several procedural requirements not previously set forth. It deletes obsolete material relating to initial committee organization and deletes the last sentence which is unnecessary. Sub. (2) is like s. 40.02 (2) (a). Sub. (3) is based on s. 40.02 (2) (b) and clarifies the method of levying and collecting the tax for the expenses of the agency school committee. [Bill 353-S]

CHAPTER 117.

School District Reorganization.

117.01 History: 1967 c. 92; Stats. 1967 s. 117.01; 1969 c. 34, 195.

Legislative Council Note, 1967: Sub. (1) based on s. 40.025 (1). The distinction is more clearly drawn between the time during which a reorganization proceeding is pending and during which a reorganization authority has jurisdiction. Sub. (1) (e) also incorporates the substance of present s. 40.035, the general requirement that all territory of the state be in a high school district. The bulk of s. 40.035 contains procedural detail which is deleted, since that requirement is now fully implemented.

Sub. (2) based on s. 40.025 (3), (4) and (5). Sub. (3) like s. 40.025 (9).

Sub. (4) (a) based on s. 40.025 (6) (1st sentence). Sub. (4) (b) is new and makes it clear that a separate procedure is followed in the first election of a school board for a new unified school district. Sub. (4) (c) based on s. 40.025 (6) (2nd to last sentences). Sub. (4) (d) based on s. 40.27 (11). The somewhat varying provisions of s. 40.27 (11) (intro.) and (a) are combined and clarified.

Sub. (5) based on s. 40.025 (8).

Sub. (6) like s. 40.025 (7).

Sub. (7) restates s. 40.18 (1) and (1a).

Present s. 40.18 (2) deleted because it is unnecessary. [Bill 353-S]

Municipal corporations may be estopped on the same principle as individuals in matters within the scope of their powers, governmental as well as proprietary. Where school districts ignored an order of the county committee annexing territory to a joint district, and for 2 years neither the joint district nor the others, operated under such order, but all the districts involved participated in the formation of another joint school district which included the greater portion of the annexed territory, such districts and a taxpayer residing in one of them were estopped to assert any right under the order so disregarded. State ex rel. Knapp v. Pohle, 185 W 610, 202 NW 148.

The prohibition in 40.025 (1) (e), Stats. 1963, of detaching territory from a union high school district so as to leave part of it noncontiguous does not apply to a reorganization order creating a new joint common district which included some noncontiguous territory. Voelz v. Beck, 22 W (2d) 1, 125 NW (2d) 33.

A school reorganization order or an appeal therefrom which affects only part of a district does not bar a further order as to parts not included in the first. Olson v. Rothwell, 28 W (2d) 233, 137 NW (2d) 86.

A petition to detach an existing common school district from a union high school district and create a new common school district is contrary to 40.025 (1) (e), Stats. 1961, and is null and void. 50 Atty. Gen. 122.

117.02 History: 1967 c. 92, 313; Stats. 1967 s. 117.02.

Legislative Council Note, 1967: Sub. (1) (a) based on s. 40.13 (1) (a). Sub. (1) (b) like s. 40.13 (1) (b). Sub. (1) (c) like s. 40.025 (10). Sub. (2) based on s. 40.02 (3). Sub. (3) revises s. 40.025 (2). Sub. (4) (a) based on s. 40.13 (5) (a). References to "incorporated" and "unincorporated" villages have been deleted. Section 990.01 (45) states that "village" means incorporated village. Sub. (4) (b) revises s. 40.13 (5) (b). Sub. (4) (c) based on s. 40.13 (5) (c). Sub. (4) (d) restates s. 40.13 (5) (d) (1st and 2nd sentences). Sub. (4) (e) restates and rearranges s. 40.13 (5) (d) (3rd, 4th and 5th sentences) and s. 40.13 (5) (e) (2nd and 3rd sentences). Sub. (4) (f) restates s. 40.13 (5) (f) and s. 40.13 (5) (e) (4th sentence). Sub. (4) (g) restates s. 40.13 (5) (g). Sub. (4) (h) like s. 40.13 (5) (e) (1st sentence). Sub. (5) revises s. 40.13 (6). Sub. (6) revises s. 40.13 (7). Sub. (7) restates s. 40.05. Sub. (8) restates s. 40.055. [Bill 353-S]

Editor's Note: The provisions of 40.03, Stats. 1953, relating to publication of notices of public hearings were considered in Joint School Dist. v. Waupaca, etc., County School Committee, 271 W 100, 72 NW 909. Similar provisions of 40.025, Stats. 1957, 1959, and 1961, were considered in Bartlett v. Joint County School Committee, 11 W (2d) 588, 106 NW (2d) 295, Reinders v. Washington County School Committee, 15 W (2d) 517, 113 N W(2d) 141, and Joint School Dist. v. Joint County School Committee, 26 W (2d) 437, 132 NW (2d) 549.

The fact that an order of detachment leaves a district with so small a tax and population base as to make operation of a school impractical does not indicate that the committee acted capriciously. Iron R. G. S. Dist. v. Bayfield County School Committee, 31 W (2d) 7, 142 NW (2d) 227.

A petition for dissolution and attachment of a whole district is not essentially similar to a later petition for partial detachment. Even if it were similar, the committee is not required to delay hearing for one year. The fact that the order removes so much territory that the remainder cannot operate a school does not prove that the order was arbitrary or an abuse of discretion. Shadow Lawn S. Dist. v. Walworth County School Committee, 33 W (2d) 333, 147 NW (2d) 227.

Recitals in a school reorganization order, made by an agency school committee, of the authority under which the order was adopted, and compliance with the procedural steps required by law, constituted both under common law and the statute presumptive evidence of the facts so recited and the validity of the proceedings preliminary thereto, and evidenced proper invocation and acquisition of jurisdiction. In re School Dist. No. 5, 42 W (2d) 264, 166 NW (2d) 160.

117.03 History: 1967 c. 92; 1967 c. 291 s. 14; Stats. 1967 s. 117.03.

Legislative Council Note, 1967: Sub. (1) revises s. 40.13 (3) and contains the substance of s. 40.135 (1). It also permits appeal upon failure of an agency school committee to act.

Sub. (2) based on s. 40.13 (4) (intro.) and (a) and s. 40.135 (2).

Sub. (3) revises s. 40.13 (4) (b) and clarifies the types of orders that a state appeal board may issue. Sub. (3) also adds the implicit requirement for the state superintendent to call a state appeal board meeting.

Sub. (4) based on s. 40.13 (4) (c).

Sub. (5) restores language formerly in s. 40.03 (5), 1961 stats., which was inadvertently deleted in a 1963 act. [Bill 353-S]

Editor's Notes: (1) The provision in 40.303 (9), Stats. 1951, authorizing an appeal to the circuit court from any order of a county school committee creating, altering, consolidating, or dissolving school districts was considered in Perkins v. Peacock, 263 W 644, 58 NW (2d) 536. The similar provision of 40.03 (5), Stats. 1953, was considered in Zawerschnik v. Joint County School Committee, 271 W 416, 73 NW (2d) 566.

(2) The term "person aggrieved," employed in 40.03 (5), Stats. 1953 and 1957, was construed in the following cases: Greenfield v. Joint County School Committee, 271 W 442, 73 NW (2d) 580; Milwaukee v. Milwaukee County School Committee, 8 W (2d) 226, 99 NW (2d) 186; and Oshkosh v. Winnebago County School Committee, 9 W (2d) 32, 100 NW (2d) 374.

Competition between statutory proceedings which cannot both succeed is governed by the rule that "the movement first started has the right of way." Lundt v. School Board, 2 W (2d) 263, 86 NW (2d) 452; Palmer v. Sawyer County School Committee, 7 W (2d) 437, 96 NW (2d) 810.

See note to sec. 28, art. IV, and note to sec. 1, art. X, citing Burton v. State Appeal Board, 38 W (2d) 294, 156 NW (2d) 386.

117.04 History: 1967 c. 92, 313; Stats. 1967 s. 117.04.

Legislative Council Note, 1967: Sub. (1) based on s. 40.095 (1) (1st and 4th sentences). Sub. (2) based on s. 40.095 (1) (2nd, 3rd and 5th sentences) and sets forth the effective date of the order. Sub. (3) based on a portion of s. 40.095 (2) (2nd sentence). The remainder of s. 40.095 (2) is deleted, since with the creation of agency school committees it covers the same material as s. 40.095 (1). Present s. 40.095 (1) (last sentence) is transferred to s. 120.50 (6) because it relates only to orders under that section. [Bill 353-S]

117.05 History: 1967 c. 92; Stats. 1967 s. 117.05.

Legislative Council Note, 1967: Sub. (1) based on s. 40.12 (1) and (8) and part of (2). Sub. (2) based on part of s. 40.12 (2). Sub. (3) (intro.) revises s. 40.12 (3) (1st and 2nd sentences). Sub. (3) (a) based on s. 40.12 (3) (3rd sentence). Sub. (3) (b) based on s. 40.12 (4) (a) and (b) (2nd sentence). Sub. (4) based on s. 40.12 (4) (b) (1st sentence) and (c). Sub. (5) based on s. 40.12 (5). Sub. (6) based on s. 40.12 (5a). Sub. (7) restates s. 40.12 (7).

Present s. 40.12 (6) deleted because it is obsolete.

Present s. 40.14 deleted because it applies only to territory not in a high school district.

Present s. 40.15 deleted because the Wisconsin supreme court in *Fleming v. Barry*, 21 Wis. 2d 259, held that present s. 40.035 impliedly repealed s. 40.15. [Bill 353-S]

The state superintendent is not empowered to review the regularity of proceedings under 40.47, Stats. 1919, it being the intent of the section to confer upon the superintendent the power to determine whether or not the educational interests of the community concerned will be best served by the establishment of the proposed high school. But without the approval of the superintendent the proceedings have not resulted in a final determination that can be reviewed on certiorari. State ex rel. McKenzie v. Brown, 174 W 498, 182 NW 602.

Where it is proposed to consolidate the territory of 3 municipalities into one union high school district, under 40.64, Stats. 1941, a petition for submitting the question need be signed by only one-tenth of the electors of the entire territory involved, and it is not necessary that the petition show signatures of one-tenth of electors in each of the affected municipalities. 30 Atty. Gen. 177.

The amendment to 40.64 (1), made by ch. 62, Laws 1947, requiring a plat of the territory to be included in a proposed union free high school district to be submitted to and approved by the state superintendent of public instruction before such a district might be created or an election held for that purpose, applies in cases where proceedings for the establishment of a union free high school district were commenced but not completed prior to the effective date of said act as well as to those commenced on or after said effective date. 36 Atty. Gen. 467.

A union high school district and common school districts upon whose territory the union high school district is superimposed exist independent of each other and the existence of each is in no way affected by the existence of the other. 42 Atty. Gen. 70.

117.06 History: 1967 c. 92; Stats. 1967 s. 117.06.

Legislative Council Note, 1967: Revises s. 40.07. A 1953 act [ch. 599, laws 1953] changed references to "common school district" to "school district" in s. 40.07, but did not alter the language referring to "annual school district meetings." This draft clarifies that this section may be used only for the consolidation of 2 or more common school districts or for the consolidation of 2 or more union high school districts. It adds a requirement that agency school committees be informed of petitions. [Bill 353-S]

117.07 History: 1967 c. 92; Stats. 1967 s. 117.07.

Legislative Council Note, 1967: Based on s. 40.078. [Bill 353-S]

117.08 History: 1967 c. 92; Stats. 1967 s. 117.08.

Legislative Council Note, 1967: Based on s. 40.032 and adds a requirement that agency school committees be notified of petitions. [Bill 353-S]

117.09 History: 1967 c. 92; Stats. 1967 s. 117.09.

Legislative Council Note, 1967: Sub. (1) based on s. 40.08 (1). Reference to s. 117.06 [present s. 40.07] deleted because that section applies generally and need not be mentioned here. Sub. (2) restates s. 40.08 (3) (a). Sub. (3) revises s. 40.08 (3) (b).

Present s. 40.08 (2) is deleted because it is unnecessary. [Bill 353-S]

Failure to keep a school for 2 successive years because there are no children in a district is not neglect to provide schooling for children. 20 Atty. Gen. 187.

The requirement in 40.08 (1), Stats. 1953, that a 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.

117.10 History: 1967 c. 92; Stats. 1967 s. 117.10.

Legislative Council Note, 1967: Sub. (1) based on s. 40.10 (1). Sub. (2) based on s. 40.10 (2) and (3). Sub. (3) based on s. 40.10 (4) and (6).

Present s. 40.10 (5) is deleted because its provisions have become meaningless.

Present s. 40.10 (7) and (8) deleted, because they were made obsolete by the enactment of the requirement that all territory in the state be in a high school district.

Present s. 40.11 deleted because it is obsolete. [Bill 353-S]

A district in which a high school has been established and is maintained remains an ordinary school district. State ex rel. Hermanson v. Callahan, 179 W 549, 191 NW 974.

Statutory requirements concerning establishment of a high school by a common school district cannot be avoided by the adoption of a 12-grade course of study. 23 Atty. Gen. 393.

CHAPTER 118.

General School Operations.

118.01 History: 1967 c. 92; Stats. 1967 s. 118.01; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Restates s. 40.46, except that a time limitation on foreign language instruction in present s. 40.46 (1) is deleted and a portion of present s. 40.46 (3) (b) is transferred to the county teachers college law and the remainder is deleted because it is obsolete. [Bill 353-S]

A pupil presenting the written objection of parents is excused from the course of study in accordance with 40.22 (2), Stats. 1929; such pupil may not be required to pass the examination in such excused study. 19 Atty. Gen. 171.

A school board may provide for supervised play and recreation of school children in conformity with the course in physical education prescribed by the state superintendent under 40.22 (3), Stats. 1941, and subject to requirements of that section as to the number of hours of instruction per week. 32 Atty. Gen. 126.

118.02 History: 1967 c. 92; Stats. 1967 s. 118.02.

Legislative Council Note, 1967: Rearranges s. 40.45 (2). [Bill 353-S]

118.03 History: 1967 c. 92; Stats. 1967 s. 118.03.

Legislative Council Note, 1967: Sub. (1) like s. 40.48. Sub. (2) like s. 40.50 (1). Present s. 40.50 (2) to (4) deleted, because the provisions are unworkable since the state superintendent does not publish annually a "list of textbooks." [Bill 353-S]

118.04 History: 1967 c. 92; Stats. 1967 s. 118.04.

Legislative Council Note, 1967: Restates s. 40.99 (1). [Bill 353-S]

118.05 History: 1967 c. 92; Stats. 1967 s. 118.05.

Legislative Council Note, 1967: Restates s. 40.98. [Bill 353-S]

118.06 History: 1967 c. 92; Stats. 1967 s. 118.06.

Legislative Council Note, 1967: Like s. 40.47 (1). [Bill 353-S]

For failure to display a flag on the schoolhouse, as required by sec. 436a, Stats. 1915, the school district officers may be removed from office, or prosecuted for neglect of official duty. 5 Atty. Gen. 742.

A requirement that the pledge of allegiance be recited by all pupils once a week in all public and private schools would be in violation of the First and Fourteenth Amendments to the U.S. Constitution. 50 Atty. Gen. 172.

The requirement that a noncompulsory pledge of allegiance be offered is constitutional. 52 Atty. Gen. 173.

118.07 History: 1967 c. 92; Stats. 1967 s. 118.07.

Legislative Council Note, 1967: Restates s. 40.47 (2) and (3). [Bill 353-S]

118.08 History: 1967 c. 92; Stats. 1967 s. 118.08.

Legislative Council Note, 1967: Restates s. 40.60, and deletes present s. 40.60 (4). According to the highway commission, that subsection is now obsolete. [Bill 353-S]

118.09 History: 1967 c. 92, 313; Stats. 1967 s. 118.09.

Legislative Council Note, 1967: Like s. 40.61. [Bill 353-S]

118.10 History: 1967 c. 92; Stats. 1967 s. 118.10.

Legislative Council Note, 1967: Restates s. 40.63. [Bill 353-S]

118.11 History: 1967 c. 92; Stats. 1967 s. 118.11.

Legislative Council Note, 1967: Like s. 40.62. [Bill 353-S]

118.12 History: 1967 c. 92; Stats. 1967 s. 118.12; 1969 c. 315.

Legislative Council Note, 1967: Sub. (1) restates s. 40.93. Sub. (2) like s. 40.95. Sub. (3) restates s. 40.94. [Bill 353-S]

Editor's Note: In connection with the amendatory legislation of 1969 see opinions of the attorneys general published in 12 Atty. Gen. 72 and 18 Atty. Gen. 372.