

No. 770, A.]

[Published June 30, 1941.]

CHAPTER 326.

AN ACT to amend, revise and consolidate chapter 22, laws of 1895, as amended, relating to the municipal court for the eastern municipal district of the county of Waukesha.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Chapter 22 of the laws of 1895, as amended, is hereby amended, revised and consolidated to read:

SECTION 1. TERRITORY COMPRISING MUNICIPAL DISTRICT OF WAUKESHA COUNTY. The territory embraced within the towns of Lisbon, Menomonee, Pewaukee, Brookfield, Genesee, Waukesha, New Berlin, Eagle, Mukwonago, Vernon and Muskego, and within all cities and villages therein located, in Waukesha county, is a municipal district, to be called "the eastern municipal district" of the county of Waukesha, for the purpose of establishing a municipal court therein with jurisdiction as hereinafter provided throughout the territory above named.

SECTION 2. MUNICIPAL COURT ESTABLISHED. There is established for the eastern municipal district a court to be known as the municipal court for the eastern district of Waukesha county. This court shall be held at the city of Waukesha, in said county, by a judge to be elected for that purpose.

SECTION 3. JURISDICTION AND POWERS OF COURT. The municipal court for the eastern municipal district of Waukesha county, is a court of record, and shall have a clerk and a seal, with suitable device, to be procured under the direction of the judge thereof, at the expense of the county of Waukesha. It may exercise powers and jurisdiction concurrent with the circuit court of Waukesha county in all cases of bastardy, crimes and misdemeanors arising in the eastern municipal district of the county, except murder. Said municipal court is also vested with all powers and jurisdiction of a justice of the peace in the eastern municipal district, in bastardy cases, criminal actions and proceedings, and jurisdiction of all prosecutions for breach of any ordinance of any city, town and village now or which may hereafter be incorporated in said territory; and jurisdiction of all prosecutions for breach of any ordinance enacted by the

county board of Waukesha county, Wisconsin; and also all the powers and jurisdiction of a justice of the peace of said county in civil cases and proceedings arising within the said municipal district, and also power to hear and determine any such case although the title to land may come in question therein. The general provisions of law relative to civil, criminal and bastardy cases before justices of the peace, shall apply to said court so far as applicable. No justice of the peace, police justice or court commissioner within said eastern municipal district, except when called in to sit as judge of the municipal court of said district as hereinafter provided, shall exercise any jurisdiction in cases of bastardy, crimes, misdemeanors or breaches of any town, village, city or county ordinance arising within the limits of said county, and all such jurisdiction within the limits of said eastern municipal district is vested in the municipal court; except that the police justice of any village or town now, or which may hereafter be incorporated, in said territory, or if there be no police justice therein, then any justice of the peace of said village or town, has concurrent jurisdiction with said municipal court in all breaches of any ordinance or by-law of said village or town, and all the general provisions of law as to the arrest, trial and punishment of offenders shall govern so far as applicable in all such actions and proceedings before said police justices or justices of the peace. Whenever any police justice or justice of the peace before whom any such action or proceeding is pending is legally disqualified from any cause to try the same, said action or proceeding shall be sent for trial to any justice of the peace of said village or town or to the said municipal court. The said municipal court has also jurisdiction of all cases brought for breach of any recognizance given in said court; but no judgment in any such action shall constitute a lien upon real estate until a transcript thereof is duly docketed in the office of the clerk of the circuit court of said county, in like manner as judgments of circuit courts in civil cases are required to be docketed; and when so docketed, shall have the same lien upon real estate in said county as judgments of the circuit court so docketed have. All judgments of said municipal court may be examined and reviewed by the supreme court in the same manner as judgments of the circuit court. To carry out its jurisdiction the municipal court has all the powers of circuit courts,

and the municipal judge has the same powers in all matters pertaining to the jurisdiction of said municipal court, as circuit judges.

SECTION 4. GENERAL PROVISIONS OF LAW APPLICABLE. The general provisions of law which may at any time be in force relative to the circuit courts and actions and proceedings therein, in cases of bastardy and crime, and the manner of impaneling and drawing jurors therein, shall apply also to the said municipal court, unless inapplicable or as hereinafter otherwise provided; and the rules of practice prescribed by the justices of the supreme court for circuit courts, shall be in force in said municipal court; and the rules of practice and proceedings shall conform as near as practicable to the rules of practice of circuit court. It has power and authority to issue all process necessary to carry this practice, which process shall in substance be the same, when applicable, as used in circuit courts. The municipal court may, by rule, direct the practice in said court, and the form and direction of process, when not otherwise provided by law, or the rules prescribed by the justices of the supreme court; and the process of said municipal court in cases of bastardy and crime may be executed in any part of this state by the officer to whom it is addressed. It may, when necessary, issue special venire to complete any panel of jurors therein, in like manner as in circuit courts.

SECTION 5. POWERS AND JURISDICTION OF THE COURT DEFINED. The said municipal court has all the powers and jurisdiction heretofore or now vested in justices of the peace, police justices or police courts of the city of Waukesha in said municipal district, in all cases of bastardy, crimes and misdemeanors arising in said city, and has jurisdiction of all prosecutions for breach of any ordinance, law, rule, regulation or resolution of said city. To carry on its business the court shall be open every morning, Sundays and legal holidays excepted, to hear, try and determine in a summary way, all cases which shall be brought before it by the proper officers, either with or without process, for violation of the laws of this state; and in any case of bastardy, crime or misdemeanor arising in said city or in said eastern municipal district, or of any breach of any such ordinance, law, rule or regulation of said city, the said court may, in its discretion, grant such continuance of cases as may be

necessary to the ends of public justice, with or without bail. Applications for warrants may be made to the clerk of the court, and he may issue the same under the supervision of the municipal judge. A printed copy of any ordinance, by-law or resolution passed by any city, town, village or county, in the official newspaper of said city, town, village or county or in pamphlet or book form, is prima facie evidence of its due passage and publication, and can be received in evidence. After issue joined, and before trial in all cases of misdemeanor cognizable before said court, of which justices of the peace would have jurisdiction, the defendant may demand a jury of not more than 12 nor less than 6 men, and shall designate the number at the time of the demand. The proper officer whom the court may direct shall thereupon make a list of twice the number of jurors demanded, who may be qualified to serve as jurors in courts of record in Waukesha county, and the parties shall then alternately strike therefrom so many names as will leave remaining the number desired. The court shall thereupon issue a venire commanding the officer to summon those so remaining to appear before it, at such time as it may direct, to make a jury for the trial of the said action, and the court may compel their attendance by attachment. Either party may challenge any juror for cause, and the deficiency occasioned thereby, or by any other cause, shall be supplied by talesmen to be selected and summoned by the officer. In all cases for the breach of an ordinance, by-law, rule or resolution, if the defendant shall not demand a jury, any city, town, village and the county may demand a jury as above provided. And if no jury be demanded it shall be a waiver of a jury trial. If either party decline to strike from the list the names which he is entitled to strike, the court may appoint some disinterested person to strike the same for said party. Each juror mentioned in this section shall receive for his services the sum of \$1 for each day, and the fees of such jurors shall be taxed as costs in such action. Witnesses and jurors shall attend before said court in all bastardy proceedings and criminal prosecutions and in actions for the breach of any ordinance, by-law or resolution, without the payment of fees in advance or tender thereof, upon the process of the court duly served; and in default thereof their attendance may be enforced by attachment. In case a jury, after being kept out a reasonable

time, should disagree, they shall be discharged and the court shall adjourn the case to a day certain and issue a new venire as aforesaid.

SECTION 6. JURY LIST. The president of each incorporated village, the mayor of each city and the chairman of the town board of each town, within said municipal district, shall each, on or before the first Tuesday of May in each year, make a list of 20 residents of such village, city or town, qualified to act as jurors in the circuit court of said county of Waukesha, to serve at the regular terms of said municipal court as jurors for the then ensuing year, and deliver such list to the clerk of said municipal court to be filed therein. The jurors for each term of said municipal court shall be selected as follows: At least 12 days before each term of said court at which cases may be tried by a jury, the clerk of said court in the presence of the judge thereof, shall draw from the list of persons selected as above provided to serve as jurors therein, 36 jurors for such term, and the clerk and the judge of said court shall make a list of the names of the persons so drawn, sign the same, and forthwith file such list in the office of said clerk; and the clerk shall issue a venire to summon such jurors. The clerk shall put the names of such persons so drawn in a box in the manner prescribed for jurors in circuit courts, and when a jury shall be required for the trial of any offense on which any information or indictment may be filed, the same shall be drawn from the names in such box, conformably to the practice prevailing in circuit courts. Jurors selected under the provisions of this section shall be eligible to try any case, in the municipal court.

SECTION 7. ELECTION OF JUDGE; TERM. The qualified electors of all the territory embraced in the said eastern municipal district of the county of Waukesha shall, on the first Tuesday of April, A.D. 1895, and on the first Tuesday of April each 6 years thereafter, elect a suitable person, who shall have been admitted to practice in courts of record in said county, and be a resident of the district for which he is elected, to the office of judge of said municipal court, to be called "the municipal judge", who shall hold his office for the term of 6 years from the first Monday in May, next succeeding such election, and until his successor is elected and qualifies, and who may be removed from office in the manner provided in the constitution

for the removal of supreme and circuit judges. If a vacancy shall happen in the office of judge of said court, the governor shall appoint a judge to fill the vacancy until a successor is elected. Elections to fill such vacancies shall be held and conducted as provided in sections 8.02 to 8.05 of the statutes of 1939 and a certificate shall be given as in case of election of county judges.

SECTION 8. APPOINTMENT OF CLERK; DUTIES. Said judge shall appoint in writing a clerk of said court, who shall hold his office during the pleasure of said judge, who shall not be a relative of said judge, and who before entering upon his duties shall take and subscribe the oath of office prescribed in the constitution, and give a bond for the faithful discharge of his duties and to pay over all moneys the same as clerks of circuit courts are required, which appointment, oath and bond shall be filed in the office of the city clerk of the city of Waukesha, and approved by the judge of the county court of Waukesha county, and a duplicate of said appointment, oath, bond and approval thereof filed in the office of the county clerk of said Waukesha county. He shall make and keep the records of said court and perform all ministerial acts required of him, by and under the direction of the judge; he shall have power to administer oaths, and take bail in the absence of the judge, subject to his revision. He may examine on oath all persons applying for warrants, and may reduce their examinations to writing and file the same; and may issue all warrants and other processes from said court, including as well, all summonses and other processes in civil actions, cognizable by justices of the peace. He shall procure, under the direction of said judge, all necessary record books, blanks, stationery, lights and fuel for said court, at the expense of the county of Waukesha, subject to the approval of the county board of Waukesha county. Said clerk may appoint a deputy, which appointment shall be approved by the judge of said court, but be revoked by the clerk at pleasure; such appointment and revocation shall be in writing and filed in the office of said clerk; such deputy shall aid said clerk in the discharge of the duties of his office under his direction; and in the absence of the clerk from his office or from the court, or in case of a vacancy by resignation, death, removal, or from any other cause, such deputy may perform all the duties

of clerk until such vacancy shall be filled. The clerk shall be responsible on his official bond for all official default or misconduct of his deputy. The compensation of said deputy shall in all cases be borne and paid by said clerk.

SECTION 9. TERMS OF COURT. The said municipal court shall hold terms commencing on the first Monday in the months of March and September of each year, at some place in the city of Waukesha to be provided by said county. Grand juries when ordered shall be drawn and summoned as provided in sections 255.14 and 255.15 of the statutes. The district attorney of Waukesha county shall be prosecuting officer in all criminal cases and in bastardy proceedings, and also in all violations of county ordinances, and also in all violations of ordinances of any towns in territory of said eastern district of Waukesha county (the town board of any said town, however, may in its discretion, have its own attorney), and the city attorney in all prosecutions for the breach of any city ordinance, by-law or resolutions brought before said court.

SECTION 10. CHANGE OF VENUE. Whenever a change of venue in any action, examination or proceeding pending in said court shall be taken on account of the prejudice of the judge, or because he is interested in any civil cause of action depending upon the same state of facts that any criminal action is based upon, or is related to the defendant, or has been of counsel for him, or is otherwise disqualified to try the case, it shall be sent to the county court of Waukesha county, providing said county court has jurisdiction to hear the same; otherwise to the circuit court of Waukesha county; or in any case said municipal judge, upon a change of venue duly taken as aforesaid, may send the action, examination or proceeding to the municipal court for the western municipal district for Waukesha county; provided, however, that the judge of said municipal court may, in his discretion, on cause of removal being shown, instead of making an order for removal as aforesaid, set the trial or examination of any action or proceeding for a day certain, and call in the judge for the western municipal district of Waukesha county to hear, try or determine the same. Whenever such change of place of trial or examination shall be applied for by one or more of several defendants in any complaint, indictment or information, in any case where a separate trial or examination

has not been previously awarded to the defendant or defendants making such application, the court in every case where it is adjudged that the place of examination be changed, shall order the change of place of trial or examination as to all of the defendants therein, in the same manner and with like effect as if all had joined in said application; and whenever in any case the place of trial or examination is changed to the circuit or county court of Waukesha county from the said municipal court, at any time when a term of said circuit or county court is being held, the recognizances of the accused and of the witnesses required by law, shall be for their appearance at such term; otherwise for their appearance at the next term of such court.

SECTION 11. SHERIFF TO BE OFFICER OF THE COURT. The sheriff of Waukesha county shall be the officer of said court, shall serve its processes and carry into effect its orders and judgments, and constables residing in said municipal district may serve its process in actions for the breach of village ordinances, and the chief of police and policemen of the city of Waukesha may serve its process in prosecutions for the breach of city ordinances, by-laws or resolutions and in all actions and proceedings in which justices of the peace formerly had jurisdiction; but such chief of police, policemen or constables shall receive no compensation from Waukesha county for such services. The said municipal court shall have power to commit or bail over to an existing term, or to its next regular term, such persons as upon examination are found to be indictable or subject to information and such witnesses as may be necessary.

SECTION 12. ABSENCE OF JUDGE. (1) EASTERN DISTRICT. (a) In case the judge of said court desires to be absent from said court, or in case of his sickness, press of business at a regular term, or of his inability for any cause to attend, he may designate and appoint by order, entered in the minutes of said court, one of the justices of the peace of said county, resident of said municipal district, to temporarily discharge the duties of judge of said court, except holding a term or any part thereof for trial of indictments, information or appeals and his acts shall be of the same force as if performed by the judge. And the clerk shall make a like record of his proceedings, and such justice of the peace shall receive for his service \$5 per

day, to be paid by said county; provided, however, that any and all sums in excess of \$100 so paid by said county for any one year because of the voluntary absence of the judge, shall be by said county, deducted from the salary of said judge. The municipal judge shall not voluntarily absent himself from the duties of his office more than 6 weeks in any one year, except from sickness. Any circuit judge or judge of any municipal court having jurisdiction in criminal cases equal to or greater than the judge of said municipal court for the eastern district of Waukesha county may hold court in term time for the trial of term cases, in case of the absence, sickness or other disability or upon request of the judge of said municipal court, and while so doing shall have the same powers as if elected judge of said court.

(b) In case of sickness, absence, or inability arising from any cause, of the municipal judge for the eastern district of Waukesha county, including application for change of venue on account of prejudice of said judge, or when said judge for any cause deems it improper for him to hear or try any proceeding of the municipal court of his district, or before him as the judge of said court, he may request the county judge of said county to hold court, and hear and try any matter or proceeding as a court or judge of said eastern district, and the said county judge is hereby authorized and empowered, upon such request, to hold said municipal court and perform any act thereof as fully as said municipal judge is authorized or empowered to do. In case of the inability of said judge to make such request or in case of a vacancy in the office of said judge, said county judge shall so act and fulfill the duties of such municipal judge at the request of the circuit judge of said county, or the clerk of such municipal court, until such inability shall cease or until such vacancy shall be filled. Said county judge so acting, under request, as municipal judge shall be designated in all proceedings as "acting municipal judge." Whenever said county judge acts as municipal judge for said district, he shall be compensated for his services in like amount and in like manner as county judges are compensated for holding court in other courts as provided in section 253.07 of the statutes.

(2) WESTERN DISTRICT. In case of sickness, absence, or inability arising from any cause, of the municipal judge

for the western district of Waukesha county, including application for change of venue on account of prejudice of said judge, or when the said judge for any cause deems it improper for him to hear or try any proceeding of the municipal court of his district, or before him as the judge of said court, he may request the county judge of said county to hold court, and hear and try any matter or proceeding as a court of judge of said western district, and the said county judge is hereby authorized and empowered, upon such request, to hold said municipal court and perform any act thereof as fully as said municipal judge is authorized or empowered to do. In case of the inability of said judge to make such request or in case of a vacancy in the office of said judge, said county judge shall so act and fulfill the duties of such municipal judge at the request of the circuit judge of said county, or the clerk of such municipal court, until such inability shall cease or until such vacancy shall be filled. Said county judge so acting, under request, as municipal judge shall be designated in all proceedings as "acting municipal judge." Whenever said county judge acts as municipal judge for said district, he shall be compensated for his services in like amount and in like manner as county judges are compensated for holding court in other courts as provided in section 253.07 of the statutes.

(3) COUNTY JUDGE. In case of sickness, absence, or inability arising from any cause, of the county judge of Waukesha county, including application for a change of venue on account of prejudice of said judge, or when said judge for any cause deems it improper for him to hear, try and determine any proceeding in the county court, he may request the municipal judge of the eastern district of Waukesha county, or the municipal judge of the western district of Waukesha county, to hold court, or hear, try and determine any matter or proceeding as a court, or as a judge of said court in the Waukesha county court, and either of said municipal judges, so called in, is hereby authorized and empowered, upon said request from the county judge, to hold said court and perform any act as the judge thereof as fully as said county judge is authorized and empowered to do in all civil, probate or other matters and pro-

ceedings of which said county court has jurisdiction. In case of the inability of said county judge to make such request, or in case of a vacancy in said office, either of said municipal judges may so act and fulfill said duties of said county judge at the request of the circuit judge of said county, or, in civil matters, at the request of the clerk of the circuit court of Waukesha county, or, in probate matters, at the request of the register in probate of said county court, until such inability shall cease or until the vacancy shall be filled. Either of said municipal judges when so acting upon request, as county judge shall be designated in all proceedings as "acting county judge." Whenever the municipal judge for the eastern district or the municipal judge for the western district of Waukesha county acts as county judge, he shall be compensated for services in like amount and in like manner as county judges are compensated for holding court in other courts as provided in section 253.07 of the statutes.

SECTION 13. FEES OF WITNESSES AND JURORS. The fees of the witnesses, jurors, sheriff and other officers and taxable costs of suits, except as herein provided, shall be the same as in circuit courts, except in cases of proceedings that would otherwise be cognizable by a justice of the peace, in which last mentioned causes and proceedings the same fees and costs shall be taxed and allowed as provided by law in justices' courts. The costs shall be paid in all criminal prosecutions in the name of the state, by the county, and in the city, village and town prosecutions, by the respective city, village or town prosecuting the same.

SECTION 14. SALARY OF JUDGE AND CLERK. The salary of the judge of said municipal court shall be the sum of \$2,880 per annum, to be paid as follows: Three-fourths of the same to be paid out of the county treasury of Waukesha county, one-fourth to be paid out of the treasury of the city of Waukesha, to be paid monthly at the end of each month out of said county and city treasuries respectively. The salary of the clerk of said court shall be \$1,812 per annum, to be paid in like manner and in like proportion as the salary of the judge, which said salaries shall be in full for all services rendered by said judge and clerk of said municipal court.

SECTION 15. TAXING FEES. The said court is authorized to tax and collect fees as follows: For all services rendered by said court in civil and criminal actions when exercising the powers of a justice of the peace, the fees allowed to justices of the peace, except as hereinafter provided; for hearing and deciding any motion, 50 cents for each; for issuing each venire, 50 cents; for making and recording all necessary orders, 50 cents each; for receiving and recording verdict of the jury, 50 cents; taking and approving bail, 50 cents; each commitment, 50 cents; drawing jury in every case, 50 cents; for services of clerk, \$1 in each criminal case; and \$1 in each civil case; and the same shall be paid as other costs in civil and criminal cases are paid, and said judge or clerk shall pay the same into the county and city treasuries, to apply on the salaries of said judge and clerk as follows: All costs imposed and collected in bastardy cases, and in criminal cases, arising under the laws of the state, shall be paid into the county treasury, and all costs imposed and collected in cases arising under the charter and ordinances of any city or village shall be paid into the treasury of the city or village under whose charter, by-laws or ordinance said case arose; and all costs collected in civil cases shall be paid as follows: Three-fourths of the same into the county treasury of Waukesha county, and one-fourth into the treasury of the city of Waukesha. The clerk of said court shall keep an accurate statement of all such costs thus collected, and file the same in the county clerk's office at the end of each month, under his hand and the seal of the said court, and shall at the same time pay over all such moneys as provided for in this act.

SECTION 16. REPORTER. The judge of said court may appoint, and from time to time remove, a stenographic reporter for said court, who shall not be a relative of said judge, who shall take and subscribe the oath of office prescribed in the constitution and who shall be furnished with all necessary stationery and shall attend only when required by said judge, and perform such duties as he may require. Said judge shall fix his compensation, not exceeding that of stenographic reporters in the circuit court, which shall be in full compensation for his services and for making such transcripts of his shorthand notes as he may be required by the judge; and he shall furnish to, and may charge persons requiring them, like transcripts at a

price not exceeding 5 cents per folio. Three-fourths of said reporter's per diem compensation shall be paid by the county and one-fourth by the city of Waukesha quarterly.

SECTION 17. This act shall take effect upon passage and publication.

Approved June 25, 1941.

No. 795, A.]

[Published July 1, 1941.

CHAPTER 327.

AN ACT to repeal 189.01 to 189.24; to renumber 189.25 to be 189.01; to create 189.01 (5), (6) and 189.02 to 189.33; to amend 20.595 (1) of the statutes, relating to the security law, providing penalties, and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Subsection (1) of section 20.595 of the statutes is amended to read:

(20.595) (1) As a revolving appropriation all moneys collected by such department * * * *as filing fees or expenses under section 189.29 or any other provision of chapter 189* to be used for the performance of all duties of said department for which no special appropriation is made and for the administration of chapter 189 in addition to funds otherwise appropriated for the administration of that chapter.

SECTION 2. Sections 189.01 to 189.24 of the statutes are repealed.

SECTION 3. Section 189.25 of the statutes is renumbered section 189.01.

SECTION 4. Subsections (5) and (6) of section 189.01 as renumbered are created to read:

(189.01) (5) Annually on or about December 1, the director shall file in the office of the governor a report containing an accurate review of the work of the department and the administration of this chapter for the preceding fiscal year, including a schedule of all securities for which registration was sought, all registrations granted, all applications for registra-