

CHAPTER 66.

GENERAL MUNICIPALITY LAW.

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66.01 Home rule; manner of exercise. (1) Pursuant to section 3 of article XI of the constitution, the method of determination of the local affairs and government of cities and villages shall be as prescribed in this section.

(2) (a) A "charter ordinance" is any ordinance which enacts, amends or repeals the whole or any part of the charter of a city or village, or makes the election mentioned in subsection (4) of this section. Such charter ordinance shall be so designated, shall require a two-thirds vote of the members-elect of the legislative body of such city or village, and shall be subject to referendum as hereinafter prescribed.

(b) Every charter ordinance which amends or repeals the whole or any part of a city or village charter shall designate specifically the portion of the charter so amended or repealed, and every charter ordinance which makes the election mentioned in subsection (4) of this section shall designate specifically each enactment of the legislature or portion thereof, made inapplicable to such city or village by the election mentioned in subsection (4) of this section.

(3) Every enactment, amendment or repeal of the whole or any part of the charter of any city or village shall be published as provided in section 10.43, shall be recorded by the clerk in a permanent book kept for that purpose, with a statement of the manner of its adoption, and a certified copy thereof shall be filed by said clerk with the secretary of state. The secretary of state shall keep a separate index of all charter ordinances and shall on August 1, 1931, issue a cumulative list of all charter ordinances filed prior to July 1, 1931, arranged alphabetically by city and village and summarizing each ordinance, and annually thereafter shall issue such a list of charter ordinances filed during the twelve months prior to July 1.

(4) Any city or village may elect in the manner prescribed in this section that the whole or any part of any laws relating to the local affairs and government of such city or village other than such enactments of the legislature of state-wide concern as shall with uniformity affect every city or every village shall not apply to such city or village, and thereupon such laws or parts thereof shall cease to be in effect in such city or village.

(5) Any city or village by charter ordinance may make the election mentioned in subsection (4) of this section, or enact, amend or repeal the whole or any part of its charter; but such ordinance shall not take effect until sixty days after its passage and publication. If within such sixty days a petition signed by a number of electors of the city or village equal to not less than seven per cent of the votes cast therein for governor at the last general election shall be filed in the office of the clerk of said city or village demanding that such ordinance be submitted to a vote of the electors it shall not take effect until submitted to a referendum and approved by a majority of the electors voting

thereon. Said petition and the proceedings for its submission shall be governed by subsections (2) to (5) of section 10.43.

(6) Any charter ordinance may be initiated in the manner provided in subsections (1) to (5) of section 10.43, but alternative adoption thereof by the legislative body shall be subject to referendum as provided in subsection (5) of this section.

(7) Any charter ordinance may be submitted to a referendum by the legislative body, in the manner prescribed in subsections (4) and (5) of section 10.43, without initiative petition, and shall become effective when approved by a majority of the electors voting thereon.

(8) Every charter, charter amendment or charter ordinance enacted or approved by a vote of the electors shall control and prevail over any prior or subsequent act of the legislative body of the city or village. Whenever the electors of any city or village by a majority vote shall have adopted or determined to continue to operate under either chapter 62, 63, or 64, or shall have determined the method of selection of members of the governing board, the question shall not again be submitted to the electors, nor action taken thereon within a period of two years. Any election to change or amend the charter of any city or village, other than a special election as provided in subsection (4) of section 10.43 shall be held at the time provided by statute for holding regular city elections.

(9) The legislative body of any city or village, by resolution adopted by a two-thirds vote of its members-elect may, and upon petition complying with section 10.43 shall, submit to the electors in the manner prescribed in subsections (4) and (5) of said section the question of holding a charter convention under one or more plans proposed in said resolution or petition.

(10) The ballot shall be in substantially the following form:

	YES	NO
Shall a charter convention be held?	<input type="checkbox"/>	<input type="checkbox"/>
If a charter convention be held what plan do you favor?		
Plan 1	Plan 2	Repeat for each plan proposed
<input type="checkbox"/>	<input type="checkbox"/>	

Mark an [X] in the square under the one you vote for.

If a majority of the electors voting thereon vote for a charter convention such convention shall be held pursuant to the plan favored by a majority of the total votes cast for all plans. If no plan receives a majority, the two plans receiving the highest number of votes shall be again submitted to the electors and a convention shall thereupon be held pursuant to the plan favored by a majority of the votes cast.

(11) Such charter convention shall have power to adopt a charter or amendments to the existing charter. Such charter or charter amendments adopted by such convention shall be certified, as soon as may be, by the presiding officer and secretary thereof to the city or village clerk and shall thereupon be submitted to the electors in the manner prescribed in subsections (4) and (5) of section 10.43, without the alternative mentioned therein, and shall take effect only when approved by a majority of the electors voting thereon.

(12) Nothing in this section shall be construed to impair the right of cities or villages under existing or future authority to enact ordinances or resolutions other than charter ordinances.

(13) It is the intent of this act that its provisions are separable, and the holding of any provision unconstitutional shall not affect the remainder thereof.

(14) All laws relating to public instruction, pursuant to sections 1, 2, 3, 4 and 5 of article X of the constitution, remain and shall continue in force for the establishment, administration and government of the district schools as heretofore, until amended or repealed by the legislature. The term "district schools" as here used, in addition to common schools includes, among others, any and all public high schools, trade or vocational schools, auxiliary departments for instruction of pupils who are deaf or of defective speech or blind, and truancy or parental schools.

(15) The provisions of section 62.13 and chapter 589 of the Laws of 1921 and chapter 423, Laws of 1923, and chapter 586 of the Laws of 1911, shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of police and fire departments. [1931 c. 211; 1935 c. 193, 248]

Note: The procedure for enacting a charter ordinance is discussed and set forth in State ex rel. Coyle v. Richter, 203 W 595, 234 NW 909.

A charter ordinance of a city is not subject to a statute dealing with local affairs unless such statute affects with uniformity every city. Van Gilder v. Madison, 222 W 58, 267 NW 25, 268 NW 108. City ordinance prohibiting killing of certain wild animals and hunting and trapping within city limits must be held constitu-

tional as local regulation authorized under home rule amendment to constitution until supreme court has ruled otherwise. 19 Atty. Gen. 233.

Ordinance prohibiting blowing of whistles by locomotives crossing city streets is not charter ordinance, and certified copy of such ordinance is not required to be filed in office of secretary of state. 20 Atty. Gen. 802.

City may adopt charter ordinance providing for election of health officer by direct vote of people instead of by appointment. 21 Atty. Gen. 1.

Where charter ordinance purports to aban-

don city-manager form of government under chapter 64, Stats., and restore mayor-alderman plan under chapter 62, it must not conflict with chapter 62, and provisions of said chapter are controlling over those portions of charter ordinance which are in conflict therewith. 26 Atty. Gen. 43.

Charter ordinance of city initiated under 10.43, increasing number of wards, changing number of aldermen from two to one per ward and adopted at spring election, may not be resubmitted at fall election, as specific provision of 66.01 (8) is applicable and controls over general provision of 10.43. 27 Atty. Gen. 593.

66.02 Consolidation. Any town, village, or city may be consolidated with a contiguous town, village, or city, by ordinance, passed by a two-thirds vote of all the members of each board or council, fixing the terms of the consolidation and ratified by the electors at a referendum held in each municipality. The ballots shall bear the words, "for consolidation," and "against consolidation," and if a majority of the votes cast thereon in each municipality shall be for consolidation, the ordinances shall then be in effect and shall have the force of a contract. The ordinance and the result of the referendum shall be certified to the clerk of the consolidated corporation and by him recorded and certified as provided in section 61.11 if a village; or subsection (6) of section 62.06 if a city; to the county clerk, if a town and the certification shall be preserved as provided in subsection (6) of section 60.05, section 61.11 and subsection (6) of section 62.06, respectively. Consolidation shall not affect the pre-existing rights or liabilities of any municipality and actions thereon may be commenced or completed as though no consolidation had been effected.

66.025 Annexation of owned territory. In addition to other methods provided by law, territory owned by and lying near but not necessarily contiguous to a village or city may be annexed thereto by ordinance adopted by the board of trustees of such village or the council of such city. Such ordinance shall contain the exact description of the territory annexed and the names of the town or towns from which detached, and shall operate to attach such territory to such village or city upon the filing of a certified copy thereof in the office of the secretary of state.

66.029 Town boundaries, actions to test alteration. In proceedings whereby territory is attached to or detached from any town, the town is an interested party, and the town board may institute, maintain or defend an action brought to test the validity of such proceedings, and may be interpleaded in any such action. [1933 c. 97; 1937 c. 432]

66.03 Adjustment of assets and liabilities on division of territory. (1) DEFINITION. In this section "municipality" includes school district, town, village and city.

(2) BASIS. Except as otherwise provided in this section when territory is transferred, in any manner provided by law, from one municipality to another, there shall be assigned to such other municipality such proportion of the assets and liabilities of the first municipality as the assessed valuation of all taxable property in the territory transferred bears to the assessed valuation of all the taxable property of the entire municipality from which said territory is taken according to the last assessment roll of such municipality.

(3) REAL ESTATE. (a) The title to real estate shall not be transferred except by agreement, but the value thereof shall be included in determining the assets of the municipality owning the same, and in making the adjustment of assets and liabilities. Except in counties containing a population of five hundred thousand or more in each detachment subject to paragraph (e) of subsection (5) of section 40.85 the title to each parcel of real estate shall be vested in the school district or city in which it is located, subject to final adjustment of assets as provided therein, and shall apply in all cases where the adjustment of assets has not been made on June 11, 1937.

(b) The right to possession and control of school buildings and school sites shall pass to the municipality in which the same are situated immediately upon the annexation or detachment of any school district territory to another municipality becoming effective, except that in cities of the first class the right to possession and control of such school buildings and school sites shall pass on July 1 following the adoption of the ordinance authorized by paragraph (b) of subsection (1) of section 62.07. The municipality thus receiving possession and control of said school buildings and school sites shall be liable to the school district from which the same is annexed or detached for its share of the value of the use thereof, which shall be determined at the time of adjustment of assets and liabilities. The municipality annexing the territory shall provide school facilities for the children residing in the remainder of the school district pending the adjustment of assets and liabilities on payment of tuition based on the per capita cost of instruction.

(4) PUBLIC UTILITIES. Any public utility plant, including any dam, power house,

power transmission line and other structures and property operated and used in connection therewith shall belong to the municipality in which the major portion of the patrons of such utility reside. The value of such utility, unless fixed by agreement of all parties interested shall be determined and fixed by the public service commission upon notice to the municipalities interested, in the manner provided by law. The commission shall certify the amount of the compensation to the clerks of each municipality interested and said amount shall be used by the apportionment board or boards in adjusting assets and liabilities.

(5) **APPORTIONMENT BOARD.** The boards or councils of the municipalities, or committees, thereof selected for that purpose, acting together, shall constitute an apportionment board. When any municipality is dissolved by reason of all of its territory being so transferred the board or council thereof existing at the time of such dissolution shall for the purpose of this section, continue to exist as the board or council of such municipality.

(6) **MEETING.** The board or council of the municipality to which the territory is transferred shall fix a time and place for meeting and cause a written notice thereof to be given the clerk of the municipality from which such territory is taken at least five days prior to the date of the meeting. The apportionment may be made only by a majority of the members from each municipality who attend, and in case of committees, the action must be affirmed by the board or council so represented.

(7) **ADJUSTMENT, HOW MADE.** The apportionment board shall determine, except in the case of public utilities, such assets and liabilities from the best information obtainable and shall assign to the municipality to which the territory is transferred its proper proportion thereof by assigning the excess of liabilities over assets, or by assigning any particular asset or liability to either municipality, or in such other manner as will best meet the requirements of the particular case. If a proportionate share of any indebtedness existing by reason of municipal bonds or other obligations outstanding shall be assigned to any municipality it shall cause to be levied and collected upon all the taxable property in such municipality in one sum or in annual instalments the amount necessary to pay the principal and interest thereon when the same shall become due, and shall pay the amount so collected to the treasurer of the municipality which issued said bonds or incurred such other obligations, who shall apply the moneys so received strictly to the payment of such principal or interest.

(8) **APPEAL TO COURT.** In case the apportionment board is unable to agree, the circuit court of the county in which either municipality is situated, may, upon the petition of either municipality, make the adjustment of assets and liabilities pursuant to provisions of this section.

(9) **TRANSCRIPT OF RECORDS.** When territory shall be detached from a municipality by creation of a new municipality or otherwise, the proper officer of the municipality from which the territory was detached shall furnish, upon demand by the proper officer of the municipality created from the detached territory or to which it is annexed, authenticated transcript of all public records in his office pertaining to the detached territory. The municipality receiving the transcript shall pay therefor. [1931 c. 394; 1937 c. 231; 1939 c. 476; 1941 c. 147]

Note: Upon division of territory and adjustment of assets and liabilities under this section municipality which obtained loan from trust funds is still responsible for repayment of same. Although annexing municipality assumes part of indebtedness, loan must be considered as liability of borrower and included in determining five per cent indebtedness limitation. 22 Atty. Gen. 397.

Provisions of (3) (b) respecting tuition charges are inapplicable where territory has been detached from school district pursuant

to 40.85 and original district continues to provide school facilities for detached territory; such charges are governed by 40.21 (5). 25 Atty. Gen. 491.

Agreement to pay tuition in excess of legal rate for admission to schools of district from which new district is formed by detachment under 40.85, Stats. 1937, of pupils of latter does not abrogate right to division of assets pursuant to 66.03 (5) to (8), for refusal to accept said pupils at legal rate. 27 Atty. Gen. 283.

66.04 Appropriations. (1) **MEMORIAL DAY.** (a) Money for the observance of Memorial day may be appropriated by any town meeting or any town or village board or city council, not to exceed in any one year, the sum of one thousand dollars.

(b) The board or council shall direct the manner of disbursement, unless there be in the town, village, or city a Grand Army post or other organization having in charge memorial day exercises, in which event such organization may direct the manner of disbursement. Two or more such organizations may by concurrent action direct what part of the fund shall be apportioned to each.

(c) The money shall be paid to the chairman, president, or mayor, and he shall account by receipted vouchers to be audited by the board or council. Order of the proper officer of the organization having charge of the exercises, for the payment of expenses of such exercises, shall be a sufficient voucher.

(d) Any town or village board, upon submission of an itemized statement of expenses incurred for Memorial day exercises by a Grand Army post or other organization,

may appropriate not to exceed twenty-five dollars toward such expenses.

(2) **INDEPENDENCE DAY.** Any city or village may appropriate not to exceed five thousand dollars for the celebration of Independence day or for a centennial celebration, provided that such a limitation shall not apply to a city of the first class. The money shall be expended for such purposes, in such manner, and through such city officers or citizen committees as the board or council shall direct, and may be expended without formal contract. When the Fourth of July falls on Sunday the celebration may be had on either the third or the fifth.

(3) **TO PROMOTE PROSPERITY.** (a) Upon petition signed by twenty-five per cent of the electors of a city, according to the preceding vote for governor, filed not less than twenty days prior to the regular city election, the following question shall be submitted: "Shall the city make an annual appropriation for commercial and industrial development?"

(b) If a majority of the votes cast on the question be in the affirmative, the council thereafter shall appropriate annually, in cities of the first class not more than four thousand dollars, in cities of the second class not more than three thousand dollars, and in cities of the third and fourth classes not more than two thousand dollars to aid and encourage the location of manufacturing, industrial, and commercial plants therein and for other purposes designed to increase the population, taxable property, and business prosperity of the city, and for necessary incidental expenses in relation thereto. The moneys shall be used by the council for such purposes.

(c) Thereafter, upon like petition, the question of discontinuing such appropriation shall be submitted and decided in like manner.

(3a) **ADVERTISING OF ATTRACTIONS.** The electors of any town at the annual town meeting, the village board of any village, or the common council of any city at any regular meeting, may appropriate in any year a sum not to exceed one-tenth of one per cent of the assessed valuation of the property of such town, village or city for the purpose of advertising the advantages, attractions and natural resources of such town, village or city and to develop and improve the same. The municipality making the appropriation or any authorized agent thereof may co-operate with any private agency or organization in such work.

(4) **BONUS TO STATE INSTITUTION.** No appropriation or bonus of any kind shall be made by any town, village, or city, nor any municipal liability created nor tax levied, as a consideration or inducement to the state to locate any public educational, charitable, reformatory, or penal institution.

(5) **AID TO AGRICULTURAL SOCIETIES.** Any town, village or city may, by a two-thirds vote of the board or council, appropriate in any one year a sum not to exceed one thousand dollars to aid any organized agricultural society or any incorporated poultry association, but no such society or association shall receive any such aid unless it also receives aid from the state, or make no charge to the public for admittance to its exhibitions.

(6) **PUBLIC WELFARE ASSOCIATIONS.** Any city may appropriate money for charitable and philanthropic purposes, to provide relief and assistance to those in need or to promote the general welfare of the poor and to alleviate poverty. Such appropriation may be made directly to any corporation located in such city organized for the purposes set forth herein. When so appropriated the money shall be expended and accounted for by such corporation in such manner as the council may direct.

(7) **INVESTMENTS.** Any county, city, village, town, school district, drainage district or other governing board as defined by subsection (4) of section 34.01 may invest any of its funds, not immediately needed, in bonds or securities issued or guaranteed as to principal and interest of the United States government or bonds or securities of any county, city, drainage district, village, town or school district of this state, or in the case of a town, city or village in any bonds or securities issued under the authority of such municipality, whether the same create a general municipality liability or a liability of the property owners of such municipality for special improvements made therein, and may sell or hypothecate the same.

(8) **DISBURSEMENT FROM LOCAL TREASURY.** (a) In every city and village all disbursements from the treasury shall be made by the city or village treasurer upon the written order of the city or village clerk after proper vouchers have been filed in the office of the clerk; and in all cases where the statutes provide for payment by the treasurer without an order of the clerk, it shall hereafter be the duty of the clerk to draw and deliver to the treasurer an order therefor before or at the time when such payment is required to be made by the treasurer. The provisions of this subsection shall apply to all special and general provisions of the statutes relative to the disbursement of money from the city or village treasury except subsection (2) of section 67.10.

(b) Municipal disbursements shall be by order check. No such order check shall be released to the payee, nor shall such be valid, unless signed by the clerk and treasurer

of the municipality. Unless otherwise directed by ordinance adopted by the governing body, the mayor or village president shall countersign all city and village order checks. The governing body may also authorize additional signatures.

(c) Whenever any city or village board or commission is vested by statute with exclusive control and management of a fund, including the audit and approval of payments therefrom, independently of the governing body, such payments shall be made by orders issued by the city or village clerk upon the filing with him of certified bills, vouchers or schedules signed by the proper officers of such board or commission, giving the name of the claimant or payee, and the amount and nature of each payment.

(d) No order shall be issued by the city or village clerk in excess of funds available or appropriated for the purposes for which such order is drawn, unless authorized by a resolution adopted by the affirmative vote of the members of the governing body of such city or village.

(e) The governing body of any city or village may, by ordinance adopted by a three-fourths vote of its members, enact a procedure alternative to that provided by paragraph (b) by providing that a complete list of all authorized disbursements verified by the signature of the clerk is filed with each depository bank prior to the issuance of checks for such disbursements. In such case municipal disbursements may be by check signed by the treasurer of the municipality and by such other officer or officers as the governing body may direct by ordinance. [1931 c. 54; 1933 c. 170, 175; 1933 c. 435 s. 2; 1933 c. 454 s. 6; 1935 c. 421 s. 3; 1935 c. 461; 1937 c. 27, 432; 1939 c. 51, 107; 1941 c. 129]

Note: Under (7) town or school district may temporarily invest in unsecured notes of county. 21 Atty. Gen. 406.

Subsection (7) was not repealed by chapter 55, Laws 1935, and municipalities may continue to invest inactive funds in government bonds where this is done in good faith and not for purpose of evading provisions of chapter 55. 24 Atty. Gen. 381.

Under 66.04 (8), Stats., 1937, all disbursements from city and village treasury must be made upon written order of city or village clerk after proper vouchers have been filed in office of clerk. This statute supersedes all prior legislation inconsistent therewith but leaves unchanged any statutory provisions not inconsistent therewith. 27 Atty. Gen. 76.
See note to 41.16, citing 27 Atty. Gen. 420.

66.05 Police regulations. (1) **PRIVILEGES IN STREETS.** (a) Privilege for an obstruction or excavation beyond the lot line, or within a highway in any town, village, or city, other than by general ordinance affecting the whole public, shall be granted only as provided in this subsection.

(b) Application therefor shall be made to the board or council, and the privilege shall be granted only on condition that by its acceptance the applicant shall become primarily liable for damages to person or property by reason of the granting of the privilege, be obligated to remove the same upon ten days' notice by the state or the municipality and waive right to contest in any manner the validity of this subsection or the amount of compensation charged and that the applicant file such bond as the board or council require, not exceeding ten thousand dollars running to the town, village, or city, and such third parties as may be injured, to secure the performance of these conditions. But if there is no established lot line and the application is accompanied by a blue print, the board or council may make such conditions as they deem advisable.

(c) Compensation for the special privilege shall be paid into the general fund and shall be fixed, in towns by the chairman, in villages by the president, and in cities by a board consisting of the board or commissioner of public works, city attorney and mayor.

(d) The holder of such special privilege shall be entitled to no damages for removal of the obstruction or excavation, and if he shall not remove the same upon due notice, it shall be removed at his expense.

(e) Third parties whose rights are interfered with by the granting of such privilege shall have right of action against the holder of the special privilege only.

(f) The provisions of paragraphs (a) to (e), inclusive, do not apply to public service corporations, or to co-operative associations organized under chapter 185 to render or furnish telephone, gas, light, heat or power, but such corporations shall secure permit from the proper official for temporary obstructions or excavation in a highway and shall be liable for all injuries to person or property thereby.

(g) This subsection does not apply to such obstruction or excavation for not longer than three months, and for which permit has been granted by the proper official.

(h) Obstruction or excavation by a city or village in any street, alley, or public place belonging to any other municipality is included in this subsection.

(i) Anyone causing any obstruction or excavation to be made contrary to the provisions of paragraphs (a) to (h), inclusive, shall be liable to a fine of not less than twenty-five dollars and not more than five hundred dollars, or to imprisonment in the county jail for not less than ten days nor more than six months, or to both such fine and imprisonment.

(2) **BUILDING MATERIAL AND APPROACHES IN STREETS.** The council of any city of the fourth class, may by ordinance or resolution, provide for the use of not to exceed one-

third in width of any or all of its streets adjacent to any proposed building, for the purpose of temporarily depositing thereon, building material and other articles necessary to be used in and about the construction of such building, and may by ordinance provide for the use of not to exceed three and one-half feet of its street or streets adjacent to any business building or proposed business building therein, to be used for approaches to such building, stairways to the basement floors of such building or openings for light to such basements.

(3) INTERFERENCE WITH PUBLIC SERVICE STRUCTURE. No contractor having a contract for any work upon, over, along or under any public street or highway shall interfere with, destroy or disturb the structures of any public service corporation encountered in the performance of such work so as to interrupt, impair or affect the public service for which such structures may be used, without first procuring written authority from the commissioner of public works, or other properly constituted authority. It shall, however, be the duty of every public service corporation, whenever a temporary protection of, or temporary change in, its structures, located upon, over, along or under the surface of any public street or highway is deemed by the commissioner of public works, or other such duly constituted authority, to be reasonably necessary to enable the accomplishment of such work, to so temporarily protect or change its said structures; provided, that such contractor shall give at least two days' notice of such required temporary protection or temporary change to such corporation, and shall pay or assure to such corporation the reasonable cost thereof, except when such corporation is properly liable therefor under the law, but in all cases where such work is done by or for the state or by or for any county, city, village, or town, the cost of such temporary protection or temporary change shall be borne by such public service corporation.

(3a) VIADUCTS, PRIVATE IN CITIES. The privilege of erecting a viaduct above a public street or alley, for the purpose of connecting buildings on each side thereof, may be granted by the city council upon the written petition of the owners of all the frontage of the lots and lands abutting upon the portion thereof sought to be connected, and the owners of more than one-half of the frontage of the lots and lands abutting upon that portion of the remainder thereof which lies within two thousand six hundred and fifty feet from the ends of the portion proposed to be so connected. Whenever any of the lots or lands aforesaid is owned by the state, or by a county, city or village, or by a minor or incompetent person, or the title thereof is held in trust, as to all lots and lands so owned or held, said petition may be signed by the governor, the chairman of the county board, the mayor of the city, the president of the board of trustees of the village, the guardian of the minor or incompetent person, or the trustee, respectively, and the signature of any private corporation may be made by its president, secretary or other principal officer or managing agent. Written notice stating when and where the petition will be acted upon, and stating what road, slip, pier, lane or alley, or part thereof, is proposed to be discontinued, shall be given by the city council as follows: By posting copies thereof in three public places in said city not less than three weeks before the day fixed for the hearing, and when possible, by the publication of said notice in the official or some other newspaper printed in said city, once a week for three successive weeks before said day.

(3b) VIADUCTS, REMOVAL OF PRIVATE. A viaduct in any city may be discontinued by the city council, upon written petition of the owners of more than one-half of the frontage of the lots and lands abutting on the street approaching on each end of such viaduct, which lies within two thousand six hundred and fifty feet from the ends of such viaduct. Whenever any of the lots or lands aforesaid is owned by the state, or by a county or city, or by a minor or incompetent person, or the title thereof is held in trust, as to all lots and lands so owned or held, said petition may be signed by the governor, the chairman of the county board, the mayor of the city, the guardian of the minor or incompetent person, or the trustee, respectively, and the signature of any private corporation may be made by its president, secretary or other principal officer or managing agent. Written notice stating when and where the petition will be acted upon, and stating what viaduct is proposed to be discontinued, shall be given by the city council as follows: By posting copies thereof in three public places in said city not less than one year before the day fixed for the hearing and again not less than twenty nor more than thirty days before the date of such hearing, and when possible, by the publication of said notice in the official or some other newspaper printed in said city, once not less than one year before and once a week for three successive weeks before said day.

(4) REMOVAL OF RUBBISH. Cities and villages may cause the removal of ashes, garbage, and rubbish from such classes of places therein as the board or council shall direct. The removal may be from all such places or from those whose owners or occupants desire the service. Districts may be created and removal provided for certain of them only, and different regulations may be applied to each removal district. The cost of removal may be provided for by special assessment against the property served, by general tax upon

the property of the respective districts, or by general tax upon the property of the city or village.

(5) **RAZING OF BUILDINGS.** (a) The governing body or the inspector of buildings or other designated officer in every municipality may order the owner of premises upon which is located any building or part thereof within such municipality which in his or their judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation, occupancy or use, and so that it would be unreasonable to repair the same, to raze and remove such building or part thereof, or if it can be made safe by repairs to repair and make safe and sanitary or to raze and remove at the owner's option. The order shall specify a time in which the owner shall comply therewith and specify repairs, if any. It shall be served on the owner of record or his agent where an agent is in charge of the building and upon the holder of any incumbrance of record in the manner provided for service of a summons in the circuit court. If the owner or a holder of an incumbrance of record cannot be found the order may be served by posting it on the main entrance of the building and by publishing in the official newspapers of the municipality for two consecutive publications at least ten days before the time limited in the order commences to run.

(b) If the owner shall fail or refuse to comply within the time prescribed, the inspector of buildings or other designated officer shall cause such building or part thereof to be razed and removed either through any available public agency or by contract or arrangement with private persons, or closed if unfit for human habitation, occupancy or use. The cost of such razing and removal or closing shall be charged against the real estate upon which such building is located and shall be a lien upon such real estate, and shall be assessed and collected as a special tax. When any building has been ordered razed and removed the governing body or other designated officer under said contract or arrangement aforesaid may sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such razing and removal, shall be promptly remitted to the circuit court with a report of such sale or transaction, including the items of expense and the amounts deducted, for the use of the person who may be entitled thereto, subject to the order of the court. If there remains no surplus to be turned over to the court, the report shall so state. If the building or part thereof is insanitary and unfit for human habitation, occupancy or use, and is not in danger of structural collapse the building inspector shall post a placard on the premises containing the following words: "This Building Cannot Be Used for Human Habitation, Occupancy or Use." And it shall be the duty of the building inspector or other designated officer to prohibit the use of the building for human habitation, occupancy or use until the necessary repairs have been made. Any person, firm or corporation who shall rent, lease or occupy a building which has been condemned for human habitation, occupancy or use shall be liable to a fine of not less than five dollars nor more than fifty dollars for each week of such violation.

(c) Anyone affected by any such order shall within thirty days after service of such order apply to the circuit court for an order restraining the inspector of buildings or other designated officer from razing and removing such building or part thereof or forever be barred. Hearing shall be had within twenty days and shall be given precedence over other matters on the court's calendar. The court shall determine whether the order of the inspector of buildings is reasonable, and if found reasonable the court shall dissolve the restraining order, and if found not reasonable the court shall continue the restraining order or modify it as the circumstances require. Costs shall be in the discretion of the court. If the court finds that the order of the inspector of buildings is unreasonable, the inspector of buildings or other designated officer shall issue no other order pursuant to the authority of this section in regard to the same building or part thereof until its condition is substantially changed. The remedies herein provided shall be exclusive remedies and anyone affected by such an order of the inspector shall not be entitled to recover any damages for the razing and removal of any such building.

(d) "Building" as used in this subsection includes any building or structure.

(6) **GAMBLING.** The board or council of any town, village, or city may prohibit all forms of gambling and fraudulent devices and practices and cause the seizure of anything devised solely for gambling or found in actual use for gambling and the destruction thereof after a judicial determination of the character or use.

(7) **OFFENSIVE INDUSTRY.** (a) Any city council or village board may direct the location, management and construction of, and license (annually or otherwise), regulate or prohibit any industry, thing or place where any nauseous, offensive or unwholesome business may be carried on, within the city or village or within four miles of the boundaries, except that the Milwaukee, Menominee and Kinnickinnic rivers with their branches to the outer limits of the county of Milwaukee, and all canals connecting with said rivers, together with the lands adjacent to said rivers and canals or within one hundred yards

thereof, shall be deemed to be within the jurisdiction of the city of Milwaukee. Any town board as to the area within the town not now or hereafter licensed, regulated or prohibited by any city or village pursuant to the provisions of this subsection, shall have the same powers as provided in this subsection for cities and villages. Any such business conducted in violation of any city, village or town ordinance permitted to be enacted under the provisions of this subsection is declared to be a public nuisance and an action for the abatement or removal thereof or to obtain an injunction to prevent the same may be authorized to be brought and maintained by the city council or village or town board in the name of this state on the relation of such city, village or town as provided in sections 280.01, 280.02 and 280.07, or as provided in section 146.125. The provisions of section 146.11 shall not be construed as any limitation upon the powers granted by this subsection. The provisions of section 146.12 shall not be construed as any limitation upon the powers granted by this subsection to cities or villages but powers granted to towns by this subsection shall be limited by the provisions of section 146.12 and any orders, rules and regulations promulgated thereunder.

(b) Any city or village may, subject to the approval of the town board of such town, by ordinance enact reasonable regulations governing areas where refuse, rubbish, ashes or garbage shall be dumped or accumulated in any town within one mile of the corporate limits of such city or village, so as to prevent nuisance.

(8) LICENSES. (a) *Exhibitions.* Any town, village, or city may license and regulate theatrical and other shows and public exhibitions. Receipts therefrom shall be paid into the treasury, and no license shall be in force beyond the term of the board or council granting the same. No license shall be required for lectures on scientific, moral, or literary subjects, or for concerts, if no other object is connected therewith.

(b) *Billposters.* Any village or city may by ordinance license and regulate billposters, distributors, and outdoor advertisers, fix the terms of license, and revoke the same at pleasure.

(c) *Electricians.* Any village or city may license and regulate electrical installation contractors or subcontractors. The license fee shall be not less than one dollar nor more than twenty dollars per year.

(d) *Peddlers.* Cities may license, regulate or restrain hawkers, peddlers and runners or solicitors for steamboats, vessels, cars, railroads, stages, public houses and other establishments, and other runners or solicitors for mercantile houses from other cities or towns for the sale of goods, wares and merchandise by sample, order or otherwise; and keepers or proprietors of gift book stores, gift concerts and other gift enterprises.

(9) LICENSES FOR NONINTOXICATING BEVERAGES. (a) Each town board, village board and common council shall grant licenses to such persons as they deem proper for the sale of beverages containing less than one-half of one per centum of alcohol by volume to be consumed on the premises where sold and to manufacturers, wholesalers, retailers and distributors of such beverages, for which a license fee of not less than five dollars nor more than fifty dollars, to be fixed by the board or council, shall be paid, except that where such beverages are sold, not to be consumed on the premises, the license fee shall be five dollars. Such license shall be issued by the town, village or city clerk, shall designate the specific premises for which granted and shall expire the thirtieth day of June thereafter. The full license fee shall be charged for the whole or a fraction of the year. No such beverages shall be manufactured, sold at wholesale or retail or sold for consumption on the premises, or kept for sale at wholesale or retail, or for consumption on the premises where sold without such license.

(am) In case of removal of the place of business from the premises designated in the license to another location in the town, village or city within the license period, the licensee shall give notice of such change of location, and the license shall be amended accordingly without payment of additional fee. No such license, however, shall be transferable from one person to another.

(b) No license or permit shall be granted to any person, unless to a domestic corporation, not a citizen of the United States and of this state and a resident of the town, village or city in which such license is applied for, nor to any person who has been convicted of a felony, unless such person has been pardoned.

(c) Each town board, village board and common council shall have authority by resolution or ordinance to adopt such regulations as it may deem reasonable and necessary regarding the location of licensed premises, the conduct thereof, the sale of beverages containing less than one-half of one per centum of alcohol by volume and the revocation of any license or permit.

(9m) LOCAL LICENSING OF SODA WATER BEVERAGES. Each town board, village board and common council of any city may grant licenses to such persons as they deem proper for the sale of soda water beverages, as defined in section 97.09 to be consumed on or off

the premises where sold. Such license fee shall be fixed by such governing body of such city, village or town but shall not exceed five dollars. The license shall be issued by the town, city or village clerk, shall designate the specific premises for which granted and shall expire on the thirtieth day of June thereafter. Each such governing body shall have authority by resolution or ordinance to adopt such regulations as it may deem reasonable and necessary regarding the location of licensed premises, the conduct thereof and the revocation of any such license.

(10) LICENSES FOR FERMENTED MALT BEVERAGES. (a) *Definitions.* As used in this subsection:

1. "Brewer" shall mean any person, firm or corporation who shall manufacture for the purpose of sale, barter, exchange or transportation fermented malt beverages as defined herein.

2. "Bottler" shall mean any person, firm or corporation, other than a brewer, who shall place in bottles fermented malt beverages as hereinafter defined, for the purpose of sale, barter, exchange, transportation, offering for sale, or having in possession with intent to sell.

3. "Wholesaler" shall mean any person, firm or corporation, other than a brewer or bottler, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in fermented malt beverages as herein defined, in quantities of not less than four and one-half gallons at one time, not to be consumed in or about the premises where sold.

4. "Retailer" shall mean any person who shall sell, barter, exchange, offer for sale or have in possession with intent to sell, any fermented malt beverages in quantities of less than four and one-half gallons at any one time.

5. "Permit" shall mean a permit issued to a brewer or bottler by the commissioner of internal revenue of the United States.

6. "Operator" shall mean any person who shall draw or remove any fermented malt beverage for sale or consumption from any barrel, keg, cask, bottle or other container in which fermented malt beverages shall be stored or kept on premises requiring a Class "B" license, for sale or service to a consumer for consumption in or upon the premises where sold.

7. "License" shall mean an authorization or permit issued by the city council or village or town board, relating to the sale, barter, exchange, or traffic in fermented malt beverages.

8. "Application" shall mean a formal written request filed with the clerk of the town, city or village in which the applicant shall be a resident, for the issuance of a license, supported by a verified statement of facts.

9. "Regulation" shall mean any reasonable rule or ordinance adopted by the council or board of any city, village or town, not in conflict with the provisions of any statute of the state of Wisconsin.

10. "Fermented malt beverages" shall mean any liquor or liquid capable of being used for beverage purposes, made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing one-half of one per centum or more of alcohol by volume. No fermented malt beverages shall be sold in this state after September 1, 1933, unless sixty-six and two-thirds per cent or more of the grain used in its manufacture consists of barley malt.

11. "Brewery premises" shall mean and include all land and all buildings used in the manufacture or sale of fermented malt beverages at a brewer's principal place of business.

(b) *Labels.* 1. Every brewer shall file with the state treasurer, in such form as he shall prescribe, proof that said brewer is the possessor of a permit, together with the permit number assigned to him. The state treasurer shall thereupon register such permit number in the name of said brewer. Every bottler shall make application to the state treasurer for the assignment to him of a registration number, which shall be registered in the name of said bottler. The numbers so registered shall appear in plain and legible type upon a label which shall be affixed by each brewer or bottler to every barrel, keg, cask, bottle, or other container in which fermented malt beverage shall be packed by said brewer or bottler.

2. No fermented malt beverage shall be sold, bartered, exchanged, offered or exposed for sale, kept in possession with intent to sell, or served in any licensed premises unless there shall be placed upon each barrel, keg, cask, bottle or other container a label bearing the name and address of the brewer or bottler manufacturing or bottling said beverage and, in plain legible type, the registration number of said brewer or bottler.

3. The possession of any fermented malt beverages in or about any licensed premises which shall not be labeled as herein provided, except upon premises of a brewer or bottler, shall be deemed prima facie evidence that such products are kept and possessed with

intent to sell, offer for sale, display for sale, barter, exchange or give away such fermented malt liquor.

(c) *Restrictions on brewers, bottlers and wholesalers.* 1. No brewer, bottler or wholesaler shall furnish, give or lend any money or other thing of value, other than consumable merchandise intended for resale, including the containers thereof, nor furnish, give, lend, lease or sell any furniture, fixtures, fittings or equipment, directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner thereof, to any Class "B" licensee, or to any person for the use, benefit or relief of any Class "B" licensee, or guarantee the repayment of any loan, or the fulfillment of any financial obligation of any Class "B" licensee; except that brewers, bottlers and wholesalers may: (a) furnish, give, lend or rent outside and inside signs to Class "B" licensees provided the value of such signs, in the aggregate, furnished, given, lent or rented by any brewer, bottler or wholesaler to any Class "B" licensee, shall not exceed \$125 exclusive of erection, installation and repair charges, but nothing herein shall be construed as affecting signs owned and located in the state of Wisconsin on the effective date hereof by any brewer, bottler or wholesaler; (b) furnish miscellaneous advertising matter and other items not to exceed, in the aggregate, the value of \$25 in any calendar year to any one Class "B" licensee; (c) furnish or maintain for Class "B" licensees such equipment as is designed and intended to preserve and maintain the sanitary dispensing of fermented malt beverages, provided the expense incurred thereby does not exceed the sum of \$25 per tap per calendar year no part of which shall be paid in cash to any Class "B" licensee; (d) sell dispensing equipment such as direct draw boxes, novelty boxes, coil boxes, beer storage boxes or tapping equipment, none of which shall include bar additions, to Class "B" licensees for cash or on credit payable in equal monthly payments within 2 years to be evidenced by a written contract or chattel mortgage setting forth all of the terms, conditions and monthly payments agreed on, and within 10 days after execution of the same the seller shall file with the register of deeds for the county wherein such equipment is installed a true copy of such contract or chattel mortgage and pay a filing fee of 50 cents; and (e) acquire within 5 days after the effective date hereof any furniture, fixtures, fittings and equipment, or any valid lien thereon or interest therein, which were actually installed in this state on the premises of any Class "B" licensee prior to the effective date hereof, and may lease or lend the same to Class "B" licensees who are in possession or to any person in possession of the premises where the same are actually installed prior to the effective date hereof. Any brewer, bottler or wholesaler who shall repossess any furniture, fixtures, fittings or equipment lent, leased or sold to any Class "B" licensee may sell the same to any Class "B" licensee, for cash on delivery only, and deliver a bill of sale of the same. Any application for Class "B" license hereafter made for the sale of fermented malt beverages shall have appended thereto and made a part thereof, an affidavit, sworn and acknowledged under oath, by the applicant for such license, setting forth the ownership of the fixtures in or attached to the premises, or any part thereof, and if such fixtures are not owned by the applicant for such license, the manner, terms and conditions under which said fixtures are held. No brewer, bottler or wholesaler shall hereafter, directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner enter into any written agreement, and no written or oral agreement shall be valid, whether or not incorporated in any chattel mortgage, conditional sales contract, bill of sale, lease, land contract, mortgage, deed or other instrument wherein or whereby any Class "B" licensee is required to purchase the fermented malt beverages of any brewer to the exclusion, in whole or in part, of fermented malt beverages manufactured by other brewers. The restrictions contained in this subdivision shall not apply to real estate owned in whole or in part on the effective date hereof by any brewer, bottler or wholesaler, directly or indirectly, or by any subsidiary or affiliate corporation, or by any officer, director, stockholder, partner or trustee for any of the foregoing; or upon which any of the foregoing had or held a valid subsisting lien on said date. Nothing herein contained shall affect the extension of usual and customary commercial credits for products of the industry actually sold and delivered. Any licensee who shall be a party to any violation of this subdivision or who shall receive the benefits thereof shall be equally guilty of a violation of the provisions thereof. The words "effective date hereof" as used in this subdivision mean the date this subdivision took effect. [May 24, 1941]

2. A brewer may maintain and operate a place in and upon the brewery premises and a place in and upon real estate owned by a brewer, or subsidiary or affiliate corporation for the sale of fermented malt beverages for which a Class "B" license shall be required for each place but not more than 2 such Class "B" licenses shall be issued, and in addition a brewer may own, maintain and operate a place or places for the sale of fermented malt beverages on any state or county fairgrounds located within this state. Any Class "B" licenses necessary in connection with this subdivision shall be issued to

the brewer. A brewer may own the furniture, fixtures, fittings, furnishings and equipment used therein and shall pay any license fee or tax required for the operation of the same. Brewers may without license therefor, furnish fermented malt beverages free of charge to customers, visitors and employes on the brewery premises and no license fee shall be required of any such brewer, if such fermented malt beverages so furnished shall be consumed on the brewery premises and if fermented malt beverages shall not be furnished or consumed in or about any room or place where intoxicating liquors, as defined by section 176.01, are sold.

3. A brewer or bottler may own and operate depots or warehouses, from which sales of fermented malt beverages, not to be consumed in or about the premises where sold, may be made in original packages in quantities of not less than four and one-half gallons at any one time. A separate wholesaler's license shall be required for each warehouse or depot maintained or operated.

4. "Brewers" and "Bottlers" who shall desire to sell (in the original packages or containers) fermented malt beverages not to be consumed in or upon the premises where sold, shall be required to obtain a wholesaler's license if said fermented malt beverages are sold in quantities of not less than four and one-half gallons at any one time, or a Class "A" license if such sales are made in quantities of less than four and one-half gallons at any one time.

(d) *Licenses; general requirements.* 1. No person shall sell, barter, exchange, offer for sale, or have in possession with intent to sell, deal or traffic in fermented malt beverages, unless licensed as provided in this subsection by the governing board of the city, village or town in which the place of business is located, provided that in case of a foreign corporation whose wholesale place of business is located outside of the state such wholesaler's license shall be issued by the governing board of a city, village or town in which is conducted some part of such wholesaler's business in this state, provided, however, that no license shall be required to authorize the solicitation of orders for sale to be made to or by licensed wholesalers, provided that nothing herein shall prohibit brewers from manufacturing, possessing or storing fermented malt beverages on the brewery premises or from transporting fermented malt beverages between such brewery premises and any depot or warehouse maintained by such brewer for which such brewer has a wholesaler's license as provided in paragraph (e) of subsection (10) of this section.

2. The governing body of every city, village and town shall have the power, but shall not be required, to issue licenses to wholesalers and retailers for the sale of fermented malt beverages within its respective limits, as herein provided. Said retailers' licenses shall be of two classes, to be designated as Classes "A" and "B."

3. The electors of any city, village or town may, by ballot, at the spring election, determine whether or not Class "B" retail licenses shall be issued for the sale of fermented malt beverages for consumption on or off the premises where sold, or whether or not Class "A" retail licenses shall be issued for the sale of fermented malt beverages for consumption away from the premises where sold, provided that whenever a number of qualified electors of any city, village or town equal to, or more than, fifteen per centum of the number of votes cast therein for governor at the last general election, shall present to the clerk thereof a separate petition on each question, in writing, signed by them, praying that the electors thereof may have submitted to them any such question and shall file such petition with the clerk at least thirty days prior to the first Tuesday of April next succeeding. Within five days of the filing of any such petition such clerk shall determine by careful examination the sufficiency or insufficiency thereof and state his findings in a signed certificate dated and attached to such petition, and within five days give written notice to the beverage tax division, at Madison, Wisconsin, that such petition has been filed with him, stating the question to be submitted, the date of filing such petition, the name of the town, its post-office address, village or city, and such clerk after and not until he shall have determined that such petition is sufficient and shall have given the notice to the beverage tax division as hereinabove set forth, shall forthwith make an order providing that such question shall be so submitted on the first Tuesday of April next succeeding the date of such order. Said petition must be circulated by one or more qualified voters residing in the town, village or city wherein such local option question will be submitted. The preparation of such petition shall be governed as to the use of more than a single sheet of paper, the dates of signatures, the places of residence of signers, and verification thereof, by the provisions of section 5.05 as far as applicable. No petition shall be circulated prior to sixty days before the date on which it must be filed, and no signature shall be counted unless it has been affixed to such petition and bears date within sixty days prior to the time for the filing thereof. At such election a separate ballot box shall be provided for such ballots. Such ballots shall conform to the provisions of subsection (8) of section 6.23.

Any question so submitted shall be upon a separate ballot and the ballot relating to the question of whether or not Class "B" retail license shall be issued shall be upon yellow print paper and the ballot relating to the question whether or not Class "A" retail license shall be issued upon light green print paper. The questions shall read as follows:

Shall Class "B" license (taverns, hotels, restaurants, clubs, societies, lodges, fair associations, etc.) be issued for the retail sale of beer for consumption on or off the premises where sold?

Yes. No.

Shall Class "A" license (stores, etc.) be issued for the retail sale of beer in original packages to be consumed away from the premises where sold?

Yes. No.

The city clerk making such order shall give notice of the election to be held on any such question in the manner notice is given of the regular city election; town and village clerks who make such orders shall give such notice by posting written or printed notices in at least five public places in the town or village not less than ten days before the date of election. The election on such question or questions shall be held and conducted and the returns canvassed in the manner in which elections in such city, town or village on other questions are conducted and the returns thereof canvassed. The results shall be certified by the canvassers immediately upon the determination thereof, and be entered upon the records of the town, village or city, and within ten days such clerk shall notify the beverage tax division of the results of such election. Such result shall remain in effect for a period of two years and thereafter until changed by ballot at another election held for the same purpose. If the results of such election shall prohibit the issuance of Class "A" and Class "B" retail licenses the town, village, or city may nevertheless issue wholesalers' licenses to applicants who qualify under paragraph (e) of subsection (10) of section 66.05, but on condition that such wholesaler shall not make any sale and delivery of fermented malt beverages in such town, village or city to any person, firm or corporation residing in such town, village or city.

4. All licenses shall be granted only upon written application and shall be issued for a period of one year to expire on the thirtieth day of June of each calendar year; provided, that licenses may be granted which shall expire on the thirtieth day of June, 1933, upon payment of one-fourth of the annual license fee. A separate license shall be required for each place of business. Said licenses shall particularly describe the premises for which issued, shall not be transferable, and shall be subject to revocation for violation of any of the terms or provisions thereof or of any of the provisions of this subsection. As soon as an application for a license has been approved a duplicate copy thereof shall be forwarded to the state treasurer.

5. No license shall be imposed upon the sale of fermented malt beverages upon any railroad sleeping, buffet car or steamboat while in transit or in any public park operated by any county, city, town or village when sold by officers or employes thereof pursuant to any ordinance, resolution, rule or regulation enacted by the governing body of such municipality where the receipts from such sales go into the public treasuries.

(e) *Wholesalers' licenses.* Wholesalers' licenses may be issued only to domestic corporations, to foreign corporations licensed under chapter 226 to do business in this state or to persons of good moral character who shall have been residents of this state continuously for not less than one year prior to the date of filing application for said license. Said licenses shall authorize sales of fermented malt beverages only in original packages or containers and in quantities of not less than four and one-half gallons at any one time, not to be consumed in or about the premises where sold. The fee for a wholesaler's license shall not exceed twenty-five dollars per year or fractional part thereof.

(f) *Class "A" retailers' licenses.* Class "A" retailers' licenses shall be issued only to domestic corporations, to foreign corporations engaged in the manufacture of fermented malt beverages and licensed under chapter 226 to do business in this state or to persons of good moral character who shall be citizens of the United States and of the state of Wisconsin and shall have resided in this state continuously for not less than one year prior to the date of the filing of application for said license. Said license shall authorize sales of fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers, or bottles and unrefrigerated. The license fee for a Class "A" license shall not exceed \$10 per year or fractional part thereof. Not more than 2 Class "A" licenses shall be issued in the state to any one corporation or person, and in each application for a Class "A" license the applicant shall state that he has not made application for more than one other Class "A" license for any other location

in the state. No such license shall be issued to any person acting as agent for or in the employ of another.

(g) *Class "B" retailers' licenses.* 1. Class "B" retailers' licenses shall be issued only to persons of good moral character, who shall be citizens of the United States and of the state of Wisconsin, and shall have resided in this state continuously for not less than one year prior to the date of the filing of the application. No such license shall be granted for any premises where any other business shall be conducted, in connection with said licensed premises except that such restriction shall not apply to a hotel, or to a restaurant not a part of or located in any mercantile establishment, or to a combination grocery store and tavern, or to a bowling alley or recreation premises or to a bona fide club, society or lodge that shall have been in existence for not less than six months prior to the date of filing application for such license. Not more than two Class "B" licenses shall be issued in the state to any one person, and in each application for a Class "B" license the applicant shall state that he has not made application for more than one other Class "B" license for any other location in the state. No such license shall be issued to any person acting as agent for or in the employ of another, except that this restriction shall not apply to a hotel or to a restaurant not a part of or located in or upon the premises of any mercantile establishment, or to a bona fide club, society or lodge that shall have been in existence for not less than six months prior to the date of application. Such license for a hotel, restaurant, club, society or lodge may be taken in the name of an officer or manager, who shall be personally responsible for compliance with all of the terms and provisions of this subsection.

2. The amount of the license fee shall be determined by the city, village or town in which said licensed premises are located, but said license fee shall not exceed one hundred dollars per year, but licenses may be issued at any time for a period of six months in any calendar year for which three-fourths of the license fee shall be paid. Such six months' licenses shall not be renewable during the calendar year in which issued. Licenses may also be issued to bona fide clubs, state, county or local fair associations or agricultural societies, lodges or societies that have been in existence for not less than six months prior to the date of application or to posts now or hereafter established, of ex-service men's organizations, authorizing them to sell fermented malt beverages at a particular picnic or similar gathering, or at a meeting of any such post, or during a fair conducted by such fair associations or agricultural societies, for which a fee of not to exceed ten dollars may be charged as fixed by the governing board. All Class "B" licenses shall be posted in a conspicuous place in the room or place where fermented malt beverages are drawn or removed for service or sale, except such licenses issued to the state fair or to county or district fairs receiving state aid. Such license when issued to the state fair or to a county or district fair shall license and cover the entire fairgrounds where a fair is being conducted and all operators thereon retailing and selling fermented malt beverages from let stands. The state fair or county or district fair to which such license is issued may let stands on such fairgrounds to operators who may retail and sell fermented malt beverages therefrom while the fair is being held, and no such operator is required to obtain an operator's license when retailing and selling such beverages on grounds of fairs receiving state aid or of the state fair.

3. Persons holding a Class "B" license may sell fermented malt beverages either to be consumed on the premises where sold or away from such premises. They may also sell beverages containing less than one-half of one per centum of alcohol by volume without obtaining a special license to sell such beverages under subsection (9) of this section.

4. Every holder of a Class "B" retailer's license selling or offering for sale draught fermented malt beverages to be consumed on or off the premises shall display a sign on, over or near each tap or faucet disclosing the brand of beer drawn from each tap or faucet and the name of the manufacturer of the beer on tap, visible to patrons for a distance of at least ten feet so that every patron may be informed of the brand of fermented malt beverages on tap. No such licensee shall substitute any other brand of fermented malt beverage in place of the brand so designated by such visible sign and every licensee who shall violate this subsection shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than fifteen dollars, and the provisions in paragraph (m) of this section shall not apply on account of any violations of this subdivision.

(h) *Conditions of licenses.* Wholesalers' and retailers' licenses shall be issued subject to the following restrictions:

1. No fermented malt beverages shall be sold or consumed upon any licensed premises during such hours as may be prohibited by local ordinance.

2. No fermented malt beverages shall be sold to any person under the age of eighteen years unless accompanied by parent or guardian.

3. No fermented malt beverages shall be sold to any person who is intoxicated.

4. No beverages of an alcoholic content prohibited by the laws of the United States shall be kept in or about licensed premises.

5. No fermented malt beverages shall be sold unless the barrel, keg, cask, bottle, or other container containing the same shall have thereupon at the time of sale a label of the kind and character required by paragraph (b) of this subsection. Every bottle shall contain upon the label thereof a statement of the contents in fluid ounces, in plain and legible type.

6. No person licensed under this subsection shall use the word "saloon" upon any sign or advertising or as a designation of any premises in or upon which fermented malt beverages are sold or kept for sale.

(i) *Operators' licenses.* 1. Every city council, village or town board, may issue a license known as an "Operator's" license, which shall be granted only upon application in writing. Said operator's license shall be issued only to persons of good moral character, who shall have been citizens of the United States and residents of this state continuously for not less than one year prior to the date of the filing of the application. Such licenses shall be operative only within the limits of the city, village or town in which issued. For the purpose of this paragraph any member of the immediate family of the licensee shall be considered as holding an operator's license.

2. There shall be upon premises operated under a Class "B" license, at all times, the licensee or some person who shall have an operator's license and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages to customers. No person other than the licensee shall serve fermented malt beverages in any place operated under a Class "B" license unless he shall possess an operator's license, or unless he shall be under the immediate supervision of the licensee or a person holding an operator's license, who shall be at the time of such service upon said premises.

3. The fee for an operator's license shall not exceed five dollars per year, shall be issued for one year, and shall expire on the thirtieth day of June of each calendar year. An operator's license may be granted, which shall expire on the thirtieth day of June, 1933, upon a payment of one-fourth of the amount of the prescribed license fee.

4. Any violation of any of the terms or provisions of this subsection by any person holding an operator's license shall be cause for revocation of said license.

(j) *Local enforcement.* The common council of any city, the board of trustees of any village and the town board of any town may adopt any reasonable rule or regulation for the enforcement of this section not in conflict with the provisions of any statute.

(k) *Municipal regulations.* Nothing in this subsection shall be construed as prohibiting or restricting any city, village or town ordinances from placing additional regulations in or upon the sale of fermented malt beverages, not in conflict with the terms and provisions of this subsection.

(l) *Court review.* 1. The action of any city council, village or town board in the granting or revocation of any license, or the failure of said city council, village or town board to revoke any license for good cause because of the violation of any of the provisions of this subsection may be reviewed by any court of record in the county in which the application for said license was filed or said license issued, upon application by any applicant, licensee or any citizen of such city, town or village.

2. The procedure in said review shall be the same as in civil actions instituted in said court. The person desiring such review shall file his pleadings, which shall be served upon the city council, village or town board in the manner provided for service in civil actions by statute, and a copy thereof shall be served upon the licensee. The said city council, village or town board or licensee shall have twenty days within which to file his or their answer to said complaint, and thereupon said matter shall be deemed at issue and hearing may be had before the presiding judge of said court within five days, upon due notice served upon the opposing party. The hearing shall be before the presiding judge without a jury. Subpoenas for witnesses shall be issued and their attendance compelled, in accordance with the provisions of statute relating to civil proceedings. The decision of the presiding judge shall be filed within ten days thereafter, and a copy thereof transmitted to each of the parties, and said decision shall be binding unless appeal be had to the supreme court in the manner provided by statute for appeals in civil actions.

(m) *Penalties.* 1. Any person who shall violate any of the provisions of this subsection, or of any municipal ordinance adopted pursuant thereto shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a term of not more than ninety days, or by both such fine and imprisonment, and his license shall be subject to revocation by a court of record in its discretion. No city, village or town shall pass any ordinance which shall fix the penalty for violation of any ordinance so that the same shall be greater than the maximum provided by this subsection. In event that such person shall

be convicted of a second offense, under the provisions of this section such offender, in addition to the penalties herein provided, shall forthwith forfeit any license issued to him without further notice, and in the event that such person shall be convicted of a felony, in addition to the penalties provided for such felony, the court shall revoke the license of such offender. Every town, village or city shall have the right to revoke any license by it issued to any person who shall violate any of the provisions of this subsection or any municipal ordinance adopted pursuant thereto. No license shall thereafter be granted to such person for a period of one year from the date of such forfeiture.

2. Any person, other than the person or corporation registering the same, who shall place upon any barrel, keg, cask, bottle, or other container containing any fermented malt beverage any label bearing a number registered by any other person or corporation, or who shall place upon any label a permit number not registered in the office of the state treasurer shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for not more than one year.

(n) *Legislative intent.* 1. The provisions of this section shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of fermented malt liquors.

2. The several terms and provisions of this subsection shall be deemed severable, and if any provision of this subsection or the application thereof to any person or circumstances is held invalid, the remainder of the subsection and the application of such provisions to other persons or circumstances, shall not be affected thereby. [1933 c. 187 s. 4; 1933 c. 191, 207; *Spl. S.* 1933 c. 1, 3; 1935 c. 50, 99, 117, 187, 238, 252, 266, 280, 352, 417; 1937 c. 346, 365, 372; 1939 c. 69, 205, 423, 426; 1941 c. 73, 103, 121]

Note: A city ordinance enacted under this section was a safety measure, the violation of which constituted negligence as a matter of law, as respects the right of a structural steel-worker, who had erected and stretched across a street a guy-rope supporting a derrick, to recover for injuries sustained when a truck struck the guy-rope. The negligence of the worker in stretching the guy-rope across the street too near the ground in violation of the ordinance contributed to his injury when the defendant's truck struck the guy-rope, causing the derrick to fall and injure the worker who was assisting in hoisting a beam into place. *Langdon v. West Allis*, 216 W 325, 257 NW 8.

It is a matter of common knowledge that purpose of statutory provision, limiting number of retail beer licenses to two for each person, was to prevent brewer from establishing chain of licensed places controlled by him and selling only his own beer (section 1, chapter 207, Laws 1933). *State ex rel. Torres v. Krawczak*, 217 W 593, 259 NW 607.

The power of a city to enact ordinances protecting the welfare of the youth of the city is not limited by statute but such ordinances may prohibit all forms of gambling and fraudulent devices and practices and cause the seizure of anything devised solely for gambling or found in actual use for gambling. The statute is a grant of power rather than a limitation. *Dallman v. Kluchesky*, 229 W 169, 282 NW 9.

The general rule that municipalities may not make regulations inconsistent with the state law is not applicable to city ordinances providing for the licensing of rendering plants because of the statute authorizing the state board of health to inspect and supervise such plants. *La Crosse Rendering Works v. La Crosse*, 231 W 438, 285 NW 393.

One who is not a citizen is not prejudiced by a discrimination between citizens, and therefore cannot challenge the constitutionality of a statute on that ground. Section 66.05 (10) (i) requires that the applicant for an operator's license be a citizen at the time of filing his application and for not less than the year prior thereto, and the statute as so construed is not unconstitutional as discriminating between citizens of the United States. *Vieau v. Common Council*, 235 W 122, 292 NW 297.

If a Class "A" retailer under (10) (f) sells beverages which he is not permitted to sell under his license, the offense is a misdemeanor and subjects the seller to the loss of his license under (10) (m) and such offense is a "crime" within the meaning of the constitution. *Frank v. Kluchesky*, 237 W 510, 297 NW 399.

66.05 (10) (f), Stats. 1939, authorizing the holder of a Class "A" retailer's license to sell fermented malt beverages only for consumption away from the premises where sold and in the original containers and "unrefrigerated," is invalid for indefiniteness and uncertainty in relation to the meaning of the term "unrefrigerated," but (10) (n) 2 contains a severability clause, the term "unrefrigerated" is considered severable, and the statute, with the term "unrefrigerated" eliminated, leaves a workable and valid provision consistent with the legislative intent. *Frank v. Kluchesky*, 237 W 510, 297 NW 399.

Under this section wholesale and Class B retail licenses may not be issued to same person. 22 *Atty. Gen.* 503.

Under this section foreign corporation may not do business in Wisconsin as wholesaler through agent who secures license. 22 *Atty. Gen.* 510.

Confectionery store operated in connection with restaurant is "mercantile establishment" within meaning of (10) (g). 22 *Atty. Gen.* 517.

City, village and town may refuse to grant licenses to sell beer and light wines, and without licenses beer and light wines may not lawfully be sold. 22 *Atty. Gen.* 569.

Under (10) city, town or village has jurisdiction over county-owned property within corporate limits as to issuance of licenses. City, village or town may not arbitrarily discriminate between applicants. Where individuals operate taverns on rented county property for private benefit regular Class B license must be obtained. Agricultural and fair association may be granted license for not to exceed ten dollars, authorizing sales during fair, when sales are for benefit of said association. 22 *Atty. Gen.* 621.

Ordinance of town board regulating sale of malt beverages is not applicable to Camp Williams. 22 *Atty. Gen.* 758.

Brewer may not lend money to person holding Class B license if money is to be used for purchase of tavern fixtures or equipment. Bona fide fixture corporation may furnish or lease fixtures or lend money to Class B licensee, even though stockholders of brewery also own stock in such fixture corporation, but such loan of money may not be accompanied by exclusive beer purchase agreement. Brewer may not guarantee payment for fixtures. 22 *Atty. Gen.* 814.

Brewer does not need wholesaler's license unless operating depots or warehouses in nature of distributing point, separate from brewing plant. Foreign corporation licensed to operate in this state cannot obtain wholesaler's license as domestic corporation. 22 *Atty. Gen.* 967.

Electors in town may secure referendum under (10) (d) 3 by petition by at least twelve qualified voters of town, such petition to be presented early enough to allow town clerk to post notices in accordance with provisions of 60.15. Electors in village cannot demand vote under (10) (d) 3 by petition but question must be submitted by village board. 23 Atty. Gen. 180, 294.

Many questions calling for construction of liquor laws (66.05 (10), chapter 139 and chapter 176) are answered. 23 Atty. Gen. 191.

Corporation may transport fermented malt beverages across state line and distribute them to retail dealers without violating law. Foreign corporation may establish warehouse in Wisconsin from which deliveries of fermented malt beverages previously sold out of state may be distributed without wholesaler's license. 23 Atty. Gen. 364.

Town board may not issue fermented malt beverage license without charge to holder of Class B liquor license. 23 Atty. Gen. 461.

Municipality may require bond from seller of fermented malt beverages, conditioned upon faithful performance of law. 23 Atty. Gen. 719.

District attorney need not prosecute for violations of local "liquor" ordinances. 24 Atty. Gen. 39.

When tavern keeper leaves home with no intention of returning his wife may not operate tavern under license issued in his name. 24 Atty. Gen. 138.

Brother who is member of household of tavern keeper is one of licensee's "immediate family" within (10) (i). 24 Atty. Gen. 362.

Electors may, on one petition, request referenda on issuance of intoxicating liquor and fermented malt beverage licenses. Questions of issuing liquor and fermented malt beverage licenses cannot be on same ballot. 24 Atty. Gen. 411.

Restaurant and grocery store operated in one establishment constitute "other busi-

ness" within meaning of (10) (g) 1. 24 Atty. Gen. 425.

Whether sale of beer on land of CCC camp owned by federal government is subject to local control depends upon whether state has relinquished jurisdiction over land. 25 Atty. Gen. 605.

Provisions of 176.17 and 66.05 (10) (c) 1 do not prohibit granting of wholesale liquor permit to corporation where one of its stockholders holds Class "B" retail license. 26 Atty. Gen. 361.

Under (10) (j) cities, villages and towns may adopt reasonable rules or regulations for enforcement of (10), and bring violation of such ordinance under provisions of (10) (m). Any such rule or regulation must be reasonable. 26 Atty. Gen. 688.

Licenses for sale of malt beverages cannot be issued for period of less than year under (10) (d) 2, but may be granted at any time during calendar year for period of six months during same calendar year under (10) (g) 2. If issued under latter provision said licenses cannot be renewed during calendar year, although holder of six months' license is not precluded from thereafter securing regular annual license upon payment of full year's fee. 27 Atty. Gen. 442.

As to meaning of "premises" in (10), see note to 176.05, citing 27 Atty. Gen. 702.

Under (10) (g) 1, Class "B" retail license for sale of fermented malt beverages may be issued to manager of particular hotel, restaurant, club, etc., that applies for license, but may not be issued to so-called "manager" of that part of hotel devoted to sale of fermented malt beverages only. 27 Atty. Gen. 735.

Issuance of second license under (10) for same premises during same license year is within power of proper licensing authorities. 28 Atty. Gen. 123.

For discussion of concessionaire licenses and town board's powers on state fair grounds, see 28 Atty. Gen. 325.

66.06 Public utilities. (1) **DEFINITIONS.** The definition of "public utility" in section 196.01 is applicable to this section. Whenever the phrase "resolution or ordinance" is used in this section, it means, as to villages and cities, ordinance only.

(2) **LIMITATION.** Nothing in this section shall be construed as depriving the public service commission of any power conferred by sections 195.05, 195.07 and 196.01 to 197.10.

(3) **FRANCHISES.** (a) Any city or village may grant to any person or corporation the right to construct and operate therein a system of waterworks or to furnish light, heat or power subject to such reasonable rules and regulations as the proper municipal authorities by ordinance may from time to time prescribe.

(b) The board or council may submit the ordinance when passed and published to a referendum.

(c) No such ordinance shall be operative until sixty days after passage and publication unless sooner approved by a referendum. Within that time electors equal in number to twenty per cent of those voting at the last regular municipal election, may demand a referendum. The demand shall be in writing and filed with the clerk. Each signer shall state his occupation and residence and signatures shall be verified by the affidavit of an elector. The referendum shall be held at the next regular municipal election, or at a special election within ninety days of the filing of the demand, and the ordinance shall not be effective unless approved by a majority of the votes cast thereon. This paragraph shall not apply to extensions by a utility previously franchised by the village or city.

(4) **SERVICE CONTRACTS.** (a) Cities and villages may contract for furnishing light, heat or water to the municipality or to the inhabitants thereof for a period of not more than ten years or for an indeterminate period if the prices shall be subject to adjustment at intervals of not greater than five years. The commission shall have jurisdiction relative to the rates and service to any city or village where light, heat or water is furnished to such city or village under any contract or arrangement, to the same extent that it has jurisdiction where such service is furnished directly to the public.

(b) When a village or city shall have contracted for water or lighting service to the municipality the cost shall be raised by tax levy and kept as a separate fund and used for no other purpose. In making payment to the owner of the utility a sum equal to the amount due the city from such owner for taxes or special assessments may be deducted.

(c) This subsection shall apply to every city and village regardless of any charter limitations on the tax levy for water or light.

(5) **JOINT USE OF TRACKS.** (a) When two electric railway companies, in pursuance of franchises, are operating upon the same public way, the city may by ordinance, effective ninety days after passage and publication, require joint use of tracks and prohibit the operation of cars on either track in more than one direction. Such joint use shall include right to install and maintain necessary poles, wires, conduits, and other accessories.

(b) Either of such railway companies may acquire by condemnation a right to use the tracks of the other company for such purpose of providing one way tracks, upon terms and conditions determined by agreement, or by the procedure provided in sections 32.08 to 32.14, inclusive, except that pending appeal to the circuit court the use may be had upon payment or deposit with the clerk of the court of the compensation awarded.

(6) **MUNICIPAL TRACKS.** Cities may lay and maintain street railway tracks upon bridges and viaducts and by ordinance lease such tracks to any company authorized to operate a street railway in the city. But the city shall not grant an exclusive lease to any one company, nor such an exclusive franchise upon approaching ways as will prevent other companies from using such municipal tracks.

(7) **JOINT OPERATION.** Any city or village served by any privately owned public utility, street railway or interurban railway rendering local service may contract with the owner thereof for the leasing, public operation, joint operation, extension and improvement by the municipality or with funds loaned by the municipality, for the stabilization by municipal guaranty of the return upon or for the purchase by instalments out of earnings or otherwise of that portion of said public utility, street or interurban railway which is operated within such municipality and any territory immediately adjacent and tributary thereto; or for the accomplishment of any object agreed upon between the parties relating to the use, operation, management, value, earnings, purchase, extension, improvement, sale, lease or control of such property. The provisions of subsection (13) of this section relating to preliminary agreement, approval by the public service commission, and ratification by the electors, shall be applicable to the contracts authorized hereby and said public service commission shall, when any such contract is approved by it and consummated co-operate with the parties in respect to making valuations, appraisal, estimates and other determinations specified in such contract to be made by it.

(8) **ACQUISITION.** (a) Any town, village or city may construct, acquire or lease any plant and equipment located within or without the municipality, and including interest in or lease of land, for furnishing water, light, heat, or power, to the municipality, or to its inhabitants or for street railway purposes; may acquire a controlling portion of the stock of any corporation owning private waterworks or lighting plant and equipment; and may purchase the equity of redemption in a mortgaged or bonded waterworks or lighting system, including the cases where the municipality shall in the franchise have reserved right to purchase. The character or duration of the franchise, permit or grant under which any public utility is operated, shall not affect the power to acquire the same hereunder. Two or more public utilities owned by the same person or corporation, or two or more public utilities subject to the same lien or charge, may be acquired as a single enterprise under any proceeding heretofore begun or hereafter commenced, and the board or council may at any time agree with the owner or owners of any public utility or utilities as to the agreed value thereof, and to contract to purchase or acquire the same hereunder at such value, upon such terms and conditions as may be mutually agreed upon between said board or council and said owner or owners.

(b) A resolution, specifying the method of payment and submitting the question to a referendum, shall be adopted by a majority of all the members of the board or council at a regular meeting, after publication at least one week previous in the official paper.

(c) The notice of the referendum shall include a general statement of the plant equipment or part thereof it is proposed to acquire or construct and of the manner of payment.

(d) Referendum elections under this subsection shall not be held oftener than once a year.

(9) **METHOD OF PAYMENT.** (a) Any town, village, city or power district may, by action of its governing body, provide for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility from the general fund, or from the proceeds or municipal bonds, mortgage bonds, or mortgage certificates. The term municipality as used in this subsection shall include power districts. Any indebtedness created pursuant to paragraphs (b), (c) and (d) of this subsection shall not be considered an indebtedness of such municipality, and shall not be included in arriving at the constitutional five per cent debt limitation.

(b) Where payment is provided by mortgage bonds, the procedure for payment shall be in the manner following:

1. The board or council shall order the issuance and sale of bonds bearing interest at a rate not exceeding six per centum per annum, payable semiannually, executed by the chief executive and the clerk and payable at such times not exceeding forty years from the date thereof, and at such places, as the board or council of such municipality shall determine, which bonds shall be payable only out of the said special redemption fund. Each such bond shall state plainly upon its face that it is payable only from the said special redemption fund, naming the ordinance creating it and that it does not constitute an indebtedness of such municipality. The said bonds may be issued either as registered bonds or as coupon bonds payable to bearer. Coupon and bearer bonds may be registered as to principal in the holder's name on the books of such municipality, such registration being noted on the bond by the clerk or other designated officer, after which no transfer shall be valid unless made on the books of such municipality by the registered holder and similarly noted on the bond. Any bond so registered as to principal may be discharged from such registration by being transferred to bearer after which it shall be transferable by delivery but may be again registered as to principal as before. The registration of the bonds as to the principal shall not restrain the negotiability of the coupons by delivery merely, but the coupons may be surrendered and the interest made payable only to the registered holder of the bonds. If the coupons be surrendered, the surrender and cancellation thereof shall be noted on the bond and thereafter interest on the bond shall be payable to the registered holder or order in cash or at his option by check or draft payable at the place or one of the places where the coupons were payable. Such bonds shall be sold in such manner and upon such terms as the board or council shall deem for the best interests of said municipality; provided, however, that if such bonds are issued bearing interest at the rate of six per centum per annum, they shall not be sold for less than par; if issued bearing a lower rate than six per centum per annum, they may be sold at less than par, provided always that the selling price is such that the interest cost to the municipality for the funds representing the proceeds of said bonds computed to maturity according to standard tables of bond values shall not exceed six per centum per annum. All bonds shall mature serially commencing not later than three years after the date of issue in such amounts that the requirement each year to pay both principal and interest will be as nearly equal as practicable. All such bonds may contain a provision authorizing redemption thereof, in whole or in part, at stipulated prices, at the option of the municipality on any interest payment date after three years from the date of the bonds, and shall provide the method of selecting the bonds to be redeemed. The board or council may provide in any contract for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility, that payment thereof shall be made in such bonds at not less than ninety-five per cent of the par value thereof.

2. All moneys received from any bonds issued pursuant hereto shall be applied solely for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility, and in the payment of the cost of any subsequent necessary additions, improvements and extensions, and there shall be and there is hereby granted and created a statutory mortgage lien upon the public utility to the holders of the said bonds and to the holders of the coupons of said bonds. The public utility shall remain subject to such statutory mortgage lien until the payment in full of the principal and interest of the bonds. Any holder of the said bonds or of any coupons attached thereto may either at law or in equity protect and enforce the statutory mortgage lien hereby conferred, and compel performance of all duties required by this subsection of the municipality. If there be any default in the payment of the principal or interest of any of the said bonds, any court having jurisdiction of the action may appoint a receiver to administer the said public utility on behalf of the said municipality, and the said bondholders, with power to charge and collect rates lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against said utility, and to apply the income and revenues thereof in conformity with this statute and the said ordinance, or the said court may declare the whole amount of said bonds due and payable and may order and direct the sale of the said public utility. Under any sale so ordered, the purchaser shall be vested with an indeterminate permit to maintain and operate the said public utility. Any municipality may provide for additions, extensions and improvements to a public utility owned by said municipality by additional issue of bonds in the manner herein provided; but such additional issue or issues of bonds shall be subordinate to all prior issues of bonds which may have been made hereunder. Any municipality may issue new bonds in the manner herein provided and secured in the same manner, to provide funds for the payment of the principal and interest of any bonds then outstanding.

3. As accurately as possible in advance, said board or council shall by ordinance fix and determine (a) the proportion of the revenues of such public utility which shall be

necessary for the reasonable and proper operation and maintenance thereof; (b) the proportion of the said revenues which shall be set aside as a proper and adequate depreciation fund; and (c) the proportion of the said revenues which shall be set aside and applied to the payment of the principal and interest of the bonds herein authorized and shall set the same aside in separate funds. At any time after one year's operation, the council or board may recompute the proportion of the revenues which shall be assignable as provided above based upon the experience of operation or upon the basis of further financing.

4. The proportion set aside to the depreciation fund shall be expended in making good depreciation either in said public utility or in new constructions, extensions or additions. Any accumulations of such depreciation fund may be invested, and if invested, the income from the investment shall be carried in the depreciation fund.

5. The proportion which shall be set aside for the payment of the principal and interest of the bonds herein authorized shall from month to month as the same shall accrue and be received, be set apart and paid into a special fund in the treasury of the said municipality to be identified as "the . . . special redemption fund."

6. If any surplus shall be accumulated in any of the above funds, it shall be disposed of as provided in paragraph (c) of subsection (11) of this section.

7. The reasonable cost and value of any service rendered to such municipality by such public utility shall be charged against the said municipality and shall be by it paid for in monthly instalments.

8. The rates for all services rendered by such public utility to the municipality or to other consumers, shall be reasonable and just, taking into account and consideration the value of the said public utility, the cost of maintaining and operating the same, the proper and necessary allowance for depreciation thereof, and a sufficient and adequate return upon the capital invested.

9. Said board or council shall have full power to adopt all ordinances necessary to carry into effect the provisions of paragraph (b) of this subsection.

10. Proceedings for purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility by any municipality heretofore begun under the provisions of law other than paragraph (b) of this subsection, may be proceeded with either under the provisions of such law, if still in force, or under the provisions of said paragraph (b) as the board or council may elect. A municipality proceeding under chapter 197 to acquire the property of a public utility may pay for the same by the method provided for in this subsection.

11. The ordinance required by subdivision 3 of this paragraph may set apart bonds hereunder equal to the amount of any secured debt or charge subject to which a public utility may be purchased, acquired, leased, constructed, extended, added to, or improved in any proceedings heretofore begun or hereafter commenced, and shall set aside for interest and sinking fund from the income and revenues of the public utility, a sum sufficient to comply with the requirements of the instrument creating the lien, or if such instrument does not make any provision therefor, said ordinance shall fix and determine the amount which shall be set aside into a secured debt fund from month to month for interest on the secured debt, and a fixed amount or proportion not exceeding a stated sum, which shall be not less than one per cent of the principal, to be set aside into said fund to pay the principal of the debt. Any surplus after satisfying the debt may be transferred to the special redemption fund. Public utility bonds set aside for such debt may, from time to time be issued to an amount sufficient with the amount then in such sinking fund, to pay and retire the said debt or any portion thereof; such bonds may be so issued at not less than ninety-five per cent of the par value in exchange for, or satisfaction of, the secured debt, or may be sold in the manner herein provided, and the proceeds applied in payment of the same at maturity or before maturity by agreement with the holder. The board or council and the owners of any public utility acquired, purchased, leased, constructed, extended, added to, or improved, hereunder may, upon such terms and conditions as are satisfactory, contract that public utility bonds to provide for such secured debt, or for the whole purchase price shall be deposited with a trustee or depository and released from such deposit from time to time on such terms and conditions as are necessary to secure the payment of the debt.

12. Any municipality which has heretofore or may hereafter purchase, acquire, lease, construct, extend, add to or improve, conduct, control, operate, or manage a public utility subject to a mortgage or deed of trust by the vendor or his or its predecessor in title to secure the payment of outstanding and unpaid bonds made by the vendor or his or its predecessor in title, may readjust, renew, consolidate or extend the debt evidenced by such

outstanding bonds and continue the lien thereof of the mortgage, securing the same by issuing bonds to refund the said outstanding mortgage bonds at or prior to their maturity, which bonds shall be payable only out of a special redemption fund to be created and set aside by ordinance as nearly as may be in the manner prescribed by paragraph (b) of this subsection, and which refunding bonds shall be secured by a statutory mortgage lien upon the public utility, and such municipality is authorized to adopt all ordinances and take all proceedings, following as nearly as may be the procedure prescribed by paragraph (b) of this subsection, the lien thereof shall have the same priority on the public utility as the mortgage securing the outstanding bonds, unless it be otherwise expressly provided in the proceedings of the common council or other governing authority to authorize the same.

13. Any city, village or town owning a waterworks system and having controlled and operated and managed such waterworks system through the expenditure of moneys withdrawn from the general fund of such municipality may issue bonds to reimburse its general fund to an amount not exceeding the amount of any such expenditures, and the findings by the governing body of any such municipality of the amount of such expenditures so to be reimbursed by the issue of such bonds shall be conclusive, and such bonds shall be issued and secured in the same manner and with like effect as provided in this section.

(c) When payment is provided by mortgage certificate it shall be in the manner following:

1. The board or council shall order the issue and sale of mortgage certificates which shall recite that they are secured by trust deed or mortgage upon such equipment and that no municipal liability is created thereby.

2. Such mortgage certificates shall bear interest not to exceed six per cent per annum, payable semiannually, shall not be sold for less than ninety-five per cent of the par value, and shall be made payable at the option of such municipality in not less than three years and in not more than twenty years from the date thereof.

3. To secure the payment of principal and interest of such mortgage certificates, the chief executive and clerk shall execute to the purchaser thereof or to a trustee selected by resolution or ordinance, a trust deed or mortgage upon such public utility to the holders of said bonds and to the holders of the coupons of said bonds.

4. The trust deed or mortgage shall among other things provide:

a. That the lien upon the property therein described and upon the income, shall be the only security, and that no municipal liability is created.

b. That the income from operation shall be applied, first to the necessary maintenance and operation, second to provide for proper and adequate depreciation, and third, to payment of the principal and interest of the certificates herein authorized. All certificates shall mature in substantially equal annual instalments, and the first instalment of principal shall fall due and be payable not later than three years after the date of issue. All such certificates shall contain a provision requiring redemption thereof, in whole or in part, at stipulated prices, at the option of the municipality on any interest payment date after three years from the date of the certificates.

c. That if any interest shall remain due and unpaid for twelve months, or if any part of the principal shall not be paid when due, the trust deed or mortgage may be foreclosed.

d. That upon default in payment of principal or interest, the holder of such trust deed or mortgage may by notice in writing served after such default declare the whole amount due and payable six months after such service and that it shall be so due and payable.

5. Refunding mortgage certificates may be issued in the same manner, upon a two-thirds vote of the board or council. The rate of interest and time of payment shall be as fixed by subdivision 2 of paragraph (c) of subsection (9).

(d) Any city, village, town or municipal power district which may own or operate, or hereafter purchase, acquire, lease, construct, extend, add to, improve, conduct, control, operate or manage any public utility may also, by action of its governing body, in lieu of the issuance of bonds or certificates or the levy of taxes and in addition to any other lawful methods or means of providing for the payment of indebtedness, have the power by and through its governing body to provide for or to secure the payment of the cost of purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating, or managing a public utility by pledging, assigning or otherwise hypothecating, the net earnings or profits derived, or to be derived, from the operation of such public utility. To that end, it may enter into such contracts and may mortgage its plant and issue such evidences of indebtedness as may be proper to carry out the provisions of this paragraph.

(9m) PUBLIC UTILITIES UNDER NIRA. For the purpose of financing necessary public works projects whether or not under the act of congress entitled "An act to encourage national industrial recovery, to foster fair competition and to provide for the construction of certain useful public works," approved June 16, 1933, usually referred to as the National Industrial Recovery Act, garbage incinerators, toll bridges, swimming pools, tennis courts, parks, playgrounds, golf links, bathing beaches, bathhouses, street lighting, city halls, courthouses, jails, schools, hospitals, and any and all other necessary public works projects whether or not undertaken pursuant to this federal act by any town, village, city, county or other municipality shall be deemed public utilities within the meaning of subsection (9) of section 66.06, and any town, village, city, county or other municipality may finance such public utilities in accordance with the provisions of and in the manner provided in subsection (9) of section 66.06. For the purposes of such financing, rentals and fees shall be considered as revenue. Any indebtedness created pursuant to this subsection shall not be considered an indebtedness of such town, village, city, county or other municipality and shall not be included in arriving at the constitutional five per cent debt limitation.

(10) MANAGEMENT. (a) In cities owning a public utility, the council shall and in towns and villages owning a public utility the board may provide for a nonpartisan management thereof, and create for each or all such utilities, a board of three or five or seven commissioners, to take entire charge and management of such utility, to appoint a manager and fix his compensation, and to supervise the operation of the utility under the general control and supervision of the board or council.

(b) The commissioners shall be elected by the board or council for a term, beginning on the first day of October, of as many years as there are commissioners, except that the terms of the commissioners first elected shall expire successively one each year on each succeeding first day of October.

(c) The commissioners shall choose from among their number a president and a secretary. They may command the services of the city engineer and may employ and fix the compensation of such subordinates as shall be necessary. They may make rules for their own proceedings and for the government of their department. They shall keep books of account, in the manner and form prescribed by the public service commission, which shall be open to the public.

(d) It may be provided, notwithstanding the provisions of section 62.09, that departmental expenditures be audited by such commission, and if approved by the president and secretary of the commission, be paid by the city or village clerk and treasurer in the manner provided by subsection (8) of section 66.04; that the utility receipts be paid to a bonded cashier or cashiers appointed by the commission, to be turned over to the city treasurer at least once a month; and that the commission have such general powers in the construction, extension, improvement and operation of the utility as shall be designated. Where in any municipality water mains have been installed or extended and the cost thereof has been in some instances assessed against the abutting owners and in other instances paid by the municipality or any utility therein, notwithstanding the provisions of section 62.19 it may be provided by the governing body of such municipality that all persons who paid any such assessment against any lot or parcel of land may be reimbursed the amount of such assessment regardless of when such assessment was made or paid. Such reimbursement may be made from such funds or earnings of said municipal utility or from such funds of the municipality as the governing body may determine.

(e) Actual construction work shall be under the immediate supervision of the board of public works or corresponding authority.

(f) Two or more public utilities acquired as a single enterprise hereunder may be operated as a single enterprise.

(g) In cities of the third or fourth class the council may provide for the operation of a public utility or utilities by the board of public works, in lieu of the commission above provided for.

(11) CHARGES. (a) The council or board of any town, village or city operating a public utility may, by ordinance, fix the initial rates and provide for this collection monthly, quarterly or semiannually in advance or otherwise. The rates shall be uniform for like service in all parts of the municipality. The charges shall be collected by the treasurer.

(b) On the first day of January and July in each year the department in charge of the utility shall furnish the treasurer with a list of all lots or parcels of real estate to which water has been furnished by the town, village or city during the preceding six

months and the amount due for the same. If such amount is not paid within ten days thereafter a penalty of ten per cent shall be added and the treasurer shall proceed to collect the said dues with said penalty, together with five per cent thereon for his fees. He shall have all the authority in collecting said tax vested in him for the collection of general taxes. Said dues shall be a lien on the real estate to which the water was furnished from the time said list is placed in the hands of said clerk, and all sums that have accrued during the preceding year and are not paid by the first day of November in any year shall be reported by the treasurer to the clerk, who shall insert the same in the tax roll as a delinquent tax against the property. All proceedings in relation to the collection, return and sale of property for delinquent taxes shall apply to said tax.

(c) The income of a public utility owned by a municipality, shall first be used to meet operation, maintenance, depreciation, interest, and sinking fund requirements, local and school tax equivalents, additions and improvements, and other necessary disbursements or indebtedness. Income in excess of these requirements may be used to purchase and hold interest bearing bonds, issued for the acquisition of the utility, or bonds issued by the United States or any municipal corporation of this state, or insurance upon the life of an officer or manager of such utility, or may be paid into the general fund.

(d) Any city, town or village may use funds derived from its water plant above such as are necessary to meet operation, maintenance, depreciation, interest and sinking funds, new construction or equipment or other indebtedness, for sewerage construction work other than such as is chargeable against abutting property; or they may turn such funds into the general fund to be used for general city purposes, or may place such funds in a special fund to be used for special municipal purposes.

(e) Any city, village or town owning a public utility shall be entitled to the same rate of return as permitted for privately owned utilities.

(12) **OUTSIDE SERVICE.** (a) Any town, village or city owning water, light or power plant or equipment may serve persons or places outside its corporate limits, including adjoining municipalities not owning or operating a similar utility, and may interconnect with another municipality, whether contiguous or not, and for such purposes may use equipment owned by such other municipality.

(b) So much of such plant or equipment, except water plant or equipment or interconnection property in any municipality so interconnected, as shall be situated in another municipality shall be taxable in such other municipality pursuant to the provisions of sections 76.01 to 76.29.

(13) **SALE OR LEASE.** Any town, village or city may sell or lease any public utility equipment owned by it, in manner following:

(a) A preliminary agreement with the prospective purchaser or lessee shall be authorized by a resolution or ordinance containing a summary of the terms proposed, of the disposition to be made of the proceeds, and of the provisions to be made for the protection of holders of obligations against such equipment or against the municipality on account thereof. Such resolution or ordinance shall be published in the official paper at least one week before adoption, or if there is no such paper, in some paper published in the municipality, if any, otherwise it shall be posted in four of the most public places in the municipality at least ten days before adoption. It may be adopted only at a regular meeting and by a majority of all the members of the board or council.

(b) The preliminary agreement shall fix the price of sale or lease, and provide that if the amount fixed by the public service commission shall be larger, the price shall be that fixed by such commission.

(c) The municipality shall submit the preliminary agreement when executed to the public service commission, which shall determine whether the interests of the municipality and of the residents thereof will be best served by the sale or lease, and if it so determine, shall fix the price and other terms.

(d) The proposal shall then be submitted to the electors of the municipality. The notice of the referendum shall include a description of the equipment, and a summary of the preliminary agreement, and of the price and terms as fixed by the public service commission. If a majority voting on the question shall vote for the sale or lease, the board or council shall be authorized to consummate the same, upon the terms and at a price not less than fixed by the public service commission, with the proposed purchaser or lessee or any other with whom better terms approved by the public service commission can be made.

(e) Unless the sale or lease is consummated within one year of the referendum, or the time is extended by the public service commission, the proceedings shall be void.

(14) IN FIRST CLASS CITIES. All provisions of this subsection apply to all first class cities.

(a) *Waterworks.* 1. Water rates shall be collected in the manner and by any one whom the council may from time to time determine, and shall be accounted for and paid to such other officials in such manner and at such times as the council may from time to time prescribe. Such persons shall give a bond to cover all the duties in such an amount as may be prescribed by the council. Final accounting shall be made to comptroller and final disposition of money shall be made to city treasurer.

2. The words "commissioner of public works" in paragraph (a) hereof shall be construed to mean and have reference to any board of public works, or commissioner of public works, or other officer of any city having control of the public works therein, and all acts authorized to be done by such commissioner except for the enforcement of regulations approved by the council shall require the approval of the council before they shall have any force or effect.

3. When the city owns its waterworks, the commissioner of public works shall have power, from time to time, to make and enforce by-laws, rules and regulations in relation to the said waterworks, and, before the actual introduction of water, he shall make by-laws, rules and regulations, fixing uniform water rates to be paid for the use of water furnished by the said waterworks, and fixing the manner of distributing and supplying water for use or consumption, and for withholding or turning off the same for cause, and he shall have power, from time to time, to alter, modify or repeal such by-laws, rules and regulations.

4. All water rates shall be due and payable on the first days of January, April, July and October in each year, for the three months preceding such days. To all water rates remaining unpaid on the twenty-first day of the month in which they become due, there shall be added a penalty of five per cent of the amount of such rates, and if such rates shall remain unpaid for ten days thereafter, water shall be turned off the premises, subject to the payment of such delinquent rates, and in all cases where the supply of water shall be turned off as above provided, water shall not be again turned on to said premises until all delinquent rates and penalties, and the sum of two dollars as expense for turning the water off and on, shall have been paid. On or before each day when such rates become due and payable as aforesaid, a written or printed notice or bill shall be mailed or personally delivered to the owner or occupant of all premises subject to the payment of water rates, directed to the place where such water is consumed, stating the amount due, the time when and the place where such rates can be paid, and the penalty for neglect of payment.

5. All water rates for water furnished to any building or premises, and the cost of repairing meters, service pipes, stops or stop boxes, shall be a lien on the lot, part of lot or parcel of land on which such building or premises shall be situated. If any water rates or bills for the repairing of meters, service pipes, stops or stop boxes remain unpaid on the first day of October, in any year, the same shall be certified to the city comptroller of such city on or before the first day of November next following, and shall be by him placed upon the tax roll and collected in the same manner as other taxes on real estate are collected in said city. The charge for water supplied by the city in all premises where meters are attached and connected, shall be at rates fixed by the commissioner of public works and for the quantity indicated by the meter. If in any case, the commissioner of public works shall determine that the quantity indicated by the meter is materially incorrect or if a meter has been off temporarily on account of repairs, the commissioner of public works shall determine in the best manner in his power the quantity used, and such determination shall be conclusive. No water rate or rates duly assessed against any property shall be thereafter remitted or changed except by the council of such city.

6. The commissioner of public works of any such city may issue a permit to the county in which it is located, to any national home for disabled soldiers, or to any other applicant to obtain water from the waterworks in the said city for use outside of the limits of such city; and for that purpose to connect any pipe that shall be laid outside of the city limits with any water pipe in such city. No such permit shall be issued until the applicant shall first file with the commissioner of public works a bond in such sum and with such surety as the said commissioner shall approve, conditioned that the said applicant will obey all rules and regulations that may from time to time be prescribed by the commissioner of public works for the use of such water; that he will pay all charges fixed by said commissioner for the use of such water as measured by a meter to be approved by said commissioner, which charges, except as to water furnished directly to county or other municipal properties, shall not be less than one-quarter more

than those charged to the inhabitants of the city for like use of water; that he will pay to any such city a water pipe assessment if the property to be supplied with water has frontage on any thoroughfare forming the city boundary line in which a water main has or shall be laid, and at the rate prescribed by the commissioner of public works; if the property to be supplied does not front on a city boundary but is distant therefrom, that a main pipe of the same size, class and standard as terminates at the city boundary shall be extended, and the entire cost shall be paid by the applicant for the extension; that such water main shall be laid according to city specifications and under city inspection; that such water main and appliances shall become the absolute property of such city, without any compensation therefor, whenever the property supplied with water by said extension or any part thereof shall be annexed to or in any manner become a part of such city; and that he will pay to any such city all damages whatever that it may sustain, arising in any way out of the manner in which such connection is made or water supply is used. In case of granting a permit to any county or to any national home for disabled soldiers, the commissioner of public works may waive the giving of such a bond. Every such permit shall be issued upon the understanding that such city shall in no event ever be liable for any damage in case of failure to supply water by reason of any condition beyond its control.

7. The commissioner of public works shall prescribe and regulate the kind of water meters to be used in such city and the manner of attaching and connecting the same, and may in like manner make such other rules for the use and control of water meters attached and connected as herein provided as shall be necessary to secure reliable and just measurement of the quantity of water used; and may alter and amend such rules from time to time as shall be necessary for the purposes named. If the owner or occupant of any premises, where the attaching and connection of a water meter may lawfully be required, shall neglect or fail to attach and connect such water meter, as is required according to the rules established by the commissioner of public works, for thirty days after the expiration of the time within which such owner or occupant shall have been notified by said commissioner of public works to attach and connect such meter, the commissioner of public works may cause the water supply by the city to be cut off from the premises, and it shall not be restored except upon such terms and conditions as the commissioner of public works shall prescribe.

8. The commissioner of public works may prescribe and regulate the size of connections made with the distribution mains for supplying automatic sprinkler systems and fix an annual charge for such service.

9. The commissioner of public works may also make rules and regulations for the proper ventilating and trapping of all drains, soil pipes and fixtures hereafter constructed to connect with or be used in connection with the sewerage or water supply of the city. The council may provide by ordinance for the enforcement of such rules and regulations, and may prescribe proper penalties and punishment for disobedience of the same. The commissioner of public works may also make rules to regulate the use of vent, soil, drain, sewer or water pipes in all buildings in said city, which hereafter shall be proposed to be connected with the city water supply or sewerage, specifying the dimensions, strength and material of which the same shall be made, and may prohibit the introduction into any building of any style or water fixture, tap or connection, the use of which shall have been determined to be dangerous to health or for any reason unfit to be used, and the commissioner of public works shall require a rigid inspection by a skilled and competent inspector under his direction of all plumbing and draining work and water and sewer connections, hereafter done or made in any building in the city, and unless the same are done or made according to rules of the commissioner of public works, and approved by him, no connection of the premises with the city sewerage or water supply shall be allowed.

10. The said commissioner shall make an annual report to the council of his doings under this subsection and the state of the water fund and the general condition of said waterworks, and such report after being submitted to the council shall be filed in the office of the comptroller.

(b) *Utility directors.* 1. The term "electric plant" as used in this subsection shall mean a plant for the production, transmission, delivery and furnishing of electric light, heat or power directly to the public.

2. If the city shall have determined to acquire a street railway and electric plant or either of them, or any other public utility in accordance with the provisions of this subsection, the mayor of such city, prior to the city taking possession of such property shall appoint, subject to the confirmation of the council, seven persons of recognized business experience and standing to act as the board of directors for such utility. Two of such persons shall be appointed for a term of two years, two for a term of four years, two for a term of six years, and one for a term of eight years. Thereafter successors shall

be appointed in like manner for terms of ten years each. Any such director may be removed by the mayor with the approval of the council for misconduct in office or for unreasonable absence from meetings of the directors.

3. The directors so appointed shall have power: To employ a manager experienced in the management of street railways and electric plants or other like public utilities and fix his compensation and the other terms and conditions of employment and to remove him at pleasure, subject to the terms and conditions of his employment. To advise and consult with the manager and other employes as to any matter pertaining to maintenance, operation or extension of such utility. To perform such other duties as ordinarily devolve upon a board of directors of a corporation organized under chapter 180 of the statutes and which is not inconsistent with the provisions of this act and of the laws governing cities of the first class. No money shall be raised or authorized to be raised by said board of directors other than from revenues derived from the operation of the utility, except by action of the council.

4. The manager appointed by the board of directors shall have complete management and control of the utility, subject to the powers herein conferred upon the board of directors and the council and shall have power to appoint assistants and all other employes which he deems necessary and fix their compensation and other terms and conditions of employment, except that the board of directors may prescribe rules for determining the fitness of persons for positions and employment.

5. The council shall fix the compensation, if any, of members of the board of directors and shall have the powers herein conferred upon it and such other powers as it now possesses with reference to street railways, electric plants and other public utilities.

(15) UTILITY DISTRICTS. (a) Towns, villages and cities of the third and fourth class may establish utility districts and thereafter the expense of highways (not including bridges), sewers, sidewalks, street lighting, and water for fire protection, or either, as board or council shall direct, not chargeable to private property, shall be paid out of the fund of the proper districts.

(b) The fund of each district shall be provided by taxation of the property in such district, upon an annual estimate by the department in charge of public works in cities and villages, and by the superintendent of highways in towns, filed by October first. Separate account shall be kept of each district fund.

(c) In towns a majority vote and in villages and cities a three-fourths vote of all the members of the board or council shall be required to thus establish utility districts and by a like vote districts may be vacated, altered, or consolidated.

(d) Before the vote shall be effective to establish, vacate, alter or consolidate, the procedure prescribed in subsections (2) to (5) of section 62.18 shall be had, both as to the plan and the purposes which the district shall embrace, except that the plan need be approved by the state board of health only as to sewers. In towns the superintendent of highways shall perform the duties hereby imposed upon the board of public works and the notice may be given by posting in three most public places in said town, one of which shall be in the proposed district, at least two weeks prior to such meeting.

(e) The provisions of this subsection shall not affect the application of the provisions of subsection (18) of section 62.18 to any city.

(17) DOCKS AND WHARVES. Any city council may by ordinance establish dock lines, regulate the construction of piers and wharves extending into any lake or navigable waters, prescribe and control the prices to be charged for pierage or wharfage thereon, prescribe and regulate the prices to be charged for dockage and storage in the city, and lease the wharfing privileges of the rivers and navigable waters at the ends of streets, giving preference to owners of adjoining land. No buildings shall be erected on the ends of streets, and a free passage over the same for all persons, with their baggage, shall be reserved.

(18) ICE PLANTS. Any city may enter into any contract which will enable it to purchase, construct, lease or acquire any equipment necessary to secure, manufacture, or sell ice, and to supply ice to itself, its inhabitants and persons doing business therein, or the county in which it is located, and may operate the same.

(19) FUEL DEPOTS. Any city may by a vote of three-fourths of all the members of the council establish and operate equipment for the purchase, sale and supply of fuel to its citizens, under regulation of the council.

(20) SLAUGHTERHOUSES. (a) Authority is hereby given to every county and to every city of more than five thousand inhabitants to construct and maintain public slaughterhouses upon such conditions and under such regulations as may be imposed by the department of agriculture and markets.

(b) The county board in each county and the common council in each city shall authorize the construction of such county or municipal slaughterhouse, shall make the necessary appropriation for the purchase of land and the construction and maintenance of

such slaughterhouse and shall take proper action to secure the building, establishment and maintenance of such county or municipal slaughterhouse. Provided, that in cities such municipal slaughterhouse shall be maintained and operated by the health department in such city.

(c) All cattle, sheep, swine and goats slaughtered in such slaughterhouse shall be examined by the proper state authorities, and after examination and inspection shall be approved or condemned in accordance with the state laws and the municipal regulations governing the examination and inspection of similar private establishments.

(d) Any person, firm or corporation who shall make use of a county or municipal slaughterhouse, and in such use shall violate any of the terms of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment of not more than one year, or by both such fine and imprisonment in the discretion of the court.

(e) The provisions of this section shall apply only to such counties and to such cities as shall have adopted the same at any general or municipal election at which the question of the establishment of such county or municipal slaughterhouse shall have been submitted to the voters of such county or such city. Such question shall, upon the written petition of electors of such county or such city equal in number to at least ten per cent of all the votes cast in such county or such city for governor at the last preceding general election, be submitted to the electors of such county or such city at the next ensuing election, and if a majority of votes cast shall be in favor of the establishment of such slaughterhouse, the provisions of this section shall apply to such county or to such city.

(21) AERIAL LANDING FIELDS. Any city may purchase or lease lands for the use of the public as an aerial landing field, and may construct thereon hangars, shops, and other equipment and maintain such landing field; and may establish and collect uniform fees for use of such field. Neither the city, nor any board, commission or officer thereof, maintaining and operating any aerial landing field, as provided in this subsection, and collecting fees for the use of the same, shall be held liable in damages for injuries done to any person, not an employe of such city, by reason of the maintenance or operation of such landing field.

(22) SEWER SYSTEM, RENT CHARGE. (a) Any town, village or city may construct, acquire or lease, extend or improve any plant and equipment within or without its corporate limits for the treatment and disposal of sewage, including the intercepting sewers necessary in connection therewith, and provide payment for the same or any part thereof from the general fund, from taxation, or from the proceeds of either municipal bonds, mortgage bonds, mortgage certificates, or as otherwise provided by law.

(b) It may provide that the entire capital, operating and other costs and expenses mentioned in paragraph (j) shall be paid out of the sewerage service charges or that only a part of these costs and expenses be so paid, and that the balance be paid from the general fund or by taxation or otherwise.

(c) A resolution specifying the method of payment shall be adopted by a majority of the members of the governing board at a regular meeting, after publication of said resolution at least one week previous in the official paper. The resolution need not be submitted to a referendum of the electors.

(d) The resolution shall include a general description of the plant, equipment, intercepting sewers, or other property it is proposed to acquire, construct or lease and the manner of payment.

(e) Where payment in whole or in part is to be made by the issue and sale of mortgage bonds or mortgage certificates, such payments shall be made as is provided in subsection

(9) of section 66.06, the provisions of which subsection as the same has been and from time to time may be amended or recreated are made a part of this section except as otherwise inconsistent herewith. The term "public utility" as used in said subsection as the same has been and from time to time may be amended or recreated shall for this purpose include the sewage treatment or disposal plant and the intercepting sewers, accessories, equipment and other property, including land. Such mortgage bonds or mortgage certificates shall not constitute a general indebtedness of the municipality but shall be secured only by the property and revenue of such plant, and the franchise herein provided for.

(ee) In the event of a sale of the mortgaged premises on a judgment of foreclosure and sale, the price paid for the same shall not exceed the amount of the judgment and the costs of sale to and including the recording of the sheriff's deed. The purchaser on the foreclosure sale may operate and maintain said sewage disposal plant and the intercepting sewers and collect sewerage service charges, and for that purpose shall be deemed to have a franchise from the municipality. The term "purchaser" shall include his successors or assigns. The rates to be charged, in addition to the contributions, if any, which the municipality has obligated itself to make towards the capital or operating costs of the plant, shall be sufficient to meet the requirements of operation, maintenance, repairs, de-

preciation, interest and an amount sufficient to amortize the judgment debts and all additional capital costs which the purchaser contributes to the plant over a period not exceeding twenty years, and in addition to the foregoing the purchaser of the premises shall be entitled to earn a reasonable amount, as determined by the public service commission, on the actual amount of his investment in the premises represented by the purchase price of the premises, plus any additions made to the same by the purchaser or minus any payments made by the municipality on account of such investments. The municipality may at any time by payment reduce such investment of the purchaser and after full payment of the purchase price plus the cost of subsequent improvements the premises shall revert to the municipality. It is further provided that so long as the premises are owned by the private purchaser, the same shall be considered a public utility and be subject to the provisions of chapter 196 of the statutes so far as applicable.

(f) For the purpose of making equitable rates for all services rendered by the sewerage system to the municipality or to citizens, corporations and other users, the property benefited thereby may be classified, taking into consideration the volume of water, including surface or drain waters, the character of the sewage or waste and the nature of the use made of the sewerage system, inclusive of the sewage disposal plant.

(g) Any town, village or city may pledge, assign or otherwise hypothecate the net earnings or profits derived or to be derived from a sewerage system to secure the payment of the costs of purchasing, constructing or otherwise acquiring a sewage disposal plant and necessary intercepting sewers or any part thereof, or for extending or improving such plant or intercepting sewers, in the manner provided in paragraph (d) of subsection (9) of section 66.06 as the same has been and from time to time may be amended or recreated.

(h) When payment is provided by mortgage bonds or mortgage certificates, the sewerage system may be placed under the management of the same officials as control the water utility of said municipality, or otherwise, as provided by the governing body of the municipality.

(i) Sewerage service charges, which shall be established by the governing body of the municipality, shall be at least sufficient to meet the requirements for operation, maintenance, repairs and depreciation. Such charges shall be collected and taxed and shall be a lien upon the property served in the same manner as water rates are taxed and collected under the provisions of subsection (11) and subdivision 5 of paragraph (a) of subsection (14) of section 66.06 as the same has been and from time to time may be amended or recreated, so far as applicable. The governing body of any town, village or city, and the officials in charge of the management of the sewerage system as well as other officers of the municipality, shall be governed in the discharge of their powers and duties under this subsection by the provisions of subsections (11) and (12) and the subdivision 5 of paragraph (a) of subsection (14) of section 66.06 as the same has been and from time to time may be amended or recreated, which are hereby made a part of this section so far as applicable and not inconsistent herewith.

(j) If the governing body of the municipality deems it advisable, rates may be established which shall not only be sufficient to meet the requirements for operation, maintenance, repairs and depreciation, but also for the payment of the principal and interest of the bonds authorized and all or a part of the expenses for additions and improvements and other necessary disbursements or indebtedness. No part of the income of such plant shall be paid into the general fund, but all income in excess of the above requirements shall be paid into a special fund to be used only for the purposes set forth in this subsection.

(k) Upon complaint to the public service commission by any user of the service that rates, rules and practices are unreasonable or unjustly discriminatory, or upon complaint of a holder of a mortgage bond or mortgage certificate or other evidence of debt, secured by a mortgage on the sewage disposal plant and intercepting sewers or pledge of the income of sewerage service charges, that rates are inadequate, the public service commission shall investigate said complaint, and if sufficient cause therefor appears shall set the matter for a public hearing upon ten days' notice to the complainant and the town, village or city. After such hearing, if the public service commission shall determine that the rates, rules or practices complained of are unreasonable or unjustly discriminatory, it shall determine and by order fix reasonable rates, rules and practices and shall make such other order respecting such complaint as may be just and reasonable. The proceedings herein shall be governed, as far as is applicable, by the provisions of sections 196.26 to 196.405.

(l) An appeal shall lie from the determination of the public service commission by any person aggrieved in the manner prescribed in sections 196.41 and 196.42.

(m) The word "sewerage" as used in this subsection shall be considered a comprehensive term, including all constructions for collection, transportation, pumping, treatment and final disposition of sewage.

(n) The authority hereby given shall be in addition to any power which towns, villages or cities now have with respect to sewerage or sewage disposal. Nothing in this section shall be construed as restricting or interfering with any powers and duties of the state board of health as prescribed by law. [1931 c 79 s. 8; 1931 c. 183 s. 2; 1931 c. 198, 388; 1933 c. 89, 102, 133, 162, 273; 1933 c. 455 s. 3; 1933 c. 479; 1935 c. 159, 230, 242, 531; 1935 c. 550 s. 405; 1937 c. 100, 252, 319; 1939 c. 155, 259, 275, 395; 1941 c. 129]

Note: It is determined that, since a public utility does not obtain an indeterminate permit in a town by simply occupying the highways pursuant to permit authorized by said 86.16, or by virtue of organization as a domestic corporation with powers conferred by said 180.17, or by merely extending its service to persons and places within a town, neither a city nor a power company was operating as a public utility under an indeterminate permit in a village formed out of the town, and that no declaration of public convenience and necessity by the commission was required under said 196.50 and 196.55, as a condition precedent to the grant by the village within the express authority of (3) of a franchise to another company. South Shore U. Co. v. Railroad Commission, 207 W 95, 240 NW 784.

The effect of 62.14 (1) and 66.06 (10) (g) is that in a city of the fourth class a municipal utility may be managed either by a non-partisan commission or by a board of public works, and that the board of public works, as constituted by 62.14 (1), may be dispensed with and its duties performed by such officers and boards as the common council may designate. Rice Lake v. United States F. & G. Co., 216 W 1, 255 NW 130.

Mortgage bonds financing extension of municipal sewage system which pledged property and income of entire system, as authorized by statute (sec. 66.06 (9) and (22), Stats. 1933), held not a municipal indebtedness included in constitutional debt limitation. Payne v. Racine, 217 W 550, 259 NW 437.

The inclusion of lots, purchased by a village for the situs of a well, in a trust deed securing mortgage certificates, issued under (9) (b), (c), given in payment for a water system, did not create an incumbrance on property owned by the village at the time of the contract and did not make the purchase price of the system an additional municipal indebtedness so as to exceed the constitutional limit, where, under purchase the contract, the lots became a part of the property and plant which the village agreed to buy from the contractor, and where the contract did not obligate the village to pay any sum in discharge of the trust deed and certificates except out of revenues to be obtained from the use of the unit of which the lots had become a part. [State ex rel. Morgan v. Portage, 174 W 583, distinguished] Morris v. Ellis, 221 W 307, 266 NW 921.

The effect of (4) (a), extending the jurisdiction of the public service commission to lighting and heating rates and service furnished to a city or village under contract, is to place such contracts under the supervision of the commission, whether or not the contracting company is a public utility, and not to make a company furnishing light or heat under such a contract a public utility. Union Falls Power Co. v. Oconto Falls, 221 W 457, 265 NW 722.

The methods prescribed by (8), (9) and 197.01 to 197.05 for the municipal acquisition of public utilities are separate, distinct, and mutually exclusive. Wisconsin P. & L. Co. v. Public Service Commission, 222 W 25, 267 NW 386.

Under (10) (a) a village utility commission has implied power to remove the manager at pleasure, and the commission cannot surrender its power of removal by appointing or making a contract with a manager for a definite term. Richmond v. Lodi, 227 W 23, 277 NW 620.

Where a city had owned and operated its own generating and distribution plant for many years and was presently operating its own distribution system, its proposal to install and operate its own Diesel generating plant, instead of continuing to purchase electrical energy from the supplier, did not involve an "acquisition" of a plant, but involved "extending, adding to, or improving"

the existing system, and, under (9) (a) and (b), the common council could issue mortgage-revenue bonds for the purposes stated without submitting the matter to a referendum, as required by (8) (a) in the case of an "acquisition". Flottum v. Cumberland, 234 W 654, 291 NW 777.

It was proper for the common council of a city, in proceedings under 66.06, for a utility acquisition project and paying for the same by mortgage-revenue bonds to be issued pursuant to (9) (b), to adopt a resolution and submit the proposition to a referendum of the electors as prescribed and required therefor by (8) (b), (c) and to ignore a proposed ordinance filed with the council by petition of the requisite number of electors under 10.43. Flottum v. Cumberland, 234 W 654, 291 NW 777.

The sale of mortgage-revenue bonds issued by a city pursuant to 66.06 (9) is governed by the special provisions in that subsection and not by provisions in ch. 67, it being the clear intent of the legislature to exempt all mortgage bonds issued pursuant to 66.06 from the provisions of ch. 67, although the literal provision of 67.01 (8) (g) is that ch. 67 is not applicable to mortgage bonds issued pursuant to 66.06 for the purpose of "acquiring" public utilities. Flottum v. Cumberland, 234 W 654, 291 NW 777.

Municipally owned public utility may not invest its depreciation fund except in manner provided in 66.04 (7). 20 Atty. Gen. 571.

Municipal utility may collect charges as taxes. Lien is imposed even though property has been sold after delinquent charges were incurred. 21 Atty. Gen. 695.

Municipality owning public utility property may extend facilities thereof beyond city limits without referendum.

Except for question of construction or acquisition by municipality of public utility property and proposed method of financing, mortgage bonds authorized by (9) may be issued without referendum vote. 25 Atty. Gen. 594.

Bonds purchased by municipal utility pursuant to (11) (c) should be deposited with city treasurer for safe-keeping. 25 Atty. Gen. 612.

City of third class operating on commission plan may govern its utility by non-partisan commission pursuant to (10). Offices of municipal utility commissioner and metropolitan sewerage district commissioner are compatible. Commission city of third class may by charter ordinance provide for method of selection of members of utility commission. 26 Atty. Gen. 267.

Subsection (13) does not apply to disposition of old, inadequate or obsolete equipment of municipally owned utility in replacement thereof by modern and adequate equipment. 27 Atty. Gen. 115.

Twenty-five per cent differential provision in (14) (a) 1, Stats. 1937, has no application to charges to be made for water furnished to other municipally owned water utilities by city of Milwaukee. If twenty-five per cent differential, where applicable, results in rate in excess of that necessary to produce fair return for service in accordance with commission standards, such excess may be considered for purposes of arriving at fair return on value of used and useful property of utility when establishing rates to be charged to customers within city. 27 Atty. Gen. 522.

Member of municipal utility commission under (10) is not entitled to compensation. He may not hold position of manager of utility and receive compensation therefor. 28 Atty. Gen. 44.

Public service commission has no jurisdiction under 66.06 (22) (k) to hold a hearing for purpose of determining reasonable rates to be charged one municipality by another for sewage service where the service was acquired by order of the state board

of health under 144.07. 28 Atty. Gen. 503.

Ch. 395, Laws 1939 is in all probability valid legislation in treating armory as public utility for purposes of financing without creating municipal indebtedness within meaning of sec 3, art. XI, Const. 28 Atty. Gen. 663.

Municipal utility funds are separate and distinct from general funds of municipality and are held by municipality in separate capacity and right within meaning of FDIC act and are each entitled to be treated as insured funds to full extent of \$5,000. 29 Atty. Gen. 407.

66.065 Special assessments. (1) Whenever any village or city shall construct or acquire by gift, purchase or otherwise a distribution system or a production or generating plant, or either of them, for the furnishing of light, heat or power to any municipality or its inhabitants or shall make any extensions thereto, such city or village may assess the whole or any part of the cost thereof to the property benefited thereby, whether abutting or not, in the same manner as is provided for the assessment of benefits for sanitary sewers under the provisions of subsection (6) of section 62.16 and section 62.18.

(2) Such special assessments may be made payable and certificates or bonds issued as is provided in sections 62.20 and 62.21. In villages or cities where no official paper is published, notice prescribed by subsection (6) of section 62.16 and sections 62.18, 62.20 and 62.21 may be given by posting said notice in three public places in said village or city as provided in subsection (4) of section 61.41.

(3) The provisions of this section shall not apply to any assessment made prior to the effective date of this section.

(4) Every town, city or village is authorized to construct and install sewers or piping for the purpose of draining subsurface or underground water, and may assess the whole or any part of the cost thereof to the property benefited thereby, whether or not it abuts on the line of such sewer or piping, in the manner provided for the assessment of the cost of sanitary sewers under subsection (6) of section 62.16 and section 62.18. Such special assessments may be made payable in certificates or bonds pursuant to, but subject to the limitations of, sections 62.20 and 62.21. In villages or cities where no official paper is published, notice prescribed by subsection (6) of section 62.16 and sections 62.18, 62.20 and 62.21 may be given by posting required notice in three public places in said town, city or village as provided in subsection (4) of section 61.41. [1937 c. 211]

66.07 Mob damage. (1) The county shall be liable for injury to person or property by a mob or riot therein, except that within cities the city shall be liable.

(2) Claim therefor must be filed within six months thereafter. Such claim may be allowed in whole or in part, as other claims, and procedure to enforce shall be as for other claims.

(3) The city or county may recover all such claims and costs paid by it, against any and all persons engaged in inflicting the injury.

(4) No person shall recover hereunder when the injury was occasioned or in any manner aided, sanctioned, or permitted by him or caused by his negligence, nor unless he shall have used all reasonable diligence to prevent the same, and shall have immediately notified the mayor or sheriff after being apprised of any threat of or attempt at such injury. Every mayor or sheriff receiving such notice shall take all legal means to prevent injury, and if he refuse or neglect to do so, the party injured may elect to hold such officer liable by bringing action against him within six months of the injury.

(5) This section shall not apply to property damage to houses of ill fame when the owner has notice that they are used as such.

Note: Where a delegation of farm strikers was negotiating with a creamery manager, and the assembly was orderly and no threats were made to the manager, a threat made by a man accompanying the delegation to a truck driver of the creamery company did not constitute notice of a threat to the company of interference with its business by a mob; and hence the failure of the company to notify the county sheriff of the threat, the company having no actual knowledge thereof, did not preclude recovery against the county for damages for cream subsequently dumped from a truck by a mob. *Portage C. C. Ass'n v. Sauk County*, 216 W 501, 257 NW 614.

In an action against a county for damages done to the plaintiff's person and property by rioters, a complaint alleging that a mob of disorderly and riotous persons collected together on the plaintiff's farm and by force and violence prevented a lawful sale, and forcibly removed plaintiff from his farm and carried away certain property, states a cause of action within this section, making counties liable for injuries by "mob or riot." It is not necessary under the statute to show physical injury to or destruction

of plaintiff's person or property. *Febock v. Jefferson County*, 219 W 154, 262 NW 588.

The assignee of a claim for damages to property done by a mob is the proper party to file such claim. The liability of the city is absolute unless exempting conditions therein specified are present and a city must not only endeavor to prevent injury by a mob but must actually prevent it. The efforts of the company in this case to protect its property did not occasion the mob or riot so as to render the city free from liability. *Northern Assur. Co. v. Milwaukee*, 227 W 124, 277 NW 149.

An action against a city for injuries done to property by a mob during a strike was properly brought by an insurer which had indemnified the owner for its property loss and taken an assignment of its claim which it had under this section, since the action was assignable, being one which survived under section 331.01. *Northern Assur. Co. v. Milwaukee*, 227 W 124, 277 NW 149.

A crime committed secretly away from public view is not a riot. *International Wire Works v. Hanover Fire Ins. Co.*, 229 W 672, 283 NW 292.

66.08 Record of orders and court certificates. The clerk of every town, village, city and county which is not provided with a book which will serve the purposes here-

inafter indicated shall obtain and keep a cancellation book in which he shall enter the number and date of each order drawn upon the treasurer of his town, city, village or county, the page of the record of the proceedings of the body which authorized the issuing of such order, the amount thereof, the name of the drawee, the purpose for which it was allowed and the date of its cancellation. Such book shall be furnished by the clerk of each county to the town, city and village clerks therein; he shall prescribe the form and size thereof and procure the same at the expense of the county; upon their receipt he shall transmit them to such clerks and charge their cost to the municipalities to which they are supplied. Immediately after the close of each term of court in any county the clerk of the court shall file with the county clerk a list of the court certificates drawn on the county treasurer, which list shall specify the number of each certificate, its date, the amount for which it was drawn, the name of the payee and the character of the service performed by him. Said list shall be recorded in a part of the cancellation book set apart for that purpose, which part shall contain a blank column in which shall be entered the date of the cancellation of each certificate. Whenever any town, village, city or county treasurer shall pay or receive in payment of taxes, or for any other purpose equivalent to the payment thereof, any order or court certificate he shall return the same to the proper authorities at their first meeting thereafter, and such evidences of indebtedness shall be canceled by destroying them, and the date of their cancellation shall be immediately entered by the proper clerk in the cancellation book. It shall be the duty of every such clerk on the receipt of such book to enter therein a list of all orders and court certificates which remain outstanding and unpaid.

66.09 Judgment against municipalities. (1) When a final judgment for the payment of money shall be recovered against a town, village, city, county, school district, town sanitary district or community centre, or against any officer thereof, in any action by or against him in his name of office, when the same should be paid by such municipality, the judgment creditor, or his assignee or attorney, may file with the clerk thereof a certified transcript of such judgment or of the docket thereof, together with his affidavit of payments made, if any, and the amount due thereon and that the judgment has not been appealed from or removed to another court, or if so appealed from or removed has been affirmed; and thereupon the amount so due, with costs and interest to the time when the money will be available for its payment, shall be added to the next tax levy, and shall, when received, be paid to satisfy such judgment. If the judgment shall be appealed from after filing the transcript with the clerk, and before the tax is collected, the money shall not be collected on that levy. If the clerk shall fail to include the proper amount in the first tax levy, he shall include it or such portion as shall be required to complete it in the next levy.

(2) In the case of school districts, town sanitary districts or community centres, transcript and affidavit shall be filed with the clerk of the town, village or city in which the district or any part of it lies, and levy shall be made against the taxable property of the district or centre.

(3) No process for the collection of such judgment shall issue until after the time when the money, if collected upon the first tax levy as herein provided, would be available for payment, and then only by leave of court upon motion.

(4) If by reason of dissolution or other cause, pending action, or after judgment, the transcript cannot be filed with the clerk therein designated, it shall be filed with the clerk or clerks whose duty it is to make up the tax roll for the property liable. [1935 c. 522]

Note: Amount of creditor's judgment against municipality using creditor's money must be placed on next tax roll, and is not within statute limiting leviable county taxes to one per cent. *Oconto County v. Townsend*, 210 W 85, 246 NW 410.

A provision in the judgment that a tax be levied by the defendant district did not constitute a levy of the tax by the court, the judgment merely declaring the duty which the statute imposes. *Wauwatosa v. Union Free H. S. Dist.*, 214 W 35, 252 NW 351.

This section does not require that the judgment creditor must at all events wait until the money to pay the judgment has

actually been collected by the tax levy and then proceed by mandamus to compel payment if payment is refused, the only limitation provided in the statute as to issuing process for the collection of the judgment being that such process shall not issue "until after the time when the money, if collected . . . would be available for payment." *State Bank of Florence v. School District*, 233 W 307, 289 NW 612.

Mere notice of judgment against town does not change duty of county clerk to pay to town income taxes of railroad company belonging to town. 20 Atty. Gen. 713.

66.095 Auto accidents, city liability. Any person, firm or corporation suffering any damage proximately resulting from the negligent operation of a motor vehicle owned and operated by any city, and which damage is occasioned by the operation of such motor vehicle in the performance of municipal business, may in the manner and form and within the time provided in section 62.25, file a claim therefor against such city and the common council of such city shall have the right to allow, compromise, settle and pay the same. In the event such claim is disallowed, the claimant may then institute an action therefor against such city pursuant to the provisions of section 62.25.

Note: This section is construed as creating liability in the discharge of a governmental function. *Schumacher v. Milwaukee*, 209 W 43, 243 NW 756.

The words "owned and operated" were intended by legislature to have their plain meaning. *Jorgenson v. Sparta*, 224 W 260, 271 NW 926.

66.10 Official publication. Whenever in sections 66.01 to 66.08, inclusive, publication is required to be in the official paper of other than a city, and there is no official paper, the publication shall be in a paper published in the municipality and designated by the officers or body conducting the proceedings, and if there be no paper published in the municipality, then in a paper published in the county and having a general circulation in the municipality and so designated, and by posting in at least four public places in the municipality, and if there be also no such paper, then by such posting.

66.11 Miscellaneous. (1) **DEPUTY SHERIFFS AND POLICE.** No person shall be appointed deputy sheriff or police officer of any county or city unless he is a citizen of the United States and shall have resided in this state continuously for one year immediately preceding. This section shall not affect common carriers, nor apply to a deputy sheriff not required to take an oath of office.

(2) **ELIGIBILITY OF OTHER OFFICERS.** No member of a town, village, or county board, or city council shall, during the term for which he is elected, be eligible for any office or position which during such term has been created by, or the selection to which is vested in, such board or council, provided that the governing body may be represented on city or village boards and commissions where no additional remuneration is paid such representatives.

(3) **PROCESS AGAINST OFFICER.** No process against private property shall issue in an action or upon a judgment against a public corporation or an officer in his official capacity, when the liability, if any, is that of the corporation nor shall any person be liable as garnishee of such public corporation.

(4) **ORDERS; ACTION; PROOF OF DEMAND.** No action shall be brought upon any city, village or school district order until the expiration of thirty days after a demand for the payment of the same shall have been made. If such action is brought and the defendant fails to appear and defend the same judgment shall not be entered without affirmative proof of such demand, and if entered without such proof shall be absolutely void. [1935 c. 421 s. 3]

Note: Under (2) member of county board is ineligible to position of public dance supervisor; under 348.28 such contract is void and board member is not entitled to receive compensation for services rendered as public dance supervisor in county. 20 Atty. Gen. 1193.

Member of county board may not be quarry foreman. 24 Atty. Gen. 394.

Town supervisor is not entitled to compensation for promoting WPA project in absence of any duty to perform such service and may not act as "sponsor" or superintendent of such project where such position is created by town board. 25 Atty. Gen. 700.

Member of county board may not be appointed pension director during term for which he is elected even though he has

resigned from county board. 26 Atty. Gen. 52.

See note to 32.07, citing 26 Atty. Gen. 349. County board may not hire one of its members to work on collection of delinquent taxes. 27 Atty. Gen. 9.

Member of county board is ineligible, during term for which he was elected, to office of additional pension investigator for county, when position was created and appropriation was made therefor during term for which he was elected to county board. Resignation during such period will not make him eligible. 28 Atty. Gen. 6.

One who has been elected to membership on county board but who has refused to qualify is not within provisions of (2). 28 Atty. Gen. 265.

66.12 Sanitation; river improvement by county and city. (1) Any county containing a city of the third class may provide for the improvement of the water supply in any river within such county, for the purpose of preservation and protection of the health and safety of the residents of such county, by replacing and restoring the banks of such river and the confinement of the waters of such river to its channel by means of closing all passages from such river, including chutes and sloughs, through which the waters of such river flow, and by such other means as the board of supervisors of such county may deem necessary and proper.

(2) The city council of any city of the third class within such county may by ordinance assume on behalf of said city all liability on account of any and all claims, demands, actions and causes of action of every nature arising from injury to private property on account of flowage, inundation or seepage due to such improvement, and such city council may appropriate such moneys as are necessary to pay, litigate or defend against all such claims.

66.13 Limitation of action attacking contracts. Whenever the proper officers of any city or village, however incorporated, enter into any contract in manner and form as prescribed by statute, and either party to such contract has procured or furnished materials or expended money under the terms of such contract, no action or proceedings shall be maintained to test the validity of any such contract unless such action or proceedings shall be commenced within sixty days after the date of the signing of such contract. [1933 c. 71; 1935 c. 421 s. 3]

66.14 Official bonds, premium. Any city, however incorporated, may pay the cost of any official bond furnished by an officer thereof, pursuant to law or any rules or regulations requiring the same, if said officer shall furnish a bond with a surety company or companies authorized to do business in this state, said cost not to exceed the current rate of premium per annum on the amount of said bond or obligation by said surety executed.

The cost of any such bond in such city shall be charged to the fund appropriated and set up in the budget for the department, board, commission or other body, the officer of which is required to furnish a bond.

66.15 Fire department, platoons. The common council, or other governing body of every city of the first, second and third class, whether organized under a general or special charter, having a paid fire department, shall provide for, and the governing power of the fire department shall divide the full paid fire fighting force in the fire department into two bodies or platoons. Each platoon shall work, or be on duty alternately an equal number of hours or as nearly so as the governing power of the fire department of each such city shall decide, provided however, that no member of said platoon shall be on duty for a longer continuous period of time than the governing power of the fire department shall designate, except in cases of positive necessity by some sudden and serious fire, accident, or other peril, which in the judgment of the chief engineer or other officer in charge demands.

66.16 Street improvement assessments, exemptions. (1) No property fronting on any street or avenue in any city of the first, second or third class shall be exempt from any assessment of benefits on account of the paving of said street or avenue with a permanent pavement, having a concrete foundation or the curbing or resurfacing of such street or avenue, until such property shall have paid in the aggregate in assessments for street pavements in front thereof the sum of three dollars per square yard; such assessments in each case to include all that part of the roadway lying directly in front of or abutting the property, and lying between the curb line and the center of such roadway. In cities of the first and second class exemption shall extend only to and include one-half of the cost of such pavement, curbing or resurfacing in excess of three dollars per square yard and only one-half the cost of any subsequent pavement, repavement or resurfacing of such street or avenue. Whenever any property has paid less than the amount in this section required, it shall be held liable for any difference up to the full amount herein required. In cities of the first class under special charter the exemptions herein shall not apply to alleys, but benefits may be assessed for any of the aforesaid improvements in any alley upon any property abutting upon any part or the whole of the entire length of such alley in any one block to the full extent to which such property may be benefited by the whole of such improvement in any such block.

(2) The common council of any city of the first, second or third class may, by resolution adopted by a majority vote of all its members, exempt property fronting on any street or avenue in any city from any assessment of benefits on account of the resurfacing of any street or avenue having a pavement with a permanent foundation or improvement to the curbing of such street or avenue, provided any county, state or federal funds, or other aid is received toward defraying the expenses of said improvement. [1939 c. 215]

66.17 Schools; transportation in Milwaukee county. In any county which has a population of three hundred thousand or more the board of any town or village or the council of any city which does not maintain a high school may provide for the transportation of children living in such town, village or city to any other school in the county which is supported by public funds and which gives courses above the eighth grade attended by such children.

66.18 Liability insurance. Cities and villages are empowered to procure liability insurance covering both the municipal corporation and its officers, agents and employes.

66.19 Civil service system; veterans' preference. (1) Any city or village may proceed under subsection (1) of section 61.34, subsection (5) of section 62.11 or section 66.01 to establish a civil service system of selection, tenure and status, and said system may be made applicable to all municipal personnel except the chief executive and members of the governing body, members of boards and commissions including election officials, the teaching staff of the board of education and the board of vocational and adult education, employes subject to section 62.13, members of the judiciary, and supervisors. In the case of veterans there shall be no restrictions as to age and except that other conditions being equal, a preference shall be given in favor of veterans of any of the wars of the United States. Preference is defined to mean that whenever an honorably discharged veteran competes in any examination he shall be accorded five points, and if such veteran has a disability which is directly or indirectly traceable to war service, he shall be accorded another five points, in addition to earned ratings therein, excepting that such preference as herein defined shall not be granted to any veteran competing in any such examination who shall not have attained at least a passing grade. Such system may also include uniform provisions in respect to attendance, leave regulations, compensation and pay rolls for all personnel included thereunder.

(2) Any town with a population of more than ten thousand inhabitants may proceed under subsection (1) of section 60.29 to establish a civil service system as provided under subsection (1) hereof and in such departments as the town board may determine. Any person who shall have been employed in any such department for more than five years

prior to the establishment of such civil service shall be eligible to appointment without examination.

(3) When any town has established a system of civil service, the ordinance establishing the same shall not be repealed for a period of 2 years after its enactment, and thereafter it may be repealed only by proceedings under section 10.43 by referendum vote. [1937 c. 258; 1939 c. 179, 243; 1939 c. 517 s. 4; 1941 c. 137]

Note: City school board and local board of vocational and adult education are not compelled to discharge present employes residing outside city where such city has adopted civil service ordinance under this section, requiring city employes to reside within city, but such ordinance should be followed in future selection and discharge of employes so far as possible. 27 Atty. Gen. 358.

Doubt expressed as to whether employes of a board of education, operating under 40.50 to 40.60, come within a civil service ordinance adopted pursuant to 66.19. Library employes considered to come within said section. 28 Atty. Gen. 386.

66.20 Metropolitan sewerage districts. (1) **AUTHORIZED.** Metropolitan sewerage districts may be created, governed and maintained as is in this section provided, in contiguous territory containing two or more of any of the following municipalities: Any city or village in its entirety or any township or part thereof, located in one or more counties, when so situated that common outlet sewers or disposal plants will be conducive to the preservation of the public health, safety, comfort, convenience or welfare.

(2) **DEFINITIONS.** For the purposes of this section the following provisions and definitions are made:

(a) "District" means metropolitan sewerage district.

(b) "Commission" means metropolitan sewerage commission.

(c) "Commissioner" means a commissioner of the metropolitan sewerage district.

(d) "Interception sewer" means one which receives the dry-weather flow from a number of transverse sewers or outlets with or without a determined amount of storm water from a combined system.

(e) "Main sewer" means one which receives one or more branch sewers as tributaries.

(3) **COUNTY COURT JURISDICTION.** (a) The county court of any county in this state is vested with jurisdiction, power and authority, when the conditions stated in subsection (4) of this section are found to exist, to establish metropolitan sewerage districts.

(b) Where the proposed district is in more than one county, the county court of the county containing the largest assessed valuation within the proposed district shall have jurisdiction.

(4) **PETITION.** Before any court shall establish a district as outlined in subsection (3):

(a) A petition signed by five per cent of the electors voting for governor at the last general election or by the owners of half the property, in either acreage or assessed value, within the limits of the territory proposed to be organized into such district, shall be filed with the clerk of the county court of the county having jurisdiction.

(b) No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, by correcting any errors in such petition. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed prior to the time of the hearing of the first petition, and shall be considered the same as though filed with the first petition. Every such petition shall be presumed to have been signed and executed by the persons whose signatures appear thereon, until proof to the contrary shall have been made.

(c) The petition shall set forth: (1) The proposed name of said metropolitan sewerage district; (2) the necessity for the proposed work; (3) a general description of territory to be included in the proposed work; and (4) a general outline of the proposed improvements.

(5) **BOND.** (a) At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed by the petitioners with security approved by the court, sufficient to pay all the expenses connected with the proceedings in case the court refuses to organize the district. If at any time during the proceedings, the court shall deem the bond first executed to be insufficient, it may by order require the execution of an additional bond within a time fixed, but not less than ten days from the date of such order. Upon failure of the petitioners to execute the same the petition may be dismissed by the court.

(b) In lieu of such bond any municipality or group of municipalities interested in the formation of such district may guarantee the payment of such expense.

(6) **HEARING, NOTICE.** Immediately after the filing of such petition, the court shall fix a time and place for a hearing on said petition, and shall cause notice by publication to be made of the pendency of the petition and of the time and place of such hearing. Such publication shall be made once a week for three consecutive weeks in a newspaper or newspapers of general circulation in the county or counties in which the proposed district is located. The first publication shall be not less than three weeks before said hearing. Said court shall also cause notice to be served personally upon the clerk of each

municipality having territory in the proposed district, and upon the state health officer at least three weeks before said hearing.

(7) **OBJECTIONS TO DISTRICT.** Any owner of real property, or the governing body of any municipality having territory within the proposed district, wishing to object to the organization thereof shall, on or before the date set for the hearing, file his or their objections to the formation of such district. Such objections shall be limited to questions of jurisdiction or a denial of the statements of the petition. The necessity for the formation of such district shall be heard by the court as an advanced case and without unnecessary delay.

(8) **JUDGMENT.** (a) Upon the hearing if it shall appear that the purposes of this section will be best served by the creation of a district, the court shall, after disposing of all objections as justice and equity require, by its findings, duly entered of record, adjudicate all questions of jurisdiction, establish the boundaries and declare the district organized and give it a corporate name, by which in all proceedings it shall thereafter be known, and thereupon the district shall be a body corporate with the powers of a municipal corporation for the purposes of carrying out the provisions of this section.

(b) If the court finds that the territory set out in the petition should not be incorporated into a district, it shall dismiss said proceedings and tax the costs against the signers of the petition. If the district is established, certified bills covering the reasonable costs and disbursements of the petitioners may be presented to the commissioners herein provided for and paid out of the funds of the district.

(c) The state board of health shall be represented at the hearing for the creation of such district and advise with the court.

(d) Should it appear to the court at said hearing that other territory not included in the original petition should be included within the district, the property holders in such additional territory shall be duly notified in such manner as the court shall determine, and a second hearing shall be held at a time and place to be fixed by the court.

(e) The decree of the court, whether for or against the organization of the district, may within twenty days after such decree, be appealed directly to the supreme court by any interested person feeling himself aggrieved, and the question presented upon said appeal shall be determined by such court upon the record made in the lower court.

(f) 1. After twenty days from date of such decree, if no appeal is taken therefrom, the clerk of the court rendering such decree shall transmit to the secretary of state, the secretary of the state board of health, and the register of deeds in each of the counties having lands within the district, copies of the findings and decree of the court incorporating said district. The same shall be filed or recorded in the above mentioned offices in the manner prescribed by law concerning corporations, upon the payment of the requisite fee.

2. At any time after the copies of the findings and decree of the court incorporating the district shall have been filed and recorded, as herein provided, the owner of any land within the district may, by petition in writing to the commissioners, describing said lands, request that said described lands be detached from the district. When any such petition shall be filed with the commissioners, they shall, except as prescribed in subdivision 5 hereof, fix a time and place of hearing on said petition, which time shall be not less than thirty days from the date of filing the petition, and the secretary of the commission shall give notice thereof by letter to the owner at his post-office address which shall be designated in the petition, and by publication in the official paper of the district once a week for three successive weeks.

3. If upon such hearing the commissioners of the district shall find that the preservation of the public health, safety, comfort, convenience or welfare does not require the continued inclusion of said described lands within the district, an order shall be entered detaching said described lands from the district. If the commissioners do not so find, the petition shall be denied. A copy of the order detaching land from the district shall, within twenty days after such order is made, be filed with the secretary of state, and a copy thereof with the state board of health, and a copy recorded in the office of the register of deeds for each county having land within the district. For the purpose of signing any such petition, the word "owner" shall be deemed to include the guardian, or other legal representative of any minor, or incompetent person owning any such land, and any executor, administrator or other person acting in a representative capacity having legal possession of any such land.

4. Any owner of land whose petition is denied by the commissioners may, within thirty days from the making of the order denying the petition, appeal therefrom to the county court which established the district. The court shall fix the time and place of hearing of such appeal, which hearing shall be a trial de nove, and the petitioner so appealing shall serve notice thereof in the manner prescribed by the court upon the commissioners of the district; if upon such hearing the court shall find that the preservation of the public

health, safety, comfort, convenience and welfare does not require the continued inclusion of the petitioner's lands within the district, an order shall be entered detaching said lands from the district. If the court does not so find, the petition to detach said lands from the district shall be denied. A copy of any order made by the court detaching said lands from the district shall be filed as prescribed for the filing of an order made by the commissioners of the district detaching lands therefrom.

5. If the land described in the petition is a farm embracing forty acres or more and is actually used for general farm purposes, the commission may, without hearing, enter an order detaching the land from the district in accordance with the petition, if it appears that the preservation of the public health, safety, comfort and convenience or welfare does not require inclusion of said land within the district. It is the legislative intent that such land under such circumstances should be detached. The order detaching such land shall be made, entered and filed as if such order were made after hearing and with like effect.

(g) Every such district may borrow money and issue its obligations therefor, bearing interest at the rate of not to exceed six per centum per annum for a term not exceeding five years. At the time any such money is borrowed, and before the obligation therefor shall have been issued, the commissioners shall levy a tax by a resolution similar to that required in paragraph (j) of this subsection.

(h) Every such district may issue bonds for the construction and extension of intercepting and main sewers, including rights of way and appurtenances, the acquisition of a sewage disposal site and for the construction and improvement of sewage disposal works. The commissioners in any such district about to issue bonds, shall adopt a resolution stating the amount of said bond, and purpose, or purposes of their issue, and such other and further matter as the commission may deem necessary or useful.

(i) 1. Every such resolution shall be offered and read at a meeting of the commissioners at which all the commissioners are present, and shall be published in the official paper of the district not less than twice during the thirty days next following such reading; and in order to be effective, shall be passed at a meeting of the commissioners at which all are present, held after such publication and within said thirty days. When any such resolution shall be passed, it shall be recorded by being copied at length in a record book kept for that purpose.

2. Such resolution shall be submitted to a vote of the electors of said district if, within thirty days after the recording thereof, there shall be filed in the office of the secretary of the commission a petition requesting said submission, signed by electors numbering at least ten per cent of the votes cast for governor in the district at the last general election. When any such petition shall have been filed with the secretary of the commission, he shall immediately notify the clerks of each town, city or village located, or having territory within such district, of the fact that such petition has been filed, calling for a special election upon the proposed bond issue; and in order that the said special election may be held upon the same day throughout the district, the secretary shall, in said notice, fix the date of the holding of such special election. Upon receipt of such notice the clerks of each town, village or city located within such district shall call a special election for the purpose of submitting the resolution for the proposed bond issue to the electors of the municipality for approval. In case a part only of a city, town or village is located within the district, the clerk of such city, town or village shall call a special election to be held upon the date fixed by the secretary of said commission, for that portion of the town, city or village which is included within the district, and such electors at such special election shall have the right to vote at a polling place or polling places, in an adjoining town, city or village which is wholly located within the district; the polling place or places shall be designated by the clerk in the notice of such special election, which notice of election for a part only of the municipality shall be posted in three public places in that part of the municipality lying within the district. The proceedings in connection with said special election shall be as provided in subsection (5) of section 67.05 of the statutes. The votes shall be counted by the inspectors and a return made thereof to the county clerk of the county in which the office of the commissioners of the district is located, and the return thereof shall be canvassed by the board of county canvassers, and the result of such election determined and certified by said board of county canvassers, and the original certificate thereof shall be filed in the office of the county clerk, and a copy certified by said county clerk shall be by him forwarded to the secretary of the commissioners of the district, and filed in the office of said commissioners, and for this purpose the provisions of sections 6.57 to 6.64 of the statutes, shall control insofar as applicable.

(j) The commissioners shall at the time of, or after the adoption of said resolution, and before issuing any of the contemplated bonds, levy by resolution a direct annual tax sufficient in amounts to pay, and for the express purpose of paying the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity.

(k) The commissioners and the district shall be and continue without power to repeal such levy, or obstruct the collection of said tax until all such payments have been made or provided for.

(l) After the issue of said bonds, the commissioners of the district shall, on or before the first day of October in each year, certify in writing to the clerks of the several cities, villages or towns having territory in such district, the total amount of such tax to be raised by each such municipality, and upon receipt of such certificate the clerk of each such municipality shall place the same on the tax roll to be collected as other taxes are collected, and such moneys, when collected, shall be paid to the treasurer of such district.

(m) Every bond so issued by a metropolitan sewerage district shall be a negotiable instrument payable to bearer, or, in case of bonds which are registerable, to bearer or the registered owner, with interest coupons attached payable annually or semiannually; shall be payable not later than the termination of twenty years immediately following the date of the bonds; shall bear interest at a rate not to exceed six per centum per annum; shall specify the times and the place, or places, of payment of principal and interest; shall be numbered consecutively with the other bonds of the same issue which shall begin with number one and continue upward, or, if so directed by the governing body, shall begin with any other number and continue upward; shall bear on its face a name indicative of the purpose specified therefor in said resolution; shall contain a statement of the value of all of the taxable property in the district according to the last preceding assessment thereof for state and county taxes, the aggregate amount of the existing bonded indebtedness of such district, that a direct annual irrevocable tax has been levied by the district sufficient to pay the interest when it falls due, and also to pay and discharge the principal at maturity; and may contain any other statement of fact not in conflict with said initial resolution. The entire issue may be composed of a single denomination, or two or more denominations.

(n) The bonds shall be executed in the name of the sewerage district by the president and secretary, and shall be sealed with the seal of the district, if it has a seal. The bonds shall be negotiated and sold, or otherwise disposed of, for not less than par and accrued interest, by the commissioners, and such negotiation and sale, or other disposition, may be effected by disposition from time to time of portions only of the entire issue when the purpose for which the bonds have been authorized does not require an immediate realization upon all of them.

(o) Any such district, when in temporary need, is authorized to borrow money pursuant to the provisions and limitations applicable to cities, of section 67.12 of the statutes.

(9) COMMISSION, APPOINTMENT, TERM, OATH, DUTIES, PAY, TREASURER. (a) The district shall be governed by three commissioners appointed by the court creating the district, and shall be residents of the district.

(b) At the time of their first appointment one member shall be appointed for a term of three years, one for a term of two years, and one for a term of one year. Upon the expiration of their several terms of office the county court shall appoint a successor, whose term of office shall be for three years and until a successor is appointed and qualified. The county court may remove any member of the commission for cause after notice and hearing and may fill any vacancy.

(c) Each member of the commission shall take and file the official oath.

(d) A majority of such commission shall constitute a quorum to do business, and in the absence of two members one member may adjourn any meeting and make announcement thereof. All meetings and records of the commission shall be published.

(e) Such commission, when all of its members have been duly sworn and qualified, shall be a permanent body corporate and shall have charge of all the affairs of the district.

(f) Such commission shall organize by electing one of its members president and another secretary.

(g) The secretary shall keep a separate record of all proceedings and accurate minutes of all hearings.

(h) Each member of the commission shall keep an accurate statement of his necessary expenses and of the services rendered by him together with the dates thereof.

(i) Each member of the commission shall receive as compensation for his actual necessary services ten dollars per day of eight hours and proportionately for fractions of days for actual times spent in rendition of services and his actual reasonable expenses. Such compensation and expenses shall be filed as a bill in the court having jurisdiction and when allowed by that court shall be paid by the treasurer of the district out of any moneys in his hands belonging to such district.

(j) The treasurer of the city or village having the largest assessed valuation within the district shall act as treasurer of the district; shall receive such additional compensation therefor as the commission may determine; and shall at the expense of the district furnish such additional bond as the commission may require. Such treasurer shall keep

all moneys of the district in a separate fund to be disposed of only upon order of the commission signed by the president and secretary.

(k) The commissioners shall prepare annually a full and detailed report of their official transactions and expenses, and shall file a copy of such statement with the court, the state board of health and the governing bodies of all cities, villages and towns having territory in such district.

(10) PLANS, CONSTRUCTION, MAINTENANCE, OPERATION. (a) The commissioners shall project, plan, construct and maintain in such district intercepting and other main sewers for the collection and transmission of house, industrial and other sewage to a site or sites for disposal selected by them, such sewers to be sufficient, in the judgment of the commissioners, to care for such sewage of the territory included in such district. The commissioners shall project, plan, construct and operate sewage disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district. The commissioners shall also project, plan, construct and maintain intercepting and other main sewers for the collection and disposal of storm water which shall be separate from the sanitary sewerage system.

(b) Except as provided in this section the commissioners shall have the powers and proceed as a common council and board of public works in cities in carrying out the provisions of paragraph (a) of this subsection.

(11) ADDITIONS TO DISTRICT. (a) If at any time the commissioners think it desirable to or are petitioned to include other territory in the district, a court proceeding similar to that for the creation of the original district shall be followed, such court proceeding, however, to be only upon the territory to be added and shall in no way affect the original district. A petition signed by the commissioners shall be deemed sufficient to start proceedings for the annexation of territory to the district.

(b) The commissioners may employ and fix compensation for a chief engineer and assistants, clerks, employes and laborers, or do such other things as may be necessary for the due and proper execution of their duties. In their discretion, the commissioners may employ the chief engineer, agents or employes of any municipality included wholly or partly in the district, as its engineers, agents or employes.

(c) The commissioners or their agents shall have access to all sewerage records of any municipality in the district, and shall require all such municipalities to submit plans of existing systems and proposed extensions. The district shall file with the clerk or other authorized official of each city, village or town having territory within the district a copy of all plans of works to be constructed by the district within such municipality. The district shall also file with each such clerk or other official a copy of all plans of sections of works without the municipality to which the sewerage facilities of such municipality must be connected.

(d) The commissioners or their agents may enter upon the land in any city, village and town in said district for the purpose of making surveys or examinations in the performance of these duties.

(e) The district may enter upon any state, county or municipal street, road or alley, or any public highway within said district for the purpose of installing, maintaining and operating the sewerage system provided for in this section, and it may construct in any such street, road or alley or public highway, a main sewer, intercepting sewer or any appurtenance thereof, without a permit or a payment of a charge. Whenever such work is to be done in a state, county or municipal highway, the public authority having control thereof shall be duly notified, and said highway shall be restored to as good condition as existed before the commencement of such work, and all costs incident thereto shall be borne by the district.

(f) The district shall have power to lay or construct and to forever maintain, without compensation to the state, any part of said system of sewerage, or of its works, or appurtenances, over, upon or under any part of the bed of any river or of any land covered by any of the navigable waters of the state, the title to which is held by the state, and over, upon or under canals or through waterways, and if the same be deemed advisable by the commission, the proper officers of the state are authorized and directed upon the application of the commission to execute, acknowledge and deliver to the commission such easements, or other grants, as may be proper for the purpose of fully carrying out the provisions of this section.

(g) Whenever necessary in order to promote the best results from the construction, operation and maintenance of the systems provided for in this section, and to prevent damage to the same from misuse, the commission may make, promulgate and enforce such reasonable rules and regulations for the supervision, protection, management and use of said system as it may deem expedient, and such regulations shall prescribe the manner in which connections to main sewers and intercepting sewers shall be made, and may prohibit discharge into such sewers, of any liquid or solid waste deemed detrimental to the sewerage system herein provided for.

(h) The district may acquire by gift, purchase, lease or other like methods of acquisition or by condemnation, any land or property situated in said district, and all tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, or in any interest, franchise, easement, right or privilege therein, which may be required for the purpose of projecting, planning, constructing and maintaining said main sewers, or any part or parts thereof, or that may be needed for the workings of said sewers when established, and so often as resort shall be had to condemnation proceeding, the procedure shall be that provided for by chapter 32, except that the powers therein granted shall be exercised by and in the name of said district in the place and instead of the county board. Furthermore, land or property may be acquired outside of said district for the purposes of this section.

(i) Before any city, village or town or any person, firm or corporation connects with or uses any main or intercepting sewer it shall obtain the permission of the commission. Prior to permitting such connection the commission shall investigate or cause to be investigated the sewer system for which such connection is requested and if found in a satisfactory condition such connection shall be permitted. Should such system be found defective in operation, construction, design or supervision the commission shall notify the governing body of the city, village or town, or the person, firm or corporation having such system, what alterations, new constructions or change in supervision or operation it shall require, and such connection shall not be permitted until all such requirements have been made.

(j) Nothing in this section shall be construed as restricting or interfering with any powers of the state board of health as provided by law.

(k) Lands used for agricultural purposes within any such district shall not be subject to assessment under the provisions of this section, but as soon as such use ceases such lands shall be subject to assessment for benefits in the manner herein provided.

(12) SPECIAL ASSESSMENTS. (a) The commissioners of any such district are authorized to make a special assessment against property which is served by an intercepting sewer, or main sewer, and may make such assessment at any time after the commissioners shall determine by resolution recorded in the minutes of its meeting to construct such intercepting or main sewer, and either before or after the work of constructing such sewer is done.

(b) The commissioners shall view the premises and determine the amount properly assessable against each parcel of land pursuant to the provisions of subsection (9) of section 62.18 of the statutes, and shall make and file, in their office, a report and schedule of the assessment so made, and shall file a duplicate copy of such report and schedule in the office of the clerk of the town, village or city wherein such land is situated.

(c) Notice shall be given by the commissioners that such report and schedule is on file in their office and in the office of the clerk of the town, village or city wherein such land is situated, and will so continue for a period of ten days after the date of such notice; that on the date named therein, which shall not be more than three days after the expiration of said ten days, said commission will be in session at their office, the location of which shall be specified in said notice, to hear all objections that may be made to such report.

(d) Such notice shall be published in the official newspaper of the district, and posted in three public places in the town, city or village wherein the land against which such assessment shall have been made is situated.

(e) No irregularity in the form of such report, nor of such notice, shall affect its validity if it fairly contains the information required to be conveyed thereby.

(f) At the time specified for hearing objections to said report, the commissioners shall hear all parties interested who may appear for that purpose, and shall proceed in the manner provided in paragraphs (f) and (g) of subsection (6) of section 62.16, and for that purpose shall possess the power by said subsections conferred upon the board of public works.

(g) The commissioners may at such meeting, or at an adjourned meeting, confirm or correct such report, and when such report shall have been so confirmed or corrected, it shall constitute and be the final report and assessment of benefits against such lands.

(h) When such final determination shall have been reached by the commissioners, the secretary thereof shall publish notice in the official paper of the district, once in each week for two successive weeks, that a final determination has been made as to the amounts assessed against each parcel of real estate.

(i) If the owner of any parcel of real estate affected by such determination and assessments feels himself aggrieved thereby, he may, within twenty days after the date of such determination, appeal to the circuit court of the county in which his land is situate, and the provisions of paragraphs (k) and (l) of subsection (6), section 62.16 shall apply to and govern such appeal; provided, however, that the notice therein required to be served

upon the city clerk shall be served upon the secretary of the commission, and the bond therein provided for shall be approved by the secretary of said commission, and the duties therein devolving upon the clerk shall be performed by the secretary of the commission.

(j) The commissioners of any such district may provide that such special assessment may be paid in annual instalments not more than ten in number, and may, for the purpose of anticipating collection of the special assessments, and after said instalments shall have been determined, issue special improvement bonds payable only out of such special assessment, and the provisions of section 62.21 of the statutes shall apply to and govern the instalment payments and the issuance of said bonds, including the provisions of said section 62.21 of the statutes relating to the matter of handling and collecting delinquent special assessments, except that the assessment notice shall be substantially in the following form:

INSTALMENT ASSESSMENT NOTICE.

Notice is hereby given that a contract has been (or is about to be) let for (describe the improvement) and that the amount of the special assessment therefor has been determined as to each parcel of real estate benefited thereby, and a statement of the same is on file with the secretary of the district; that it is proposed to collect the same in . . . instalments, as provided by section 62.21 of the statutes, with interest thereon at . . . per centum per annum; that all assessments will be collected in instalments, as above provided, except such assessments as the owners of the property shall, within thirty days from the date of this notice, file with the secretary of the commission a statement in writing that they elect to pay in one instalment, in which case the amount of the instalment shall be placed upon the next ensuing tax roll.

(k) Said instalment assessment notice shall be published in the official paper of the district, and posted in three public places in the town, city or village wherein the lands against which such special assessment shall have been made, are situate.

(l) The commissioners of such district shall, on or before the first day of October in each year, certify in writing to the clerks of the several cities, towns or villages, the amount of the special assessment against lands located in their respective city, town or village for the ensuing year, and upon receipt of such certificate the clerk of each such city, town or village shall forthwith place the same on the tax roll to be collected as other taxes and assessments are collected, and such moneys when collected shall be paid to the treasurer of such district. The provisions of law applicable to the collection of delinquent taxes upon real estate, including sale of lands for nonpayment of taxes, shall apply to and govern the collection of said special assessments, and also shall apply to and govern the collection of general taxes levied by the commissioners of any such district.

(m) The provisions of the statutes relating to reassessments shall be applicable to assessments made under the provisions of this section.

(13) TAXATION. (a) The commissioners of such district are authorized to levy, on or before the first day of October in each year, a tax upon all the taxable property in the district for the purpose of carrying out the provisions and performing duties under this section, provided that the amount of any such tax in excess of that required for maintenance and operation and for principal and interest on bonds shall not exceed, in any one year, one mill for each dollar of the assessed valuation of the taxable property in the district, and shall certify in writing to the clerks of the several cities, villages and towns having territory in such district, the total amount of tax assessed against the taxable property in each such municipality lying in whole or in part within the district.

(b) Upon receipt of such report the clerk of each such city, town or village shall forthwith place the same upon the tax roll to be collected as other taxes, and such moneys when collected shall be paid to the treasurer of such district.

(14) EXISTING SEWERS TAKEN, COMPENSATION. Should any existing sewer or sewerage disposal plant be taken over by the district, the value of the same shall be agreed upon by the commissioners and the governing body of the municipality owning such sewer or sewerage disposal plant, and such value after approval by the public service commission shall be credited to such municipality. Should the commissioners and governing body of said municipality be unable to agree upon a value, the value shall be determined by and fixed by the public service commission of Wisconsin after a hearing to be had upon application by either party, and upon reasonable notice to the other party, to be fixed and served as said public service commission shall prescribe.

(15) SERVICE CHARGES TO STATE, COUNTY OR MUNICIPALITY. (a) Any such district which shall have constructed, taken over or otherwise acquired a plant for the treatment or disposal of sewage, may charge to the state or county or to any municipality the cost of service rendered thereto by such district in treating or otherwise disposing of sewage at any such plant which is received from any state institution not located within the limits

of a city or county institution or premises, or which is collected within the limits of such municipality, and may likewise charge to the state, county or municipality the cost of service rendered to any such state institution, county or municipality in the carrying or transmission of sewage through the sewers of said district, and charge for any other similar service so rendered. The cost of such service shall, in the first instance, be determined and fixed by the commissioners of the district, and shall be paid monthly or annually or at the end of such other periods of time as the said commissioners shall determine; and the municipality or governing body of the institution shall be notified in writing of the amount of the cost of such service, and of the time of payment thereof, by delivering a written statement of the same to the clerk of such municipality, or to said governing body.

(b) If the governing body of such state or county institution or premises, or of the municipality shall not be satisfied with the amount of the cost as fixed by the commissioners, they may, within thirty days, apply to the public service commission, upon reasonable notice to be given to the commissioners of the sewerage district, to be fixed by the public service commission by service on the secretary of the commissioners of the sewerage district, and said public service commission shall, upon hearing, determine and fix the proper amount of the cost of such service.

(c) The state, county or municipality shall pay the amount of the cost of such service to the treasurer of the district from time to time, as shall be fixed and determined by the commissioners of the district, unless the municipality, state or county shall have appealed to the public service commission, in which case payment shall be made within thirty days after the determination of the proper amount by the public service commission, and thereafter from time to time as shall be fixed and determined by the commissioners of the district.

(d) Any municipality making any such payments to any such district, shall have authority to assess the same as a special tax against lands in such municipality which are specially benefited by any such service, or any such municipality may pay the same out of its general fund.

(16) APPLICATION OF SECTION 59.96 (6) (h) TO SEWERAGE DISTRICTS. Paragraph (h) of subsection (6) of section 59.96 shall apply to districts organized and existing under this section of the statutes. [1931 c. 294, 349]

Note: County court may organize as district only part of entire area originally proposed. Territory to be detached from that originally proposed in organization of sewer district, is issue of fact to be determined in each case as question arises. *Golden v. Green Bay Metropolitan Sewerage Dist.*, 210 W 193, 246 NW 505.

That appeal in organization of sewer district could be taken only within twenty days after decree did not render statute authorizing such appeal unconstitutional as denial of adequate remedy. *Golden v. Green Bay Metropolitan Sewerage Dist.*, 210 W 193, 246 NW 505.

66.21 Special assessments against railroad for street improvement. (1) Whenever any city or village in this state shall cause any street, alley or public highway within its corporate limits to be improved by grading, curbing, paving or otherwise improving the same, where the cost of such improvement, or a part thereof, shall be assessed against abutting property, and such street, alley or public highway is crossed by the track or tracks of any railroad, operated in whole or in part by steam power, and engaged as a common carrier, the common council or board of public works of such city, or the trustees of such village shall at any time after the completion and acceptance of such improvement by the municipality, cause to be filed with the local agent of the railroad corporation operating such railroad, a statement showing the amount chargeable to such railroad corporation for such improvement, which shall be an amount equal to the cost of constructing said improvement along said street, alley or public highway immediately in front of and abutting its right of way on each side of said street, alley or public highway, based upon the price per square yard, lineal foot or other unit of value used in determining the total cost of said improvement.

(2) The amount so charged against any railroad corporation for improving the street, fronting or abutting its right of way, shall not exceed the average amount per front foot assessed against the remainder of the property fronting or abutting on said street, alley or public highway so improved. The amount arrived at as above set forth and contained in said statement, shall be due and payable by said railroad corporation to the said municipality, causing the same to be filed within thirty days of the date when the same shall be presented to the local representative of said railroad corporation.

66.22 Action to recover assessment. In case any railroad corporation shall fail or refuse to pay to any city or village the amount set forth in any such statement or claim for the making of street improvements, as provided in the preceding section, within the time therein specified, said city or village shall have a valid claim for such amount against said railroad corporation, and may maintain an action therefor in any circuit court within this state to recover the same.

66.23 Improvement of streets by abutting railroad company. Whenever the track or tracks of any railroad, operated in whole or in part by steam power, shall be laid upon or along any street, alley or public highway within any city or village, the corporation operating such railroad or railroads shall maintain and improve such portion of the length of the street as is occupied by its tracks; and said railroad corporation shall grade, pave or otherwise improve such street or portion thereof in such manner and with such materials as the common council of such city, or the village board may by resolution or ordinance determine; provided, however, that the total cost of such improvement shall not exceed three dollars per square yard, and that said railroad corporation shall not be required to pave or improve that portion of said street, alley or public highway occupied by it with different material or in a different manner from that in which the remainder of said street is paved or improved.

66.24 Notice to railroad company; time for construction. (1) When any city or village shall have ordered any street, alley or public highway to be paved, graded, curbed or improved, as provided in the preceding section, the clerk of such city or village shall cause to be served upon the local agent of such railroad corporation, a notice setting forth the action taken by such city or village relative to the improvement of such street.

(2) If the railroad corporation shall elect to construct said street improvement, it shall within ten days of the receipt of said notice from the clerk of such city or village, file with said clerk notice of its intention to construct said street improvement, and it shall be allowed until the thirtieth day of June thereafter to complete said work, unless said work is ordered after May twentieth of any year, and in that case said railroad corporation shall be allowed forty days from the time the clerk of the municipality presents the notice to the railroad agent, in which to complete said work.

66.25 Construction by municipality; assessment of cost. (1) Whenever any city or village shall order any street, alley or public highway improved, as provided in section 66.23, and notice shall be served on said railroad corporation, as provided in section 66.24, and said railroad corporation shall not elect to construct said improvement as therein provided, or having elected to construct said improvement, shall fail to construct the same within the time provided in section 66.24 the city or village shall at once proceed to let a contract for the construction of said improvement, and cause said street to be improved as theretofore determined, and when said improvement shall be completed and accepted by the city or village, the clerk of said city or village shall present to the local agent of said railroad corporation a statement of the cost of said improvement, and said railroad corporation shall within twenty days of such receipt thereof pay to the treasurer of such city or village the amount as shown by such statement of cost presented as aforesaid; provided, that the railroad corporation shall not be liable to pay for paving, grading or otherwise improving a street, more than three dollars per square yard for pavement or other improvement actually constructed.

(2) In case any railroad corporation shall fail to pay the cost of constructing any pavement or other street improvement as herein provided, the city or village causing the same to be constructed shall have the right to enforce collection of such amount by an action at law against said railroad corporation as provided in section 66.22.

66.26 Effect of sections 66.21 to 66.25, inclusive. Sections 66.21 to 66.25, inclusive, shall not operate to repeal any existing law, but shall provide a method of compelling a railroad corporation to pay its proportionate share of street, alley or public highway improvements in case any city or village shall elect to follow the provisions thereof.

66.27 Forestry land, local acquisition. Any city, village, town, or school district of the state may acquire and own lands for forestry purposes, either within or without the territorial limits of such municipality, and may carry on forestry on such lands, and appropriate, raise and expend money for such purposes.

66.28 Municipal sale of abandoned property. Cities and villages may, at a public auction to be held once a year, dispose of any personal property which shall have been abandoned, or shall have remained unclaimed for a period of thirty days after the taking of possession of the same by the city or village officers. All receipts from such sales, after deducting the necessary expenses of keeping such property and conducting such auction, shall be paid into the city or village treasury.

Note: Automobile taken into possession by city under this section. 26 Atty. Gen. for city police because of fictitious licensing 456.
and stored in sheriff's garage may be sold

66.29 Public works, contracts, bids. (1) **DEFINITIONS.** (a) The word "person" as used in this section shall mean and include any and every individual, copartnership, association, corporation or joint stock company, lessee, trustee or receiver.

(b) The term "municipality" shall mean and include the state and any county, town, city, village, school district, board of school directors, sewer district, drainage district, or any other public or quasi public corporation, board or other public body charged with the duty of receiving bids for and awarding any public contract.

(c) The term "public contract" shall mean and include any contract for the construction, execution, repair, remodeling, improvement of any public work, building, furnishing of supplies, material of any kind whatsoever, proposals for which are required to be advertised for by law.

(2) **BIDDER'S PROOF OF RESPONSIBILITY.** Upon all public contracts, by any municipality, board or other public body, every public officer charged with the duty of receiving bids for and awarding of any contract, may within its discretion before delivering any form for bid proposals pertaining thereto to any person, require such person to submit a full and complete statement sworn to before an officer authorized by law to administer oaths, of financial ability, equipment, experience in the work prescribed in said public contract, and of such other matters as the municipality, board, public body or officer thereof may require for the protection and welfare of the public in the performance of any public contract; and such statement shall be in writing on a standard form of a questionnaire as adopted for such use by the municipality, board or public body or officer thereof, to be furnished by such municipality, board, public body or officer thereof, and shall be filed in the manner and place designated by the municipality, board, public body or such officer thereof, not less than five days prior to the time set for opening of bids. The contents of said statements shall be confidential and shall not be disclosed except upon written order of such person furnishing the same, or in cases of actions against, or by such person or municipality.

(3) **PROOF OF RESPONSIBILITY, CONDITION PRECEDENT.** No bid shall be received from any person who has not submitted the sworn statement as provided in the preceding sections, provided that any prospective bidder who has once qualified to the satisfaction of the municipality, board, public body or officer, and who wishes to become a bidder upon subsequent public contracts under the jurisdiction of the same, to whose satisfaction the prospective bidder has qualified under the provision of the preceding section, need not separately qualify on each public contract unless required so to do by the said municipality, board, public body or officers.

(4) **REJECTION OF BIDS.** Whenever the municipality, board, public body or officer is not satisfied with the sufficiency of the answer contained in the questionnaire and financial statement, it may reject said bid, or disregard the same.

(5) **CORRECTIONS OF ERRORS IN BIDS.** Whenever any person shall submit a bid or proposal for the performance of public work under any public contract to be let by the municipality, board, public body or officer thereof, who shall claim mistake, omission or error in preparing his bid, the said person shall, before the bids are opened, make known the fact that he has made an error, omission or mistake, and in such case his bid shall be returned to him unopened and the said person shall not be entitled to bid upon the contract at hand unless the same is readvertised and relet upon such advertisement. In case any such person shall make an error or omission or mistake and shall discover the same after the bids are opened, he shall immediately and without delay give written notice and make known the fact of such mistake, omission or error which has been committed and submit to the municipality, board, public body or officers thereof, clear and satisfactory evidence of such mistake, omission or error and that the same was not caused by any careless act or omission on his part in the exercise of ordinary care in examining the plans, specifications, and conforming with the provisions of this section, and in case of forfeiture, shall not be entitled to recover the moneys or certified check forfeited as liquidated damages unless he shall prove before a court of competent jurisdiction in an action brought for the recovery of the amount forfeited, that in making the mistake, error or omission he was free from carelessness, negligence or inexcusable neglect.

(6) The municipality, board, public body or officer shall have the power to set out in any public contract reasonable and lawful conditions as to the hours of labor, wages, residence, character, and classification of workmen to be employed by any contractor, and to classify such contractors as to their financial responsibility, competency, and ability to perform work and to set up a classified list of contractors pursuant thereto; and such municipality, board, public body or officer thereof shall further have the power to reject the bid of any person, if such person has not been classified pursuant to the said questionnaire for the kind or amount of work in said bid. Whenever such municipality, board, public body or officer shall contemplate the letting of any public contract, pursuant to the provisions of this section, the advertisement for proposals for the doing of the same shall expressly state in effect that the letting is made subject to the provisions of this section and that such municipality, board or public body or officer reserves and has the right to reject any and all bids at any time.

(7) On all contracts the bidder shall incorporate and make a part of his proposal for the doing of any work or labor or the furnishing of any material in or about any public work or contract of the municipality, a sworn statement that he has examined and carefully

prepared his bid from the plans and specifications and has checked the same in detail before submitting the said proposal or bid to the municipality, board, department or officer charged with the letting of bids, and also at the same time as a part of such said proposal, submit a full and complete list of all the subcontractors and the class of work to be performed by each.

(8) Whenever there is a dispute between the contractor or surety or the municipality as to the determination whether there is a compliance with the provisions of the contract as to the hours of labor, wages, residence, character, and classification of workmen employed by any contractor, the determination of the municipality shall be final, and in case of violation of said provisions, the municipality may declare the contract in default and request the surety to perform or relet upon advertisement the remaining portion of the contract. [1933 c. 395; 1935 c. 139; 1939 c. 283]

Note: The instant bidder, showing the village board his final-estimate sheet, which showed on its face that his mistake of \$6,000 in the bid submitted by him occurred because of erroneously setting down on the estimate sheet a "0" for a "6" in the thousand space of the total of a column of figures representing the cost of materials for the work, and explaining that the mistake in the entry on the estimate sheet occurred because the ribbon in his adding machine was worn and gave the figure "6" in the adding-machine slip the appearance of a "0", satisfied the requirement of (5), that a bidder making a mistake in his bid shall submit to the municipality clear and satisfactory evidence of such mistake and that it was not caused by his carelessness in examining the plans and specifications. *Krasin v. Almond*, 233 W 513, 290 NW 152. The public policy which insists on competition between bidders for public work and dictates that contracts shall be let to the lowest responsible bidder is violated when prospective bidders enter into an arrangement to exact from each other a percentage of the amount of each contract secured during a given year, and the law casts out as illegal an arrangement to hamper competitive bidding when so limited and so described. *Associated Wisconsin Contractors v. Lathers*, 235 W 14, 291 NW 770.

66.295 Authority to pay for public works done in good faith. (1) Whenever any city of whatever class, however incorporated, shall have received and shall have enjoyed or shall be enjoying any benefits or improvements furnished under any contract which shall have been heretofore declared as imposing no legal obligation on any such city and which contract was entered into in good faith and has been fully performed and the work has been accepted by the proper city officials, so as to impose a moral obligation upon such city to pay therefor, such city, by resolution of its common council and in consideration of such moral obligation, may pay to the person furnishing such benefits or improvements the fair and reasonable value of such benefits and improvements.

(2) The fair and reasonable value of such benefits and improvements and the funds out of which payment therefor shall be made shall be determined by the common council of such city. Such payments may be made out of any available funds, and said common council shall have authority, if necessary, to levy and collect taxes in sufficient amount to meet such payments.

(3) Where payment for any benefits or improvements mentioned in subsections (1) and (2) of this section shall be authorized by the common council of any city and where special assessments shall have been levied for any portion of such benefits or improvements prior to the authorization of such payment, the city authorities shall proceed to make a new assessment of benefits and damages in the manner provided for the original assessment, except that steps required in the laws relating to the original assessment to be taken prior to the ordering or doing of such benefits or improvements may be taken after the authorization of such payment with the same effect as if taken prior to the ordering or doing of such benefits or improvements. The owner of any property affected by such reassessment may appeal therefrom in the same manner as from an original assessment. On such reassessment full credit shall be given for all moneys collected under an original assessment for such benefits and improvements. [1941 c. 272]

66.30 [Renumbered section 66.029 by 1937 c. 432 s. 2]

66.30 Local co-operation. Any city, village, town, county or school district may, by action of the governing body thereof, enter into an agreement with any other such governmental unit for the joint or co-operative exercise of any power or duty required or authorized by statute, and as part of such agreement may provide a plan for prorating any expenditures involved. [1939 c. 210]

66.31 Arrests. Any peace officer of a city, village or town may, when in fresh pursuit, follow into an adjoining city, village or town and arrest any person or persons for violation of state law or of the ordinances of the city, village or town employing such officer. [1937 c. 432]

66.32 Extraterritorial powers. The extraterritorial powers granted to cities and villages by statute, including subsection (2) of section 62.23, subsection (7) of section 66.05, section 146.10, and section 236.06, shall not be exercised within the corporate limits of another city or village. Wherever such statutory extraterritorial powers shall overlap, the jurisdiction over said overlapping area shall be equally divided between the municipalities concerned at the respective mid-points so that not more than one municipality shall exercise such power over any area. [1937 c. 432]

66.33 Appropriations for Wisconsin Works Progress Administration Projects; validation of appropriations heretofore made. (1) The governing body of any county, town, city or village at any legal meeting is empowered to appropriate an amount of money for the carrying out of any projects which are eligible under the Wisconsin Works Progress Administration. The amount of money appropriated for such purposes shall not in any one year exceed one-half of one per cent of the total valuation of the taxable property in the municipality in the preceding year. The appropriation made under the provisions of this section shall not be subject to any provisions of the statutes relating to tax limitations.

(2) Any appropriation heretofore made by any county, town, city or village for any eligible project under the Wisconsin Works Progress Administration is hereby legalized and validated the same as if specific authority existed therefor. [1935 c. 476]

66.35 License for closing-out sales. (1) No person shall conduct in any city a "closing-out sale" of merchandise except in the manner hereinafter provided or in the manner provided by ordinance of such city. Every person shall obtain a city license before retailing or advertising for retail any merchandise represented to be merchandise of a bankrupt, insolvent, assignee, liquidator, adjuster, administrator, trustee, executor, receiver, wholesaler, jobber, manufacturer, or of any business that is in liquidation, that is closing out, closing or disposing of its stock or a particular part or department thereof, that has lost its lease or has been or is being forced out of business, that is disposing of stock on hand because of damage by fire, water, smoke or other cause, or that for any reason is forced to dispose of stock on hand. Such license is denominated a "closing-out sale license" and such sale a "closing-out sale." Such license must be obtained in advance if such advertisement or representation, expressed or implied, tends to lead people to believe that such sale is a selling out or closing out sale.

(2) Every person requiring a "closing-out sale license" shall make an application in writing to the city clerk in the form provided by said clerk and attach thereto an inventory containing a complete and accurate list of the stock of merchandise on hand to be sold at such sale and shall have attached thereto an affidavit by the applicant or his duly authorized agent, that the inventory is true and correct to the knowledge of the person making such affidavit. Said affidavit shall include the names and addresses of the principals, such as the partners, officers and directors and the principal stockholders and owners of the business, and of the inventoried merchandise. Said inventory shall contain the cost price of the respective articles enumerated therein, together with the date of purchases and the identity of the seller. If the merchandise was purchased for a lump sum or other circumstances make the listing of the cost price for each article impracticable, said inventory shall state the lump sum paid for said merchandise and the circumstances of the purchase. Said application shall further specify the name and address of the applicant, and, if an agent, the person for whom he is acting as an agent, the place at which said sale is to be conducted and the time during which the proposed sale is to continue. The license shall specify the period for which it is granted, which time shall not exceed sixty successive days, Sundays and legal holidays excepted, from the date of the license.

(3) The time during which a sale may be conducted may be extended by the mayor if, at any time during the term of the license, a written application for such extension, duly verified by affidavit of the applicant shall be filed by said licensee with the mayor. Said application shall state the amount of merchandise, listed in the original inventory, which has been sold and the amount which still remains for sale and shall state the time for which an extension is requested. No extension shall be granted if any merchandise has been added to the stock, listed in the inventory, since the date of the license, and the applicant shall satisfy the mayor by affidavit or otherwise, as directed by him, that no merchandise has been added to the said stock since the date of the issuance of the license. The mayor may grant or deny the application and if granted the period of the extension shall be determined by said mayor, but shall not exceed thirty days from the expiration of the original license. If said extension is granted, the same shall be issued by the mayor of said city upon the payment of an additional license fee of twenty-five dollars per day for the time during which it is granted.

(4) It shall be unlawful to sell, offer or expose for sale, at any sale for which a license is required by this section, any merchandise not listed in the inventory, required by subsection (2), except that any merchant may, in the regular course of business, conduct a closing-out sale of merchandise and at the same time sell other merchandise, if the merchandise for the sale of which a license is required shall be distinguished by a tag or otherwise so that said merchandise of said class is readily ascertainable to prospective purchasers, and shall not label or tag other merchandise in a manner to indicate to, or lead, a prospective purchaser to believe that said merchandise is of the class or classes for which a license is required. Each article sold in violation of the provisions hereof, shall constitute a separate offense, and any false or misleading statement in said inventory, applica-

tion or extension application shall constitute a violation of this section.

(5) The city clerk shall verify the details of such inventory as filed in connection with an application for such license and shall also verify the items of merchandise sold during any sale under said license, and it shall be unlawful for any licensee to refuse to furnish on demand to the city clerk, or any person designated by him for that purpose, all the facts connected with the stock on hand or any other information that he may reasonably require in order to make a thorough investigation of all phases of said sale, so far as they relate to the rights of the public.

(6) The fee for such licenses shall be, and the same is hereby fixed, as follows:

For a period not exceeding fifteen days, twenty-five dollars;

For a period not exceeding thirty days, fifty dollars;

For a period not exceeding sixty days, seventy-five dollars;

And a further fee of one dollar per thousand dollars of the price set forth on the inventory.

(7) This section shall not apply to sales by public officers or sales under judicial process.

(8) The city clerk shall on June first and December first of each year pay into the state treasury, twenty-five per cent of all license fees collected under this section. Provided that the provisions of this subsection shall not apply to license fees collected under the provisions of any closing-out sale ordinance of such city.

(9) Any person violating this section shall, for each violation, forfeit not less than twenty-five dollars nor more than two hundred dollars. [1933 c. 219; 1935 c. 550 s. 389]

Note: License must be obtained to conduct closing-out sale where person has lost his lease and is compelled to move into new location across street and advertise to sell his goods, or part thereof. 22 Atty. Gen. 673. Municipality under (1) may pass ordinance that supplements statute, but may not pass ordinance in conflict therewith. Where terms of ordinance are less severe in requirements than terms of statute, statute controls. 27 Atty. Gen. 336. Merchant selling out seasonable merchandise at close of season, is not required to obtain license for "closing-out" sale. 28 Atty. Gen. 471.

66.40 Housing authorities. (1) **SHORT TITLE.** This section may be referred to as the "Housing Authorities Law".

(2) **FINDING AND DECLARATION OF NECESSITY.** It is declared that there exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; that these slum areas cannot be clear, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income would, therefore, not be competitive with private enterprise; that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; that it is in the public interest that work on such projects be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is declared as a matter of legislative determination.

(3) **DEFINITIONS.** The following terms, wherever used or referred to in this section shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Authority" or "housing authority" means any of the public corporations established pursuant to subsection (4).

(b) "City" means any city. "The city" means the particular city for which a particular housing authority is created.

(c) "Council" means the council or other body charged with governing the city.

(d) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

(e) "Area of operation" includes the city for which a housing authority is created and the area within five miles of the territorial boundaries thereof but not beyond the county limits of the county in which such city is located and provided further that in the

case of all cities the area of operation shall be limited to the area within the limits of such city unless the city shall annex the area of operation, but the area of operation of a housing authority shall not include any area which lies within the territorial boundaries of any city for which another housing authority is created by this section.

(f) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this section.

(g) "Government" includes the state and federal governments and any subdivision, agency or instrumentality corporate or otherwise of either of them.

(h) "State" shall mean the state of Wisconsin.

(i) "Federal government" shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(j) "Housing projects" shall include all real and personal property, building and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair insanitary or unsafe housing, or (b) to provide safe and sanitary dwelling accommodations for persons of low income, or for a combination of said (a) and (b). The term "housing project" may also be applied to the planning of buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(k) "Community facilities" shall include real and personal property, and buildings and equipment for recreational or social assemblies, for educational, health or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority or the occupants of the dwelling accommodations, or for both.

(l) "Bonds" shall mean any bonds, interim certificates, notes, debentures or other obligations of the authority issued pursuant to this section.

(m) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts, land contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(n) "Trust indenture" shall include instruments pledging the revenues of real or personal properties.

(o) "Contract" shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(p) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(q) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees or such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.

(r) "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

(s) "Persons of low income" means persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(t) "State public body" means any city, town, incorporated village, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(4) CREATION OF HOUSING AUTHORITIES. (a) When the council of a city by proper resolution shall declare at any time hereafter that there is need for an authority to function in the city, a public body corporate and politic shall then exist in the city and be known as the "housing authority" of the city. Such authority shall then be authorized to transact business and exercise any powers herein granted to it.

(b) The council shall adopt a resolution declaring that there is need for a housing authority in the city if it shall find that insanitary or unsafe inhabited dwelling accommodations exist in the city or that there is a shortage of safe or sanitary dwelling accommodations in the city available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said council may take into consideration the degree of overcrowding, the percentage of land coverage, the

light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

(c) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the council declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city. A copy of such resolution duly certified by the city clerk shall be admissible evidence in any suit, action or proceeding.

(5) APPOINTMENT, QUALIFICATIONS AND TENURE OF COMMISSIONERS. (a) When the council of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall, with the confirmation of the council, appoint five persons as commissioners of the authority. No commissioner may be connected in any official capacity with any political party nor shall more than two be officers of the city in which the authority is created. The powers of each authority shall be vested in the commissioners thereof in office from time to time.

(b) The commissioners who are first appointed shall be designated by the mayor to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term in the same manner as other appointments. Three commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner if such commissioner has been duly confirmed as herein provided and has duly taken and filed the official oath before entering upon his office. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

(c) When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employes, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the city attorney or chief law officer of the city for such legal services as it may require. An authority may delegate to one or more of its agents or employes such powers or duties as it may deem proper.

(6) DUTY OF THE AUTHORITY AND COMMISSIONERS OF THE AUTHORITY. The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this section and the laws of the state and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

(7) INTERESTED COMMISSIONERS OR EMPLOYES. No commissioner or employe of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for insurance, materials or services to be furnished or used in connection with any housing project. If any commissioner or employe of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

(8) REMOVAL OF COMMISSIONERS. For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor, but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the city clerk. To the extent applicable, the provisions of section 17.16 relating to removal for cause shall apply to any such removal.

(9) POWERS OF AUTHORITY. An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers in addition to others herein granted:

(a) Within its area of operation to prepare, carry out, acquire, lease and operate

housing projects approved by the council; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(b) To take over by purchase, lease or otherwise any housing project undertaken by any government and located within the area of operation of the authority when approved by the council; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property or any interest therein.

(c) To act as agent for any government in connection with the acquisition, construction, operation or management of a housing project or any part thereof.

(d) To arrange or contract for the furnishing of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof.

(e) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this section) to establish and revise the rents or charges therefor.

(f) Within its area of operation to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; and to engage in research and studies on the subject of housing.

(h) To acquire by eminent domain any real property, including improvements and fixtures thereon.

(i) To own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable, to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project.

(k) In connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof.

(l) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this section.

(m) To invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control.

(n) To sue and be sued, to have a seal and to alter the same at pleasure, to have perpetual succession, to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.

(o) To make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this section, to carry into effect the powers and purposes of the authority.

(p) To exercise all or any part or combination of powers herein granted. No provisions of law with respect to the acquisition or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(q) The bonds, notes, debentures or other evidences of indebtedness executed by a housing authority shall not be a debt or charge against any city, county, state or any other governmental authority, other than against said housing authority itself and its available property, income or other assets in accordance with the terms thereof and of this act, and no individual liability shall attach for any official act done by any member of such authority. No such authority shall have any power whatsoever to levy any tax or assessment.

(10) EMINENT DOMAIN. The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this section after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of chapter 32 or pursuant to any other applicable statutory provisions, now in force or hereafter enacted for the exercise of the power of eminent domain.

At any time at or after the filing of a petition for condemnation, and before the entry of final judgment, the authority may file with the clerk of the court in which the petition is filed, a declaration of taking signed by the duly authorized officer or agent of the authority declaring that all or any part of the property described in the petition is to be taken for the use of the authority; provided no such declaration of taking may be filed unless and until the necessity of taking of such property for the public use has been first established by the verdict of a jury. The said declaration of taking shall be sufficient as it sets forth: (1) a description of the property, sufficient for the identification thereof, to which there may be attached a plat or map thereof; (2) a statement of the estate or interest in said property being taken; (3) a statement of the sum of money estimated by the authority to be just compensation for the property taken, which sum shall be not less than the least assessed valuation for tax purposes of the estate or interest in the property to be taken.

From the filing of the said declaration of taking and the deposit in court to the use of the persons entitled thereto of the amount of the estimated compensation stated in said declaration, title to the property specified in said declaration shall vest in the authority and said property shall be deemed to be condemned and taken for the use of the authority and the right to just compensation for the same shall vest in the persons entitled thereto. Upon the filing of the declaration of taking the court shall designate a day (not exceeding thirty days after such filing, except upon good cause shown) on which the person in possession shall be required to surrender possession to the authority.

The ultimate amount of compensation shall be vested in the manner provided by law. If the amount so vested shall exceed the amount so deposited in court by the authority, the court shall enter judgment against the authority in the amount of such deficiency together with interest at the rate of six per cent per annum on such deficiency from the date of the vesting of title to the date of the entry of the final judgment (subject, however, to abatement for use, income, rents or profits derived from such property by the owner thereof subsequent to the vesting of title in the authority) and the court shall order the authority to deposit the amount of such deficiency in court.

At any time prior to the vesting of title of property in the authority the authority may withdraw or dismiss its petition with respect to any and all of the property therein described.

Upon vesting of title to any property in the authority, all the right, title and interest of all persons having an interest therein or lien thereupon, shall be divested immediately and such persons thereafter shall be entitled only to receive compensation for such property.

Except as hereinabove provided with reference to the declaration of taking, the proceedings shall be as is or may hereafter be provided by law for condemnation, and the deposit in court of the amount estimated by the authority upon a declaration of taking shall be disbursed as is or may hereafter be provided by law for an award in condemnation proceedings.

Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation.

(11) ACQUISITION OF LAND FOR GOVERNMENT. The authority may acquire by purchase or by the exercise of its power of eminent domain as aforesaid, any property, real or personal, for any housing project being constructed or operated by a government. The authority upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

(12) ZONING AND BUILDING LAWS. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated.

(13) TYPES OF BONDS. (a) An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (1) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds, or with such proceeds together with a grant from the federal government in aid of such project; (2) exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds; or (3) from its revenues generally. Any of such bonds may be additionally secured by a pledge of any revenues or (subject to the limitation hereinafter imposed) a mortgage of any housing project, projects or other property of the authority.

(b) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(c) The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority.

(14) FORM AND SALE OF BONDS. (a) Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six per centum per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such

resolution, its trust indenture or mortgage may provide. Any bond reciting in substance that it has been issued by an authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed, in any suit, action or proceeding involving the validity or enforceability of such bond or the security therefor, to have been issued for a housing project of such character. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

(b) The bonds may be sold at public or private sale as the authority may provide. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum per annum.

(c) In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

(d) The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased only out of any such revenues available therefor. All bonds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

(e) Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this section shall be fully negotiable.

(15) PROVISIONS OF BONDS, TRUST INDENTURES, AND MORTGAGES. In connection with the issuance of bonds or the incurring of any obligation under a lease and in order to secure the payment of such bonds or obligations, the authority shall have power:

(a) To pledge by resolution, trust indenture, mortgage (subject to the limitations hereinafter imposed), or other contract all or any part of its rents, fees, or revenues.

(b) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.

(c) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof, or with respect to limitations on its right to undertake additional housing projects.

(d) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

(e) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

(f) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) To provide for the terms, form, registration, exchange, execution and authentication of bonds.

(h) To provide for the replacement of lost, destroyed or mutilated bonds.

(i) To covenant that the authority warrants the title to the premises.

(j) To covenant as to the rents and fees to be charged, the amount to be raised each year or other period of time by rents, fees and other revenues and as to the use and disposition to be made thereof.

(k) To covenant as to the use of any or all of its property, real or personal.

(l) To create or to authorize the creation of special funds in which there shall be segregated (a) the proceeds of any loan or grant or both; (b) all of the rents, fees and revenues of any housing project or projects or parts thereof; (c) any moneys held for the payment of the costs of operations and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payments; and (e) any moneys held for any other reserves or contingencies; and to covenant as to the use and disposal of the moneys held in such funds.

(m) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(n) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

(o) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must con-

sent thereto and the manner in which such consent may be given.

(p) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(q) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.

(r) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(s) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(t) To covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right to take possession and to use, operate, manage and control such housing projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

(u) To vest in a trust or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

(v) To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character.

(w) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified as the government or any purchaser of the bonds of the authority may reasonably require.

(x) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the constitution of the state and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its property, real or personal, except as provided in subsection (16) hereof.

(16) POWER TO MORTGAGE WHEN PROJECT FINANCED WITH AID OF GOVERNMENT. In connection with any project financed in whole or in part, or otherwise aided by a government (whether through a donation of money or property, a loan, the insurance or guarantee of a loan, or otherwise), the authority shall also have power to mortgage all or any part of its property, real or personal, then owned or thereafter acquired.

(17) REMEDIES OF AN OBLIGEE OF AUTHORITY. An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employes thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this section.

(b) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

(c) By suit, action or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority.

(18) ADDITIONAL REMEDIES CONFERRABLE BY MORTGAGE OR TRUST INDENTURE. Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations, the right upon the happening of an "event of default" as defined in such instrument:

(a) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof. If such receiver be appointed, he may enter and take possession of such housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

(19) REMEDIES CUMULATIVE. All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority.

(20) SUBORDINATION OF MORTGAGE TO AGREEMENT WITH GOVERNMENT. The authority may agree in any mortgage made by it that such mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon; in such event, any purchaser or purchasers at a sale of the property of an authority pursuant to a foreclosure of such mortgage or any other remedy in connection therewith shall obtain title subject to such contract.

(21) CONTRACTS WITH FEDERAL GOVERNMENT. In addition to the powers conferred upon the authority by other provisions of this section, the authority is empowered to borrow money or accept grants from the federal government for or in aid of any housing project which such authority is authorized to undertake, to take over any land acquired by the federal government for the construction or operation of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this section to authorize every council to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the undertaking, construction, maintenance and operation of any housing project which the authority is empowered to undertake.

(22) TAX EXEMPTION AND PAYMENTS IN LIEU OF TAXES. The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes of the state or any state public body; provided, however, that the city in which a project or projects are located may fix a sum to be paid annually in lieu of such taxes by the authority for the services, improvements or facilities furnished to such project or projects by such city, but in no event shall such sum exceed the amount that would be levied as the annual tax of such city upon such project or projects.

(23) REPORTS. The authority shall at least once a year file with the mayor of the city a report of its activities for the preceding year.

(24) BIDS. When a housing authority shall have acquired the property necessary for any project, said authority shall complete and approve plans, specifications and conditions in connection therewith for carrying out such project, and shall then advertise for bids for all work which said authority must do by contract, such advertisements to be published once a week for two consecutive weeks in a newspaper of general circulation in the city in which the project is to be developed. The contract shall be awarded to the lowest qualified and competent bidder. Section 66.29 of the statutes shall apply to such bidding.

(26) OPERATION NOT FOR PROFIT. It is declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient:

(a) To pay, as the same become due, the principal and interest on the bonds of the authority;

(b) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority;

(c) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments

which will be due on such bonds in any one year thereafter and to maintain such reserve.

(27) RENTALS AND TENANT SELECTION. (a) In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

1. It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons of low income.

2. It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

3. It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an aggregate annual income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to the occupants, of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

(b) Nothing contained in the housing authorities law, as hereby amended, shall be construed as limiting the power of an authority:

1. To invest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by said law, as amended, with respect to rentals, tenant selection, manner of operation, or otherwise; or

2. Pursuant to subsection (16) to vest in obligees the right, in the event of a default by the authority, to acquire title to a housing project or the property mortgaged by the housing authority, free from all the restrictions imposed by subsections (26) and (27).

(28) CO-OPERATION IN UNDERTAKING HOUSING PROJECTS. For the purpose of aiding and co-operating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its property to a housing authority or the federal government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Cause services to be furnished to the authority of the character which it is otherwise empowered to furnish;

(d) Subject to the approval of the council, furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(f) Enter into agreements, (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority or the federal government respecting action to be taken by such state public body pursuant to any of the powers granted by this section;

(g) Do any and all things, necessary or convenient to aid and co-operate in the planning, undertaking, construction or operation of such housing projects;

(h) Purchase or legally invest in any of the bonds of a housing authority and exercise all of the rights of any holder of such bonds;

(i) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction;

(j) In connection with any public improvements made by a state public body in exercising the powers herein granted, such state public body may incur the entire expense thereof. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

(29) CONTRACTS BETWEEN AUTHORITY AND CITY. In connection with any housing project located wholly or partly within the area in which it is authorized to act, any city may agree with an authority or government that a certain sum (subject to the limitations imposed by subsection (22)), or that no sum, shall be paid by the authority in lieu of taxes for any year or period of years.

(30) **ADVANCES TO HOUSING AUTHORITY.** When any housing authority which is created for any city becomes authorized to transact business and exercise its powers therein, the governing body of the city, may immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of such housing authority during the first year thereafter, and may appropriate such amount to the authority out of any moneys in such city treasury not appropriated to some other purposes. The moneys so appropriated may be paid to the authority as a donation. Any city, town or incorporated village located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it.

(31) **PROJECT SUBMITTED TO PLANNING COMMISSION.** Before any housing project of the character designated in paragraph (a) of subsection (9) be determined upon by the authority, or any real estate acquired or agreed to be acquired for such project or the construction of any of the buildings begins or any application made for federal loan or grant for such project, the extent thereof and the general features of the proposed layout indicating in a general way the proposed location of buildings and open spaces shall be submitted to the planning commission, if any, of the city or political subdivision in which the proposed project is located, for the advice of such planning commission upon the proposed location, extent, and general features of the layout.

(32) **SEVERABILITY.** Notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(33) **THIS SECTION CONTROLLING.** In so far as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be controlling.

(34) **SUPPLEMENTAL NATURE OF SECTION.** The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law. [1935 c. 525; Spl. S. 1937 c. 10, 15; 1941 c. 7]

Notes: This section, as amended by chs. 10 and 15 Spl. S. 1937, relating to public housing projects, is not in violation of sec. 1, art VIII, Const., relating to uniformity of taxation. Such projects may not be undertaken without approval of city council and act is not in conflict with Wagner-Steagall act. 27 Atty. Gen. 38.

66.42 [Renumbered section 66.04 sub. (3a) by 1939 c. 107]

66.45 Barriers across streets for play purposes. The council or board of any city or village may cause streets that are not a part of any federal, state or county trunk highway system, to be set aside for the safety of children in coasting or other play activities, and may obstruct or barricade such streets for such period of time and in such manner as shall most effectively safeguard the children from accidents. The council or board of such city or village shall erect and maintain thereon barriers or barricades, lights or warning signs therefor and shall not be liable for any damage caused thereby. [1937 c. 419]

66.50 Municipal hospital board. (1) In any city or village, however organized, having a municipal hospital therein, the board of trustees or other governing board of such municipal hospital shall have power and authority, except as otherwise provided by ordinance:

(a) To prescribe rules of order for the regulation of their own meetings and deliberations and to alter, amend or repeal the same from time to time;

(b) To enact, amend and repeal rules and regulations relating to the government, operation and maintenance of such hospital and relating to the employes thereof;

(c) To contract for and purchase all fuel, food and other supplies reasonably necessary for the proper operation and maintenance of such hospital;

(d) To enact, amend and repeal rules and regulations for the admission to and government of patients at such hospital;

(e) To enter into contract for the construction, installation or making of additions or improvements to or alterations of such hospital whenever such additions, improvements or alterations have been ordered and funds provided therefor by the city council;

(f) To engage all necessary employes at such hospital for a period not to exceed one year under any one contract and at a salary not to exceed the sum of twenty-five dollars per week, excluding board and laundry, unless a larger salary be expressly authorized by the city council;

(g) To audit all accounts and claims against said hospital or against said board of trustees and, if approved, such shall be paid by the city or village clerk and treasurer in the manner provided by subsection (8) of section 66.04.

(2) All expenditures made pursuant to this section shall be within the limits authorized by the governing body of the municipality. [1937 c. 432; 1941 c. 129]

66.51 Revenue bonds for counties and cities. (1) Every county, or city, or both jointly, may construct, purchase, acquire, develop, improve or operate a county or city building, or both jointly, for a courthouse, city hall, armory, library, auditorium and music hall, or municipal center, or any combination thereof. The county board, common council of any city, or both jointly are authorized in their discretion for any of its corporate purposes as set forth herein, to issue bonds on which the principal and interest are payable exclusively from the income and revenues of such project financed with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in the financing and construction thereof. Provided, the credit of the county, or city, or both jointly, shall not be pledged to the payment of such bonds, but shall be payable only from the revenues of such project or the funds received from the sale or disposal thereof. If the county board, or common council of a city, or both jointly, so determine, such bonds shall be secured either by a trust indenture pledging such revenues or by a mortgage on the property comprising such project and the revenues therefrom.

(2) The bonds or other evidences of indebtedness shall state upon their face that the county, or city, or both jointly, shall not be a debt thereof or be liable therefor. Any indebtedness created by this section shall not be considered an indebtedness of such county or city and shall not be included in such amounts of determining the constitutional five per cent debt limitations.

(3) The provisions of subsection (9) of section 66.06 relating to the issuance of revenue bonds by cities for public utility purposes in so far as applicable shall apply to the issuance of revenue bonds under this section. [1939 c. 395]

Note: This section is in all probability operation of armory proper county purpose. valid legislation in treating armory as pub- Municipalities may build armories and lease lic utility for purposes of financing without that portion not needed for municipal pur- creating municipal indebtedness within poses. 21.61 is applicable to armories meaning of sec. 3, art. XI, Const. Legisla- financed under ch. 395, Laws 1939. 28 Atty. Gen. 663.

66.52 Employes or officers in military service. (1) The governing body of any city or village may grant a leave of absence to any employe or officer who is inducted into the armed forces of the federal government pursuant to legislation enacted by the 76th or 77th Congress of the United States of America.

(2) The governing body of any city or village may provide for safeguarding the reinstatement and pension rights of any employe or officer so inducted into the federal armed forces.

(3) No employe or officer who is appointed to fill the place of an employe or officer so entering the federal armed forces shall acquire permanent tenure during such period of replacement service. [1941 c. 171]

66.53 Repayment of assessments in certain cases. Whenever in any city any contract for improvements has been or may be hereafter declared void by any court of last resort on the following grounds: want of power to make such contract; made contrary to a prohibition against contracting in any other than a specified way; or forbidden by statute, and if the governing body of such city shall not have adopted the resolution referred to in subsection (1) of section 66.295 relating to payment of any person who has furnished any benefits pursuant to said void contract, the governing body of such city may provide that all persons who have paid all or any part of any assessment levied against the abutting property owners by reason of such improvement may be reimbursed the amount of such assessment so paid from such fund as the governing body may determine. [1941 c. 272; 43.08 (2)]