clerk shall file a notice of such order with the parent or guardian of the pupil. Parents or guardians of expelled pupils may appeal to the state superintendent. An appeal may be taken within 30 days from the decision of the state superintendent to the circuit court of the county in which the school is located.

(18) Any board which has control of primary grades may establish and maintain a kindergarten. Such kindergarten shall constitute a school of the district, and shall not be discontinued unless the kindergarten enrollment for the preceding year was less than 15.

(19) The board may provide for accident insurance covering pupils in the district; but no such insurance shall be paid for from school funds unless the expenditure is au-

thorized by the annual meeting of a common school district or high school district, or the common council in a city school district or school district in a city of the first class.

(20) The board may pay the membership fee in an organization of school boards in this state and the actual and necessary expenses of its representatives incurred in attending meetings of such organizations.

**History:** 1951 c. 268, 346; 1953 c. 90, 226, 441, 611; 1955 c. 407, 481; 1957 c. 33, 200, 393, 503.  
Replacement of a school's heating plant involving purchases in excess of \$300 is precluded unless authorized by specific appropriation. 38 Atty. Gen. 561. See note to 40.20, citing 40 Atty. Gen. 103. See note to 40.65, citing 42 Atty. Gen. 104.

**40.301 Gifts and grants.** The boards of common school districts, union high school districts and city school districts operating under this chapter may receive, accept and use gifts or grants of furniture, books, equipment, supplies, moneys, securities or other property used or useful for school and educational purposes. All moneys received as gifts or grants shall be deposited in the general educational fund but shall be considered as segregated trust funds. Whenever such board shall receive gifts or grants as hereinbefore provided, they shall make such use thereof or invest the same, in the case of moneys, as the donor or grantor shall specify and in the absence of any specific directions as to the use of such gifts or grants by a donor or grantor, the board of school directors may determine the use or may invest the same in accordance with the provisions of law applicable to trust investments. In the use, control or investment of such gifts or grants, the board of school directors may exercise all of the rights and powers generally conferred upon trustees.

**History:** 1955 c. 140.

**40.305 School building corporations.** (1) AGREEMENT BETWEEN SCHOOL BOARD AND CORPORATION. For the purpose of providing school buildings and equipment for elementary or secondary schools and to enable the construction, financing and ultimate acquisition thereof, any school district may, when authorized to do so by a district meeting, make agreements with nonprofit-sharing corporations, by one or both of the following methods:

(a) The district may convey, sell or lease part of its presently owned school site to the corporation which shall construct and equip a school building on such land as designated by the school board. The board may then re-lease the land and the building from the corporation for the use of the district.

(b) The corporation may by purchase or gift acquire lands not owned by the school district and construct and equip school buildings on such land as designated by the school board. The board may then lease the land and buildings from the corporation for the use of the district.

(2) LEASE TERMS AND CONDITIONS. All such leases shall be for periods not exceeding 20 years, upon conditions approved by the school board as to annual rental, maintenance and ultimate purchase by the district.

(3) EXEMPT FROM TAXATION. Such buildings, equipment and improvements and the leasehold interest in such lands shall be exempt from taxation.

(4) ISSUANCE OF REVENUE BONDS. (a) The corporation is authorized to issue revenue bonds in such amount as may be required to pay for the purchase of sites and the construction and equipping of school buildings, and to issue refunding bonds to retire existing bonds at current value and pay the cost of construction of enlargements or improvements to such buildings and construct and equip additional buildings. Additional revenue bonds may be issued to pay the cost of construction of enlargements, additions or improvements.

(b) The bonds may be secured by a pledge of the revenues received from the rental of the school buildings to the school district.

(5) ORGANIZATION AND POWERS. A corporation may be organized by the board of any school district pursuant to this section and ch. 181 and shall have the powers enumerated in ch. 181 insofar as they may be applicable. Members of the school board may serve as incorporators, directors and officers of such corporation.

**History:** 1953 c. 463; 1955 c. 222, 661.

See note to sec. 3, art. XI, citing State ex rel. Rogers v. Milligan, 267 W 549, 66 NW (2d) 326. A provision in a proposed 20-year lease, requiring the lessee school district to levy an annual irrevocable tax for the full term of 20 years for the purpose of paying the rent, would be invalid, in that a school district is without authority to levy an annual irrevocable tax over such a period of time for the purpose of paying rent. State ex rel. Rogers v. Milligan, 269 W 565, 69 NW (2d) 485. See note to sec. 3, art. XI, citing State ex rel. Rogers v. Milligan, 269 W 565, 69 NW (2d) 485.

**40.31 Claim against district, enforcement.** No action shall be maintained against a school district upon any claim until it has been presented to the board and disallowed, in whole or in part. Failure of the board to allow the claim within 60 days after it is

filed with the clerk is a disallowance. The clerk shall serve on the claimant notice of disallowance by registered mail, and receipt therefor, signed by the claimant, shall be proof of service. The claimant may accept a portion of his claim without waiving his right to recover the balance. No interest shall be recovered on an allowed claim after an order of the board is available to the claimant. If the claimant recovers a greater sum than was allowed, he shall recover costs, otherwise the board shall recover costs. Disallowance by the board shall bar an action on the claim 6 months after service of notice of disallowance.

**History:** 1953 c. 90.

**40.33 Duties of director.** The district director shall:

- (1) Countersign all orders as provided in s. 40.34 (2).
- (2) Defend on behalf of the district all actions brought against it; prosecute, when authorized by district meeting or board, actions brought by the district.
- (3) Prosecute an action for the recovery of any forfeiture incurred under this chapter in which his school district is interested. If the director has incurred the forfeiture, such action shall be prosecuted by the treasurer. One-half of the net sum recovered shall be paid into the district treasury and the other half to the county treasury for the benefit of the school fund.
- (4) Act as chairman of board meetings and see that minutes of the meetings are properly recorded, approved and signed.

**History:** 1953 c. 90, 599.

**40.34 Duties of treasurer, bond.** (1) The treasurer of all districts, except those operating under the city school plan, shall, within 15 days after his election or appointment, execute and file a bond executed by 2 qualified sureties approved by the board or a surety company bond in an amount to be determined by a majority vote of the board but at least equal to 5 per cent of the annual school district budget but in no case shall the bond be in an amount less than \$1,000. He shall file additional personal or surety bonds in such greater amounts as the board demands, as a result of a majority vote of the board, within 15 days after demand. He may buy surety company bonds with district funds.

- (2) The treasurer shall:
  - (a) Apply for, receive, and if necessary sue for all money appropriated to or collected for the district, and disburse the same in the manner provided by s. 66.042 on the order of the clerk, countersigned by the director. In every school district, except a city school district, all disbursements from the treasury shall be made by the treasurer upon the written order of the clerk after proper vouchers have been filed with the clerk; such disbursements shall be by order check and no order check shall be released to the payee, nor shall it be valid, unless signed by the clerk and treasurer and countersigned by the director, except that in school districts having 5 or more school board members such disbursements may be by order checks signed by the clerk and treasurer and any other one member of the board. No order shall be drawn for the payment of which money has not been appropriated according to law.
  - (b) Enter in the account books of his office all the money received and disbursed by him, specifying particularly the sources from which it was received, the persons to whom and the objects for which it was paid.
  - (c) Present to the annual meeting a written statement of all the money received by him during the preceding year, and of each disbursement made by him; he shall exhibit the voucher covering each disbursement.
  - (d) Deposit immediately upon receipt the funds of the district in the name of the district in the public depository designated by the board; failure to comply 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 s. 34.01 (6). The interest arising therefrom shall be paid into the school district treasury.
- (3) The treasurer may receive money raised in extra-curricular activities.

**History:** 1951 c. 63, 407; 1953 c. 90, 569; 1957 c. 162.

**40.35 Duties of clerk.** The district clerk shall:

- (1) Report the name and post-office address of each officer of his district to the clerk and treasurer of each municipality in which his district is situated and to the county superintendent, within 10 days after the election or appointment of such officer.
- (2) Act as clerk and record the proceedings of the district meetings.
- (3) Enter in the record book provided by the board the minutes of its meetings, orders, resolutions and other proceedings.
- (4) Enter in the record book copies of all his reports to the municipal clerk, and the certificate of the proceedings of a meeting returned by a temporary clerk.
- (5) Draw orders on the treasurer as directed by the district meeting and the board and record in a suitable book all orders drawn on the treasurer.

(6) Furnish, at the expense of the district, for the use of each teacher, a school register in the form prescribed by the state superintendent; require its return to him at the expiration of the teacher's employment; and preserve the same with the records and papers of the district.

(7) Notify each person of his election or appointment to a district office within 5 days thereafter; and furnish each teacher a copy of the contract made with her by the board.

(8) Deliver to the town clerk, before September 1 in each year, a certified statement showing the amount of taxes voted and not before reported, and also the amount of tax to be collected in such year, if any, for the annual payment of any loan. In a joint district, he shall deliver to the clerk of each municipality in which any part of the district is situated, a certified statement showing the proportion of such taxes to be assessed in that part of the district within his municipality, which proportion shall be ascertained from the full valuations to be certified to him and the county superintendent by the state superintendent from the certification of the full valuations of each part of a joint district made to the state superintendent by the state department of taxation under s. 40.68. When the equalized valuation of one of the municipalities or of a portion of one of the municipalities that comprises a part of a joint school district is reduced in any one year to an amount below its equalized valuation of the previous year by reason of the destruction or removal of all or of a portion of the property of a part of the freeholders with a resulting excessively inequitable apportionment of the school district tax levy on the remaining equalized valuations, the clerk shall call in the supervisor of assessments, who if he finds that such inequities will result shall reduce the equalized valuations of the previous year by the full value of the property so destroyed or removed and certify the resulting values to the school clerk for use in computing the tax levy certifications required by this section.

(9) Within 5 days after receipt of notification from the county superintendent of the name of a new school, notify the proper postmaster of the name and location of the school, and the number of the district. If a school is not located on any mail route, the clerk shall furnish the local postmaster with the names of persons to whom the mail for the school may be delivered. The school board may rent a lock box at district expense for each school not on a mail route. The clerk shall notify the postmaster of school vacations, and shall direct what disposition shall be made of the school mail during vacations.

**History:** 1951 c. 224, 270; 1953 c. 90, 599.

**40.40 Teachers' contracts.** (1) The district board shall contract in writing with qualified teachers; the contract, with a copy of the teacher's authority attached, shall be filed with the clerk. Such contract, in addition to fixing the teacher's wage, may provide for compensating the teacher for necessary travel expense in going to and from the schoolhouse at a rate not to exceed 6 cents per mile. No teaching contract with any person not legally authorized to teach the named school or subject shall be valid; and all teaching contracts shall terminate if, and when, the authority to teach terminates.

(2) District boards may provide in the contracts of teachers of agricultural and homemaking courses for payment for services performed outside of the district and connected with the performance of their regular teaching duties, and for the payment of the traveling expenses connected with such services out of district funds.

(3) The board may give to any teacher, without deduction from her wages, the whole or part of any time spent by her in attending a teacher's institute held in the county, or a school board convention or the meeting of any teachers' association, upon such teacher's filing with the school clerk a certificate of regular attendance at such institute, convention or association, signed by the person conducting the institute or convention, or by the secretary of the association.

**History:** 1953 c. 90.

A new consolidated school district decided not to operate the S. school and canceled the plaintiff's contract to teach at such school; the county superintendent failed to request of the state superintendent a renewal of the plaintiff's teaching permit to teach in the S. school solely because of the action of the new district; there was a breach of contract, entitling the plaintiff to recover damages, if any, from the new district, notwithstanding provisions in (1) that no teaching contract with any person not legally authorized to teach a named school shall be valid, and that all teaching contracts shall terminate when the authority to teach terminates. *Nyre v. Joint School Dist. 258 W 248, 45 NW (2d) 614.*

**40.41 Renewal of teachers' contracts.** (1) The term "teacher" as used in this section means any person who holds a teacher's certificate issued by the state superintendent or a classification status under the state board of vocational and adult education and whose legal employment requires such certificate or classification status, excepting part-time teachers and teachers employed by any local board of vocational and adult education in any city of the first class and excepting teachers employed by any board of school directors in any city of the first class.

(2) A teacher shall be given written notice of renewal or refusal of his contract for the ensuing school year on or before April 1 of the school year during which said teacher holds a contract by the managing body or other proper officer of the school or system in which the teacher is employed. If no such notice is given on or before April 1, the contract of teaching service then in force shall be continued for the ensuing school year. A teacher receiving a notice of renewal of contract for the ensuing year from the employing board or proper officer, or a teacher who does not receive a notice of renewal or refusal of his or her contract for the ensuing school year on or before April 1, shall accept or reject, in writing, such contract not later than April 15 following. No teachers shall be employed or dismissed except by a majority vote of the full membership of the managing body or board. Nothing in this section shall prevent the modification or termination of a contract by mutual agreement of the teacher and the school board.

**History:** 1953 c. 90.

See note to 40.42, citing State ex rel. Michael v. McGill, 265 W 336, 61 NW (2d) 494.

**40.42 Security in employment for teachers in populous counties.** (1) The term "teacher" as used in this section includes any person except a superintendent, assistant superintendent and county supervising teacher, who holds a teacher's certificate, and whose legal employment requires such certificate, who is employed full time and meets the minimum requirements prescribed by the governing body employing such person, and who is employed by any school board, board of trustees or governing body of any school created and existing under chs. 40 and 41 entirely and exclusively in any county having a population of 500,000 or more, excepting schools, vocational and adult schools and state colleges in cities of the first class. A person who acquired tenure as a teacher under this section shall not be deprived of tenure as a teacher by reason of his employment as a principal.

(2) All employment of teachers as defined in sub. (1) except employment as principals shall be on probation and after continuous and successful probation for 3 years and the gaining of the fourth contract in the same school system or school either before or after July 1, 1944, such employment shall be permanent except as provided in sub. (3) and until discharge for cause. Employment of principals shall be on probation and after continuous and successful probation for 3 years and the gaining of a fourth contract in the same school system or school either before or after July 1, 1948, such employment shall be permanent except as provided in sub. (3) and until discharge for cause. A teacher who has acquired permanent employment by reason of 3 or more years of continuous service as herein provided, upon accepting employment in another school system or school to which this section applies, shall be on probation therein for 2 years and after continuous and successful probation for 2 years and gaining the third contract in such school system or school, such employment therein shall be permanent except as provided in sub. (3) and until discharge for cause.

(3) No teacher who has become permanently employed, as herein provided, shall be refused employment, dismissed, removed or discharged, except for inefficiency or immorality, for wilful and persistent violation of reasonable regulations of the governing body of such school or for other good and just cause, upon written charges based on fact preferred by the governing body or other proper officer of the school system or school in which such teacher is employed. Such charges shall, after 10 days' written notice thereof to such teacher, and within 30 days after receipt of such notice, upon such teacher's written request, be heard and determined by the governing body of the school system or school in which such teacher is employed. Hearings shall be public in all cases when requested by such teacher and all proceedings thereat shall be taken by a court reporter. All parties shall be entitled to be represented by counsel on the hearing. The action and decision of such managing body in any such matter shall be final.

(4) A person employed by a school board during a time of war as a substitute for a teacher on full-time duty in any of the armed forces of the United States or any reserve or auxiliary thereof on leave and notified in writing at the time of employment that the position is of a temporary nature shall not be deemed a teacher under this section.

(5) If necessary to decrease the number of permanently employed teachers by reason of a substantial decrease of pupil population within the school district the governing board of the school or school system in which such teacher is employed may lay off the necessary number of said teachers but only in the inverse order of the appointment of such teachers. No permanently employed teacher as aforesaid shall be prevented from securing other employment during the period of such suspension. Such teacher shall be reinstated in inverse order of his suspension provided such teacher is qualified to fill the vacancy. Such reemployment shall not result in a loss of credit for previous years of service. No new permanent or substitute appointments shall be made while there are suspended permanent teachers available who are adequately prepared to fill the vacancies.

(6) This section shall not apply to teachers having civil service status under ch. 16 and is not intended to repeal, amend, modify or affect the provisions of ss. 37.31, 41.15 (12) and 38.24.

(7) This section shall not apply to any teacher after the close of the school year during which such teacher has attained the age of 65 years; any subsequent employment of such teacher shall not be a waiver of the provisions of this subsection.

**History:** 1953 c. 90.

Since 40.42 (3) is a special law it takes precedence over 40.41 (2), and a Milwaukee teacher who did not receive a notice of renewal of his contract and did not accept the old contract by April 15 was entitled to reinstatement, since no written charges were filed or hearing held. State ex rel. Michael v. McGill, 265 W 336, 61 NW (2d) 494. See note to sec. 32, art. IV, citing State ex rel. Michael v. McGill, 265 W 336, 61 NW (2d) 494.

**40.43 Teachers' certificates and licenses.** (1) Any person who desires to teach in any of the public schools, or in schools maintained and operated by county homes for dependent children or other county or state institutions or schools in which children are received for care or education shall procure a certificate from the state superintendent.

(2) Any person who contracts to teach in any public school shall within 10 days after entering into such contract file in the office of the county or city superintendent a statement showing the date of expiration and the grade and character of certificate held. The superintendent shall promptly notify the proper school clerk of the receipt of such statement. No order or warrant shall be issued by the clerk of the school board or board of education in payment of the salary of any teacher, unless such teacher has complied with this subsection.

(3) No certificate to teach in any common school shall be issued unless the applicant has completed 2 years of school work beyond the work of the high school, which shall be devoted to pedagogical instruction and training; any teacher who has taught in any common school in the school year of 1937-1938 or prior thereto shall be allowed to continue to teach in the common schools without complying with the requirements of this subsection.

(4) A fee of \$2 shall be paid to the state superintendent with each application for a license to teach school or for a renewal of such license, or for a state certificate to teach.

(5) Any license or certificate to teach, issued by the state superintendent, may be revoked by him for incompetency or immoral conduct on the part of the holder, after written notice of the charges and of an opportunity for defense.

(6) In granting certificates for the teaching of courses in economics, social studies and agriculture, adequate instruction in co-operative marketing and consumers' co-operatives shall be required. In granting certificates for the teaching of the courses in science and social studies adequate instruction in the conservation of natural resources shall be required.

**History:** 1953 c. 90.

The penalty clause of (2), in view of the legislative history, has reference only to the failure to file any statement with the county superintendent showing the teacher's possession of a proper teaching certificate, and has no application to the time of filing such statement. Worachek v. Stephenson Town School Dist. 270 W 116, 70 NW (2d) 657.

**40.435 Discrimination as to teachers prohibited.** (1) No discrimination shall be practiced in the employment of teachers in public schools because of their race, nationality or political or religious affiliations, and no questions of any nature or form shall be asked applicants for teaching positions in the public schools relative to their race, nationality or political or religious affiliations, either by public school officials or employees or by teachers' agencies and placement bureaus.

(2) Whoever violates this section shall be fined not less than \$25 nor more than \$50, or imprisoned in the county jail not less than 5 nor more than 30 days. Violation of this section shall be cause for the removal of any superintendent, member of a board of education or school board, or other public school official.

**History:** 1953 c. 90.

**40.44 Age of pupils; register; teacher's report.** (1) No child may be admitted to the first grade unless he is 6 years old on or before December 1 in the year he proposes to enter school. Residents above 20 years of age may be admitted to the district schools when in the judgment of the board they will not interfere with the pupils of school age.

(2) The teacher in each common school shall enter in the school register the names, ages and studies of all pupils and their daily attendance, and such other facts as the county superintendent or state superintendent requires, which register the teacher shall deliver to the clerk at the close of each term, and whenever it is required for the use of the board. A standard loose-leaf pupil accounting record may be substituted for the school register.

(3) The teacher shall make a written report to the board or to the county superintendent concerning any matters relating to the school in such form or manner as the

board or superintendent prescribes; and any teacher who neglects or refuses to so keep the register shall forfeit her wages during the time of such neglect or refusal.

**History:** 1953 c. 90, 599.

**40.45 School month; holidays; special observance days.** (1) Twenty school days constitute a school month. Not to exceed 5 Saturdays may be counted as school days in any school year when school is taught thereon with the consent of the board. School days are days on which school is actually taught (including the special observance days mentioned in sub. (2)) and the following days on which school is not taught:

(a) Labor Day, Thanksgiving, Christmas, New Year's Day, and Memorial Day if within the scheduled school term, and not within a scheduled vacation period;

(b) Days on which state and county teachers' conventions are held.

(c) Days on which school is closed by order of a health officer.

(2) September 28 is Frances Willard Day; October 9 is Leif Erikson Day; April 13 is American Creed Day. School shall be taught on such dates and on October 12, November 11, February 12, February 22 (unless any of such dates fall on Saturday or Sunday) but the day shall be appropriately observed. If any such date falls on Saturday or Sunday, observance shall be had on a school day immediately preceding or following.

**History:** 1953 c. 90; 1957 c. 97.

**40.46 Curriculum.** (1) **FUNDAMENTAL COURSE.** Reading, writing, spelling, English grammar and composition, geography, arithmetic, elements of agriculture and conservation of natural resources, history and civil government of the United States and of Wisconsin, citizenship and such other branches as the board determines shall be taught in every elementary school. All instruction shall be in the English language, except that the board may cause any foreign language to be taught to such pupils as desire it, not to exceed one hour each day.

(2) **PHYSIOLOGY AND HYGIENE.** Physiology and hygiene, sanitation, the effects of stimulants and narcotics upon the human system, symptoms of disease and the proper care of the body, shall be taught for one-half of the school year in either the sixth, seventh or eighth grade, but no pupil shall be required to take such instruction if the parents file with the teacher a written objection thereto. A semester of work in physiology and hygiene shall be offered in each high school curriculum.

(3) **PHYSICAL EDUCATION.** (a) 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 one and 2-room schools such instruction and training shall take the form of supervised playground work. The time devoted to such course by each pupil above the kindergarten shall aggregate at least 2½ hours each school week, exclusive of recess periods.

(b) Every county teachers college and every high school course for the training of teachers shall require all students to take a course in physical education and playground games and management.

(c) Physical education as used herein is instruction in the theory and practice of physical exercise and instruction in hygiene, but does not include medical supervision.

(4) **PREVENTION OF ACCIDENTS.** Each public school teacher shall devote not less than 30 minutes in each month to teaching her pupils how to prevent accidents and promote safety on the public highways.

(5) **MORALS.** Every public school teacher shall teach her pupils morality and how to conduct themselves as social beings.

(6) **ANIMAL LIFE.** Each public school teacher shall devote not less than 30 minutes each month to teaching the pupils kindness to and the habits, usefulness and importance of animals and birds, and the best methods of protecting, preserving and caring for all animal and bird life.

(7) **FIRE PREVENTION.** Each public school teacher shall devote not less than one-half hour each month to teaching the pupils fire prevention.

(8) **CO-OPERATIVES AND CONSERVATION.** Every high school and school of vocational adult education shall prescribe adequate and essential instruction in co-operative marketing and consumers' co-operatives and conservation of natural resources.

(9) **DAIRY PRODUCTS.** All public and private elementary and high schools shall spend at least 15 minutes in each school week in instruction in and study of the true and comparative vitamin content and food and health values of dairy products and their importance for human diet. The course of such instruction and the educational material therefor shall be prescribed by the state superintendent and shall be included in the instruction manuals for such schools. Such educational program shall be directed by the state superintendent through county and city superintendents and such other educational officials whose co-operation may be deemed necessary to insure its success. The state depart-

ment of agriculture, the state board of health and the college of agriculture of the university of Wisconsin and the extension division thereof shall co-operate with and assist the state superintendent in the development and execution of such program.

(10) **CITIZENSHIP.** Every public and private school shall, by appropriate instruction and ceremonial to be formulated by the state superintendent, teach the proper reverence and respect for and the history and meaning of the American flag, the Declaration of Independence, the U. S. Constitution, as well as the duties and responsibilities of citizenship, so that government of the people, by the people and for the people may function and endure in the United States of America.

**History:** 1951 c. 33; 1953 c. 90, 599; 1955 c. 146.

**40.47 Flag; first aid; fire drill.** (1) Every school board and the governing body of every private school shall cause the United States flag to be displayed in the schoolroom or from a flagstaff on each school ground, during the school hours of each day's session of school.

(2) Every school board and the governing body of every private school shall provide a standard first aid kit for use in cases of emergency.

(3) The person having direct charge of any public or private school shall, at least once each month without previous warning, drill all pupils in the proper method of departure from the building as if in case of fire. The foregoing provisions shall be observed except when the principal or person having such direct charge deems that the health of the pupils may be endangered by inclement weather conditions.

**History:** 1953 c. 90.

**40.48 Textbooks; lists, sale.** (1) **ADOPTED, FURNISHED.** Subject to the power of the county textbook board to adopt and supply books, the common school district board shall adopt all the textbooks necessary for use in the schools under its charge. The list of the adopted books shall be filed with the school clerk.

(2) **PURCHASE AND SALE; AGENTS.** The board may purchase textbooks and sell them to the pupils at cost or it may designate agents of the district to sell the textbooks to the pupils. The agents shall, at stated times, make settlement with the district for books sold. The agents may add a selling commission which shall not exceed 10 per cent of the net prices.

(3) **AGENTS' PRICE LIMIT.** No dealer in textbooks shall sell any books at a price to exceed 15 per cent advance on the net list prices, transportation added thereto.

(4) **PENALTY.** Any person violating this section shall be fined not less than \$25 nor more than \$100.

**History:** 1953 c. 90, 599.

**40.49 Uniform textbooks for county.** (1) **COUNTY TEXTBOOK BOARD.** If a majority of all the districts vote at any annual county school board convention in favor of adopting uniform textbooks, each school district being entitled to one vote, the convention shall immediately elect a county textbook board of not less than 3 nor more than 5 persons. The convention shall, at a regular meeting every 5 years thereafter, elect not less than 3 nor more than 5 persons who shall constitute said textbook board; the convention may at any time by a majority vote discontinue such board. School districts which maintain high schools may not vote on the question of uniformity of textbooks, nor in the election of the textbook board.

(2) **TERM OF BOARD MEMBERS.** The members of the textbook board shall hold office for 5 years and until their successors are elected and qualified.

(3) **ELIGIBILITY, VACANCY.** No person shall be eligible to the textbook board unless he is a legally qualified teacher and has had 5 years of experience in teaching or in the supervision of public schools. Dealers in textbooks, or agents of, or persons interested in, any person engaged in publishing or furnishing school textbooks, or persons who are interested in any book or series of books as author, associate author, or in any manner whatsoever are not eligible; and if any member is so interested, his office shall become vacant.

(4) **OATH OF OFFICE.** Each member of the textbook board shall, before entering upon the duties of his office, take the constitutional oath of office; and shall also swear that he is not directly or indirectly interested in or related to any publishing house or person engaged in publishing or furnishing school textbooks, or any of their agents, and that he is not interested directly or indirectly in any book or series of books as author, associate author, or otherwise. The oath shall be filed with the county clerk.

(5) **ORGANIZATION OF BOARD.** The members of the textbook board shall, within 10 days after their election, meet at the county seat and organize by electing one of their number president and one secretary. The board shall adopt such rules and regulations as may be necessary to the transaction of its business.



(6) **CONTRACTS WITH BOARD.** The president and secretary shall sign all contracts on behalf of the textbook board. The secretary shall keep a full record of all proceedings of the board in a book kept for that purpose, which book shall be a public record and be kept in the office of the county superintendent.

(7) **MEETINGS OF BOARD.** The textbook board shall meet at the county seat on the first Saturday in May, and at such other times as it deems necessary. The president shall call a meeting upon the written request of a majority.

(8) **EXPENSES PAID.** The members of the textbook board shall be reimbursed from county funds their actual and necessary expenses in the performance of their duties.

(9) The textbook board shall select and adopt a series of textbooks, covering all branches of study required to be taught below the ninth grade. A majority vote of all the members of the board is necessary to adopt or change any textbook.

(10) The books so selected shall be used in all school districts of the county, except those maintaining high schools and graded schools of the first class.

(11) The books so selected shall be introduced in the schools the following September and shall remain in use until displaced or replaced by the textbook board; but no books so adopted and introduced into said schools shall be changed within 5 years from the date of adoption.

(12) In districts furnishing free textbooks, it is optional with the district board whether or not a change of the textbooks shall be made; but, whenever a change is made, only such textbooks shall be selected as have been adopted under this section.

(13) An elementary school may, by a unanimous vote of the district board, adopt in lieu of the textbooks selected by the textbook board, the books used in the grades of the nearest city schools.

(14) The textbooks adopted by the textbook board shall be selected after a careful examination of all sets of books presented, taking into consideration the material used, illustrations, binding, price, and all other things that go to make up a desirable textbook; merit, however, shall be the main point considered in their selection.

(15) School districts or the textbook board may select, introduce and use additional and supplementary books at any time when they deem it necessary in order to establish and maintain the highest standard of excellence in their schools. Such supplementary books shall not be used to the exclusion of the books previously adopted.

(16) The textbook board shall at least 30 days before meeting to adopt textbooks, send notice to textbook publishers and advertise in a newspaper of general circulation in the county that the board will on a day named meet at the county seat and select and adopt textbooks for use in the district schools of said county, and shall invite bids to furnish such books, giving a list of textbooks to be selected. Said notice shall also state the time when bids and samples of books must be submitted to them, and such further facts as the board deems necessary.

(17) Any person desiring to furnish books shall, at or before the time for filing his bid, deposit in the office of the county superintendent samples of all textbooks included in his bid, together with lists giving the lowest exchange price, wholesale price and retail price to pupils or school districts for the same. The samples and lists shall remain in the superintendent's office and shall be open at all times to public inspection.

(18) The textbook board shall require any person who contracts for furnishing books to give a good and sufficient bond to the board in such sums as the board may require, with sureties and conditioned for the faithful performance of such contract.

(19) The textbook board shall arrange for such depositories as it deems necessary for furnishing the adopted books to school boards or local dealers. Such depositories shall furnish a sufficient bond to protect publishers. Depositories shall receive books displaced by the uniform adoption and return them to publishers at agreed allowances. Depositories shall accept books on the uniform list at reasonable prices from people who are moving out of the county; such books to be resold to pupils in the county at a slight advance on cost.

(20) In the administration of this section a district situated in more than one county shall be deemed to be fully within the county in which the schoolhouse is located.

**History:** 1953 c. 90.

**40.50 Textbooks censored.** (1) No book shall be adopted for use or be used in any public school which falsifies the facts regarding the history of our nation, or which defames our nation's founders, or misrepresents the ideals and causes for which they struggled and sacrificed, or which contains propaganda favorable to any foreign government.

(2) Upon complaint of any 5 citizens filed with the state superintendent that any book which is being used in a public school contains any matter prohibited by this section, the state superintendent shall fix a time for a public hearing upon such complaint, which shall be not more than 30 days from the date of filing said complaint, and such

hearing shall be conducted either by the state superintendent or the assistant state superintendent or by one of the state supervisors of schools, to be designated by the state superintendent, which hearing shall be held at the county seat of the county where the complainants reside. Notice of such hearing shall be given at least 10 days prior to the date thereof through the public press and by registered mail to the complainants, the school board interested and to the publishers of such book.

(3) Within 10 days after such hearing the state superintendent shall make a finding upon such complaint. If he finds that the book in question contains matter prohibited by this section, he shall note such finding in the list of textbooks which he is required annually to publish. Such book shall not thereafter be placed on the list of textbooks which may be adopted, sold or exchanged.

(4) Every school board, board of education, board of vocational education or textbook board which has control over the textbooks used in any school shall cause every book which the state superintendent has found contains matter prohibited by this section to be withdrawn from use in such school prior to the opening of the school year following the publication of such finding. No state aid shall be paid for the support of any such school during any year in which any such textbook is used in such school after such finding.

**History:** 1953 c. 90.

**40.51 Exclusion on account of religion, nationality or color a misdemeanor.** No person shall be excluded from any public school on account of his religion, nationality or color. No separate school or department shall be kept for any person on account of his religion, nationality or color. A member of any board of education who votes to exclude from any public school any child on account of his religion, nationality or color shall be fined not more than \$100 or imprisoned not less than 30 days, nor more than 6 months, or both.

**History:** 1953 c. 90.

**40.52 "School bus" defined.** In ss. 40.53 to 40.58, "school bus" means a motor vehicle which transports children to or from a public school or which transports school groups engaged in extracurricular activities to or from points designated by such public school, even though such vehicle also transports children or school groups to or from private schools or colleges or points designated by them, but does not include:

(1) A motor vehicle owned or operated by a parent or guardian transporting only his own children, regardless of whether the school has made a contract with or paid compensation to such parent or guardian for such transportation; or

(2) A vehicle having a seating capacity of fewer than 10 persons, including the operator, and used in casual, occasional or reciprocal transportation of school children and not under contract.

**History:** 1957 c. 514.

**40.53 Transportation.** (1) **WHO TO BE TRANSPORTED.** Except as provided in s. 40.55, the school boards of all school districts operating public elementary or high schools shall provide transportation to and from school for all pupils residing in the district and 2 miles or more from the nearest public school they may attend. Such school boards may provide transportation for teachers to and from school subject to the same controls and limitations as are provided by this section for the transportation of pupils. In districts operating high schools, the board may also provide transportation for nonresident high school pupils residing 2 miles or more from the school within areas served by the school by bus routes approved by the county school committee and the state superintendent. If the district operating the high school does not provide transportation for nonresident high school pupils, the municipality in which the nonresident pupils reside shall arrange for such transportation and such municipality shall make claim to the county clerk for the cost of transportation so provided in the manner specified in s. 40.56 (2). The annual or special school meeting of any school district operating an elementary or a high school, or if no such meeting is held, then the school board of any such district may authorize the transportation of all or any part of the pupils of such school district, but if such transportation is furnished to less than all of the pupils there shall be reasonable uniformity in the minimum distance that pupils will be transported. The board of any public elementary school district which has suspended school shall provide transportation to and from school for all elementary pupils residing therein, and 2 miles or more from the nearest district school which they may attend, or 2 miles or more from any other district school which in the opinion of the state department of public instruction it is more feasible for them to attend.

(2) **PHYSICALLY DISABLED CHILDREN.** Every district shall provide transportation for physically disabled children, as defined in s. 41.01 (4), to any elementary or high school or to the Wisconsin school for the visually handicapped or the Wisconsin school for the deaf, regardless of distance, provided the request for such service is approved by the

state superintendent. When the county board has authorized the county superintendent to provide transportation of handicapped children under s. 39.105 this responsibility, duty and control shall transfer to the county superintendent of schools except that the school board of any district which has an enrollment of 1,000 or more children may be exempted from the provisions of s. 39.105 upon filing before June 1 with the state superintendent of public instruction and the county superintendent of schools a declaration of its desire to have its district exempted from such section and to continue to operate under the general law. Such declaration shall remain in force continuously until revoked upon any subsequent filing stating a desire to come under s. 39.105. State aid for such approved cases shall be granted on the same basis as transportation of normal children. These aids shall be supplemented by the aids provided for by s. 41.03 in an amount not to exceed the full cost. The approval of such cases shall be based on whether or not the child can walk to school with safety and comfort.

(3) TRANSPORTATION TO VOCATIONAL SCHOOLS. The governing body of any school district operating high schools or the municipality providing high school transportation may provide or contract for transportation or for board and lodging for nonresident full-time pupils attending schools of vocational and adult education who are not high school graduates, are less than 20 years of age and attend such schools full time, and such district or municipality shall be eligible for transportation or board and lodging aids under the same conditions as a district or municipality transporting pupils to high schools. Claims for transportation or for board and lodging of such nonresident pupils attending schools of vocational and adult education shall be submitted to the municipal clerk in the same manner as claims for tuition of nonresident vocational and adult education school pupils as provided in s. 41.19. Such claims shall be allowed and paid as other claims are allowed and paid. This subsection shall not apply to cases where the distance between a pupil's home and the vocational school along the usually traveled public highway is over 15 miles, except that this limitation shall not apply to cases in which the student resides on an approved bus route or to cases for which board and lodging are provided.

(3m) TRANSPORTATION TO HIGH SCHOOL OUTSIDE DISTRICT. The board of a district operating a high school, which, according to s. 40.91 (3), must permit a high school student to attend school outside the district, shall provide transportation for such students who reside 2 or more miles from such school.

(4) TRANSPORTATION FOR EXTRACURRICULAR ACTIVITIES. (a) Any school district or other governmental agency authorized to operate or contract for the operation of a school bus may provide transportation for pupils; their parents or guardians; members of the faculty and school doctors, dentists and nurses; in connection with any extracurricular school activity, such as a school athletic contest, school game, school outing or school field or any other similar school trip when:

1. A school bus which is regularly used by or for such district or agency is used for such transportation, and such transportation is under the immediate supervision of a competent adult employe of such district or agency and such bus is operated by a competent driver regularly used as a bus driver by such district or agency;

2. A school operated by such district or agency has an actual educational interest in such activity;

3. Such use does not extend more than 50 miles beyond the boundary of the state, but this restriction does not apply to any such use by the Wisconsin school for the deaf;

4. The principal or other person with comparable authority authorizes such use; and

5. Such school bus is insured as defined in s. 40.57.

(b) Such district or agency may make or authorize a charge for such transportation to be paid by the persons transported in an amount:

1. Sufficient to reimburse it for the use of such school bus; or

2. If such school bus is operated by a person under contract with such district or agency, sufficient to adequately reimburse the owner or operator thereof for such use.

(5) METHODS OF TRANSPORTATION; CONTRACTS. Transportation may be provided by the school board or by the county superintendent when authorized to provide transportation or in the case of nonresident high school students by the municipal board by any of the following methods:

(a) By contract with a common carrier, with a taxi company or with other parties;

(b) By contract with the parent or guardian of the pupils to be transported. If transportation is furnished under contract with parents, the compensation shall be at the rate of not less than 3 nor more than 10 cents per mile for each mile necessarily traveled for said purpose, regardless of the number of pupils transported per family, but not more than the actual cost of transporting such pupils by a public carrier. If the district board and the parents cannot agree upon the amount of compensation, the case shall be appealed to the state superintendent who shall determine the amount of compensation to be designated in the contract.

- (c) By contract with another public school district;
- (d) By joint contract between 2 or more school districts and a third party who is either an individual or a common carrier;
- (e) By the purchase and operation of a district-owned vehicle.

(6) **TERM OF CONTRACTS.** Any governing body having authority to enter into a contract for the transportation of pupils may enter such contract for a term not to exceed 3 years.

(7) **VEHICLES; DRIVERS.** (a) The commissioner of motor vehicles shall adopt and enforce such rules as he deems necessary in the interests of safety to cover the design, construction, inspection and operation of school busses. Such rules shall by reference be made a part of any contract for transportation of public school pupils.

(b) All drivers or operators of vehicles used for the transportation of public school pupils for compensation shall be under written contract with the school district for which such drivers or operators transport pupils. The form of contract shall be prescribed by the state superintendent and shall provide that any party to such contract shall be at all times subject to rules of the department of public instruction and any rules adopted by the commissioner of motor vehicles pursuant to par. (a).

(c) The school board may adopt additional rules, not inconsistent with state law or rules adopted pursuant to par. (a) or (b), for the protection of the pupils or to govern the conduct of the person in charge of the conveyance used for transportation of public school pupils for compensation.

(d) School district boards, municipal boards and persons independently engaged in transportation of pupils shall discontinue the use of any vehicle used by them to transport pupils upon receipt of an order signed by the state superintendent or the commissioner of motor vehicles ordering such discontinuance. Members of the state department of public instruction and of the motor vehicle department are authorized to ride any public school bus at any time for the purpose of inspection.

(8) **SCHOOL BUS ROUTES.** The location and extent of all public school bus routes for the transportation of pupils shall be determined by the school board of the district or the municipal board operating such routes but no public high school bus route on which non-resident pupils are transported, shall be put into operation until a certificate of approval has been obtained from both the county school committee and the state superintendent and no state aids shall be granted any district or municipality which operates public high school bus routes not so approved. In case of disagreements on approval of bus routes the decision of the state superintendent shall control. Public school bus routes shall be established in such manner that transportation will be provided all students residing 2 miles or more from the nearest public school they are eligible to attend in the case of pupils residing in the district and in the case of nonresident high school students living 2 miles or more from the school and in the area served by the approved bus route of that school, except for those students for whom board and lodging is provided. Upon receipt of a signed order from the state superintendent, the board shall discontinue any route specified by him.

(9) **TRANSPORTATION ACCIDENT REPORT.** All accidents involving school transportation operated under the authority of school district or municipal boards under the provisions of this section or s. 40.55 shall be reported by the boards of said districts or municipalities to the state superintendent of public instruction within 10 days after their occurrence on forms provided by that office upon request. Such reports shall not be prejudicial to the individuals of boards rendering same.

**History:** 1951 c. 25, 513, 734; 1953 c. 24, 90, 119, 217, 336, 441, 540, 631; 1955 c. 211; 1957 c. 19, 514, 699.

**Revision Committee Note, 1953:** (3m) was created on the theory that if payment of tuition for such students is sound, their transportation should also be provided. (8) is repealed. The duty in (8) (a) to transport children from suspended districts is covered by new 40.53 (1) and authority to make contracts is in new (5). (8) (b), dealing with extracurricular activities, is treated in new (4). The persons and activities listed in new (4) are those listed in old 40.345 (3). "Joint" is eliminated in new (5) (c) to make clear that an operating district can contract with a district, including a suspended district, which does not operate transportation. (Bill 1-S)

The statutes do not authorize a school district to transport children to a parochial or private school in a bus owned and operated by the district, either free or upon payment of fares. If a school district contracts with an independent contractor to transport children to a public school over approved routes, the contract need not require the

operator to exclude parochial school children from riding on the bus at the same time over the same route. The propriety of the amount paid to the operator by the school district will depend upon the particular circumstances, but the district may pay only for the transportation the law authorizes it to furnish. No state transportation aid may be paid on account of such parochial school students. 40.34 (8) [40.53 (1)] does not authorize transportation of parochial or private school pupils to and from school or to and from extracurricular school activities. 38 Atty. Gen. 532.

See note to 40.02, citing 40 Atty. Gen. 194.

A bus transporting school groups engaged in extracurricular activities to or from a school or school district, 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.

**40.54 Board and lodging or house rental in lieu of transportation.** (1) If, in the judgment of the school board or the municipal board, as the case may be, providing the transportation, it is to the advantage of the district or of the municipality and in the judgment of parent or guardian also to the advantage of the pupil that board and lodging in lieu of transportation be provided for all or part of the time for pupils of the district or municipality for whom transportation must be provided or for whom it has been authorized under s. 40.53 (1), the board or municipality shall enter into a written contract under which such pupils shall be properly boarded and lodged, and the board or municipality shall pay for such board and lodging from the general fund. This provision shall also apply to physically disabled children. The parent or guardian may select the home in which his child is boarded and lodged. The board may, if in its judgment it is to the interest of the district, in lieu of furnishing transportation to the school in the districts of residence of pupils or board and lodging, pay the tuition of such children in a school in another district and in the event that the distance from the pupil's home to such school is 2 miles or more, provide transportation and the state superintendent may grant permission for a handicapped child to be transported to a school in another district if he resides on an established bus route and if this results in equal or better educational opportunities for the child and an acceptable form of transportation is provided.

(2) Whenever in the judgment of the board it is to the interest of the district in lieu of transportation to rent a house for the family of children required to be transported, it may enter into a written lease for such house and pay as rental therefor not more than the amount which would have to be paid for transportation.

**History:** 1951 c. 25, 734; 1953 c. 90, 236, 631.

**40.55 City option.** Sections 40.53, 40.54 and 40.56 do not apply to pupils who reside in cities; except that where a city determines to furnish transportation for such pupils, the same state aid shall be allowed as is provided by s. 40.56.

**History:** 1953 c. 90.

**40.56 Transportation and lodging; payment of costs; state aids.** (1) **RECORDS.** The school clerk shall give the teacher at the opening of the school the names of all children of school age in the district, residing more than 2 miles from the school, and the teacher shall inquire of every such child when enrolled, whether he is to be transported, and the manner of transportation, and shall keep a record that will show every day each pupil is transported. At the close of the term, the teacher shall file a report of such attendance with the clerk, who shall include such report with his annual report to the county superintendent, giving the names of the parents, the names and ages of the pupils, the distance transported, the number of days transported, the amount due for such pupil, and the total sum paid by the district. The parent shall keep a daily record of such attendance and present such record with his bill for transportation. A similar report and record shall be kept and made for all pupils who are boarded and lodged. The county superintendent shall make personal inspection of the transportation and lodging furnished, and shall report his findings thereon to the state superintendent at the close of the school year. If the state superintendent is satisfied that the law and the contracts for the transportation and board and lodging of pupils have been substantially complied with, he shall certify to the director of budget and accounts the sum due each district under the provisions of this section. In case of differences concerning the character and sufficiency of the transportation or board and lodging, the state superintendent shall have power to determine such matter and his decision thereon shall be final.

(2) **PAYMENT OF COSTS.** The cost of furnishing transportation to pupils as provided in ss. 40.53 and 40.54, except in the case of nonresident high school pupils, shall be paid by the district in which they reside, and no part of such cost shall be charged to the pupils, their parents or guardians. The cost of transporting nonresident public high school pupils, or the cost of board and lodging for such pupils furnished in lieu of transportation, shall be borne by those municipalities, or portions thereof, within the county which lie outside of districts operating high schools. Claims for transportation provided nonresident public high school pupils, or for board and lodging provided in lieu of transportation, shall be made to the county clerk and a tax levied for the payment of the same in the manner provided in s. 40.91 (4) and (5) for the payment of nonresident high school tuition. Claims in excess of state aids for the transportation provided nonresident high school pupils shall not exceed \$36 per year per pupil except that a greater amount may be allowed when a certificate of approval of the same has been filed with the county clerk by the county school committee. The claim per pupil shall be reduced proportionately if such transportation is furnished for less than a full school year because of non-enrollment. Claims, in excess of state aids, for board and lodging provided nonresident public high school pupils in lieu of transportation shall not be more than \$4 but not to exceed 40 per cent of the cost per week of 5 days for each child so boarded and lodged.

(2a) CORRECTIONS. Any errors, omissions or other corrections in the transportation claims filed under sub. (2) or apportionment of the high school transportation tax for a given year after 1949 may be corrected in the certification of such tax for a subsequent year.

(3) STATE AIDS FOR TRANSPORTATION. School districts and municipalities which furnish transportation to and from a public school as provided in s. 40.53 are entitled to receive state aid on account of such transportation at the rate of \$24 per school year per pupil transported to and from school whose residence is at least 2 miles and not more than 5 miles by the nearest traveled route from the public school attended and \$36 per school year per pupil transported to and from school whose residence is more than 5 miles by the nearest traveled route from the public school attended. Such aids shall be reduced, proportionately, in the case of pupils transported for less than a full school year because of nonenrollment. Transportation aid to any district or municipality shall not exceed the actual cost of transportation to the district or municipality. No state aid of any kind shall be provided to any district which after July 1, 1949, charges any part of the cost of the transportation furnished under s. 40.53 against the pupils transported, their parents or guardians, nor shall any state aid of any kind be provided to any district which fails to transport all of the pupils attending the district's school and whose transportation is required under s. 40.53.

(4) STATE AIDS FOR BOARD AND LODGING. The district or the municipality shall be reimbursed by the state at the rate of not more than \$6 but not to exceed 60 per cent of the cost per week of 5 days for each pupil so boarded and lodged. In the case of handicapped children the aids herein provided for are to be supplemented from the aids provided for by s. 41.03 in an amount which, when added to the aids herein provided, will not be in excess of the cost of such board and lodging. The costs paid under this subsection and s. 41.03 (1) (a) shall not be classified as public relief.

(5) APPROPRIATION PRORATED. If in any year the total of the claims for state aid under this section exceeds the amount appropriated in s. 20.650 (12), the state superintendent shall equitably prorate the amount available among the several school districts entitled to share in this state aid.

**History:** 1953 c. 90, 119, 336, 441, 631.

**40.57 Compulsory insurance on school busses.** (1) No motor vehicle shall be used as a school bus unless a policy of bodily injury and property damage liability insurance, issued by an insurer authorized to transact business in this state, is maintained thereon. Such policy shall provide bodily injury liability coverage with limits of not less than \$10,000 for each person, and, subject to such limit for each person, total limits as follows:

(a) \$30,000 for each accident for each such motor vehicle having a seating capacity of 7 passengers or less;

(b) \$40,000 for each accident for each such motor vehicle having a seating capacity of more than 7 but less than 16 passengers;

(c) \$50,000 for each accident for each such motor vehicle having a seating capacity of more than 15 but less than 25 passengers;

(d) \$75,000 for each accident for each such motor vehicle having a seating capacity of more than 24 but less than 37 passengers;

(e) \$100,000 for each accident for each such motor vehicle having a seating capacity of more than 36 but less than 50 passengers; and

(f) Not less than \$2,000 for each accident for each passenger seat accommodation for each such motor vehicle having a seating capacity of more than 49 passengers.

(2) Such policy shall also provide property damage liability coverage with a limit of not less than \$5,000.

**Cross Reference:** See also 194.41 (1).

(3) Coverage under such policy of insurance shall apply:

(a) To the transportation of pupils; their parents or guardians; members of the faculty and school doctors, dentists and nurses, to and from the school or district which operates such bus or which contracts for its operation; and

(b) To the transportation of such persons in connection with any extracurricular school activity, such as a school athletic contest, school game, school outing or school field or any other similar school trip when made in conformity with s. 40.53 (4). But when so used, unless otherwise provided in the policy, such insurance shall apply only to accidents occurring in the state and not to exceed 50 miles beyond its boundaries.

(4) Any insurer issuing any such policy may exclude coverage for public or livery use of any such school bus, but any such exclusion shall not apply:

(a) When any such school bus, while regularly used as such, is also used to transport pupils of another school, public or private, whether or not a charge is made for such transportation; nor

(b) When used in accordance with sub. (3), whether or not any person lawfully transported is required to pay a charge therefor.

(5) The school district or other governmental agency responsible for the operation of a school bus, or which lawfully contracts for its operation, shall procure insurance, or shall require that there be filed with the clerk thereof a certificate of insurance showing that insurance has been procured and is in effect which covers the owner and operator of the bus and also the school district or other governmental agency which contracts for its operation; and a like certificate of insurance shall be filed with the motor vehicle department. No license to operate a school bus shall be issued by the motor vehicle department unless such insurance or a certificate of insurance as stated above is on file with the motor vehicle department. No such insurance shall be terminated prior to its expiration, nor canceled for any reason, unless there is filed with the motor vehicle department by the indemnitor a notice thereof at least 10 days prior to the date of termination or cancellation. The license issued for a school bus on which the insurance has been terminated or canceled shall be revoked by the motor vehicle department effective on the date of cancellation or termination of the insurance.

(6) If, with respect to the maintenance, operation or use of any such school bus, the defense of governmental function is available to any such school district or other such governmental agency, such defense shall not apply to the extent of the insurance coverage afforded by any such policy of insurance, nor shall such defense be available to any such insurer under any such policy.

(7) This section shall not apply to any motor vehicle owned or operated by a parent or guardian transporting only his own children whether or not any contract is made with or compensation paid to such parent or guardian for such transportation by any school district or other governmental agency.

(9) This section shall not apply to vehicles operated by common carriers certificated under ch. 194, where such vehicles are used under contract pursuant to the provisions of ss. 40.53 and 40.55, provided such common carrier has complied with the provisions of s. 194.41 or 194.42.

**History:** 1953 c. 90, 336; 1955 c. 273, 652.

This section 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.

40.57 (Stats. 1949) requires school districts which contract with common carriers to provide insurance coverage additional to that which the carrier may have under 194.41 and to keep on file either a policy of insurance or a memorandum of insurance. 38 Atty. Gen. 635.

**40.58 Inspection of school busses prior to sale, penalty.** (1) Any person intending to purchase a motor vehicle to be used as a school bus shall prior to purchase give the seller thereof notice in writing of such intended use.

(2) The seller shall thereupon obtain from the motor vehicle department a certificate of compliance with the conditions prescribed by its school bus regulations, which certificate shall be carried upon the vehicle at all times. Subsection (1) shall not preclude a licensed motor vehicle dealer from securing a certificate of approval at any time.

(3) The seller of any such vehicle who fails to obtain such certificate prior to sale shall be liable to the purchaser thereof for all repairs and improvements required by such regulations for a period of 9 months after sale and shall be fined \$50 for the first offense and \$100 for the second and each subsequent offense.

(4) This section does not apply to any school bus for which a certificate of compliance already has been issued by the motor vehicle department and which carries a certificate not more than one year old nor to any school bus having a passenger-carrying capacity of fewer than 10 persons, including the operator. Passenger-carrying capacity shall be determined by dividing by 20 the total seating space measured in inches.

**History:** 1951 c. 99; 1953 c. 90; 1957 c. 514.

**40.60 Marking school zones.** (1) On any street or highway which passes along the grounds of any public or private school in which there is teaching during a school term of not less than 6 months, the authority in charge of the maintenance of said street or highway shall erect black and yellow "school" warning signs.

(2) On every highway entering a city or incorporated village, there shall be erected near the corporate limits in plain view of entering motorists, and maintained in good condition, signs bearing the words "Drive Carefully in School Zones".

(3) All signs required by this section and their installation shall comply with standards which shall be adopted by the state highway commission.

(4) Signs in place on July 1, 1949, which comply with s. 40.895 (Stats. 1947) until requiring replacement, may be continued in service in lieu of signs complying with this section.

**History:** 1953 c. 90.

**40.61 Safety zones.** (1) Every school district maintaining a school outside the limits of a city or village shall provide at the school site a zone which will provide safety for pupils from vehicular traffic during loading and unloading operations at the school. The zone may consist of a widening toward or into the school yard of the traveled portion of the adjacent highway so as to permit a vehicle to stop in the extended area completely clear of such traveled portion or may be constructed wholly within the school yard with connecting roads to the adjacent highway. The zone and approaches from the highway for use of vehicles shall be graveled or hard-surfaced.

(2) The district shall work in co-operation with the agency of the town, county or state having jurisdiction of the highway to the end that matters pertaining to the highway will be properly protected. Contracts for the necessary materials and construction and maintenance (which shall include snow removal) may be entered into with the county or town, or with private persons; but if the contracting party does not have jurisdiction over the highway, the contract shall be approved by the agency of the state, county or town having jurisdiction over the highway before any work is commenced thereunder.

(3) All loading and unloading of pupils at the school, whether transported by a public or a private vehicle, shall take place in the safety zone. The operator of a vehicle under contract to transport pupils to such school shall have necessary police powers so that pupils will be properly safeguarded in the loading and unloading operations at the zone and also while his vehicle is approaching and leaving the zone. He shall first alight before discharging or receiving pupils at the zone, and while at stops on his highway route to receive and discharge pupils, he shall exhibit the vehicle's stop sign.

**History:** 1953 c. 90.

**40.62 School ground fences.** The district shall erect and maintain all the fence necessary to inclose the district site or grounds without any financial burden on the holders of adjoining properties.

**History:** 1953 c. 90.

**40.63 School safety patrols.** Any school district board or city school board or the board of school directors of any city of the first class may organize school safety patrols and with the permission of the parents appoint pupils as members thereof for the purpose of influencing and encouraging the other pupils to refrain from crossing public highways at points other than at regular crossings and for the purpose of directing pupils not to cross highways at times when the presence of traffic would render such crossing unsafe. Nothing herein contained shall be construed to authorize or permit the use of any safety patrol member for the purpose of directing vehicular traffic nor shall any safety patrol member be stationed in that portion of the highway intended for the use of vehicular traffic; except that this section shall not affect any plan in operation on July 11, 1939, under which a junior police patrol directs traffic under the authorization, supervision and control of either the sheriff's department or of the chief of police or traffic department of the police department of any city, town or village. No liability shall attach either to the school district or any individual, director, superintendent, teacher or other school authority by virtue of the organization, maintenance or operation of school safety patrol organized, maintained and operated under authority of this section.

**History:** 1953 c. 90.

**40.65 Tuition; elementary schools.** (1) **DUTY; EQUAL RIGHTS OF PUPILS.** If facilities are adequate, the school board shall admit nonresident pupils to the elementary grades. Tuition pupils shall have all the rights and privileges enjoyed by resident pupils.

(2) **COMPUTATION OF TIME.** In computing tuition, 5 school days (as defined in s. 40.45) shall constitute a school week; 20 school days shall constitute a school month. No deduction of tuition shall be made on account of absence on the part of any pupil, unless such pupil has been absent 10 consecutive school days. In case of a longer absence at one time deduction shall be made only for the absence in excess of 10 days, but if a school is closed pursuant to an order of the health officer during the term regularly established by the school board, and the expenses of instruction and maintenance are incurred by the district the same as if the school were operating, tuition shall be charged the same as if the school had been in session.

(3) **COMPUTATION OF TUITION.** Tuition for nonresident children in grades below the ninth shall be fixed as follows:

(a) In a basic aid district: From the total cost of operating and maintaining the school there shall be subtracted an amount equal to the sum of the county aid and the



difference so determined shall be divided by the average daily attendance for the given year.

(b) In an integrated aid district: From the total cost of operating and maintaining the school there shall be subtracted an amount equal to the sum of the county aid and the difference so determined shall be divided by the average daily attendance for the given year.

(c) In either par. (a) or par. (b) total cost shall include the salary of the principal, supervising teachers and superintendent for that portion of time devoted to the teaching of or supervision of grades below the ninth grade and excluding that portion of costs for the operation and maintenance of grades above the eighth grade, including an item for building and equipment costs equal to 2 per cent of the original expenditures by the districts for buildings and equipment thereof as certified by the state superintendent of public instruction, such charge not to apply for a greater period of time than 50 years in the case of a new building or for the unexpired portion of 50 years of life of an old building, excluding land costs.

(d) In school districts authorized to operate and maintain elementary schools the board may, in all operating districts, but in suspended districts only until July 1, 1957, upon its own order provide for the enrollment of pupils in elementary schools located in states other than Wisconsin and pay for the tuition that accrues because of such enrollment and for the transportation costs necessitated by such enrollment of pupils who reside 2 miles or over from such out-of-state schools, from school district operation and maintenance funds until the following compact [see ch. 573, Laws 1955] has been approved for the operation of interstate school districts between such state and Wisconsin, but in suspended districts not later than July 1, 1957. The cost of such tuition shall be treated as a part of the cost of instruction of such districts and they shall be credited with the enrollment and average daily attendance of such tuition pupils for aids purposes as though they had been enrolled in the schools of the districts of their residence. The districts shall be entitled to receipt of aids for the transportation of such pupils on the same basis as though they had been transported to the schools of the districts of their residences.

**History:** 1951 c. 225; 1953 c. 90, 118, 631; 1955 c. 573.

**Cross Reference:** For high school tuition, see 40.91.

District of residence of children who attend kindergarten at school of another district cannot be compelled under 1951 statutes to pay nonresident tuition for such kindergarten pupils, where the district of residence suspended its schools but not pursuant to 40.16 (15) (Stats. 1951). 42 Atty. Gen. 104.

Creation of interstate school districts discussed. 44 Atty. Gen. 130.

**40.654 Nonresident tuition; written agreement.** Before the admission of any non-residents to a public elementary or high school the board shall make a written agreement with the parents for the payment of tuition at the rate legally fixed, except when the tuition is a public charge.

**History:** 1951 c. 225; 1953 c. 90.

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 this section, 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 34, 64 NW (2d) 249.

**40.655 Tuition paid by state.** (1) The state shall pay tuition for children attending public schools as follows:

(a) For children in children's homes out of the appropriation made by s. 20.650 (13).  
(b) For children in foster homes attending high school out of the appropriation made by s. 20.650 (14).

(c) For children of parents employed at and residing on state or federal military camps, federal veterans hospitals or state charitable or penal institutions out of the appropriation made by s. 20.650 (16).

(2) Such children shall attend school in the district in which the home or facility is located or, if none, the nearest school.

(3) When transportation is furnished as provided by law governing elementary and high school transportation, application for state aid shall be made, allowed, certified and paid in the same manner provided in the case of state aid for transportation of all other elementary and high school pupils.

**History:** 1953 c. 90; 1957 c. 493.

**40.657 County to pay tuition.** The elementary and high school tuition of every person of school age who is a child of a parent employed and residing at a county insti-

tution shall be paid by the county. The county board may charge such tuition to the account of the county asylum or the county home.

**History:** 1953 c. 90.

**40.66 State aid for public schools, purpose.** It is hereby declared to be the policy of this state that education is a state function and that some relief should be provided from local general property tax as a source of school revenues where it is excessive, and that other sources of revenue should contribute a larger percentage of the total funds needed; that in order to provide reasonable equality of educational opportunity for all the children of the state, the state must guarantee that a basic educational opportunity be available to each student, but that the state should be obligated to contribute to the educational program only if the district provides a program which meets state standards.

**History:** 1953 c. 90.

**40.67 State aid district.** For the purpose of computing aids under ss. 40.70 and 40.71 the following classes of aid districts are established:

(1) **BASIC AID DISTRICT.** A basic aid district shall meet the following requirements:

(a) All teachers, including supervisory and administrative personnel, must possess certificates, licenses or permits, as established by the state superintendent, to teach the subjects or grades they are to teach before they enter on duty in such positions.

(b) Teaching personnel must be paid at least the minimum salaries and must be granted the sick leave provided in s. 40.71 (7).

(c) School must be held at least 180 days per year, the days to be computed as provided in s. 40.45. School must be taught as provided in s. 40.45.

(d) It must comply with the provisions of ss. 40.23 (2), 40.30 (18), 40.46, 40.47 (3), 42.41 and 42.43.

(2) **INTEGRATED AID DISTRICT.** An integrated aid district shall meet the following requirements:

(a) All of the requirements established in sub. (1).

(b) It must be organized as a common school district or a city school district.

(c) It must operate grades one through 12 or kindergarten through 12 in any acceptable combination.

(d) It must have sufficient pupils and the proper teacher-pupil ratio to be able to provide a modern enriched educational program as defined by the state department of public instruction.

(e) In addition to the minimum professional qualifications required by sub. (1) (a), it must furnish satisfactory evidence to the department of continuous inservice improvement of its professional staff, such as summer session attendance, participation in workshops, extension classes and similar activities.

(f) It must make adequate provision for healthful, safe school facilities in accordance with standards established by the department.

(g) It must provide a modern enriched educational program as defined by the department which, except for such modification as the department shall approve, in addition to the proper academic subjects, shall include:

1. Training in the elementary schools, by a qualified teacher at regular intervals, in health and physical education and in at least 2 of the following fields: Music (including vocal), kindergarten, arts and applied arts.

2. More than 5 teachers in high school; instruction in high school in at least 2 of the following fields: Home economics, industrial arts, commercial work and agriculture; in at least one subject from the general field of physical education for both boys and girls, in music (including vocal) and in art, taught by teachers who teach in no more than one other field.

3. At least 2 of the following auxiliary services: Hot lunch program, periodic dental inspection, periodic medical examination, school nurse service, at least one-quarter of the time of one teacher devoted to guidance and counseling, provision for at least one type of mentally or physically handicapped children, available audio-visual aids and library facilities.

4. Instruction in the conservation and wise use of natural resources in both elementary and secondary schools.

**History:** 1951 c. 495; 1953 c. 90.

**40.68 Valuation determined and certified.** Annually on or before August 1, the full value of the taxable property in each school district and in each part of a joint school district shall be determined by the department of taxation according to its best judgment from all the sources of information available to it and shall be certified by it to the state superintendent.

**History:** 1951 c. 33, 224; 1953 c. 90; 1955 c. 220.

This section complies with the 1955 ex rel. Thomson v. Peoples State Bank, 272 amendment to sec. 3, art. XI, Const. State W 614, 76 NW (2d) 370.

**40.69 Property tax relief.** It is the purpose of the state aid formula provided in ss. 40.70 and 40.71 to cause the state to assume a greater proportion of the costs of public education and to relieve and reduce the general property of some of its tax burden.

**History:** 1957 c. 490.

**40.70 State aids, computation.** (1) **AVERAGE DAILY ATTENDANCE.** "Pupils in average daily attendance" is the sum of actual daily attendances in all schools of the district for each day of the school term divided by the number of days school is actually held. The quotient, if it contains a fraction, shall be expressed as the nearest whole number. In computing the number of pupils in average daily attendance no first grade pupil shall be counted unless he attains the age of 6 years on or before December 1 of the school year in which he enters first grade. A pupil enrolled in a recognized half-day kindergarten program shall be counted as one-half pupil provided he attains the age of 5 years on or before December 1 of the year in which he enrolls. A pupil enrolled in a 4-year-old-half-day kindergarten program shall be counted as one-half pupil if he attains the age of 4 years on or before December 1 of the year in which he enrolls. The same formula shall be used in computing average daily attendance for resident pupils, nonresident pupils, or both.

**Revisor's Note:** 40.70 (1) is printed as go into effect for school aids paid after amended by ch. 700, s. 1, Laws 1957. That 1958-1959, and that provision is set forth in act provides that a different provision is to section 3 of ch. 700.

(2) **TEACHERS EMPLOYED.** In computing the number of teachers employed, professional workers who devote less than full time to their professional duties shall be counted in proportion to the time devoted to such duties. Teachers who devote full time to handicapped children shall not be counted.

(3) **TEACHER-PUPIL RATIO.** "Teacher-pupil ratio" is the quotient of number of pupils in average daily attendance divided by the number of teachers employed as defined in sub. (2). As a basis for aid payments, teacher-pupil ratio must be approved by the state superintendent.

(4) **YEAR TAKEN AS BASIS FOR STATISTICS.** In the computation of aids for all districts the average daily attendance and the teacher-pupil ratio for the previous school year shall be used, except that in districts newly altered, created, reestablished or recreated, the computation of aids for the first year shall be based on the average daily attendance and the teacher-pupil ratio of the district for the third week in September of the first year of operation on such newly altered, created, reestablished or recreated basis and the estimated budget of said year of operation and the estimated required tax levy rate on the equalized valuation of territory comprising said district as determined by the department of taxation for the same year upon which the aids would have been apportioned if the district had not been reorganized, except when the valuation of the district is increased or decreased in excess of 10 per cent in which case the computation shall be made on the basis of the full valuation of the districts affected by the order or reorganization.

(5) **AID TO BASIC AID DISTRICTS.** (a) In basic aid districts which did levy a tax of 3 mills or more in the year prior to that in which the aids are granted on the equalized valuation of the district for the year prior to the levy of such tax, state aids for elementary pupils shall be paid as follows:

1. If the district has a total of one to 9 resident pupils in average daily attendance, \$28 per resident pupil in average daily attendance.

2. If the district has a total of 10 or more resident pupils in average daily attendance, a sum equal to the mill rate required for the current operation and maintenance by the district up to 15 mills on the amount by which the equalized valuation per resident pupil in average daily attendance is less than \$23,000 per resident pupil in average daily attendance not to exceed 25 resident pupils in average daily attendance per teacher, but not less than \$28 per resident pupil in average daily attendance, except that the state shall provide not less than: a. In a one-teacher unit school district with 12 or more resident pupils in average daily attendance, a sum equal to the amount produced by applying the mill rate levied by the district not to exceed 15 mills on the amount by which the equalized valuation of the district is less than \$300,000; b. in a 2-teacher unit school district with 26 or more resident pupils in average daily attendance, a sum equal to the amount produced by apply-

ing the mill rate levied by the district not to exceed 15 mills on the amount by which the equalized valuation of the district is less than \$600,000; c. in a 3-teacher unit school district with 45 or more resident pupils in average daily attendance a sum equal to the amount produced by applying the mill rate levied by the district not to exceed 15 mills on the amount by which the equalized valuation of the district is less than \$900,000; but d. in no case less than \$28 per resident pupil in average daily attendance not exceeding 25 pupils per teacher.

(b) High school aids shall be paid to basic districts operating high schools at the rate of \$35 per pupil in average daily attendance during the previous year in grades 9 through 12 for both resident and nonresident pupils, except as provided in s. 40.71 (6) (c). Aid paid on account of nonresident pupils shall be deducted from the nonresident tuition claims made under s. 40.91 (4) and (5).

(c) In union high school districts that meet the requirements of high schools in a basic district the aid shall be \$35 per pupil in average daily attendance during the previous year in grades 9 through 12 for both resident and nonresident pupils.

(d) When a new union high school district is created comprised of territory in which a high school is not in operation, such district may, in its first year of operation, operate classes for ninth and tenth grades and provide for its eleventh and twelfth grade pupils on a tuition basis, and in its second year of operation, operate classes for the ninth, tenth and eleventh grades and provide for its twelfth grade pupils on a tuition basis, and qualify for receipts of aids on account of such 2 first years of operation at the same rate of aids per pupil in average daily attendance as it would have been eligible to receive if it had operated the ninth, tenth, eleventh and twelfth grades.

(6) AID TO INTEGRATED AID DISTRICTS. (a) State aids shall be paid to integrated aid districts for both elementary and high school resident pupils on the following basis: The state shall provide a sum equal to the amount produced by applying the required mill rate levied by the district on that equalized valuation indicated in sub. (5) (a) upon which the eligibility for receipt of aids is determined up to 15 mills on the amount by which that equalized valuation per resident pupil in average daily attendance for the previous year not exceeding 25 resident pupils in average daily attendance per teacher is less than \$28,000 but in no case shall the state pay less than \$35 per resident elementary pupil in average daily attendance and \$44 per resident high school pupil in average daily attendance, not exceeding 25 resident pupils in average daily attendance per teacher. Aids under this subsection shall be payable only to such integrated districts which did levy a tax of 5 mills or more in the year prior to that in which the aid is granted on the equalized valuation of the districts for the year prior to the levy of such tax.

(b) State aid shall be paid to integrated districts for nonresident high school pupils at the rate of \$44 per nonresident high school pupil in average daily attendance which sum shall be deducted from the nonresident tuition claim made under s. 40.91 (4) and (5).

(7) ELEMENTARY SCHOOL DISTRICTS OFFERING APPROVED PROGRAM OF SERVICES. (a) State aids shall be paid to each elementary school district providing education from first grade through eighth grade or kindergarten through eighth grade, in a sum equal to the amount produced by applying the required mill rate levied in the elementary school districts on that equalized valuation of the districts indicated in this section upon which eligibility for receipt of aids is determined up to 15 mills, on the amount by which the equalized valuation per resident pupil in average daily attendance for the preceding year in such elementary school district, not exceeding 25 resident pupils in average daily attendance per teacher, is less than \$26,000 if the elementary school district meets the requirements of s. 40.67 (2) (a), (b), (d), (e), (f) and (g) 1, 3 and 4, and provided such elementary district has been at some prior date a part of an integrated school district, or employs not less than 4 teachers in the elementary school.

(b) In no case shall any elementary school district to which this subsection applies receive state aid of less than \$35 per resident elementary pupil in average daily attendance, not exceeding 25 resident pupils in average daily attendance per teacher. Aids under this subsection shall be payable only to those elementary school districts which levied a tax of 3 mills or more in the year prior to that in which the aid is granted on the basis of the equalized valuation of the district for the year prior to the levy of the tax.

**History:** 1951 c. 11, 115, 233, 344; 1951 c. 734 s. 18; 1953 c. 5, 28, 90, 112, 118, 401, 631; 1955 c. 147, 446, 568; 1957 c. 490, 643, 663, 700.

**Revision Committee Note, 1953:** The phrase "for the previous school year" is deleted for simplification. It is the same year as "the year prior to that in which the aids are granted". (Bill 1-S)

National forest income allotted to school districts under 59.07 (22) may not be used in substitution for the required minimum applicable 3 and 5 mill tax levy for county school aid under 59.075 or for state aid under 40.70. 41 Atty. Gen. 268.

**40.71 State aids, miscellaneous provisions.** (1) **BIENNIAL AID ADJUSTMENT.** Biennially following the release of data on property valuations by the state department of taxation in even-numbered years, the committee on education of the legislative council shall, with the co-operation of the state department of public instruction, representatives of the local school administrators and 3 members of school boards representing, respectively, common school districts with grades 1 to 8, school districts with grades kindergarten to 12 or 1 to 12 and union high school districts consider the advisability of readjusting the valuation per resident pupil in average daily attendance in the basic and integrated aid districts upward or downward in terms of changes in valuations or school costs, and shall report their findings to the governor and to the legislature, recommending action to be taken to properly adjust the aid program to the appropriation provided by s. 20.650 (13).

(2) **METHOD OF APPLICATION FOR AID.** At the time of submitting to the state superintendent the annual report required by s. 39.02 (19) the administrative officer or clerk of the school board of each district shall also submit to the state superintendent a statement on a form provided by the latter, of the aid level for which the district will seek to qualify in the ensuing year, together with such supporting evidence as the department shall request. The department shall review these reports, and upon that basis together with the supervisory and consultative reports which the department shall have prepared, as well as other evidence which the supervisory staff may provide, determine the aid level for which the district shall qualify. The department shall notify the district on or before August 15 of its determination, and the recommended changes necessary to qualify for the aid level sought. Any person dissatisfied with the decision of the department may, within 15 days from the date thereof, apply for and receive in writing an explanation of the basis for such decision by the state superintendent.

(2a) **ADVANCE PAYMENT OF AIDS.** Upon the request of a school district filed on or after July 15, the state department of public instruction may upon its determination of need grant an advance payment of the state aid payable to such district not to exceed 75 per cent of its total annual aid, provided the district's annual report for the previous year is filed and processed.

(3) **PRORATION OF AIDS.** In the event that the appropriations available for state aids in any one year are insufficient to pay the full amount as provided in s. 40.70 (5) and (6), the payment shall be prorated among the various districts entitled thereto.

(4) **APPROVAL OF BUDGETS.** Where the said aid to be received by a district is over 50 per cent of the total receipts of any district in any one year, or where excess state aid is required because of the 15, 20 or 25 mill tax limitation the budget for the year on which such aids may be paid shall be approved by the state superintendent prior to the expenditure thereof except in the case of the aids that will be payable in 1956.

(5) **COUNTY AIDS.** If any county fails to raise for the support of the common schools by taxation, upon the aggregate valuation of the whole county, an amount at least equal to \$350 for each public elementary teacher employed in the county, as determined in s. 59.07 (21) and as certified to the county clerk by the state superintendent, and shall fail to apportion to each district such amount for each elementary teacher employed, the aid for the schools of that county shall be withheld from the next succeeding apportionment except that aid may be apportioned by the state for distribution to all districts which have received a county apportionment for the preceding year.

(6) **STATE SUPERINTENDENT MAY VARY AIDS.** (a) The state superintendent may, at his discretion, provide a higher level of aids than the district would be entitled to under this section and s. 40.70, if in his judgment the geography, sparsity of population, inadequacy of property valuation, difficulties of transportation, or other factors, make it impossible for the district to qualify for the higher level of aids, provided that the school district levies a tax for school purposes, of at least 5 mills in the year for which the aid is granted on the equalized valuation of the district for the year previous. He may also withhold the aids from any school in which the scope and character of the work are not maintained in such manner as to meet his approval.

(b) If the state superintendent is satisfied that the educational program of any union high school district meets the requirements of s. 40.67 (1), (2) (d), (f), (g) 2 and 3 and that the district did levy a tax of 3 mills, or more in the year prior to that in which the aid is granted on the equalized valuation of the district for the year prior to the levy of such tax, the state superintendent shall grant in aids an amount equal to the required mill levy made by the district up to 10 mills on the amount by which the equalized valuation per resident pupil in average daily attendance up to 25 resident pupils in average daily attendance per teacher is less than \$65,000, but not less than \$44 per resident pupil in average daily attendance up to 25 resident pupils in average daily attendance per teacher.

State aids shall be paid on account of nonresident union high school pupils at the rate of \$44 per nonresident in average daily attendance which \$44 shall be deducted from the nonresident tuition claims under s. 40.91 (4) and (5).

(c) If the state superintendent is satisfied that the educational program of any union high school district meets the requirements of a high school in a basic district and that the district did levy a tax of 3 mills, or more, in the year prior to that in which the aid is granted on the equalized valuation of the district for the year prior to the levy of such tax, the state superintendent shall grant in aids an amount equal to the required mill levy made by the district up to 10 mills on the amount by which the equalized valuation per resident pupil in average daily attendance up to 25 resident pupils in average daily attendance per teacher is less than \$55,000, but not less than \$35 per resident pupil in average daily attendance up to 25 resident pupils in average daily attendance per teacher. State aids shall be paid on account of nonresident union high school pupils at the rate of \$35 per nonresident in average daily attendance which \$35 shall be deducted from the nonresident tuition claims under s. 40.91 (4) and (5).

(7) TEACHERS' SALARIES, SICK LEAVE. (a) No aid as provided in this section and s. 40.70 shall be paid to any school district except to a city school district in a city of the first class, for any year during which such district has not maintained a common school for at least 9 months taught by a qualified teacher under a contract providing for leave of absence of the teacher by reason of personal sickness, without deduction from the salary of such teacher at the rate of at least 5 days per year and for accumulation of at least 30 days of unused sick leave from year to year and at a salary of not less than \$1,800 per school year, if the certificate of such teacher is based on 2 years of professional training and not less than \$2,000 per school year if such teaching certificate is based on not less than 3 years of professional training and not less than \$2,600 if based on 4 years of professional training with a degree; unless the state superintendent shall be satisfied that such school was maintained and so taught for at least 3 months, and the failure to maintain and so teach it for 9 months was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers.

(b) No aid shall be paid to any city school district of a city of the first class for any year during which such district has not maintained common schools taught by qualified regular teachers at salaries of not less than \$140 a month, and by qualified continuous substitute teachers at salaries of not less than \$6 a day, for the full period during which such schools were in session during such year as provided by the rules of the board of school directors of such district; unless the state superintendent shall be satisfied that any failure to so maintain such schools and so teach them for such full period was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers. No aid shall be paid for or on account of any public school as defined in s. 42.20, unless the employer as defined in s. 42.20 has complied with ss. 42.39 to 42.43.

(8) USE OF AIDS, EXEMPTION FROM EXECUTION. All moneys appropriated, allotted and paid to any school district under s. 20.650 (11) to (15) and all moneys appropriated, allotted and paid by any county to any school district from tax revenues derived under s. 59.07 (21) shall be used, disbursed and expended by the school district receiving such moneys solely for the school purposes and expenses for which apportioned under s. 40.70 and this section. Such moneys shall at all times be exempt from execution, attachment, garnishment or other process in favor of creditors except as to claims for salaries or wages of teachers and other school employes and as to claims for school materials, supplies, fuel and current repairs.

(9) PUPILS ATTENDING OUT-OF-STATE SCHOOLS. Any district or city or municipality of residence of children attending out-of-state schools as provided for by s. 40.91 (2), excluded from any state aid because of some mistake or omission by some officer may, at any time within 2 years after such state aid first becomes payable, furnish proof to the state superintendent of the facts of such mistake or omission and that the same has been corrected or remedied. If such proof is satisfactory to the state superintendent he shall certify such facts to the director of budget and accounts with the amount due such district or city because of such mistake or omission and the director of budget and accounts shall thereupon draw his warrant for such amount in favor of such district or city.

(10) STATE AID ON HIGH SCHOOL STUDENTS WHO ATTEND OUT-OF-STATE SCHOOLS. Upon making payment of high school tuition to out-of-state school districts, the county clerk shall make application to the state superintendent for state aids on forms provided by the department. The state superintendent shall, after receipt of such application, and having satisfied himself of its correctness certify the claim for payment in the same man-

ner and from the same appropriation as aids are certified and paid to school districts. The amount of such aid received by any county in any year shall be applied to the next payment of high school tuition, and the amount to be levied on the tuition-paying area of the county reduced accordingly in the next tax levy.

(11) CERTAIN RENTALS NOT INCLUDED IN COST OF OPERATION. Amounts paid by school districts as rentals which are used for the purpose of retiring indebtedness on the buildings or properties for which said rentals are paid, shall not be included in the cost of operation and maintenance for the purpose of computing aids or tuition.

**History:** 1951 c. 233, 353, 598; 1953 c. 90, 112, 126, 287, 441, 631; 1955 c. 147, 604, 652; 1957 c. 36, 490, 672.

**40.73 Aid to counties maintaining institutions having schools.** Any county, which maintains a county home for dependent children or other institution in which children are received for care, and in which institution or institutions the educational facilities required to be provided by a common school district are maintained, shall be entitled to state educational aids granted under ss. 40.70, 40.71 and 41.03. The educational facilities offered in such institutions shall be under the supervision of the county superintendent and state superintendent.

**History:** 1953 c. 90.

**40.74 Annual report of district clerk.** (1) The district clerk (except in cities of the first class) shall during each July make and transmit to the county superintendent a verified report as of June 30 of such year showing:

(a) The names and ages of children over the age of 4 and under the age of 20 years residing in the district and the names of their parents or other persons with whom such children resided on said date. No children cared for at any charitable or penal institution of this state shall be included in such report.

(b) The number of such children taught in the district school during the last year.

(c) The number attending school during that year under the age of 4 and the number over the age of 20 years.

(d) The number of school days taught, including holidays, by teachers legally qualified.

(e) The names of all teachers employed during the year, the number of days taught by each, including holidays, the monthly wages paid to each, and the time allowed any teacher for attendance on any institute for which no wages were deducted.

(f) The amount of money received during the year, designating separately the amount received from the school fund income, from taxes levied by the county board, from taxes voted by the district, and from all other sources, and the manner in which the same has been expended, showing separately the expenditure of school money received from the state.

(g) The amount and character of district debts.

(h) Names and addresses of native-born men and women attaining their majority in the 12-month period ending the third Sunday of May.

(i) Such other facts and statistics in relation to the schools, public or private, in such districts as the state superintendent may require.

(2) The report shall be made on forms supplied by the state superintendent before July 15. Except for city districts, one copy shall be sent to the county superintendent. At the opening of school, one copy shall be sent to the person in charge of each school in the district. If the school district extends into 2 or more counties, the clerk shall make separate reports for the part of the district in each county and forward such report to the proper superintendent.

(3) A district clerk who neglects to make such annual report shall be liable to his district for the whole amount of money lost by such district in consequence of his neglect.

(4) The clerk may employ some competent person to take the school census.

**History:** 1953 c. 90.

**40.77 Compulsory school attendance.** (1) GENERAL PROVISIONS. (a) Any person having under his control a child between the ages of 7 and 16 years shall cause such child to attend some school regularly to the end of the school term, quarter, semester or other division of the school year in which he is 16 years of age, unless the child has a legal excuse, during the full period and hours, religious holidays excepted, that the public or private school in which such child should be enrolled is in session.

(b) This subsection does not apply to any child who is not in proper physical or mental condition to attend school (the certificate of a reputable physician in general practice

shall be sufficient proof that a child is unable to attend school) nor to any child exempted for good cause by the school district board or board of education of the school district in which the child resides, except that in the case of high school attendance, if the district in which the child resides does not operate a high school, by the county superintendent, nor to any child who has completed the full 4-year high school course. Any child who has completed the first 8 grades of school work or the equivalent thereof may at his option attend a vocational and adult education school full time in lieu of attendance at any other school.

(c) Instruction during the required period elsewhere than at school may be substituted for school attendance. Such instruction must be approved by the state superintendent as substantially equivalent to instruction given to children of like ages in the public or private schools where such children reside.

(2) VOCATIONAL AND ADULT EDUCATION SCHOOLS. Any person over 16 but under 18 who is not married, and not indentured as an apprentice, who resides or is employed in a district which maintains a vocational and adult education school, who has not completed a full 4-year high school course and is not attending a high school full time, shall attend a vocational and adult education school for at least one full school day of not less than 6½ hours every week if regularly, lawfully and gainfully employed, half time if employed at home, and full time if unemployed; and the parents of such minors shall compel such school attendance. If there are no parents or not more than one parent living at home in households in which there is at least one child, and it is necessary for one of the children who is over 16 and under 18 years to be employed at home in order to maintain the household, such child, for the purpose of school attendance under this subsection, shall be deemed to be regularly, lawfully and gainfully employed.

(3) PENALTY. Whoever violates this section shall be fined not less than \$5 nor more than \$50, or imprisoned in the county jail not more than 3 months, or both. In a prosecution under this section, if the defendant proves that he is unable to comply with the law because of the disobedience of the child in question, it shall be a good defense and such child shall be proceeded against as delinquent in the manner and in the courts specified in ch. 48.

**History:** 1951 c. 38; 1953 c. 90; 1955 c. 575.

Plan under which boys indentured as apprentices attend high school half days, taking full load of regular course, and work the other half days, meets the compulsory school attendance provision. Half day's attendance thereunder counted as one-half-pupil day in computing school aid. 40 Atty. Gen. 248.

Report card period is not a "division of the school year" within the meaning of the term as used in (1) (a) and a pupil is required to attend school until the end of the term, quarter, or semester in which such pupil reaches 16 years of age. 46 Atty. Gen. 28.

**40.78 Truancy.** (1) TRUANCY DEFINED. Truancy consists of any absence from school during which the teacher or principal has not been notified officially of the legal cause of such absence by the parent or guardian of the absent pupil. In case of illness for more than 3 days, or upon request of the truant officer, a statement from the local health officer or nurse or attending physician shall be submitted.

(2) REPORTS ON TRUANCY. City superintendents shall require the teachers under their supervision to report all absences daily to the truant officer, and county superintendents shall require the teachers under their supervision and teaching in schools of 3 or more teachers to report all absences to their principals daily, and in all other schools under his supervision the county superintendent shall require the responsible teacher to report all absences to him at the end of each week of school.

(3) ENROLLMENT DATA. All teachers of private schools shall keep a record embodying the data enumerated in ss. 39.025 and 40.74 (1). Such record shall be open to the inspection of truant officers at all reasonable times, and when called upon by any truant officer, such teachers shall furnish, on blanks supplied by the truant officer, the above mentioned data in regard to pupils between the ages of 7 and 18, who claim, or who are claimed to be in attendance at such schools, and every school teacher shall promptly notify the proper truant officer of any pupil whose attendance is habitually and inexcusably irregular.

(4) OFFICERS, DUTIES. In cities of the first class, the school board shall appoint welfare workers or attendance officers who, when employed, shall have the powers of truant officers. To qualify for employment such welfare workers shall possess the qualifications required for teachers in such cities and, when employed, shall have all the rights and privileges of teachers. In school districts other than cities of the first class, not under the jurisdiction of the county superintendent, the board of education shall appoint as truant officer any professional employe of the school system. In school districts under the jurisdiction of the county superintendent, the supervising teachers, the county superintendent and the principals shall be truant officers.



(5) COMPENSATION OF TRUANT OFFICERS. (a) Truant officers in cities shall receive such compensation as is fixed by the school boards.

(b) When the county superintendent, supervising teachers and principals are acting as truant officers, they shall receive their actual and necessary expenses incurred in the performance of their duties as truant officers.

(6) POWERS OF OFFICERS. A truant officer may visit factories, workshops, mercantile establishments and other places of employment in his locality to ascertain whether any minors are employed therein contrary to law. He shall require that the school certificates and lists of minors who are there employed shall be produced for inspection, and he shall report all cases of illegal employment to the proper school authorities and to the industrial commission. When a truant officer receives a delinquent report or learns by investigation or by personal observation that any child is unlawfully and habitually absent from school, he shall immediately proceed in accordance with sub. (7).

(7) PURSUIT OF TRUANT. (a) The truant officer shall, within 12 hours from his receipt of the report of absence made as required by sub. (2), or other information of absence, give written notice by personal service to the parents or guardians of absent children, to send such children to some school at least by the next following day in which school is in session unless an excuse from the proper health or judicial authority is filed. The officer shall at once notify the school principal or responsible teacher in writing of such service of notice; and a return of the child to school shall be promptly reported by the school principal or responsible teacher to the truant officer. The failure of the child to return to school on the next school day shall be reported at once to the truant officer by the school principal or responsible teacher. The truant officer shall again give notice to the parent or guardian of the child, and notify the school administrator of such service in writing. If the child does not return to school on the day following the service of the second notice the truant officer shall proceed to take the necessary action in accordance with s. 40.77 (3).

(b) The notice shall inform the parents of the legal requirements for school attendance. A copy of s. 40.77 shall be printed on the face or back of such notice. Truant officers, after giving such notice, shall ascertain whether the parents have complied with the notice; and in case of failure to so comply within 3 days the officer shall begin and prosecute criminal proceedings against offending parents.

(c) Truant officers may apprehend without warrant any child found violating s. 40.77 or this section, and cause such child to be placed in some school.

(8) PENALTY. Any superintendent of schools or any truant officer who violates this section shall be subject to a forfeiture of not less than \$5 nor more than \$25.

**History:** 1953 c. 90.

40.79 Aid for poor school children. Any principal or teacher in charge of any public school shall report to the authority administering poor relief for the municipal unit wherein such school is situated, the name and address of any child in such school whose parent, guardian or other person having control, charge or custody of any such child, is without sufficient means to furnish any such child with food or clothing necessary for such child to attend school as required by law.

**History:** 1953 c. 90.

**Cross Reference:** 40.29 (13) provides for free books and school supplies for indigent children.

40.80 City school plan. (1) Sections 40.80 to 40.827 provide a system of school administration (called "city school plan"). All general school statutes govern city schools as far as applicable, and as they are in harmony with this plan.

(2) (a) Any fourth class city whose territory constitutes all or part of one school district and which has at least 80 per cent of the entire population of such school district or a fourth-class city with not more than 10 per cent of its territory in another school district or any second or third class city may proceed under s. 40.803 or 66.01 to adopt or abandon the city school plan, or may operate or continue to operate as a common school district. No action taken by the school board of any such city nor any act of such school district in levying taxes, borrowing money, issuing bonds, executing contracts or otherwise shall be invalidated by failure to comply with ss. 40.80 to 40.827.

(b) Territory of such fourth class city lying within another school district shall not pay school tax within such city. Such territory lying within the other school district shall continue to vote on school matters within said district and shall not vote on any matter relating to the city school plan within said city.

(c) No second or third class city may, because of this amendment (1953), change

from the city school district plan to the common school district plan unless it does so as part of a school reorganization plan under either s. 40.03, 40.06 or 40.07.

**History:** 1953 c. 90, 599.

**Revision Committee Note, 1953:** This revision permits all 2d and 3d class cities to operate, at their option, under the common school plan after reorganization. Such a move will facilitate operations after integration. This election seems to have been contemplated by old 40.807 (2) (c). New (2) (c) keeps 2d and 3d class cities under the city plan unless they elect, in a reorganization, the common school plan. (Bill 1-8)

See note to 39.06, citing 45 Atty. Gen. 218.

**40.801 City is a school district.** (1) Each city operating under the city school plan is a single and separate school district; any territory outside of the city which is joined with city territory in the formation of a school district is attached to the city for school purposes.

(2) The electors residing in such attached territory may vote on all school matters, including borrowing of money for school purposes, which are submitted to or are voted on by city electors, and may exercise such right at the polling place where they vote at state, local and judicial elections or at any other convenient polling place agreed upon by the city clerk and municipal clerk of the municipality whose electors are concerned, and shall have the right to initiate and sign petitions pertaining to city bonds for school purposes as provided in s. 67.05 (7) (b). When any school matter is to be submitted or voted upon, the city clerk shall ascertain from the clerks of the municipalities in which the attached territory lies the number of ballots each municipality will require and shall prepare and supply, at the city's expense, sufficient ballots for such purpose. The clerks of municipalities shall, upon receipt of the election returns, certify to the city clerk the results of any election at which a school matter is voted upon, including the election of board of education members.

**History:** 1953 c. 90, 147, 441; 1955 c. 578.

See note to art. XI, sec. 3, citing 41 Atty. Gen. 324.

**40.803 City school board.** (1) **ELECTION, TERM, OATH, CHANGES.** The school affairs of each city under the city school plan shall be managed by a board of education consisting of such number of members as is authorized in s. 40.26 except as hereinafter provided and selected in the same manner as such board was selected on July 2, 1953. If such board of education, on August 24, 1955, consists of a number of members larger than authorized by s. 40.26, the city clerk shall put into effect a plan which shall reduce the number of board members by one at each election of board members and the common council may, by resolution adopted when a vacancy occurs, reduce the size of the board until the number conforms with the requirements of s. 40.26. If the board consists of a lesser number than is authorized by s. 40.26 the city council may by resolution increase the size of the board. Additional positions created by the council shall be considered as vacancies on the board at the time of their creation. Before filling such vacancies as provided in s. 17.26, the city clerk shall put into effect and publish a plan specifying the length of term of any new member to be appointed. The plan shall co-ordinate the expiration of the terms of additional members of the board so that they may be distributed as evenly as possible in order that thereafter a number of terms as nearly equal as may be may expire annually. Electors residing in any area attached to the city for school purposes may be elected or appointed to and may serve upon the city board of education in the same manner as electors of the city. When an order of attachment becomes effective the requirement for additional members on the board provided for in par. (a) shall create a vacancy or vacancies which shall be filled as provided in s. 17.26 (2). Nomination papers shall be required for electors residing in the attached territory seeking election to the board of education, which papers shall be filed with the city clerk in accordance with the laws governing the filing of nomination papers for city officers. The city clerk shall prepare all ballots for the election of board of education members, including ballots solely for the attached territory when the board of education is not elected at large. When voting machines are used in the election, they may also be used for the school election provided an entire precinct is included, otherwise a special poll list shall be prepared by the municipal clerk for any partial precinct and printed ballots shall be supplied by the city clerk.

(a) The limitations pertaining to the size of the board of education as set forth in s. 40.26 shall not prevent the addition of members to such board when members are not elected at large. If city board members are elected by wards then each municipality in the attached area shall elect the same number of board members as are elected from each city ward. If city board members are appointed by the mayor or the council then there shall be appointed by the mayor or council from the entire area a number of school board members obtained by dividing the latest census population of the attached area by the city population per city school board member, with a major fraction counting as an ad-

ditional board member; in no such case shall the attached territory have less than one school board member.

(b) When a city school district or joint city school district desires to change the number of members of its board of education within the limits prescribed in s. 40.26 or the manner of selecting them, or both, it may, in addition to the method specified in the introductory paragraph of this subsection, do so either by an ordinance adopted by the council and approved by a referendum vote of the electors of the city school district or joint city school district or by an initiated ordinance under s. 10.43 or by resolution adopted by the electors of such school district at a referendum election initiated by a petition signed by 300 electors of the district. Either of the following 2 plans may be adopted and the provisions thereof shall be set forth in the ordinance:

1. A board shall be chosen from the city at large at the regular city election for terms of 3 years beginning the July 1 following. Prior to the first election after increasing the number of members of the board the length of the terms of the additional members shall be determined by the city clerk in the manner provided by s. 40.26 (3), and published. One-third of the members of the board (as nearly as may be) shall be elected annually thereafter. The members of such board are city officials and shall be nominated and elected as are other city officials and shall take and file the official oath.

2. A board shall be chosen consisting of any number of members designated by s. 40.26, appointed by the mayor and confirmed by the council, or elected by the council, whichever method is provided for in the ordinance.

(2) MEETINGS. The board shall hold regular monthly meetings at such times as it prescribes by rule; special meetings may be held under such standing rules as the board may adopt. All said meetings shall be open to the public, except that in cases where the board resolves itself into a committee of the whole the public shall be excluded from such committee meeting if the committee so desires and except that hearings before the board on charges against an employe shall be closed to the public if requested by the employe against whom the charges were preferred.

(3) ORGANIZATION. The board shall elect one of its members president and another vice president; and shall elect a secretary who need not be a member. The city treasurer shall be the treasurer of the school board.

**History:** 1953 c. 90; 1955 c. 578.

An ordinance changing the size of a city school board, in order to be effective, must be voted upon favorably by a referendum of the electors, even when the ordinance is initiated by a petition under 10.43 and approved by the council. (21 Atty. Gen. 540, not followed.) 39 Atty. Gen. 103.

**40.805 School board election, second class cities.** If any city of the second class by referendum as provided for in this chapter votes to adopt the elective system of selecting and appointing members of the board of education, a special election for members of such board shall be held within 30 days at a date to be determined by the city council. A call for such special election shall be issued by the council in accordance with law. The members of the board of education chosen in such special election shall take office on the second Monday following such election. The 2 persons receiving the highest number of votes shall hold office until their successors elected 3 years after the preceding spring election have qualified; and the 2 persons receiving the next highest number of votes shall hold office until their successors elected 2 years after the preceding spring election have qualified; and the 3 persons receiving the next highest number of votes shall hold office until their successors elected one year after the preceding spring election have qualified.

**History:** 1953 c. 90.

**40.807 Government of reorganized city school district.** (1) Whenever a plan of reorganization under s. 40.03 or 40.06 which involves a city school district has been made effective, the city council or commission and the town chairmen and village presidents of the municipalities involved in the reorganization shall determine by the method of voting prescribed in sub. (2) whether to:

(a) Abolish the city school district and create a common school district; or

(b) Continue as a city school district under the special fiscal controls mentioned in sub. (2).

(2) If the election to operate under this subsection is made, fiscal control of the city school district shall be exercised in the following manner: The town chairmen, village presidents and each member of the city council or commission shall have one vote for each full \$200,000 of equalized valuation of the school district which is within their municipality. In the case of city council or commission members, the amount of equalized valuation per councilman or commissioner shall be determined by dividing the total equalized valuation of the city within the school district by the total number of city councilmen or commissioners. In no case shall any town chairman or village president have less than one vote.

(3) The city council or commission acting with the town chairmen and village presidents as provided in sub. (2) shall have the power to approve the school budget, levy the general property tax for school purposes, and all other fiscal controls now exercised by the city council or commission over city school districts.

(4) The city council or commission and the town chairmen and village presidents of the towns, villages and cities voting as prescribed in sub. (2) may by adoption of a resolution abandon the method of fiscal control in use by the school district and adopt the common school district plan. The city clerk shall transmit a certified copy of such resolution to the state superintendent of public instruction and he shall make an order in accordance therewith and file it as provided in s. 40.025 (5).

(5) This section shall not apply to cities of the first class.

**History:** 1953 c. 90; 1957 c. 536.

**Revision Committee Note, 1953:** The section references in the first line of new (1) are inserted to make the options available to an enlarged city district regardless of the method of adding the outside territory. (Bill 1-S)

(2) is constitutional. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

**40.809 School board, powers and duties.** The board of a city school district shall have the powers and be charged with the duties of common school district boards as far as the same are not otherwise provided for or limited by statute. It may:

(1) Establish and organize high schools, elementary schools, night schools, and kindergartens for the purpose of providing for the educational requirements of the city, including any territory attached to the city for school purposes, and it may also provide for, establish and maintain nursery schools for children under 4 years of age under such rules and regulations as it may prescribe. The school board may accept and receive federal funds for the operation of such nursery schools and expend such funds in conformity with the purposes and requirements thereof. The school board may require and charge a reasonable fee for attendance in such nursery schools in order to sustain the project but may waive such charge or fee or any portion thereof to any person who is unable to make such payment. The school district shall not be entitled to additional state aid for the operation and maintenance of a nursery school.

(2) Employ a city superintendent but for not longer than 3 years at a time; employ assistant superintendents, school principals and teachers.

(3) Grade the schools and prescribe the courses to be pursued therein, subject to the authority vested in the state superintendent.

(4) Select and acquire sites, employ architects and engineers for the preparation of plans and specifications for school buildings and adopt the same, but deeds and leases taken shall be in the name of the city, and the title to all school property shall vest in the city.

(5) Purchase and preserve necessary school equipment and apparatus.

(6) Contract for the necessary fuel, light, water and supplies for the schools.

(7) Employ janitors and engineers and other needed help to care for the school buildings and other property.

(8) Fix the compensation and prescribe the duties of all persons employed or appointed by the board.

(9) Estimate the expenses of the city schools and prepare a budget; purchase sites for school buildings or other school uses; construct school buildings or additions thereto. Any action under this subsection shall be submitted to the common council for approval, except as provided in s. 40.807.

(10) Furnish lunches to pupils, at cost; such lunches may be furnished to needy pupils at such prices and on such conditions as the board may prescribe, but the fact that such lunches are furnished to some at less than cost shall not be disclosed to others.

(11) Pay the membership fee of the board in an organization of school boards in this state, and the actual and necessary expenses of its representatives in annually attending a meeting of such organization.

(12) Determine what textbooks shall be used in the schools; a list of such books shall be kept in its office. It shall not change such textbooks within 3 years of adoption, unless the city furnishes free textbooks.

(13) Purchase such textbooks and fix the terms and conditions upon which they shall be furnished to pupils, but no book shall be used or permitted which tends to teach sectarian ideas.

(14) Adopt rules for its own meetings and deliberations; and for the government of the schools, the faculty, and other employees of the board.

(15) Provide for periodic health examinations for school employes and pupils as specified in s. 40.30 (10m) (a), (b) and (c).

**History:** 1953 c. 90, 147, 441.

**Revision Committee Note, 1953:** New (9) is amended so that governing body of enlarged city district need not secure approval of common council. (Bill 1-8)

The provision in (4) that in the case of a city school district the title to all school property shall vest in the city, as applied to the city school district continued by the instant reorganization order of a joint county school committee, is not objectionable on the ground of prohibiting any future reorganization or change of boundary of this school district by the municipal officers of an affected town or an affected village under 40.06. The taxpayers of the vil-

lage as a village entity and of the town as a town entity have no vested inviolable interest in such matter. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

Where a city is operating under the city school plan, and has territory attached thereto for school purposes only, issuance of bonds by such city to construct schools is under 87.04 (2) (b) and to be voted by the city council. Bonds may be issued by such city to construct schools regardless of whether the schools are to be located in the city proper or in the attached area. 41 Atty. Gen. 324.

**40.811 City school funds; construction work.** (1) All money appropriated for school purposes shall be under the direction of and shall be expended by the school board.

(2) (a) The erection of buildings shall be let by the school board to the lowest responsible bidder, as provided in s. 62.15, and the school board shall, for that purpose, possess the powers conferred by that section on the board of public works.

(b) The alteration or repair of buildings or other construction work (the estimated cost of which exceeds \$1,000) may be let by the school board to the lowest responsible bidder, as provided in s. 62.15, and the school board shall, for that purpose, possess the powers conferred by that section on the board of public works, or it may be done directly by said school board without submitting the same to bids upon the passage of an ordinance as provided for in said section.

**History:** 1953 c. 90.

**40.813 City school building sinking fund; school budget and tax.** (1) City school districts are authorized to create and establish sinking funds for the purpose of financing the construction of school buildings. All money raised through taxation pursuant to this authorization shall be deposited by the city treasurer in a separate fund to be designated as a sinking fund to be used for the financing of the construction of school buildings, and such money shall not be used for any other purpose except as provided by s. 67.11 (1), or be transferred to any other fund except by authorization of (a) three-fourths majority vote of the members of the board of education and the adoption of a resolution by the city council approving the resolution of authorization adopted by the board of education or (b) a three-fourths majority vote of the members of the board described in s. 40.807 (3).

(2) The school board shall annually, before October, make an estimate of the expenses of the public schools for the ensuing year, and of the amount which must be raised by city taxation, and shall certify the same to the city clerk who shall lay the same before the common council at its next meeting. The common council shall consider such estimate, and by resolution determine and levy the amount to be raised by city taxation for school purposes for the ensuing year, which amount shall be included in the annual city budget and be called the "City School Tax."

(3) In a city district governed by the board described in s. 40.807 (3) the board shall act as in sub. (2) of this section but shall certify the estimate to the governing bodies of all included municipalities; such bodies shall then levy the amounts as provided in sub. (2).

**History:** 1953 c. 90, 620.

**40.815 Taxation of attached territory.** (1) All property attached to a city for school purposes shall be taxed for such purposes the same as property within the city.

(2) Each year the city clerk shall ascertain the total of taxes levied by the city for school purposes, and shall apportion to such outside property its proportionate share thereof, based upon the full value of all property subject to such taxes, within and without the city; and such portion or share shall be certified to the clerk of the municipality in which such attached territory lies, be entered on the tax roll, collected and returned as provided in s. 40.88.

(3) The full value of the property within and without the city shall be ascertained from the report filed pursuant to s. 39.10 (7).

**History:** 1953 c. 90.

Territory in a city school district but outside of the city limits is not subject to the county tax under 70.62 (1) for the operation of the office of county superintendent of schools. 39 Atty Gen. 356.

Where a city is operating under the city school plan, and has territory attached thereto for school purposes only, annual instalments of the irrepealable tax to retire bonds issued by such city to construct schools are collectible as a tax spread each year as they accrue over the property in both the city proper and the attached area in that year. 41 Atty. Gen. 324.

**40.817 Disbursements of city school funds.** The city clerk (or comptroller where applicable) shall keep separate accounts of all moneys raised and apportioned for city school purposes. Said moneys shall be paid out as follows: The school board shall present to the city clerk a certified bill, voucher or schedule signed by its president and secretary, giving the names of the claimants and the amount and nature of each claim. The city clerk shall issue proper orders upon such certification, to the city treasurer, who shall pay them from the proper funds in the manner provided by s. 66.042.

**History:** 1953 c. 90.

**40.819 City superintendent of schools; powers, duties, eligibility.** (1) The city superintendent of schools shall have general supervision of the professional work of the schools, and the promotion of pupils.

(2) He shall make written recommendations to the school board about teachers, courses of study, discipline and such other matters as he thinks advisable; he shall perform such other duties as the board requires.

(3) He shall not be a member of the school board. He may not engage in any pursuit which interferes with the proper discharge of his duties; he may act as principal or teacher in any school under his supervision; he may possess the qualifications required for the principalship of a high school.

(4) He shall make the report required by s. 39.14, directly to the state superintendent.

(5) He shall attend annually one convention called by the state superintendent for the purpose of consultation upon matters pertaining to the supervision and management of city schools. He shall be reimbursed his actual and necessary expenses incurred for travel, board and lodging because of attendance upon such convention, such bills to be audited and allowed by the school board upon presentation of an itemized statement of expense accompanied by a certificate of attendance signed by the state superintendent.

**History:** 1953 c. 90.

**40.821 City technical schools.** The common council may establish a technical school or college as a part of the city school system; the ordinance establishing such school or college shall be submitted to and approved by the electors of the city in substantially the same manner as other city ordinances are submitted to the electors. The ordinance shall provide for the organization of such school or college, and may confer the management and control on the existing school board or on a special board created thereby. The ordinance may be amended or repealed by an ordinance submitted and adopted in the same manner.

**History:** 1953 c. 90.

**40.823 Evening and part-time college classes.** The common council or school board of any city may establish evening and part-time college classes. The common council may appropriate money to maintain such classes and may accept and use donations therefor.

**History:** 1953 c. 90.

**40.825 City school board proceedings; publication.** The proceedings of city school boards, except in cities of the first class, including a statement of all receipts and expenditures, shall be printed and published within 30 days in a newspaper printed in the city, if there is one, and if there is none, in such manner as the board directs.

**History:** 1953 c. 90.

This section does not apply to common operating under city school plan must be school district boards. 24 Atty. Gen. 590. published once annually under 40.28. 27 Proceedings of school board in city not Atty. Gen. 333.

**40.827 Salaries for board members.** The governing body of any city may, before the annual city budget is prepared, provide for and fix the amount of compensation of city school board members for the ensuing year. Such amount shall be included in the annual city budget as part of the city school tax.

**History:** 1953 c. 90.

**40.85 High school district meetings and elections; call, notice, conduct.** (1) Except as provided otherwise in this chapter, high school district meetings and elections shall be noticed, called and conducted as common school district meetings are, and the first meeting shall be deemed an annual meeting.

(2) The annual meeting of high school districts shall be on the last Monday in June at 8 p. m., unless another hour was fixed by a previous annual meeting.

(3) The district officers shall be elected by ballot and the polls of the election shall be open from one to 8 p. m. of the annual meeting day; except that if the previous annual meeting so determined, such election shall be held at the time of the annual meeting and after the presentation of the officers' reports. The time and place of the election and annual meeting shall be specified in the notice. A plurality shall elect.

(4) Special district meetings may be called by the high school district board, and shall be called by the clerk upon the written request of 15 electors.

**40.86 Powers of high school district meetings.** The annual high school district meeting may:

(1) Elect a high school board. When the territory which constitutes a common school district is identical with that which supports a high school, the common school district board shall also be the high school board.

(2) Purchase or lease a site for the high school; build, hire or purchase a schoolhouse; repair, equip and furnish the same and provide for the maintenance of the high school; vote a tax for such purposes.

(3) Vote to consolidate schools or to discontinue a school where more than one high school is operated by the district.

(4) Authorize the school board to purchase textbooks to be furnished to the pupils of the high schools under such conditions as may be prescribed by the meeting or by regulation of the board.

(5) Determine the length of time the high school shall be taught during the year, which shall not be less than 9 months.

(6) Establish and maintain, with the approval of the state superintendent, seventh and eighth grades in connection with the high school.

(7) Exercise all the powers relative to the high school district which are conferred by statute upon the meetings of common school districts, relative to the affairs of such district.

**History:** 1953 c. 90.

**40.87 High school board; election, terms, powers.** (1) The officers of union high school districts shall be a director, a treasurer and a clerk and such additional members as may be designated in orders creating union high school districts pursuant to s. 40.025 (3) or s. 40.03 (1); they shall constitute the school board. When the designated number is 3 the term of each shall be 3 years and until his successor has qualified. They shall be elected and notified and shall qualify in the same manner and time as the officers of common school districts. At the first election, the clerk shall be chosen for one year, the treasurer for 2 years and the director for 3 years, and the time preceding the next annual meeting shall be counted as a year in determining their terms of office. When the number of board members designated in orders creating union high school districts is in excess of 3 the first election of officers and the terms thereof and of succeeding officers shall be governed by s. 40.26 (3) and (4).

(2) The high school board shall conduct the affairs of the district on the general plan provided for common school districts, and shall possess, with respect to such high school district, all the powers exercised by and be charged with all the duties and liabilities imposed on the officers and board of the common school district. The treasurer shall give a like bond to be approved by the director and filed with the clerk. The clerk shall report to the state and county superintendent the facts required by s. 40.74, excepting sub. (1)(a).

**History:** 1953 c. 90; 1955 c. 5, 681; 1957 c. 699.

**40.88 High school taxes.** (1) Except as herein otherwise provided, high school district taxes shall be levied and collected, and all money belonging to a high school district shall be paid out on orders drawn and countersigned in the manner prescribed for levying and collecting taxes and making payments in common school districts.

(2) The school clerk shall certify all taxes levied for high school purposes to the municipal clerk. If any high school district is joint, the clerk of the high school board shall certify to the clerk of each municipality the amount to be raised by each. The apportionment shall be determined and shall be equalized as provided in s. 40.35 (8).

(3) The high school district taxes shall be entered on the next tax rolls of the municipalities and collected and returned as other taxes are, and shall be paid to the high school district treasurer.

(4) If any high school district meeting has not voted a tax sufficient to operate its high school at least 9 months during the current year, the high school board shall, before the third Monday of November, determine the sum necessary to be raised to so maintain such high school and to furnish additional necessary equipment, and the clerk shall forthwith certify to the proper municipal clerk the amount so fixed and it shall be collected as provided in this section.

**History:** 1953 c. 90.

**40.89 Course of study in high schools.** (1) The high school board shall determine, with the advice and consent of the state superintendent, the course of study.

(2) Any high school board may establish and maintain, in connection with the school, courses in manual training, home economics, agriculture, or commercial subjects. The state superintendent shall establish a standard of qualification for teachers for such courses, and may grant special certificates to qualified applicants, which certificates shall

be in such form and for such time as he may prescribe and shall qualify the holders to teach the courses or subjects named in the certificates.

(3) The board of any school district which operates a high school may contract with the university extension division of the university of Wisconsin for extension courses for pupils enrolled in such high schools. The cost of such contract shall be paid out of school district funds and shall be included in the cost of operation and maintenance of the high school districts which enter into such contract for the purpose of computing tuition costs.

(4) The board of any school district which operates a high school may contract with flight operator schools approved by the civil aeronautics administration for courses in flight instruction approved by the state superintendent. The cost of such contract shall be paid out of school district funds and shall be included in the cost of operation and maintenance of the high school districts which enter into such contract for the purpose of computing tuition costs.

(5) Any district maintaining a school with grades 7 through 12 may combine grades 7 and 8 with the 6 lower elementary grades and grade 9 with the 3 higher high school grades, or may combine grades 7, 8 and 9 into junior high school grades.

(6) The board of any school district which operates a high school may provide institutional on-farm training to veterans who are eligible for such training under P. L. 550, ch. 875, 2nd session, 82nd congress and may charge tuition on the basis of the cost per week to each veteran enrolled for all classroom, group, individual, or other instruction recognized by the veterans administration in the payment of education and training allowances.

**History:** 1953 c. 90, 169.

**40.90 High schools; admittance.** (1) The high school board shall determine, with the advice and consent of the state superintendent, the minimum standard of qualifications for admission.

(2) (a) A certificate or common school diploma issued by a city or county superintendent that the holder thereof has completed the course of study in the school district in which he resides, or one at least equivalent to the course of study provided by the state superintendent for the common schools, shall be evidence of the completion of the course of study required by this section. Such certificate or diploma or a certified copy thereof or a certified copy of a list of graduates shall be filed with the high school district clerk.

(b) A certificate or diploma, issued by the superintendent of a private school, that the holder thereof has completed the course of study prescribed by such school, which shall be substantially equal to the course of study provided by the state superintendent for the common schools, shall be evidence of the completion of the course of study required by this section and shall entitle the holder to admission to high school, provided that such school meets the requirements of par. (c). Such certificate or diploma or a certified copy thereof or a certified copy of a list of graduates shall be filed with the high school district clerk or clerk or secretary of a city board of education.

(c) When the superintendent of such private school has filed with the state superintendent the course of study mentioned in par. (b), pupils from any such school shall be admitted to any high school in the state in accordance with par. (b).

**History:** 1953 c. 90.

**40.91 High school tuition.** (1) **ADMISSION OF NONRESIDENTS.** The board shall admit to the high school, when facilities will warrant, any person of school age who resides in the state, but not within any high school district, and who has complied with the entrance requirements. Nonresidents so admitted shall be entitled to the same privileges and be subject to the same rules and regulations as resident pupils.

(2) **GENERAL.** Every high school shall be free to all persons of school age resident in the district. The board may charge a tuition for each nonresident pupil, excepting a nonresident pupil having a legal settlement as defined in s. 49.10 in the high school district; this provision for tuition shall be available to a public high school without this state if its course of study is equivalent to Wisconsin's and if it is at least 1½ miles nearer the pupil's home than is any Wisconsin high school. The boards of districts which operate high schools may upon their own order provide for the enrollment of pupils in high schools located in states other than Wisconsin and pay for the tuition that accrues on account of such enrollment and for the transportation costs necessitated by such enrollment on account of such pupils who reside 2 miles or over from such schools out of school district operation and maintenance funds. The cost of such tuition shall be treated as a part of the cost of instruction of such districts and they shall be credited with the enrollment and average daily attendance of such tuition pupils for aids purposes as though they had been enrolled in the schools of the districts of their residence. The districts shall



be entitled to receipt of aids on account of the transportation of such pupils on the same basis as though they had been transported to the schools of the districts of their residences.

(3) **TUITION, REORGANIZED DISTRICTS.** The board of any school district which operates a high school shall permit a high school pupil who resides in the district but who has attended one high school outside the district and completed 2 years' work thereat and who was placed in the district where he now resides by virtue of a school district reorganization effected under the provisions of this chapter after August 26, 1947, to complete his high school course at such high school. The school board shall provide for the payment of tuition of such student out of district funds. In the event the parent or guardian of any such high school pupil has paid tuition at any time since August 26, 1947 in order to keep such pupil enrolled in such high school, the parent or guardian shall be entitled to reimbursement for any tuition so paid from the high school district of which the pupil is a resident provided a claim is filed with the school board of such district within 3 years from the time such tuition was paid.

(4) **CLAIM FOR TUITION.** (a) The tuition for any given year for nonresident pupils who have pursued high school work shall be determined as follows: From the sum total of money expended by the school district for interest and in operating and maintaining grades 9 through 12, including either the sum of \$15 per nonresident pupil to be deposited and expended as provided in s. 40.22 (17) or an item for building and equipment costs equal to 2 per cent of the original expenditures by the districts prior to January 1, 1945, and 5 per cent for original expenditures on and after January 1, 1945, for buildings and equipment thereof as certified by the state superintendent of public instruction, such charge not to apply for a greater period of time than 50 years in the case of a building built prior to January 1, 1945, and 20 years in the case of a building built since January 1, 1945, or for the unexpired portion of 50 years or 20 years of the life of an old building, excluding land costs, such sinking fund or indebtedness charge to be deposited and expended as provided in s. 40.22 (17) or applied in lieu of taxes authorized by irrepealable tax levies for payment of principal and interest on indebtedness for capital outlay, there shall be subtracted an amount equal to the sums of federal aids, county aids and the cost of transportation, and the difference so determined shall be divided by the average daily attendance for the given year. From this amount shall be subtracted the state aid received per nonresident pupil in average daily attendance. The amount so determined shall be the amount per pupil chargeable as nonresident high school tuition.

(b) Before August 1 in each year, beginning with the year 1947, the school clerk shall file with the clerk of each county and municipality from which any tuition pupil was admitted, a sworn statement of claim against the county setting forth the residence, name, age, date of entrance and the number of weeks' attendance, during the preceding school year, of each person admitted from such county, the average daily attendance of the high school for the year, the statement of the cost of operation and maintenance of the high school as computed in accordance with this section, the amount of tuition to which the district lays claim for each pupil, and the aggregate sum for tuition due the district from the county. This statement shall be rendered on a form prescribed by the state superintendent. Whenever the total claim for tuition and transportation made by any school district exceeds \$7,000 and request is made by the county clerk or upon petition of 10 taxpayers of the county filed with the county clerk, the claim to each county must be accompanied by a certified statement that an audit has been prepared by a certified public accountant or other qualified accountant showing that the true and accurate costs on which the claims are based are as set forth in the statement. If the audit report cannot be completed by August 1, it shall be filed with the county clerk, not later than the next January 1, and the county clerk shall make necessary adjustments for the claims of the school in the subsequent year. Within 10 days of the receipt of such statement the clerk of each municipality receiving the same shall make return to the county clerk of any suggested corrections therein together with all necessary factual information in support of such corrections.

(c) Any errors, omissions or other corrections in the high school tuition claims or apportionment of the high school tuition tax for a given year after 1946 may be corrected in the certification of such tax for a subsequent year.

(d) The school district clerk shall file certified copies of all tuition billed with the state superintendent before August 15 of each year.

(5) **TUITION TAX.** (a) Except as provided in par. (b) upon receipt of the high school tuition claims from the respective school clerks and before submitting those required by sub. (4) (a) to the county school committee, the county clerk shall examine all the claims for the purposes of establishing the accuracy of the data on residence, period of attendance, and mathematical calculations, and the legal authority for claiming tuition. For that purpose the county clerk may call upon school or other local officials to supply in-

formation and data which will verify the claims and satisfy the county clerk as to their accuracy. After examining the claims, the county clerk shall notify each district clerk of the results of his examination of such claims, and in cases where corrections are necessary, notify the clerk of the school district, who shall meet with the county clerk, at the school district's expense, to make such corrections. He shall apportion the amount thereof on the basis of the ratio of the equalized valuation of that portion of each municipality within the county that lies outside of districts which operate high schools to the total equalized value of all of the territory within the county that lies outside of high school districts and certify the amount so obtained to the clerks of said municipalities. The aforesaid equalized valuation shall be determined and certified to the county clerk annually on or before August 1 by the department of taxation. The municipal clerk shall enter upon the next tax roll in a local column such sums as may be due for such tuition from his municipality and the amount so entered shall be collected when and as other taxes are collected. If a portion of such municipality forms a part of a high school district, the taxable property in that portion shall be exempt from such tuition tax.

(b) In counties containing a city of the first class the county clerk shall upon receipt of the high school tuition claims from the respective school clerks transmit the same to the secretary of the county school committee. The secretary shall have the duty imposed on the county clerk in other counties of examining and verifying claims. In performing this duty he may call upon and receive assistance from the county auditor if deemed necessary. The procedure for the apportionment, collection and payment of claims allowed shall in all other respects be that set forth in par. (a).

(c) In lieu of placing the amount due for high school tuition upon the tax roll as provided in par. (a), the governing body of any municipality required to pay such tuition may by resolution authorize its treasurer to pay the amount of such tuition as certified by the county clerk out of surplus municipal funds, provided no portion of such municipality forms a part of a high school district.

(d) After a town, city or village consolidates with a city of the first class or any territory is annexed thereto, the tuition and transportation charges accrued as provided in this section to such town, city or village or such annexed territory may, at the option of the city of the first class, be entered as provided in this subsection either upon the following tax roll of the entire city of the first class or only upon that part of such tax roll which represents the territory consolidated or annexed wherein such charges accrued.

(6) UNIVERSITY HIGH SCHOOL. The proper authorities of any town, village or city, the whole or a portion of which is not within a free high school district, may authorize residents of such town, village or city who do not live within a free high school district to attend the high school maintained by the university of Wisconsin. The tuition shall be the same as required of other students. The clerk of the town, city or village shall file with the bursar of the university a copy of the resolution authorizing attendance at the university high school, and the bursar shall on or before July 1 of each year make a sworn statement to the clerk of such town, city or village showing the amount of tuition due as required by sub. (2). Upon receipt of such statement taxes shall be levied for payment of the tuition, and the tuition shall be paid the university in the same manner as taxes are levied and moneys paid for tuition for attendance at free high schools. Nothing in this subsection shall be construed to require the university to admit persons to the high school, and it shall be the sole judge of its capacity for seating and instruction and the qualifications of the applicant for admission.

**History:** 1951 c. 12, 66, 114, 249, 338, 525, 654; 1953 c. 90, 261, 333, 611; 1955 c. 233, 365, 414, 552, 652; 1957 c. 97.

Under (4) and (5), a school district located both within and without the county, whose claim for tuition was allowed by the committee only in the prescribed so-called maximum amount, was not injured or aggrieved by the action of the committee in allowing similar claims of school districts located within the county in amounts in excess of the so-called maximum, and the complaining district had no standing to compel the committee to allow its claim in a greater amount. *Joint School Dist. v. Boyd*, 270 W 222, 70 NW (2d) 630.

Where clerk of school district fails to file high school tuition claim under (5) (b) [40.91 (4) (b)], or fails to include all pupils in claim, the school district under (6) [40.91 (5)] is entitled to receive from county treasurer out of taxes collected under that section no more money than that for which claim has been filed and county treasurer is not authorized to prorate such tax money among districts which have complied with the law and those which have not. No state

aid under (6) [40.91 (5)] may be paid to make up the deficiency. 38 Atty. Gen. 552.

Tuition of non-Indian children residing on Indian reservation not located in any municipality is to be paid under (6) [40.91 (5)], as amended by ch. 573, Laws 1947, in the same manner as tuition of pupils residing elsewhere in the county. 38 Atty. Gen. 613.

Property not in a district operating a high school, annexed to a high school district, is not exempt from tuition tax under (6) [40.91 (5)], until after it has been part of the high school district for a full school year and is not to be subjected to operating tax of the high school district until in that tax year in which it is a part of the high school district prior to the start of the school year. 39 Atty. Gen. 593.

See note to 40.02, citing 40 Atty. Gen. 194. Certifications under 40.47 (6) (a), Stats. 1949, as amended by ch. 12, Laws 1951, should be based on the equalized valuations of the previous year. Adjustments in equalized

valuations so certified to reflect losses and gains due to annexations should conform to 37 Atty. Gen. 10. 40 Atty. Gen. 467.

Ch. 552, Laws 1955, providing that audit statements accompany claims for nonresident high school tuition and transportation under 40.91 (4), is inapplicable to claims filed prior to August 12, 1955. As applicable to claims filed thereafter, it is construed as not requiring such accompanying audit statement unless the county clerk's request is made or the taxpayer's petition filed prior to the filing of the school district claim. 45 Atty. Gen. 90.

**40.92 District superintendent.** (1) The board of education of a city operating its schools under the city school plan provided by ss. 40.80 to 40.827 and the school board of any school district that includes a city within its boundaries and operates both elementary and high school grades may employ for a period not longer than 3 years at a time, a superintendent to supervise and manage the schools under the direction of such employing board.

(2) The board of any school district operating grades kindergarten or 1 to 12 or grades 9 to 12 may enter into a contract to employ a superintendent or supervising principal for a period not longer than 3 years at a time.

**History:** 1953 c. 90, 343; 1957 c. 21.

**40.93 School officers not to be book agents.** Neither the state superintendent, nor any person in his office, nor any county superintendent, nor any officer or teacher connected with any public school, shall act as agent or solicitor for the sale of any schoolbooks, maps, charts, school library books, school furniture, apparatus or stationery, or furnish any assistance to or receive any reward therefor from any author, publisher, bookseller or dealer doing the same. Every person violating this section shall forfeit not less than \$50 nor more than \$200 for each offense and be liable to removal from office therefor.

**History:** 1953 c. 90.

**40.94 Forfeitures enforced by voter.** When any person or officer designated in this chapter to prosecute an action for a forfeiture or for neglect of duty shall fail to prosecute within 10 days after being requested in writing by an elector of the school district, so to do, any elector therein may prosecute such action.

**History:** 1953 c. 90.

**40.95 Penalty.** Any officer or teacher who fails or neglects to make the reports, or who fails to keep the records, required by this chapter, shall be subject to a forfeiture of not less than \$5 nor more than \$25 for each such failure or neglect.

**History:** 1953 c. 90.

**40.98 School conservation camps.** (1) **PURPOSE; CREATION.** In order to promote an understanding of geology, geography, conservation, nature study and other aspects of general knowledge which are learned best by actual contact with nature itself, any school district may establish, operate and maintain and levy taxes to support individually or in co-operation with other school districts or municipalities, a school conservation camp. Such camp need not be within the school district.

(2) **ORGANIZATION AND MANAGEMENT.** The board of any such school district may operate, contribute to the operation of, participate in the joint operation of, pay or charge fees for the operation of such school conservation camp. Such board or boards may admit nonresident students as well as resident students of their districts. The board or boards shall determine age and other entrance requirements, and the program to be offered. Such camp may be operated in summer or at any other time that the board or boards may determine.

(3) **FACILITIES.** The board or boards may acquire, rent or accept the gratis use of facilities and equipment to operate such camp. It may accept private contributions of any kind.

(4) **PROPERTY OF OTHER AGENCIES.** The board may conduct the camp on property under the custody of other municipal, state or federal agencies when permission is granted or on private property with consent of the owner.

(5) **CO-OPERATION.** The several departments of state government such as conservation, agriculture, public instruction, and the university shall co-operate in making their staff and facilities available to further the objectives of this program.

**History:** 1955 c. 177.