

## TITLE VIII.

## Functions and Government of Municipalities.

## CHAPTER 59.

## COUNTIES.

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**59.01 Body corporate.** Each county organized in this state is a body corporate, empowered to sue and be sued, to purchase, take and hold real and personal estate for public uses, including lands sold for taxes, to sell, lease and convey the same, including the author-

ity to enter into leases or contracts with the state for a period of years for the uses and purposes specified in subdivisions 1, 2, 3, 4, and 5 of paragraph (d) of subsection (7) of section 23.09, to make such contracts and to do such other acts as are necessary and proper to the exercise of the powers and privileges granted and the performance of the duties charged upon it by law, and shall so continue until altered by law. [1935 c. 212]

**Note:** As respects county's liability for highways is a "governmental function." injuries sustained when automobile collided with road grader at night, maintenance of 221. *Crowley v. Clark County*, 219 W 76, 261 NW 221.

**59.02 Powers how exercised; direct legislation.** (1) Except as provided in subsection (2) of this section, the powers of a county as a body corporate can only be exercised by the county board thereof, or in pursuance of a resolution or ordinance adopted by such board.

(2) Ordinances and resolutions may be adopted by any county board by a majority vote when a quorum is present, or by such larger vote as may be required by law in special cases. [1943 c. 177]

**Note:** Even though rules of parliamentary procedure are violated, in absence of appeal from ruling of chair, county ordinance passed in method set out in (2) is valid. 27 Atty. Gen. 21.

County board may not submit questions to referendum except as it takes definite action itself thereon and makes taking effect of such action contingent upon approval of electors. 27 Atty. Gen. 161.

Sections 59.02 (2) and 59.04 (3) do not prohibit county board from adopting rule for suspension of its rules when quorum is present by majority vote or such other vote in excess of majority as board may deem desirable. 27 Atty. Gen. 309.

Where county board has submitted proposition to voters by referendum, proposition being one within duties of county board and with respect to which board is final authority,

vote of electors may be taken as directory only and county board may, if it chooses, disregard will of electorate. Electorate has no governing powers except such as are given by statute and cannot legislate except by following procedure outlined in 10.43. 28 Atty. Gen. 11.

An ordinance duly enacted by a county board cannot be amended, repealed or suspended by a resolution. 28 Atty. Gen. 367.

One county board cannot by providing a method as to how a resolution may be amended or repealed require a succeeding or future county board to conform to the method provided. 28 Atty. Gen. 588.

Law providing for adoption of county ordinance by direct legislation pursuant to provisions of 10.43 is unconstitutional. 28 Atty. Gen. 719.

**59.03 County boards; composition; election; terms; substitutes; compensation; compatibility.** The boards of supervisors of the several counties classified according to population as shown by the last preceding state or United States census, shall be composed of representatives from within the county elected and compensated as follows:

(1) **SPECIAL COUNTIES.** In each county having a population of at least two hundred and fifty thousand:

(a) *Composition.* Of a supervisor from each assembly district therein elected by the electors of said district.

(b) *Election; term.* At the election held on the first Tuesday in April, 1921, one supervisor from each even-numbered assembly district shall be elected for a term of two years. Thereafter, beginning with the election held on the first Tuesday in April, 1924, all supervisors shall be elected for terms of four years at the election to be held on the first Tuesday in April next preceding the expiration of their respective terms. The supervisors elected prior to the election in 1924 shall be elected from and represent the assembly districts as the same existed on the first day of June, 1921.

(c) *Compensation.* Each such supervisor shall be paid out of the county treasury two thousand four hundred dollars per annum, except the chairman of the board who shall be paid two thousand seven hundred dollars. They shall receive no further compensation for services rendered in their official capacity.

(2) **OTHER COUNTIES.** In each county containing less than two hundred fifty thousand population:

(a) *Composition.* Of the chairman of the town boards of the several towns therein.

(b) *Same.* Of a supervisor from each city ward or part of city ward in the county, provided that each city with a population of eight hundred or less shall have but one supervisor unless such city shall be located in more than one county, in which case such city shall be entitled to one supervisor in each county.

(c) *Same.* Of a supervisor from every incorporated village or part of such a village in the county.

(d) *Election; terms.* Notwithstanding any other provision of the statutes, a supervisor from a city, city ward, or a part of a city ward, or village or a part of a village, shall be elected by the electors thereof at the same time that city or village officers are elected.

(e) *Substitutes.* If from sickness or other cause the chairman of any town board is unable to attend any meeting of the county board, either of the other 2 members of the town board, to be designated by themselves (and if they disagree they shall decide by lot), shall attend such meeting and act as a member of the county board, but he shall not be permitted to so act until the town clerk certifies to the county clerk that he was designated therefor. In cities and villages a substitute for any supervisor may be appointed in such

cases by the mayor or village president, and the city or village clerk shall certify such designation to the county clerk.

(f) *Compensation.* Each member of the county board, of each county to which this subsection is applicable, subject to the limitations herein provided, shall be allowed and paid by the county a compensation for his services and expenses in attending the meetings of the board at the rate of four dollars per day for the time he actually attends, excepting Sundays, and mileage for each mile traveled in going to and returning from the place of meeting by the most usual traveled route at the rate prescribed in paragraph (f) of subsection (6) of section 14.71; but any county board may at its annual meeting, by resolution, fix the compensation of the members of such board to be elected at the next ensuing election, at any sum not exceeding five dollars per day and such additional compensation for the chairman as the county board by a two-thirds vote may determine. No per diem allowance shall be made for any time occupied in traveling, where mileage is allowed therefor, except when on account of distance or lack of train service a member cannot attend the opening session of any county board meeting without leaving his home on the day preceding such session, or when for either of said causes he cannot return to his home until the day following the adjournment of such meeting, he may, in the discretion of the county board, be allowed and paid a per diem for such time, in addition to the time for which he can draw pay as provided for in this section, and such days shall not count as part of the limited number of days' attendance herein referred to. Except for services as a member of a committee as provided in section 59.06, no supervisor in any one year shall be paid for more days' attendance on the county board than as set opposite the respective population of the county he represents, as follows: Twenty thousand or less, twenty days; more than twenty thousand but less than one hundred thousand, twenty-five days; more than one hundred thousand but less than two hundred and fifty thousand, thirty days. As an alternative method of compensation, any county board in counties having a population in excess of twenty-five thousand which is subject to the provisions of this subsection, may at its annual meeting, by a two-thirds vote of members elected, fix the compensation of the members of such board to be elected at the next ensuing election at an annual salary not to exceed five hundred dollars which shall be in full for all services for the county including all committee service under section 59.06, and section 83.015 (1) (a), except that such members shall be entitled to mileage. The provisions of section 83.015 (1) (a), however, shall not apply to any county containing a population of more than 100,000.

(3) *COMPATIBILITY.* No county officer of any county or deputy of any such officer, or undersheriff, is eligible to the office of supervisor, but a county supervisor may also be a member of the common council of the city or of the board of trustees of the village in which he was elected or appointed. [1931 c. 86; 1931 c. 373 s. 3; 1935 c. 407; 1939 c. 45; 1943 c. 65; 1943 c. 334 s. 5]

**Cross Reference:** For county highway committee, see 83.015.

**Note:** Offices of member of county board and justice of peace are incompatible. 19 Atty. Gen. 510.

Under this section and 59.06 limiting number of days for which members of county board may receive per diem, year is member's official year and begins, as to him, when he qualifies in office. 20 Atty. Gen. 730.

Prior to amendment to (2) (f) by chapter 407, Laws 1935, resolution by county board to reimburse chairman for expenses incurred in performance of his duties, in addition to per diem and mileage for attending sessions and per diem for maximum thirty days' committee service, was invalid. 21 Atty. Gen. 237.

County board members are entitled to mileage in going to and returning from adjourned sessions of board. 22 Atty. Gen. 183.

County board members are not entitled to mileage for each day while attending annual meeting nor to reimbursement for cost of meals while attending meeting. 24 Atty. Gen. 805.

Member of county board may act as conciliation commissioner. 25 Atty. Gen. 22.

County board members are not entitled to mileage for each day while attending annual or special meeting of board. In counties containing population of one hundred thousand to two hundred fifty thousand, annual salary provided board members under (2) (f) does not include payment for services on highway committee. 25 Atty. Gen. 86.

Members of highway committee who are

members of county board cannot receive their increase in per diem until their next term as members of county board. 25 Atty. Gen. 437.

Resignation of officer who serves until successor is elected and qualified takes effect upon qualification of his successor; he is entitled to compensation for serving in office until such successor has been appointed and qualifies. 26 Atty. Gen. 63.

Divorce counsel is ineligible for office of county supervisor by reason of (3). 27 Atty. Gen. 296.

Under (3) county board member may not serve as deputy sheriff even though he is willing to serve without pay. 28 Atty. Gen. 32.

Offices of mayor and supervisor of county board are compatible. 28 Atty. Gen. 138.

Neither chairman nor any other member of county board may charge or receive greater compensation for per diem allowance or travel expense than is authorized by statute or by legislative action of county board, even though such person gives additional services or incurs additional expense. 30 Atty. Gen. 88.

Adoption by county board of committee recommendation upon oral motion may be sufficient under this section to place members on annual salary, even though proposition is not submitted in form of written resolution. Provision in such recommendation specifying that it shall be effective as to members elected in certain year prior to action is operative only as to members elected at next ensuing election. 30 Atty. Gen. 165.

**59.04 Meetings; adjournment; quorum; absentees.** (1) (a) Every county board shall meet on the Tuesday next succeeding the second Monday of November in each year at the county seat for the purpose of transacting business as a board of supervisors. Such meeting may be adjourned by the county clerk, upon the written request of a majority of the members of such board, to such a day as is designated in such request, but not less than one week nor more than three weeks from the said Tuesday next succeeding the second Monday of November. Upon such adjournment being made, such clerk shall give each member of the board written notice of the time to which the annual meeting has been adjourned.

(b) Every county board except in counties having a population of five hundred thousand or more, shall meet on the first Tuesday of May in each year for the purpose of organizing and for the purpose of transacting business as a board of supervisors. At such organization meeting such board may transact any and all business permitted by law to be transacted at the annual meeting. Such meeting may be adjourned in the same manner as the annual meeting.

(2) A special meeting of any county board shall be held only upon a written request of a majority of the members thereof addressed and delivered to the county clerk, and specifying the time and place of such meeting. The time shall not be less than one week from the delivery of such request to the clerk. Upon receiving such request the county clerk shall forthwith mail to each member of the board notice of the time and place of such meeting. Any special meeting may be adjourned from time to time by a vote of a majority of all the members of the board.

(3) A majority of the supervisors entitled to a seat in the county board shall constitute a quorum for the transaction of business. All questions shall be determined by a majority of the supervisors present unless otherwise provided.

(4) Every county board shall sit with open doors, and all persons conducting themselves in an orderly manner may attend. If any member of the board absents himself from any meeting of the board without good cause or without being first excused by the board, the chairman is authorized to issue a warrant requiring the sheriff or some constable of the county forthwith to arrest such member and bring him before the board. The expenses of such arrest shall be deducted from the pay of such member unless otherwise directed by the board. [1935 c. 235]

**Note:** Resolution of county board that such board shall meet in regular session on third Tuesday in April in each year is void. 20 Atty. Gen. 81.

County board may continue its annual meetings from time to time until it adjourns sine die; such continued meetings are lawful annual meetings. *Dandoy v. Milwaukee Co.*, 214 W 586, 254 NW 98; 24 Atty. Gen. 628.

County board member serving jail sentence for fishing without license is not legally incapacitated to participate in county board

meetings, assuming he is permitted to attend meetings. 24 Atty. Gen. 705.

Salary of elective county officer may not be changed during his term of office, but county board may at its organization meeting in month of May change salary of officer whose term commences following January. At its May meeting county board may increase number of days allowed for committee meetings and exercise all powers which may be exercised at annual meeting. 27 Atty. Gen. 248.

**59.05 Chairman; vice chairman; powers and duties.** (1) The county board, at the first meeting after each regular election at which members thereof are elected for full terms, shall elect one of their number chairman. A person so elected shall perform all duties required of the chairman until the county board elects his successor. The chairman may administer oaths to persons required to be sworn concerning any matter submitted to the board or a committee thereof or concerning any matter connected with their powers or duties. He shall countersign all ordinances of the county board, and shall preside at all meetings when present. When directed by ordinance of the county board he shall countersign all county orders, transact all necessary county board business with the local and county officers, expedite all such measures as may be resolved upon by the county board and shall take care that all federal, state and local laws, rules and regulations pertaining to county government are faithfully carried out and adhered to.

(2) The board at the time of the election of chairman shall also elect one of their number vice chairman for the same term, who, in case of the absence, disability or death of the chairman shall perform the duties of his office.

(3) In case of the absence of a chairman for any meeting the members present shall choose a temporary chairman. [1943 c. 371]

**Note:** De facto chairman of county board may sign highway improvement bonds issued by county. Upon resignation of chair-

man of county board, board has authority to elect successor for unexpired term. 20 Atty. Gen. 85.

**59.06 Committees; appointment; compensation.** (1) Any county board may, by resolution designating the purposes and prescribing the duties thereof and manner of reporting, authorize their chairman to appoint before the first day of June in any year a committee or committees from the members of the county board elect, and the committees so appointed shall perform the duties and report as prescribed in such resolution.

(2) The members of such committee shall receive such compensation for their services as the county board shall allow, not exceeding the per diem and mileage allowed to members of the county board. No supervisor shall be allowed pay for committee service while the board is in session, nor for mileage except in connection with services performed within the time herein limited. The number of days for which compensation and mileage may be paid a committee member in any one year, except members of committees appointed to have charge of the erection of any county buildings, and except as otherwise provided by law, are limited as follows:

(a) In counties containing less than twenty-five thousand population, according to the last preceding state or United States census, to twenty days in the aggregate, not more than ten days of which shall be for services on any one committee, except that the county board of such county may increase the number of committee meetings as provided in paragraph (b) of this subsection and similarly fix the compensation of the members thereof for such additional meetings.

(b) In other counties, to thirty days in the aggregate for services on one or more committees, except that the county board of such county may, by a two-thirds vote of the members present, if it deems it necessary to expedite and properly conduct the business of the county, increase the number of days for which compensation and mileage may be paid a committee member in any one year and fix the compensation for each additional day actually served. [1935 c. 235, 236]

**Note:** Committee created under this section may not perform administrative functions with respect to highways. 20 Atty. Gen. 57.

Member of committee of county board may be allowed per diem for committee service rendered during period of temporary adjournment of annual meeting of board, except where adjournment is merely one from day to day. "In session" as used in (2) means in actual session. 22 Atty. Gen. 160.

Subsection (1) does not govern appointment of committee after meeting of board. Except as provided in (1) county board committee may be appointed in accordance with procedural rules of board itself. 22 Atty. Gen. 997.

County board may appoint committee of its members to have charge of erecting and equipping tuberculosis sanatorium for insane. Such committee may contract for furnishings without calling for bids in absence of statute or resolution by board requiring bids. 24 Atty. Gen. 326.

See note to 281.202, citing 24 Atty. Gen. 649.

Per diem of members of county park committee is limited by (2), even though committee may, as part of its duties, supervise erection of county building. 24 Atty. Gen. 732.

Members of county board pension advisory committee are entitled to per diem. Board may appropriate money for assistance administration subject to release by its pension committee. 24 Atty. Gen. 768.

Members of county board committee are

**59.07 General powers of board.** The county board of each county is empowered at any legal meeting to:

(1) **GENERAL POWERS.** Make such orders concerning the corporate property of the county as they may deem expedient.

(2) **LEASES, CONTRACTS, CONVEYANCES.** Make such leases, contracts or other conveyances in relation to lands acquired for public purposes as in their discretion are in the interest of the public welfare.

(3) **ACCOUNTS, SETTLEMENT.** Examine and settle all accounts of the receipts and expenses of the county, examine, settle and allow all accounts, demands or causes of action against such county, and when so settled to issue county orders therefor as provided by law.

(4) **BUILDINGS, HIGHWAY GARAGE; MAINTENANCE.** Build and keep in repair the county buildings and cause the same to be insured in the name and for the benefit of the county, and in case there are no county buildings, to provide suitable rooms for county purposes.

(a) Provide and designate the location of buildings to shelter the machinery and equipment used for construction and maintenance of highways.

(5) **TAXES, LEVY AND APPORTIONMENT.** Apportion and order the levying of taxes as provided by law, and direct the raising of such sums of money as may be necessary to defray the county charges and expenses and all necessary charges incident to or arising from the execution of their lawful authority.

entitled to mileage for each day of committee attendance. 25 Atty. Gen. 86.

Executive committee of county board has no authority to expend money for replacement of wornout county highway department trucks until appropriation has been made by county board. 26 Atty. Gen. 613.

Under (2) (b) county board may by two-thirds vote increase number of days for which compensation and mileage may be paid committee members subsequently to holding of additional committee meetings. 27 Atty. Gen. 181.

If authorizing resolutions are silent with respect thereto, both county highway committee and county asylum committee may purchase materials and equipment without letting of bids. 27 Atty. Gen. 489.

Under 82.05 (1) members of county highway committee may be reimbursed for their actual and necessary expense in traveling to and from committee meetings each day. Unless otherwise provided by specific statute, members of other county board committees shall receive per diem and mileage for each day of official service under 59.06 (2). 27 Atty. Gen. 851.

County board chairman who is ex officio member of all committees of board is entitled to per diem and expenses for committee service under 59.06 (2), notwithstanding that he has been voted additional \$125 per year under 59.03 (2) (f), such additional compensation being intended to cover his statutory duties as chairman under 59.05. 29 Atty. Gen. 154.

(6) **GENERAL AUTHORITY.** Represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made.

(7) **PUBLIC RECORDS, FORMS, PURCHASING AGENT.** Prescribe the form and manner of keeping the public records of the county in any county office and the accounts of the several county officers; and, except in counties of a population of 125,000 or more, may appoint a person or committee as county purchasing agent, and such person or member of such committee need not be a member of the county board but may be the county clerk, county treasurer or any other county officer, and make appropriations for their services. Such purchasing agent shall provide all books, stationery, blanks, safes, furniture, telephone service, fuel and lights necessary for the discharge of official business in the offices of the county clerk, clerk of the circuit court, register of deeds, treasurer, sheriff and county judge, and the chairman of the county board shall forthwith sign an order in payment therefor. When the cost of such supplies exceeds \$60, the said purchasing agent shall in such manner as he shall deem best to secure the attention of probable bidders, invite proposals of similar standard supplies of equal quantity, and shall purchase from the lowest reliable bidder. Any county board may by ordinance require that the purchasing for any or all of the offices, boards, departments and commissions of the county shall be made in such manner and by such agency as the county board may determine.

(8) **OFFICIAL SEALS.** Provide an official seal for the county and for the several county officers required by law to have one; and also for the circuit and county courts, with such inscription and devices as said courts shall respectively require. The official seals of the several county boards now in use shall be deemed to be the official county seals of the several counties respectively until others are provided.

(10) **FEES, OFFICERS AND MAGISTRATES.** Fix and regulate from time to time the fees or compensation of officers and magistrates for services performed in all prosecutions for vagrancy or under the laws concerning tramps, intoxication in a public place, indecent exposure of the person or disorderly conduct, except when the prosecution for any such offense is brought under a city or village charter or ordinance; and no greater compensation than is so fixed shall be recovered.

(11) **HIGHWAY TRAFFIC, REGULATIONS.** Enact ordinances or by-laws regulating traffic of all kinds on any highway, except street or interurban railways, in the county which is maintained at the expense of the county and state, or either thereof; declare and impose forfeitures, and enforce the same against any person for any violation of such ordinances or by-laws; provide fully the manner in which forfeitures shall be collected; and provide for the policing of such highways and to provide for what purposes all forfeitures collected shall be used.

(12) **TRANSCRIPTS.** Procure transcripts or abstracts of the records of any other county affecting the title to real estate in such county, and such transcripts or abstracts shall be prima facie evidence of title except as is provided in section 235.47, when the records there provided for shall have the effect expressed in said section.

(13) **SCHOOL DISTRICTS, APPROPRIATION.** Appropriate to any school district in which a county farm or a state charitable or penal institution or any state-owned lands which are used for agricultural purposes or any part thereof is situated, an amount of money for school purposes equal to the amount that would be paid as school taxes upon such farm land or part thereof situated within such district if such land were privately owned. The valuation of such farm land shall be determined by the county board of equalization.

(14) **HIGHWAYS, LIGHTING.** Provide, by contract or otherwise, for lighting of improved highways maintained by the county or the construction of which has been aided by the county or state, and of bridges located thereon.

(14a) **GRAVE MARKERS, VETERANS.** (a) To furnish upon the petition of any five reputable freeholders of any township or municipality in their county some suitable and appropriate metal marker for the grave of each and every soldier, sailor, or marine who served with honor in the forces of the United States, buried within the limits of said township or municipality, to be placed upon the grave of such soldier, sailor or marine for the purpose of permanently marking and designating said grave for memorial purposes.

(b) In all petitions to the board of county supervisors, the petitioners shall state in said petition the names of soldiers, sailors, or marines buried and the number of such graves in their said township or municipality at the time of making the petition.

(14b) **MILWAUKEE COUNTY, SIDEWALKS.** Provide, in counties having a population of two hundred fifty thousand or over, by contract or otherwise, for the building of sidewalks outside the corporate limits of any city or village in such county.

(15) **SHERIFF'S FAMILY PENSION.** Appropriate such sum or sums as they shall deem

just and proper to the family of any sheriff or his deputies who shall have been heretofore or who may hereafter be killed while in the discharge of his or their official duties.

(16) MILWAUKEE COUNTY, BILLBOARD REGULATION. In counties having a population of two hundred fifty thousand or more, regulate, by ordinance, the maintenance and construction of billboards and other similar structures on premises abutting on highways maintained by such counties, so as to promote the safety of public travel thereon.

(17) INSECTS, WEEDS, ANIMAL DISEASES; APPROPRIATION. To appropriate money for the control of insect pests, weeds, or plant or animal diseases within the county. The county clerk shall within ten days notify the state department of agriculture at the state capitol of such appropriation.

(17m) LAND FOR STATE PARKS. To acquire land within the county for the purpose of transferring the same, by gift or otherwise, to the state for state park purposes.

(18) ZONING, BUILDING INSPECTOR. For the enforcement of all laws, ordinances, rules and regulations enacted pursuant to the provisions of section 59.97, appoint a building inspector, define his duties and fix his term of office and compensation. The jurisdiction of said building inspector, however, shall not extend over any lands actually used for agricultural purposes.

(19) GENERAL. Perform all other acts and duties which may be authorized or required by law.

(20) INSTITUTIONS, AIRPORTS, TAX TO MUNICIPALITIES. May, in its discretion, appropriate each year to any town, city or village in which a county farm, asylum, hospital, or home for the aged or charitable institution or state hospital or charitable or penal institution or county or municipally-owned airport is located, and which would be subject to tax if privately owned, an amount of money equal to the amount which would have been paid in town, city, village and school tax upon the lands without buildings, if such land were privately owned. The valuation of such lands (without buildings) and computation of the tax shall be made by the county board. In making such computation county-owned lands, on which courthouse or jail are located, and unimproved county lands shall not be included.

(21) DEEDS TO MUNICIPALITIES. To authorize the county treasurer to deed county-owned lands to towns, cities or villages having an excess of delinquent real estate taxes to their credit in exchange for such part of the interest of such city, village or town for one or more years as shall be agreed upon by the county board and the governing body of the city, village or town. The county lands so conveyed shall not be valued at less than the face value of the certificates covering such lands.

(22) SCHOOL AID FROM FOREST INCOME. In any year when the national forest income to any county is less than five hundred dollars, the entire sum shall be used toward payment of county school aid required under paragraph (a) of subsection (4) of section 40.87 to school districts included within national forest boundaries, but when such annual income shall exceed five hundred dollars, then seventy-five per cent shall be used for such school aid and the remainder shall be allotted to the county highway committee for construction and maintenance of highways within or leading to national forests.

(23) INSURANCE. Provide by ordinance that the county shall carry public liability and property damage insurance, either in commercial companies or by self-insurance created by setting up an annual fund for such purpose, covering without exclusion because of enumeration, motor vehicles, malfeasance of professional employes, maintenance and operation of county highways, county parks, parkways, or airports, and any other county activities involving possibility of damage to the general public.

(24) ACQUISITION FOR FLOWAGE. To acquire by purchase, gift or condemnation, such lands as may be required for flowage purposes in connection with any dam completed under any county sponsored work project.

(25) FUNDS APPROPRIATED TO SOIL CONSERVATION DISTRICT. To appropriate funds to a soil conservation district which includes lands lying within the county, to be used by the supervisors of the district in the administration of district affairs and in controlling erosion within the district. [1931 c. 220, 233; 1933 c. 292, 377; 1935 c. 124, 150, 279, 400, 550 s. 8, 401; 1939 c. 87, 312, 323; 1941 c. 87, 136; 1943 c. 56, 229]

**Note:** Where a member of the county board reported to the board that an amount of money belonging to the county was in the possession of the sheriff by reason of excessive charges, and urged that action be taken to collect the amount from the sheriff, the board's response, by adopting a motion that the sheriff's bills already allowed and paid be accepted by the board, amounted to a refusal to bring an action and showed that any demand on the board for action would be futile, so that the member in question, as a taxpayer, was entitled, without further resorting to the board, to bring an action

to recover the amount from the sheriff for the county. *Yates v. Helstern*, 235 W 88, 292 NW 311.

59.07 (24), created by ch. 312, Laws 1939, authorizing county boards to acquire by purchase, gift or condemnation such lands as may be required for flowage purposes in connection with any dam "completed" under any county sponsored work project, applies to dams completed under county sponsored work projects before as well as after the effective date of the act. *Vaudreuil Lumber Co. v. Eau Claire County*, 239 W 538, 2 (2d) NW 356.

Under this section the county board may determine that the office of the county pension department be kept at a designated place other than the county seat. *Linden v. Babcock*, 241 W 209, 5 NW (2d) 759.

County clerk may not accept employment as county purchasing agent. County superintendent of schools may not be required to purchase supplies through county purchasing agent. 20 Atty. Gen. 196.

Appropriation made pursuant to (13) is discretionary with county board. Appropriation so made is to be raised by general tax on county. 20 Atty. Gen. 986.

County board has no authority to enact ordinance regulating sale of milk. Board may organize county health department and this department may, in turn, make rules and regulations regarding sale of milk. 21 Atty. Gen. 531.

County board is not authorized to purchase excess delinquent tax roll of town. 22 Atty. Gen. 391.

When county rents courthouse as a commercial enterprise it is liable for torts occurring through negligence of its officers or agents. County board has right to permit use of courthouse for nongovernmental functions provided such use is in interests of public welfare, and does not interfere with use of court rooms by judiciary. 22 Atty. Gen. 404.

County board has no power to authorize or direct county treasurer to satisfy village's equity in delinquent taxes returned from said village by assigning tax certificates upon such delinquent taxes to village in return for payment by village to county of amount of county's claim for unpaid state special taxes and county school tax liability for which village disputes. 22 Atty. Gen. 950.

Subsection (21) does not authorize transfer by county of one year's tax certificates in exchange for town's credit on delinquent real estate taxes. 22 Atty. Gen. 984.

County board is without power to appropriate money to pay off mortgage existing against real estate conveyed to county by inmate of county home. 23 Atty. Gen. 86.

Commissioner of drainage district who is directly interested in sale of land in district does not have right to sit as member of county board while question of sale of such land is voted on. 24 Atty. Gen. 549.

County has only such powers as are given by statute and cannot purchase lands for purpose of avoiding cost of providing bridges, highways, etc., to such lands. County may purchase land for park purposes under 27.065 and may borrow money therefor under 67.04 (1) (h), subject to limitations of 67.03. It may also acquire lands for forest reserves under 59.98. 25 Atty. Gen. 379.

County board may compromise claims or judgments in favor of county. 25 Atty. Gen. 397.

See note to 26.13, citing 25 Atty. Gen. 532. County and city may, in compromising excess of delinquent real estate taxes under (21), include value of tax deeds for years other than those years from which excess is computed. 25 Atty. Gen. 584.

County may avail itself of protection of statute of limitations against claims, but it may also waive such defense. 26 Atty. Gen. 8.

County board may supply district attorney's office with law library equipment al-

though not obliged to do so. 26 Atty. Gen. 12.

County board cannot by ordinance give exclusive jurisdiction of traffic law violations to county court. 26 Atty. Gen. 100.

County board has no power to appropriate money to Wisconsin Dairymen's Association for purpose of inducing association to hold its convention in county. 26 Atty. Gen. 309.

Offices of county purchasing agent and county treasurer are incompatible. 26 Atty. Gen. 621.

Appropriation by county to employ private attorney to resist application by railroad before interstate commerce commission for permission to abandon branch running through county is within power of county board under 59.07 (6) and 59.08 (28). 27 Atty. Gen. 162.

County board may not pass ordinance prohibiting sale and use of fireworks within county. 27 Atty. Gen. 690.

Words "all fines, forfeitures and receipts" contained in county traffic ordinance adopted pursuant to (11) includes costs and fees. 27 Atty. Gen. 739.

Circuit judge or court has no power to prohibit use of court room at all times for all purposes other than court use and county board use unless facts are such that such order does have reasonable relation to exercise of judicial function. Under ordinary circumstances such order appears to have no reasonable relation to judicial function. 28 Atty. Gen. 186.

County board has power to determine location of county offices, including that of county agent, at least where housing is at county expense. 28 Atty. Gen. 341.

County is without power, emergency or otherwise, to provide by resolution that it will not continue a husband and wife on its payroll at the same time nor employ any man whose wife is gainfully employed nor any woman whose husband is gainfully employed. 28 Atty. Gen. 446.

Power of county to bargain collectively with labor unions and to make agreements as to hours, wages, nondiscrimination, etc., discussed. 29 Atty. Gen. 82.

Existing statutes do not require that proposal for repair of county building shall be submitted for bids. 30 Atty. Gen. 320.

Scope of county highway traffic ordinance is limited to highways maintained at expense of county and state or either of them by virtue of 59.07 (11), although in other respects authority of county in adopting highway traffic ordinance has been broadened by 85.84. 30 Atty. Gen. 431.

County purchasing agent appointed under (7) is not authorized to purchase equipment for offices other than those there enumerated. County officer appointed as purchasing agent may be paid compensation for acting as such agent in addition to his regular salary as county official. 31 Atty. Gen. 27.

Counties are not required to carry workmen's compensation insurance, but county boards may provide for carrying it. 59.07 (23) does not apply to this type of insurance. 8 Atty. Gen. 529 followed. 31 Atty. Gen. 76.

As to county furnishing supplies for circuit court reporter, see note to 252.18, citing 31 Atty. Gen. 222.

#### 59.074 [Repealed by 1943 c. 275 s. 22]

**59.074 Civil service system; pensions; counties may establish.** (1) Any county may proceed, under section 59.07, to establish a civil service system of selection, tenure and status, and said system may be made applicable to all county personnel, including personnel authorized by statute to be appointed by officers, boards, committees or commissions, except the members of the governing body, elective constitutional officers, members of boards and commissions and members of the judiciary. Such system may also include uniform provisions in respect to attendance, leave regulations, compensation and pay rolls for all personnel included thereunder.

(2) Any county may proceed under said section 59.07 to establish a system of pensions for such county employes, and such system may be made uniformly applicable to all such employes paid from county funds except employes included under a pension system previously established by statute. [1943 c. 186]



**59.075 Common school tax.** (1) The county board of each county is empowered at or before November meeting each year to order the levying of a tax upon the aggregate assessed valuation of the county for the elementary schools of the school districts for which a tax has been levied for the operation and maintenance of the schools and placed on the tax rolls:

(a) Where such tax levy is 2 mills or more on the full valuation as provided in section 40.87 (2), in an amount not less than the product of \$250 multiplied by the number of public elementary teachers employed in the county during the preceding school year by school districts in which the average daily attendance was 10 or more pupils as certified by the state superintendent to the county clerk.

(b) Where such tax levy is one mill or more but less than 2 mills on the full valuation as provided in section 40.87 (2), in an amount not less than the product of \$125, multiplied by the number of public elementary teachers employed in the county during the preceding school year by school districts in which the average daily attendance was 10 or more pupils as certified by the state superintendent to the county clerk.

(c) To school districts in which the average daily attendance is less than 10 and more than one pupil as certified by the state superintendent the following amounts per pupil in average daily attendance provided that such district has levied and placed upon the tax roll for operation and maintenance a tax, as set forth below, on the full valuation of the district as provided in section 40.87 (2):

MILL LEVY	AMOUNT
2 or more .....	\$25.00
1 or more but less than 2.....	12.50

(d) No county aid shall be paid to any school district which has not levied and placed upon the tax roll for operation and maintenance a tax of at least one mill on the full valuation of the district as provided in section 40.87 (2).

(2) In any case where a school district lies in more than one county, then the county in which such elementary teachers during the preceding year are employed as so certified shall be reimbursed from any other county in which such school district lies for its share of such two hundred and fifty dollars for the number of such elementary teachers in the whole district in the same ratio as the assessed valuation of the property of such school district lying in such other county bears to the assessed valuation of all the property in the whole district; the county superintendent of schools (of the county paying the whole amount in the first instance), or the city superintendent of schools not under the jurisdiction of such county superintendent shall compute the number (including a fraction of a number) that will be derived from applying to the whole number of teachers the same ratio as the assessed valuation of the property of the school district lying in any other such county bears to the assessed valuation of all the property of the whole school district; having arrived at such number he shall multiply the same by two hundred and fifty and the result in dollars shall be certified by him, at the time of the other certification, as the amount to be reimbursed by such other county; the county clerk of the county receiving such certification shall certify to the county clerk of any such other county the amount required to be reimbursed and the county board of such other county shall levy a tax in such amount in the same manner and by the same method as the tax levied under the provisions of subsection (1) of this section; when such tax is collected it shall be remitted by the county treasurer of such other county to the county treasurer of the county entitled thereto. The provisions of paragraph (a) of subsection (4) of section 40.87 relating to aid shall apply to any such other county which does not comply with the provisions of this subsection. [1939 c. 143, 178; 1943 c. 360, 526]

**Note:** Local treasurers are requested to remit in cash the taxes levied under 59.075 on March 22. 21 Atty. Gen. 145.  
Under (1) county school aids are raised by levy on all taxable property in county and reduction in such aids resulting from

national forest income will therefore be reflected in levy as whole rather than merely in levy on those particular properties located in school districts situated in national forests. 30 Atty. Gen. 115.

**59.08 Special powers of board.** In addition to the general powers and duties of the several county boards enumerated in section 59.07 special powers are conferred upon them, subject to such modifications and restrictions as the legislature shall from time to time prescribe, to:

(1) **TOWNS, ORGANIZATION, BOUNDARIES.** Set off, organize, vacate and change the boundaries of the towns in their respective counties, designate and give names thereto, fix the time and place of holding the first town meeting therein, and make all necessary orders for the preservation of the records and papers of any town which may be vacated, but no town shall be vacated unless a majority of all the members entitled to seats in the county board shall so decide; and no county board, except in the counties of Ashland, Barron, Bayfield, Burnett, Douglas, Juneau, Marathon, Oconoto, Polk and Shawano, and except as provided in section 60.05 shall set off, establish or organize any town that at

the time of being so set off and organized does not contain a population of at least one hundred and twenty-five inhabitants, at least twenty-five of whom shall have been actual electors of this state and resident within the territory of the proposed new town at least six months prior to the time such organization shall take effect.

(2) ROAD COMMISSIONERS. Appoint commissioners to act with similar commissioners duly appointed by any other county or counties, and, except as otherwise provided by law, authorize them to lay out or discontinue any road extending through or into their own and one or more other counties, subject to the ratification of the board.

(3) TOWNS, CHANGE OF NAME. Change the name of any town, in their respective counties.

(4) BRIDGES. Grant charters to any person to build and maintain toll and free bridges in their respective counties.

(4a) DISCONTINUANCE OF STREETS. To alter or discontinue any street, slip, or alley in any recorded plat in any town in such county, not within any incorporated city or village, in the same manner and with like effect as provided in sections 61.38 and 61.39.

(5) POWERS, EFFECTED BY ORDINANCE. When any of the special powers and duties conferred by this section upon county boards shall be exercised by the legislature, it shall be a restriction upon the county board so far as the legislature shall exercise such power. All powers conferred upon county boards by this section shall be carried into effect by the enactment of ordinances, which shall be in the ordinary form of laws passed by the legislature, and shall commence as follows: "The county board of supervisors of the county of . . . do ordain as follows."

(6) JUVENILE JUDGE. The county board may appropriate annually for the benefit of, and pay over to any judge of a juvenile court, appointed or designated in pursuance of the provisions of subsection (1) of section 48.01, a sum of money as compensation for the additional services rendered by such juvenile judge.

(6m) COUNTY OR MUNICIPAL JUDGE. Appropriate money to employ additional help in the office of the county judge or municipal judge.

(7) WAR RECORDS. Appropriate money for the collection, publication or distribution of war records. All appropriations heretofore made by any county board for such purposes are hereby validated.

(7m) FISH HATCHERIES. Appropriate money for the establishment and maintenance of fish hatcheries.

(8) OFFICE OR POSITION, CREATE OR ABOLISH. The county board, at any annual meeting, may abolish, create or reestablish any office or position (other than the county officers designated by section 59.12 of the statutes, judicial officers and the county superintendent of schools), created by any special or general provision of the statutes and the salary or compensation for which is paid in whole or in part, by the county, and the jurisdiction and duties of which lie wholly within the county or any portion thereof, notwithstanding the provisions of any special or general law to the contrary.

(9) AMUSEMENTS, LICENSES. Enact ordinances, by-laws, or rules and regulations, providing for the regulation, control, prohibition, and licensing of dance halls and pavilions, amusement parks, carnivals, street fairs, bathing beaches and other like places of amusement. Such ordinances, by-laws or regulations shall provide for such license fees as shall yield so nearly as may be possible sufficient revenues for administering their provisions. Upon the passage of such an ordinance the county board shall select from persons recommended by the county board a sufficient number thereof whose duty it shall be to supervise public dances according to assignments to be made by the county board. Such persons while engaged in supervising public dances or places of amusement shall have the powers of deputy sheriffs, and shall make reports in writing of each dance visited to the county clerk, and shall receive such compensation as the county board may determine and provide. Their reports shall be filed by the county clerk and embodied by him in a report to the county board at each meeting thereof. The county board shall immediately revoke the license of any dance hall proprietor or manager if there is allowed at any such dance presence of intoxicated persons, or of children of seventeen years of age or under unaccompanied by their parent or lawful guardian, or if any of the ordinances, rules, or regulations prescribed by the county board are violated, and the county board may, in its discretion, enact an ordinance expressly requiring the revocation of such dance hall license if the use of intoxicating liquor is permitted in such dance hall or pavilion or on the premises during the holding of a public dance. The chairman of the county board, when the board is not in session, shall be authorized to issue license or to suspend the license of any person violating any of the provisions of this law or any rule or regulation adopted by the county board; such issuance of licenses or the suspension of such license to be acted on by the county board at its next meeting. Ordinances, by-laws or rules and regulations enacted

by a county board under this subsection shall not apply to any city or village in such county which by ordinances regulates dance halls or other places of amusement.

(9a) CHILD WELFARE. Establish such agencies and employ such personnel as it may deem necessary for the social welfare and protection of mentally defective, dependent, neglected, delinquent and illegitimate children within the county, fix the compensation of personnel so employed, and appropriate money for such agencies and personnel; provided that the personnel authorized to be employed hereunder may include the services of a child welfare agency licensed under section 48.37. Nothing herein shall authorize any departure from any of the provisions of any other statute relating to the social welfare and protection of such children, nor to relieve any county from any obligation imposed by any such statute, but any county board may provide additional facilities and agencies for the social welfare and protection of such children.

(9b) SOFT DRINK REGULATION. Enact ordinances providing for a specified closing hour for places where soft drinks are sold. Ordinances, by-laws, or rules and regulations enacted by a county board under this subsection shall not apply to any city or village in such county which has or may hereafter by ordinance regulate and control places where soft drinks are sold.

(10) IMMIGRATION BOARD. (a) The county board of any county may create a county board of immigration to consist of from three to five members, one of whom shall be the county surveyor. Such board shall meet at such times and places, and its members shall receive such compensation and expenses and shall serve for such terms as the county board may determine.

(b) It shall be the duty of such board to aid in promoting settlement of vacant agricultural lands in the county, and to protect prospective settlers from unfair practices of the unscrupulous.

(c) The county board may in any one year appropriate for the carrying out of the work of such board a sum not to exceed five thousand dollars.

(11) AIRPORTS. The county board of any county in which a county airport or air field is operated by a county park commission pursuant to subsection (4) of section 27.05, may by resolution make determination to take over and operate such airport, and upon the delivery of a certified copy of said resolution the county park commission, at a date to be designated in said resolution, shall turn over and surrender to said county board the charge, superintendence and control of said airport, including all lands, buildings, structures and appurtenances of whatever kind, and thereupon the county board shall be vested with all the powers and authority conferred on the county park commission under said subsection (4) of said section 27.05, and of all other powers and authority now or hereafter conferred upon county boards with reference to the establishment, control, operation and maintenance of airports or landing fields. All unexpended balances in appropriations made for the year in which such airport shall be turned over shall be transferred to the jurisdiction of the county board, to be used for the purposes for which said moneys were appropriated.

(13) MILWAUKEE COUNTY, SEWAGE. In counties having a population of two hundred fifty thousand or over, provide for the transmission and disposal of sewage from any of the county buildings, and for such purpose may pay to the city, town or village in which said county buildings are situated for the transmission and disposal of sewage, such proportion of the expense thereof, as certified under the provisions of section 59.96, to any such city, town or village; such proportionate expense to be determined by the ratio which the amount of sewage contributed by any such county buildings may bear to the total amount of sewage contributed by any such city, town or village to such system; and such counties may provide and furnish meters to determine the amount of sewage so contributed.

(14) MILWAUKEE COUNTY, GROUP INSURANCE. Provide, in counties having a population of two hundred and fifty thousand or more, for group insurance for officers and employes of such counties and to make the necessary rules and regulations therefor.

(15) AMUSEMENTS, REGULATION. Exercise all the powers conferred by law on cities to regulate by ordinance, dance halls, roadhouses, and other places of amusement outside the limits of incorporated cities and villages. The powers hereby conferred shall be in addition to all grants, and shall be limited only by express language.

(17) MILWAUKEE COUNTY, RELIEF DEPARTMENT. In counties having a population of five hundred thousand or more the county board may create a department to handle the investigational work pertaining to applications for all forms of public relief granted in said county for which the county is primarily liable to pay, including without exclusion because of enumeration the subject matter of poor relief, aid to dependent children, soldiers and sailors relief, old-age assistance, and blind and deaf pensions. The personnel of such department shall be appointed pursuant to county civil service laws in such manner as the county board shall determine in the ordinance creating such department. The

county board shall provide by regulation the duties and powers of such personnel. Whenever such department shall have been created all courts, commissions or officers in said county now charged by law with the duty of granting any of the forms of public relief for which the county is primarily liable to pay, shall refer all applications for such relief to such department for such investigation and report as may be required by law or as the said court, commission, board or officer may in addition direct. Nothing contained in this section shall be construed to modify any of the powers now vested in courts, commissions, boards or officers with reference to public relief except that when such department has been created, no such relief shall be granted until the application therefor has been referred to the investigational department and its report thereon received. The county board of supervisors shall have power to make the necessary rules and regulations to carry out the intent of the statute which is declared to be to provide a centralized method of investigation of applications for all forms of public relief in counties to which this statute applies.

(18) **LIME TO FARMERS.** To provide for and engage in the manufacture, sale and distribution of agricultural lime to be sold at cost to farmers. All moneys received from such sale shall be paid into the county treasury. For the employment needed for such purposes preference shall be given to the unemployed of the county. The county board shall appropriate such sums as shall be needed to carry out the provisions of this subsection.

(19) **SALE OF TAX LANDS.** (a) The county board may delegate its power to sell lands acquired by tax deed to a committee consisting of the county clerk, county treasurer and the chairman of the town or the supervisor of the village or the supervisor of the city ward wherein the particular lands are situated or an alternative committee of three members to be appointed as are other standing committees of the county, except that where there is a standing conservation committee of the county board, then if such powers are delegated they shall be delegated to such conservation committee. The members of such first committee shall receive no extra compensation for such services. The members of such alternative committee shall be reimbursed as are other standing committees.

(b) The county board shall have the power and it may authorize said committee to sell at private sale or public auction any or all county owned land acquired by tax deed. The county board shall appropriate such sums of money as may be necessary to carry out the provisions of this subsection.

(20) **RECREATION.** Appropriate money for the purpose of creating, promoting and conducting, or for the purpose of assisting in the creating, promoting and conducting, or both, of recreational programs and activities in the county which are conducive to the general health and welfare, and may, to render effectual the powers herein given, elect a person or persons, for such term and at such salary as may be determined, and such person or persons shall exercise such powers and perform such duties as shall be given by the board and which are not inconsistent with law, and such county board may further provide where and for what purpose and manner moneys appropriated pursuant to this subsection may be expended. Such person or persons may be designated . . . . County Recreation Committee. At the annual meeting held next after the meeting making such appropriation the board shall determine in what cities, towns and villages such programs and activities were held and such other cities, towns and villages in the county which received benefits therefrom and determine the amount of money expended from the appropriation to make such programs or activities or benefits derived therefrom possible in each such municipality and order a tax levied upon the property of each such municipality in accordance with such apportionment in order to reimburse the county for such expenditures, but no such expenditure shall be made nor improvement ordered without the consent of the governing body of any such city, town or village.

(21) **COUNTY BOARD ASSOCIATION.** Appropriate money by a two-thirds vote to purchase membership in an association of county boards for the protection of county interests and the furtherance of better county government.

(21m) **PURCHASE OF PUBLICATION, AUTHORIZED.** To appropriate money for the purchase of books, magazines and other publications dealing with government problems and to furnish copies thereof to members of the board.

(22) **PATRIOTIC CELEBRATIONS, FRATERNAL CONVENTIONS.** Any county may appropriate money to defray the expense of municipal commemorative or patriotic celebrations or observance or of state or national conventions of war veterans or of national conventions of fraternal associations within the county.

(23) **SERVICE OFFICER.** May create the position of service officer and elect for such office a veteran of a war, who was engaged in the service of the United States, to hold office for a term of two years, except in counties having a population of five hundred thousand or more wherein the term of such office shall be for an indefinite period pursuant to the provisions of sections 16.31 to 16.44, inclusive, of the statutes, and to receive such

compensation, as the board may fix. If a vacancy shall occur during the term, the chairman of the board may appoint such a veteran to fill such vacancy for the unexpired term, except in counties having a population of five hundred thousand or more where such vacancy shall be filled in the manner of an original appointment. Such service officer shall advise with all veterans of wars, residents of the county, who were engaged in the service of the United States relative to any complaint made or problem submitted by them to him and shall render them such assistance as, in his opinion, he may render. In counties having a population of five hundred thousand or more such service officer when appointed shall act as secretary of the soldiers' relief commission provided for in section 45.12. The board may provide such officer with clerical assistance and such other needs as will enable him to adequately perform his duties. The board may require such reports as it may determine.

(25) **DYNAMITE, PURCHASE AND SALE.** To appropriate money with which to purchase dynamite; to provide for selling the same at cost to persons desiring to clear land in the county, of stones and stumps, and to provide a method by which such person may perform work on county highways to pay for such dynamite if he so desires.

(26) **SEWAGE DISPOSAL PLANT.** The county board of any county may appropriate money to defray, in whole or in part, the cost of constructing or maintaining a sewage disposal plant for county institutions ordered by state authority, the expense of such construction or maintenance to be borne entirely by the county or in conjunction with any city in such county.

(27) **DELINQUENT TAXES, PURCHASE.** In its discretion, by a two-thirds vote, authorize the county to purchase and assume such delinquent taxes, tax certificates and interest thereon from any town, city or village, exclusive of the penalty provided by section 74.03 as exceed the sum then due the county from such town, city or village for unpaid county taxes.

(28) **ADVERTISE COUNTY.** Appropriate not to exceed five thousand dollars in any year to advertise the advantages, attractions and natural resources of the county and to conserve, develop and improve the same. The county, or any authorized agent thereof, may co-operate with any private agency or organization in such work. Appropriations heretofore made by counties, pursuant to authorization in this chapter, and heretofore or hereafter expended in whole or in part for the purposes stated in this subsection are validated.

(29) **ACTIONS TO QUIET TITLE.** To commence and maintain actions in law or in equity to quiet the title to county-owned lands, and to appropriate sufficient money to defray the costs thereof, and to add to the sale price of said lands, the reasonable expenses of such action, whether or not said action was commenced prior to the passage of this subsection.

(30) **HISTORICAL SOCIETIES.** Appropriate not to exceed five hundred dollars in any year to any local historical society duly incorporated under section 44.03 located in such county for the purpose of collecting and preserving the records of the early pioneers, the life of the Indians, the experience of military men, and the salient historical features of such county.

(31) **HIGHWAY SAFETY.** To appropriate money to citizens safety committees or to county safety commissions or councils for highway safety and patrol.

(32) **ROAD SCHOOL ATTENDANCE.** To appropriate by a two-thirds vote of the members present a sum of money sufficient to defray the actual and necessary expenses incurred by members of the county highway committee in attending the annual road school.

(33) **PUBLIC MUSEUMS.** In counties having a population of less than two hundred fifty thousand, appropriate in any year money toward the maintenance of public museums in the county.

(34) **DAMS, ERECTION.** Provide for the maintenance or erection and maintenance of dams in parks, parkways and playgrounds owned by the county and to that end may acquire the necessary rights and in the name of the county prosecute proceedings to obtain permission to erect and maintain such dams.

(35) **STREETS AND HIGHWAYS, CONSTRUCTION.** To provide by ordinance that the county, may, through its highway committee or other designated county official or officials, enter into contracts with cities, villages and towns within the county borders for the purpose of enabling the county to construct and maintain streets and highways in such municipalities.

(36) **MILWAUKEE COUNTY; CITY-COUNTY CRIME COMMISSION.** The county board of any county having a population of 500,000 or more or the common council of any city of the first class however organized in such county, may appropriate money to defray in whole or in part the expenses of a city-county crime commission organized and functioning to determine methods of crime prevention in such county, provided that all items of expense paid out of such appropriation shall be presented and paid on county board vouchers as are claims against counties.

(37) DRAINAGE DISTRICT BONDS. To purchase drainage district bonds at market value or at a discount in order to salvage the equity of the county in the lands affected and to secure resumption of tax payments thereon and so permit the final dissolution of such drainage district.

(38) ALLOWANCE OF CURRENT ACCOUNTS. Delegate to the standing finance or audit or executive committee of the county board its power to examine, settle and allow all current accounts against the county not in excess of five hundred dollars on any one such account and when so settled and allowed to authorize the issuance of county orders therefor.

(39) FIRE PROTECTION. The county board may establish a fire department or upon petition of two-thirds of the residents of any contiguous locality pursuant to the provisions of subsection (20) of section 60.29 in so far as the same may be applicable, provide fire department service and protection for such residents as are otherwise unable to obtain such service from a village or city or the town board as provided by subsection (20) of section 60.29. The county board shall determine the fee schedule to reimburse the fire departments and make such rules and regulations as may be necessary for the maintenance of service and equipment. An inspector may be appointed to inspect each such fire department at least twice each year for proper maintenance. Any such contract may be terminated by either party upon giving a ninety-day written notice thereof. The county board may levy a tax upon all the real and personal property in said contiguous locality to reimburse the county for the fees and costs expended.

(40) SURPLUS COMMODITY STAMPS. To adopt and participate in any food stamp plan, cotton stamp plan, or other surplus commodity absorption plan, in connection with furnishing relief to needy persons within any or all towns, villages or cities in the county and to appropriate money to carry out any such plan, including the cost of administration thereof. All previous participation in any such plan and appropriations and expenditures made for any such purpose by any county board is validated. This subsection is created to permit counties to appropriate money for co-operating with and assisting towns, villages or cities in the relief and support of poor and indigent persons pursuant to section 49.01.

(41) SECONDHAND CAR DEALERS, JUNKING CARS. The county board of any county may by ordinance or resolution license and regulate the business of dealing in second-hand motor vehicles, the business of wrecking motor vehicles, or the conduct of motor vehicle junking. Such ordinance or resolution shall not apply to any town, village or city in such county which shall adopt an ordinance governing the same subject matter.

(42) LAND CONTRACTS ON TAX DEED LANDS. The county board of each county is empowered at any legal meeting to authorize the county clerk to enter into a land contract, upon such terms and at such price as he may deem advisable, to convey by deed to cities, towns, villages or individuals, any land which the county has acquired by tax deed. The title to such land shall remain in the county until fully paid for and the purchaser shall pay for such lands within 5 years or less. The land contract shall contain the usual standard provisions and in event of default the county may foreclose the same with costs and reasonable attorney fees. When such contract runs to a person or private corporation such land shall be placed on the tax roll and be subject to taxation the same as though absolute title thereto was vested in the purchaser under such land contract and such purchaser shall be liable to pay all taxes assessed against such land. If such purchaser shall fail to pay such taxes the county may pay the same and add the sum so paid to the amount due on the land contract.

(43) CIVILIAN DEFENSE. To appropriate annually for the benefit of and pay over for the aid of, county councils of defense, authorized by the state council of defense, during the time the United States of America is at war, a sum not to exceed 1/10 of one mill on the dollar on the assessed valuation of the property in said county. Sums so appropriated shall be expended through such agencies as the governing body of the county may designate. The tax levied under this subsection shall not be included in computing the maximum levy provided for in section 70.62 (2).

(44) MILWAUKEE COUNTY; POWER OVER STATE AND COUNTY TRUNK HIGHWAYS. The county board of every county having a population of at least 150,000 may exercise any and all corresponding powers conferred upon cities in the widening or improving and maintaining of state trunk or county trunk highways, however acquired, and the constructing or laying of water pipes, sewers and all other public service facilities therein, and in the levying of special assessments and issuing of assessment certificates and special improvement bonds.

(45) BLACKOUT ORDINANCES. Enact ordinances regulating blackouts (including uniform air raid signals), providing penalties for violations thereof, providing for the appointment and removal of air raid wardens and specifying their powers, and providing for precautionary measures to minimize injury to life and property and to protect and care for persons and property in the event of an air raid.

(46) NURSING ASSOCIATIONS. To appropriate money toward the maintenance and support of duly organized and bona fide nursing associations in the county, such associations to have at least one qualified nurse. [1931 c. 77, 333, 344; 1933 c. 187 s. 4; 1933 c. 339, 475; Spt. S. 1933 c. 4; 1935 c. 76, 101, 108, 207, 221, 291, 392, 461 s. 2; 1937 c. 28, 147, 299, 315, 412; 1939 c. 29, 33, 34, 51, 76, 148, 166, 195, 248, 348, 356; 1939 c. 513 s. 13; 1941 c. 14, 145, 225, 332; 43.08 (2); 1943 c. 7, 134, 195, 308; 1943 c. 334 s. 6; 43.08 (2)]

**Cross Reference:** For validation of appropriations and expenditures for councils of defense prior to enactment of (43), see 1943 c. 7 s. 3 and 22.11.

**Note:** In construing an act the title may be resorted to. The county board may regulate, but not arbitrarily prohibit public dance halls. But an ordinance which limits public dances in licensed halls to two per month is unreasonable and void. State ex rel. *Pumplin v. Hohle*, 203 W 626, 234 NW 735.

Contract whereby county agreed with private person that he should conduct advertising campaign for sale of realty held by county under tax deeds and under which contract lands were to be sold at sum equal to amount of delinquent taxes, interest and charges, plus fifty per cent of such amount, which was to cover compensation and expenses, held invalid, since county had no authority to create new agency to supercede agencies set up by legislature. State ex rel. *Buchanan v. Cole*, 218 W 187, 260 NW 467.

A county ordinance providing for discontinuance of public dances from 1 A. M. until 8 A. M. on week days and from 1 A. M. Sunday until 8 A. M. on Monday and on Christmas Eve and Christmas Day was a reasonable regulation. *Stetzer v. Chippewa County*, 225 W 125, 273 NW 525.

County board cannot license roadhouse, but may license hall where dances are held, refreshments served and other amusements furnished to public. 20 Atty. Gen. 7.

Under (9), villages and towns which regulate dance halls are not exempt from provisions of county dance hall ordinances. 20 Atty. Gen. 179.

Subsection (8) does not empower county to abolish office of supervising teacher and rescind its appropriation for his salary. 22 Atty. Gen. 614.

County board may not delegate its power to sell lands acquired by county by tax deed to private individual, firm or corporation; and board may delegate its power only to committee provided for by (19). 23 Atty. Gen. 20.

County board may not refuse to issue dance hall license or revoke such license solely for reason that fermented malt beverage or intoxicating liquor license has been issued for dance hall premises. 23 Atty. Gen. 536.

County board may not create office of county supervisor of music. 24 Atty. Gen. 424.

Where dance hall supervisor is hired by tavern keeper who permits dancing but has no license under 351.57 he lacks police powers given him under 59.08 (9) which he would have at licensed public dance. 25 Atty. Gen. 693.

**59.083 Milwaukee county, consolidation of municipal services, home rule, metropolitan district.** (1) Except as elsewhere specifically provided in these statutes, the county board of any county with a population of two hundred fifty thousand or more, is hereby vested with all powers of a local, legislative and administrative character, including without limitation or restriction because of enumeration, the subject matter of water, sewers, streets and highways, fire, police, and health, and to carry out these powers in districts which it may create for different purposes, or throughout the county, and for such purposes to levy county taxes to issue bonds, assessment certificates and improvement bonds, or any other evidence of indebtedness. The powers hereby conferred may be exercised by the county board in any town, city or village, or part thereof located in such county upon the request of any such town, city or village, evidenced by a resolution adopted by a majority vote of the members-elect of its governing body, designating the particular function, duty or act, and the terms, if any, upon which the same shall be exercised by the county board or by a similar resolution adopted by direct legislation in such town, city or village in the

County pension commissioner and engineer are subject to removal at any time by present or any future county board, even though county board has passed resolution that their terms shall be for definite period of time. 26 Atty. Gen. 313.

See note to 59.07, citing 27 Atty. Gen. 162. When county committee has set up lime project without authorization by county board, county may by subsequent action of county board ratify and approve acts of committee provided that contracts and liabilities incurred are not subject to some other legal infirmity. 27 Atty. Gen. 247.

Under (9) county dance hall inspector has powers of deputy sheriff and as such may make arrests for any offense, misdemeanor or crime committed in his presence. 27 Atty. Gen. 550.

See note to 75.35, citing 27 Atty. Gen. 572.

County dance hall ordinance adopted pursuant to 59.08 (9) and 351.07, and containing a definition of a public dance hall which includes roadhouses providing place or space for dancing, applies to taverns having floor space where the public is admitted and does dance. The source of music, type of the floor, the number of couples involved, and whether or not the dancing is merely incidental to the tavern business, are not determining factors under such definition. 28 Atty. Gen. 392.

County board may delegate function of examining, settling and allowing current accounts only to committees named in (38) and subject to limitations therein prescribed. 28 Atty. Gen. 641.

Where territory is detached from one town and attached to another pursuant to (1) it is not necessary that election be held. 29 Atty. Gen. 42.

County board may not under 59.08 (8) abolish board of trustees provided for in 41.47 and vest functions of board in committee of county board. Opinion in 21 Atty. Gen. 1036 disapproved. 30 Atty. Gen. 15.

Place where liquor and beer are served is not ipso facto "roadhouse" or "place of amusement" within meaning of (15) and county boards have no authority to enact ordinances requiring closing of such places after 1:00 A. M. 28 Atty. Gen. 347; 30 Atty. Gen. 25.

Power of county to enter into group insurance contract with insurance company on behalf of county employes is limited to Milwaukee county by virtue of 59.08 (14). 30 Atty. Gen. 222.

County board, under 59.08 (8), may abolish county park commission created pursuant to 27.02, but probably can not transfer functions of commission to committee of county board. Powers granted by 59.08 (8) must be exercised at annual meeting of board. 30 Atty. Gen. 340.

manner provided in section 10.43. Such resolution shall further provide whether the authority or function is to be exercised exclusively by the county or jointly by the county and the town, city or village, and shall also find that the exercise of such power by the county would be in the public interest. Upon the receipt of the resolution, the county board may, by a resolution adopted by a majority vote of its membership, elect to assume the exercise of such function, upon the terms and conditions set forth in the resolution presented by the town, city or village.

(2) The county board of any such county may, by a resolution adopted by a majority of its membership, propose to the towns, cities and villages located in such county, or any of them, that it offers to exercise such powers and functions therein in order to consolidate municipal services and functions in said county. Such resolution shall designate the particular function, duty or act and the terms and conditions, if any, upon which the county board will perform the same. The powers conferred in subsection (1) and designated in such resolution may thereafter be exercised by the county board in each such town, city or village which shall accept such proposal by the adoption of a resolution by a majority vote of the members-elect of its governing body or by direct legislation in the manner provided in section 10.43 of the statutes.

(3) Whenever the request under subsection (1) or acceptance under subsection (2) of a town, city or village shall be by resolution of its governing board, such request or acceptance shall not go into effect until the expiration of sixty days from the adoption of the resolution. If a petition pursuant to section 10.43 for direct legislation on such request or acceptance shall be filed before the expiration of said sixty days, the resolution of the governing board shall be of no effect but the request or acceptance of such town, city or village shall be determined by such direct legislation.

(4) After and upon the adoption of resolutions by the county board and subject to the provisions of subsection (3) by one or more towns, cities or villages either as provided in subsection (1) or in subsection (2) the county board shall have full power to legislate upon and administer the entire subject matter committed to it, and among other things, to determine, where not otherwise provided by law, the manner of exercising the power thus assumed.

(5) The town, city or village concerned may enter into necessary contracts with the county, and appropriate money to pay to the county the reasonable expenses incurred by it in rendering the services assumed. Such expenses may be certified, returned and paid as are other county charges, and in the case of services performed pursuant to a proposal for the consolidation thereof initiated by the county board and made available to each town, city and village in the county on the same terms, the expenses thereof shall be certified, returned and paid as county charges; but in the event that each and every town, city and village in the county shall accept such proposal of the county board the expenses thereof shall be paid by county taxes to be levied and collected as are other taxes for county purposes. Said towns, cities and villages are vested with all necessary power to do the things herein required, and to do all things and to exercise or relinquish any of the powers herein provided or contemplated. The procedure herein provided for the request or acceptance of the exercise of the powers conferred on the county board in cities and villages is hereby prescribed as a special method of determining the local affairs and government of such cities and villages pursuant to section 3 of article XI of the constitution.

(6) The powers conferred by this section shall be in addition to all other grants of power and shall be limited only by express language. [1935 c. 450]

**59.09 Publication of ordinances and proceedings.** (1) Whenever any county board passes any ordinance under the provisions of this chapter the county clerk shall immediately cause the same to be published in some newspaper published in such county, and if there is none, then in the paper which he determines has the most general circulation therein; and such clerk shall procure and distribute copies of such paper to the several town clerks, who shall file the same in their respective offices.

(2) Said board shall, by ordinance or resolution, provide for one publication of a certified copy of all its proceedings had at any meeting, regular or special, in one or more newspapers published and having a general circulation therein, said publication to be completed within sixty days after the adjournment of each session. If no such newspaper is published in the county, then such publication shall be made in some newspaper published in an adjoining county and having a general circulation in the county where such meeting was held; but the cost of any such publication under this subsection shall in no case exceed the rate per folio fixed by law for the publication of legal notices.

(3) Said board may at any meeting, regular or special, provide by resolution for the publication in pamphlet form by the lowest and best bidder therefor, of a sufficient and designated number of copies of its duly certified proceedings, for general distribution.

(4) Said board may order public notices relating to tax sales, redemption and other



affairs of the county to be published in a newspaper printed in any other than the English language, to be designated in such order, whenever they shall deem it necessary for the better information of the inhabitants thereof, and it shall appear from the last previous census that one-fourth or more of the adult population of such county are of a nationality not speaking the English language, and that there shall have been a newspaper published therein continuously for one year or more in the language spoken by such nationality; but all such notices shall also be published in a newspaper published in the English language as provided by law. The compensation for all such publications shall be paid by the county ordering the same, and shall be the same as that prescribed by law for publication in the English language; and no extra charge shall be allowed for translation in any case. No irregularity, mistake or informality in any such publication shall affect the validity or regularity of any tax sales, redemptions or other legal proceedings.

(5) (a) In counties having a population of two hundred fifty thousand or more, the county board of supervisors, at its annual meeting shall direct the county clerk to invite proposals from the English newspapers published daily in said county, for the publication and printing of the proceedings of said board, and all other notices or advertisements as shall be authorized or required to be published or printed by the said board and all officers, boards and departments of said county, during the next ensuing year, which publications and advertising may be divided and classified if the said board shall so order.

(b) Such proposals shall name a price per folio, or shall name a price per folio per thousand of average daily circulation in such county for the period of six months next preceding the date of such proposals, as shown by the affidavit of an authorized officer or agent of such proponent, or shall name a price for such advertising space as may be required or ordered by said board at any time during the year for which awards shall be made, or, at the option of the proponent, shall include any or all of such separate proposals as aforesaid.

(c) The said board may by resolution suspend the publication of proceedings in newspapers and provide for the printing thereof in pamphlet form until the further action of the board in relation thereto. Separate bids may be called for if so ordered by said board, from printers in the county, for the printing of the proceedings of said county board in pamphlet form in such quantities as shall be determined by said board.

(d) Each bid shall be accompanied by a certificate of the county treasurer that the bidder has deposited with him a United States bond, corporate surety bond or certified check in the sum of five hundred dollars, or the cash deposit of a like amount, conditioned that said bidder will, if successful, enter into a contract as provided in the resolution of said board or invitation for such bids. The county clerk shall on the date named in said invitation for bids, in the presence of the committee on printing and stationery of said board, open all such proposals and enter upon his minutes a record thereof, all of which shall be reported to the board at its next meeting, together with the recommendations of said committee. The said board shall thereupon consider such proposals and by its resolution designate and award such advertising and printing to the lowest bidder or to the lower bidder based upon a rate per thousand of average daily circulation in such county, or said board may award such publication and printing to the lowest bidder and also to the lowest bidder per thousand of average daily circulation as aforesaid, or said board may award any division or classification of such publication and printing made under the provisions hereof, to the lowest bidder and award the remaining division or divisions, or classification, to the lowest bidder per thousand of circulation aforesaid. In the event that said board shall elect to print its proceedings in pamphlet form only, the invitation for bids and the award may be made to the lowest responsible bidder, at a rate per folio, or per page, or such other basis as said board shall determine.

(e) Upon the award of the contract, or contracts, the deposits of unsuccessful bidders, and upon execution of proper contracts by successful bidders, the deposits shall severally be returned. The contract, or contracts, shall be accompanied by a good and sufficient bond in such amount as shall be fixed by said board conditional for the faithful performance of such contract.

(f) The said board of supervisors may, in lieu of the foregoing provisions, provide by ordinance, a method of printing and publication of its proceedings and notices, and the method of obtaining bids and contracts therefor.

(g) In any case where it shall be deemed advisable, the county board may provide for further or additional publication of notices in appropriate trade mediums.

(h) The rates provided by section 331.25 for legal notices, shall not apply to printing or publications hereunder.

**Note:** Official county newspaper need not be physically printed in entirety in county when its news and editorial matter is prepared therein and it is issued and published therein. 19 Atty. Gen. 409.

Publication issued by merchants of city to advertise their merchandise and wares, which contains some news items, is not "newspaper" within meaning of (2). 22 Atty. Gen. 108.

Newspaper having no circulation whatever in eighty-five per cent of area of county does not qualify under (2) as one having general circulation in county. 22 Atty. Gen. 295.

Publication of proceedings of county board in supplement to weekly newspaper distributed with regular edition of such paper to all paid subscribers thereof is legal publication. Newspaper of general circulation is one pub-

lished for dissemination of local or telegraphic news of general character having bona fide subscription list and distributed among all classes. 23 Atty. Gen. 408.

Publication of ordinances pursuant to (1) should be separate and independent of publication of county board proceedings pursuant to (2). 27 Atty. Gen. 21.

**59.10 Neglect of duty.** Any supervisor who refuses or neglects to perform any of the duties which are required of him by law as a member of the county board of supervisors, without just cause therefor, shall for each such refusal or neglect forfeit a sum of not less than fifty nor more than two hundred dollars.

**59.11 County seat; change.** (1) The county seat shall be fixed and designated by the county board at the first regular meeting after the organization of any county; and no county seat shall be changed except as provided in this section.

(2) If two-fifths of the legal voters of any county, to be determined by the poll lists of the last previous general election held therein, the names of which voters shall appear on some one of the poll lists of said election, shall present to the county board a petition signed by them asking a change of the county seat to some other place designated in such petition, such board shall submit the question of removal of the county seat to a vote of the qualified voters of the county. Such election shall be held only on the day of the general election, notice thereof shall be given and the same shall be conducted as in the case of the election for officers on that day, and the votes shall be canvassed, certified and returned in the same manner as other votes at such election. The question to be submitted shall be "Shall the county seat of . . . county be removed to . . .," and the ballots on such question shall be deposited in a separate ballot box.

(3) If a majority of all the votes cast at such election on that subject are in favor of the proposed change, the chairman of the county board shall certify the same, with the attestation of the county clerk, to the governor, who thereupon shall issue his proclamation to that effect and cause the same to be published in the official state paper, and from the date of such publication the place so designated shall be the county seat of such county, and the county board shall not again submit the question of removal within five years.

(4) However, when a county seat has been established in one place for a period of fifteen years or more, and the county has there erected permanent buildings of the value of not less than ten thousand dollars, the county seat shall not be removed, nor shall any application for its removal be submitted to a vote of the electors of the county unless a petition signed by at least one-half of the resident freeholders of the county as evidenced by the recorded deeds in the office of the register of deeds of the county, in favor of such removal, shall first be presented to the county board and filed in the office of the county clerk; and no such election to change any county seat shall be held for a period of five years after the year in which a courthouse or other county building costing three thousand dollars or more was built at the county seat and occupied for county purposes.

**59.12 County officers; terms.** A county clerk, treasurer, sheriff, coroner, clerk of circuit court, district attorney, register of deeds and surveyor shall be elected in each county for full terms at the general election held in each even-numbered year. The regular term of office of each such officer shall commence on the first Monday of January next succeeding his election and shall continue two years and until his successor qualifies.

**59.13 Official oaths and bonds.** (1) Each county officer named in this chapter shall execute and file an official bond and take and file the official oath within twenty days after receiving official notice of his election or appointment, or if not officially notified, within twenty days after the commencement of the term for which he was elected or appointed. Every deputy appointed by any such officer shall take and file the official oath and if he neglects shall forfeit one hundred dollars. Such official bonds shall be in sums and with sureties, as follows:

(a) County clerk, not less than two thousand dollars.

(b) County treasurer, if the bond is furnished by individual sureties, not less than the amount nor exceeding twice the amount of all taxes directed by the county board to be levied therein and to be received by the treasurer during the ensuing year, with three or more sureties; or, if the bond is furnished by a security company, in such sum as is fixed by the county board; but in counties wherein depositories have been designated and have furnished approved bonds, as required by law, the amount of the treasurer's bond shall not exceed the amount of such taxes nor be less than ten per cent thereof in counties having a population of one hundred fifty thousand or more, nor less than twenty per cent of such taxes in other counties.

(c) Sheriff, not less than five nor more than twenty-five thousand dollars, with not less than three sureties.

(d) Coroner, not less than five hundred nor more than ten thousand dollars, with not less than two sureties.

(e) Clerk of the circuit court, not less than five thousand dollars, with two or more sureties.

(f) District attorney, one thousand dollars.

(g) Register of deeds, except in counties containing one hundred fifty thousand population or more, three thousand dollars, with two or more sureties. In counties containing one hundred thousand or more population, not less than three thousand dollars, with two or more sureties, conditioned for the accuracy of his work and the faithful, correct and impartial performance of his duties, and in addition thereto a bond in sum of not less than ten thousand dollars, with two or more sureties, conditioned for the faithful accounting for and paying over to the county treasurer all moneys which may come into his hands as such officer, or into the hands of his deputy or assistants for him.

(h) Surveyor, one thousand dollars.

(i) County abstractor, five thousand dollars, with two or more sureties.

(2) Each such official bond shall be in sum fixed by law; or if not so fixed, in sum fixed by resolution of the county board, within the limitations prescribed by law, if any, at the annual meeting in November prior to the commencement of the term of office of the particular officer. Both the bond and the sufficiency of the sureties thereto shall be approved by a committee consisting of the chairman and not less than two other members of the county board who shall report in writing their action on all bonds.

(3) Each such bond shall be guaranteed by the number of personal sureties prescribed by law, or if not prescribed, by the number fixed by the county board within the limitations, if any, prescribed by law, or by a surety company as provided by section 204.07. In the case of the county clerk, county treasurer and county abstractor the county board may by resolution require them to furnish bonds guaranteed by surety companies and direct that the premiums therefor, agreed upon between the board and the companies, be paid out of the county treasury.

(4) If it deems the bond of any officer insufficient, the county board may by resolution require him to furnish additional bond in sum to be named in the resolution, not exceeding ten thousand dollars for the register of deeds of any county with a population of less than one hundred fifty thousand, and not exceeding the maximum sum, if any, fixed by law for additional bonds for other officers.

**Note:** Elected county officer may not be required to furnish surety company bond except as provided in (3). 20 Atty. Gen. 3.

Vacancy exists in office of county treasurer when person elected fails to file his bond within time required by law, but com-

mittee on bonds should approve bond when filed late if form and sureties satisfactory. 24 Atty. Gen. 196.

County board may not require county judge to furnish surety bond or pay premium thereon. 26 Atty. Gen. 617.

**59.14 Offices, where kept; when open.** (1) Every sheriff, clerk of the circuit court, register of deeds, county treasurer, register of probate and county clerk shall keep his office at the county seat in the offices provided by the county or by special provision of law; or if there be none such, then at such place as the county board directs. The county board may also require any elective or appointive county official to keep his office at the county seat in an office to be provided by the county. All such officers shall keep such offices open during the usual business hours each day, Sundays and legal holidays excepted, and except that the county board of each county may permit said officers to close their offices on Saturday afternoon for such time as the county board may direct, and with proper care shall open to the examination of any person all books and papers required to be kept in his office and permit any person so examining to take notes and copies of such books, records or papers or minutes therefrom.

(2) If any such officer neglects or refuses to comply with any of the provisions of this section he shall forfeit five dollars for each day such noncompliance continues. Actions for the collection of such forfeiture may be brought upon the complaint of the district attorney of the proper county or of any party aggrieved by such refusal or neglect.

**Note:** It is sufficient compliance with requirements of (1) for sheriff to have his undersheriff reside at county seat and keep open sheriff's office provided there. 21 Atty. Gen. 842.

Register of deeds can require persons desiring to examine chattel mortgages filed in her office to consult index and ask for mortgage desired. 22 Atty. Gen. 69.

**59.15 Compensation; fees; salaries; changes.** (1) The county board at its annual meeting shall fix the annual salary for each county officer, except as provided in section 253.15, to be elected during the ensuing year and who will be entitled to receive a salary payable out of the county treasury. The salary so fixed shall not be increased or diminished during the officer's term, and shall be in lieu of all fees, per diem and compensation for services rendered, except the following additions:

(a) Compensation to the sheriff for keeping and maintaining prisoners in the county jail;

(b) Reimbursement to the sheriff in counties containing three hundred thousand or more population, according to the last preceding state or United States census, for expenses actually and necessarily incurred in the performance of his official duties;

(c) Reimbursement to the district attorney of the amount of his expenses actually and necessarily incurred in briefing and arguing criminal cases before the supreme court, as required by subsection (7) of section 59.47, and in traveling within and without his county in the performance of his official duties;

(d) Compensation received by the clerk of the circuit court for work done for the United States government or for congress.

(e) The county board, at its annual meeting shall fix the salary or compensation for any office or position (other than the county officers designated by section 59.12, judicial officers and the county superintendent of schools) created by any special or general provision of the statutes and the salary or compensation of which is paid in whole or in part by the county and the jurisdiction and duties of which lie wholly within the county or any portion thereof, and such salary or compensation may be fixed from time to time at any annual meeting of the county board for the ensuing year; and such power is hereby granted to the county board notwithstanding the provisions of any special or general law to the contrary. The salary or compensation of all officers and personnel administering old-age assistance, aid to dependent children and blind pensions shall be fixed in accordance with rules and regulations relating to compensation and classification adopted by the state department of public welfare as provided in subsection (2) of section 49.50.

(ef) Notwithstanding any other provision of the law to the contrary, the county board may increase the salary of any elective county officer for or during his term of office. Any action taken by a county board since November 1, 1942, increasing the salary of any elective county officer, and all appropriations therefor shall be ratified and validated, as if such action and appropriation had been authorized by law. This paragraph is emergency legislation and shall expire January 1, 1945.

(f) In counties having a population of 500,000 or more, the compensation incident to any office or position, except an elective office, may be changed by ordinance which may be adopted at any regular meeting.

(g) Reimbursement to county officers and employes for traveling expenses including food and lodging disbursed in the course of discharging the duties and functions of the particular position or office; and the county board may at the annual meeting establish a standard allowance for such traveling expenses and the general purposes for which such reimbursement may be allowed.

(2) The county board of any newly created county may, at any regular meeting during the term of office of officers appointed therefor, fix the annual salaries of such officers.

(3) The county board may at any time fix or change the number of deputies, clerks and assistants that may be appointed by any county officer and fix or change the annual salary of each such appointee, except that the salaries of the undersheriff and of the register in probate may be changed only at the annual meeting.

(4) Salaries of officers or persons included within the provisions of subsections (1), (2) and (3) fixed by or pursuant to law shall be and remain the salaries of such officers and persons until changed by the county board pursuant to this section.

(5) The county board may at any time change the compensation of any county officer from fees collected and retained by him to a salary, and may fix the annual salary of such officer. However, if such change is made after election or appointment of the officer, the board and such officer shall stipulate in writing the amount of compensation which shall be received and accepted annually by such officer for the remainder of his term as equivalent to the fees or fees and salary to which he was theretofore entitled. The county board of any county wherein such change has been made may at any time change the compensation of any such officer from a salary to fees collected or to part salary and part fees collected; but no change of compensation shall be made during the term for which any such officer was elected or appointed except as provided in this subsection.

(6) Whenever all the fees together of the register are less than five hundred dollars per annum, the county board may, in its discretion, pay him a sum of money which, with the fees received by him, will amount to not to exceed seven hundred dollars per annum.

(7) Any officer who shall receive a salary in lieu of fees shall collect the fees appertaining to the office and turn them over to the county treasurer. He shall keep such books of account as the county board may order showing the fees charged and collected.

(8) When a salary has been fixed for any county officer in lieu of fees such officer shall keep an accurate account of all fees collected by him and pay the same over to the county treasurer. He shall also make a quarterly statement duly verified of all such fees collected and file such statement with the county clerk.

(9) In this section the term "county officer" means any elective officer whose salary or compensation is paid in whole or in part out of the county treasury, including salaries or compensation so paid for which compensation is made by the state. [1939 c. 254, 425, 533; 1941 c. 323; 1943 c. 93, 94, 168, 275, 342]

**Note:** As to fees received by clerks of courts in naturalization proceedings, see note to 59.42, citing *Barron v. Beckwith*, 142 W 519, 124 NW 1030.

While a municipal officer may be elected or appointed for a specific term he is not bound and cannot be compelled to serve for the entire term; hence his election or appointment cannot be considered a contract for hire for a stipulated term, and the reduction of his salary during his term is not a violation of contract. *Dandoy v. Milwaukee County*, 214 W 586, 254 NW 98.

A contract of a sheriff for board of prisoners is not assignable, since his duty to feed prisoners does not rest upon contract but upon statute, and in any event does not involve an obligation which passes to his personal representatives upon his death. *Frielipp v. Sauk County*, 215 W 16, 254 NW 369.

Subsection (1) did not apply to the office of municipal judge until the enactment of an amendment on August 8, 1929, creating subsection (9). Under chapter 18, Laws 1909, creating the municipal court of Kenosha county and fixing the annual salary of the municipal judge thereof at a designated amount until otherwise fixed by the county board, the county board, prior to the creation of said subsection (9) was authorized to change the judge's salary at any time, but after the creation of (9) the county board could act in the matter only at its annual meeting. *Stewart v. Kenosha County*, 226 W 171, 275 NW 459.

A resolution of the county board affecting the compensation of the county judge, adopted in November of 1929, when the election for county judge was not to occur until the spring of 1931, was not so premature as to be invalid under the provision in (1) that the county board at its annual meeting shall fix the annual salary of the county judge and other county officers "to be elected during the ensuing year." Tardiness, not prematurity, in fixing salaries of county officers is the vice aimed at, the purpose of the statute being to avoid partisan bias and personal feeling and to give prospective candidates seasonable knowledge of the amount of compensation. *Axelberg v. Bayfield County*, 233 W 533, 290 NW 276.

Compensation of sheriff may be fixed by county board at part salary and part fees; when that is done fees for all services within salary provision must be paid over to county treasurer. 20 Atty. Gen. 19.

County board may require officer receiving salary in lieu of fees to account to county treasurer and pay over such fees daily. 20 Atty. Gen. 51.

County board has no power to prohibit employment of married women in respective offices. 20 Atty. Gen. 141.

In county where sheriff's salary is fixed in lieu of all fees, such sheriff is not entitled to recover for board away from home or assistance or mileage nor gas and repairs for his car, but he may recover expenses incurred in returning prisoner from another state. County board has power to reduce compensation which sheriff receives for feeding prisoners during his term, but if this is below actual cost sheriff may recover difference. 20 Atty. Gen. 386, 717.

County board may reduce amount allowed for clerk hire or stenographic help pursuant to (3) and this would not amount to decreasing salary of county officer. 20 Atty. Gen. 1171.

County board may include allowance for certain expenses of sheriff as part of his salary. Expenses for use of automobile are actual expenditures for gas, oil, etc., and reasonable allowance for wear and tear. 21 Atty. Gen. 190.

Adoption of county budget showing salary of county judge is fixing of such salary by county board. 21 Atty. Gen. 245.

County board may at adjourned annual meeting or special meeting held prior to

fall election fix salaries to be paid to elective county officers to be elected during year in which such action is taken. 21 Atty. Gen. 602. See also 24 Atty. Gen. 88.

Sheriff on salary which covers his services in all criminal cases is not entitled to receive additional fees for serving papers under 247.29, being contempt proceedings to enforce order of court in divorce action for alimony and suit money. 21 Atty. Gen. 765.

Sheriff may bind county to pay deputies appointed during emergency reasonable compensation. 22 Atty. Gen. 781.

County judge whose salary is fixed by county board is not entitled to per diem referred to in 253.15 (2). 23 Atty. Gen. 111, 24 Atty. Gen. 46.

Where sheriff is entitled only to fees received from private persons for service of legal process he has no claim against county for fees for serving papers issued under 247.29. 24 Atty. Gen. 116.

Political year commences on first Monday in January which was January 7 in 1935. Outgoing county officers who have been paid in full for their term are entitled to no extra compensation for first six and one-half days of January, 1935, nor may there be any corresponding deductions from salaries of incoming officers. Pay day of county employees is discussed. 24 Atty. Gen. 127.

District attorney may be reimbursed for actual and necessary expenses incurred in traveling within his county by auto in performance of his official duties. Such expenses may include gas, oil, etc., and reasonable allowance for wear and tear if county board has fixed standard governing wear and tear. 24 Atty. Gen. 177.

Compensation to be paid judge of juvenile court may be fixed by county board at any time. 24 Atty. Gen. 816.

Clerk of court placed on salary January 1, 1937, is entitled to all fees for services actually performed prior to said date and may retain same upon their payment. Clerk's fees become due and payable at time of performance of specific service. Where clerk is on salary county is entitled to fees for making certified copies of records except where furnished to United States government or for congress. He has no power to employ stenographer to prepare certified copies and pay her folio fee therefor unless authorized so to do by county board. 26 Atty. Gen. 394.

See note to 59.04, citing 27 Atty. Gen. 248. County board may not, under (1), increase salary of county treasurer during his term of office. Additional clerk hired for WPA project in office of register of deeds when authorized by county board is within authority of county board. 27 Atty. Gen. 614.

Ch. 468, Laws 1935 (253.15 (4)) repealed 59.15 (1) in so far as latter applies to salary of county judge. 28 Atty. Gen. 139.

Clerk of court on salary basis is not entitled to retain clerk's fees taxed in foreclosure actions brought by HOLC, federal land bank, etc. (1) (d) is not applicable to situation where clerk is performing duty imposed by state law and where state law fixes compensation for such duty. 28 Atty. Gen. 656.

Where office of sheriff is on salary basis deputy sheriff cannot collect mileage from county for travel on county business. 28 Atty. Gen. 673.

County clerk on salary basis who receives salary in lieu of all other fees and compensation pursuant to 59.15 (1) is not entitled to retain ten cent fee for issuing hunting licenses under 29.09 (7). 29 Atty. Gen. 91.

Legislature has power to increase or decrease salary of judge of county court (in act increasing or decreasing jurisdiction of said court) during his term of office. Salary fixed becomes effective as of date named in act and it is no valid objection that county board had not at time of enactment appro-

priated funds with which to pay additional salary. 29 Atty. Gen. 139.

Under (1) (e) county board may at its annual meeting or at adjourned annual meeting reduce salaries of superintendent and matron of county asylum from salaries previously fixed under 46.19 by board of trustees of county institutions. 30 Atty. Gen. 127.

County board may, during sheriff's term, change amount of compensation to be paid him for meals of prisoners but may not increase or diminish annual allowance for use of his car. 30 Atty. Gen. 484.

Clerk of circuit court is entitled to fees

from naturalization proceedings in addition to salary fixed by county board. Board may not compel him to pay such fees into county treasury. County board may not provide two alternative compensation plans for office of clerk of circuit court and permit clerk to choose, which shall be applicable. 31 Atty. Gen. 107.

The legislature may authorize county boards to increase salaries of elective county officials during terms of office for which they are elected. Art. IV, sec. 26, Const., is not applicable to county officials. 32 Atty. Gen. 51.

**59.16 County clerk; deputies; salaries; vacancies.** (1) Every county clerk shall appoint in writing one or more deputies and file such appointment in his office. Such deputy or deputies shall aid in the performance of the duties of such clerk under his direction, and in case of his absence or disability or of a vacancy in his office, unless another is appointed therefor as provided in subsection (3), shall perform all the duties of such clerk during such absence or until such vacancy is filled. The county board may in its discretion, at any meeting, provide a salary for such deputy or deputies.

(2) In each county having a population exceeding one hundred and fifty thousand according to the last state or national census, the county clerk may also appoint such number of assistants as the county board may, at any legal meeting thereof, authorize and prescribe, and said assistants shall receive such salaries as said county board at any such meeting shall provide and fix.

(3) If any county clerk is incapable of discharging the duties of his office the county board may, if they see fit, appoint a person such clerk, who shall serve until such disability is removed. If the county board is not in session at the time of such incapacity, the chairman of said board may appoint such clerk, whose term shall not extend beyond the next regular or special meeting of the county board. A person so appointed or appointed to fill a vacancy in the office of county clerk, upon giving an official bond with like sureties as are required of such clerk, shall perform all the duties of such office; and thereupon the powers and duties of the deputy of the last clerk shall cease.

**Note:** Offices of deputy county clerk and deputy county treasurer are incompatible. 22 Atty. Gen. 707.

A minor cannot hold the office of deputy county clerk. 28 Atty. Gen. 591.

Under (1) county clerk may direct work to be performed by deputy county clerks and may restrict such work to certain activities, such as issuance of hunting and fishing licenses. 29 Atty. Gen. 174.

**59.17 County clerk; duties.** The county clerk shall:

(1) **COUNTY BOARD PROCEEDINGS.** Act as clerk of the county board at all the meetings thereof; keep and record in a book therefor true minutes of all the proceedings of the board; make regular entries of their resolutions and decisions upon all questions; record the vote of each supervisor on any question submitted to the board, if required by any member present, and perform all duties prescribed by law or required by the board in connection with their meetings and transactions.

(2) **SAME.** Record at length in a book therefor every resolution, order and ordinance adopted or passed by the board.

(3) **SAME.** Sign all orders for the payment of money directed by the board to be issued, and keep in a book therefor a true and correct account thereof, and of the name of the person to whom each order is issued; but he shall in no case sign or issue any county order except upon a recorded vote or resolution of the board authorizing the same; nor shall he sign or issue any such order for the payment of the services of any justice of the peace, magistrate, clerk of court, district attorney or sheriff until the person claiming such order files an affidavit stating that he has paid into the county treasury all moneys due the county and collected or received by him in his official capacity.

(4) **ACCOUNTS.** File and preserve in his office all accounts acted upon by the board, and indorse their action thereon, designating specifically upon every account the amount allowed, if any, and the particular items or charges for which allowed, and such as were disallowed, if any.

(5) **RECEIPTS AND DISBURSEMENTS.** Record in a book therefor the reports of the county treasurer of the receipts and disbursements of the county.

(6) **SAME.** Keep a true and accurate account in a book therefor of all money which comes into his hands by virtue of his office, specifying the date of every receipt or payment, the person from or to whom the same was received or paid, and the purpose of each particular receipt or disbursement, and keep such book at all times open to the inspection of the county board or any member thereof.

(7) **SAME.** Keep in the manner prescribed in subsection (6) a separate account of all moneys paid the county treasurer by him.

(8) **SAME.** Keep all of the accounts of the county and all such books of account as the county board directs.

(9) **ACTIONS; NOTIFY DISTRICT ATTORNEY.** Promptly notify the district attorney of every action or proceeding commenced against the county and of every appeal from the action of the county board.

(10) **SCHOOL TAXES, RECORDS TO STATE SUPERINTENDENT.** Transmit to the state superintendent on the last Monday in December in each year certified copies of all resolutions and proceedings of the county board passed or had during the preceding year relating to the raising of any money for school purposes, and report the amount to be raised in each town in the county.

(11) **SCHOOL MONEYS, NOTICE OF APPORTIONMENT.** File in his office every notice received from the state superintendent of the apportionment of school money to be distributed in the county, and forthwith transmit a certified copy thereof to the county treasurer, and lay a like copy before the county board at their next annual meeting.

(12) **VILLAGES, TOWNS; CHANGE OF NAME.** Immediately transmit to the secretary of state, after the name of any town or village is changed or a new town is organized or the boundaries of any town are altered by the county board, a certified copy of the ordinance adopted therefor, indicating such change or changes.

(13) **DUPLICATE RECEIPTS.** Make out and deliver to the treasurer duplicate receipts of all moneys received by him as such clerk, and countersign and file in his office the duplicate receipts delivered to him by the treasurer of money received by him.

(14) **CERTIFIED COPIES; OATHS AND BONDS; SIGNATURES.** (a) Make and deliver to any person, on demand and payment of the lawful fees therefor, a certified copy or transcript of any book, record, account, file or paper in his office, and make any certificate which by law is declared to be evidence, and charge ten cents for each folio of such copy or transcript and twenty-five cents for each such certificate.

(b) Except as otherwise provided, the county clerk shall receive and file the official oaths and bonds of all county officers and upon request shall certify under his signature and seal the official capacity and authority of any county officer so filing and charge therefor the statutory fee. Within thirty days after the passage of this paragraph and, upon the commencement of each term hereafter, every county clerk shall file his signature and the impression of his official seal in the office of the secretary of state.

(15) **TAXES; ELECTION DUTIES.** Perform all duties imposed on him in relation to the assessment and collection of taxes, and to the preparation and distribution of ballots and the canvass and return of votes at general, judicial and special elections.

(16) **REPORT, RECEIPTS AND DISBURSEMENTS TO COUNTY BOARD.** Make a full report to the county board, at the annual meeting, in writing, verified by his oath, of all money received and disbursed by him, and separately of all fees received by him; and settle with the board his official accounts and produce to them all books, accounts and vouchers relating to the same.

(17) **PROCEEDINGS TO HISTORICAL SOCIETY.** Forward to the state historical society, postpaid, within thirty days after their publication a copy of the proceedings of the county board, and of all printed reports made under authority of such board or by the authority of other county officers.

(18) **COUNTY HIGHWAY COMMISSIONER; NOTIFY OF ELECTION.** Except in counties having a population of one hundred and fifty thousand or more, notify a county commissioner of highways of his election within ten days thereafter.

(19) **COUNTY TAX FOR ROAD AND BRIDGE FUND.** Except in counties having a population of one hundred and fifty thousand or more, notify the proper town officers of the levy and rate of any tax for the county road and bridge fund.

(20) **LIST OF MUNICIPAL OFFICERS.** Each county clerk shall, annually, on the first Tuesday of June, transmit to the secretary of state a typewritten or printed list showing the name and post-office address of the chairman, mayor, president, clerk, treasurer and assessor of each town, city and village within his county. Such lists shall be placed on file for the information of the public.

(25) **GENERAL.** Perform all other duties required of him by law. [1937 c. 421; 1943 c. 275 s. 1, 24]

**Note:** Instances enumerated in which county clerk is authorized to issue orders without resolution from county board. 20 Atty. Gen. 416.

County clerk may not issue county orders in payment for road machinery in absence of resolution or recorded vote by county board authorizing same. 22 Atty. Gen. 393.

County clerk is not authorized to charge fee for administering oath to applicant for

marriage or hunting license. County board may not require county clerk to render notarial services in matters unconnected with county business, but if such services are rendered and fees are collected they belong to county. 27 Atty. Gen. 187.

A county clerk has no implied authorization to convey county lands by warranty deed. 28 Atty. Gen. 478.

**59.175 Clerks of counties containing state institutions to make claims in certain cases.** The county clerk of any county, where such county is entitled to reimbursement as provided in subsection (16) of section 14.30, shall make certified claim against the state,

without direction from the county board, in all cases where such reimbursement is directed in said subsection, upon forms prescribed by the secretary of state and to contain such information as shall be required by him; such claims to be filed with the state board of control on or before June first of each year. If the claims are approved by such board they shall be certified to the secretary of state and paid from the appropriations made by subsection (6) of section 20.07. [1937 c. 119]

**59.18 County treasurer; eligibility.** No person holding the office of sheriff, under-sheriff, county judge, district attorney, clerk of the circuit court, county clerk or member of the county board shall be eligible to the office of county treasurer or deputy county treasurer.

**Note:** Office of county treasurer and office of town chairman are incompatible, even though county has commission form of government. 20 Atty. Gen. 1217. Member of county board is eligible to office of county treasurer during term for which he was elected, provided he resigns from county board and is elected county treasurer by vote of electors. 21 Atty. Gen. 800.

**59.19 Deputy; oath; salary; temporary vacancy.** (1) The county treasurer may appoint a deputy to aid him in the discharge of the duties of his office. Such deputy, in the absence of the treasurer from his office or in case of a vacancy in said office or any disability of the treasurer to perform the duties of his office, unless another is appointed therefor as provided in subsection (2), may perform all the duties of the office of treasurer until such vacancy is filled or such disability is removed. Such appointment shall be made in writing, and the person so appointed shall take and file the official oath. He shall file his appointment with the county clerk. The county board, may in its discretion, at its annual meeting or at any special meeting, provide a salary for such deputy.

(2) If any county treasurer is incapable of discharging the duties of his office, the county board may, if they see fit, appoint a person treasurer who shall serve until such disability is removed. A person so appointed or appointed to fill a vacancy in the office of treasurer, upon giving an official bond with like sureties as are required of such treasurer, shall perform all the duties of such office, and thereupon the powers and duties of the deputy of the last treasurer shall cease.

**Note:** Offices of deputy county clerk and justice of peace are not incompatible at common law nor is incumbent of one office in- eligible to hold other under constitution and statutes of this state. 29 Atty. Gen. 143.

**59.20 County treasurer; duties.** The county treasurer shall:

(1) Receive all moneys from all sources belonging to the county, and all other moneys which by statute or county ordinance are directed to be paid to him, and, except in counties having a population of 500,000 or more in the case of the payment of delinquent property taxes or the redemption of tax sales, and the sale or assignment of property for taxes at or after tax sale, make out and deliver to the county clerk duplicate receipts therefor, and file in his office the duplicate receipts delivered to him by the county clerk for money received by him. In the case of the exception hereinabove provided, the county treasurer shall file a duplicate receipt in his office.

(2) Pay out all moneys belonging to the county only on the order of the county board, signed by the county clerk and countersigned by the chairman, except when special provision for the payment thereof is otherwise made by law; and, except in counties having a population of one hundred and fifty thousand or more, pay out all moneys belonging to the county road and bridge fund on the written order of the county commissioner of highways, signed by the county clerk and countersigned by the chairman of the county board.

(3) Pay all such county orders in the order of time in which they are presented for payment; but where two or more are presented at the same time, give precedence to the order of the oldest date, but he shall receive of town, city and village treasurers all county orders issued in such county, which such treasurers may present in payment of county taxes, to the amount of the county taxes actually collected by any such treasurer in the year for which such orders are offered in payment, which amount shall be determined by the affidavit of such treasurer.

(4) Keep a true and correct account of the receipt and expenditure of all moneys which come into his hands by virtue of his office in books kept therefor, specifying the date of every receipt or payment, the person from or to whom the same was received or paid, and the purpose of each particular receipt or payment; keep also in like manner a separate account of all fees received, a separate account of all moneys received for taxes, and a separate account of money received upon redemption of lands from sales thereof for nonpayment of taxes, further specifying in the two last accounts the description of the property on account of which such money was paid, which books shall be open at all times to the inspection of the county board or any member thereof and to all the county and state officers; make in writing a fully itemized statement and report, verified by his



oath, to such board on the first day of their annual meeting and at such other times as they may direct, of all moneys of whatsoever nature received and disbursed by him; exhibit his vouchers therefor to be audited and allowed, and settle with them his accounts as treasurer; and exhibit to the board all moneys in his custody or under his control as treasurer, and, if required, make oath that such moneys are the funds of the county.

(5) Transmit to the state treasurer at the time he is required by law to pay the state taxes a particular statement, verified by his affidavit indorsed upon or attached thereto, of all moneys received by him during the preceding year and which are payable to the state treasurer for licenses, fines, penalties, or on any other account, and at the same time pay to the state treasurer the amount thereof after deducting the legal fees.

(6) Cause to be insured, when directed by the county board, at the expense of the county, the county buildings or any of them in the name of the county; and, in case of loss, demand and receive the money due on account of such insurance for the use of the county; and all such money shall be applied to rebuilding or repairing such county buildings.

(7) Make annually, on the third Monday of March, a certified statement, and forward the same to each town, city and village clerks in his county, showing the amount of money paid from the county treasury during the year next preceding to each such town, city and village treasurer in his county, specifying the date of each payment, the amount thereof and the account upon which the same was made; and it shall be unlawful for any county treasurer to pay to the treasurer of any town any money in his hands belonging to such town from the third Monday of March until ten days after the annual town meeting except upon the written order of the town board.

(8) Retain 10 per cent for fees in receiving and paying into the state treasury all moneys received by him for the state for fines and penalties, except that 50 per cent of the fines and penalties under chapter 85 shall be retained as fees, and retain such other fees for receiving and paying money into the state treasury as are prescribed by law.

(9) Make and deliver to any person on demand and payment of the lawful fees therefor a certified copy or transcript of any book, record, account, file or paper in his office and make any certificate which by law is declared to be evidence, and collect as fees therefor ten cents for each folio of any copy or transcript and twenty-five cents for each certificate.

(10) On the first day of each month pay into the county treasury the whole amount of fees received by him.

(11) Pay to the state treasurer on his order all state suit tax moneys received from the clerk of the circuit court pursuant to subsection (11) of section 59.39 and if any such moneys remain in his hands when he is required to pay the state tax, pay such moneys therewith to the state treasurer.

(12) Perform all other duties required of him by law. [1941 c. 206; 1943 c. 277]

**Note:** County treasurer shall furnish on demand to any person upon payment of lawful fees, certified copy of unpaid taxes on designated lands. Fee charged therefor should be fee designated in (9). Neither county treasurer nor county board can change statutory fees. Fees obtained by county treasurer on salary basis for furnishing certified copy on his own time should be paid into county treasury. 25 Atty. Gen. 52.

County treasurer is liable for tax misinformation furnished by his deputy to prospective purchaser of land who relies upon information furnished to his damage. 27 Atty. Gen. 544.

County treasurer's responsibility for funds in his possession is in nature of that of insurer and he is liable for all losses even

though he has exercised due diligence. 27 Atty. Gen. 844.

Ch. 18, Laws 1909, provides that clerk of municipal court of Kenosha county should pay fines and penalties into county treasury quarterly. County treasurer is entitled to retain 50% of fines and penalties paid to him for quarter ending October 1, 1941, arising out of violations of ch. 85, Stats. There is no substance to contention that ch. 206, Laws 1941, effective September 1, 1941, amending 59.20 (8), and increasing county treasurer's fee from 10% to 50%, shall be construed to permit retention of only 10% of fines which were imposed prior to effective date of law. Increase in fee provided for by ch. 206, Laws 1941, does not conflict with provisions of sec. 2, art X, Wis. Const. 31 Atty. Gen. 248.

**59.21 Sheriff; undersheriff; deputies.** (1) Within ten days after entering upon the duties of his office the sheriff shall appoint some proper person, resident of his county, undersheriff, provided that in counties with a population of five hundred thousand or more the appointment of an undersheriff shall be optional; and within such time the sheriff shall appoint deputy sheriffs for his county as follows:

(a) One for each city and village therein having one thousand or more inhabitants.

(b) One for each assembly district therein, except the district in which the undersheriff resides, which contains an incorporated village having less than one thousand inhabitants and does not contain a city or incorporated village having more than one thousand inhabitants.

(c) Each deputy shall reside in the city or village for which he is appointed, or if appointed for an assembly district, shall reside in the village in such district.

(2) He may appoint as many other deputies as he may deem proper.

(3) He may fill vacancies in the office of any such appointee, and may appoint a person to take the place of any undersheriff or deputy who becomes incapable of executing the duties of his office.

(4) A person appointed undersheriff or deputy for a regular term or to fill a vacancy or otherwise shall hold office during the pleasure of the sheriff.

(5) The sheriff or his undersheriff may also depute in writing other persons to do particular acts.

(6) Every appointment of an undersheriff or deputy, except deputations to do a particular act, and every revocation of such appointment shall be in writing and be filed and recorded in the office of the clerk of the circuit court.

(7) In case of a vacancy in the office of sheriff the undersheriff shall in all things and with like liabilities and penalties execute the duties of such office until the vacancy is filled as provided by law.

(8) (a) In counties having a population of less than 500,000, the county board may by ordinance fix the number of deputy sheriffs to be appointed in said county which number shall not be less than that required by subsection (1) (a) and (b), and fix the salary of such deputies; and may further provide by ordinance, that deputy sheriff positions shall be filled by appointment by the sheriff from a list of 3 persons for each position, such list to consist of the 3 candidates who shall receive the highest rating in a competitive examination of persons residing in such county for at least one full year prior to the date of such examination. Such competitive examinations may be by a county civil service commission or by the state bureau of personnel at the option of the county board and it shall so provide by ordinance. The director of the state bureau of personnel shall upon request of the county board conduct such examination according to the methods used in examinations for the state civil service and shall certify an eligible list of 3 names for each position to the sheriff of such county who shall thereupon make an appointment from such list to fill such position within 10 days after the receipt of such eligible list. The county for which such examination is conducted shall pay the cost thereof. In the event that a civil service commission is decided upon for the selection of deputy sheriffs, then the provisions of sections 16.31 to 16.44 shall apply so far as consistent with this subsection, except sections 16.33, 16.34 and 16.43 and except the provision governing minimum compensation of the commissioners and except that such ordinance may provide for 3 commissioners. Except that for the duration of the present war (World War II) and until its termination as proclaimed by the President or the Congress and for one year thereafter in counties appointing deputy sheriffs under a civil service system, temporary appointments of deputy sheriffs may be made without complying with the civil service ordinance.

(b) The persons appointed shall hold the office of deputy sheriff on good behavior, but may be removed from such office at any time by an affirmative vote of three-fourths of the members-elect of the county board in such county upon charges of malfeasance or neglect of duty preferred to such board by the sheriff or any citizen and after notice and hearing before such county board.

(c) The county board of any county adopting the ordinance provided for in this subsection may provide that any deputy sheriff acting as such at the time of such adoption shall be eligible to such appointment without examination.

(d) Adoption of the ordinance provided for by this subsection shall not preclude the county board from thereafter amending or repealing such ordinance, but such amendment or repeal shall not be effective unless voted by the affirmative vote of three-fourths of the members-elect of such board. The civil service provisions of this section shall apply only to such deputies who are regularly employed by the county or sheriff and shall not apply to honorary deputies. [1933 c. 279; 1935 c. 349; 1937 c. 253; 1943 c. 194]

**Note:** Where a sheriff acts in good faith and in obedience to a mandate proceeding from a court having jurisdiction of the subject matter of the suit and nothing appears in the process to appraise the sheriff of any want of jurisdiction over the person affected by the process, the sheriff is justified in proceeding thereunder. *Kalb v. Luce*, 234 W 509, 291 NW 841.

Offices of deputy sheriff or undersheriff and constable are compatible. Sheriff on salary basis cannot, by having papers which are delivered to him served by constable, evade law which requires such sheriff to serve, all papers delivered to him for service and to collect and pay into county all fees therefor. Where papers are delivered to undersheriff or deputy sheriff for service, he must serve them in his official capacity and may not serve them as individual. 20 Atty. Gen. 296.

Questions arising where civil service ordinance adopted under (8), Stats. 1935, discussed. 24 Atty. Gen. 747.

Under (4) deputy sheriff or undersheriff holding over until his successor is appointed and qualified is entitled to collect fees of his office. 25 Atty. Gen. 583.

Where county civil service ordinance for selection of deputy sheriffs is in conflict with provisions of (8) (Stats. 1935) sheriff is not bound thereby in appointing deputies. 25 Atty. Gen. 747.

In counties which have adopted civil service ordinance for deputy sheriffs pursuant to (8) only one examination needs to be given where more than one vacancy exists provided vacancy to be filled has no relation to residence in town, city or village. In such cases separate examination must be held to fill such positions. 27 Atty. Gen. 244.

Offices of sheriff and deputy sheriff are

incompatible both under sec. 4, art. VI, Const., and at common law. Deputy sheriff, by accepting office of sheriff, abandons office of deputy sheriff. 29 Atty. Gen. 247.

When a county has adopted the civil service system for deputy sheriffs the ordi-

nance must apply to all future appointments and system may not be part civil service and part not civil service. County board may not by ordinance establish qualifications for position of deputy sheriff. 29 Atty. Gen. 312; 29 Atty. Gen. 482.

**59.22 Liability for appointees' acts; bonds.** (1) Except as provided otherwise in subsection (3), the sheriff shall be responsible for every default or misconduct in office of his undersheriff, jailer and deputies during the term of his office, and after the death, resignation or removal from office of such sheriff as well as before; and an action for any such default or misconduct may be prosecuted against such sheriff and his sureties on his official bond or against the executors and administrators of such sheriff.

(2) The sheriff may require his undersheriff, jailer and every deputy who is not required by subsection (3) to furnish an official bond, before entering upon the duties of his office, to execute and deliver to him a bond in such sum and with such sureties as he may require, conditioned for the faithful performance of his official duties; and every default or misconduct of such undersheriff or deputy for which the sheriff shall be liable shall be a breach of such bond.

(3) In counties having a population of two hundred thousand or more, the sheriff shall not be responsible for the acts, defaults or misconduct in office of either his jailer or his deputies, appointed under sections 16.31 to 16.44, inclusive, except where such deputy or jailer acts under the express direction of the sheriff. Each such deputy and jailer shall execute and file an official bond and shall be liable for his acts, defaults, or misconduct in office in the same manner and to the same extent that the sheriff and his executors and administrators would otherwise be liable, and actions therefor shall be prosecuted directly against such deputy or jailer and the surety on his official bond.

**59.225 Arming sheriffs.** The county board of any county may furnish its sheriff, undersheriff and deputy sheriffs with the necessary arms, ammunition, gas bombs and gas sticks for the carrying out of their respective duties, such arms, ammunition, gas bombs and gas sticks to remain the property of the county.

**59.23 Sheriff; duties.** The sheriff shall:

(1) Take the charge and custody of the jails of his county and the persons therein, and keep them himself or by his deputy or jailer.

(2) Keep a true and exact register of all prisoners committed to any jail under his charge, in a book therefor, which shall contain the names of all persons who are committed to any such jail, their residence, the time when and cause of commitment, and the authority by which they were committed; and if for a criminal offense, a description of his person; and when any prisoner is liberated, state the time when and the authority by which he was liberated; and if any person escapes, state the particulars of the time and manner of such escape.

(3) Attend upon the circuit court held in his county during its session, and at the commencement of every term of such court file with the clerk thereof a list of his deputies, not exceeding three, who are to receive a per diem for attendance on such court. The court, however, may by special order authorize a greater number of deputies to attend when the court is engaged in the trial of any person charged with a crime.

(4) Personally, or by his undersheriff or deputies, serve or execute according to law all processes, writs, precepts and orders issued or made by lawful authority and to him delivered.

(5) Deliver on demand to his successor in office, when he has qualified according to law, the jail and other property of the county and all prisoners in such jail, and all books, records, writs, processes, orders and other papers belonging to his office and in his possession or in that of his undersheriff, jailer or deputies, except as provided in section 59.32, and upon the delivery thereof such successor in office shall execute to him a receipt therefor.

(6) In counties having a population of three hundred thousand or more, assign one deputy, to be mutually agreed upon by him and the district attorney, to the office of the district attorney.

(7) Perform all other duties required of him by law.

(8) In counties having a population of five hundred thousand or more, the sheriff is authorized to destroy all sheriff's dockets, daily jail records and cash books dated prior to 1901. It shall be the duty of the sheriff to hereafter retain and safely keep all such records for a period of thirty years, after which the same may be destroyed.

(9) When the sheriff is required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a

party the coroner shall perform the service and all statutes relating to sheriffs shall apply to coroners where the sheriff is a party.

(10) To enforce in his county all general orders of the industrial commission relating to the sale, transportation and storage of explosives. [1931 c. 200; 1935 c. 541 s. 144; 1937 c. 373]

**Note:** A sheriff and deputy are liable for false imprisonment for arrest under a warrant showing on its face that it is not in conformity to the statutes, since a sheriff is protected in performing official duties only when the writ is regular on its face, and he is not chargeable with knowledge to the contrary. *Rubin v. Schrank*, 207 W 375, 241 NW 370.

For liability of sheriff for failure to en-

force an execution, see note to 295.01, citing *Cordts v. Reuter*, 223 W 518, 271 NW 39.

Board of control is authorized to issue order requiring sheriff to apprehend probation violator and it is duty of sheriff to obey such order. 22 Atty. Gen. 66.

County board cannot require sheriff who is compensated on fee basis to keep book or record of amount he receives as fees. 26 Atty. Gen. 425.

**59.24 Peace maintenance; powers and duties of peace officers.** Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties and quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections; for which purpose, and for the service of processes in civil or criminal cases and in the apprehending or securing any person for felony or breach of the peace they and every coroner and constable may call to their aid such persons or power of their county as they may deem necessary.

**Note:** Highway motor police appointed by county highway committee are supplementary to sheriff and sheriff is not thereby relieved of duty to preserve peace. 19 Atty. Gen. 256.

County is responsible for damage to citizen's car which was impressed by sheriff in apprehension of criminal. 24 Atty. Gen. 565.

**59.25 Transportation of criminals through other counties; rewards for their apprehension.** (1) Any sheriff or other officer who has legally arrested any person in any county may pass across and through such parts of any other county or counties as are in the ordinary route of travel from the place where such person was arrested to the place where he is to be conveyed, according to the command of the process by which such arrest was made; and such conveyance of such prisoner shall not be deemed an escape, nor shall the prisoner so conveyed or the officers having him in custody be liable to arrest on any civil process while passing through such other county or counties.

(2) Whenever a person convicted of, or charged with, any felony, the punishment for which is not less than five years' imprisonment, shall escape, or whenever any such felony shall be committed by any unknown person or persons the sheriff of the county from which such escape was made or in which such felony was committed may, in his discretion and with the consent of the chairman of the board of such county when such board is not in session, and with the consent of the board when they are in session, offer such reward for the apprehension and delivery of such escaped person, or the apprehension or conviction of the perpetrator of such felony as he may deem necessary, not exceeding one thousand dollars in any one case; but no such reward or any part thereof shall be paid to any such sheriff, his undersheriff or any deputy. The right to any such reward shall be determined finally by such sheriff; and if more than one person claims the same he shall determine what portion, if any, the claimants are entitled to, and shall certify his determination to the county treasurer, and such certificate shall be the treasurer's authority for paying the sum so certified.

**59.26 Not to act as attorney.** No sheriff, undersheriff, deputy or coroner shall appear or practice as attorney in any court, draw or fill up any writ, pleading or proceeding for a party in any action, nor, with the intent to be employed in the collection of any demand or the service of any process, advise or counsel any person to commence an action or proceeding; and for violation of any of the provisions of this section every such officer shall forfeit not exceeding fifty dollars.

**59.27 Service on sheriff; how made.** Every writ, notice or other paper required to be delivered to or served on any sheriff may be served by leaving the same at his office during the hours it is required to be kept open; but if there is any person belonging to such office therein, such writ, notice or other paper shall be delivered to such person; and every such service shall be deemed equivalent to a personal delivery to or service on such sheriff.

**59.28 Sheriff; fees.** Every sheriff shall be entitled to receive the following fees for his services, except for services in actions or proceedings before justices of the peace, for which fees are specially provided by law:

(1) For serving a summons or any other process by which an action shall be commenced in any court of record, or writ or order of injunction or other order, and making return thereon, for one defendant, one dollar; for each additional defendant, fifty cents

(2) Traveling in making service of any summons, writ or other process, except upon criminal warrants, ten cents per mile for each mile actually traveled going and returning; provided, that the sheriff shall serve all process, orders and papers in any one action or

proceeding which may then be in his hands for service, which can be served at the same time and upon all persons upon whom service is required who can be served in the same journey, and he shall be entitled to one mileage for the greatest distance actually traveled by him to make such service, and no more; and that for summoning grand and petit jurors no traveling fees shall be charged for more than the distance actually and necessarily traveled in summoning such jurors.

(3) Taking a bond or undertaking in any case, when required by law, and approving the same, fifty cents.

(4) Making a copy of any bond or undertaking, summons, writ, complaint or other paper served or taken, when required by law or demanded by a party, and when not furnished by a party to the action or his attorney, ten cents per folio.

(5) Serving and returning a subpoena to testify, for each person served, twenty-five cents.

(6) Serving an execution on a judgment for the recovery of real estate, or other writ not provided for, one dollar.

(7) Collecting and paying over all sums upon execution, writ or process for the collection of money, five per cent on the first three hundred dollars; two and one-half per cent on the next three hundred dollars or any part thereof and one and one-half per cent on any excess over six hundred dollars; but in no case shall the whole percentage exceed thirty dollars.

(8) Advertising goods and chattels for sale upon execution, writ or process, seventy-five cents; but where there is more than one execution, writ or process in the hands of the sheriff against the same defendants there shall be but one advertising fee charged in the whole, which shall be on the execution having priority.

(9) Drawing advertisement of real estate, per folio, twenty-five cents.

(10) Every certificate of sale of real estate, fifty cents.

(11) Filing copy thereof with register of deeds, including fees of register of deeds, twenty-five cents.

(12) Drawing, executing and acknowledging a deed pursuant to a sale of real estate, two dollars, to be paid by the grantee in such deed.

(13) Summoning a grand or petit jury, to be paid from the county treasury, fifty cents for each juror named.

(14) Summoning a jury upon a writ of inquiry attending such jury, and making and returning the inquisition, one dollar and fifty cents.

(15) Summoning a special jury, struck pursuant to an order of court, and returning the panel, one dollar and fifty cents.

(16) Summoning a jury, pursuant to any precept or summons of any officer in any special proceeding, one dollar; and for attending such jury when required, one dollar and fifty cents per day.

(17) Attending a view when ordered by the court, one dollar and fifty cents per day, and ten cents per mile traveling fee, going and returning.

(18) Summoning appraisers and swearing the same, one dollar.

(19) Every appraiser, for each day, one dollar.

(20) Drawing an inventory or other paper, except return upon a summons, subpoena or venire, twenty-five cents per folio; provided, that whenever several writs of attachment against the same defendant are delivered to the sheriff for service and execution, such sheriff shall be entitled to ten cents per folio for drawing an inventory on all writs subsequent to the first writ of attachment so executed by him, of any property included in the first inventory so drawn by him, and no more; and five cents per folio for all copies thereof.

(21) Attending the supreme court, one dollar and fifty cents per day, to be allowed on the certificate of the chief justice or clerk and paid out of the state treasury.

(22) Attendance upon the circuit or county court, three dollars per day to the sheriff and two dollars each per day to the necessary deputies, to be paid out of the county treasury; provided, that in any county having a population of at least sixty thousand, the sheriff or necessary deputies shall receive such salary or per diem in excess of the amount herein prescribed as the county board may determine.

(23) Serving notice of any election upon election officers, fifty cents for each election district, to be paid by the county.

(24) For serving any writ or other process with the aid of the county, two dollars and fifty cents and all necessary expenses incurred thereby.

(25) All such necessary expenses incurred in taking possession of any goods or chattels and preserving the same as shall be just and reasonable in the opinion of the court.

(26) All fees allowed by law and paid to any printer for any advertisement required to be published by the sheriff.

(27) Traveling to serve any criminal process for every mile actually traveled ten cents per mile, whether in the county from which process issued or not, and actual and necessary disbursements for board and conveyance of prisoner.

(28) Every commitment to prison, fifty cents.

(29) Discharging a person from prison, fifty cents, which shall include the drawing and filing of a certificate of discharge with the clerk of the court.

(30) Bringing up a prisoner upon habeas corpus to testify or answer in any court or before a judge, one dollar.

(31) Attending before any officer with a prisoner for the purpose of having him surrendered in exoneration of his bail or attending to receive a prisoner so surrendered who was not committed at the time, and receiving such prisoner into custody, in either case one dollar.

(32) Attending any court with a prisoner, one dollar and fifty cents per day and seventy-five cents for each half day, besides actual and necessary expenses. Guarding any prisoner sentenced to imprisonment at hard labor in the county jail, when the prisoner performs such labor upon any highway or public improvement and there are no secure means for preventing his escape, one dollar and fifty cents for each day and seventy-five cents for each half day so employed.

(33) For selling real estate under any judgment or order of court, or on foreclosure by advertisement, and making all the necessary papers and notices, including deed or certificate, when the amount bid does not exceed one thousand dollars, ten dollars; when the amount bid exceeds one thousand dollars, fifteen dollars; for travel performed in making such sale, to be computed from the courthouse, ten cents per mile going and returning, besides the cost of publishing any advertisement of sale. For drawing and executing and acknowledging a deed upon a sale made by his predecessor in office, three dollars. When any such sale is made by a referee or any other officer he shall have the same fees.

(34) When any person accused of any criminal offense shall escape from custody or pursuit without fault or negligence of the sheriff, and the district attorney shall certify such pursuit was necessary and proper, and the county board shall be satisfied by proof that such escape was not the result of the carelessness or negligence of the sheriff, such board may, in their discretion, allow a fair compensation for the time and necessary expense incurred in such pursuit.

(35) For assisting clerk of circuit court in drawing jury, one dollar.

**Note:** The claim of a deputy sheriff for mileage under (27) was payable to the sheriff and was subject to the claims of creditors of the sheriff. *Prielipp v. Sauk County*, 215 W 16, 254 NW 369.

Sheriff cannot insist upon payment of statutory fees before undertaking service of process. 24 Atty. Gen. 508.

Neither sheriff nor his deputies are entitled to per diem provided by (22) where sheriff is compensated upon a salary basis even though the salary resolution reads that it "shall not be construed to include fees or per diem earned by the sheriff in civil actions or for private individuals. 28 Atty. Gen. 363.

**59.29 Compensation for apprehensions in other states; conditions.** (1) In all cases where by the laws of this state the governor is authorized to demand of the executive authority of any other state any fugitive from justice or any person charged with crime in this state and to appoint an agent to receive such person, and such person is apprehended in any other state by the sheriff or deputy sheriff of the county in this state where the warrant for such fugitive from justice is properly issued, or such crime was committed, and such person voluntarily returns with said sheriff to this state without requisition, such sheriff shall be entitled to eight dollars per day for the time necessarily expended in traveling to, apprehending and returning with such person and his actual and necessary expenses for such time, which compensation and expenses shall be allowed by the county board of such county upon the presentation thereto of an itemized and verified account, stating the number of days he was engaged, the number of miles traveled and each item of expense incurred in rendering such services, including the transportation and board of the person in his custody. No allowance whatever shall be made him as mileage.

(2) The sheriff of any county having less than three hundred thousand population shall not receive the compensation provided for in subsection (1), unless the apprehension shall have been duly authorized in writing by the district attorney or by the county judge of the county wherein the crime was committed, which written authority shall certify that the ends of justice will be subserved by the apprehension and return of such person, and the sheriff shall attach such certificate to and file it with his itemized account of such services.

**Note:** Sheriff who returns prisoner from of assistant nor mileage for use of such another city is not entitled to pay expenses assistant's automobile. 19 Atty. Gen. 377.

**59.30 Fees, how collected.** All fees allowed to the sheriff upon the service of an execution or a writ for the collection of money or judgment for the sale of real estate and advertising thereon shall be collected by virtue of such execution, writ or judgment in the same manner as the sum therein directed to be collected.

**59.31 Fees, how paid.** All fees to which sheriffs or their deputies are entitled for attendance required by law upon any court of record shall be paid out of the treasury of the county wherein such services were rendered in the manner that fees of jurors attending such courts are paid; and whenever any such officer is required to perform any service for the state, which is not chargeable to his county or some officer or person, his account therefor shall be paid out of the state treasury.

**Note:** If probation violator was not convicted in county whose sheriff is requested to apprehend him, expense of temporarily lodging him in jail is chargeable to state. 22 Atty. Gen. 66.

**59.32 Excessive fees.** No sheriff, undersheriff or deputy shall directly or indirectly ask, demand or receive for any services or acts to be by him performed in the discharge of any of his official duties any greater fees than are allowed by law; and for the violation of any of the provisions of this section every such officer shall be liable in treble damages to the party aggrieved and shall forfeit not less than twenty-five nor more than two hundred and fifty dollars.

**59.33 Powers after term.** (1) Every sheriff, undersheriff and deputy, compensated for his services by fees or by part salary and part fees, may execute and return all writs, processes and orders in their hands at the expiration of the sheriff's term of office and which such sheriff, undersheriff or deputy has, prior to that time, begun to execute by service, levy, advertisement or the collection of money thereon.

(2) In counties where the compensation of sheriffs, undersheriffs and deputies has been changed from the fee to the salary system as provided by law, the sheriff, immediately upon the expiration of his term, shall turn over to his successor all writs, processes and orders in his hands, or in the hands of his undersheriff or deputies, whether or not such writs, processes and orders have been partly or fully executed or returned, and such successor shall execute and return or complete the execution and return of such writs, processes and orders.

(3) In case of a vacancy in the office of sheriff, of any county, his undersheriff and deputies then in office having then any writ, process or order in their hands shall have the same authority and be under the same obligation to serve, execute and return the same as if such sheriff had continued in office.

**59.34 Coroner; duties.** The coroner shall:

(1) Take inquest of the dead when required by law, except that in counties having a population of 500,000 or more such duty and the powers incident thereto shall be vested exclusively in the office of medical examiner hereby created. Such office shall be filled and occupied for a term of 4 years and until a successor shall have been appointed and qualified pursuant to sections 16.31 to 16.44. Appointment to such office shall be made by the county board of supervisors. Reappointments shall be made in the same manner in the month preceding the expiration of such 4-year term. Such office may be occupied on a full or part-time basis and shall be paid such compensation as the county board of supervisors of such county may by ordinance provide. The medical examiner may appoint such assistants as the county board shall authorize. Whenever requested by the court or district attorney, the medical examiner shall testify to facts and conclusions disclosed by autopsies performed by him, at his direction, or in his presence; shall make physical examinations and tests incident to any matter of a criminal nature up for consideration before either court or district attorney when requested so to do; shall testify as an expert for either such court or the state in all matters where such examinations or tests have been made, and perform such other duties of a pathological or medico-legal nature as may be required; and without fees or compensation other than the salary provided.

(2) When there is no sheriff or undersheriff in any county organized for judicial purposes, exercise all the powers and duties of sheriff of his county until a sheriff is elected or appointed and qualified; and when the sheriff for any cause is committed to the jail of his county, be keeper thereof during the time the sheriff remains a prisoner therein.

(3) Serve and execute process of very kind and perform all other duties of the sheriff when the sheriff is a party to the action and whenever the clerk of the circuit court addresses the original or other process in any action to him as provided in subsection (12) of section 59.39, execute the same in like manner as the sheriff might do in other cases; exercise the same powers and proceed in the same manner as prescribed for sheriffs in the performance of similar duties; and in all cases the coroner and his sureties shall be liable in the same manner and to the same extent on his official bonds as sheriffs and their sureties are liable in similar cases.

(4) Perform all other duties required by law. [1943 c. 247]

**Note:** Coroner may not hold formal investigation preliminary to inquest nor summon witnesses to attend. The coroner may exclude public from inquests, including at-

torneys for witnesses, but power should be exercised with caution. Coroner's records are public records. 20 Atty. Gen. 323.

**59.35 Special counties; deputies and assistants; powers.** (1) The coroner of every county having a population of 500,000 or more, the medical examiner and his assistants, shall be compensated for the performance of all their official duties by salaries fixed by the county board of supervisors, which shall be in lieu of any other compensation.

(2) In any such county the medical examiner provided by section 59.34 (1) shall exercise all of the powers and perform all of the duties of the coroner in the event of his absence or disability, or in the event of a vacancy in said office, until such vacancy shall have been filled; except that such medical examiner shall not be subject to the direction, supervision or control of said coroner in the exercise of any of the powers or the performance of any of the duties defined by section 59.34 (1).

(3) The county board of any such county at its annual meeting next preceding the general election of county officers, shall fix the salary of the coroner to be elected at such election.

(4) In any such county the medical examiner and his assistants shall have all the powers of a constable or sheriff to serve subpoenas requiring the attendance of witnesses at any inquest to be held by such medical examiner, or other orders or writs. [1943 c. 247]

**59.36 Service when no coroner.** Whenever, for any cause, there is a vacancy in the office of coroner, or when he is absent from his county, sick or unable to perform the duties of his office, or for any reason, except the nonpayment of legal fees, refuses to serve and execute legal process against the sheriff in any action commenced in any court of record within the county for which such coroner was or should have been elected, any judge of a court of record or court commissioner of such county may, on proof of such vacancy, sickness, absence or refusal to serve and execute such process, by an order to be indorsed on such process and addressed to him, empower any respectable citizen and taxpayer of the county in which such process is to be served and executed to serve and execute the same; and such order shall be sufficient authority to the person therein named to serve and execute such process with like powers, liabilities and fees as the coroner.

**59.365 Deputy coroner.** (1) Within ten days after entering upon the duties of his office, the coroner may appoint some proper person, resident of his county, deputy coroner. Such deputy shall reside in the county for which he is appointed. The coroner may fill vacancies in the office of any such appointee, and may appoint a person to take the place of such deputy who becomes incapable of executing the duties of his office. A person appointed deputy coroner for a regular term or to fill a vacancy or otherwise shall hold office during the pleasure of the coroner. Every appointment of a deputy coroner and every revocation of such appointment shall be in writing and filed and recorded in the office of the clerk of the circuit court. In case of a vacancy in the office of coroner, the deputy coroner shall in all things and with like liabilities and penalties execute the duties of such office until the vacancy is filled as provided by law.

(2) The coroner shall be responsible for every default or misconduct in office of his deputy coroner during the term of his office, and after the death, resignation or removal from office of such coroner as well as before; and an action for any such default or misconduct may be prosecuted against such coroner and his sureties on his official bond or against the executors and administrators of such coroner.

(3) The coroner may require his deputy coroner, before entering upon the duties of his office, to execute and deliver to him a bond in such sum and with such sureties as he may require, conditioned for the faithful performance of his official duties; and every default or misconduct of such deputy coroner for which the coroner shall be liable shall be a breach of such bond.

(4) Whenever a medical examiner has been appointed in counties having a population of 500,000 or more as provided in section 59.34 (1), the provisions of this section shall not apply in such counties, nor shall the coroner of such counties be responsible for any default or misconduct in office of such medical examiner. [1943 c. 247]

**59.37 Coroner; fees.** For all services rendered by coroners they shall be allowed the same fees as are allowed to sheriffs for similar services. For confining a sheriff in any house on civil process, fifty cents for each day, to be paid by such sheriff before he shall be entitled to be discharged from such confinement, unless otherwise ordered by the court.

**59.38 Clerk of court; deputies; chief deputy in certain counties.** Every clerk of the circuit court shall appoint one or more deputies, men or women, which appointments shall be approved by the judge of the circuit court, but be revocable by the clerk at pleasure; such appointments and revocations shall be in writing and filed in his office; such deputies shall aid the clerk in the discharge of his duties, and in his absence from his office or from the court they may perform all his duties; or in case of a vacancy by resignation, death, removal or other cause the deputy appointed shall perform all such duties until such vacancy is filled. In counties having a population of two hundred fifty thousand



or more the clerk shall appoint one chief deputy clerk and one or more deputy clerks, men or women, as the county board shall authorize. Such deputy clerks shall aid the clerk in the discharge of his duties under the supervision of the clerk or the chief deputy clerk. The appointment of such chief deputy clerk shall be in writing and filed in the clerk's office; shall be approved by the judges of said circuit, but be revocable at the pleasure of the clerk. Such chief deputy clerk shall have all powers and duties of deputy clerks, shall have supervision over all deputy clerks, and in the absence of the clerk from his office or from the court he may perform all said clerk's duties; or in case of a vacancy by resignation, death, removal or other cause the chief deputy clerk shall perform all such duties until such vacancy is filled. [1937 c. 293]

**59.39 Clerk of court; duties.** The clerk of the circuit court shall:

(1) Perform all the duties of clerk of the circuit court of his county and keep all the records, books and papers thereof.

(2) Keep in his office a book to be called a court record and enter therein the names of the plaintiffs and defendants in every civil action, suit or proceeding brought in such court either by summons, appeal, change of venue or otherwise, the names of the attorneys of the respective parties, a brief statement of the nature of the action or proceeding, the date of filing every paper therein and of each proceeding taken, the time when the same is put upon the calendar for trial, and when and how disposed of; the volume and page of the minute book, where the minutes had of proceedings in every case can be found, and the volume and page of the record of judgments and orders, where any judgment, order or report has been entered, so as to make such record a history in brief of each action or proceeding from its beginning to the final disposition of the same; and a complete index of all proceedings therein.

(3) Keep a book to be called a criminal record, and keep therein a record in every criminal action or proceeding in the same manner as in civil actions.

(4) Keep a minute book and enter therein a brief statement of all the proceedings had in open court, showing all motions and orders made in open court in the progress of every trial, the names of the witnesses sworn, jurors drawn, the officer sworn to take them in charge, and the verdict of the jury when returned, and all the openings and adjournments of the court.

(5) Keep a book to be called a judgment and order book, and record therein all judgments, orders and reports when required to be recorded.

(6) Keep a book to be called the record of officers, in which he shall record all appointments of court commissioners, deputy sheriffs, notaries public and other officers whose appointments are required by law to be recorded in his office, and in which he shall also enter in tabular form the name, date of qualification, and the commencement and termination of the official term of each justice of the peace elected in his county, and make a proper index thereto.

(7) Keep such other books, including a daily journal, in which every judgment affecting real estate shall be entered in the manner required by law before the same shall be docketed, as are required by law to be kept in his office, and such as the judge of the circuit court may direct to be kept therein.

(8) Keep an accurate list in a book provided for that purpose of all certificates issued by him to witnesses, interpreters, jurors, sheriffs, and deputy sheriffs, stating the number, date and amount of each, and to whom issued, and furnish to the county board at each annual session thereof a certified transcript of such list for the year next preceding such session, which transcript shall be entered in full on the records of said board.

(9) Register in alphabetical order, in books provided therefor, the names of all persons who shall, in the manner prescribed by law, declare their intention to become citizens of the United States, or who shall be admitted to citizenship of the United States in the circuit court.

(10) Make out and transmit to the secretary of state, on or before the first day of June in each year, a certified list of the names of all persons who during the preceding year were elected or appointed justices of the peace and duly executed and filed their official bonds.

(11) Quarterly, on the first day of January, April, July and October, or within five days thereafter, pay to the treasurer of his county for the use of the state the state tax of one dollar required by law to be paid to him on every civil action which has been entered in the circuit court of his county during the three months ending on the last day of the month immediately preceding, and take duplicate receipts from the county treasurer for the sums so paid; and within ten days thereafter forward to the secretary of state one of said receipts, with a statement on oath of the number of such actions entered in said court during said three months.

(12) Address the original or other process in any action pending or to be commenced

in the court for which he is clerk to the coroner, whenever any party thereto or his agent or attorney files with him an affidavit stating that he verily believes that the sheriff of such county, by reason of either partiality, consanguinity or interest, will not faithfully perform his duty in such action.

(13) Perform such other duties as are required by law.

**Note:** Clerks of circuit courts are not required or authorized by statute or by the circuit court rules adopted by the supreme court to set or bring cases on for trial. *Wis. Lumber & S. Co. v. Dahl*, 214 W 137, 252 NW 714.

Where the appellants' attorneys and the respondent's attorneys agreed that a check was to be used as a supersedeas on the money judgment appealed from and the agreement contained no direction to the clerk of the circuit court, with whom the check was deposited, to cash the check, the clerk in receiving and holding the check violated no duty which he was required by law to perform and hence the clerk and his surety could not be held liable for the loss resulting from delay in presenting the check for payment. *Wilhelm v. Hack*, 234 W 213, 290 NW 642.

See note to 360.27, citing 26 Atty. Gen. 600.

Civil suit against clerk of circuit court for damages arising out of alleged failure to perform duties of office by not cashing or having certified insurance company's check deposited with him as supersedeas bond, as result of which judgment creditor was unable to realize upon judgment because of failure of insurance company, held: that it is not duty of district attorney to defend action; that county board may not authorize retention of counsel to be paid at county expense; that county is under no duty to reimburse clerk for expense of defending action but may do so under 331.35, if clerk prevails and then petitions for reimbursement or under other circumstances specified where clerk does not prevail but is not at fault. 28 Atty. Gen. 96.

**59.40 Not to act as attorney.** No person acting as clerk of any circuit or county court in this state shall be allowed to practice as attorney or solicitor in the court in which he is acting as clerk; nor shall he be eligible to the office of justice of the peace during the time he holds the office of such clerk.

**59.41 Certify records as clerk of county court.** The clerk of the circuit court in each county shall be the clerk of the county court for the purpose of certifying to copies and transcripts of all the records and files of said county court to be used in any other state, agreeably to section 905 of the revised statutes of the United States, and in making such certificate he shall use the seal of said county court and sign himself "Clerk of the County Court," and shall also have authority in such capacity to authenticate acknowledgments of all instruments taken by the judge of said county, and for such services the clerk shall receive the fee allowed by law for similar service.

**59.42 Clerk of court; fees.** Except as otherwise provided by law, the clerk of the circuit court shall collect the following fees:

(1) For entering upon the court record the title of each action or proceeding commenced or coming into court by appeal or otherwise, fifty cents.

(2) For filing every paper in a cause, or any paper required by law to be filed in the office of the clerk of the circuit court, ten cents.

(3) For drawing a jury in each cause, fifty cents; for swearing a jury when drawn, twenty-five cents, and for swearing each juror on his voir dire, ten cents.

(4) For docketing each judgment or transcript of judgment, one dollar, and for satisfying judgment, twenty-five cents.

(5) For issuing and sealing every writ or process, when filled up by them, fifty cents, and when not filled up by them, twenty-five cents.

(6) For issuing each subpoena, when filled up by them, twenty-five cents, and when not filled up by them, fifteen cents.

(7) For every certificate, including seal, twenty-five cents.

(8) For receiving and entering the verdict of a jury, twenty-five cents.

(9) For swearing an officer to take charge of a jury, fifteen cents; for swearing each witness upon the trial of a cause, ten cents, and for administering an oath to any other person, twenty-five cents.

(10) For recording any paper, order, judgment or report, when required, ten cents per folio.

(11) For making copies of any judgment, order, report, or other paper or record, ten cents per folio.

(12) For each commission to take a deposition, fifty cents.

(13) For searching each volume for each judgment, fifteen cents per volume.

(14) For making up judgment roll, when none is furnished by the parties, fifty cents.

(15) For certifying and mailing judgment roll, papers or records on an appeal or writ of error to the supreme court, two dollars.

(16) For certifying and mailing papers in any action upon change of venue, one dollar.

(17) For taxing bill of costs in civil causes, twenty-five cents.

(18) For entering upon a judgment docket an assignment of judgment or return of execution, fifteen cents.

(19) For entering cause upon calendar for trial when at issue, ten cents.

- (20) For entering in minutes each motion or order, fifteen cents, and for entering return of writ or process, ten cents.
- (21) For entering plea of criminal, in each cause, fifty cents.
- (22) For entering any criminal cause upon the criminal record, upon an indictment or information, or upon an appeal or an examination from a justice's court, fifty cents.
- (23) For entering forfeiture of recognizance or discharge of bail, twenty-five cents.
- (24) For filing any paper in any criminal proceeding, ten cents.
- (25) For entering any motion or demurrer to an indictment or information, taking a recognizance, fifty cents.
- (26) For making a commitment or certificate of conviction of any criminal, one dollar.
- (27) For copy of an indictment or information, ten cents per folio.
- (30) For indexing each case, direct and inverse, which is entered of record, ten cents.
- (31) For drawing grand and petit jurors, one dollar.
- (32) For issuing a venire, fifty cents.
- (33) For drawing special jury, grand or petit, fifty cents.
- (34) For notice for publication of time when grand and petit jurors are to be drawn, fifty cents.
- (35) For reporting an assessment of damages, fifty cents.
- (36) For approving any bond or undertaking, twenty-five cents.
- (37) For transcript of judgment, fifty cents.
- (38) For filing mechanics' liens, ten cents; for docketing the same for each defendant, twenty-five cents, but not to exceed one dollar in any one case.
- (39) For entering upon the daily journal each judgment affecting real estate, twenty cents.
- (40) At the time of the commencement of every action or special proceeding or upon the filing of the original papers therein upon appeal from inferior courts or officers or upon a change of venue, except in criminal cases, the sum of two dollars in addition to the state tax, but no such two dollar payment shall be required from towns, counties, villages, cities or school districts, either on the commencement of an action or proceeding or the transfer thereof from one county to another or in any action to review an order or award of the industrial commission of Wisconsin under the provisions of sections 102.03 to 102.34, inclusive.
- (41) In counties wherein he is compensated otherwise than by salary, he shall be entitled to:
  - (a) Two dollars for making out and transmitting to the secretary of state the certified list of the names of justices of the peace as required by law, to be paid by the county.
  - (b) Three dollars per day for each day's attendance upon a session of any regular or special term of the circuit court of his county, or as much more as the county board directs; and for similar attendance and service by his deputy the latter shall be paid the same amount. Such payments shall be made by the county upon the certificate of the circuit judge.
- (42) The clerk shall be entitled to fees, in connection with the delinquent income tax warrants provided by sections 71.36 and 71.37, as follows:
  - (a) For docketing copy or transcript of warrant, one dollar.
  - (b) For filing every paper in connection with such warrants, ten cents.
  - (c) For transcript of warrant, fifty cents.
  - (d) For execution upon warrant, fifty cents.
  - (e) For entering return of warrant or execution upon the docket, fifteen cents.
  - (f) For entering satisfaction or release upon the docket, twenty-five cents.
  - (g) The fees herein fixed shall be allowable only with respect to warrants issued subsequent to October 7, 1937, and no fees other than those herein enumerated shall be allowable.
- (43) Notwithstanding any provision of the statutes to the contrary the clerk of circuit court except in counties having a population of 500,000 or more shall uniformly collect fees in the actions, at the times and in the amounts specified in the following schedule, to wit:

Nature of action	At commencement of action including suit tax	At entering judgment
(a) Foreclosure of any mortgage, land contract or mechanics lien .....	\$3.00	\$7.00
(b) Partition .....	3.00	8.00
(c) Default divorce .....	3.00	3.00
(d) Modification of divorce decree.....	none	1.50
(e) Judgment on failure to answer.....	3.00	2.00
(f) Cognovit judgment .....	none	5.00

(g) Matters for discharging mortgages and other liens  
 on real estate..... none 3.00

(44) Notwithstanding any provision of the statutes to the contrary the clerk of circuit court except in counties having a population of 500,000 or more shall uniformly collect the following fees:

- (a) For filing and docketing a transcript of judgment, \$1.30.
- (b) For filing and docketing a deficiency judgment, \$2.
- (c) For issuing a transcript of judgment, 50 cents.
- (d) For issuing an execution and filing the return thereon, 75 cents. [1931 c. 470 s. 3; Spl. S. 1937 c. 1, s. 3; 1941 c. 44; 1943 c. 169]

**Note:** Clerk of circuit court need not turn from naturalization proceedings. 22 Atty. into county treasury fees received by him Gen. 258.

**59.43 Fee; bill; filing.** The said clerk shall file with the papers in each case an itemized bill of all fees charged by him therein at the time of taxation of costs or whenever they are paid him, and before he can lawfully demand or receive the same; and before entering judgment in any action may require the prevailing party to pay all his fees in such action or proceeding remaining unpaid which have been incurred therein by either the plaintiff or defendant, and every such clerk may require his fees to be paid in advance for any services except such as are to be performed in the progress of a trial in court.

**Note:** In so far as 59.43 and 71.36 (2) conflict, latter controls. 28 Atty. Gen. 168.

**59.44 District attorney pro tempore; assistants in criminal and civil cases. (1)**

When there is no district attorney for the county, or he is absent from the court, or has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged and for which he is to be tried, or is near of kin to the party to be tried on a criminal charge, or is unable to attend to his duties, or is serving in the armed forces of the United States, the circuit court, by an order entered in the minutes stating the cause therefor, may appoint some suitable person to perform, for the time being, or for the trial of such accused person, the duties of such district attorney, and the person so appointed shall have all the powers of the district attorney while so acting.

(1a) All appointments of persons to perform the duties of district attorney made by order of the circuit court since December 8, 1941 for the reason that the district attorney is serving in the armed forces of the United States, are validated to the same extent and with life effect, as if such appointments had been specifically authorized by law.

(2) The court may, in the same manner, and in its discretion, appoint counsel to assist the district attorney, in the prosecution of persons charged with crime punishable by imprisonment in the state prison, and in case of prosecutions before a grand jury, and upon indictments found by grand juries, and in bastardy cases. Such counsel shall be paid such sums as the court, by order entered in the minutes, certifies to be a reasonable compensation therefor, which sum shall in no case exceed twenty-five dollars per day for each day actually occupied in such prosecution, and not to exceed fifteen dollars per day for not more than five days actually and necessarily occupied in preparing for trial in any one case, the same to be paid in the manner provided by law for the payment of counsel for indigent criminals.

(3) When there is an unusual amount of civil litigation to which the county is a party or in which it is interested, the circuit court may, on the application of the county board, by order filed with the clerk of said county, appoint an attorney or attorneys to assist the district attorney, and fix his or their compensation. [1943 c. 423]

**Note:** Power of court to appoint a special prosecutor or district attorney where the district attorney is disqualified under (1) is not limited to appointing for trial of the case. Trial is not limited to preparation for and trial of the case in the trial court but extends to appeal or review in the supreme court. Limitations with respect to fees for preparation and trial under (2) are not applicable on the appeal. 28 Atty. Gen. 546.

**59.45 Assistants in other than special counties.** The district attorney, except in counties containing a city of the first class, may, when authorized, at any regular or special meeting of the board by a majority of all of the members of the board, appoint one or more assistant district attorneys and a stenographer and a clerk to aid him in the performance of the duties of his office. Such assistant district attorneys shall be attorneys admitted to practice law in this state. The assistant district attorneys so appointed shall have full authority to perform all the duties of the district attorney, except the signing of indictments and informations. No assistant district attorney so appointed shall be required to give an official bond.

**Note:** Offices of assistant district attorney and justice of peace are incompatible. 31 Atty. Gen. 230.

**59.46 Assistants in special counties. (1)** The district attorney of any county containing more than two hundred thousand population may appoint two deputy district attorneys, a corporation counsel, and such assistants as may be authorized by the county

board. The corporation counsel, as to civil, and the deputies according to rank, as to all other matters, shall have full authority to perform all the duties of the district attorney, under his direction, and in the absence or disability of the district attorney such corporation counsel, as to civil, and such deputies according to rank, as to all other matters, may do and perform all the acts required by law to be performed by the district attorney. Such deputies shall each have practiced law in this state at least two years prior to such appointment, and shall hold office during the pleasure of the district attorney. Such assistants, when appointed, shall have full authority to perform all the duties of the district attorney, under his direction, except the signing of indictments and informations. The district attorney of such county may when he deems necessary appoint such temporary counsel as may be authorized by the county board.

(2) The district attorney in any county containing a city of the first, second or third class may also appoint one or more clerks and one or more stenographers, the number and salary of whom is to be fixed by the board at any meeting thereof.

(3) The district attorney of any county containing a city of the first class may appoint such investigators as may be authorized by the county board, and the county board may abolish such positions at their pleasure. Such investigators when so appointed shall have general police powers within said county.

**59.47 District attorney; duties.** The district attorney shall:

(1) Prosecute or defend all actions, applications or motions, civil or criminal, in the courts of his county in which the state or county is interested or a party; and when the place of trial is changed in any such action or proceeding to another county, prosecute or defend the same in such other county.

(2) Prosecute all criminal actions, except for common assault and battery or for the use of language intended or naturally tending to provoke an assault or breach of the peace, before any magistrate in his county, other than those exercising the police jurisdiction of incorporated cities and villages in cases arising under the charter or ordinances thereof, when requested by such magistrate; and upon like request, conduct all criminal examinations which may be had before such magistrate, and prosecute or defend all civil actions before such magistrates in which the county is interested or a party.

(3) Give advice to the county board and other officers of his county, when requested, in all matters in which the county or state is interested or relating to the discharge of the official duties of such board or officers; examine all claims against the county for officers,' interpreters,' witnesses' and jurors' fees in criminal actions and examinations when presented to the county board, and report in writing thereto as to the liability of the county to pay the same.

(4) Attend, when requested by any grand jury, for the purpose of examining witnesses in their presence; give them advice in any legal matter; draw bills of indictment and informations; issue subpoenas and other processes to enforce the attendance of witnesses.

(5) File, on or before the eighth day of November in each year, in the office of the county clerk, an account verified by his affidavit of all money received by him during the preceding year by virtue of his office for fines, recognizances, forfeitures, penalties or costs, specifying the name of each person from whom he may have received the same; the amount received from each and the cause for which the same was paid; and at the same time pay all such money to the county treasurer; and for every neglect or refusal to render such account and pay the money so received by him to the county treasurer he shall forfeit not less than fifty nor more than two hundred dollars.

(6) Attend to the settlement of bills of exceptions in cases which he has tried during his term of office after his term of office has expired; for which services so rendered he shall receive compensation from the county where elected, not to exceed twenty-five dollars per day for time actually expended.

(7) Upon the request and under the supervision and direction of the attorney-general, brief and argue all criminal cases brought by appeal or writ of error or certified from his county to the supreme court.

(8) Serve as legal adviser to the county highway commissioner and draw all papers required in the performance of the commissioner's duties, and attend to all legal matters in and out of court where such commissioner shall be a party.

(9) Enforce the provisions of sections 100.22 and 100.23, by appropriate actions in courts of competent jurisdiction.

(10) To enforce the provisions of all general orders of the industrial commission relating to the sale, transportation and storage of explosives. [1935 c. 500 s. 360; 1937 c. 373]

**Note:** It was not error to permit an assistant district attorney to appear for the applicants and participate in proceedings on an application for a judicial inquiry as to the mental condition of an allegedly feeble-minded person, since both the state and county are interested in such proceedings. In re Terrill, 240 W 53, 2 (2d) NW 847.

District attorney is not required to prosecute in another state proceeding to recover income taxes; he may receive no extra compensation therefor; he may be reimbursed his actual expenses. 20 Atty. Gen. 225.

Office of district attorney is incompatible with membership on county income tax board of review. 21 Atty. Gen. 431.

Offices of district attorney and director of joint school district in same county are compatible. 22 Atty. Gen. 677.

For a discussion of the duties of district attorneys, with a collection of scattered statutory provisions and review of court decisions and attorney-general's opinions on that subject, see 25 Atty. Gen. 549-573.

Upon notice of county court to district attorney that hearing is to be held to determine sanity of person under 51.11 in which inquiry county is interested, it is duty of district attorney to appear. 25 Atty. Gen. 614.

Offices of district attorney and member of village board are incompatible. 26 Atty. Gen. 11.

District attorney should not act as guardian ad litem in any hearing or proceeding involving question of insanity, as duty to incompetent may well conflict with duty to county. 28 Atty. Gen. 30.

It is duty of district attorney to enforce criminal statute even though he believes such statute to be unconstitutional. However, he is under no duty to refrain from submitting constitutional question to court and may properly recommend in case of conviction that constitutional question be certified to supreme court, under 358.08. 28 Atty. Gen. 86.

See note to 59.39, citing 28 Atty. Gen. 96.

Neither (3) nor other general or special statutes relating to duties of district attorney make it his duty to obtain options, examine titles, draft contracts and conveyances nor prepare bond issues and perform other like services for building committee of county board in connection with construction of new county buildings. Private counsel may be employed by county for such purpose. 28 Atty. Gen. 162.

**59.48 Not to be city attorney; exceptions.** It shall be unlawful for any district attorney of any county having a population of forty thousand or more to hold the office of or act as city attorney of any city in the county of which he is district attorney, except pursuant to contract entered into prior to June, 1915. If any district attorney violates the provisions of this section, his office of district attorney shall be deemed vacant.

**59.49 Rewards; restrictions.** No district attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his official duty to attend; nor be concerned as attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution commenced but undetermined shall depend; nor shall any district attorney while in office be eligible to or hold any judicial office whatever, nor shall any person who shall have acted as district attorney, assistant district attorney, or special district attorney at the time of the arrest, examination, or indictment of any person charged with crime, and who was at such time such official of the county where the crime charged was committed, thereafter appear for, or defend such person against the crime charged in such complaint, information or indictment.

**59.50 Register of deeds; deputies.** Every register of deeds shall appoint one or more deputies, who shall hold their office during his pleasure. Such appointment shall be in writing and filed and recorded in his office. Such deputy or deputies shall aid the register in the performance of his duties under his direction, and in case of vacancy or the register's absence or inability to perform the duties of his office such deputy or deputies shall perform the duties of register until such vacancy is filled or during the continuance of such absence or inability.

**59.51 Register of deeds; duties.** The register of deeds shall:

(1) Record or cause to be recorded in suitable books to be kept in his office, correctly and legibly all deeds, mortgages, maps, instruments and writings authorized by law to be recorded in his office and left with him for that purpose.

(2) State upon the record of any instrument the number and denomination of all United States internal revenue stamps, if any, affixed thereto.

(3) Keep the several books and indexes hereinafter mentioned in the manner required.

(4) Indorse upon each instrument or writing received by him for record his certificate of the time when it was received, specifying the day, hour and minute of reception and the volume and page where the same is recorded, which shall be evidence of such facts.

(5) Indorse plainly upon the top of the back, when folded, of each instrument received for record, or file as soon as received a number consecutive to the number affixed to the instrument next previously received according to the numbering now established, and to enter the same in the indexes.

(6) Safely keep and return to the party entitled thereto, on demand within a reasonable time, every instrument left with him for record not required by law to be kept in his office.

(7) Register, file and index as directed by law, all marriages contracted and deaths, births and stillbirths occurring in his county.

(8) Make and deliver to any person, on demand and payment of the legal fees there-



He shall make correct entries in said index of every instrument or writing received by him for record, under the respective and appropriate heads, entering the names of the grantors in alphabetical order; and he shall immediately upon the receipt of any such instrument or writing for record enter in the appropriate column, and in the order of time in which it was received, the day, hour and minute of reception; and the same shall be considered as recorded at the time so noted. Wherever any register has made in any index required by law to be kept in his office, in the index column provided for describing the land affected by the instrument indexed, the words "see record," "see deed," "see mortgage," or other instrument, as the case may be, such entry shall be a sufficient reference to the record of such instrument if it be in fact recorded at large in the place so referred to.

**59.53 Index of records.** He shall keep an index of all records or files kept in his office showing the number of the instrument or writing consecutively, the kind of instrument and where the same is recorded or filed, thus:

Number of instrument.	Kind of instrument.	WHERE RECORDED OR FILED.		
		Volume.	Page.	Letters of file.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

and shall keep another index showing the number of the instrument and the names of the grantees in each instrument or writing in alphabetical order, and the names of the grantors, and the volume and page where the same is recorded, and the name of the instrument or writing.

**59.54 Record of attachments, lis pendens, etc.** He shall keep a separate book or register divided into columns with appropriate headings, in which he shall enter an abstract of every writ of attachment or copy thereof and certificate of real estate attached, of every certificate of sale of real estate, and of every notice of the pendency of any action affecting real estate, which may be filed pursuant to law in his office, specifying the day, hour and minute of his reception thereof, the names of the several parties mentioned therein, designating separately plaintiffs and defendants; the names of the attorneys of the respective parties; the date when the land was sold; the description of all such real estate mentioned, and the amount of indebtedness claimed in any such writ, and the amount for which any such land was sold; and he shall keep for each such book an index, showing in alphabetical order, separately, the names of each party plaintiff and each party defendant, and the page on which such name is found, and shall file and carefully preserve in his office every such paper received. When a notice of the pendency of an action for the foreclosure of a mortgage is filed he shall enter upon the margin of the record of such mortgage a memorandum of the filing of such notice and of the date thereof.

**59.55 Tract index system; power to alter.** (1) The register shall also keep a tract index in suitable books, so ruled and arranged that opposite to the description to each quarter section, sectional lot, town, city or village lot or other subdivision of land in the county, which a convenient arrangement may require to be noted, there shall be a blank space of at least forty square inches in which he shall enter in ink the letter or numeral indicating each volume, and the class of records of such volume designating mortgages by the letter M, deeds by the letter D, and miscellaneous by the abbreviation Mis., and the register of attachments, sales and notices by the letter R, together with the page of said volume upon which any deed, mortgage or other instrument affecting the title to or mentioning such tract or any part thereof shall heretofore have been or may hereafter be recorded or entered; provided, that no such index shall be kept in any county where none now exists until ordered by the county board to be made; but no such index, when once made in any county, shall ever thereafter be discontinued, unless such county has or shall adopt, keep and maintain a complete abstract of title to the real estate therein as a part of the records of the office of the register of deeds thereof.

(2) In any county which has a city of the first class, the county board of supervisors may, by resolution, adopt a more complete system of tract indices than that above specified, or a system of chain of title indices, provided such system be clearly specified in such resolution; and may thereafter at any time before the completion of such system alter or change such system or add to the same by resolution clearly specifying such alterations, changes or additions. In the event of such adoption, said board of supervisors may contract, with any suitable person, to compile and complete such system of indices, and may



make supplemental contracts for the compilation and completion of such alterations, changes and additions, and may levy such taxes as may be required to cover the cost of so doing; said register of deeds shall not be required to compile, install or complete such system of indices or such alterations, changes or additions, but shall after the same be so completed under such contract, or contracts of such board of supervisors, thereafter maintain and keep up the same; and, thereafter shall discontinue all other tract indices theretofore in use or maintained.

(3) In the event of the adoption of any such system of tract indices, or of any such system of chain of title indices, by such county board of supervisors, by such resolution, if such resolution shall provide that any such index shall include an abstract or notation of any proceeding or proceedings pending, or of any instruments or documents filed or entered in the office of the clerk of any court of such county or of the county court or of the register of probate, or of any sales for taxes made by any officer of said county, or of any city in said county, and shall call for a daily report to be made to the register of deeds of said county by any officer in charge of any such office of any such proceedings, instruments or documents or tax sales, each such office so called upon by said resolution to make such daily report, shall, upon the close of business on each day report, in writing, under his hand, to said register of deeds, any and all proceedings, instruments and documents, and tax sales, so called for by such resolution, and said register shall, when required to maintain and keep up such system of indices, note all such proceedings, instruments and documents, and tax sales upon such indices, in accordance with such resolution.

(4) Whenever in the judgment of the county board of any county any existing tract index or indices become unfit for use, because of mistake therein or of imperfection in or insufficiency of plan, or because of becoming worn, overcrowded, or unserviceable or unreliable for any reason the county board may at any meeting thereof, by resolution, order a new and corrected set of tract indices arranged and compiled according to such plan as it may authorize, and in that behalf may purchase suitable books and receive bids and contract with any competent person to do said work, at a price not exceeding five cents per folio, which shall be paid out of the county treasury on acceptance of said work by the county board. The person contracting to do said work, and his assistants, shall have access to and be entitled to the use of the old tract indices and other records in the register's office and other county records; and when said work is completed and said new tract indices are approved and adopted by the county board, the old tract indices shall be preserved as provided in section 59.71 subsection (2). The resolutions of the county board ordering, approving, and adopting such new tract indices, duly certified by the county clerk, shall be recorded in each volume of such new tract indices; and thereupon the same shall become and be the only lawful tract indices in the register's office.

**59.56 Special counties; record of changes in streets, alleys, etc.** In counties having a population of two hundred and fifty thousand or more according to the last state or United States census, and when the county board has prepared and compiled in book form an eminent domain record containing an abstract of facts relating to the laying out, widening, extending or vacating any street, alley, water channel, park, highway or other public place by any court, legislature, county board, common council, village board or town board and shall make an order that such records with an index thereto be thereafter maintained and kept up, and provide a suitable book for that purpose, the register of deeds shall thereafter maintain and keep such book in which shall be entered an abstract of all proceedings relating to the laying out, widening, extending or vacating any street, alley, water channel, park, highway or other public place by any court, county board, common council, village board or town board. Such abstract shall substantially contain the facts as to the filing of a notice of lis pendens, the date of filing, the description, the court in which or the body before whom the proceeding is pending, the result of the proceedings, the action taken and the date thereof and briefly all the essential facts of any such proceeding, and such records shall have a practical index, with reference to the number and page of the volume where such abstracts are entered respectively. The abstracts and records to be kept by the register of deeds shall by him be certified to be true and correct and when so certified shall be prima facie evidence of the facts therein recited and shall be received in all courts and places with the same effect as the original proceedings; and the record so prepared and compiled by the county board shall be prima facie evidence of the facts therein recited and shall also be received in all courts and places with the same effect as the original proceedings.

**59.57 Register of deeds; fees.** Except as otherwise provided by law every register of deeds shall receive the following fees, to wit:

(1) (a) For entering and recording the following forms of standard instruments which

are to be approved by the register of deeds association and thereafter filed in the approved form in the office of the secretary of state:

## FEES FOR RECORDING WISCONSIN LEGAL FORMS

Form No.	Nature of Instrument	Fees
1	Warranty deed, by individual .....	\$1.00
2	Warranty deed, by corporation .....	1.00
3	Warranty deed, by corporation, with authorization clause.....	1.00
4	Warranty deed, to corporation .....	1.00
5	Warranty deed, covenant against own acts .....	1.00
6	Warranty deed, covenant against own acts by corporation.....	1.00
7	Warranty deed, by individual, 10c per folio extra for restriction clause....	1.00
8	Warranty deed, by corporation, 10c per folio extra for restriction clause....	1.00
9	Warranty deed, statutory form .....	.60
10	Warranty deed, by corporation, statutory form.....	.60
11	Quit claim deed, by individual .....	.60
12	Quit claim deed, by corporation, long form.....	.60
13	Quit claim deed, short form .....	.60
14	Quit claim deed, by corporation, statutory form.....	.60
15	Mortgage, insurance, option and tax clause .....	1.70
16	Mortgage, insurance, option and tax clause, by corporation.....	1.70
17	Mortgage, insurance, option and tax clause, to corporation.....	1.70
18	Mortgage, short form, insurance, option and tax clause.....	1.00
19	Mortgage, by corporation, short form ins., option and tax clause.....	1.00
20	Mortgage, to corporation, short form, ins., option and tax clause.....	1.00
21	Mortgage, insurance, option, tax and receivership clause.....	1.80
22	Mortgage, by corporation, insurance, option, tax and receivership clause....	1.80
23	Mortgage, to corporation, insurance, option, tax and receivership clause....	1.80
24	Mortgage, option and tax clause .....	1.40
25	Mortgage, option and tax clause, by corporation.....	1.40
26	Mortgage, option and tax clause, to corporation.....	1.40
27	Mortgage, short form, option and tax clause.....	1.00
28	Mortgage, by corporation, short form, option and tax clause.....	1.00
29	Mortgage, to corporation, short form, option and tax clause.....	1.00
30	Mortgage, to building and loan association.....	1.20
31	Mortgage, by individual, statutory form.....	1.00
32	Mortgage, by corporation, statutory form .....	1.00
33	Land contract, insurance clause .....	1.70
34	Land contract, by corporation, insurance clause .....	1.90
35	Land contract, by individual, without insurance clause .....	1.30
36	Land contract, by corporation, without insurance clause.....	1.50
37	Assignment of land contract, by individual .....	.60
38	Assignment of land contract, by corporation .....	.60
39	Assignment of land contract, by attorney in fact .....	.60
40	Assignment of real estate mortgage, statutory form .....	.50
41	Assignment of real estate mortgage, by corporation, statutory form .....	.50
42	Assignment of real estate mortgage, by attorney in fact, statutory form....	.50
43	Assignment of real estate mortgage, by individual .....	.50
44	Assignment of real estate mortgage, by corporation .....	.60
45	Assignment of real estate mortgage, by attorney in fact.....	.60
46	Assignment of real estate mortgage, without recourse .....	.50
47	Assignment of real estate mortgage, by corporation, without recourse.....	.60
48	Assignment of real estate mortgage, by attorney in fact, without recourse..	.60
49	Partial release of mortgage, by individual.....	.75
50	Partial release of mortgage, by corporation .....	.75
51	Partial release of mortgage, by attorney in fact .....	.75
52	Partial payment mortgage receipt, by individual .....	.50
53	Partial payment mortgage receipt, by corporation .....	.50
54	Partial payment mortgage receipt, by attorney in fact .....	.50
55	Satisfaction of real estate mortgage, by individual, short form .....	.50
56	Satisfaction of real estate mortgage, by corporation, short form .....	.50
57	Satisfaction of real estate mortgage, by attorney in fact, short form.....	.50
58	Satisfaction of real estate mortgage, by individual .....	.50
59	Satisfaction of real estate mortgage, by corporation .....	.50
60	Satisfaction of real estate mortgage, by attorney in fact.....	.50

(am) An extra charge of 10 cents per folio or fraction thereof shall be made on ap-

proved forms for all descriptions in excess of 2 folios, and a charge of 3 cents shall be made for every entry in the tract index in excess of 3.

(b) For entering and recording other instruments 10 cents per folio, and 3 cents for every necessary entry in a tract index in excess of 3 entries in counties where a tract index is kept; with a minimum fee of 60 cents for any quitclaim deed, \$1 for any other deed, \$1 for any mortgage, and 50 cents for any other instrument. No extra charge shall be made for a description in any instrument of less than 2 folios.

(2) For recording any instrument written in any other than the English language, twenty cents for each folio.

(3) For filing and entering any writ of attachment or copy thereof, with the certificates of the officer, or any certificate of sale, or any notice of the pendency of any action containing not more than twenty defendants, twenty-five cents, and twenty-five cents for every additional twenty defendants in any such notice.

(4) For copies of any records or papers, ten cents for each folio, and twenty-five cents for his certificate.

(5) For every entry of a discharge of a mortgage in the margin of a record, ten cents.

(6) For filing and entering bills of sale, chattel mortgages, conditional sales contracts, assignments and renewals or copies thereof, foreclosure affidavits, or any other paper relating thereto, 50 cents; and for filing and entering releases thereof, 25 cents for each instrument released. Chattel mortgages or conditional sales contracts, together with a printed or written assignment thereon, offered for filing at the same time, shall be considered as one instrument receiving but one document number. The filing fee for such instruments shall be 50 cents. Whenever after July 1, 1943, there shall be offered for filing any instrument which varies from the approved substance of paper or varies more than one-eighth of an inch from the approved size as prescribed by section 59.51, an additional filing fee of one-half the regular fee shall be made by such register.

(7) For a certified copy of the full record of any marriage, birth, or death, 50 cents; and for a short-form certificate, 25 cents, with the exceptions stated in chapter 69.

(8) For examining the proofs of marriage, birth or death, when presented in the form of affidavits, fifty cents.

(9) For making a new tract index upon the order of the county board, such sum as may be fixed by the county board, not exceeding two cents for each entry, to be paid from the county treasury.

(10) For recording plats containing from one to fifty lots, twenty-five dollars, and for each additional lot, ten cents, except cemetery plats, containing from one to two hundred lots or fractional part thereof, twenty-five dollars, and for each additional two hundred lots or fractional part thereof, five dollars.

(11) For ordinary exhibits or sketches, attached to or incorporated in any deed or other instrument not exceeding a page 10 inches by 16 inches, \$5, and those exceeding this size, \$10; except where a photostatic, photographic or similar process is used by the register of deeds, such fee shall be one-half of such amounts.

(11a) For exhibits, drawings or plats and printed matter, attached to any deed or other instrument, not exceeding a page 10 inches by 16 inches, \$10, and for those exceeding this size, \$20; except where a photostatic, photographic or similar process is used by the register of deeds, such fee shall be one-fourth of such amounts.

(11b) For registering any marriage, birth, stillbirth or death certificate, when recorded into regular bound volumes, or filed in special filing cases, securely locked, 25 cents to be paid by the county.

(12) All the foregoing fees to be payable in advance by the party procuring such service.

(13) For the recording of right of way easement, or consent to easement, in favor of a co-operative association organized under chapter 185 for the transmission and distribution of electrical energy and power in order to secure benefits made available under the federal electrification administration, ten cents each, if filed by the co-operative association in the form of a photostatic copy. In counties where the register of deeds is on a salary basis, the county board may vote to waive the filing of such easements in photostatic form, and may vote to waive the recording fee, for such easements in whole or in part.

(14) Fifty cents for the filing of a certificate discharging an attachment or lis pendens. [1931 c. 288; 1937 c. 44, 405; 1939 c. 467; 1941 c. 143, 242, 312; 1943 c. 203, 295, 503]

**Note:** County board may waive recording fees under (13) when original easements are filed. 27 Atty. Gen. 212.

See note to 49.26, citing 27 Atty. Gen. 353.  
See note to 62.18, citing 27 Atty. Gen. 385.  
Sixty forms of standard instruments referred to in ch. 467, Laws 1939, are those forms approved by Wisconsin register of deeds association and filed in office of secretary of state in 1919, pursuant to 235.16, and no further approval or filing of such forms is required. 28 Atty. Gen. 650.  
Where number of real estate mortgages are purported to be satisfied in one instrument, said instrument cannot be said to constitute standard form of instrument for which recording fee is 50 cents, under (1) (a). Fee for recording such instrument is

computed at rate of 10 cents per folio under (1) (b), Stats. 1941. 30 Atty. Gen. 341.

Under (1) (b), Stats. 1941, fee for recording conveyance of lands for highway purposes is 10 cents per folio and 3 cents for every necessary entry in tract index when kept. Wisconsin recorders association lacks authority to add highway conveyance form

to 60 standard forms mentioned in (1) (a) or to provide recording fee therefor other than that prescribed by statute. 31 Atty. Gen. 88.

Register of deeds is not entitled, in addition to fee provided by (11b), for registering birth, death and marriage certificates, to fee for subsequent corrections to such certificates so registered. 31 Atty. Gen. 334.

**59.575 Certifications and filings for veterans; no charge.** (1) The term "veteran" as used in this section means any person, male or female, who performed active service in the armed forces of the United States during any war declared by Act of Congress, and who has been honorably discharged, or released from such active service under honorable conditions, or who is presently serving in the armed forces of the United States.

(2) No fee shall be charged by any register of deeds, clerk of circuit court or any other public officer, either state, county or local, having custody of statistical records, for the making and certifying of copies, or examining proofs of any public record or instrument, required for or in connection with, the filing of any claim or application with the United States Veterans Administration or any other federal agency, or to any state agency, or to the regularly established agency of any state, for benefits under federal or state laws, by a veteran or by any dependent of a veteran, when certified proof is required in connection with any claim or application for benefits, under federal or state laws, to which such veteran, or a dependent of a veteran, either living or dead, may be required to file, except, that in the counties where the register of deeds is under the fee system and not a fixed salary, the usual fee for such service shall be paid by the county to the proper officer. The provisions of this section shall supersede any provision of law in conflict herewith. [1943 c. 422]

**59.58 County abstractor; appointment; duties; fees.** (1) Whenever any county adopts a tract index system or any recognized chain of title system, the county board thereof may create a department to be known as an abstract department, either in connection with or independent of the office of the register of deeds, as said county board deems advisable and may appoint a competent person for a term of two years, who shall be known as the county abstractor, and shall have charge of and operate said abstract department. The board shall furnish a seal for said abstractor, who shall place said seal on each and every abstract issued by him.

(2) The register of deeds shall be eligible to the office of county abstractor and may hold both offices at the same time.

(3) The county abstractor shall at all times on demand of any person, and on payment of the fee therefor, make and deliver to any such person an abstract of title to any land in such county.

(4) The county board shall fix the salary of said abstractor, provide such clerical assistance as may be necessary and fix their compensation and shall fix the fees to be received for the compiling and furnishing of abstracts and may at any time prescribe regulations for the operation and conduct of said department. All fees received for the compiling and furnishing of abstracts shall be paid into the county treasury.

(5) The county board may by two-thirds vote of all the members of said board discontinue the furnishing of abstracts. [1935 c. 22]

**Note:** The liability of the maker of an abstract of title for damages because of mistakes in the abstract is based on contract and not on negligence, and he is therefore not liable to persons misled to their damage unless some privity of contract exists between them. Peterson v. Gales, 191 W 137, 210 NW 407.

**59.59 Surveyor; deputies.** The surveyor may appoint and remove deputies at will on filing a certificate thereof with the county clerk.

**59.60 Surveyor; duties.** The county surveyor shall:

(1) Execute, by himself or his deputy, any survey required of him by order of any court or upon application of any individual or corporation.

(2) Make a record in books kept therefor, of all corners set and the manner of fixing the same and of all corrected bearings and the distances of all courses run, of each survey made by him or his deputies and so arrange or index the same as to be easy of reference and file and preserve in his office the original field notes and calculation thereof; and within ten days after completing any survey, make a true and correct copy of the foregoing record, in record books to be furnished by the county and kept on file in the office of the county clerk.

(3) Furnish a copy of any record, plat or paper in his office to any person on demand and payment of his legal fees therefor.

(4) Administer to every chainman and marker assisting in any survey, before commencing their duties as such, an oath or affirmation faithfully and impartially to discharge the duties of chainman or marker, as the case may be; and the said surveyor and his deputies are empowered to administer the same.

(5) Perform such other duties as may be required by law.

**Note:** No registered engineer of state county surveyor or deputy duly appointed, may record private survey in county surveyor's record books unless he is also 27 Atty. Gen. 713.

**59.61 How bearings expressed in surveys.** In all surveys the bearings shall be expressed as nearly as may be according to the true meridian, and the declination of the magnetic meridian from the true meridian shall be given, with the year, month and day of the survey, except in the survey of an east and west and north and south line, when the declination of the needle from the line surveyed with the date thereof shall be sufficient.

**59.62 Subdividing sections.** Whenever a surveyor is required to subdivide a section or smaller subdivision of land established by the United States survey he shall proceed according to the statutes of the United States and the rules and regulations made by the secretary of the interior in conformity thereto. In subdividing a quarter section bordering on the north line of a township he shall establish the eighth corner equidistant from the quarter-section corners and the sixteenth section corner eighty rods from the quarter-section corner unless the quarter line vary in actual length from the length stated in the original survey, in which case such sixteenth corner shall be established at a greater or less distance in exact ratio to the excess or deficiency in the actual length of such quarter line. In subdividing a quarter section bordering on the west line of a township the eighth corner shall be established as above provided for establishing a sixteenth corner, and the sixteenth corner shall be established equidistant from the quarter-section corners.

**59.63 Relocation and perpetuation of section corners and division lines.** (1) Whenever a majority of all the resident landowners in any section of land within this state desire to establish, relocate or perpetuate any sectional or other corner thereof, or in the same section a division line thereof, they may make a formal application in writing to the town clerk of the town in which the land is situated. Such clerk shall file such application in his office and shall within a reasonable time give at least ten days' notice in writing to the owner or owners of all adjoining lands, if such owner or owners reside in the county where said land is situated and if not, by publication once each week for three weeks successively in a newspaper published nearest to such land, stating the day and hour when the town board will meet to consider and pass upon such application, and said town board shall, at such meeting, hear all interested parties and shall approve or reject such application; if such application is approved the town clerk shall notify the county surveyor who shall within a reasonable time proceed to make the required survey and location. If a corner is to be perpetuated, he shall deposit in the proper place a stone or other equally durable material of the dimensions and in the manner and with the markings set forth in section 60.37, and shall also enter in his field notes one or more bearing trees if there be such, the species and size, direction and distance thereof, and if there be no trees he shall deposit one or more suitable stones at a sufficient depth as witness to said corner, all of which proceedings shall be accurately entered by said surveyor or his deputy in a suitable book to be kept for that purpose, carefully preserved and which shall together with all applications on file be turned over by such county surveyor to his successor in office upon request and a receipt taken therefor.

(2) All expense and cost of the publication of said notice, if any, and of said survey shall be apportioned by the town clerk among the several pieces or parcels of land in said section upon the basis of the area surveyed and by him included in the next tax roll and shall be collected in the same manner as other taxes are collected. [1931 c. 23]

**Note:** Where county surveyor makes survey of lands and special tax for his fees and expenses is levied by town clerk against such lands, but said lands are returned delinquent and county purchases and takes tax deed, county while holding such tax deed is not liable to county surveyor for such fees and expenses. 20 Atty. Gen. 744.

Sections 59.60, 59.63 and 59.635 require county surveyor to make survey in all cases requiring relocation and perpetuation of section corners and division lines and perpetuation of land marks. No other surveyor may be hired except as provided in 59.635 (3). 24 Atty. Gen. 500.

**59.635 Perpetuation of landmarks.** (1) No landmark, monument, corner post of the government survey or survey made by the county surveyor or survey of public record shall be destroyed, removed, or covered by any material that will make said landmark, monument, or corner post inaccessible for use, without first having erected as hereinafter provided witness or reference monuments for the purpose of identifying the location of such landmark and making a certified copy of the field notes of the survey setting forth all the particulars of the location of said landmark with relation to the reference or witness monuments so that its location can be determined after its destruction or removal and filing the same in a manner hereinafter provided.

(2) Whenever it becomes necessary to destroy, remove or cover up in such a way that will make it inaccessible for use, any landmark, monument of survey, or corner post within the meaning of this act, the person or persons who intend to commit such act shall serve written notice upon the county surveyor of the county within which said land-

mark is located, except that such notice shall be served upon the city or village engineer if such landmark is located within the corporate limits of a municipality, to the effect that he, or they, deem it necessary to remove or destroy such landmark, giving a legal description of the same together with the reason for doing so. The county surveyor, city or village engineer upon receipt of said notice, shall within a period of not to exceed six working days, either by himself or by his deputy, make a survey of said landmark, and, if he deems it necessary because of the public interests to remove said landmark, he shall erect two or more witness monuments or, if within a municipality, may make two or more offset marks at places near said landmark and where they will not be disturbed. He shall make a survey and field notes giving a description of the landmark and the witness monuments or offset marks, stating the material and size of the witness monuments and locating the offset marks, the distance and courses in terms of the true meridian that the witness monuments bear from the landmark and, also, of each witness monument to at least one of the other witness monuments. He may also make notes as to such other objects, natural or artificial, as will enable anyone to locate the position of the landmark. The witness monuments shall be made of durable material of cement, natural stone, iron, or other equally durable material, except wood. If iron pipe monuments are used, they shall be made of two inch or more galvanized iron pipe not less than thirty inches in length having an iron or brass cap fastened to the top and marked with a cross cut on the top of the cap where the point of measurement is taken. If witness monuments are made of cement, stone or similar material, they shall be not less than thirty inches in length nor less than five inches in diameter along the shortest diagonal marked on the top with a cross where the point of measurement is taken. The county surveyor upon completing the survey shall make a certified copy of the field notes of the survey and file it as provided for in section 59.60 of the Wisconsin Statutes of 1931. The city or village engineer upon completing the survey shall file the notes in his office, open to the inspection of the public.

(3) In those counties where there are no county surveyors or where the county surveyor, because of illness or other infirmities, does not commence the work within the required period of time, a petition can be made to the county judge of the county within which said landmark is located requesting him to appoint a surveyor to act in the capacity of the county surveyor. The county judge, upon receipt of this petition, may appoint a qualified surveyor to act in the capacity of the county surveyor in doing this work.

(4) The cost of the work of perpetuating the evidence of any landmark under the scope of this act shall be borne by the party or parties deciding to have such work done.

(5) Any person or persons who shall remove or destroy or make inaccessible any landmark, monument of survey, corner post of government survey, survey made by the county surveyor or survey of public record without first complying with this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not to exceed two hundred fifty dollars or by imprisonment in the county jail for a period of not more than one year.

(6) It shall be the duty of every forest ranger, forest patrolman, conservation warden, and every other officer of the department of conservation to enforce the provisions of this section. [1933 c. 104]

**59.64 Certificates and records as evidence.** The certificate and also the official record of the county surveyor when produced by the legal custodian thereof or any of his deputies, when duly signed by him or them in his or their official capacity, shall be admitted as evidence in any court within this state, but the same may be explained or rebutted by other evidence and if any surveyor or either of his deputies be interested in any tract of land a survey of which becomes necessary, such survey may be executed by any competent person to be appointed by the court before whom such matter may be pending.

**59.65 Surveyor; fees.** The surveyor and his deputies may demand and receive the following fees, except it be otherwise agreed upon with the parties employing them:

(1) For each day's service, five dollars; but the county boards of the several counties may at any annual meeting fix the per diem to be paid at a greater sum.

(2) For each mile traveled in going from his office to the place of rendering service and returning, ten cents.

(3) For plat and certificate, except town plats, fifty cents.

(4) For recording a survey, fifty cents.

(5) For each chainman and marker necessarily employed, not less than two dollars per day, unless they be furnished by the person for whom the survey is made.

(6) For making a copy, ten cents a folio and twenty-five cents for his certificate.

**59.66 Penalty for nonfeasance.** Any county surveyor who fails or refuses to perform any duty required of him by law shall be punishable by a fine of not less than twenty-five dollars nor more than fifty dollars for each such failure or refusal.

**59.67 Property of county; how held and conveyed.** (1) All real and personal estate conveyed to any county or the inhabitants thereof or to any person for the use of the county or the inhabitants thereof shall be deemed the property of such county; and all such conveyances shall have the same force and effect as if they had been made directly to the county by name.

(2) The property of the county shall be held by the county clerk in the name of the county. The county board may, by resolution or ordinance, direct the county clerk to sell and convey or contract for the sale and conveyance of any real estate of the county, whether acquired by tax deed or otherwise, not donated and required to be held for a special purpose, and all deeds, contracts and other agreements made in pursuance thereof on behalf of the county by the county clerk under his hand and the county seal and acknowledged by him shall be valid and shall convey or contract for the future conveyance of all the right, title, interest and estate which the county may then have in and to the land involved. The county board may in such ordinance or resolution prescribe that in the terms of such conveyance of any such lands with standing timber situated thereon, the grantee, his heirs or assigns, shall be restricted and limited from cutting or removing any hard or soft wood tree less than 6 inches in diameter at the stump 2 feet above the ground and such provisions shall be covenants running with the land. [1941 c. 5]

**Note:** Resolution of county board purporting to authorize county clerk to sell county-owned land at price which equals or exceeds assessed valuation is invalid. 22 Atty. Gen. 387.

County board resolution to sell to former owner, lands acquired by county on tax deeds for amount of taxes, interest and penalties, does not constitute valid communicated offer which ripens into binding contract upon tender of payment by former owner, and such resolution is contrary to public policy. 26 Atty. Gen. 158.

County board may not lawfully authorize exchange of county-owned lands for other lands to which county already holds title by tax deed. 26 Atty. Gen. 177.

County may not accept quitclaim deed from owner of land upon which county holds tax certificates in consideration for quitclaim deed from county to such owner covering part of such lands, with taxes on such latter lands marked paid. 27 Atty. Gen. 348.

Resolution of county board that county tax deed land be sold at minimum price except to owners, mortgagees and lienholders, who shall have privilege to buy their land by payment of all taxes and charges against it, is valid. 31 Atty. Gen. 286.

There is no provision in statutes for county to charge back to village tax certificates held by county and canceled by it because lands were not subject to taxation. 32 Atty. Gen. 14.

**59.68 County buildings; proximity of courthouse to other buildings.** (1) Each county shall at its own expense provide at the county seat a courthouse, a jail, fireproof offices, and other necessary buildings suitable to their proper uses, and keep the same in good repair; but no jail shall be constructed until the plans and specifications therefor shall be approved by the state department of public welfare, and no jail shall be constructed in the basement of any other building. Until a courthouse is provided, or when the courthouse from any cause becomes unsafe, inconvenient or unfit for holding court, the county board shall provide some other convenient building at the county seat for that purpose temporarily; and such building shall then be deemed the courthouse for the time being for all purposes.

(2) In the construction hereafter of any courthouse the following restrictions and limitations shall be observed:

(a) Such construction shall be in accordance with plans and specifications accompanied by the certificate of the judge of the circuit court in whose circuit the building is to be erected, to the effect that after consultation with competent experts he is advised and believes that the court rooms therein provided for will possess proper acoustical properties. The expense of such expert advice shall be paid out of the county treasury upon the certificate of such judge.

(b) Repairs which amount substantially to a reconstruction of a courthouse shall be governed by the same restrictions and limitations, as far as practicable. [1943 c. 93]

**59.69 Fairgrounds; acquisition; use; donations; conditions.** Land upon which to hold agricultural and industrial fairs and exhibitions may be acquired by county boards and improvements made thereon as follows:

(1) In counties containing less than fifty thousand population, by gift, purchase or land contract, but the purchase price of the land shall not exceed eight thousand dollars, and expenditures for the construction of buildings, fences and other improvements on said land shall not exceed eight thousand dollars, unless the expenditure in either case shall be first approved by the electors of the county as provided in this subsection; and the board may grant the use thereof from time to time to agricultural and other societies of similar nature for agricultural and industrial fairs and exhibitions, and such other purposes as tend to promote the public welfare, and may receive donations of money, material or labor from any person, town, city or village for the improvement or purchase of such land. All fences, buildings and sheds constructed and other improvements made on such lands by societies using the same may be removed by such societies at any time within six months after the right of such societies to use such land shall terminate, unless otherwise agreed in writing by and between such societies and the county at the time of the construction of

such fences, buildings and sheds and the making of other improvements. A sum in excess of eight thousand dollars may be expended for such land and a sum in excess of eight thousand dollars for the construction of buildings, fences and other improvements on said land, if the question whether such expenditure shall or shall not be made is submitted to a vote of the qualified electors of the county and a majority of those voting on the question vote in favor of making such expenditure. Such election shall be noticed and conducted and the votes thereat counted, canvassed and returned in the manner provided in section 67.14.

(2) In counties containing more than fifty thousand and less than three hundred thousand population, by gift, purchase or land contract, but the purchase price of the land shall not exceed one thousand dollars for each one thousand of population within the county, and expenditures for the construction of buildings, fences and other improvements on said land shall not exceed one thousand dollars for each one thousand of population within the county, unless the expenditures in either case shall be first approved by the electors of the county as provided in this subsection; and the board may grant the use thereof from time to time to agricultural and other societies of similar nature for agricultural and industrial fairs and exhibitions, and such other purposes as tend to promote the public welfare, and may receive donations of money, material or labor from any person, town, city or village for the improvement or purchase of such land. All fences, buildings and sheds constructed and other improvements made on such lands by societies using the same may be removed by such societies at any time within six months after the right of such societies to use such land shall terminate, unless otherwise agreed in writing by and between such societies and the county at the time of the construction of such fences, buildings and sheds and the making of other improvements. A sum in excess of one thousand dollars for each one thousand population within the county may be expended for such land and a sum in excess of one thousand dollars for each one thousand of population within the county for the construction of buildings, fences and other improvements on said land, if the question whether such expenditure shall or shall not be made is submitted to a vote of the qualified electors of the county and a majority of those voting on the question vote in favor of making such expenditure. Such election shall be noticed and conducted and the votes thereat counted, canvassed and returned in the manner provided in section 67.14.

(3) In counties containing more than three hundred thousand population, by donation, purchase or condemnation, but not exceeding in value one hundred fifty thousand dollars, and the board may convey, grant or donate such lands so purchased or acquired or the use thereof to the state of Wisconsin or to agricultural and industrial societies for the purpose of holding thereon agricultural and industrial fairs and exhibitions, and may receive donations of money, material or labor from any person, town, city or village for the improvement or purchase of such land. If at any time lands or the use thereof so conveyed, granted or donated shall be abandoned or no longer used for the purpose for which such lands or the use thereof were so conveyed, granted or donated, the title to such lands shall revert to the county having conveyed, granted or donated the same; and the commissioners of public lands, in the case of conveyances, grants or donations to the state, are authorized and directed to execute and deliver such proper deeds of conveyance as will revert the title to such lands in such county, and when such lands or the use thereof were conveyed, granted or donated to an agricultural and industrial society, such proper deeds or conveyance shall be executed and delivered by such society by its proper officers. However, the state may at any time within one year after title to any such lands revert by proper conveyance in such county, remove any buildings or structures erected thereon by or for the state subsequent to the acquisition of such lands by the state.

(4) The provisions of section 59.865 shall in no way affect the provisions of section 59.69 and subsection (6) of section 27.05.

**59.70 Isolation hospitals.** (1) In counties having a population of thirty thousand or more the county board may erect, establish and maintain isolation hospitals or places for the care and treatment of all persons afflicted with infectious, contagious and communicable diseases, requiring isolation and quarantine under the laws of the state, who are inmates of the charitable, penal, correctional and other institutions of said county or who are required to be cared for and treated at the expense of said county. The board may also provide for the care and treatment therein of all persons so afflicted, who are required to be cared for by the various towns, cities and villages in said counties, under such terms, conditions, rules and regulations, as to apportionment of cost of erection of such buildings and places and the expense of care and treatment of such persons afflicted, as may be agreed upon between the county board and the common council of such cities and the boards of such villages and towns, and each such council or board is hereby vested with power and authority to enter into such contracts and to appropriate such funds as may be necessary to carry into execution all contracts so made.

(2) All isolation hospitals and other places, when so erected or established in counties having a county board of administration, shall be conducted under the control and man-



agement of said board in the same manner and to the same extent as other institutions under the control of such board, and in other counties such isolation hospitals and other places shall be conducted under the control and management of the county board. Any resident of this state not indigent may be received into, treated and cared for in such isolation hospital or other place upon such terms and conditions and at such rate or pay as may be established and fixed by the board having charge of such isolation hospital or other place; provided, however, that indigent and destitute sick persons shall be cared for and have preference of admission to such hospitals and places.

**59.71 Records where kept; public examination; rebinding; transcribing.** (1) The books, records, papers and accounts of the county board shall be deposited with the respective county clerks and shall be open without any charge to the examination of all persons.

(2) When any book or public record, or the record of any town, village or city plat in any county office shall, from any cause, become unfit for use in whole or in part, the county board shall make an order that such book, record or plat be rebound or transcribed; if said order be to rebind such book, record or plat, such rebinding must be done under the direction of the officer in charge of said book, record or plat, and in his said office; if said order be to transcribe such book, record or plat, it shall be the duty of the officer having charge of the same to provide a suitable book for that purpose; and thereupon such officer shall transcribe the same in the book so provided; and carefully compare the transcript with the originals, and make the same a correct copy thereof, and shall attach to such transcript a certificate over his official signature that he has carefully compared the matter therein contained with, and that the same is a correct and literal copy of the book, record or plat from which the same was transcribed, naming such book. Such copy of book, record or plat, so certified, shall have the same effect in all respects as the original, and such original book, record or plat shall be deposited with the county treasurer and carefully preserved. The order of the county board directing the transcribing of any book, record or plat duly certified by the county clerk shall, with such certificate, be recorded in each copy of book, record or plat transcribed. The fee of the officer for such service shall be fixed by the board, not exceeding ten cents per folio, or if such books or any part thereof consist of printed forms, not to exceed five cents per folio for such books or records, to be paid by the county.

**59.72 County auditors; powers; duties.** (1) In counties having a population of less than three hundred thousand, according to the last preceding state or United States census, the county clerk shall act as auditor, unless an auditor is appointed as provided in subsection (2), and, when directed by resolution of the county board, shall examine the books and accounts of any county officer, board, commission, committee, trustees or other officer or employe intrusted with the receipt, custody, or expenditure of money, or by or on whose certificate any funds appropriated by the county board are authorized to be expended, whether compensated for services by fees or by salary, and the books and accounts of justices of the peace, and all original bills and vouchers on which moneys have been paid out and all receipts of moneys received by them. He shall have free access to such books, accounts, bills, vouchers and receipts as often as may be necessary to perform the duties required under this subsection and he shall report in writing the results of such examinations to the county board.

(2) The county board of any county having less than three hundred thousand population, according to the last preceding United States or state census, may appoint and by resolution fix the compensation of a county auditor. A person so appointed shall perform the duties and have all the powers conferred upon the county clerk as auditor by subsection (1), and shall perform such additional duties and shall have such additional powers as are imposed and conferred upon him from time to time by resolution adopted by the board.

(3) In counties having a population of three hundred thousand or more, according to the last preceding state or United States census, the chairman of the county board shall appoint a person known to be skilled in matters of public finance and accounting to act as county auditor. Such appointment shall be made pursuant to sections 16.31 to 16.44 of the statutes and shall be subject to confirmation by the county board. The auditor shall direct the keeping of all of the accounts of such county, in all of its offices, departments and institutions, and shall keep such books of account as may be necessary to properly perform the duties of his office. His salary and the amount of his official bond shall be fixed by the county board. He shall perform all duties pertaining to his office, and shall have all of the powers and perform all the duties specified and enumerated in subsection (1) and shall perform such other duties as may be imposed by the county board.

(4) In counties included within subsection (3), the county auditor may appoint a deputy auditor pursuant to sections 16.31 to 16.44 to aid him in the discharge of the duties

of his office, and who, in the absence or disability of the county auditor, or in case of a vacancy in said office, shall perform all the duties of the office of county auditor until such vacancy is filled, or disability is removed. Such deputy shall execute and file an official bond in the same amount as that given by the county auditor. [1935 c. 127]

**Note:** County auditor is entitled to have access to records of receipts kept by county clerk under 59.17 (6). 24 Atty. Gen. 694. See note to Art. VI sec. 4, citing 24 Atty. Gen. 787.

**59.73 Receipts and deposits of money; accounts.** Every county officer and employe and every board, commission or other body that collects or receives moneys for or in behalf of the county, shall:

(1) Give such receipts therefor and file such duplicates thereof with the county clerk and county treasurer as the county board directs.

(2) Keep books of account and enter therein accurately from day to day with ample description, the items of his official service, and the fees therefor.

(3) Pay all such moneys into the county treasury at such time as is prescribed by law, or if not so prescribed daily or at such intervals as are prescribed by the county board.

(4) Perform all other duties in connection therewith that are prescribed by or pursuant to law.

**59.74 Depositories; designation.** (1) The county board of each county containing two hundred thousand or more population shall designate two or more, and in other counties the county board, or when the occasion arises and the county board is not in session, then a committee of the board which has been authorized to do so shall designate one or more banks, banking institutions, or trust companies organized and doing business under the Wisconsin or United States laws, located in Wisconsin, as county depositories, one or more of which shall be designated as working banks, all deposits in which shall be active deposits. [Spl. S. 1931 c. 1 s. 1, 3; Spl. S. 1931 c. 15 s. 1; 1933 c. 435 s. 1, 2]

**59.75 Funds to be placed in depositories; reports; cash balance.** (1) Whenever any county board shall have designated a county depository or depositories in accordance with the provisions of section 59.74 the county treasurer shall deposit therein as soon as received all funds that come to his hands in that capacity in excess of the sum he is authorized by such board to retain and any sum so on deposit shall be deemed to be in the county treasury, and such treasurer shall not be liable for any loss thereon resulting from the failure or default of such depository; provided, that the county board or a committee thereof designated by it may invest any funds that come into his hands in excess of the sum he is authorized by the county board to retain for immediate use, in the name of the county in interest bearing bonds of the United States, or of any county or municipality in the state, and such board or committee may sell such securities when deemed advisable.

(2) Every such depository shall on the first business day of each month, and oftener when required, file with the county clerk a statement of the amount of county money deposited with it during the preceding month, and the treasurer shall at the same time file with such clerk a statement showing the amount of moneys received and disbursed by him during the previous month.

(3) The county board may fix the amount of money which may be retained by the treasurer but in no case shall the sum exceed three thousand dollars; provided, that in all counties having a population of two hundred thousand inhabitants or over, the treasurer may retain such sum as may be fixed by the county board, not exceeding one hundred thousand dollars.

(4) Such treasurer and clerk, whenever the cash balance does not amount to the sum authorized by the county board to be retained, may increase it to such amount by their check on the county depository or depositories in favor of such treasurer. [Spl. S. 1931 c. 15 s. 2; 1935 c. 339]

**Note:** Where bank purchases bonds from county with understanding that money is to remain in said bank until needed, county is not bound to keep money in said bank; but if said bank is sole county depository, the county treasurer is required to deposit money in said bank. 19 Atty. Gen. 344.

**59.76 Claims against counties; actions on; disallowance.** (1) No action shall be brought or maintained against a county upon any account, demand or cause of action when the only relief demandable is a judgment for money, except upon a county order, unless the county board shall consent and agree to the institution of such action, or unless such claim shall have been duly presented to such board and they shall have failed to act upon the same within the time fixed by law. No action shall be brought upon any county order until the expiration of thirty days after a demand for the payment thereof has been made; and if an action is brought without such demand and the defendant fails to appear and no proof of such demand is made, the court or the clerk thereof shall not permit judgment to be entered, and if judgment is entered it shall be absolutely void.

(2) The decision of the county board disallowing in whole or in part any claim of any person shall be final and a bar to any action founded thereon, except as provided in subsection (1), unless an action be brought to recover against the county within six months after such disallowance. Failure to allow a claim before the adjournment of the next annual session of the board after the claim is filed shall be deemed a disallowance.

(3) The claimant may accept payment of any portion of his claim allowed without waiving his right to recover the portion disallowed. The plaintiff, if he recover any sum in excess of the amount allowed, if any, by the board, shall have costs irrespective of the amount so recovered; otherwise the defendant shall recover costs. No interest shall be recovered upon any sum allowed by the county board for which an order shall have been duly drawn, after the order shall be available to the plaintiff. The court may examine all the items of the claim presented to the board and, if it appear that the plaintiff has been allowed as great a sum on the whole claim as he is entitled to, he shall recover no greater sum and the defendant shall have costs.

**Note:** The requirement that all claims shall be filed with the county board before bringing action against the county is not removed as to claims against counties arising under highway contracts by the provisions of 82.04 to 82.06. Failure of the contractor to file a claim against the county before bringing action for the balance due under the contract may be taken advantage of by a plea in abatement. [Lincoln County v. Oneida County, 80 W 267, 50 NW 344, and State ex rel. Elliott v. Kelly, 154 W 482, 143 NW 153, distinguished.] The power to arbitrate claims against counties resides in the county board, and an arbitration award pursuant to a submission by the county highway committee imposed no liability on the county. Joyce v. Sauk County, 206 W 202, 239 NW 439.

An amendment correcting a mistake in the summons and complaint by substituting the word "corporation" for "company" in a

plaintiff's corporate name did not cause the commencement of the action to date therefrom, within the limitation barring actions on claims against counties not brought within six months after disallowance. Nece-dah Mfg. Corp. v. Juneau County, 206 W 316, 237 NW 277, 240 NW 405.

County cannot waive statutory requirements as to filing of claims against county. Filing of verified claim is condition precedent to existence of cause of action against county. Maynard v. De Vries, 224 W 224, 272 NW 27.

Action on claim is not barred until statutory time after notice is given. 19 Atty. Gen. 240.

The holder of a county order, whether for pension or otherwise, may maintain an action against the county after it has been presented to the county treasurer and payment refused, even though such refusal was for want of funds. 28 Atty. Gen. 360.

**59.77 Claims, how made; procedure.** (1) IN GENERAL. Every person, except jurors, witnesses, interpreters, and except physicians or other persons entitled to receive from the county fees for reporting to the register of deeds births or deaths, which have occurred under their care, having any such claim against any county shall:

(a) Make a statement thereof in writing, setting forth the nature of his claim and the facts upon which it is founded, and if the claim is an account the items thereof separately, the nature of each and the time expended in the performance of any service charged for, when no specific fees are allowed therefor by law, and, if the claim is for mileage, the statement shall specify dates and places so as to show between what points and when and the purpose for which the travel charged for was had.

(b) Such statement shall be verified by the affidavit of the claimant, his agent or attorney, and filed with the county clerk; and no such claim against any county shall be acted upon or considered by any county board unless such statement is so made and filed.

(2) OF COURT OFFICERS, CERTIFIED BY DISTRICT ATTORNEY. No claim for official services, in any criminal action or proceeding before a justice of the peace or other magistrate shall be allowed by any county board until the same has been examined and a written report made thereon by the district attorney of the proper county as required by subsection (4); nor shall the claim of any sheriff, undersheriff, deputy sheriff, constable or other such officer for the services or expenses of an assistant in making an arrest or commitment be allowed unless the magistrate before whom the prisoner is brought certifies that there was a necessity for such assistance because of the dangerous character of the defendant or because two or more persons were arrested at the same time.

(3) OF JUDICIAL OFFICERS. County judges, court commissioners and justices of the peace shall, on or before the first Monday of November in each year, forward to the county clerk of their respective counties a correct statement of all actions or proceedings had before them, during the year next preceding, in which the county shall have become liable for costs, giving the names of the parties in each action or proceeding, the nature and result of the same, the amount of costs in detail in each case, and what items, if any have been paid and the amount thereof. The county clerk shall file such statements in his office; and no such officer who shall neglect to make and return such statements within the time above prescribed shall receive any compensation from the county for any service rendered by him in any criminal case or proceeding during the year next preceding the time when such statement is required to be made and returned. Each such justice of the peace shall also, at the time of making any such statement, annex thereto and file with the said clerk a sworn statement, giving the titles of all criminal actions tried before him during

the same period in which the defendant, or any defendant, shall have been convicted, and shall also state therein that he filed a certificate of conviction in each such case as and within the time required by law; and no bill of any justice of the peace shall be allowed, in whole or in part, unless accompanied by such sworn statement, nor unless all such certificates of conviction have been filed.

(4) OF COURT OFFICERS; CERTIFICATION; AUDIT BY DISTRICT ATTORNEY; WAIVER. Fees of officers, in any action or proceeding before a justice of the peace, court commissioner or county judge, shall be certified to and allowed by the county board in the manner following, and in no other way:

(a) At least ten days before the annual meeting of such board every such officer shall make and file with the county clerk a certified statement of all actions or proceedings had or tried before him in which the state was a party, and wherein the county has become liable for the fees of officers, or magistrates, within the year next preceding the date of such statement, showing the title and nature of the action or examination, date of trial, the names of all officers, who actually attended court and gave in a statement of their attendance and travel; and also such on the part of the defendant as were allowed against the county, and the amount to which they are severally entitled. Such statement shall be substantially in the following form, viz.:

STATE OF WISCONSIN	}	IN JUSTICE COURT.
against		Complaint for ....
.....		Before ...., Justice of the Peace.

    Heard the .... day of ...., 19..

To the County Board of .... County:

I hereby certify that in the foregoing entitled action the following named persons rendered services therein, and attended before me in the capacity stated, and that they are severally entitled to the amounts specified below for said services, attendance and travel, and that said services were actually and necessarily rendered, and said action was prosecuted in good faith:

A. B. (constable or sheriff), actually and necessarily traveled in serving the.. herein, .... miles, and attended court .... days, and is entitled to .... dollars for other just and lawful services in the cause, and in all is entitled to .... dollars.

Dated this .... day of ...., 19..

(b) The county clerk shall deliver such statement to the district attorney, who shall examine the same and make a report in writing thereon to the county board, specifying the items in each for which the county is or is not liable, and the extent of its liability if it is liable for a part only of any such item. Such statement and report shall be laid before the county board by the county clerk, and in so far as the items charged therein are approved by the district attorney such statement shall be prima facie evidence of the claims of the persons named therein; and the board shall examine the same and allow such as are legal, and direct that orders be drawn for the amount allowed to each person named therein. If any person in whose favor any such order is drawn shall not call for the same within two years from the time his claim is allowed his right to any compensation for his services shall be deemed waived and the county board shall cancel such order.

(5) OF JURORS, WITNESSES, INTERPRETERS; PENALTY. Whenever any county is liable for fees of jurors, witnesses on the part of the state or on the part of the defendant, or of interpreters in any action or proceeding before a justice of the peace, court commissioner, county judge or other magistrate, procedure to secure payment of the same shall be as follows:

(a) The officer before whom such juror, witness or interpreter attended, shall furnish to such person a certificate setting forth the name of such person, the time served, the number of miles traveled by him and the amount of compensation to which he is entitled, together with the title of the action in which such person so served, the capacity in which he served and the date of service. Such certificate shall be dated and signed by such magistrate and examined and certified to by the district attorney of the county in which such persons or person so served.

(b) The person receiving such certificate shall in the presence of the magistrate issuing the same indorse thereon a certificate that he is the person mentioned therein by the magistrate, that the time of service, the number of miles traveled and the capacity in which he served are true and correct as therein stated, and that he has not at any time received any compensation therefor.

(c) Upon presentation of such certificate of such magistrate, together with the certificate of such district attorney and of the person holding the same indorsed thereon as hereinbefore specified, the county treasurer shall, except in counties having a population of over three hundred thousand, pay to the holder of such certificate the amount therein

set forth, out of the funds of the county, and such certificate with the indorsement thereon shall be filed in the office of the county treasurer.

(d) In counties having a population of over three hundred thousand the aforesaid certificate shall be presented to the county clerk instead of to the county treasurer, and said clerk shall, subject to the provisions of subsection (3) of section 59.81 issue to the person holding said certificate, an order upon the county treasurer for the amount therein set forth.

(e) Said certificate shall then be filed with the county clerk.

(f) Any magistrate, juror, witness or interpreter who shall make or sign any such certificate which is untrue in respect to anything material, which he knows to be false, or which he has not good reason to believe is true shall be punished as provided in section 348.33.

(6) FEES FOR STATEMENTS AND CERTIFICATES. Every county judge, court commissioner and justice of the peace shall receive from the county treasurer twelve cents per folio for making statements and returns required by subsection (3), and twenty-five cents for making each certificate required by subsection (4), and all such statements and certificates shall be transmitted to the county clerk by registered mail, and for so transmitting such statements and certificates such county judge, court commissioner or justice of the peace shall receive the sum of twelve cents.

(7) OF JUDGES, JUSTICES AND COMMISSIONERS. The county board at any session thereof, either an adjourned or a special session, may as provided in paragraph (b) of subsection (4) of this section examine and allow any statement, account or claim of any county judge, court commissioner and justice of the peace which is on file with the county clerk before the opening of such session of the county board. [1933 c. 460 s. 2]

**Note:** District attorney should not withhold his certificate required by (5) (a) for witness and juror fees in cases of assault and battery before justice of peace, where such prosecution was conducted by private attorneys. 23 Atty. Gen. 245.  
This section requires that district attorney examine and approve accounts of coroner. 26 Atty. Gen. 431.

**59.78 Special counties; classification of claims.** In counties containing a population of more than three hundred thousand, the county auditor shall classify all such claims according to the budgetary funds provided for in section 59.84, against which they are chargeable, before such claims are laid before such board. He shall then submit with the claims chargeable against each fund, a statement of the balance in such fund against which no county orders have been issued. If such balance in any fund is less than the total of the claims chargeable against such fund, he shall call the attention of the board to that fact, and such board shall not issue county orders in excess of such balance without previously appropriating to such fund an additional sum at least sufficient to cover such orders. If any claims or claim shall be for a purpose for which no specific appropriation has been made in the budget, such claim or claims shall be considered as chargeable against the contingent fund. When the county auditor countersigns any order on the county treasurer for the payment of a claim allowed he shall charge such order against the fund appropriated for that purpose. [1935 c. 127, 477]

**59.79 Action on claims by board.** The county clerk shall, on the first day of any meeting of the county board, lay before said board all such claims, statements of which have been filed in his office since the last meeting of such board, with a schedule of the same showing the amount thereof and the order in which the same were filed; and the county board shall act upon all such claims before the adjournment of the next annual session of such board after such statements were filed with the clerk, and shall examine and allow or disallow the same in whole or in part unless withdrawn by leave of the board; and in case of the disallowance of a part of an account or other claim composed of separate items the board shall designate particularly each item disallowed; and when the amount allowed for any claim shall have been accepted and received by the claimant, and no action shall be brought to recover the remainder thereof, no further sum shall thereafter be allowed or paid thereon by the county board. The county board, or a committee thereof, for the purpose of ascertaining the facts in relation to any claim presented for their exemption and allowance, may take such testimony as they may deem necessary.

**59.80 Salaries; when payable.** (1) Salaries of county officers, deputies, clerks, assistants and employes shall be paid at the end of each month, but the county board of any county may authorize the payment of such salaries semimonthly.

(2) No county judge shall receive or be allowed to draw any salary, unless he shall first take and subscribe an oath before an officer entitled to administer oaths, that no cause or matter in his court remains undecided that has been submitted for decision for the period of ninety days, exclusive of the time that he shall have been actually disabled by sickness, which affidavit shall be presented to and filed with the county clerk of such county. [1935 c. 65]

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344

**59.81 County orders and scrip.** (1) **ISSUANCE; LIMITATIONS.** When any claim is allowed by any county board, either in whole or in part, said board shall direct an order to be drawn upon the county treasurer in favor of the claimant for the amount so allowed, but no order except for the per diem and mileage of the members of said board shall be drawn in favor of any claimant within five days after the allowance of his claim. Any person whose claim has been allowed in part may receive the order drawn for the part so allowed without prejudice to his right to appeal as to the part disallowed. But no county board shall issue a greater amount of orders, scrip and certificates of indebtedness than the amount of the county taxes levied in such county for such year. The county board may authorize the issuance of orders, scrip or certificates of indebtedness at a rate of interest specified thereon, but not to exceed six per cent per annum; except that such orders, scrip and certificates of indebtedness shall bear no interest if paid and payable within one month from date of issuance, and shall bear no interest after date of publication of redemption notice as hereafter provided. The county treasurer may give notice that the county will redeem certain outstanding orders, scrip or certificates by publication in any newspaper published in the county. Such publication shall specify the particular orders, scrip or certificates, or series thereof then redeemable.

(2) **DISBURSEMENTS ON.** In all counties having a population of less than three hundred thousand, all disbursements from the county treasury shall be made by the county treasurer upon the written order of the county clerk after proper vouchers have been filed in the office of the county clerk; and in all cases where the statutes provide for payment by the treasurer without an order of the county clerk, it shall hereafter be the duty of the county 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 county treasury.

(3) **SPECIAL COUNTIES; COUNTERSIGNED BY AUDITOR.** In all counties having a population of three hundred thousand or more all orders and warrants drawn upon or against county funds shall be countersigned by the county auditor; and the treasurer of such county shall make no payment of county funds for any purpose unless the order, warrant, certificate, direction or authority given him for such payment is countersigned by such county auditor. This provision requiring the countersigning by said auditor shall apply to all laws and statutes, special and general, relative to the payment of county funds by the county treasurer.

(4) **EXAMINATION OF.** The county board at their annual session, or oftener if they deem necessary, shall carefully examine the county orders returned paid by the county treasurer by comparing each order with the record of orders in the county clerk's office, and cause to be entered in said record opposite to the entry of each order issued the date when the same was canceled. They shall also make a complete list of the orders so canceled, specifying the number, date, amount, and person to whom the same is made payable, except in counties having a population of more than five hundred thousand, the name of the person to whom the same is made payable may be omitted, which statement shall be entered at length on the journal of the board; and immediately after the above requirements are complied with the orders so canceled shall be destroyed in the presence of the board.

(5) **UNCALLED FOR ORDERS; CANCELLATION; REISSUE.** The county clerk shall prepare and present to the county board, at each annual session thereof, a descriptive list giving the amount, date and payee of all county orders which have remained in his office for two years uncalled for by the payee. The board shall cause such orders to be compared with such list, and when found or made correct such list shall be entered at length on the journal of the board and filed in the office of such clerk; and all such orders shall be canceled and destroyed. The person in whose favor such order was drawn, excepting those issued under the provisions of subsection (4) of section 59.77, may, upon application to the chairman of the board and county clerk, made within six years from the date of such order and not afterwards, have a new order issued to him for the amount of the original, without interest [1933 c. 65, 358]

**59.82** The auditing committee of the county board in counties which have such a committee and in other counties the county auditor, or the county clerk if there is no county auditor, shall personally, before the meeting of the county board in each year, inspect the docket of every justice of the peace, police justice, municipal judge or other magistrate in the county who is authorized to receive fines under section 360.34, when such magistrate has had any criminal case during the previous year and ascertain therefrom the amount of such fines received by any such magistrate during the preceding year ending October 31 and make a separate written report for each such magistrate, which report shall be verified by his affidavit, embrace the title of each case in which any such fine was

received, the date of conviction and the total amount of fines received during the period covered by such report. To facilitate the making of such examinations and reports the several magistrates shall deliver their dockets to the auditing committee, county auditor or county clerk, as the case may be, at such time before or during the annual meeting of the county board and at such place as such committee, auditor or clerk may designate, to be forthwith examined and to be returned to such magistrate on the same day of delivery. Failure or refusal of a justice, municipal judge or other magistrate to deliver his docket at the time and place designated by such committee, auditor or clerk shall subject the justice, municipal judge or magistrate to the penalties specified in section 360.34 (2). The county board shall, at their annual meeting, compare the reports upon such examinations with those made by magistrates pursuant to said section 360.34. [1943 c. 356]

**Note:** Justice of the peace is not entitled to county auditing committee or official. 22 fees or mileage for delivering docket to Atty. Gen. 249.

**59.83 Publication of financial report.** The several county boards shall cause to be made out and published immediately after their annual meeting, in at least one newspaper published in their county, if such there be, a report of the receipts and expenditures of the year next preceding and the accounts allowed; and if no newspaper be published in the county, then a copy of such report shall be posted on the courthouse door and at two other public places in the county. The county board may within its discretion waive the publication of names of needy soldiers, sailors, marines and United States war veterans and the amount of relief provided under section 45.14 and shall publish in lieu thereof the total disbursements thereunder. [1939 c. 207]

**59.84 Special counties; budgetary procedure; transfer of funds.** (1) The fiscal year of all county departments and institutions in every county having a population of more than three hundred thousand shall close on December thirty-first of the year in which a county auditor is first appointed, and of each year thereafter.

(2) In every such county each county officer and the superintendent of every county institution, the clerk of every court, the secretary of every board or commission which expends county money and the executive head of every other office or department which expends county money, shall annually, on or before August 15, make in writing and file with the county auditor in such form as the county auditor may require, a detailed report and estimate of all the necessary expenditures of every kind and nature to be made by their several departments, institutions, offices or boards out of county funds, during the ensuing fiscal year, except as the county board shall have authorized the grouping of particular expenditures as hereinafter provided.

(3) The county auditor shall compile such reports and estimates, together with an estimate for a reasonable contingent fund for unforeseen emergencies, a report of the funds required of such interest and sinking funds for county bonds and land contracts as are to fall due during the ensuing year, and an estimate of the receipts to be derived from taxes, from the state, from bonds, and from all other sources to meet such expenditures. The county auditor shall submit all of the said reports and estimates, thus compiled, to the county board on or before September 15 and such board shall immediately refer them to the proper committee thereof. Such committee shall then proceed to hold a series of public hearings at which it shall require every officer who has submitted a report and estimate as above provided, or a representative of the department, institution, office or body for which said report and estimate was made, to appear before such committee and give information with regard to appropriations required for his department, institution, office or body. The county auditor or his deputy shall attend each of such hearings to render assistance and advice. Such committee shall prepare a tentative budget which shall show for the ensuing year all anticipated revenues from sources other than property taxes, the proposed property tax levy and all proposed expenditures for each department, institution, office, commission, body or activity. In a comparable form the tentative budget shall show all actual revenues, including the property tax levy, and all actual expenditures for the previous year; the actual revenues, including the property tax levy, and actual expenditures for the first 6 months of the current year; the estimated revenues and expenditures for the last 6 months of the current year; and the revenue and expenditure appropriations as shown in the budget for the current year. Such tentative budget also shall show the actual indebtedness of the county at the end of the preceding year and an estimate of the indebtedness at the ends of the current and ensuing years. On or before October 15 such committee shall submit the tentative budget to the county board and shall publish a summary thereof in the 2 daily newspapers having the largest circulation in the county and make available copies of the tentative budget for public inspection. Such publication shall state the time and place of a public hearing to be held on such budget.

(4) The county board shall, not less than 14 days after publication of the budget summary and prior to the adoption of a property tax levy, but not later than November 5, hold a public hearing on such tentative budget at which citizens shall be invited to

express their opinions thereon. On or before the annual meeting the board shall adopt the budget with such changes, increase or decrease, as seem to it proper. When so adopted, the sums provided for the said various departments, institutions, offices and bodies and for the various functions within these departments, institutions, offices and boards shall constitute legal appropriations for the ensuing fiscal year and the county auditor shall keep account of each of the said appropriations, together with any other moneys which may become legally available for the use of each respective department, institution, office or body, as a separate fund, provided that, where more than one department, institution or office is under the same management, the county board may, by resolution, authorize the grouping of particular expenditures whenever it shall determine that economy will be promoted thereby. Such appropriations shall become available on the first day of said fiscal year but not before.

(5) At the request of the head of any department or office or at the request of any board, the county board may, by resolution adopted at any legal meeting, transfer money from one fund to another within the appropriation of the department, institution, office or board making the request, and by a resolution adopted by an affirmative vote of two-thirds of the members-elect of the county board at any legal meeting such board may transfer money from the contingent fund to any other budgetary fund or appropriate money from the contingent fund for any legal county purpose. Notices of any change creating an increase in the total budget after the adoption thereof shall be published in such newspapers within 8 days after such change. [1935 c. 137; 1939 c. 175; 1943 c. 103]

**59.85 Aid to immigration societies.** (1) The county board of any county may appropriate not to exceed one thousand dollars in any one year for the purpose of assisting any county association of the citizens of such county, or any association composed of the citizens of two or more counties of which the citizens of such county are members, organized solely for the purpose of inducing immigration to the state.

(2) The disbursement of any appropriation made under this section shall be under the supervision of the chairman of said board, the county clerk and county treasurer, and in all cases after such an appropriation has been made, there shall be filed with the said county clerk a sworn statement by the treasurer of the immigration society for whose benefit the appropriation was made, showing that the amount of said appropriation has been used by said association for the purpose of inducing immigration to the county making said appropriation and to adjoining counties, and itemized bills for the expenditure of a sum equal to said appropriation duly verified shall accompany such statement of said treasurer. Upon the approval of such statement and such itemized bills, by the county officers above named, said moneys so appropriated shall be paid by the proper officers of the county making the same into the treasury of said immigration association.

**59.86 Aid to fairs.** The county board of any county having a population of thirty thousand or more by the last federal census may vote an amount not exceeding twenty thousand dollars and in all other counties the county board may vote an amount not exceeding five thousand dollars in the aggregate for all societies in the county in any one year to aid in the purchase of, or to make improvements upon the fairgrounds for any organized agricultural society, or to aid any organized agricultural society or any incorporated poultry association in any of its public exhibitions held or to be held; and any amount so voted shall be paid upon demand by the county treasurer to the treasurer of such organized agricultural society, who shall keep an accurate record of the expenditure thereof by such society, and file a verified copy of such record with the county clerk within one year after the receipt of such amount from the county treasurer.

**Note:** Member of county board has no right to vote on resolution designating county fair association in which he holds stock as the fair to receive county aid. 20 Atty. Gen. 15.

Under this section, county board may appropriate money to aid agricultural societies including payment of debt already incurred for past exhibitions. 20 Atty. Gen. 34, 250; 22 Atty. Gen. 166.

**59.865 Referendum on county fair.** Whenever a majority of the electors upon a referendum in any county have approved thereof, the county board of any such county may provide for and conduct county fairs and exhibitions and for such purpose may:

(a) Acquire by deed or lease real estate and make improvements thereon and may acquire such property owned or controlled by any society, association or board.

(b) Appropriate such sum or sums as it may deem necessary for the adequate equipment and the proper management and control of such fair or exhibition.

(c) Adopt rules and regulations for the proper conduct, management and control of such property and of such fair or exhibition and for the appointment and salaries of persons necessary therefor.

(d) Provide for all other acts and duties which may be deemed necessary for the acquisition of property to be used for fairs and exhibitions and the conduct thereof.

(e) The powers granted to counties under paragraphs (b), (c) and (d) of this section



may be exercised without another referendum vote, by the county board of any county which shall have heretofore acquired or may hereafter acquire real estate for the purpose of conducting a county fair thereon, pursuant to a referendum vote of the electors of such county.

**59.87 County agricultural representatives.** (1) For the purpose of aiding in the agricultural development of the several counties in the state, any county is hereby authorized, through its county board, to establish and maintain an agricultural representative in accordance with the provisions of this section.

(2) Such agricultural representative under the direction and supervision of the special committee on agriculture shall:

(a) Advise and consult with individuals in reference to farming methods.

(b) Aid in the development and improvement of agriculture and country life conditions.

(c) Offer courses of instruction to young people and adults.

(d) Aid in the formation of co-operative enterprises.

(e) Promote better business methods among farmers.

(f) Give such assistance as possible in the development of agricultural teaching in the schools of the county.

(g) Do other work designed to promote the agricultural or rural development of the county.

(h) Keep in touch with all agencies in the state and elsewhere that will enable him to utilize the most improved knowledge in the furtherance of his work.

(i) Make an annual report of his activities to the county board.

(3) For the partial maintenance of agricultural development of such county under the supervision of such agricultural representative, and for such other extension work as is provided for in an act of congress approved May 8, 1914, entitled "an act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of congress approved July second, eighteen hundred and sixty-two, and of acts supplementary thereto, and the United States department of agriculture," authority is hereby given the county board to raise, by tax levy or otherwise, for periods of not less than two years each, such moneys as may be deemed sufficient to cover the share of the county in such work. In no case shall the amount appropriated by the county for this work be less than one thousand dollars annually. Such moneys shall be disbursed by the county treasurer only upon orders of the county clerk which shall have been approved by the special committee on agriculture.

(4) To supplement the funds provided by the county for the agricultural development, state aid, in the sum of seven hundred dollars annually, shall be given to each county in which the county board has made the required appropriation, and in which a county agricultural representative has been established. Such state aid shall be expended under the direction of the board of regents of the University of Wisconsin.

(5) For the period ending June 30, 1920, this work shall be organized in not to exceed forty-five counties of the state, for the fiscal year beginning July 1, 1920, in not to exceed fifty counties of the state, for the fiscal year beginning July 1, 1921, in not to exceed fifty-eight counties of the state, for the fiscal year beginning July 1, 1922, in not to exceed sixty-five counties of the state and for the fiscal year beginning July 1, 1923, and annually thereafter, in not to exceed seventy-one counties of the state.

(6) Immediately after the county board has voted to establish the position of county agricultural representative and has provided the necessary money for the share of the county therefor, the county clerk shall send the application of such county to the dean of the college of agriculture for the appointment and establishment of such county agricultural representative. All applications from the several counties shall be so made prior to December tenth of each year, or as soon thereafter as possible. In case the applications do not exceed the maximum limit of counties that can be provided for in this section, the board of regents shall select as soon as possible a properly qualified person to serve in each county in the capacity of county agricultural representative. If, however, more applications are received than can be acted on in accordance with the provisions of this act, the dean of the college of agriculture shall recommend to the board of regents a list of counties not in excess of the maximum number authorized by this section, taking into consideration in making such selection the best interests of the agricultural welfare of the state.

(7) Authority is hereby given the county training school board of any county in which an agricultural representative is established to enter into co-operation with the regents of the university with reference to the use of the county agricultural representative in connection with the agricultural instruction given in said county training school, subject to such rules and conditions as may be mutually agreed upon between said county training school board and the regents of the university.

(8) In counties where the work of the county agricultural representative is not connected with the county training school, the county superintendent of schools in such county shall co-operate with the county agricultural representative in such way as best designed to further the interests of this work in that county.

(9) From and after the annual meeting of the county boards in November, 1919, the special committee on agriculture shall consist of the chairman of the county board of supervisors, the county superintendent or superintendents of schools, and three practical farmers representing the agricultural interests of the county, appointed by the county board of supervisors, one of whom shall be a member of the county board of supervisors. In those counties that have county agricultural schools, the two boards shall work in conjunction as one board, provided that in counties having a population of two hundred and fifty thousand or more, the county agricultural representatives shall be appointed pursuant to section 46.21, and the power and duties of his office shall be exercised in connection with and as a department of the county school of agriculture. Such members of the special committee on agriculture, except the county superintendent or superintendents of schools member thereof, shall receive as compensation and expenses the amounts and allowances provided by section 59.06. [1933 c. 140 s. 3; 1937 c. 31; 1939 c. 513 s. 14]

**Note:** County is not impliedly authorized to employ cow tester at county's expense. County, having no authority to employ cow tester, could not ratify acts of county agent and special committee on agriculture in employing such tester. *Spaulding v. Wood County*, 218 W 224, 260 NW 473.

County agricultural agent's salary should be fixed by county board. County board may repeal appropriation for maintenance of county agricultural agent and abolish office. County board may not delegate appointment of farmer members of county agriculture committee. Members of county agricultural committee are not entitled to compensation. 20 Atty. Gen. 276; 21 Atty. Gen. 146.

While county board may abolish position of county agricultural representative, it has no right to have such action take effect before end of period for which appropriation

was made by preceding board and agreement made with university. Neither may county board rescind appropriation for extension work for period covered by agreement between university and United States department of agriculture. 22 Atty. Gen. 7.

County board may at adjourned annual meeting repeal appropriation for maintenance of county agricultural agent and abolish office provided it is done before agreement has been made between university and United States department of agriculture covering coming two years. Question submitted directly to electors for referendum vote on question of abolishing office of county agent is only advisory and not binding upon county board. In order to make it binding upon board, it should pass resolution abolishing office and make it contingent upon subsequent favorable referendum vote by electors. 22 Atty. Gen. 287.

#### 59.88 District attorney, appropriation for criminal trials and investigations. (1)

The county board of each county having less than two hundred fifty thousand inhabitants shall include in its annual tax levy not less than two hundred dollars and not to exceed one thousand dollars to create a fund to be used by the district attorney to defray such expenses in conducting investigations by the grand jury and in the preparation for and in the trial of criminal cases as are necessary and for which no other provision has been made.

(2) No expense shall be incurred against such fund by the district attorney unless he first obtains a written order of the court in which the grand jury is impaneled or the trial is to be had.

(3) Upon the presentation to such judge by the district attorney of a satisfactory statement of any expenses incurred under such order, payment from such fund shall be made as provided in section 357.26.

(4) Any part of such fund remaining in the treasury at the end of the county's fiscal year shall be transferred to the general fund of the county.

#### 59.89 Disposition of unclaimed funds by court clerks. (1)

On or before the tenth day of January of every odd-numbered year the clerk of any circuit court, district court, municipal court, or other court of record in this state shall file with the county treasurer of his county a written report under oath of all moneys, securities, or funds in his hands or under his possession or control where, for a period of four years or more, no order has been made, or no step or proceeding has been had or taken in the case, action, or proceeding in, by or through which said moneys, securities, or funds may have been deposited or left with said clerk or his predecessors in office, and where no valid claim has been made upon or for any such moneys, securities, or funds for a period of four years or more, and where the owner or ownership of said moneys, securities, or funds is unknown, or undetermined, and said clerk or his successor in office shall hold said moneys, securities or funds, together with all interest or profits had thereon, until two years after the making of said report unless sooner demanded by and turned over to the legal owner or owners thereof.

(2) Two years after the filing of said report the clerk of any circuit, district, municipal, or other court of record holding or having in his possession any such moneys, securities, or funds, shall turn the same over to the county treasurer, unless sooner demanded by and turned over to the legal owner or owners thereof pursuant to order of the court in which such case, action or proceeding shall have been pending, and the county treasurer and his successors in office shall hold the same for a period of six years unless sooner de-

manded by and turned over to the legal owner or owners thereof, except as provided in subsection (4) hereof.

(3) At the end of said six years the county treasurer shall publish, once each week for three successive weeks, in a newspaper published in the county, the fact that he has such unclaimed moneys, securities, or funds in his possession for disposition. If no legal claim is made for such moneys, securities, or funds within ten days after the last publication above provided for, then the county treasurer shall turn such moneys, securities, or funds, together with all interest and profits had thereon, into the general fund of the county treasury, and no action shall thereafter be maintained by any person, firm, or corporation against the county or the county treasurer for the same or any part thereof.

(4) In case any such money constitutes a portion of the assets of an insolvent person, copartnership or corporation it shall be held by the county treasurer for one year after the passage and publication of this act unless sooner turned over to the legal owner or owners thereof. At the end of said year the judge of the circuit court of said county on the petition of the county treasurer shall cause a notice to be published once a week for six successive weeks in some newspaper in said county, that such county treasurer has such unclaimed money, and specifying a time not more than four months after the date of the first publication within which creditors of such insolvent shall present their claims for examination and allowance. Such notice shall state the amount of money to which said notice applies, when it was deposited with the county treasurer, the source from which derived, and all other facts which will help to identify the fund. All claims shall be verified and filed with the county treasurer on or before the date specified, or be barred. On the day specified in said notice the county treasurer shall apply to the said judge for an order allowing or rejecting such claims and authorizing the payment of all claims allowed. If any claim presented is rejected for any reason ten days additional time shall be given the claimant in which to present satisfactory proofs. The other shall direct the money paid to those creditors who filed and had their claims allowed, the money to be divided pro rata. If no claims are filed or allowed such money shall be held as provided in subsections (2) and (3) of this section. The statute of limitation shall not be pleaded to any claim filed within the time limited in said notice. [1931 c. 159]

**Note:** Disposition of unclaimed funds by clerk of court is governed by this section rather than 59.90. 25 Atty. Gen. 510.

**59.90 Unclaimed funds in public treasury.** (1) On or before the tenth day of January of every odd-numbered year, each county, town, city and village officer, and each clerk of every court of record, shall file with the county treasurer of his county a written report under oath giving the names and the last known addresses of all persons for whom any such officer or clerk holds money or security, and which has not been claimed for at least one year, and showing the amount of such money or the nature of such security in detail. A duplicate report shall also be mailed to the secretary of state. Upon receiving said reports the county treasurer shall cause a notice to be published on or before February first of the same year in some newspaper having a general circulation in his county, once a week for three successive weeks, which notice shall contain the names and last known addresses of the owners of such unclaimed money or security, and shall state that unless the owners call for and prove their ownership of such money or security within six months from the time of the completed publication, the county treasurer will take possession or control of such money or security.

(2) If within ten years from the time any such money or security is delivered to the county treasurer the owner thereof shall prove to the satisfaction of the county treasurer his right to the possession of the same, it shall be paid or delivered to him. If no such proof is made, then at the end of such ten-year period such money or property shall become the property of the county. Nothing herein contained shall be construed to deprive the owner of any such property of his right to proceed by court action for the recovery of such moneys from the county treasurer.

(3) Any person violating the provisions of this section shall, upon conviction, be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months. [1933 c. 38]

**59.91 Viaducts and bridges; bonds.** (1) SPECIAL COUNTIES MAY CONSTRUCT. The county board of supervisors of any county within this state which now has or may hereafter have according to any state or national census taken a population of one hundred fifty thousand or more, is hereby authorized and empowered to erect, construct and maintain any viaduct or bridge over and across any gully, river or valley, or railroad track or tracks agreeable to the conditions and provisions of this act and subsisting laws applicable thereto, when in the opinion of such county board the erection of such viaduct or bridge shall be for the best interests of the county and inhabitants thereof, which opinion shall

be rendered by resolution duly adopted by the county board of supervisors of such county, at any legal meeting thereof. Such viaduct or bridge shall be constructed of such length, width and height as the said county board of supervisors may by resolution determine.

(2) **LOCATION; BONDS WHEN ISSUED.** Whenever any such county board shall have determined upon the erection of any viaduct or bridge as provided for in this section, it may at any regular meeting of said board, determine by resolution in the manner provided by law, and the rules and regulations of such county board, the tract or tracts of land over and upon which such viaduct shall be placed or constructed, and the determination of such county board and the selection by it of the tract over and upon which such viaduct shall be so placed, shall be final; but no bonds shall be issued under the provisions of this section until said determination has been made and had by such county board of supervisors.

(3) **DUTY OF SURVEYOR; NEGOTIATIONS BY BOARD; DAMAGES.** Whenever the county board of supervisors of any such county shall determine to erect and construct a viaduct or bridge under and according to the provisions of this section, it is hereby made the duty of the county surveyor of such county, immediately upon such determination and the selection of such county board, of the location of such viaduct, or as soon thereafter as practicable, to cause a survey of the property so selected to be made, and to file said survey in the office of the county clerk of such county; and he shall also file therewith a description of the several parcels of land contained therein; and also a map or plat thereof, showing the location of the same, unless such survey, description and plat has already been prepared, and such county board of supervisors or such committee as such board may appoint, shall upon the filing of such plat and description of such land and the survey thereof, ascertain if the same or any part thereof can be acquired from the owners thereof, by dedication without compensation, and also enter into negotiations with the several owners of the land necessary to be acquired, for the purpose of the fee simple of, or right of way over, all the lands described in said survey, which cannot be acquired by gift for the purpose of constructing a viaduct thereon, and such lands as shall be included in said survey, which cannot be acquired by gift or purchase at an agreed price, or the right of way over such lands, shall thereupon be condemned by the said county board of supervisors, in the manner provided by law for laying out a county road for the purpose of constructing such viaduct thereon; provided, that the damages assessed therein shall be paid by said county. If by constructing said viaduct in the manner aforesaid, any damages be sustained by any person or persons, to his or their property, then and in such cases the damages so sustained shall be paid out of the treasury of the county.

(4) **DRAWBRIDGE; HEIGHT OVER TRACK.** When any such viaduct shall be built over a navigable river, a suitable drawbridge shall be provided therein, and whenever any such viaduct shall cross over and above any railroad track, the same shall have its lowest member not less than twenty-three feet above the rail of said railway.

(5) **PROFILE; PLANS; CONTRACT.** Whenever the erection of a viaduct, under the provisions of this section, shall have been determined upon, the county board of supervisors of the county about to construct the same shall cause to be made a complete profile plan and detailed specifications for the work, and as soon thereafter as practicable, such county board of supervisors shall let the contract for the work according to law to the lowest bidder, and enter upon the construction of such viaduct, bridge and approaches in conformity thereto.

(6) **FRANCHISES AND RIGHTS NOT TO BE GRANTED.** No franchises or rights shall ever be granted for purposes of horse, steam, electric or other railway communication, and no exclusive privileges or immunities shall ever be granted for the lighting of streets, highways and the like over any viaduct constructed under the provisions of this section, by the county constructing the same, to any person, persons or corporation.

(7) **BONDS, WHEN ISSUED; SUBMISSION OF TO VOTE OF PEOPLE; WHEN.** Whenever the construction of a viaduct shall have been determined upon, agreeably to the conditions of this section, the county board of supervisors of the county about to construct such viaduct, is hereby authorized and empowered to issue bonds of such county for the purpose of raising money for the building of such viaducts, and for the procurement of title thereto, or a right of way over any and all lands necessary to or convenient for the construction and maintenance of such viaduct, and necessary or convenient approaches thereto, and the payment of all damages which may be assessed or allowed to the owners of property that shall be purchased or condemned for the uses and purposes in this section, provided, such bonds to bear interest at a rate not exceeding five per cent per annum, interest payable semiannually, and the principal payable at such time or times, within twenty years from the date of such bonds, as the county board of supervisors of such county may determine. Provided, however, that no bonds authorized by this section, shall be issued within sixty days after the vote of any county board authorizing such issue, and if, within such period of sixty days there shall be filed with the county clerk of such county a petition signed by

not less than ten per cent in number of the voters who voted in said county at the last preceding general election asking for a submission of the question of issuing such bonds to a vote of the people, such bonds shall not be issued until authorized by a majority of the voters voting upon such question, in which case the question of such issue shall be submitted to the people in the manner provided by section 943, statutes of 1919, and all provisions of said section 943, statutes of 1919, relating to the method of submission of the question of issuing bonds to a vote of the people, shall apply to the issue of bonds under the provisions of this section.

(8) **BONDS, TENOR AND EFFECT OF.** All county bonds issued by any county under the provisions of this section shall be signed by the chairman and countersigned by the clerk of the county board of supervisors of the county issuing the same, and shall be under the corporate seal of said county, and shall be in the sum of one thousand dollars, five hundred dollars and one hundred dollars each, the number of bonds of such denomination to be fixed by the county board of supervisors, with interest coupons thereunto attached, payable semiannually; all of such bonds issued in any one year, to be payable with the same rate of interest, and the interest payable semiannually at one time and place; such time and place to be determined by the county board of supervisors, and to appear upon the face of such bonds and coupons, and said bonds, when signed, countersigned and sealed, as aforesaid, shall be in the hands of a bona fide holder of the same for value, full and complete evidence, both at law and in equity, to establish the indebtedness of the county issuing the same, according to the tenor and effect of said bond.

(9) **DUTY OF COUNTY TREASURER; BOND AND SURETIES.** When the issue of any county bonds, under the provision of this section, shall have been determined upon, the county board of supervisors of the county about to issue the same, may at any legal meeting, direct by resolution, their chairman to sign, and the clerk of said board to countersign, all the bonds authorized to be issued under this section, or such part thereof as the said board may from time to time determine shall be issued; and it shall be the duty of the treasurer of any such county, under the supervision of the county board of supervisors of such county, to negotiate the bonds so issued; provided, that none of said bonds shall be sold at a rate less than par; and the said county treasurer of such county, shall keep and maintain all moneys received from the sale of the bonds issued, in a fund separate from all other moneys belonging to said county, and no part of said bond or of the moneys arising from the sale thereof, shall be expended for or applied to any purposes whatever, except to defray the expenses of obtaining the right of way and for the building of any viaduct, constructed under and according to the provisions of this section, and for materials to be used therein and labor furnished thereon; and the said treasurer and his sureties shall be liable to such county for any misapplication of the same or any part thereof; and the said treasurer, before he shall receive such bonds or any money received from the sale thereof for any purpose whatever, shall within thirty days after it has been determined to issue such bonds, execute to the county board of supervisors of such county, a bond with three or more sufficient sureties or a surety company in the penal sum of double the amount of bonds or moneys so to be received by him, conditioned that he will faithfully perform all orders and resolutions of said county board of supervisors which may be passed by virtue of the powers conferred upon such board by this section; that he will keep the bonds received by him safely, that he will keep the moneys received by him and arising from the sale of said bonds safely and separately from other moneys belonging to such county, that he will not pay out the same or any part thereof, except in the manner herein provided, which said bonds shall be approved by the county board of supervisors of said county, and filed in the office of the clerk of said county board of supervisors, and the treasurer of said county shall in a book in a form convenient for that purpose, keep all the coupons belonging to such bonds when the same shall be returned, paid and canceled; such book at all times to be subject to the inspection of any member of said board, citizen or citizens of such county.

(10) **INTEREST AND PRINCIPAL; HOW PAID.** It shall be the duty of any county board of supervisors which shall have determined upon the building of any viaduct under the provisions of this section, at or before issuing any bonds in pursuance hereof, to provide for the payment of the interest and the ultimate payment of the principal, of any and all bonds which shall be issued under and by virtue of this section; and for that purpose such county board of supervisors is hereby authorized and required at or before the issue of any such bonds shall have been determined upon, to provide for the assessment, levy and collection of a direct annual tax upon all the taxable property of such county in which such viaduct shall be located, sufficient to pay the interest on such bonds so issued, and also to provide for the levy and assessment of a direct tax, sufficient to pay and discharge the principal of said bonds, as the same shall mature, and to collect the same in the manner as other taxes are levied and collected by law.

(11) **ORDERS; FORM OF.** All county orders drawn on the treasurer of any such county, which shall have undertaken the erection of any such viaduct as herein provided, which are to be paid out of the moneys received on the sale of such bonds, or any part thereof, shall contain the words following, to wit: "On Viaduct Contract;" and the treasurer shall pay no county order or orders drawn on him against such county, out of the money received by him on the sale of such bonds or any part thereof, unless such order shall contain the words "On Viaduct Contract," and the chairman of such county board of supervisors is hereby prohibited from signing and the clerk of said board from countersigning, any county order or orders of such county which shall contain the words "On Viaduct Contract," unless the consideration for such order be for work done or for material furnished, or both, in the erection of such viaduct, or in payment for lands purchased or damages lawfully assessed to owner or owners of land which shall have been duly condemned for use for, or in the construction, maintenance or use of any such viaduct.

(12) **BONDS TO BE NUMBERED AND REGISTERED.** The clerk of said county board of supervisors shall number such bonds and cause the same to be registered in the office of the treasurer of such county wherein such viaduct shall be located, in a book to be provided for that purpose.

(13) **POWERS OF COUNTY BOARD.** All legislative and administrative powers necessary to carry the powers conferred by this act into full force and effect, are hereby conferred upon the county board of supervisors of any county within this state, which shall avail itself of the provisions of this act, agreeably to the conditions thereof.

**Note:** "Authenticated copies," as used in (10a), refers to copies of chattel mortgages authenticated by register of deeds of county where original mortgage in duplicate is filed, in case of single mortgage of the personal property situated in different counties. 19 Atty. Gen. 20.

**59.92 Bonds for reclaiming lands.** (1) For the purpose of promoting the public welfare by the proper development of natural resources, the county board of any county may issue special improvement bonds in the manner prescribed in this section subject to the restriction on county indebtedness imposed by section 3, article XI of the constitution, and may loan the proceeds on the security of agricultural land to owners of land within the county to assist them in reclaiming land within the county for agricultural use by draining said land where necessary and by removing from it such stumps, brush, fallen or standing timber or stones as prevent an efficient use of the land for agricultural purposes and plowing the land.

(2) Any county board which desires to avail itself of the authority granted by this section may elect two persons to serve for a term of four years as members of a board to be known as the county reclamation board and may request the governor to appoint a third person to serve with the two elected members for a term of four years and the governor shall make such appointment within thirty days of the delivery of the request. The three persons so chosen shall constitute the reclamation board of the county and shall hold office until their respective successors are qualified. Upon or before the expiration of the terms of the members of the reclamation board first chosen it shall be the duty of the county board and the governor to choose successors to the said members for terms of four years and thereafter the county board and the governor shall choose members of the reclamation board every four years so long as a reclamation board is necessary to carry out the provisions of this section. One of the members of the reclamation board shall be a competent surveyor. The compensation of each member of the reclamation board shall be fixed by the county board at a sum not exceeding five dollars per day for actual service rendered in addition to actual and necessary expenses. Claims for such compensation and expenses shall be submitted by voucher and when audited in the same manner as other claims against the county are audited, shall be paid from the reclamation fund hereinafter provided for, or in case no moneys in the reclamation fund are available for this purpose, from any moneys in the county treasury not otherwise appropriated, but in the latter case the amounts so taken from the county treasury shall be returned to the said treasury from the reclamation fund as soon as any moneys in the said fund become available for the purpose.

(3) Before entering upon his duties as a member of the reclamation board each person appointed or elected a member of the board shall take and subscribe the usual oath of office and shall file the same with the county clerk.

(4) No member of the reclamation board shall participate in any action taken by the board with respect to the reclamation of any land, the performance of any work of reclamation or the drawing or fulfillment of any contract in which he is pecuniarily interested directly or indirectly. If more than one member of the reclamation board shall, by reason of the provisions of this subsection, be unable to participate in the action of the board on any matter before the board or likely to come before it, the board may request the county board, if the county board is in session, or the chairman of the county board and the county clerk, if the county board is not in session, to appoint the necessary number of

persons to serve as members of the reclamation board when the latter takes action upon the said matter in the places of the members who are unable to serve, and the county board or the county chairman and the county clerk, as the case may be, shall make the appointments requested forthwith.

(5) The reclamation board shall organize annually by electing from its own members a chairman and a secretary who shall perform the duties usually performed by such officers. The board shall meet whenever and wherever necessary to the proper performance of its duties. Two members of the board shall constitute a quorum for the transaction of business, but the county board or the attorney-general may call upon any member of the reclamation board not participating in any action taken by the board of which he is a member for a written statement as to whether or not he approves of such action with the reasons for his approval or disapproval and the members so called upon shall file the statement requested with the county board or the attorney-general, as the case may be, within ten days of the delivery of the request. The secretary of the reclamation board shall keep a record of all proceedings and transactions of the board and shall file a copy of such record with the county clerk within ten days after the date of such proceedings or transactions, except that when said board shall remain in continuous session for ten days or more the secretary of the board may file such copy within ten days after the adjournment of the session, and the county clerk shall keep such copy open to public inspection.

(6) The reclamation board shall have power, subject to the orders of the county board, to perform all acts reasonably necessary and proper to carry out the provisions of this section and the reclamation board may with the consent of the county board employ such assistants as may be necessary at such compensation as the county board may approve.

(7) The procedure for the issuance of the special improvement bonds authorized by this section shall be as hereinafter provided in this subsection, and no bonds shall be issued under the authority of this section in any other manner:

(a) Fifteen or more persons who are freeholders in the county may, upon the payment to the county treasurer of a fee of one dollar each, file with the county clerk petitions addressed to the county board requesting aid in obtaining funds to reclaim land by draining it where necessary and by removing from it such stumps, brush, fallen or standing timber or stones as prevent an efficient use of the land for agricultural purposes and plowing said land each setting forth in an individual petition under oath:

1. A statement that he is the owner of wild or partially improved land within the county and that he occupies said land, or is prepared to occupy same within one year.

2. The number of acres of land desired reclaimed, its location by governmental subdivisions of forty acres, the nature of the reclamation desired, the estimated cost of the reclamation and the name and address of the person making the estimate.

3. The number of acres, the location by governmental subdivisions of forty acres and the assessed value of the land which the petitioner offers as security for the loan requested if such land is not identical with the land desired reclaimed.

4. The names and addresses of all persons known to the petitioner as having or claiming to have a legal or equitable interest or title in the land offered as security for the loan.

5. The amount of money desired as a loan; and such other information as the county board may require.

6. Each such petition shall contain an agreement signed by the petitioner and by all persons known to him as having a legal or equitable interest or title in the land offered as security for the loan consenting to the placing of a special tax lien, prior to all other liens except general tax liens, upon said land as hereinafter provided in subsection (17).

(b) Upon the receipt of such fifteen petitions the county board may direct the reclamation board to visit the petitioners and the lands described in the petitions or to make such other investigations as the county board may deem necessary, and to report upon the correctness of the statements made in the petitions, the practicability, desirability and probable cost of reclaiming the several pieces of land as requested in the petition and upon such other pertinent matters as the county board may designate.

(c) After consideration of the report of the reclamation board, the county board may, if it deems the securities offered by the individual petitioners to be of sufficient value and is satisfied that all persons having a legal or equitable interest in the land offered as security for loans have signed the petitions for loans as provided in subdivision (a) of this subsection, and that the granting of the loans will promote the public welfare by aiding in the proper development of the natural resources of the county, issue special improvement bonds of the character hereinafter prescribed to the amount necessary to secure the funds to make the loans hereinafter authorized for the purpose of defraying part or all of the expense of reclaiming such of the lands described in the petitions as the county board deems worth the expense of reclamation.

(d) The county board may at any time during the life of a bond issue made under

the preceding provisions of this subsection issue additional bonds in the same manner for the purpose of securing funds to loan to individual petitioners who are of less number than fifteen and who may be either resident or nonresident freeholders within the county but who otherwise comply with the preceding provisions of this subsection.

(8) The county clerk shall keep all petitions filed under subsection (7) open to public inspection.

(9) All bonds issued under the authority of this section shall constitute a general county liability and shall be nontaxable, semiannual interest payment, coupon bonds, executed in behalf of the county by the chairman of the county board and countersigned by the county clerk, payable principal and interest at the county treasurer's office at such time as the chairman of the county board and the county clerk together shall determine but within a period of not less than five years nor more than twenty years from the date of issue. All bonds issued under the authority of this section shall before being offered for sale be submitted to the attorney-general together with a transcript of all proceedings held before, or by order of, the county board with reference to the reclamation work contemplated and the bond issue proposed, and no such bonds shall be valid unless approved by the attorney-general and officially indorsed by him on the back of each bond. It shall be the duty of the attorney-general to examine all transcripts of proceedings and all bond issues presented to him as hereinbefore prescribed as soon as possible after their receipt and to (1) Officially indorse the bonds, if in his judgment, the provisions of this section have been complied with in the issue of the bonds, or (2) refuse to indorse the bonds, if, in his judgment, the provisions of this section have not been complied with in the issue of the bonds, in which case he shall forward to the county clerk a statement giving his reasons for his refusal. The bonds when indorsed by the attorney-general shall be offered for sale by public advertisement and shall be sold to the person or persons offering to furnish the money desired at the most favorable rate of interest.

(10) Every county board which issues bonds under the authority of this section shall provide for the establishment in the county treasury of a fund to be known as the reclamation fund and to be used only in carrying out the provisions of this section. All moneys received by the county under this section shall be paid into the reclamation fund and all moneys disbursed by the county under this section except as otherwise herein provided, shall be disbursed from the reclamation fund.

of the bonds issued under the authority of this section and the interest thereon whenever

(11) The county board shall have power to levy a special assessment for the payment such payments become due and there is no money in the reclamation fund for their discharge.

(12) The county board may, when necessary, direct that special county orders signed by the chairman of said board and the county clerk be issued from time to time for the payment of moneys whose payment is authorized by the provisions of this section. Such special county orders shall be payable from any moneys in the county treasury not otherwise appropriated but shall be refunded from the county reclamation fund or such special county orders may, in the discretion of the county board and with the consent of the holders of the orders, be exchanged for county bonds issued under the authority of this section.

(13) Any county board availing itself of the authority granted by this section may grant loans to persons who have filed petitions in the manner prescribed in subsection (7) of this section for county aid in obtaining funds to assist in the reclamation of land subject to the following conditions imposed elsewhere in this section:

(a) No loan shall be granted upon any land of which the market value, exclusive of the value of buildings and other perishable improvements is less than ten dollars per acre.

(b) No loan shall be granted of an amount exceeding fifty per cent of the market value of the land offered as security, including the value of the buildings on the said land when reclaimed under the provisions of this section, nor of an amount exceeding the sum fixed by the reclamation board as necessary to reclaim the land actually to be reclaimed by aid of the loan and no loan shall in any case exceed the sum of forty dollars for each acre of land actually to be reclaimed.

(c) No loan of less than one hundred or more than three thousand dollars shall be granted to any one person and no person shall be granted separate loans aggregating more than three thousand dollars.

(d) The rate of interest charged borrowers shall be the rate of interest paid by the county for the funds loaned plus such an additional per centum as the county board shall deem necessary to cover the expense incurred by the county in carrying out the provisions of this section.

(e) All loans shall be made for a term of twenty years, but any borrower may repay his loan in whole or in part at any time within said term, and any borrower may, with the consent of the county clerk and the chairman of the county board, repay his loan upon an



amortization plan within a term of twenty years or less, and in all cases in which partial payments have been made interest shall be charged only upon the unpaid balance of the loan.

(f) All borrowers shall be required to execute written agreements with the county to keep all buildings, fences and other improvements upon the property offered as security in good repair until the loan is repaid and to observe all conditions imposed by this section or under its authority.

(14) The county board may, when it deems the security offered for a loan insufficient for the amount requested, require additional security in land or grant a loan of less amount than that called for in the petition for the loan or it may refuse altogether to grant the loan as in its judgment appears best calculated to promote the public welfare and in all such cases the judgment of the county board shall be final.

(15) The reclamation board may let contracts to responsible contractors for the reclamation of the land to be reclaimed and when convenient plowed by aid of the loans granted under this section or said board may allow the persons granted loans to (a) Reclaim and plow the land themselves with or without hired help or (b) hire it reclaimed by another person under a contract approved by the said board. When the reclamation board lets a contract under this section it shall require the contractor to file with the county clerk a bond in a penal sum equal to the price agreed upon to be paid for the work of reclamation to be performed under the contract and signed by two sureties, residents of the state of Wisconsin, each justifying in the full amount of the bond and approved by the board, or signed by a surety company approved by the board. Said bond shall run to the county and shall be conditioned for the faithful execution and observance of the terms and conditions of the contract.

(16) Loans granted under this section shall be paid in accordance with the following provisions:

(a) When the work of reclamation is performed under contract with the reclamation board the contract price shall be paid directly to the contractor from the amount of the loan granted for the work of reclamation, and if the contract price is less than the amount of the loan granted, the amount of the loan actually to be paid and to be chargeable against the land accepted as a security for the loan as provided in subsection (17) shall be reduced to the amount of the contract price. Payment may be made in full upon presentation and acceptance as hereinafter prescribed of proof of the completion of the work, or payment may be made in instalments from time to time during the progress of the work, but the aggregate amount of such instalments shall never exceed eighty per cent of the amount of the contract price and the remaining twenty per cent of the contract price shall not be paid until proof of the completion of the work is presented and accepted as hereinafter prescribed.

(b) When the work of reclamation is performed otherwise than under contract with the reclamation board the amount of the loan shall be paid to the person granted the loan. Payment may be made in full upon presentation and acceptance as hereinafter provided of proof of the completion of the work, or payment may be made in instalments from time to time during the progress of the work upon presentation and acceptance as hereinafter provided of proof that certain portions of the work have been completed as prescribed by the county board as a prerequisite to the payment of such instalments.

(c) The presentation and acceptance of the proof of the completion of work, or of portions of work, performed under the provisions of this section shall be made as follows: The person entitled to receive the amount of the loan or any instalment thereof may present a duly verified claim to the reclamation board for the amount of money which may be paid to him under the conditions of the loan and the conditions of any contract which he may have entered into with the reclamation board with respect to the work of reclamation.

(d) The reclamation board shall consider a claim so presented to it as soon as possible after its receipt and shall allow the claim, if satisfied, after an examination of the work of reclamation made personally by one or more members of the board and such other investigation as may be necessary, that the claim should be allowed, and the county treasurer shall pay the claim when allowed by the reclamation board.

(17) The principal and interest of each loan made under the provisions of this section shall constitute a special tax lien, prior to all other liens except general tax liens, upon the land accepted as security for the loan.

(18) The collection of the principal and interest of loans made under the provisions of this section shall be enforced in the following manner: The county clerk shall, on or before the first of November in each year, certify to the clerk of the town in which is located each particular piece of land accepted by the county board as security for a loan, the amount of money necessary to be assessed against that piece of land to pay the amount due for that year on the principal and interest of the loan according to the terms of the

loan, and the town clerk shall each year make the proper extension of taxes upon the tax roll to raise the money required. Thereafter the special taxes so charged shall be treated as regards payment in the same manner as any other taxes, and when collected shall be paid into the county reclamation fund.

(19) The county clerk shall, whenever a petition for a loan is filed with the county board and whenever a loan is granted, file a written notice to that effect with the register of deeds giving the name of the petitioner for the loan, the number of acres and the location in governmental subdivisions of forty acres of the land offered by the petitioner or accepted by the county board, as the case may be, as security for the loan and the amount of the loan requested or granted. The register of deeds shall number consecutively all such notices filed with him and shall index them under the names of the petitioners for loans and in the tract index so that the notices may easily be found. No register of deeds shall demand or receive any fee or charge of any kind for performing the services required by this subsection.

(20) The county board may request any state or county officer to render any service reasonably within his power and duties as a public official to render in carrying out the provisions of this section and all state and county officers shall comply with such requests, when made, without charge of any kind.

(21) Any county board electing members of a reclamation board as provided in subsection (2) may at the same time adopt suitable rules and regulations for carrying out the provisions of this section, but no such rules and regulations shall be valid until they have received the approval of the attorney-general and no change shall thereafter be made in such rules and regulations without the approval of the attorney-general. It shall be the duty of the attorney-general to examine all such rules and regulations submitted to him for approval as soon as possible after their receipt and to (a) Officially indorse the rules and regulations, if in his judgment they are reasonably calculated to promote the proper carrying out of the provisions of this section, or (b) refuse to indorse the rules and regulations, if in his judgment they are not reasonably calculated to promote the proper carrying out of the provisions of this section, in which case he shall forward to the county board a statement giving the reasons for his refusal.

59.93 [Repealed by 1943 c. 334 s. 6a]

**59.94 Registration of farms.** (1) The owner of any farm or country estate, or his agent duly authorized therefor in writing, may register the name of such farm or estate in the office of the register of deeds of the county wherein the farm or estate is situated. The owner or purchaser of said farm or any part thereof, may change or release said name from his respective interest in said farm by filing a certificate stating that the original registered name is released. A new name or names to said farm or any parts thereof may then be registered. Every register of deeds shall keep a registry book for such purpose, and upon request, shall make registrations therein as provided in this section. Registration shall consist in writing in the registry book the name of the owner of the farm or estate and such name for the farm or estate as the owner or agent may designate, if no other farm or estate in the county has been previously registered under the same name. The register of deeds shall charge and collect twenty-five cents for making each registration and each certificate filed. The registry book herein provided for shall be a public record in the office of the register of deeds.

(2) Any register of deeds who shall fail or refuse to provide a registry book and make registrations therein, and file certificates, as provided in this section, or who shall charge or collect more than twenty-five cents for making any such registration, or filing such certificate, or who shall knowingly register a farm or estate under a name previously adopted and registered for some other farm or estate in such county, or any person who shall use, by way of advertisement or otherwise, the name of any farm or estate registered as provided in this section, to designate or as the name of any farm or estate in such county other than the farm or estate for which such name was registered, unless such name was adopted for and used as the name of such other farm or estate prior to the passage and publication of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five nor more than twenty-five dollars or by imprisonment in the county jail for not less than ten nor more than thirty days, or by both such fine and imprisonment.

59.95 [Repealed by 1935 c. 214 s. 2]

**59.96 Metropolitan sewerage commission.** (1) APPOINTMENT OF COMMISSIONERS. In any county where the common council of any city of the first class within such county shall have adopted a resolution declaring that it is necessary to provide sewage disposal works for such city and in which a sewerage commission has been appointed and qualified, and has adopted plans for, and commenced the construction of a sewage disposal plant

for said city the governor shall appoint three sewerage commissioners who shall constitute and be known as the "Metropolitan Sewerage Commission" of such county. There shall be certified by the sewerage commission of such city of the first class one person, by the state board of health of the state of Wisconsin one person, to the governor of the state of Wisconsin, who shall appoint as members of such metropolitan sewerage commission the two persons thus certified, and who shall further name as the third member of such commission a resident within the drainage area hereinafter provided of said county outside of the city limits of such city of the first class. They shall be appointed within thirty days after the taking effect of this act.

(2) **OATH OF OFFICE; EXPENSES.** Each appointee before entering upon the duties of this office shall take and subscribe the oath of office prescribed by the constitution and file the same with the secretary of state, duly certified by the official administering such oath. Each commissioner shall be reimbursed his actual and necessary expenses in the performance of his duties and shall receive no salary.

(a) The removal from the drainage area of said third commissioner who is a resident of said county outside of said city of the first class shall operate as a resignation of his office and the vacancy thus created shall be filled by the governor.

(b) The state board of health or the metropolitan sewerage commission may at any time certify to the governor further respective names whom the governor shall appoint as members of said commission, and thereupon the term of office of the former appointees respectively shall terminate.

(3) **ORGANIZATION.** A majority of the commissioners shall constitute a quorum for the transaction of business. As soon as the commissioners first appointed under this section enter upon the duties of their office, they shall organize by electing one of their members chairman, who shall be removable at pleasure by the commissioners. The chairman shall preside over all meetings of the commission and shall perform such other duties as are imposed upon him by this section or may be assigned to him by the commission. The commission shall appoint a secretary, who may or may not be a member of the commission, who shall be removable at pleasure by the commission, and shall receive, if not a member of such commission, such compensation as the commission may determine.

(4) **MEETINGS; REPORTS.** The metropolitan sewerage commission shall hold meetings for the transaction of business. All sessions or meetings of said commission shall be public and all records shall be public records. The commission shall prepare annually a full and detailed report of its official transactions and expenses and shall mail such statement to the governor of the state, to the state board of health, the mayor of such city of the first class, the sewerage commission of such city of the first class, and to the governing boards of all cities, towns and villages in such county within the drainage area hereinafter provided for.

(5) **SURVEYS.** Upon the organization of such metropolitan sewerage commission, the sewerage commission of such city of the first class shall submit to such metropolitan sewerage commission the maps and surveys showing the portion of said county which is within the same drainage area as the sewerage system of such city of the first class, the sewage from which may be cared for by the disposal plant located in such city of the first class, and said metropolitan sewerage commission shall thereupon by resolution determine the boundaries thereof in each of the respective towns and villages outside of the city limits of such city of the first class and must file with the clerk of each of the cities, towns or villages affected by this act and with the state board of health a copy of the map and survey and boundaries by it adopted.

(6) **POWERS AND DUTIES.** (a) The metropolitan sewerage commission shall project, plan, construct and maintain in such county outside of the city limits of such city of the first class main sewers for the collection and transmission of house, industrial and other sanitary sewage to and into the intercepting sewerage system of such city of the first class, and when required in the judgment of such commission, pumping and temporary disposal works and other plants, sufficient in the judgment of such commission to care for the sanitary sewerage of the territory in said county outside of said city of the first class within the drainage area hereinafter provided for.

(b) The said metropolitan sewerage commission is authorized in its name to contract and to be contracted with, and to sue and to be sued.

(c) The metropolitan sewerage commission may require any town, city or village in such county, or any occupant of any premises outside of said city of the first class, located in such county, engaged in discharging sewage effluent from sewage plants, sewage refuse, factory waste, into any river or canal within such county within the drainage area hereinafter provided for to so change or rebuild any such outlet, drain or sewer as to discharge said sewage, waste or trade waste into the sewers of such city, town or

village or into said main sewers by it established and under such regulations as the commission may determine.

(d) The commission may employ and fix the compensation of all agents, assistants, clerks, employes and laborers as it may deem advisable for the due and proper execution of its duties, and in its discretion may employ the chief engineer or agent or employes of any such city of the first class, or of the sewerage commission thereof, as its engineers, agents or employes, provided, however, that the compensation fixed therefor shall not be paid to such person but to such city or such sewerage commission.

(e) The commission may enter upon the land in the cities, villages and towns in said county outside of said city of the first class for the purpose of making surveys or examinations in the performance of its duties.

(f) The commission may enter upon any state, county or municipal street, road or alley, or any public highway in said county outside of said city of the first class for the purpose of installing, maintaining and operating the sewage 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 commission.

(g) The commission 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 flowing through said cities, villages and towns, 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 under right of ways of railroad, interurban and street railway companies, 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 deeds, or other instruments, as may be proper for the purpose of fully confirming this grant.

(h) All persons, firms or corporations lawfully having buildings, structures, works, conduits, mains, pipes, tracks or other physical obstructions in, over or under the public lands, avenues, streets, alleys or highways of said cities, villages and towns which block or impede the progress of such sewer, when in process of construction, establishment or repair shall upon reasonable notice by the commission, promptly so shift, adjust, accommodate or remove the same at the cost and expense of such individuals and corporations, as fully to meet the exigencies occasioning such notice.

(i) 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.

(j) The commission may acquire by gift, purchase, lease or other like methods of acquisition or by condemnation, any land or property situated in said county outside of said city of the first class, and all tenements, hereditaments and appurtenances 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 when so often as resort shall be had to condemnation proceeding the procedure shall be that provided for by chapter 32 of the statutes, except that the powers therein granted shall be exercised by and in the name of said commission in the place and stead of the county board.

(k) Whenever the plans and specifications for any main sewer shall have been completed and approved by the sewerage commission of such city of the first class and by the state board of health as provided in sections 144.01 to 144.12, inclusive, and the commission shall have determined as provided in this section to proceed with the work of the construction thereof, it shall advertise by notice in such newspaper and technical press as it may deem proper, for bids for the construction of said main sewer and its appurtenances in part or as a whole, as in its judgment it may deem advisable. Contracts for such work shall be let to the lowest responsible bidder, or the commission may reject any and all bids and if in its discretion the prices quoted are unreasonable or the bidders irresponsible, or the bids informal, it may readvertise the work or any part of it. With the consent of all its members it may itself do any part of any such works, by any labor under such condi-

tions in every respect as it may prescribe. All contracts shall be protected by such bonds, penalties and conditions as the commission shall require.

(l) The powers of the commission shall not extend to or apply to the territory of any city of the first class which may be constructing, building and operating its sewerage system under a commission provided by law.

(m) Said commission shall not construct any such main sewer nor alter or extend the same without having first submitted complete plans and specifications for the installation, alteration or extension, in writing, to the sewerage commission of such city of the first class and secured its approval thereof. All contracts entered into by said commission for the construction, alteration and extension of any such main sewers shall contain a provision that the final payment, amounting to at least fifteen per cent of the entire cost, shall not be made until the contractor files with the said commission the certificate of the sewerage commission of such city of the first class that said main sewer has been located and constructed in accord with the plan submitted and approved by it.

(n) Said contract shall also contain a provision that the work of constructing said sewers shall be done under inspection to be furnished by the sewerage commission of such city of the first class, which inspection service shall be paid for at actual cost by the commission.

(o) Before any town, city or village or any private person or corporation shall be permitted to connect with or use any such main sewer provided for by this section, it shall obtain the approval of the sewerage commission of such city of the first class, which sewerage commission shall examine into it and hear all the parties in interest, and if it finds such sewer or system defective in construction, design, supervision or operation, it shall notify said metropolitan sewerage commission what alterations, new constructions or change in supervision or operation it shall require and deem necessary to correct existing and improper conditions and said metropolitan sewerage commission shall not permit such connection to be made or continued until such alterations, new constructions, change in supervision or operation shall have been made as provided in the determination of said sewerage commission of said city of the first class.

(p) Said metropolitan sewerage commission or said sewerage commission of said city of the first class, and their respective officers and agents are authorized to make examination of any and all sewers and sewerage systems within said county outside of the limits of said city of the first class for the purpose of determining if said systems are defective in operation, construction, design or supervision.

(q) When any such main sewer, or other disposal works, pumping or other plant shall be completed it shall thereafter be operated and kept in repair and in sanitary condition by the sewerage commission of said city of the first class, or by such authority as shall be charged by law with the duty of the operation and maintenance of the intercepting sewers and sewage disposal plant of said city.

(r) Nothing in this section shall be construed as restricting or interfering with any powers of the state board of health as provided by law, or with the powers granted to the sewerage commission of such city of the first class.

(7) BONDS. (a) Whenever said metropolitan sewerage commission requires funds out of which to pay for the projection, planning, construction and maintenance of said main sewers, pumping and temporary disposal works and other plans, or in other respects in connection therewith, it shall adopt a resolution stating the amount that it requires for such purposes and shall file with the county board of supervisors of such county a certified copy thereof, and thereupon such board of supervisors is required and directed to provide by resolution for issuing corporate bonds of such county for the amount so required, payable at such time not longer than twenty years from the date of their issue as shall be determined by said resolution of the board of supervisors, provided that when any part of an issue shall have a maturity greater than ten years, such resolution shall require payment of the principal in substantially equal annual instalments during the life of such issue. Such bonds shall be payable in lawful money of the United States, bearing interest at a rate to be determined in said resolution, and such bonds shall be in such form as may be prescribed by such resolution and shall be signed by the chairman of said board and by the clerk thereof and shall be called metropolitan sewerage bonds and shall be consecutively numbered and shall have interest coupons attached, and shall show on their face that the same are issued for the benefit of so much of the territory of said county as lies in the same drainage area as said city of the first class and there shall be annually levied by said county board a direct tax upon all taxable property in said drainage area sufficient to pay the annual interest thereon, and also to pay and discharge the principal thereof at maturity, and there shall be included in said tax levy an amount estimated by the board of supervisors to be sufficient to cover the loss and cost of the collection thereof, which tax shall be collected as provided in subsection (10) of this section. It shall not be necessary to submit any such bond issue to the vote of the people. The tax hereinabove

provided to be levied shall not be included within the provisions of any county, town, city or village tax limitation statute.

(b) Upon the sale of any such bonds, the county board of such county shall pay the proceeds thereof to the county treasurer of said county for the credit of the said commission and said county treasurer shall, from time to time, against said fund, pay warrants or checks when authorized by said commission and signed by the chairman and secretary thereof.

(c) Whenever after the organization of such metropolitan sewerage commission the sewerage commission of such city of the first class requires funds out of which to pay for the projection, planning, construction and maintenance of a sewerage system for the collection, transmission and disposal of house and other sewage and for constructing, building and maintaining its sewage disposal plant in connection therewith, it shall adopt a resolution stating the amount that it requires for such purposes and shall file with the county board of supervisors of such county a certified copy thereof, and thereupon such board of supervisors is required and directed to provide by resolution for issuing corporate bonds of such county for the amount so required, payable at such time not longer than twenty years from the date of their issue as shall be determined by said resolution of the board of supervisors, provided that when any part of an issue shall have a maturity greater than ten years, such resolution shall require payment of the principal in substantially equal annual instalments during the life of such issue. Such bonds shall be payable in lawful money of the United States, bearing interest at a rate to be determined in said resolution and such bonds shall be in such form as may be prescribed by such resolution and shall be signed by the chairman of said board and by the clerk thereof and shall be called metropolitan sewerage bonds and shall be consecutively numbered and shall have interest coupons attached, and shall show on their face that the same are issued for the benefit of so much of the territory of said county as lies in the same drainage area as said city of the first class, and there shall be annually levied by said county board a direct tax upon all taxable property in such drainage area sufficient to pay the annual interest thereon, and also to pay and discharge the principal thereof at maturity, and there shall be included in said tax levy an amount estimated by the board of supervisors to be sufficient to cover the loss and cost of the collection thereof, which tax shall be collected as provided in subsection (10) of this section. It shall not be necessary to submit any such bond issue to the vote of the people. The tax hereinabove provided to be levied shall not be included within the provisions of any county, town, city or village tax limitation statute.

(d) Upon the sale of any such bonds, the county board of such county shall pay the proceeds thereof to the city treasurer of said city of the first class to the credit of the said sewerage commission of said city and said city treasurer shall, from time to time, against said fund, pay warrants or checks when authorized by said commission and signed by the chairman and the secretary thereof.

(e) At least ten days before the first day of October in each year beginning with the year 1929, such metropolitan sewerage commission shall by resolution determine and certify to the sewerage commission of such city of the first class, the proportion, if any, of said actual cost plus interest thereon as defined in paragraph (a) of subsection (8) of so much of the intercepting sewers and sewage disposal plant constructed by the sewerage commission of such city of the first class prior to the organization of the metropolitan sewerage commission which in that year shall be credited to such city of the first class until said entire actual cost plus such interest shall have been discharged by such credits, which shall be not later than the year 1960.

(8) APPORTIONMENT OF COST. (a) When the sewerage commission of such city of the first class begins the operation of its sewage disposal plant it shall estimate and report to the clerks of every city, town or village within the drainage area of the city of the first class the actual cost, including interest at five per cent upon said actual cost of so much of the intercepting sewers and sewage disposal plant constructed by the sewerage commission of such city of the first class prior to the organization of the metropolitan sewerage commission and before the first day of February in each year thereafter the sewerage commission of such city shall estimate and by resolution determine what sums in their judgment will be required to meet the expenses and disbursements of the sewerage commission of such city for the current fiscal year and shall include in such estimate and resolution as a part of the expense of the operation of such sewerage system all the expense of operation and of keeping in repair such sewerage system and disposal plant, including said main sewers, pumping and temporary disposal works and other plants, constructed by said metropolitan sewerage commission, and also an amount equal to five per cent per annum upon the actual cost as estimated and reported hereunder of said intercepting sewers and sewage disposal plant constructed prior to the organization of said metropolitan sewerage commission, and shall estimate and report the proportion

thereof that will be due from each city, town or village in said drainage area in payment for the transmission and disposal of its sewage and for keeping in repair the intercepting sewers and disposal plant, including said main sewers, pumping and temporary disposal works and other plants, constructed by said metropolitan sewerage commission, and each city, town or village shall pay that proportion of the whole expense as the amount of sewage it contributes bears to the total amount of sewage disposed of by said city, in such disposal plants, except such city of the first class shall be entitled to a credit against its proportion of such expenses equal to said five per cent of the actual cost of such intercepting sewers and disposal plant constructed prior to the organization of such metropolitan sewerage commission, but the charge and the credit of such five per cent of such actual cost shall continue only until provision has been made by which said entire drainage area, including said city of the first class, shall reimburse said city of the first class for the amount of such actual cost.

(b) On or before the first day of October in each year beginning with the year 1939 such sewerage commission of the city of the first class shall by resolution determine and certify to the county board of supervisors of such county the proportion of the actual cost plus interest thereon, as defined in paragraph (a) of subsection (8), of so much of the intercepting sewers and sewage disposal plant constructed by the sewerage commission of such city of the first class prior to the organization of the metropolitan sewerage commission, which in that year shall be credited to such city of the first class as determined by such metropolitan sewerage commission, according to the provisions of paragraph (c) of subsection (7), together with annual interest on the unpaid balance thereof at the rate of two and one-half per cent per annum until said entire cost plus interest shall have been discharged, and there shall be annually levied by said county board a direct tax upon all of the taxable property in such drainage area sufficient to pay said amounts together with the amounts provided to be levied in paragraphs (a) and (c) of subsection (7), but in making such levy there shall be credited to such city of the first class the amount so certified to the county board of supervisors by such sewerage commission of the city of the first class, under the provisions of this subsection for payment of principal and interest on the actual cost plus interest thereon, as defined in paragraph (a) of subsection (8), of so much of the intercepting sewers and sewage disposal plant constructed by the sewerage commission of such city of the first class prior to the organization of such metropolitan sewerage commission, and during and after the year 1939, the charge and credits of such five per cent of such actual cost as provided for in paragraph (a) of subsection (8) shall cease and be discontinued. Such tax shall be collected as provided in subsection (10) of this section. The tax hereinabove provided to be levied shall not be included within the provisions of any county, town, city or village tax limitation statute.

(9) TAX LEVY; POWERS OF TOWNS. Such sewerage commission of such city of the first class shall, on or before the first day of October of each year, certify in writing to the clerks of the several cities, towns and villages having territory in said drainage area, the total amount necessary to pay the expenses for the transmission and disposal of said sewage for said year and the share thereof that each such city, town and village must pay after the report has been made as herein provided.

(a) Upon the receipt of such report by each such clerk, he shall submit the same to the next regular or special meeting of the governing board of said city, town or village and such board shall, by resolution, levy and assess taxes sufficient to pay the same, against all of the taxable property included within the drainage area in his said town, city or village. Following such assessment and levy, the clerk of each such city, town or village shall place the same upon the tax roll to be collected as other taxes are collected upon all of the taxable property within such drainage area, and such moneys when collected shall be paid by the treasurer of each such city, town or village, to the treasurer of such city of the first class to the credit of said sewerage commission of such city of the first class.

(b) There is imposed upon all towns in counties in which under the provision of this section a metropolitan sewerage commission is created and appointed, all of the powers vested in villages under chapter 61 of the statutes relating to the power of villages to finance, assess, build, construct and maintain sewerage systems, mains, laterals, drains and all appurtenances, and all of the duties by such provision imposed upon the village boards or villages, their several committees and village clerk, shall be performed in such towns by the town boards and town clerks thereof; provided, that the town board of any such town may lay sewers or water mains along either or both sides of any street or highway in the town, and in that event shall assess the cost thereof only against the property abutting and adjoining upon that side of the street or highway in which the sewer or water main may be laid; and all notices and specifications required thereby may be made and given by the towns in such work where no newspaper is published therein by posting five copies thereof in five public places in said town, and all duties by such provision imposed upon village

clerk and village treasurer in extending upon the tax roll and collecting all assessments and taxes relating to such improvements, shall be performed in the same manner by town clerks and town treasurers of such towns.

(c) The metropolitan sewerage commission and the sewerage commission of a city of the first class are authorized and empowered, in their names, to contract with any town, village, city, sanitary district or metropolitan sewerage district organized under section 66.20 in such county wholly or partly outside of the boundaries determined to be in the same drainage area as the sewerage system of such city of the first class, or wholly or partly outside of such county but in the same drainage area as the sewerage system of such city of the first class, for the transmission and disposal of sewage from any territory located in such town, village, city, sanitary district or metropolitan sewerage district organized under section 66.20. Before such town, village, city, sanitary district or metropolitan sewerage district organized under section 66.20 shall be permitted to connect its sewers with or use any main sewers, such sewers shall be approved as provided by paragraph (n) of subsection (6) of section 59.96. The governing board of any such town, village, city, sanitary district or metropolitan sewerage district organized under section 66.20 by a vote of three-fourths of its members is hereby authorized to enter into such contract and to levy irrepealable taxes for the term covered by such contract for the cost of such service as determined by such contract upon the whole town, village, city, sanitary district or metropolitan sewerage district organized under section 66.20, or upon such part thereof as the governing board determines by such vote to be benefited thereby.

(10) LEVY AND COLLECTION OF METROPOLITAN SEWERAGE TAXES. The taxes levied pursuant to paragraphs (a) and (c) of subsection (7), paragraph (b) of subsection (8), and subsection (11) of this section after apportionment to the several towns, villages and cities, including cities of the first class, situated within the metropolitan sewerage drainage area in the manner provided by section 70.63 of these statutes, shall be spread upon the respective real estate and personal property tax rolls of said towns, villages and cities in a separate column distinct from all other taxes. So much of said taxes so apportioned to each of said towns, villages and cities as shall be collected by the respective town, village and city treasurers shall be paid over in cash to the county treasurer as the trustee of said metropolitan sewerage district by the town, village or city treasurer on or before the date in each year when said town, village and city treasurers are required by law to make settlement with the county treasurer for the state and county taxes. So much of said taxes as shall be delinquent shall be set forth as separate items of the delinquent returns of real estate and personal property taxes made by the town, village and city treasurer and thereafter shall be treated as a separate tax by the county treasurer in all matters pertaining to the collection of said tax including advertisement for sale as delinquent and tax certificate issued thereon. If there shall be no bidder at the tax sale for nonpayment of such separate tax, the county treasurer shall bid off the tract of land upon which such separate tax is unpaid in the name of the county, as trustee for said metropolitan sewerage district. Upon redemption of or realization upon the tax sale certificates issued for such separate tax, the county treasurer shall pay the proceeds thereof into the sinking funds provided for outstanding metropolitan sewerage bond issues. All laws pertaining to the sale and redemption of county tax certificates shall apply to such metropolitan sewerage taxes except as herein modified. Town, city and village treasurers while the tax rolls are in their hands and thereafter the county treasurer shall receive payment of and give receipt for such metropolitan sewerage tax items separately, if so tendered.

(11) AUTHORIZATION OF REFUNDING PRINCIPAL OF METROPOLITAN SEWERAGE BONDS.

(a) In order to provide for the payment at maturity of the principal of bonds issued pursuant to paragraphs (a) and (c) of subsection (7) of section 59.96 of the statutes in the event of a delinquency in the collection of taxes levied for the payment of such principal, the metropolitan sewerage commission and the sewerage commission of the city of the first class within such metropolitan sewerage area shall adopt a resolution finding the amount of such delinquency in the collection of such taxes and requesting the county board of supervisors of such county to issue refunding corporate bonds of such county in the manner provided in paragraph (a) of subsection (7) of section 59.96 of the statutes for the purpose of providing for the payment of the principal of such bonds and shall file a certified copy of such resolution with the county board of supervisors of such county. Upon the filing of such resolution said board of supervisors is required and directed to provide by resolution for issuing refunding corporate bonds of such county for the amount so required payable within ten years from their date in lawful money of the United States, bearing interest at a rate to be determined in said resolution, and such bonds shall be in such form as may be prescribed by such resolution and shall be signed by the chairman of said board and by the county clerk and shall be consecutively numbered and shall have interest coupons attached, and shall show on their face that the same are is-



sued for the benefit of so much of the territory of said county as lies in the same drainage area as said city of the first class, and there shall be annually levied by said county board a direct tax upon all taxable property in said drainage area sufficient to pay the annual interest thereon, and to pay the amount of principal of said refunding corporate bonds as the same become due and there shall be included in said tax levy an amount estimated by the county board of supervisors to be sufficient to cover the loss and cost of the collection thereof, which tax shall be collected in the manner prescribed in subsection (10) of section 59.96. The tax hereinabove provided to be levied shall not be included within the provisions of any county, town, city or village tax limitation statute. Such refunding bonds may be sold or exchanged on the basis of par for par for the bonds so refunded. Authority to issue the refunding bonds hereinabove provided for is expressly granted. It shall not be necessary to submit any such refunding bond issue to the vote of the people.

(b) Upon the sale of such refunding bonds the county board shall pay the proceeds of such bond issue to the county treasurer acting as trustee of the said metropolitan sewerage district and such treasurer shall keep such proceeds in a fund separate from all other funds and shall use the same solely to pay the principal of bonds so refunded. The county containing such metropolitan sewerage district may purchase at not more than the par value thereof any of the bonds issued by authority of section 59.96, out of any available county funds.

(12) INCONSISTENT LAWS REPEALED. All laws or parts of laws inconsistent herewith are hereby repealed. [1933 c. 357; 1933 c. 450 s. 1; 1935 c. 433; 1939 c. 6, 78; 1943 c. 177]

**Revisor's Note, 1933:** The effect of the amendment is to transfer the clause "and there shall be included in said tax levy an amount estimated by the board of supervisors to be sufficient to cover the loss and cost of the collection thereof" from paragraph (b) of (8) to (c) of (7) of 59.96 as located in chapter 357, Laws 1933. Its present location is an error and this amendment is to correct this error. (Bill No. 426 S, s. 1)

County board held without discretion to refuse to issue bonds on sewerage commission's demand. *Milwaukee Sewerage Commission v. Board of Supervisors*, 211 W 412, 248 NW 454.

When the sewerage commission has adopted a resolution stating the amount which it requires for the construction and maintenance of sewers, and has filed a certified copy thereof with the county board, the board is without authority to require the commission to determine the necessity for the amount designated or its reasons for adopting its resolution, or to refuse to provide the amount designated. *State ex rel. Milwaukee S. Commission v. Supervisors*, 220 W 670, 265 NW 848.

**59.97 Zoning power.** (1) (a) The county board of any county may by ordinance regulate, restrict and determine the areas within which agriculture, forestry and recreation may be conducted, the location of roads, schools, trades and industries, the location, height, bulk, number of stories, and size of buildings and other structures, the percentage of lot which may be occupied, size of yards, courts, and other open spaces, the density and distribution of population, and the location of buildings designed for specified uses, and establish districts of such number, shape and area, and may also establish set-back building lines, and may further regulate, restrict and determine the areas in and along or in or along natural watercourses, channels, streams and creeks in which trades and industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted, and may adopt an official map or maps which will show thereon such areas, outside the limits of incorporated villages and cities, as such county board may deem best suited to carry out the purposes of this section. For each such district, regulations may be imposed designating the location, height, bulk, number of stories and size of buildings and other structures, percentage of lot which may be occupied, the size of yards, courts and other open spaces, and density and distribution of population, and the trades, industries or purposes that shall be included or subjected to special regulations and designating the uses for which buildings may not be erected or altered; provided, however, that the said county board shall before it adopts such ordinance or ordinances, submit the same to the town board or town boards of the town or towns in which may be situated any lands affected by such ordinance, and thereupon obtain the approval of said town board or town boards, so far as the same affects the lands in such town or towns, and in like manner any and all ordinances, which may amend any ordinance, which have been adopted as herein provided, shall be submitted to said town boards of the towns in which said lands are located and their approval obtained as to each such change before the same shall be adopted by the county board. Such ordinance or amendments thereto may be adopted as to such town or towns which shall have given their approval thereto. The provisions of this subsection shall be applicable in every respect to regulating and restricting trailer camps or tourist camps or both.

(b) The county board of any county may by ordinance regulate, restrict and determine the location, height, bulk, number of stories and size of buildings and other structures and objects of natural growth, whether or not in existence on the effective date of this paragraph [June 7, 1941], in territory outside the limits of incorporated villages and

cities in the vicinity of an airport, whether publicly or privately owned, and may divide such territory into several areas and impose different restrictions with respect to each area which restrictions may be applicable to an entire town or only a portion thereof. The county board shall, before it adopts such ordinance or ordinances, submit the same to the town board or town boards of the town or towns in which may be situated any lands affected by such ordinance, and thereupon obtain the approval of said town board or town boards, so far as the same affects the lands in such town or towns, and in like manner any and all ordinances, which may amend any ordinance, which have been adopted as herein provided, shall be submitted to said town boards of the towns in which said lands are located and their approval obtained as to each such change before the same shall be adopted by the county board. Such ordinance or amendments thereto may be adopted as to such town or towns which shall have given their approval thereto. In the exercise of its power under this paragraph, the county board may, by eminent domain, remove or alter any buildings, structures or objects of natural growth which are contrary to the restrictions imposed in the area in which they are located.

(2) If such county has a county park commission or rural planning board organized as provided by law, such commission or board shall recommend boundaries of such districts and appropriate regulations and restrictions to be imposed therein. The county park commission or rural planning board shall first formulate a tentative report and shall hold public hearings thereon before submitting a final report to the county board. After such final report is submitted, and the ordinance pursuant thereto adopted, the county board may from time to time alter, supplement or change the boundaries or regulations contained in such ordinance in the manner herein set forth, but not less than ten days' notice of any such proposed changes shall first be published in the official newspapers for publication in such county, and a hearing be granted to any person interested, at a time and place to be specified in the notice. Each such notice shall be published at least three times during the ten days prior to the date of hearing.

(2a) When any county acquires lands by tax deeds, the county board may exchange any such lands for other lands in the county for the purpose of promoting the regulation and restriction of agricultural and forestry lands.

(3) In case a protest against a proposed amendment, supplement, or change be presented, duly signed and acknowledged by the owners of twenty per centum or more of the frontage proposed to be altered, or by the owners of at least twenty per centum of the frontage immediately in the rear thereof, or by the owners of at least twenty per centum of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by a three-fourths vote of the county board of supervisors.

(4) The county board shall prescribe such rules and regulations as it may deem necessary for the enforcement of the provisions hereof, and of all ordinances enacted in pursuance thereof. Such rules and regulations and the districts, set-back building lines and regulations specified in subsection (1) shall be prescribed by ordinances which shall be designed to promote the public health, safety and general welfare. Such ordinances shall be enforced by appropriate fines and penalties. Compliance with such ordinances may be also enforced by injunctive order at the suit of such county or the owner or owners of such real estate within the district affected by such regulation. Such ordinances shall not prohibit the continuance of the use of any building or premises for any trade or industry for which such building or premises are used at the time such ordinances take effect, but the alteration of, or addition to, any existing building or structure for the purpose of carrying on any prohibited trade or new industry within the district where such buildings or structures are located may be prohibited.

(5) The powers herein granted shall be liberally construed in favor of the county exercising them, and this section shall not be construed to limit or repeal any powers now possessed by any such county.

(6) The county board may by ordinance zone any lands owned by the county without necessity of securing the approval of the town boards of the towns wherein such lands are situated and without following the procedure outlined in subsection (2).

(7) (a) Immediately after the publication of a county zoning ordinance, it shall be the duty of the board of supervisors of such county to cause to be made a record of the present use of all buildings and premises used for purposes not in conformity with the regulations of the district in which such buildings and premises are situated, such record to contain the names and addresses of the owner or owners of such nonconforming use, and of any occupant other than the owner, the legal description or descriptions of land and the nature and extent of land use. Such record shall be published for three successive weeks in a newspaper having general circulation in the county. Within sixty days after such final publication, upon presentation of proof to the county board, errors or omissions may be corrected in such record. On expiration of such sixty-day period such record shall be filed in

the office of the county clerk and a certified copy thereof in the office of the register of deeds. Such record shall constitute prima facie evidence of the extent and number of nonconforming uses existing at the time the ordinance became effective.

(b) Errors or omissions in such record shall be corrected by the county board upon the petition by any citizen or by the board on its own motion. Its decision in such matters shall be final.

(c) The county clerk shall furnish to each town assessor immediately after the filing of the record of nonconforming uses, a record of the nonconforming uses lying within the assessment district of the said town assessor. After the assessment of the following year and after each succeeding assessment thereafter the town assessor shall file a written report certified by the board of review with the register of deeds listing all nonconforming uses which have been discontinued between the assessment periods. If a nonconforming use has been discontinued any future use of such building, land or premise shall be in conformity with the provisions of the ordinance regulating land uses in the district. The register of deeds and county clerk shall record discontinued nonconforming uses as soon as reported by the assessors.

(d) The provisions of this subsection shall not apply to those counties issuing building permits as a means of enforcing the zoning ordinance or of checking nonconforming uses or to counties which have instituted other devices for this purpose. [1931 c. 236; 1935 c. 303, 403; 1941 c. 195; 1943 c. 281]

**Note:** Many phases of zoning law discussed at length. 20 Atty. Gen. 751.

Where county zoning ordinance permits signs of only a certain type in a district, the published record of nonconforming uses should contain a description of the land upon which nonconforming signs are located,

unless the county under (7) (d) enforces issuance of building permits or other devices. County zoning ordinance can become effective in town only if town board approves such ordinance prior to its adoption by county board. 28 Atty. Gen. 626.

**59.98 Reforestation by counties.** (1) The county board of any county may by resolution acquire land by tax deed or otherwise for the purpose of establishing a county forest reserve, which resolution may be submitted for approval to a vote of the people if the county board so determine. If the board shall determine not to submit such resolution to a vote of the people or if a petition for submission be not filed as hereinafter provided such resolution shall be referred to the next meeting of the board and shall be published for at least three weeks prior to such meeting. If the board shall fail to submit such resolution then upon a petition signed by ten per cent of the electors of the county voting for governor at the last general election demanding a referendum thereon be presented to the county clerk within ninety days after the adoption of such resolution by the board, the county clerk shall cause the question to be submitted to the electors of the county at the next ensuing general election and the resolution shall not be in effect nor be in force unless a majority of the electors voting thereon shall approve the same.

(2) The county board of any such county shall have power:

(a) To appropriate funds for the purchase, development, preservation and maintenance of such forest reserve.

(b) To sell any or all of such reserve to the state.

(c) To establish and maintain forests on such reserve for the purposes of growing timber, demonstrating forestry methods, protecting watersheds or providing public recreation.

(d) To establish and maintain forest nurseries and experimental stations, and to sell trees and shrubs to residents of the county at cost.

(e) To establish such reserve or any part thereof to be a refuge for wild life, and to prohibit hunting, fishing or trespassing on such reserve.

(f) To regulate the burning of rubbish, slashings and marshes or other areas on or near such reserve, and to regulate camp fires and smoking on such reserve at such times and places as may be necessary to reduce the danger of destructive forest fires.

(g) To establish and maintain an efficient fire fighting system for the protection of forests on its reserve.

(h) To use such reserve or any portion thereof for parks, public shooting and fishing grounds or waters, fish hatcheries or game farms.

(i) To extend and consolidate any lands or waters in the county suitable for any of the purposes permitted by this section by exchange of other lands or waters purchased under the provisions of this section.

(j) To receive by gift or bequest in the name and on behalf of the county lands or waters suitable for any of the purposes consistent with the purposes of this section.

(k) To make such reasonable rules and regulations and to do all other things that may be necessary and proper to carry out the purposes of this section.

(3) The county board of any county establishing and maintaining a county forest

reserve shall co-operate with the state conservation commission in all ways possible, and the county agent of such county shall carry on a reforestation educational program among farmers, other landowners and school children.

(4) All provisions of the statutes covering fires, fishing, hunting and trapping shall apply to county forest reserves.

(5) Any county having established and maintaining a county forest reserve under the provisions of this section and having entered the same under the forest crop law shall receive from the state an amount equal to 10 cents for each acre of land within such forest reserve, to be used for the purchase, development, preservation and maintenance of such forest reserve, provided, that if the total payments hereunder in any one year shall exceed the appropriation for that year then such payment of 10 cents per acre shall be proportionately reduced. The conservation commission shall pay to such county the amount due to it as state aid on or before the thirty-first day of March, of each year based on the acreage of such lands as of the preceding thirtieth day of June, except that when voluntary withdrawal and sale of forest crop lands results in breaking up well blocked county forests the conservation commission shall deduct from the next payment to such county the amount hereunder previously paid on the withdrawn lands. Any county accepting forestry aid funds paid pursuant hereto thereby consents that the conservation commission may construct and use forest fire lookout towers, telephone lines and fire lanes or other forest protection structures on any county forest lands and the chairman or vice chairman of the county board or any authorized committee thereof of such county shall execute any easements on or over such lands which the conservation commission may require for forest protection.

(6) Every sale of forest products shall be made only on the scale, measure or count of the cut products as reported by a scaler acceptable to the county board committee charged with the administration of county forests. Such committee may authorize sales of material for use by the purchaser up to one hundred dollars in value. All commercial sales shall require public notice and sealed bids. Timber sale contracts require authorization as follows: Up to two hundred dollars, by the committee; two hundred to one thousand dollars, by the county board; and over one thousand dollars, by both the county board and the conservation commission. [1931 c. 455 s. 2; 1933 c. 128; 1933 c. 454 s. 5; 1935 c. 83; 1937 c. 282; 1939 c. 142, 390; 1941 c. 49 s. 91]

**Note:** Lands however acquired by county may be placed in forest reserve by proper procedure. 20 Atty. Gen. 891.

Moneys appropriated to county under (5) for purchase, development, preservation and maintenance of forest reserves may be expended for purposes enumerated in (2). 24 Atty. Gen. 639.

See note to 77.03, citing 25 Atty. Gen. 657. Forest crop money received by county

under (5) may be expended by county in surfacing fire trail through county forest reserve lands which have been withdrawn from forest crop lands. 27 Atty. Gen. 93.

Where appropriation under 20.20 (14) (b), for payment of aid for county forest reserves as authorized in 59.98 (5), is insufficient to pay 10 cents per acre therein provided, payments should be prorated. 30 Atty. Gen. 183.

**59.99 County zoning, adjustment board. (1) APPOINTMENT, POWER.** The county board may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of section 59.97 may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(2) **PERSONNEL.** The board of adjustment shall consist of 3 members, who shall be appointed or elected as herein provided. The chairman of the county board shall appoint, with the approval of the county board, 3 members for terms of 1, 2 and 3 years, respectively, dating from July 1, 1927; provided, that in counties having a population of 500,000 or more such members shall be elected for like terms by the county board. Successors shall be appointed or elected in like manner at the expiration of each term and their terms of office shall be 3 years in all cases, beginning July 1 in the year in which they are appointed or elected and until their successors are appointed or elected. The members of the board shall all reside within the county and outside of the limits of incorporated cities and villages; provided, however, that no 2 members shall reside in the same town. The board shall choose its own chairman. Office room shall be provided by the county board, and the actual and necessary expenses incurred by the board in the performance of its duties shall be paid and allowed as in cases of other claims against the county. The county board may likewise compensate the members of said board and such assistants as may be authorized by said county board. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) **RULES, MEETINGS, MINUTES.** The county board shall adopt rules for the conduct of the business of said board of adjustment, in accordance with the provisions of any ordinance or ordinances adopted pursuant to section 59.97. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the county board.

Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(4) **APPEALS TO BOARD.** Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the building inspector or other administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(5) **STAYS.** An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(6) **HEARING APPEALS.** The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(7) **POWERS OF BOARD.** The board of adjustment shall have the following powers:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of section 59.97 or of any ordinance adopted pursuant thereto.

(b) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

(c) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(8) **ORDER ON APPEAL.** In exercising the above-mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(9) **MAJORITY RULE.** The concurring vote of two members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(10) **COURT REVIEW.** Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

(11) **CERTIORARI.** Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(12) **RETURN TO WRIT.** The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(13) **COURT DECISION.** If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his

findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(14) **Costs.** Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. [1943 c. 292]

**59.996 Milwaukee county building and sanitary codes.** The county board of any county having a population of two hundred and fifty thousand or more may, by ordinance, adopt building and sanitary codes, make necessary rules and regulations in relation thereto and provide for enforcement of such codes, rules and regulations by forfeiture or otherwise.

**59.997 Consolidation of counties; procedure; referendum. (1)** Any two or more adjoining counties in the state may consolidate into a single county by complying with the requirements and procedure herein specified.

(2) The county boards of commissioners or county boards of supervisors of any two or more adjoining counties desiring to consolidate their respective counties into a single county may enter into a joint agreement for the consolidation of such counties, setting forth in such consolidation agreement:

(a) First, the names of the several counties which they propose to be consolidated;

(b) Second, the name under which it is proposed to consolidate the said counties, which name shall be such as to distinguish it from the name of any other county in Wisconsin, other than the consolidating counties;

(c) Third, the property, real and personal, belonging to each county, and the fair value thereof in current money of the United States;

(d) Fourth, the indebtedness, bonded and otherwise, of each county;

(e) Fifth, the proposed name and location of the county seat of the consolidated county;

(f) Sixth, if the said counties have different forms of county organization and government, the proposed form of county organization and government of the consolidated county;

(g) And seventh, the terms of agreement.

(3) The county board of commissioners or county board of supervisors of each of the said counties may appoint an advisory committee composed of three persons to assist the said board in the preparation of such agreement.

(4) The original of the consolidation agreement, together with a petition on behalf of the several county boards of commissioners or county boards of supervisors, signed by the chairman of each of said boards, asking that a referendum on the question of consolidation of the several counties be ordered, shall be filed with the clerk of the circuit court of one of such counties and a copy of such consolidation agreement and of the petition shall be filed with the clerk of the circuit court of each of the other such counties.

(5) The qualified electors of each county involved in the consolidation proposal whose county board of commissioners or county board of supervisors has not taken the initiative under subsection (2) may, by filing with the county board of commissioners or county board of supervisors of the said county a petition, signed by not less than twenty per centum of the qualified electors of said county, based on the total vote cast for governor at the last general election, asking the said board to effect, in accordance with subsection (2), a consolidation agreement with such county or counties as shall be named in the said petition, and asking for a referendum on the said question, require the said board to so proceed. A copy of the petition of the electors shall also be filed with the clerk of the circuit court of the county. If the said county board of commissioners or county board of supervisors is able within six months thereafter to effect such consolidation agreement, the procedure shall be the same as hereinbefore set forth. If the said board within the said period of time is unable or for any reason fails to perfect such consolidation agreement, then the judge of the circuit court of the said county shall appoint a committee of five representative citizens of the county, to act for and in lieu of the said county board of commissioners or county board of supervisors in perfecting the said consolidation agreement and in petitioning for a referendum.

(6) The county board of commissioners or county board of supervisors shall cause a copy of the said consolidation agreement thereafter to be published in each county which it is proposed to consolidate, at least once a week for two successive weeks in two or more newspapers having a general circulation in the said counties, and a copy of the said agreement shall be posted at the front door of the courthouse of each county.

(7) When the publication of the said consolidation agreement in each of the said counties is completed, of which the certificate to the judge of the circuit court of the said counties

from the owner-editor or manager of each newspaper publishing the same shall be proof, the judge or judges of the circuit courts of the said counties shall, by order entered of record in each of such counties, require the several county clerks of the counties included in the consolidation agreement to submit such question to a vote of the qualified electors of such counties at the next election to be held on the first Tuesday in April, or the next regular election, or at a special election to be held on the day fixed in said order, which day shall be the same in each of the counties proposing to consolidate. A copy of said order shall be filed with the county clerk of each of such counties. If such question is submitted at a special election, it shall be held not less than thirty days nor more than sixty days from the completion of the consolidation agreement, but not within sixty days of any April or general election.

(8) The county clerk shall notice such election as other elections. The ballots shall be provided by the county clerk and shall be in substantially the following form:

OFFICIAL REFERENDUM BALLOT

If you desire to vote for the consolidation of (insert names of counties proposing to consolidate) counties pursuant to consolidation agreement, make a cross (X) or other mark in the square after the word "Yes," underneath the question; if you desire to vote against consolidation, make a cross (X) or other mark in the square after the word "No," underneath the question.

Shall (here insert names of counties proposing to consolidate) counties consolidate pursuant to consolidation agreement?

YES

NO

(9) Such ballot shall have on the back or reverse side thereof the indorsements provided by law for ballots for general elections and shall be marked by the voter and counted and canvassed as other ballots cast on questions in the county are counted and canvassed. The election shall be conducted by the same officers and in the same manner as are other elections in the county. The results of the election shall be certified to the judge or judges of the circuit court of said counties.

(10) If a majority of the votes cast in each county upon such question are in favor of the consolidation of such counties, the judge or judges of said circuit court shall enter such fact of record in each such county. If in any one of such counties less than a majority of the votes cast upon such question are in favor of the proposed consolidation, said consolidation shall be declared to have failed for all purposes. If a majority of the votes cast upon such question in any county are opposed to consolidation, the question of consolidation shall not be again submitted to the electors of such county for a period of two years.

(11) At the next succeeding regular November election, held at least sixty days after the election at which consolidation is approved by the voters, there shall be elected for the consolidated county all county officers provided for by law, except as provided in subsection (12), and such officers shall be nominated as provided in chapter 5. Their terms shall begin on the first Monday of January next succeeding their election, at which time they shall replace all elective county officers of the counties consolidated into the consolidated county whose terms shall on such day terminate. All appointive county officers shall be appointed by the person, board or authority upon whom the power to appoint such officers in other counties is conferred. The terms of such officers shall commence on the first Monday of January next succeeding the first election of officers for the consolidated county, and shall continue, unless otherwise removed, until their successors have been appointed and qualified. The successors of all such officers whose first election or appointment is herein provided for shall thereafter be elected or appointed at the time, in the manner and for the terms provided by law.

(12) Consolidation effected under this section shall not affect the county courts or county superintendent of schools of the several counties until the expiration of the terms of the respective county judges and superintendents of schools holding office at the time of consolidation.

(a) Each county court shall continue to exercise the jurisdiction prescribed by law at the time of consolidation in the territory within which his jurisdiction then extends. In the judicial election held in April in the year prior to the expiration of the terms of the respective county judges, there shall be elected by the voters of the new consolidated county a county judge for such county who shall take office on the first Monday in January following the election. Thereafter the county courts of the several counties embraced in the consolidation shall cease to exist and the county court of the new consolidated county shall have jurisdiction in the entire county.

(b) Each county superintendent of schools in the several counties shall continue to exercise jurisdiction over the territory embraced in his district at the time of consolidation, but at the termination of his term the new consolidated county shall constitute but one superintendent district. In the election held in April prior to the expiration of such term,

a county superintendent of schools shall be elected for the entire consolidated county, to take office on the first Monday in July following the election.

(13) Upon the first Monday of January following the first election of county officers for the consolidated county, the several counties shall thereafter for all purposes be treated and considered as one county, under the name and upon the terms and conditions set forth in the said consolidation agreement; and all rights, privileges, and franchises of each of the said several counties, and all records, books, and documents, and all property, real and personal, and all debts due on whatever account, as well as other things in action, belonging to each of such counties, shall be deemed as transferred to and vested in the said consolidated county, without further act or deed. All property, all rights of way, and all and every other interest shall be as effectually the property of the consolidated county as they were of the several counties prior to said consolidation; and the title to real estate, either by deed or otherwise, under the laws of this state vested in any of the said counties, shall not be deemed to revert or be in any way impaired by reason of this consolidation; but the rights of creditors and all liens upon the property of any of the said counties shall be preserved unimpaired; and the respective counties shall be deemed to continue in existence to preserve the same and all debts, liabilities and duties of any of the said counties shall henceforth attach to said consolidated county and be enforced against it to the same extent as if the said debts, liabilities and duties had been incurred or contracted by it, unless by the terms of said agreement the outstanding bonded indebtedness of the said counties shall not be transferred and attached to said consolidated county, but shall remain as obligations of the said counties which for such purpose shall be deemed to continue in existence.

(14) Suits may be brought and maintained against such consolidated county in any of the courts of this state in the same manner as against any other county. Any action or proceeding pending by or against either of the counties consolidated may be prosecuted to judgment as if such consolidation had not taken place; or the consolidated county may be substituted in its place. The townships, school districts, election districts and voting places in the consolidated county shall continue as in the several counties prior to consolidation, unless and until changed in accordance with law.

(15) Until changed by law, the same circuit courts shall continue, though it may result in the consolidated county being a part of two or more circuits. All such courts shall, however, be held at the place designated as the county seat of the consolidated county, and each such court and the judge thereof shall continue to have and exercise the same jurisdiction as it or he had and exercised before such consolidation. If two or more judges have jurisdiction in any consolidated county they or a majority of them shall exercise the power to appoint officers and fill vacancies as is vested in judges of circuit courts of other counties.

(16) For the purpose of representation in congress and in the legislature the existing congressional, senatorial and assembly districts shall continue until changed in accordance with law. Such consolidated county shall in all respects, except as otherwise provided herein, be subject to all the obligations and liabilities imposed, and shall possess all the rights, powers and privileges vested by law in other counties.

(17) The provisions of this section shall be deemed cumulative and the authority herein granted to counties shall not be limited or made inoperative by any existing statute.

(18) If any section, subsection, sentence, clause or phrase of this section is held to be unconstitutional or in conflict with any other section, provision, part or portion of this section, such decisions shall not affect the validity of the remaining portion of this section.

[1935 c. 332]

59.100 to 59.134. [These sections, created by chapter 155, Laws 1937, providing annuity and benefit funds for the sheriff's department in Milwaukee county, are of local application and are not properly numbered for insertion in the statutes, and for these reasons are not printed. Section 59.135 was added by chapter 250, laws 1939 and 59.124 (1) (d) was added by chapter 249, laws 1943.]