pass more than 25% of the natural flow of the stream through the dam. Wisconsin P. & L. Co. v. Public Service Comm. 5 W (2d) 167, 92 NW (2d) 241.

31.35 History: 1935 c. 212, 486; Stats. 1935 s. 31.35.

31.36 History: 1937 c. 379; Stats. 1937 s. 31.36; 1957 c. 528; 1961 c. 191; 1965 c. 163, 614; 1969 c. 276 ss. 230, 236.

31.38 History: 1959 c. 441 s. 9; Stats. 1959 s. 31.38; 1961 c. 568; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

CHAPTER 32.

Eminent Domain.

32.01 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.01; 1947 c. 362, 581; Spl. S. 1958 c. 3; 1959 c. 639, 693; 1965 c. 238.

Drafting Committee Note, 1959: No change from 1957 statutes except reference to redevelopment authority. [Sub. Am. 1-A to Bill 483-A]

Editor's Note: For cases decided under earlier forms of this section prior to 1930, see Wis. Annotations, 1930.

32.02 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.02, 927—1 part (1); 1921 c. 396 s. 95; Stats. 1921 s. 32.02; 1935 c. 421 s. 3; 1943 c. 93 s. 1; 1947 c. 362, 423, 513, 581; 1949 c. 338; 1951 c. 119; 1953 c. 61 s. 1; Spl. S. 1958 c. 3; 1959 c. 238, 639, 672, 693; 1965 c. 238; 1967 c. 27; 1969 c. 276 ss. 602 (1), 603 (3); 1969 c. 366 s. 117 (2) (b); 1969 c. 397.

Drafting Committee Note, 1959: No change from 1957 statutes except as amended in the special session, 1958 by reference to redevelopment authority, and inclusion of the state department of public welfare in sub. (1). [Sub. Am. 1-A to Bill 483-A]

On exercises of eminent domain see notes to sec. 1, art. I; on taking private property for public use see notes to sec. 13, art. I; on suits against the state see notes to sec. 27, art. IV; on property taken by a municipality see notes to sec. 2, art. XI; on municipal home rule see notes to sec. 3, art. XI; on acquisition of lands by the state and subdivisions see notes to sec. 3a, art. XI; and on rights of drainage see notes to 88.87-88.94.

An electric railway company may condemn a special easement in property, leaving vested in the owner all rights, privileges and easements not sought to be condemned. It is not necessary for the company to condemn an exclusive easement if it determines that it needs only the special easement. Milwaukee E. R. & L. Co. v. Becker, 182 W 182, 196 NW 575.

The general rule that property devoted to one public use may not be condemned for another public use does not apply if the condemnor has statutory authority, either expressly or by necessary implication, to condemn the property or if the property may be taken without destroying or materially impairing the existing public use. The city of Racine had implied authority to condemn right of way for street purposes on which no track lay or structure stood. Chicago & Northwestern R. Co. v. Racine, 200 W 170, 227 NW 859.

Where landowners voluntarily appeared and consented to condemnation proceedings, notwithstanding the condemnation petition did not allege property could not be acquired by gift or at agreed price, the court acquired jurisdiction. Pennefeather v. Kenosha, 210 W 695, 247 NW 440.

An interest in property sought to be condemned under ch. 275, Laws 1931, relating to cities of the 1st class, held by the party seeking to acquire title, is not a bar to a proceeding to acquire a fee title to the same, where its rights are clear and the necessity for a fee title has been determined. Milwaukee v. Heyer, 238 W 583, 300 NW 217.

A power company, in connection with acquiring an easement, may condemn the right to cut down trees to provide sufficient clearance for its wires; and other restrictions reasonably required for safety, such as the restriction of future buildings on the premises to 25 feet in height and fireproof construction, are likewise permissible subjects for acquisition. Klump v. Cybulski, 274 W 604, 81 NW (2d) 42.

32.03 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.03; 1927 c. 70, 353; 1947 c. 423, 513; 1951 c. 235; 1959 c. 639.

Drafting Committee Note, 1959: No change in substance from 1957 statutes. [Sub. Am. 1-A to Bill 483-A]

"An examination of the legislative declarations discloses that certain kinds of property devoted to public uses may be condemned and taken for railroad purposes, but no provision of the law grants the right expressly or by necessary implication to so take lands devoted to the use of a public park. A legislative grant to subject such property to another public use is one in derogation of existing laws, and renders the rule 'Expressio unius est exclusio alterius' applicable to this subject. Whatever is embraced in the statutes giving this right leads clearly and satisfactorily to the conclusion that it was intended that the right should be confined to the particular property therein specified." In re Milwaukee Southern R. Co. 124 W 490, 502, 102 NW 401, 405.

Property of a canal company which furnishes power to the public is protected from condemnation. Wisconsin T., L., H. & P. Co. v. Green Bay & M. C. Co. 188 W 54, 205 NW 551.

A railway company cannot acquire land owned by a municipality by condemnation. Matson v. Caledonia, 200 W 43, 227 NW 298.

The state highway commission has power to condemn property owned by school districts and to condemn property of public utilities engaged in interstate commerce subject to the rights of such utilities under 86.16 and 182.017 (1), Stats. 1951. 41 Atty. Gen. 229.

A city of the fourth class does not possess the power to condemn land owned by a county as a site for construction of a city sewage disposal plant. The term "municipality" in 32.03 (1), Stats. 1957, includes a county. 47 Atty. Gen. 270.

32.04 History: 1959 c. 639; Stats. 1959 s. 32.04.

Drafting Committee Note, 1959: This legislation puts in one place the procedure for condemnation (with the exceptions hereinafter

noted)—Ch. 32 Stats. Sec. 32.04 is repealed. Certain portions of the existing statute are cared for by the new provisions of Sec. 32.05 infra. Others are carried into s. 32.06 infra. [Sub. Am. 1-A to Bill 483-A]

32.05 History: 1959 c. 639; 1959 c. 640 s. 2, 3; Stats. 1959 s. 32.05; 1961 c. 52, 202, 486, 622, 682; 1963 c. 6; 1965 c. 219, 238, 252, 596; 1967 c. 102, 331, 339; 1969 c. 500 s. 30 (1)(b), (2)(e).

Drafting Committee Notes, 1959:

(As to intro. par.): The ordinary laying out of town roads pursuant to Ch. 80 Stats. is not affected. Proceedings for laying out streets and alleys in the City of Milwaukee under the Kline Law are not affected.

(As to (1)): The relocation order is the act which authorizes and initiates the highway improvement. The original order of course appears in the proceedings of the commission, council or board having jurisdiction over the particular highway. For local convenience, it is filed with the register of deeds [county clerk].

(As to (4)): The taking of private property for public use is a procedure in which the property owner should be given great consideration. He should be clearly informed with respect to the lettered items in sub. (3). He should know when he will have to remove from the property so that he can make adequate arrangement for other quarters. If he has an opportunity to check the appraisals on which the offer is based, he will be less apt to feel that the offer is arbitrary. If an item of damage has been overlooked he can point it out. If these rights are accorded the owner he cannot be heard to complain except as to an honest difference in evaluating his damages.

This section takes care of the interests of minors and incompetents in lands needed for highways. Cf. 1957 s. 32.04.

(As to (5)): The owner or mortgagee may wish to contest condemnor's right to condemn. This subsection gives him that right at the outset of the proceedings rather than requiring him to wait until the proceedings reach the status of an action in circuit court on appeal from the award as the present (1957) law requires. If such action is commenced against a city or village and the owner does not prevail, the city or village may nevertheless secure a jury verdict of necessity.

(As to (6)): The 20-day period is more liberal to the owner than is the present law under which an award may be made within a day or two after an offer has been made. If the offer is accepted 60 days are allowed for consummation of the title transfer.

(As to (7) (a)): This subsection provides a summary method of acquisition of title by condemnor. The award in general follows the terms of the jurisdictional offer. The amount of compensation may not be less than that stated in the jurisdictional offer but may be more. The necessity for the taking has been determined by the condemnor in making the relocation order. However in the case of condemnation by a municipal corporation the Wis. Const. Art. XI, Sec. 2, requires that the necessity of taking be determined by a jury verdict, hence the exception to proceeding by award, as hereinbefore noted.

See sub. (7) (e) infra for right of municipal corporation to institute action to determine necessity of taking.

(As to (7) (c)): The foregoing subsection definitely resolves 2 vexing questions, namely the "date of evaluation" of the property for purposes of awarding just compensation and also the "date of taking" i.e., the date when title passes. Both of such dates are important in the event of appeals from such award as to the matter of interest, exemption from taxes, and the right to possession.

(As to (7) (d)): Where there is more than one party having an adversary interest in the award, the condemnor may find it convenient to deposit the amount of the award with the clerk of circuit court. In such case the award payees may petition the court for an order for payment of their proper share.

(As to (7) (e)): The provision in this paragraph is necessary because of the constitutional provision that no municipal corporation (city or village) may condemn private property for public use without the verdict of a jury as to the necessity of such taking.

(As to (8)): This subsection protects the condemnor's right after title has passed and compensation has been paid.

(As to (9) (a)): Within 2 years after the date of taking (date of recording award) the owner has a choice of 2 paths of further procedure in review of the award. He may invoke the right to have a review by 3 commissioners of condemnation as above provided with further right of appeal from such commission's award to circuit court and jury, or he may bypass the commission and appeal directly to the circuit court and jury as provided by s. 32.05 (11) infra.

(As to (9) (b)): The 14-day interest free period is given to permit governmental condemnors time to go through the mechanics of payment. The amount of the original award was paid at date of taking.

(As to (10) (a)): This subsection allows either party to the proceeding before the condemnation commissioners to appeal to the circuit court and a jury. The prohibition on disclosure of previous offers or awards is court made law today in Wisconsin. The burden of proof remains as in any lawsuit.

(As to (10 (c)): In par. (c) above there is a 14-day interest free period in which to make payment of the judgment. Taxable costs and disbursements go to the prevailing party in the appeal.

(As to (11)): This section provides the mechanics of an appeal by landowners directly from the original award to circuit court and a jury. Such appeal may be taken within 2 years after date of taking. [Sub. Am. 1-A to Bill 483-A]

Editor's Note: See also notes under 32.06 on condemnation procedure in other than highway, etc., matters; that section, although applying to different situations, contains many provisions which are similar to those in 32.05.

If one of the several parties has appealed, and the company has also appealed from the whole award, both appeals may be tried together if all the parties are before the court. The plaintiff is the successful party if, upon his appeal, the award is increased, or if, upon defendant's appeal, it is not reduced; otherwise the defendant is the successful party. One

of several parties to whom an award has been made may appeal separately therefrom, and he will not be required to bring the other parties into court. It is the duty of the company to bring in all the parties necessary. Washburn v. Milwaukee & L. W. R. Co. 59 W 379, 18 NW 431.

The owner of several lots or parcels of land which have been taken and for which damages have been awarded separately may take a single appeal from the whole award. The notice is not a process to bring the parties into court. Its sole object is to advise the opposite party that the party giving the notice is not satisfied with the award made and desires a new one made by a jury and the court. A single notice that several persons whose lands have been taken appeal, each severally and for himself, from the award made to each of them, is good. Larson v. Superior S. L. R. Co. 64 W 59, 24 NW 487.

See Fritz v. Southern W. P. Co. 181 W 437, 195 NW 321, in connection with 32.05 (5).

See note to 280.01 on procedure, citing Briggson v. Viroqua, 264 W 47, 58 NW (2d) 546.

See note to 893.17, citing Zombkowski v. Wisconsin River P. Co. 267 W 77, 64 NW (2d) 236.

The right to appeal in any proceeding instituted for the acquisition of land for public purposes is governed by statute. State Highway Comm. v. Grant, 7 W (2d) 308, 96 NW (2d) 346.

See Beer v. Ozaukee County Highway Comm. 9 W (2d) 346, 101 NW (2d) 89, in connection with 32.05 (3).

The attorney for a county highway committee can sign and file a notice of appeal for the committee. Brausen v. Daley, 11 W (2d) 160, 105 NW (2d) 294.

A tender of a check to the owner's wife, who had only a dower interest, was not sufficient to stop the running of interest on the award. The fact that the state was paying most of the award through the city does not limit the interest to the city's share of the payment where the state had already paid its share to the city. The fact that lessees may have an interest in the award does not prevent the owner from recovering interest on the whole. Grant v. Cronin, 12 W (2d) 352, 107 NW (2d) 153.

When an application is made to the judge for assignment of an award to commissioners for review, the judge is acting in an administrative capacity and no appeal lies from a refusal to make the assignment for error in the application or from a refusal to allow amendment of the application. Acheson v. Winnebago County Highway Comm. 14 W (2d) 475, 111 NW (2d) 446.

Under 32.05 (2a) negotiation with the property owner by the condemnor of land sought to be taken for highway construction is a necessary condition of conferring jurisdiction on the condemnor and the court to determine just compensation, and failure of the condemnor to negotiate would render the judgment invalid if the property owner raised the issue in timely fashion under 32.05 (5). Arrowhead Farms, Inc. v. Dodge County, 21 W (2d) 647, 124 NW (2d) 631.

A condemnation proceeding becomes a proceeding in court upon filing an appeal from the commissioner's award. Prior to that it is an administrative proceeding. Millard v. Columbia County Highway Comm. 25 W (2d) 425, 130 NW (2d) 861.

Under 32.05 (10) there is no authority for the imposition of terms on dismissal of an appeal to the circuit court. Schrab v. State Highway Comm. 28 W (2d) 290, 137 NW (2d) 25.

In determining whether an appeal under 32.05 (9) was improperly to the court instead of to the judge, the whole record must be examined. Minor errors are to be disregarded. No filing fee is to be paid on such appeal. Condemnation statutes are in derogation of the common law and must be strictly construed in favor of the condemnee. Schroedel Corp. v. State Highway Comm. 34 W (2d) 32, 148 NW (2d) 691.

32.05 (4) does not require that personal service be attempted before mailing nor that personal service be made if the mailed notice is not delivered. Service by mail is complete on the date of mailing and risk of miscarriage or nondelivery is on the addressee. Boeck v. State Highway Comm. 36 W (2d) 440, 153 NW (2d) 610.

Under 32.05, Stats. 1963, a city may create a controlled-access street, and whether the property owner is entitled to compensation for access rights depends upon other factors. The provisions of 32.05 (3), requiring an itemization of damages, is not directory but mandatory. The requirement of 32.05 (3), that a jurisdictional offer must make reference to the appraisal and where it may be found is in addition to the requirement that damages be itemized in the jurisdictional offer. Wisconsin T. H. Builders, Inc. v. Madison, 37 W (2d) 44, 154 NW (2d) 232.

The requirement of 32.05 (3)(d) that the jurisdictional offer contain an itemization of damages is mandatory, and a jurisdictional offer which fails to do so is void. Wisconsin T. H. Builders v. Madison, 37 W (2d) 44, 154 NW (2d) 232.

In a proceeding under authority of 84.09 (3) (a) in which the county highway committee condemned land at the request of the state highway commission and took title in the name of the county, the requirements of 32.05 (9)(a) and (11) with regard to service of notice of landowner's appeal to the circuit court were satisfied by serving notice on the county only. Procedural statutes should be liberally construed so as to permit a determination upon the merits. Kyncl v. Kenosha County, 37 W (2d) 547, 155 NW (2d) 538.

Where service by mail of notice or process is authorized by statute, such service is completed upon the timely mailing thereof, even though not specifically stated in the statute. The party electing pursuant to statute to use mail as a mode of service must bear the burden of proving that the service was timely accomplished. Schroedel Corp. v. State Highway Comm. 38 W (2d) 424, 157 NW (2d) 562.

32.06 History: 1959 c. 639; 1959 c. 640 s. 4; Stats. 1959 s. 32.06; 1961 c. 202, 486; 1963 c. 6; 1965 c. 219.

Drafting Committee Notes, 1959:

(As to (3)): This is a new procedure in general condemnation but the same reasons applicable to its use in highway matters are applicable here.

(As to (5)): This subsection compares with s. 32.05 (5) supra. See note thereto.

(As to (7)): The date of filing lis pendens is the "date of evaluation" as compared to the present date of filing the commissioners' award.

(As to (9) (a)): Sub. (9) (a) deals with condemnor's right to abandon the proceedings. The court may in fixing terms allow reasonable expert witness fees and a reasonable attorney's fee to condemnee. Such right does not exist today but is reasonable if condemnee is to be made whole.

(As to (9) (b)): Again the 14-day period is given to allow governmental bodies to process payment of award.

(As to (10)): The burden of proof remains as in any lawsuit. [Sub. Am. 1-A to Bill 483-A]

Revisor's Note, 1963: 32.06 (10), which spells out the appeal procedure, was amended in 1961 to cut the appeal time to 60 days. The parallel provision in sub. (3) was overlooked. Amendment approved by C. Stanley Perry and Richard Barrett, two members of the original committee. [Bill 44-S]

Editor's Note: See also notes under 32.05, since that section, although applying to different situations, contains many provisions which are similar to those in 32.06.

In a proceeding by a sewerage district to condemn land along a creek for passage of sewage effluent, the court may not, in the guise of imposing "terms" on the abandonment of the proceeding, in effect grant compensation to the landowner by restraining the sewerage district from passing effluent through the land without first paying to the landowner the amount fixed by the condemnation commissioners as the value of the land. However, the court could properly require condemnor to pay attorneys' fees for landowner's counsel for services rendered in opposing the motion for abandonment. Witzel v. Madison Met. Sewerage Dist. 5 W (2d) 443, 93 NW (2d) 174.

In the absence of bad faith or unreasonable delay on the part of the condemning authority which instituted the condemnation proceeding, a landowner is not entitled to recover damages for the abandonment of the proceeding. (Feiten v. Milwaukee, 47 W 494, so far as to the contrary, overruled.) Upper Third Street Dev. Corp. v. Milwaukee, 8 W (2d) 595, 99 NW (2d) 687.

Where plaintiff did not start an action within 40 days to contest the right to condemnation, his action will be dismissed on the merits and an adverse examination necessary to plead denied. Weeden v. Beloit, 22 W (2d) 414, 126 NW (2d) 54.

Fees of only 3 expert witnesses may be taxed; this does not refer only to appraisal witnesses. Attorney's fees based on a contingent fee contract, if approved by the trial court, may be awarded plus an allowance for fees on the appeal. Hutterli v. State Conservation Comm. 34 W (2d) 252, 148 NW (2d) 849.

The legislative intent implicit in 32.06 (10) is to place the burden of proof in a condemnation action on the issue of just compensation upon the landowner, regardless of which party appeals. Loeb v. Board of Regents, 40 W (2d) 657, 162 NW (2d) 653.

32.07 History: 1919 c. 571 s. 1; 1919 c. 702 s. 26; Stats. 1919 s. 32.07; 1927 c. 69; 1927 c. 362 s. 1; 1943 c. 230; 1947 c. 423, 581; 1949 c. 643; 1953 c. 91; Spl. S. 1958 c. 3; 1959 c. 410, 639; 1961 c. 202; 1963 c. 476; 1965 c. 238.

Revisor's Note, 1949: This change in (1) is necessitated by the amendment of 255.04 to provide for a standard method of drawing juries in courts of record when exercising civil or criminal jurisdiction, and by the repeal of 255.10 by Chapter 488, laws of 1949. [Bill 664-S.]

Under 32.07, Stats. 1923, necessity justifying condemnation for right of way by a street railway corporation must be determined by such corporation itself, while the necessity to condemn for station grounds must be determined by the judge. Milwaukee E. R. & L. Co. v. Becker, 182 W 182, 196 NW 575.

Condemnation proceedings for a right of way, for an electric power line for public use, are wholly statutory; the petitioner determines the necessity for taking; the right to take springs from the fact that line is to serve public needs and is not a taking for private use; the petitioner has the right to locate the line and to abandon a location even after condemnation proceedings are completed, and to relocate the line; the width of the right of way is not limited by statute, 193.11 Stats. 1925, having no application to such transmission line; and an owner whose land is taken, and who is fully compensated therefor, cannot be heard to object to the present location on the ground that the petitioner for good reason and a consideration agreed with another owner and did change the location so as not to cross the land of such other owner. Under the express provisions of 32.07 (2) the determination of the necessity for taking a right of way for an electric power transmission line is for the petitioner and not for a court or a jury. Blair v. Milwaukee E. R. & L. Co. 187 W 552, 203 NW 912.

In a proceeding authorized by 190.17, Stats. 1927, to condemn a strip of land 200 feet in width for sidetracks, storage tracks, switch yard and car-storage yards, the court must determine the necessity for the taking in a judicial proceeding. In re Chicago, M. St. P. & P. R. Co. 197 W 503, 222 NW 776.

Condemnation statutes are to be strictly construed and must be strictly complied with. In proceedings by a city to condemn lands for street purposes, a petition which does not disclose on its face that a resolution had declared the necessity to condemn the designated land, was insufficient. A mere reference in the resolution to a petition of the citizens wherein the necessity was declared was not a sufficient declaration by the council. In re Condemnation of Lands in Beaver Dam, 205 W 299, 237 NW 119.

The board of regents of the University of Wisconsin, authorized by 32.02 (1) and 36.06 (5), Stats. 1951, to acquire land by condemnation proceedings, is a "board" within the meaning of 32.07 (2), so that it is thereby authorized to determine the necessity of the taking. Wisconsin Chapter House Asso. v. Regents, 260 W 206, 50 NW (2d) 469.

The broad discretion vested in those having the power of eminent domain and the power to determine the necessity for taking land will not be disturbed in the absence of fraud, bad faith or gross abuse of discretion, even though an alternative might be as convenient and cheaper. Swenson v. Milwaukee County, 266 W 129, 63 NW (2d) 103.

The "necessity" required to support condemnation is only a reasonable, and not an absolute or imperative, necessity. Where the application is for a right of way for an electric line, the petitioner is to determine the necessity. It is not for the court to decide whether the power company is making the best decision with respect to location of its power circuits or the need for acquiring the desired easement to string power lines above a strip of the plaintiff's property, and judicial interference with the utility's determination would at most be warranted only by a convincing showing that such determination is unreasonable, arbitrary, or not made in good faith. Klump v. Cybulski, 274 W 604, 81 NW (2d) 42.

The condemnation statutes, contained in ch. 32, Stats. 1957, are in derogation of the common law and are to be strictly construed; and pleadings instituting proceedings under such statutes are also to be strictly construed. Madison v. Tiedeman, 1 W (2d) 136, 83 NW (2d) 694.

A determination by a common council of the necessity of taking is legislative in character, and the motives which prompted the council in performing such a legislative function are not within the field of judicial scrutiny. Banach v. Milwaukee, 31 W (2d) 320, 143 NW (2d) 13.

In a condemnation proceeding to acquire land for laying out a street, the adoption of a relocation order under 32.05 takes the place of and constitutes a determination of necessity. Wisconsin T. H. Builders v. Madison, 37 W (2d) 44, 154 NW (2d) 232.

32.075 History: 1955 c. 213; Stats. 1955 s. 32.075; 1959 c. 639.

Drafting Committee Note, 1959: No change in substance from 1957 Statutes. [Sub. Am. 1-A to Bill 483-A]

32.08 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.08; 1959 c. 639; 1961 c. 486; 1965 c. 252.

The commissioners should be impartial men, and their investigations open and known to both parties. Powers v. Bears, 12 W 213.

The fact that the commissioners were stockholders in the railroad company which instituted condemnation proceedings is not ground for quashing the report at the instance of the company. Strang v. Beloit & M. R. Co. 16 W 666.

32.09 History: 1959 c. 639; Stats. 1959 s. 32.09; 1961 c. 486, 682.

The submission of 2 questions in a special verdict, one covering the value of the land taken considering it as a part of the entire premises, and the other covering the depreciation in value of the land not taken, would result in duplication of damages. Jeffery v. Chicago & M.E.R. Co. 138 W 1, 119 NW 879.

The increased use of an old, long-used switch track in a public street, occasioned by the construction of a new branch switch track, does not entitle the owner to recover damages; and the taking of a small piece of land for the construction of such new track does not entitle the owner to recover damages for depreciation in value of a tract wholly independent and separate in use and purpose from the tract from which the small piece was taken, notwithstanding the fact that the 2 tracts are contiguous. Lippert v. Chicago & Northwestern R. Co. 170 W 429, 175 NW 781.

In assessing damages in a condemnation proceeding to acquire the right of way for a telephone line in front of farm premises the advantage to the farm of getting accessibility to the line is a public benefit and not a "special benefit" to the farm. The measure of damages for such a taking is the difference between the value of the farm as it was without the line and its value with the line. Accessibility should not be considered. The landowner should be allowed to show all uses to which the condemned property may be put by the appropriator. Riddle v. Lodi T. Co. 175 W 360, 185 NW 182.

In proceedings by landowners to appraise damages resulting from flowage caused by a dam, where there was evidence that the condition of the land might have resulted from unusual rainfall as well as from the construction of the dam, an order appointing commissioners of appraisal was reversed with instructions to dismiss the petition without prejudice to the institution of new proceedings if, within the period of the statute of limitations, the lands remain wet during a continued period of normal rainfall. Application of Gehrke, 176 W 452, 186 NW 1020.

In appraising the value of lands taken, it is proper to consider the amount for which lands of similar quality in the same locality have been recently and voluntarily sold; but it is prejudicial error to show the sum paid in settlement of condemnation proceedings for similar lands, or the price paid by the condemnor for similar lands, even where proceedings had not been begun. Blick v. Ozaukee County, 180 W 45, 192 NW 380.

In condemnation of a right of way, opinion evidence as to damages is not conclusive, and where the court feels injustice has been done by the award, the verdict should be set aside and a new trial granted. Only such elements of damage must be considered as may be reasonably certain to flow from the construction and maintenance of the transmission line of a light and power company, in the exercise of ordinary care. In a proceeding to acquire a right of way, injuries that may result from negligence in the construction or maintenance of the line is not an element of such damages. By condemnation such company does not get the fee but merely a qualified and specific use thereof, which is to be exercised with as little injury to the fee owner as is reasonable. It may cut or remove fences across the right of way when that becomes necessary for erection or repairs, but must restore such fences, if needed by the owner, within a reasonable time or respond in damages caused by failure so to do. The awards in this case were excessive. Jewell v. Wisconsin-Minnesota L. & P. Co. 181 W 56, 194 NW 31.

For the taking of land by flowage caused by a dam the measure of damages is the de-

preciation in value of the owner's entire farm where the taking works no substantial change of possession, that is, where no specific part is taken. Fritz v. Southern W. P. Co. 181 W 437, 195 NW 321.

A condemnor of private property must pay the value of the part or interest actually taken, plus the owner's damage to the part of the land or interest not taken. Such damages must be founded upon a definite and fixed basis, estimated as of the time of the taking, and must be paid at the earliest time reasonably possible. Milwaukee E. R. & L. Co. v. Becker, 182 W 182, 196 NW 575.

Damages in condemnation proceedings equal the difference between value of land before and after taking. In condemnation proceedings, ascertaining damages payable to an owner by determining value of land taken, plus diminution in value of residue, is not necessarily erroneous. That farm land within city limits, worth $500 per acre, was valued by a jury in condemnation proceedings at $1,200 showed valuation for platting purposes. Smith v. Milwaukee E. R. & L. Co. 201 W 325, 230 NW 44.

Damages based upon negligent construction of a highway are not recoverable in condemnation proceedings since such damages occur after the taking and are not incident thereto. Damages from obstruction of surface water resulting from highway construction are recoverable, if at all, only as provided in 88.38, Stats. 1933. Leininger v. County Highway Committee, 217 W 61, 258 NW 368. See also Leininger v. Pierce County, 226 W 515, 277 NW 187.

The measure of damages to landowners from the state's flowage of lands for the maintenance of certain water levels on a river by means of a dam is the difference between the present value of the land and its value as affected by the execution of the proposed project. State v. Adelmeyer, 221 W 246, 265 NW 838.

Where the railroad company used the lumber company's private roadbed and right of way to serve strangers, the service to strangers being partly conducted over a spur, which the railroad was entitled to use in serving an assignee of a grantee of the lumber company, there was a taking by the railroad, but it was a limited taking, entitling the lumber company to compensation from the railroad for only that portion of the property, used in serving strangers, which was beyond the spur. New Dells L. Co. v. Chicago, St. P., M. & O. R. Co. 222 W 264, 268 NW 243.

In a condemnation proceeding property is to be valued as of the time of taking and in such condition as it was at that time. Any amount by which the value has been decreased because of the pendency of and delay in the adoption and execution of the condemnor's plans for the taking of the property and the making of the improvement must be excluded from consideration. Any amount by which the value of the property has been enhanced because of the prior execution of a public improvement project may properly be taken into account as long as that prior improvement was a separate project. Damage to the property resulting from a prior project may not be taken into account in the current condemnation proceeding. A. Gettelman Brewing Co. v. Milwaukee, 245 W 9, 13 NW (2d) 541.

In proceedings to assess compensation for a strip of land on a farm, condemned for the construction of a power line, the rejection of the landowners' offer to prove how much they would make in a season selling melons at a roadside stand was not error, the rule that loss of profits is not recoverable or provable in condemnation of an owner's interest being particularly applicable here where the location of the stand was not disturbed by the construction, and its operation was affected only by the fact that an elm tree previously shading the stand was removed. An award of $1,200 for the land taken in this case, where the testimony as to the loss sustained varied from $500 to $6,500, and the jury had viewed the premises, will not be disturbed as inadequate. Dusevich v. Wisconsin Power & Light Co. 260 W 641, 51 NW (2d) 732.

No compensation is due the landowner for depreciation in market value for commercial purposes of the remaining portion of land after a partial taking as a result of a highway relocation and making it a controlled access highway. A controlled access highway is so designated under the police power, and losses arising out of its exercise are not compensable. Carazalla v. State, 269 W 593, 70 NW (2d) 208, 71 NW (2d) 276.

Since only "danger-producing" signs are prohibited by 86.191 (4), Stats. 1957, the jury in a condemnation case could accept testimony of an advertising man as to the value of a small remaining triangle on which advertising signs could be placed. Smuda v. Milwaukee County, 3 W (2d) 473, 89 NW (2d) 186.

In condemnation proceedings to acquire an easement for transmission-line towers over certain farms, the submission of a question requiring the jury to determine the value of each farm immediately prior to and immediately after the taking, together with appropriate instructions as to allowance of severance damages, constituted a correct interpretation of 32.09 (1) as against a contention that the statute required that the values to be determined before and after the taking should be limited to the easement strip instead of the entire farm, and that a separate question as to severance damages should have been submitted. Braun v. Wisconsin Elec. P. Co. 6 W (2d) 262, 94 NW (2d) 593.

Any use to which it is reasonable to infer from the evidence that the land may be put in the near future, or within a reasonable time, may properly be considered, and compensation may be awarded on the basis of its most-advantageous use, but the future uses considered must be so reasonably probable as to affect the present market value. The fact that the owner of the property here involved had not seen fit to use the frontage on a certain street for some business development, permissible under the zoning of such parcel, was evidence to be considered on the issue of the most-advantageous use, but it was not conclusive thereon. Utech v. Milwaukee, 9 W (2d) 352, 101 NW (2d) 57.

In determining before and after values in a partial taking, it is not proper to subtract the value of the land taken from the value before taking to determine the value of the land re-

maining, since this fails to reflect severance damage to the remaining land. Utech v. Milwaukee, 9 W (2d) 352, 101 NW (2d) 57.

When a portion of an owner's real estate is taken by the state by eminent domain, for highway purposes, damage resulting from the inconvenience occasioned by the construction work, although not constituting a separate compensable item of damage, is an item properly considered by the jury in determining the value of the remaining property after the taking. Richards v. State, 14 W (2d) 597, 111 NW (2d) 505.

32.09 (8) does not limit the applicability of 326.12 as to discovery proceedings in condemnation cases. State ex rel. Reynolds v. Circuit Court, 15 W (2d) 311, 112 NW (2d) 686, 113 NW (2d) 537.

For discussion of severance damages to several parcels not in same ownership, see Jonas v. State, 19 W (2d) 638, 121 NW (2d) 235.

See note to 84.29, citing Stefan Auto Body v. State Highway Comm. 21 W (2d) 363, 124 NW (2d) 319.

In a case of partial taking evidence is admissible that the remaining area is no longer capable of use for a particular purpose or that its usefulness has been impaired and the cost of constructing additional facilities to restore the usefulness can be considered in determining the aftertaking value. Ken-Crete Products Co. v. State Highway Comm. 24 W (2d) 355, 129 NW (2d) 130.

A special benefit is one which enhances the value of the land either by improving its physical condition or, under certain circumstances, by changing its highest and best use. Land which by reason of its proximity to a no-access highway interchange is enhanced in value because its highest and best use, assuming the completion of the public improvement, is immediately favorably changed or its potential for favorable change in use appears by reasonable probability to be imminent, is specially benefited. Petkus v. State Highway Comm. 24 W (2d) 643, 130 NW (2d) 253.

The question of whether special benefits accrue to property and affect its value because of the planned improvements and the extent thereof is a factual determination to be made by the jury and not a question of law. While the burden of proof as to damages rests upon the landowner, the existence of special benefits is a matter of affirmative defense as to which the burden is upon the condemnor, and it must show that the claimed special benefits are direct, immediate, and certain, both as to time and place, not remote or speculative. Hietpas v. State, 24 W (2d) 650, 130 NW (2d) 248.

In order to lay a proper foundation for the admission of testimony showing special benefits by reason of changed use to the land remaining after the taking, it is necessary for the party claiming the special benefit to show that zoning regulations governing the land in question presently permit the changed use or that a reasonable probability exists that zoning in the near future will accommodate such use; but a mere possibility, or an assumption on the part of the witness is not enough and must be rejected as being speculative. Hietpas v. State, 24 W (2d) 650, 130 NW (2d) 248.

In condemnation proceedings instituted by a public utility to acquire an easement for a transmission line across a farm, where the owners claimed acquisition rendered the strip affected thereby useless for future residence purposes and impaired the value of the remainder of the portion which it divided, whereas the condemnor contended residential development of the land was speculative and too remote, a jury finding resolving conflicting expert testimony in favor of the owners, based on evidence which was not inherently incredible and from which it could have been inferred that the demand of buyers for the property for subdivision and residential purposes was reasonably probable in the near future and affected present market value, would not be disturbed. Kreuscher v. Wisconsin Elec. P. Co. 27 W (2d) 351, 134 NW (2d) 487.

Compensation for damages caused by loss of existing rights of access constitute remuneration for a partial taking of premises under the power of eminent domain pursuant to 84.09 and ch. 32. A contention that the taking of an access right was ipso facto an exercise of police power and not compensable under the power of eminent domain (and hence the contention that the latter procedure was mistakenly utilized), could not be successfully maintained, where the highway from which access rights to the leased premises were eliminated was not declared a controlled-access road pursuant to law. Hastings Realty Corp. v. Texas Co. 28 W (2d) 305, 137 NW (2d) 79.

In land-condemnation cases where opinions of ostensibly equally qualified experts as to values vary to a substantial and irreconcilable degree, proper evidence of comparable sales can be of aid to the jury in the performance of its obligation to find the true value. Weeden v. Beloit, 29 W (2d) 662, 139 NW (2d) 616.

Before evidence of a mineral deposit may be admitted in a condemnation case, a foundation must be laid to show that the presence of the mineral deposit affects the fair market value of the land. Volbrecht v. State Highway Comm. 31 W (2d) 640, 143 NW (2d) 429.

Under 32.09 (6), Stats. 1965, the measure of damages in a condemnation proceeding where there is a severance is the difference between the fair market value of the whole property immediately before the taking and the fair market value of the remainder immediately thereafter. Lambrecht v. State Highway Comm. 34 W (2d) 218, 148 NW (2d) 732.

Credibility of expert witnesses in a condemnation case and the weight to be given to conflicting testimony as to the applicable method of evaluating property is a matter to be resolved by the jury under appropriate instructions of the trial court. Lambrecht v. State Highway Comm. 34 W (2d) 218, 148 NW (2d) 732.

An expert witness testifying to the value of property which he has examined should base his opinion on comparable sales as an element of value if such sales have taken place; the sales used as a foundation or partial foundation of an expert's opinion of value are admissible and, if not comparable, go to the weight of his opinion, not to its admissibility. Besnah v. Fond du Lac, 35 W (2d) 755, 151 NW (2d) 725.

A city, even when proceeding under its eminent domain power rather than under its po-

lice power, need not pay for the alleged taking of access rights in connection with the laying out of a new limited-access street on a location where no street previously existed, since the landowner whose land abutted the new street had no prior access rights which could be taken. Wisconsin T. H. Builders v. Madison, 37 W (2d) 44, 154 NW (2d) 232.

Evidence of comparable sales is admissible in a condemnation case either as direct independent evidence of value or as supporting an expert's opinion of value, and while the general rules of admissibility are less restrictive in the latter situation, the trial court still exercises considerable discretion in determining whether or not to admit the evidence. Kamrowski v. State, 37 W (2d) 195, 155 NW (2d) 125.

Just compensation for the land taken is not restricted to the value only of the present use if a more advantageous probable use actually affects the present market value. Van De Hey v. Calumet County, 40 W (2d) 390, 161 NW (2d) 923.

Farm land was properly valued for residential use where this appeared to be its highest and best use. The trial court did not abuse its discretion in admitting evidence of sales of small parcels for residential purposes, particularly since the admission of these sales was for the limited purpose of showing a basis for and giving weight to the opinion of value of the expert witness. Van De Hey v. Calumet County, 40 W (2d) 390, 161 NW (2d) 923.

32.09 (6), Stats. 1965, which in pertinent part provides for payment of compensation in case of a partial taking which results in damage to property abutting on a highway right-of-way due to change of grade where accompanied by a taking of land, requires a taking of land before the statutory provisions become applicable and require compensation; hence if there is no taking the statutory provisions do not apply. More-Way North Corp. v. State Highway Comm. 44 W (2d) 165, 170 NW (2d) 749.

Valuation problems under eminent domain. Crouch, 1959 WLR 608.

Compensation for a lessee's trade fixtures. Kinnamon, 1966 WLR 1215.

Eminent domain; just compensation; special benefits. Wheeler, 1966 WLR 1225.

32.10 History: 1959 c. 639; Stats. 1959 s. 32.10; 1961 c. 486.

Drafting Committee Note, 1959: This section is derived from the last paragraph of 1957 s. 32.04 and is modified to fit into proposed new procedure. The section affords authority for dispossessed landowner to bring "condemnation in reverse". [Sub. Am. 1-A to Bill 483-A]

Editor's Note: Referring to sec. 1852, R. S. 1878 (which authorized "inverse condemnation" and which was redesignated as sec. 32.15, Stats. 1919, and superseded by 32.12, Stats. 1959), the supreme court incorporated the following statement in its opinion in Handlin v. Chicago & Northwestern R. Co. 61 W 515, 522, 21 NW 623, 625, citing Buchner v. Chicago M. & N. R. Co. 56 W 403, 60 NW 264: "The language of this section is certainly broad enough to cover every case where a railroad corporation has already constructed its roadbed or tracks upon the lands of another without having acquired title thereto by purchase or otherwise, and in every such case there can be no doubt but that the landowner could proceed under the statute to have commissioners appointed to ascertain his compensation and damages for the taking of his property by the company for its roadbed, if the company has omitted to institute such proceedings on its own behalf until after they have so taken and occupied his land."

Citations of subsequent cases involving "inverse condemnation" questions are as follows: Cassidy v. Chicago & Northwestern R. Co. 70 W 440, 35 NW 925; Shealey v. Chicago, Madison & Northern R. Co. 72 W 471, 40 NW 145; Taylor v. Chicago, Milwaukee & St. Paul R. Co. 83 W 645, 53 NW 855; Tucker v. Chicago, St. Paul, Minneapolis & Omaha R. Co. 91 W 576, 65 NW 515; Frey v. Duluth, South Shore & Atlantic R. Co. 91 W 309, 64 NW 1038; Hooe v. Chicago, Milwaukee & St. Paul R. Co. 98 W 302, 73 NW 787; Babcock v. Chicago & Northwestern R. Co. 107 W 280, 83 NW 316; Stewart v. Milwaukee E. L. & R. Co. 110 W 540, 86 NW 163; Verbeck v. Minneapolis, St. P. & S. S. M. R. Co. 159 W 51, 149 NW 764; Eisler v. Chicago, Milwaukee & St. Paul R. Co. 163 W 86, 157 NW 534; Peters v. Chicago & Northwestern R. Co. 165 W 529, 162 NW 916; Application of Gehrke, 176 W 452, 186 NW 1020; Skalicky v. Friendship E. L. & P. Co. 193 W 395, 214 NW 388; Muscoda B. Co. v. Worden-Allen Co. 196 W 76, 219 NW 428; Baerwolf v. Wisconsin River P. Co. 198 W 112, 223 NW 571; Tobin v. Willow River P. Co. 208 W 262, 242 NW 480; and Konrad v. State, 4 W (2d) 532, 91 NW (2d) 203.

See note to 893.17, citing Zombkowski v. Wisconsin River P. Co. 267 W 77, 64 NW (2d) 236.

A landowner's property does not necessarily have to be physically occupied to entitle him to a remedy under 32.10. McKenna v. State Highway Comm. 28 W (2d) 179, 135 NW (2d) 827.

Where the state legislature by statute rescinded the power of an agency to sell land, a person who had acquired an option to purchase from such agency did not have a right to bring an action of inverse condemnation under 32.10, since the state had not occupied the land. Herro v. Wisconsin F. S. P. D. Corp. 42 W (2d) 87, 166 NW (2d) 433.

Inverse condemnation: the constitutional limits of public responsibility. Mandelker, 1966 WLR 3.

32.11 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.13; 1959 c. 639; Stats. 1959 s. 32.11.

Drafting Committee Note, 1959: No change from 1957 s. 32.13 except renumbering. [Sub. Am. 1-A to Bill 483-A]

32.12 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.15; 1959 c. 639; Stats. 1959 s. 32.12; 1961 c. 486.

Revisor's Note, 1919: This is the substance of section 1852 of the statutes. [Bill 270-S]

Drafting Committee Note, 1959: No change from 1957 Stats. except reduce interest rate from 7 per cent to 5 per cent in (3). [Sub. Am. 1-A to Bill 483-A]

The mere fact that a railroad has been surveyed and located over land without protest on part of the owner does not give the com-

pany any right to enter upon and permanently occupy the land. Bohlman v. Green Bay & L. P. R. Co. 30 W 105.

Where the company takes possession without instituting condemnation proceedings and without consent of the owner, the owner may maintain ejectment or trespass. He may recover damages sustained before suit but not permanent damages for taking the land. Sherman v. Milwaukee, L. S. & W. R. Co. 40 W 645.

The owner may maintain trespass for taking part of a street in which he has the fee and recover the difference between the rental value of the premises without the road and with it prior to the suit. Blesch v. Chicago & Northwestern R. Co. 43 W 183, 48 W 168, 2 NW 113.

The failure of the owner to order the company off the land or to bring an action for damages till the statute has nearly run is not a consent to its occupation. Rusch v. Milwaukee, L. S. & W. R. Co. 54 W 136, 11 NW 253.

Sec. 1852, Stats. 1898, does not allow a railroad company to take and hold possession of land without the consent of the landowner, without first making or tendering compensation. Entry, without consent, tacit or express, of the owner and without compensation with intention to appropriate them permanently is unlawful and will be restrained. McCord v. Eastern Ry. of Minnesota, 136 W 254, 116 NW 845.

Where a railroad company has failed to obtain a certificate of convenience and necessity from the railroad commission and where it was decided that such company could not institute condemnation proceedings, it was not entitled to continue to occupy the land by obtaining a certificate from the commission. Great Northern R. Co. v. McCord, 143 W 589, 128 NW 432.

As respects issues and proof, the rule that one seeking to take the property of another by right of eminent domain must recognize the title of his adversary is inapplicable where under 32.15, Stats. 1933, the condemnor expressly alleged in its petition that it instituted condemnation proceedings to free its title from any defects existing because of the claims of its adversaries. Perszyk v. Milwaukee E. R. & L. Co. 215 W 233, 254 NW 753.

32.15 (1), Stats. 1955, applies only if the person having potential condemnation power "has not acquired title thereto, or if such title was defective"; it does not apply where good title has been conveyed by deed to the public agency, the subsequent award filed by the agency having been made merely to meet statutory requirements and to provide compensation for the demolition of a building located partly on land not conveyed by the deed. Lee Realty Corp. v. West Allis, 32 W (2d) 175, 145 NW (2d) 121.

32.13 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.16; 1959 c. 639; Stats. 1959 s. 32.13.

Drafting Committee Note, 1959: No change from existing statute 32.16 except renumbering, and method of choosing commissioners. [Sub. Am. 1-A to Bill 483-A]

The company should apply to the court under sec. 21, ch. 119, Laws 1872, for the appointment of such commissioners as the statute authorizes; and where this is not done there is no error in rendering a judgment for the sale of the premises held by it. Aiken v. Milwaukee & St. P. R. Co. 37 W 469.

In a valuation proceeding under ch. 119, Laws 1872, in connection with a mortgage foreclosure proceeding brought against the railroad company which had acquired title subject to the mortgage, the land must be valued as of the time the railroad company acquired title, without improvements made by the company but including any enhancement in value caused by the projected and prospective construction of the company's road. Aspinwall v. Chicago & Northwestern R. Co. 41 W 474.

The taking which must be made good to the mortgagee, where a mortgaged estate is condemned, is the whole injury to the estate, not the mere value of the strip of land to be occupied by the right of way. Stamnes v. Milwaukee & S. L. R. Co. 131 W 85, 109 NW 100.

32.14 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.17; 1957 c. 597; 1959 c. 639; Stats. 1959 s. 32.14.

Drafting Committee Note, 1959: No change from existing s. 32.17 except renumbering and deletion of court's power to appoint other commissioners. [Sub. Am. 1-A to Bill 483-A]

Under 269.44, authorizing the "court" to amend any process, pleading, or proceeding, and 32.14, authorizing a "court or judge" to permit amendments to a petition "filed pursuant to s. 32.06," but which latter expressly withheld that authority in matters of condemnation for highways, neither the county court nor the judge thereof could have granted a landowner's motion to amend his application for assignment to a commission of county condemnation commissioners in a highway condemnation matter. Acheson v. Winnebago County Highway Comm. 14 W (2d) 475, 111 NW (2d) 446.

See note to 990.001, (general), citing Union M. Co. v. Spies, 181 W 497, 195 NW 326.

32.15 History: 1919 c. 571 s. 1; 1919 s. 32.18; 1959 c. 639; Stats. 1959 s. 32.15.

Drafting Committee Note, 1959: No change from 1957 s. 32.18 except renumbering. [Sub. Am. 1-A to Bill 483-A]

32.16 History: 1955 c. 298, 366; Stats. 1955 s. 32.195; 1959 c. 639; Stats. 1959 s. 32.16.

Drafting Committee Note, 1959: No change from 1957 s. 32.195 except renumbering. [Sub. Am. 1-A to Bill 483-A]

32.17 History: 1919 c. 571 s. 1; Stats. 1919 s. 32.20; 1919 c. 702 s. 28; 1919 c. 703 s. 34; 1959 c. 639; Stats. 1959 s. 32.17.

32.18 History: 1959 c. 639; Stats. 1959 s. 32.18; 1961 c. 486; 1963 c. 572; 1969 c. 500 s. 30 (2) (e).

In an action to recover damages resulting from the change of the grade of highways the plaintiffs were not entitled to recover interest on the award, since the statute does not provide for interest, and since claims against the state do not bear interest unless its consent thereto has been manifested by lawful contract or legislative act. Klingseisen v. State Highway Comm. 22 W (2d) 364, 126 NW (2d) 40.

32.19 History: 1961 c. 486; Stats. 1961 s. 32.19; 1969 c. 409.

See note to 32.09, citing Richards v. State, 14 W (2d) 597, 111 NW (2d) 505.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing Hanley v. Volpe, 305 F Supp. 977.

Claims for cost of moving of property, necessitated by a taking of land by a public or private body having the power of eminent domain, may be paid in cases where a former landowner performs the work himself. 51 Atty. Gen. 166.

32.20 History: 1961 c. 486; Stats. 1961 s. 32.20; 1969 c. 500 s. 30 (2) (e).

32.21 History: 1961 c. 486; Stats. 1961 s. 32.21.

32.25 History: 1969 c. 409; Stats. 1969 s. 32.25.

32.26 History: 1969 c. 409; Stats. 1969 s. 32.26.

32.27 History: 1969 c. 409; Stats. 1969 s. 32.27.

CHAPTER 34.

Public Deposits.

34.01 History: Spl. S. 1931 c. 1 s. 2; 1933 c. 435 s. 2; Stats. 1933 s. 34.01; 1935 c. 55, 222, 438; 1937 c. 210; 1947 c. 411 s. 11(220.02(5)); 1951 c. 511 s. 47; 1953 c. 341; 1961 c. 507; 1969 c. 276 ss. 592 (7), 598 (1).

Moneys of the Milwaukee policemen's annuity and benefit fund, when deposited in a designated depository bank by the city treasurer as custodian of such fund, are a "public deposit," within 34.01 (1) and are "public moneys," within 34.01 (5). Tesch v. Board of Deposits, 237 W 527, 297 NW 379.

Public officers receiving moneys by virtue of their offices come within the provisions of ch. 34, Stats. 1931, and are bound by and receive protection of said chapter. Moneys held in trust by the superintendent of the home for dependent children for benefit of wards of the home are public moneys and come within the provisions of ch. 34. Those designated by the county board are public depositories for clerks of court. 21 Atty. Gen. 127.

Funds distributed to local units of government or committees by the industrial commission are public deposits and are covered by ch. 34. 22 Atty. Gen. 180.

Reconstruction Finance Corporation moneys deposited by the governor or unemployment relief trustees are public deposits under ch. 34. 22 Atty. Gen. 319.

Deposits of state annuity and investment board are public deposits as defined in 34.01 (1). 29 Atty. Gen. 421.

Moneys deposited with the banking commission for specified purposes and which have been deposited as a special fund in the state treasury by the commission pursuant to 220.20 and 220.08 (13) and (14) constitute a "public deposit" and "public moneys" within the meaning of 34.01. 31 Atty. Gen. 191.

Where provisions of 62.13, relating to policemen's and firemen's pension funds in cities of second and third class are applicable to village by virtue of operation of 61.65, such funds are subject to ch. 34. 31 Atty. Gen. 381.

Funds withheld from employes under provisions of federal income tax law by the state treasurer or treasurer of municipality or other governmental subdivision of state, whether such funds are carried in separate tax account or as part of other public funds, are public moneys within meaning of 34.01 (5) and are subject to provisions of ch. 34. 32 Atty. Gen. 103.

Where the FDIC has ruled that pension funds are held by banks in a separate capacity from other funds of the city and are entitled to a separate insurance coverage by virtue of ch. 496, Laws 1939, providing that police and firemen have vested rights in such funds, and ch. 175, Laws 1943, making similar provision for other municipal employes, such funds are to be reported separately to the board of deposits from the dates of these enactments rather than from the date of the FDIC ruling based on these enactments. 33 Atty. Gen. 135.

Funds of the Milwaukee Mid-Summer Festival Corporation are not subject to the public deposits law. Funds of housing authorities created by a city under 66.40 are subject to ch. 34. 35 Atty. Gen. 58.

A Wisconsin "public depositor" cannot without violating the provisions of ch. 34 deposit "public funds" up to $5,000 in an out-of-state bank. This is true (even though deposits in said bank up to that amount may be insured by the Federal Deposit Insurance Corporation and for that reason are by order of the board of deposits exempt from payment of premium into the state deposit fund) since 34.05 (1) and 34.01 (5) establish that every "public depositor" deposit all "public moneys" coming into the hands of the treasurer in a Wisconsin "public depository." 36 Atty. Gen. 181.

Alimony and dependent children payments received by a clerk of court and deposited in a public depository constitutes a public deposit and public moneys. 51 Atty. Gen. 40.

Moneys deposited with the motor vehicle commission under 344.20, placed in custody of state treasurer, are public moneys under 34.01 (5) and subject to placement by investment board under 25.17 (61). 51 Atty. Gen. 57.

34.02 History: 1969 c. 259; Stats. 1969 s. 34.02.

34.026 History: 1935 c. 394; Stats. 1935 s. 34.026; 1943 c. 275 s. 11; 1951 c. 511 s. 47; 1961 c. 507; 1969 c. 276 s. 592 (7).

34.03 History: 1935 c. 55 s. 1, 5; 1935 c. 222, 438, 477; Stats. 1935 s. 34.03; 1937 c. 210, 426; 1947 c. 270; 1947 c. 411 s. 11 (220.02(5)); 1951 c. 319 s. 200; 1951 c. 511 s. 20, 21, 47; 1951 c. 735 s. 3; 1957 c. 640; 1961 c. 507, 682; 1965 c. 433 s. 121; 1967 c. 29 s. 5; 1967 c. 291 s. 14; 1969 c. 276 s. 592 (7).

See note to sec. 1, art. IV, on delegation of power, citing Tesch v. Board of Deposits, 237 W 527, 297 NW 379.

See note to sec. 1, art. VIII, on the rule of taxation (general), citing Tesch v. Board of Deposits, 237 W 527, 297 NW 379.

The board of deposits may accept nonassessable capital stock of a newly organized national bank in lieu of part of its claim against an old bank. The board may not accept capital stock of a state bank which is subject to statutory assessment in lieu of part of its claim. 23 Atty. Gen. 50.