

# LAWS

PASSED BY

THE NINTH SESSION

OF THE

# LEGISLATIVE ASSEMBLY

OF THE

STATE OF NORTH DAKOTA

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BEGUN AND HELD AT BISMARCK, THE CAPITAL OF SAID STATE  
ON TUESDAY, THE THIRD DAY OF JANUARY, A. D. 1905,  
AND CONCLUDED MARCH THIRD, 1905.

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1905

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By E. F. Porter

Secretary of State of the State of  
North Dakota.



### AUTHENTICATION.

STATE OF NORTH DAKOTA,        }  
Secretary's Office, Bismarck.   }

I hereby certify that the laws contained in this volume are true and correct copies of the original enrolled bills passed by the Legislative Assembly of the State of North Dakota, at the ninth session thereof, beginning January 3d, 1905, and terminating March 3d, 1905, now on file in this office, with the exception of clerical errors.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Dakota, this 1st day of July, 1905.

[SEAL]

E. F. PORTER,  
Secretary of State.

# THE LAWS.

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## ABANDONMENT.

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### CHAPTER 1.

[H. B. No. 122—Treat.]

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#### ABANDONING WIFE.

AN ACT to Prevent the Abandonment and Neglect of Wife or Children by Persons Charged by Law With the Maintenance Thereof; to Make Such Abandonment and Neglect a Felony; and to Prescribe the Punishment Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. ABANDONMENT OF WIFE OR CHILD MADE A FELONY. PUNISHMENT.] Any person who wilfully omits without lawful excuse to furnish proper food, clothing, shelter or suitable care in case of sickness to his wife or minor child under fifteen years of age, shall upon conviction be deemed guilty of a felony and punished by imprisonment in the penitentiary for not more than three years, nor less than one year, in a county jail, or in a workhouse at hard labor for not more than one year, nor less than three months; provided, however, if after conviction and before sentence he shall appear before the court in which said conviction shall have taken place, and enter into bond to the state of North Dakota in such penal sum as the court may fix, to be approved by the court as to surety, conditioned that he will furnish said child or wife with necessary and proper home, food, care and clothing, then the court may suspend sentence therein; provided, that upon failure of such person to comply with said undertaking, he may be ordered to appear before the court and show cause why sentence should not be imposed, whereupon the court may pass sentence, or for good cause shown may modify the order and take a new undertaking and further suspend sentence as may be just and proper.

§ 2. REPEAL.] All acts or parts of acts inconsistent with this act are hereby repealed.

§ 3. EMERGENCY.] Whereas, an emergency exists in this, that there is now no adequate provision of law for the punishment of crimes of this character, this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1905.

# ABSTRACTERS.

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## CHAPTER 2.

[S. B. No. 186—Sifton.]

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### ABSTRACTERS OF TITLE.

AN ACT To Amend Section 1774 of the Revised Codes of the State of North Dakota for 1899, Relating to Abstracters.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1774 of the revised codes be amended and re-enacted to read as follows:

§ 1774. ABSTRACTERS TO GIVE BONDS.] It shall be unlawful for any person, firm or corporation to engage in the business of making or compiling abstracts of title to real estate in this state or to demand and receive pay for the same without first having for use in such business a complete set of abstract books or records of all instruments filed or of record in the office of the register of deeds in and for the county in which such business is to be conducted, or in good faith engaged in the preparation for not less than three months of such books or records and without first filing in the office of the county auditor of the county in which such business is to be conducted, a bond to the county in the penal sum of ten thousand dollars, with not less than three sureties to be approved by the board of county commissioners of such county, conditioned for the payment by such abstracters of any and all damages that may accrue to any person for whom any abstract or certificate of title is made by reason of any error, deficiency or mistake in any abstract or certificate of title made and issued by such person, firm or corporation; provided, that in counties containing less than ten thousand inhabitants, the bond herein required shall be five thousand dollars.

§ 2. EMERGENCY.] Whereas, in the opinion of the legislative assembly, an emergency exists, therefore this act shall be in full force and effect from and after its passage and approval.

Approved March 9, 1905.

# ACTIONS.

## CHAPTER 3.

[S. B. No. 110—Movius.]

### ACTION AGAINST HOMESTEAD.

AN ACT to Limit the Time Within Which An Action May Be Commenced, or a Defense or Counterclaim Interposed, Founded Upon a Claim of Right to a Homestead Heretofore or Hereafter Conveyed or Incumbered, Otherwise Than as Provided by the Law in Force at the Time of the Execution of the Conveyance or Incumbrance Thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. LIMITING TIME WHEN ACTIONS MAY BE COMMENCED AGAINST HOMESTEADS.] No action, defense or counterclaim founded upon a right of homestead in property conveyed or incumbered prior to the taking effect of this act and since the taking effect of section 3609 of the revised codes of 1895, otherwise than as provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the taking effect of this act, shall be effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed on or before the first day of January, 1906; and no action, defense or counterclaim founded upon a right of homestead in property hereafter conveyed or incumbered, otherwise than as provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the execution of such conveyance or incumbrance, shall be effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed within two years after the execution of such conveyance or incumbrance; provided, nevertheless, that such limitation shall not apply, if the homestead claimant was, at the time of the execution of such conveyance or incumbrance, in the actual possession of the property claimed and had not quit such possession previous to the commencement of such action, or the interposing of such defense or counterclaim; and provided, further, that this act shall not in any way affect claims to homestead which may have become barred under the provisions of section 3609 of the revised codes of 1895.

§ 2. • REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 13, 1905.

## CHAPTER 4.

[S. B. No. 149—Pierce.]

## ACTIONS AGAINST UNKNOWN DEFENDANTS.

AN ACT to Amend Sections 5908 and 5909 of the Revised Codes of 1899, as Amended by Section 1 of Chapter 5 of the Laws of 1901, Relating to Unknown Persons Defendant in Certain Actions and Service of Summons Upon the Same.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 5908, as amended by section 1 of chapter 5 of the laws of 1901, be and the same is hereby amended so as to read as follows:

§ 5908. JOINDER OF DEFENDANTS.] In an action to determine adverse claims all persons appearing of record to have estates or interests in, or liens or incumbrances upon the property, and all persons in possession, may be joined as defendants, and all others may be joined by inserting in the title of the action the following: "All other persons unknown claiming any estate or interest in, or lien or incumbrance upon the property described in the complaint."

§ 2. AMENDMENT.] That section 5909, as amended by section 1 of chapter 5 of the laws of 1901, be and the same is hereby amended so as to read as follows:

§ 5909. UNKNOWN PERSONS MADE PARTIES.] All persons having or claiming an estate or interest in, or lien or incumbrance upon the property described in the complaint, whether as heirs, devisees, legatees, or personal representative of a deceased person, or under any other title or interest, and not in possession or not appearing of record in the office of the register of deeds, the clerk of the district court or the county auditor of the county in which the land is situate to have such claim, title or interest therein, may be proceeded against as persons unknown, and any order, judgment or decree entered in the action shall be valid and binding on such unknown persons, whether of age or minors, and on those claiming under them. Service of the summons in such action may be had upon all such unknown persons defendant by publication in the manner provided by law for service by publication upon defendants whose residence is unknown; provided, that as to such unknown persons defendant the affidavit for publication shall be required to state in substance the following facts: That the interests of such unknown persons defendant in the land described in the complaint are not shown of record in the office of the register of deeds, the clerk of the district court or the county auditor of the county in which such land lies, and the affiant does not know and is unable to ascertain the names, residences or postoffice addresses of any of the persons who are

proceeded against as unknown persons defendant; and the affidavit or complaint shall further show that the relief sought in the action consists wholly or partly in excluding the defendants from any interest in or lien upon specific real property in this state; and where jurisdiction is sought to be obtained against unknown persons under the provisions of this section, the summons shall state where the complaint is or will be filed, and there shall be subjoined to the summons as published, a notice signed by the plaintiff's attorney containing a description of the land to which such action relates. Unknown corporations claiming interests are included within the word "persons" as used in this act.

§ 3. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 13, 1905.

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## CHAPTER 5.

[H. B. No. 138—Stevens of Burleigh.]

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### COMMENCEMENT OF ACTIONS.

AN ACT to Amend Section 5210 of the Revised Codes of 1899, Relating to the Time of Commencement of Actions.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 5210 of the revised codes of 1899 be amended to read as follows:

§ 5210. EXCEPTION. ABSENTEE.] If, when the cause of action shall accrue against any person, he shall be out of the state, such action may be commenced within the terms herein respectively limited after the return of such person into the state; and if after such cause of action shall have accrued such person shall depart from and reside out of this state and remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action; provided, however, that the provisions of this section shall not apply to the foreclosure of real estate mortgages by action or otherwise; provided, further, that action against trustees acting under the townsite laws of the United States and this state, must be commenced within two years of the date when the cause of action accrued.

Approved March 10, 1905.

## CHAPTER 6.

[H. B. No. 260—Arnold.]

## DISMISSING CIVIL ACTIONS.

AN ACT Relating to the Dismissal of Civil Actions and Providing When and How Such Actions May Be Dismissed, and When the Judgment of Dismissal Shall Be on Its Merits.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CIVIL ACTIONS, HOW DISMISSED.] A civil action may be dismissed, without a final determination of its merits, in the following cases:

1. By the plaintiff, at any time before trial, if a provisional remedy has not been allowed, or counterclaim made, or affirmative relief demanded in the answer; provided, that an action on the same cause of action against any defendant shall not be dismissed more than once without the written consent of the defendant or an order of the court on notice and cause shown.

2. By either party, with the written consent of the other; or by the court, upon the application of either party, after notice to the other, and sufficient cause shown, at any time before the trial.

3. By the court, when upon the trial and before the final submission of the case, the plaintiff abandons it, or fails to substantiate or establish his claim, or cause of action, or right to recover.

4. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal.

5. By the court, on the application of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

§ 2. DISMISSALS UNDER SUBDIVISIONS 1 AND 2 MAY BE MADE HOW.] The dismissal mentioned in the first and second subdivisions of the first section of this act may be made by an entry in the clerk's register, by the plaintiff or his attorney, and a written notice of such dismissal and entry served on the adverse party, and judgment may thereupon be entered accordingly; provided, that in the cases mentioned in the said first subdivision of the first section of this act, and in cases in which the parties to the action consent in writing to the dismissal of such action, the judgment of dismissal may be entered by the clerk on motion of either party without any notice to the opposite party, and without an order from the court or judge.

§ 3. DISMISSALS UNDER OTHER SUBDIVISIONS, HOW MADE.] In every case, other than those mentioned in the first section of this act, the judgment in the action shall be rendered on the merits.

§ 4. ALL OTHER MODES OF DISMISSAL ABOLISHED.] All other modes of dismissing an action, except as provided in this act, by non-suit or otherwise, are hereby abolished.

Approved March 11, 1905.

# ADULTERATIONS.

## CHAPTER 7.

[H. B. No. 28—Dickinson.]

### ADULTERATING FORMALDEHYDE.

AN ACT to Prevent Fraud in the Sale of Formaldehyde Used as a Fungicide, Prescribing a Penalty for the Violation, Providing for the Inspection and Analysis of Same, and Charging the North Dakota Government Agricultural Experiment Station With the Duty Thereof, and Charging the State's Attorney With the Enforcement Hereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DUTY OF MANUFACTURERS AND DEALERS.] It shall be the duty of each and every manufacturer of formaldehyde (the aldehyde of methyl alcohol) to be used as a fungicide within the state, and of every dealer of original packages of said formaldehyde manufactured outside of this state, before the said formaldehyde is offered or exposed for sale, or sold within this state as a fungicide, or for fungicidal purposes, to submit to the director of the North Dakota government agricultural experiment station at Fargo, samples of said formaldehyde, and a written or printed statement setting forth the brand or brands of said formaldehyde to be sold, the number of pounds contained in each retainer or container in which it is put on the market for sale, the name or names of the manufacturers and the place of manufacturing the same.

Second. The statement shall set forth in per cent by weight, the amount of formaldehyde contained in the said solution of formaldehyde, and the statement so furnished shall be considered as constituting a guarantee to the purchaser that every quantity, sold or offered for sale, shall contain not less than the amount of formaldehyde expressed in per cent as set forth in the said statement.

§ 2. RIGHT TO SELL IN THE STATE, HOW OBTAINED.] Every purchaser of said formaldehyde in original packages, which is manufactured outside of this state, who intends to sell or expose the same for sale, and every manufacturer of said formaldehyde within this state shall, after filing the statement above provided for, with the director of the North Dakota government agricultural experiment station at Fargo, receive from the said director a certificate stating that he has complied with the foregoing statement, which certificate shall be furnished without charge therefor; said certificate when furnished shall authorize the party when receiving the



same to deal in this state in the said formaldehyde. Any person who fails to comply with the terms of section 1 of this act shall not be entitled to such certificate and it shall not be construed as applying to retail dealers selling formaldehyde which has already been labeled and guaranteed.

§ 3. LEGAL STRENGTH.] Formaldehyde when sold, offered or exposed for sale, as a fungicide, in this state, shall contain at least forty per centum by weight of formaldehyde, and if it falls below thirty-eight per cent it shall be deemed adulterated within the meaning of the terms of this act.

§ 4. DUTY OF THE DIRECTOR.] The director of the North Dakota government agricultural experiment station at Fargo shall secure different brands of formaldehyde sold, offered or exposed for sale within the state, and shall have said samples of formaldehyde analyzed, and for this purpose he may appoint such agent or agents as he may deem necessary, for the enforcement of the act, and such agent or agents shall have free access and egress at all reasonable hours, for the purpose of examining into any place wherein it is suspected any formaldehyde may be kept, and such agent or agents may take from any person, firm or corporation samples of said formaldehyde for analysis and when said goods are found on analysis to be in violation of this law the said director shall report the said fact to the state's attorney for the district wherein the offense is committed.

§ 5. CERTIFICATES AS EVIDENCE.] Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo relating to the analysis of any formaldehyde shall be presumptive evidence of the facts therein stated.

§ 6. DUTY OF STATE'S ATTORNEY.] It shall be the duty of the state's attorney to prosecute all persons violating any of the provisions of this act when the evidence thereof has been presented by the North Dakota government agricultural experiment station as provided for in sections 4 and 5 of this act.

§ 7. WHAT CONSTITUTES VIOLATION.] The doing of anything prohibited by this act shall be evidence of the violation of the provisions of this act relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this act relative to the things so directed to be done, and any person who shall sell any unbroken package of formaldehyde or any part thereof which has not been labeled as herein provided, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than one hundred dollars, together with the costs of the suit in an action caused to be brought by the director of the North Dakota government agricultural experiment station in the name of the people of the state of North Dakota.

§ 8. EMERGENCY.] Whereas, an emergency exists in that there is no law regulating the sale of formaldehyde for fungicidal purposes, therefore this act shall take effect immediately after its passage and approval.

Approved February 17, 1905.

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## CHAPTER 8.

[S. B. No. 49—McArthur.]

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### ADULTERATION OF PAINTS.

AN ACT to Prevent the Adulteration of and Deception in the Sale of White Lead and Mixed Paints.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. PERSONS MANUFACTURING, SELLING OR OFFERING FOR SALE WHITE LEAD OR PAINTS MUST ADOPT CERTAIN LABEL, SHOWING MINERAL CONSTITUENTS. ADULTERATION CONSTITUTES A MISDEMEANOR. PENALTY. EXCEPTION.] Every person, firm or corporation who manufactures for sale or exposes for sale, or sells within this state, any white lead, paint or compound intended for use as such, shall label the same in clear and distinct open gothic letters upon a white background and show the true per cent of each mineral constituent contained in said paint, or if other than linseed oil is used in its preparation, the names of such oils or substitutes shall be shown together with the percentage thereof, and every person, firm or corporation who manufactures for sale, or exposes for sale or sells within this state any mixed paint or compound intended for use as such, which contains any ingredients other than pure linseed oil, pure carbonate of lead, oxide of zinc, turpentine, Japan dryer and pure colors, shall be deemed guilty of a misdemeanor and upon conviction thereof shall, for each offense, be punished by a fine of not less than twenty-five and not more than one hundred dollars and costs, or by imprisonment in the county jail not exceeding sixty days; provided, that any such person, firm or corporation who shall manufacture for sale or expose for sale, or sell within this state any white lead, paint or mixed paint containing ingredients other than those as above enumerated, shall not be deemed guilty of a violation of this act in case the same be properly labeled showing the quantity or amount of each and every ingredient used therein and not specified above, and the name and residence of the manufacturer or person for whom it is manufactured.

§ 2. POSSESSION OF ARTICLES IN VIOLATION OF THIS ACT DEEMED PRIMA FACIE EVIDENCE OF VIOLATION.] The having in possession by any person, firm or corporation dealing in said articles, any articles or substances hereinbefore described and not properly labeled, as

provided by section 1 of this act, shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this act and punishable under it.

§ 3. DIRECTOR OF NORTH DAKOTA AGRICULTURAL EXPERIMENT STATION CHARGED WITH ENFORCEMENT OF THIS ACT.] The director of the North Dakota government agricultural experiment station is charged with the proper enforcement of all the provisions of this act.

§ 4. DIRECTOR, ASSISTANTS, ETC., TO HAVE ACCESS TO ALL PLACES MANUFACTURING OR SELLING ARTICLES NAMED IN THIS ACT, WITH POWER TO OPEN PACKAGES.] The said director and the assistants, experts, chemists and agents shall be duly authorized for the purpose, and shall have access and ingress to all places of business, factories, stores and buildings used for the manufacture or sale of paints. They shall also have power and authority to open any package, can, jar, tub or other receptacle containing white lead paints that may be sold, manufactured or exposed for sale, in violation of the provisions of this act.

§ 5. ACT IN FORCE JANUARY 1ST, 1906.] This act shall take effect and be in force from and after January 1, 1906.

Approved March 6, 1905.

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## CHAPTER 9.

[H. B. No. 42—Treat.]

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### ADULTERATING PARIS GREEN.

AN ACT to Prevent Fraud in the Sale of Paris Green Used as an Insecticide, Prescribing a Penalty for the Violation, Providing for the Inspection and Analysis of Same, and Charging the North Dakota Government Agricultural Experiment Station With the Duty Thereof and Charging the State's Attorney With the Enforcement Hereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DUTY OF MANUFACTURERS AND DEALERS.] It shall be the duty of each and every manufacturer of Paris green (commercial acetoarsenite of copper) to be used as an insecticide within the state, and of every dealer in original packages of said Paris green manufactured outside of this state, before the said Paris green is offered or exposed for sale, or sold within this state as an insecticide, to submit to the director of the North Dakota government agricultural experiment station of Fargo, samples of said Paris green, and a written or printed statement setting forth: First, the brands or said Paris green, to be sold, the number of pounds contained in each package in which it is put on the market for sale, the name or names of the manufacturers and the place of manufacturing the same; second, the statement shall set forth the amount of combined arsenic which

the said Paris green contains, and the statement so furnished shall be considered as constituting a guarantee to the purchaser that every package of such Paris green contains not less than the amount of combined arsenic set forth in the statement.

§ 2. RIGHT TO SELL IN THE STATE AND HOW OBTAINED.] Every purchaser of said Paris green in original packages, which is manufactured outside of this state, who intends to sell or expose the same for sale, and every manufacturer of said Paris green within this state, shall, after filing the statement above provided for, with the director of the North Dakota government agricultural experiment station at Fargo, receive from the said director a certificate stating that he has complied with the foregoing statement, which certificate shall be furnished without charge therefor; said certificate when furnished shall authorize the party when receiving the same to deal in this state in the said Paris green. Any person who fails to comply with the terms of section 1 of this act shall not be entitled to such certificate and it shall not be construed as applying to retail dealers selling Paris green which has already been labeled and guaranteed.

§ 3. LEGAL STRENGTH.] Paris green, when sold, offered or exposed for sale, as an insecticide, in this state, shall contain at least fifty per centum of arsenious oxid, and shall not contain more than four per centum of the same in the uncombined state.

§ 4. DUTY OF THE DIRECTOR.] The director of the North Dakota government agricultural experiment station at Fargo shall examine or cause to be examined different brands of Paris green sold, offered or exposed for sale within the state, and cause samples of the same to be analyzed, and for this purpose he may appoint such agent or agents as he may deem necessary for the enforcement of this act, and such agent or agents shall have free access at all reasonable hours, for the purpose of examining into any place wherein it is suspected any Paris green may be kept, and such agent or agents may take from any person, firm or corporation, samples of said Paris green for analysis and when said goods are found on analysis to be in violation of this law the said director shall report the said facts to the state's attorney for the district wherein the offense is committed.

§ 5. CERTIFICATES AS EVIDENCE.] Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo relating to the analysis of any Paris green shall be presumptive evidence of the fact therein stated.

§ 6. DUTY OF STATE'S ATTORNEY.] It shall be the duty of the state's attorney to prosecute all persons violating any of the provisions of this act when the evidence thereof has been presented by the North Dakota government agricultural station, as provided for in sections 4 and 5 of this act.

§ 7. WHAT CONSTITUTES VIOLATION.] The doing of anything prohibited by this act shall be evidence of the violation of the pro-

visions of this act relating to the things so prohibited, and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this act relative to the things so directed to be done, and any person who shall sell or dispose of any package of Paris green or any part thereof which has not been labeled as herein provided, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than one hundred dollars, together with the costs of the suit in an action caused to be brought by the director of the North Dakota government agricultural experiment station in the name of the people of the state of North Dakota.

§ 8. EMERGENCY.] Whereas, there is now no law adequately governing the sale of Paris green in this state, an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 18, 1905.

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## CHAPTER 10.

[H. B. No. 27—Sweet.]

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### PURE DRUG LAW.

AN ACT to Prevent the Adulteration, Misbranding and Selling of Adulterated and Insufficiently Labeled Drugs or Medicines, Prescribing a Penalty for the Violation Hereof, Providing for the Inspection, Testing and Analyzing of Said Drugs and Medicines, Charging the North Dakota Experiment Station With the Duty Thereof, and Charging the State's Attorney With the Enforcement Hereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. ADULTERATING AND LABELING DRUGS.] It shall be unlawful for any person, his agent or servant, or while acting as agent or servant of any other person or corporation to manufacture for sale, offer for sale, or sell within this state any drug which is adulterated within the meaning of this act.

§ 2. DRUGS DEFINED.] The term "drug" as used in this act shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics.

§ 3. WHAT CONSTITUTES ADULTERATION.] A drug shall be deemed to be adulterated:

First. If, when sold under or by a name recognized in the United States pharmacopœia, it differs from the standard of strength, quality or purity prescribed therein, unless the order therefor requires an article inferior to such standard or unless such difference is made known or so appears to the purchaser at the time of the sale.

Second. If, when sold under or by a name not recognized in the United States pharmacopœia, but which is found in some other

pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity prescribed in such work.

Third. If its strength, quality or purity falls below the professed standard under which it is sold; provided, that a drug or medicine shall not be deemed adulterated in the following case: If the standard of strength or purity of any drug has been raised since the issue of the last edition of the United States pharmacopœia, no prosecution relative to it shall be maintained until such change of standard has been published throughout the commonwealth.

§ 4. DRUGS AND MEDICINES TO BE LABELED.] Every proprietary product, drug, medicine or beverage containing more than five per cent of ethyl alcohol, or which contains chloral hydrate, ergot, morphine, opium or any of their compounds or derivatives, cocaine or any of its salts, bromine, iodine or any of their salts, shall be clearly labeled in black open gothic letters printed on a white background showing the name and percentage of each of the foregoing constituents, and said label shall be affixed to each and every package, carton, box or bottle in such a way as to be clearly seen.

§ 5. COCAINE, HOW SOLD.] No sale or gift of cocaine or of its salts shall be made, or delivery thereof made in this state except upon the written prescription of a licensed physician.

§ 6. METHYL ALCOHOL PROHIBITED.] It shall be unlawful to sell, offer or expose for sale, or have in possession any preparation or product, intended for the use of man, either for internal or external purposes, which contains methyl alcohol or "wood spirits."

§ 7. PHYSICIAN'S PRESCRIPTION TO BE FILLED.] Nothing in this act shall be so construed as to in any way interfere with the written prescription of any regularly licensed physician or with the filling of the same by a licensed druggist.

§ 8. PENALTY FOR VIOLATION.] Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall for the first offense be punished by a fine of not less than five dollars or more than one hundred dollars, and all necessary costs, including the expense of analyzing such adulterated articles when said person has been found guilty under this act, and all such adulterated or misbranded articles may by order of the court be seized and destroyed.

§ 9. DUTY OF STATE'S ATTORNEY.] It shall be the duty of the attorney general and state's attorney to prosecute all persons violating any of the provisions of this act when the evidence thereof has been presented by the North Dakota government agricultural experiment station as provided for in sections 11 and 12 of this act.

§ 10. THE NORTH DAKOTA EXPERIMENT STATION TO INSPECT AND ANALYZE DRUGS AND MEDICINES.] The North Dakota government agricultural experiment station shall make analysis of drugs and

medicines found on sale in North Dakota suspected of being adulterated, at such times and places and to such extent as it may determine, and may appoint such agent or agents as it may deem necessary for the enforcement of the provisions of this act, and such agent or agents shall have free access and egress, at all reasonable hours, for the purpose of examining into any place wherein it is suspected any drug or medicine adulterated with any deleterious or foreign ingredient or which falls below the standard of purity or where such ingredients exist, and such agent or agents, upon tendering the market price of said article, may take from any person, firm or corporation samples of any articles suspected of being adulterated as aforesaid.

§ 11. FACTS—HOW TRANSMITTED.] Whenever said station shall find, by its analysis, that adulterated drugs have been on sale in this state or that said drugs are in violation of this act, it shall forthwith transmit the facts so found to the attorney general and the state's attorney of the county in which said adulterated product was found.

§ 12. CERTIFICATES AS EVIDENCE.] Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo relating to the analysis of any drug products or medicines, shall be presumptive evidence of the facts therein stated.

§ 13. STATION TO MAKE ANNUAL REPORT.] The said station shall make an annual report to the governor upon the work done under this act and said report may be included in the report which said station is already authorized by law to make to the governor.

§ 14. WHAT GOODS SUBJECT TO THIS ACT; WHAT EXEMPT.] All goods coming into this state after July 1, 1905, shall be subject to the provisions of this act, while those goods within the state prior to that date shall be considered as exempt until January 1, 1906.

Approved February 28, 1905.

## CHAPTER 11.

[S. B. No. 27—Hanna.]

## PURE FOOD LAW.

AN ACT to Amend and Re-enact Sections 1, 2 and 3 of Chapter 6 of the Session Laws of 1903, the Same Being an Act to Prevent the Adulteration, Misbranding and Selling of Adulterated and Unwholesome Foods and Beverages, Prescribing a Penalty for the Violation, Providing for the Inspection and Analysis of Foods, Charging the North Dakota Government Agricultural Experiment Station With the Duty Thereof, Charging the State's Attorney With the Enforcement Hereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. ADULTERATING AND MISBRANDING FOODS AND BEVERAGES.] It shall be unlawful for any person, either for himself or while acting as agent or servant of any other person or corporation, to manufacture for sale, sell, offer or to have for sale, to solicit orders for, to store or to deliver within the state any article of food or beverage which is unwholesome or adulterated within the meaning of this act. The having in possession of such adulterated article or articles shall be deemed as prima facie evidence of the violation thereof. For the purposes of this act all condiments, extracts, vinegars, or other substances used in the preparation or compounding of foods or food products and beverages shall be deemed as articles of food.

§ 2. WHAT CONSTITUTES ADULTERATION.] Any article of food or beverage shall be considered as unwholesome or adulterated within the meaning of this act:

First. If it contains and form of analine dye or other coal tar dye, or if colored with a harmless vegetable dye and the name thereof is not given on the label.

Second. If it contains formaldehyde, benzoic acid, sulphurous acid, boric acid, salicylic acid, hydrofluoric acid, saccharin, betanaphthol, or any salt or antiseptic compound derived from these products.

Third. If any substance or substances have been mixed with it so as to reduce or lower or injuriously affect its quality or strength or food value so that such article of food or beverage when offered for sale, shall deceive or tend to deceive the purchaser.

Fourth. If any inferior or cheaper substance or substances have been substituted wholly or in part for the article, so that the product when sold shall deceive or tend to deceive the purchaser.

Fifth. If any necessary or valuable constituent of the article has been in whole or in part abstracted.

Sixth. If it be an imitation of or offered for sale under the specific name of another article.

Seventh. If it be labeled, branded, or colored so as to deceive



or mislead the purchaser, or if it be falsely labeled in any respect.

Eighth. If it consists wholly or in part of a diseased, decomposed, filthy or putrid animal or vegetable substance, or if such substance or substances be used in the preparation thereof.

Ninth. If every package, bottle or container does not bear the true net weight, the name of the real manufacturers or jobbers, and the true grade or class of the product, the same to be expressed in clear and distinct English words in black type on a white background; provided, that an article of food or beverage shall not be deemed adulterated in the following cases:

First. If it be a compound or mixture of recognized food products not included in definitions sixth and eighth of this section.

Second. In the case of candies and chocolates, if they contain no terra alba, barytes, talc, chrome yellow or other mineral substances, or analine dyes or other coal tar dyes or other poisonous colors, flavors or products detrimental to health.

Third. If in the case of baking powders or any mixture or compound intended for use as a baking powder they have affixed to each and every box, can or package containing such powder or like mixture or compound, a light colored label upon the outside and on the face of this there is distinctly printed with black ink and in clear legible type the name and address of the manufacturers, the true and correct analysis, and in a form to be prescribed by the North Dakota government agricultural experiment station, of each and all the constituents or ingredients contained in or contributing a part of such baking powders, or mixture or compound intended for use as a baking powder. The label shall bear no advertising or descriptive matters other than the name of the manufacturer, composition as prescribed for above, and directions for use.

Fourth. In the case of perishable goods put up in bulk, sodium benzoate may be used in proportion not to exceed one part in two thousand in such products and under such regulations as may be determined upon and proclaimed by the North Dakota government agricultural experiment station at Fargo. This clause shall not be applicable for goods coming into the state after July, 1907, nor to any case at any time where products can be commercially produced without the use of chemical preservatives. Where the use of preservatives are permitted the fact shall be clearly set forth on this label in the form and manner to be prescribed by the North Dakota government agricultural experiment station at Fargo.

§ 3. PENALTY FOR VIOLATION.] Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall for the first offense be punished by a fine of not less than twenty-five dollars or more than one hundred dollars, and all necessary costs, including the expense of analyzing such adulterated articles, when said person has been found guilty under this act. Products found to be adulterated within the meaning of this act may by order of the court be seized and ordered destroyed.

Approved February 24, 1905.

# APPROPRIATIONS.

## CHAPTER 12.

[S. B. No. 52—Sharpe.]

### ADJUTANT GENERAL.

AN ACT to Amend Section 1375 of the Revised Codes, Relating to Additional Duties of the Adjutant General.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1375 of the revised codes of the state of North Dakota be, and is hereby amended to read as follows:

§ 1375. ADDITIONAL DUTIES OF ADJUTANT GENERAL.] That the adjutant general shall, in addition to his other duties, organize and conduct a bureau of pensions, for the purpose of assisting ex-soldiers and sailors, residents of the state, who may apply for pensions on account of wounds or disability incurred in the service of the United States in establishing their claims without fees or commissions. The salary of the adjutant general shall be eighteen hundred dollars per annum, which, with the necessary expenses incurred in conducting the bureau of pensions, office and clerk hire, furniture, fuel, light, postage, not to exceed one thousand dollars, eight hundred dollars of which salary and expenses shall be paid from the militia fund and the balance shall be paid from the general fund by warrants drawn by the state auditor on the state treasurer, on the order of the governor.

§ 2. EMERGENCY.] Whereas, the duties of the adjutant general have largely increased, and there is no adequate compensation provided for him, therefore an emergency exists, and this act shall take effect and be in force from and after its passage and approval.

Approved March 16, 1905.

## CHAPTER 13.

[S. B. No. 4—Hanna.]

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## AGRICULTURAL COLLEGE LABORATORY.

AN ACT Appropriating Money for the Building and Equipping of a Chemical Laboratory and a Greenhouse for the North Dakota Agricultural College and Experiment Station at Fargo.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of the moneys in the state treasury, not otherwise appropriated, the sum of fifty thousand dollars, for the building and equipping of a chemical laboratory and of a greenhouse for the North Dakota agricultural college and experiment station at Fargo.

§ 2. EMERGENCY.] An emergency exists in this, that the chemical department of the college and station is without room in which to conduct classes or in which to carry on investigations in agricultural and farm chemistry, or the conducting of work as required under the pure food law; and the department of botany has no greenhouse in which to conduct experiments in plant diseases, such as wheat rust, smut, and flax wilt—experiments which should be conducted under glass throughout the year to make progress or to prove most effective; and since these improvements were contemplated by the last legislative assembly and there is immediate need for these lines of work the present year, therefore this act shall take effect from and after its passage and approval.

Approved March 15, 1905.

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## CHAPTER 14.

[H. B. No. 10—Buttz.]

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## ARMORY RENT.

AN-ACT to Amend Section 1419 of Chapter 19 of the Political Code, Entitled "Militia."

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1419 of chapter 19 of the political code of 1899 be, and the same is hereby amended to read as follows:

§ 1419. DUTY OF COMMANDING OFFICER. APPROPRIATION.] The commanding officer of each company, troop or battery, and the treasurer of each regimental band, shall provide suitable rooms, at

a convenient place in the city where each organization is located or stationed, with the necessary furniture, fuel, lights, drawers, lockers, closets and gun racks for an armory, assembly and drill room, for such organization, and such rooms shall be under the exclusive control of the commanding officer. There shall be an annual appropriation of five hundred dollars from the militia fund for the rent and furnishing of such armory or band headquarters for each organization of the national guard; six hundred dollars additional to be paid to the chief musician of each regimental band as compensation for the services in training said band at his home station, and the sum of one hundred dollars to be paid to the commanding officer of each troop or battery to provide horses for mounted drills by said troop or battery during each year; provided, that no less than five mounted drills shall have been held by said troop or battery during each year.

§ 2. REPEAL.] That the acts approved February 28 and March 6, 1903, of the session laws, amending section 1419 of the revised codes relating to armory rent, etc., are hereby repealed.

§ 3. EMERGENCY.] An emergency exists in that there are not sufficient funds appropriated by law to meet the expenses of maintaining the regimental band attached to the militia, therefore this act shall take effect from and after its passage and approval.

Approved February 25, 1905.

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## CHAPTER 15.

[S. B. No. 78—LaMoure.]

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### BLIND ASYLUM.

AN ACT Making an Appropriation for the Erection of a Building for the Blind Asylum, Located at Bathgate, Pembina County, and for the Proper Furnishing and Equipment of the Same and to Provide for Its Maintenance and Operation.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] For the purpose of erecting a suitable building for the blind asylum, located at Bathgate, Pembina county, and for furnishing and equipping the same, there is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of twenty-five thousand dollars; provided, that before this sum shall be available for the uses contemplated herein, there shall have been conveyed to the state of North Dakota, by good and sufficient deed of warranty, at least ten acres of land at or near Bathgate, suitable for the site of said blind asylum, said land to be conveyed to the state of North Dakota without charge or

cost to said state or said institution and which said site shall be approved by the board of trustees of said blind asylum, or a majority thereof.

§ 2. POWERS OF BOARD OF TRUSTEES.] Upon the receipt and approval of the land mentioned in section 1 of this act, the board of trustees of said blind asylum are authorized and empowered to proceed to the erection of a suitable building or buildings for said blind asylum, to furnish and equip the same for use and provide for its maintenance and operation.

§ 3. BOARD TO NOTIFY GOVERNOR OF COMPLETION.] Upon the completion and equipment of said blind asylum, as provided for herein, the board of trustees of said institution shall inform the governor of this state of that fact and that the said asylum is ready to receive inmates, whereupon the governor shall cause the transfer to said asylum of any persons now being cared for at other institutions, at the expense of the state, and the provisions of the laws of this state, relative to the expenses of the care and custody of the blind, shall apply to the state blind asylum and any appropriations now in force for this purpose shall inure to the benefit and credit of the blind asylum at Bathgate.

§ 4. EMERGENCY.] Whereas, there is no blind asylum in North Dakota and it is needed that said institution be at once made ready for the reception of inmates, therefore an emergency exists and this act shall take effect and be in force from and after its passage and approval.

Approved March 14, 1905.

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## CHAPTER 16.

[S. B. No. 154—Simpson.]

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J. G. CAMPBELL.

AN ACT Appropriating to James G. Campbell, State's Attorney of Stark County, \$300 Attorney's Fees for Services Rendered in the Unorganized Territory Attached to Stark County for Judicial Purposes During the Years 1903 and 1904.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of three hundred dollars to James G. Campbell, state's attorney of Stark county, North Dakota, as fees for services performed in the prosecution of criminal cases arising in the unorganized territory attached to Stark county for judicial purposes during the years 1903 and 1904.

Approved March 15, 1905.

## CHAPTER 17.

[S. B. No. 112—Senate Committee on Appropriations.]

## CAPITOL MAINTENANCE.

AN ACT to Amend Section 338 of the Revised Codes of 1899, as Amended by Chapter 28 of the Session Laws of 1903, Providing for an Appropriation for Supplies for the Capitol Building, Executive Mansion and the Public Grounds and Parks Connected Therewith and for Necessary Repairs Upon the Capitol Building and Executive Mansion.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 338 of the revised codes of 1899, as amended by chapter 28 of the session laws of 1903, is hereby amended to read as follows:

§ 338. POWERS OF BOARD OF TRUSTEES. APPROPRIATION.] The board of trustees of public property is authorized and empowered to provide all necessary furniture, fuel, lights, stationery, postage, express, freight, drayage, and all other necessary supplies for the state offices and executive mansion and the public grounds and parks connected therewith, and to make all necessary repairs upon the capitol building and executive mansion, and there is hereby annually appropriated out of any money in the state treasury, not otherwise appropriated, the sum of twenty-four thousand dollars, or so much thereof as may be necessary to carry out the provisions of this section, and the state auditor is empowered to draw his warrant for such sums as shall be found due on account of claims or accounts against such appropriation, upon approval thereof by the state auditing board, and upon approval the state treasurer is hereby directed to pay such warrants from the general fund of the state.

§ 2. EMERGENCY.] Whereas, in the opinion of the legislative assembly, an emergency exists, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 14, 1905.

## CHAPTER 18.

[S. B. No. 176—Senate Joint Special Committee.]

## CLERK HIRE, CAPITOL.

AN ACT Providing for the Amount of Clerk Hire to be Allowed Various State Offices, and Making an Appropriation Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CLERK HIRE.] The following amounts are hereby fixed and allowed for clerk hire of the several state offices hereinafter mentioned, which sums, commencing January 1, 1905, shall be paid in monthly payments on the warrant of the state auditor:

Governor's office—for private secretary, stenographer, messenger, and such other employees as may be necessary, per annum .....	\$3,000
Secretary of state's office, per annum.....	3,900
State auditor's office, per annum.....	5,700
Treasurer's office, per annum.....	5,000
Superintendent public instruction's office, per annum.....	4,000
Commissioner agriculture and labor's office, per annum....	2,700
Attorney general's office, per annum.....	4,000
Commissioner of insurance's office, per annum.....	3,600
State bank examiner's office, for stenographer and office clerk, per annum.....	1,000
Clerk of supreme court's office, per annum.....	1,200
Secretary of state's office, for care and custody of state libraries, per annum.....	1,000
State weather bureau's office, per annum.....	600
Deputy commissioner of university and school lands, per annum .....	1,800

Provided, that the chief deputy in the several offices enumerated shall receive out of the sums herein provided for an annual salary of one thousand eight hundred dollars per annum; and provided, further, that all clerical appointments shall first be referred to the governor for his approval.

§ 2. APPROPRIATION.] There is hereby annually appropriated out of any money in the state treasury not otherwise appropriated, a sum of money sufficient to carry out the provisions of this act.

§ 3. EMERGENCY.] Whereas, the sum now fixed for clerk hire for the different state offices is not sufficient to secure the necessary assistance for the proper conduct of the work in state offices, therefore an emergency exists and this act shall take effect and be in force from and after its passage and approval.

Approved March 14, 1905.

## CHAPTER 19.

[S. B. No. 79—LaMoure.]

## COCHRANE LIBRARY.

AN ACT Making an Appropriation for the Purchase of the Law Library of the Late John M. Cochrane, of Grand Forks, North Dakota, for the Use of the College of Law of the University of North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] For the purchase of the law library of the late John M. Cochrane, of Grand Forks, North Dakota, for the use and benefit of the college of law of the university of North Dakota, there is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of ten thousand dollars.

§ 2. DUTY OF DEAN OF COLLEGE OF LAW.] The dean of the college of law of the university of North Dakota is hereby authorized to inventory and receive the said law library, properly classify the same, have the same suitably labeled and branded as being the property of the state of North Dakota, provide suitable shelving for the said books, insure the same in the name of the state of North Dakota, and in any proper manner direct the management of the said law library. The said law library shall be a reference library only and be for the use of students attending the college of law of the university of North Dakota and others who may desire to consult the same, during proper hours to be prescribed by the dean of said college of law. The dean of said college is authorized and required to make suitable rules for the use of said law library, one of which rules shall be to the effect that no books shall be removed for use from the library room in which said books are contained. If at any time the college of law of the said university of North Dakota shall be discontinued the said books, and all of them, shall be immediately transferred to the capitol at the seat of government and be merged with and become a part of the state law library. The dean of said college of law, immediately on the receipt of said law library, shall make out duplicate invoices and inventories of said law library and transmit one to the secretary of state, to be by him preserved. On the first day of July thereafter in each year the said dean shall transmit a new invoice and new inventory showing all books on hand, including the additions to said law library, if any, which additions shall, from time to time, as fast as received, be branded and marked as provided for the original purchase herein. Any law books now the property of the said university, or which shall be hereafter received, shall be likewise branded and a full inventory returned to the secretary of state, it being the intention of this act that on the receipt of the said Cochrane library all books on the subject of the



law, owned by the university of North Dakota and used in its college of law, shall be merged with the said Cochrane library so as to form one full and complete law library. The dean of said college of law is authorized to exchange before branding any duplicate books he may have, for other works of a legal nature suitable for use in said college of law.

§ 3. EMERGENCY.] Whereas, it is necessary to purchase the law books provided for herein before July 1st, therefore an emergency exists and this act shall take effect and be in force from and after its passage and approval.

Approved March 14, 1905.

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## CHAPTER 20.

[H. B. No. 6—Buttz.]

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### CLARENCE M. COLE.

AN ACT for the Relief of Clarence M. Cole, a Member of Battery "A,"  
North Dakota National Guard.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. ADMITTED TO AGRICULTURAL COLLEGE.] That the trustees of the agricultural college at Fargo are authorized to admit Clarence M. Cole to said college as a student for one year, and for such further period as said trustees shall deem just and proper, to give the said beneficiary a suitable education that will enable him to earn a livelihood.

§ 2. BOARD SHALL PROVIDE FOR MAINTENANCE.] That said Clarence M. Cole, while a member of Battery "A" of the national guard of the state of North Dakota, without any fault on his part and while in the performance of his duty as a soldier of the state, on June 27, 1903, at Camp Lawton, Ramsey county, North Dakota, lost his right arm four inches below the elbow, by reason of the premature discharge of a gun belonging to said battery. Said board of trustees shall provide for the maintenance (including suitable clothing) of said beneficiary during the time he remains a student in said college, and they are authorized to designate a class of studies suitable for him to pursue.

§ 3. POWERS OF BOARD.] That if said board of trustees shall at any time deem it advisable to discharge said beneficiary from said college, they are authorized so to do.

§ 4. SOLDIERS' HOME AUTHORIZED TO ADMIT.] That if at any time after said Clarence M. Cole shall have left the said agricultural college, his physical condition becomes such that he is not able to provide for the necessities of life, said condition not having been brought about by his own vicious habits, then the board of trustees

of the soldiers' home at Lisbon, in said state, shall upon the application of said Clarence M. Cole, examine him, with a view to his admission in the said soldiers' home, and if, upon examination, the said board of trustees deem it advisable, they are authorized to admit said Clarence M. Cole as an inmate to the said soldiers' home on an equality with the ex-soldiers of the United States; provided, however, that the additional expense of maintaining said Clarence M. Cole shall be borne by the state of North Dakota.

§ 5. REPEAL.] That all acts and parts of acts in conflict with this act are hereby repealed.

§ 6. EMERGENCY.] Whereas, an emergency exists in this, that there is no law providing for the admission and maintenance of beneficiaries to the agricultural college or other educational institutions of the state, and such institutions close their school year prior to July 1, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1905.

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## CHAPTER 21.

[S. B. No. 62—Simpson.]

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### DICKINSON EXPERIMENT STATION.

AN ACT Creating and Establishing an Agricultural Experiment Station at or Near Dickinson in Stark County; Providing for its Management and Making an Appropriation Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. EXPERIMENT STATION CREATED AND ESTABLISHED AT DICKINSON. MEMBERS OF BOARD.] There is hereby created and established an agricultural and grass experiment station, to be located at or near Dickinson in Stark county, in connection with the North Dakota agricultural college at Fargo and under the direction of the board of directors of said college, and one additional member to be appointed by the governor by and with the advice and consent of the senate, whose term of office shall be for four years from and after the date of his appointment and until his successor shall be appointed and qualified, and who shall receive for his services the sum of three dollars per day for each day employed under the direction of said board, or in attending its meetings, and five cents for each mile actually and necessarily traveled in connection therewith; provided, however, that said member's authority on said board shall be limited to the consideration of matters affecting the sub-station provided for in this act.

§ 2. DUTY OF BOARD TO MAKE EXPERIMENTS WITH GRASSES, FORAGE AND AGRICULTURAL PRODUCTS. STATION MUST NOT BE ESTABLISHED OR EXPERIMENTS UNDERTAKEN UNLESS SUITABLE LAND IS DONATED TO THE STATE.] It shall be the duty of said board, as constituted herein, at said station, to make experiments with native and other grasses and forage products as well as other agricultural products of the soil, with a view of improving and enlarging the supply of forage of said district and extending and increasing the agricultural products thereof; provided, that such experiments shall not be undertaken nor said station established unless a suitable area of land not less than one hundred sixty acres within two miles of the city of Dickinson shall be donated free of charge, by warranty deed to the state of North Dakota.

§ 3. APPROPRIATION.] There is hereby appropriated out of the funds of the state treasury not otherwise appropriated the sum of ten thousand dollars for the purpose of establishing said station and conducting said experiments, as provided in this act and for no other purpose.

§ 4. EMERGENCY.] An emergency exists in this, that there is no provision of law for said experimental station, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 2, 1905.

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## CHAPTER 22.

[S. B. No. 167—LaMoure.]

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### DIPPING TANK DEFICIT.

AN ACT to appropriate the Sum of \$6,997.59 to Pay Expenses Incurred by the Chief State Veterinarian and the State Board of Auditors in Connection with the Erection, Equipment and Maintaining of State Dipping Tanks for Dipping Live Stock in the Prevention of the Spread of Scabies.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of the state funds in the treasury, not otherwise appropriated, the sum of \$6,997.59 for the payment of bills approved by the chief state veterinarian of the state of North Dakota and the state board of auditors, incurred in connection with the erection, equipment and maintenance of state dipping tanks for the purpose of dipping live stock, during the year A. D. 1904, for the cure and prevention of scabies among cattle.

§ 2. EMERGENCY.] An emergency exists in this, that said expenses have been incurred by the state and approved by the state

board of auditors and there is no designated fund out of which said expenses may be paid, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 14, 1905.

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## CHAPTER 23.

[H. B. No. 48—White.]

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### FARMERS' INSTITUTES.

AN ACT to Amend Sections 2 and 4 of Chapter [172] of the Laws of 1901, Entitled, "An Act to Create a State Farmers' Institute Board of Directors and Prescribing its Powers and Duties, and Making an Appropriation for Conducting Farmers' Institutes," as the Same Was Amended by Chapter 11 of the Laws of 1903.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Sections 2 and 4 of [chapter 172 of] the laws of 1901, as amended by chapter 11 of the laws of 1903, are hereby amended so as to read as follows:

§ 2. ORGANIZATION OF BOARD.] The state farmers' institute board of directors shall have power to organize, by electing one of its members to act as president, and one to act as secretary, and shall have power, and it is hereby made its duty to employ a director of farmers' institutes and such other institute conductors and lecturers as may be deemed necessary, to authorize the holding of not less than fifty farmers' institutes each year, the same to be of such a nature as to instruct the farmers of the state in maintaining the fertility of the soil, the improvement of cereal crops grown in the state, principles of breeding as applied to domestic animals, the making and handling of dairy products, the destruction of noxious weeds and injurious insects, forestry and the growing of fruits, feeding and management of live stock, and in general such instruction as will tend to promote the prosperity, home life and comfort of the farming population.

§ 4. APPROPRIATION FOR INSTITUTE.] There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of six thousand dollars annually for carrying out the purpose of this act. All charges, accounts and expenses authorized by this act shall be paid by the treasurer of the state, upon the approval of the president and secretary of the board of directors.

§ 2. REPEAL.] All acts or parts of acts in conflict or inconsistent with this act are hereby repealed.

Approved March 15, 1905.

## CHAPTER 24.

[S. B. No. 123—Cashel.]

## AID TO HIGH SCHOOLS.

AN ACT to Amend Sections 870 and 871 of the Revised Codes of North Dakota for 1899, Relating to the Appropriation for Aid to State High Schools.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 870 of the revised codes of 1899, as amended by the laws of 1903, be amended to read as follows:

§ 870. AMENDED. SCHOOLS VISITED ONCE EACH YEAR. WHAT SCHOOLS TO RECEIVE STATE AID. APPROPRIATION.]

1. The high school board shall cause each school receiving aid under this act to be visited, at least once each year, by a committee of one or more members, who shall carefully inspect the instruction and discipline of the preparatory classes and make a written report on the same immediately; provided, that no money shall be paid in any case until after such report shall have been received and examined by the board and the work of the school approved by the board.

2. The said board shall receive applications from such schools for aid as hereinafter provided, which applications shall be received and acted upon in the order of their reception. The said board shall apportion to each of said schools, which shall have fully complied with the provisions of this act, and whose application shall have been approved by the board, the following sums, to-wit: Eight hundred dollars each year to each school maintaining a four years' high school course and doing four years' high school work; the sum of six hundred dollars each year to each school having a three years' high school course and doing three years' high school work; provided, that the moneys so apportioned to any high school shall be used to increase the efficiency of the high school work; provided, further, that the total amount of apportionment and expenses under this act shall not exceed twenty-five thousand dollars in one year. The sum of twenty-five thousand dollars is hereby appropriated annually for the purposes of this act, to be paid out of any moneys in the state treasury, not otherwise appropriated; which amount, or so much thereof as may be necessary, shall be paid upon the itemized vouchers of said board, duly certified and filed with the state auditor; provided, however, that in the case the amount appropriated and available under this act for the payment of aid to such schools shall in any year be insufficient to apportion each of such schools as are entitled thereto the full amount intended to be apportioned to the high schools of the various classes, then, in such case, such amount as is apportioned and available shall be apportioned pro rata among the schools entitled thereto.

§ 2. AMENDMENT.] That section 871 of the revised codes of 1899, as amended by the laws of 1903, be amended to read as follows:

§ 871. AMENDED. NO COMPENSATION. EXPENSES.] The members of the board shall serve without compensation, but the actual and necessary expenses of the board, any clerical officer of the board, or any examiner shall be paid in the same manner as those of state officers; provided, that the total expense, including the apportionments to the schools aforesaid, shall not exceed twenty-five thousand dollars in any one year.

Approved March 15, 1905.

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## CHAPTER 25.

[S. B. No. 137—Cashel.]

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### HISTORICAL SOCIETY.

AN ACT Defining the Status and Providing for the Duties of the State Historical Society of North Dakota, and Making an Appropriation Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DUTIES OF STATE HISTORICAL SOCIETY. EX-OFFICIO MEMBERS OF BOARD.] The state historical society of North Dakota shall be the trustee of the state, and as such shall faithfully expend and apply all money received from the state to the uses and purposes directed by law, and shall hold all its present and future collections and property for the state, and shall not sell, mortgage, transfer or dispose of in any manner, or remove from the historical rooms in the capitol at Bismarck any article therein without authority of law; provided, this shall not prevent the sale or exchange of any duplicates that the society may have or obtain; and provided, that the secretary of the said society shall have power to withdraw for temporary use such of the collections as shall be needed for the compilation and editing of the publications of the society, and that such of the collections as may be needed for exhibition purposes may be withdrawn for that purpose by the authority of the board of directors. The governor, auditor, secretary of state, commissioner of agriculture and labor, and superintendent of public instruction shall be ex-officio members of the board of directors of said society, and shall take care that the interests of the state are protected.

§ 2. FURTHER DUTIES.] It shall be the duty of said society:

1. To collect books, maps, charts and other papers and materials illustrative of the history of this state in particular and of the west generally.

2. To obtain from the early pioneers narratives of their exploits, perils and adventures.

3. To procure facts and statements relative to the history, progress and decay of our Indian tribes so as to exhibit faithfully the antiquities and the past and present resources and conditions of this state.

4. To purchase books to supply deficiencies in the various departments of its collection, and especially reports on the legislation of other states, on railroads and geological surveys and of educational and humane institutions for legislative reference, and such other books, maps, charts and materials as will facilitate the investigation of historical, scientific and literary subjects. The secretary of state shall furnish to the state historical society of North Dakota, for reference and exchange purposes, fifty copies each of every state publication.

5. To thoroughly catalogue the entire collections of said society for the more convenient reference of all persons who have occasion to consult the same. The state shall bind the unbound books, documents, manuscripts and pamphlets, and especially newspaper files containing legal notices, in the possession of the state historical society of North Dakota.

6. To prepare biennially for publication a report of its collections and such other matters relating to the transactions of the society as may be useful to the public. There shall be printed by the state one thousand five hundred copies of the biennial volume of collections of the state historical society of North Dakota, five hundred copies of which shall be bound in cloth and the remainder authorized by law shall be bound in pamphlet form.

7. To keep its rooms open at all reasonable hours on business days for the reception of the citizens of this state who may wish to visit the same, without fee.

8. That whenever any grant, devise, bequest, donation or gift or assignment of money, bonds or choses in action, or of any property, real or personal, shall be made to the state historical society of this state, said society is hereby directed to receive and accept such and that the right and title to the same shall pass to the state.

§ 3. APPROPRIATION.] For the purpose of aiding in the performance of said duties there is hereby annually appropriated to the said society, from and after the time of the passage of this act, the sum of one thousand two hundred and fifty dollars. The board of directors of said society shall keep a correct account of the manner of expenditure of the money hereby appropriated and report annually to the governor a detailed statement of such expenditure.

§ 4. REPEAL.] Section 153 of the revised codes of 1899 is hereby repealed.

Approved March 16, 1905.

## CHAPTER 26.

[S. B. No. 164—Regan.]

## IMMIGRATION.

AN ACT Making an Appropriation for Carrying Into Effect Provisions of Law Relating to the Duties of the Commissioner of Agriculture and Labor.

Whereas, The state of North Dakota is pre-eminently an agricultural state, and the most should be made of the fact; that a published statement of its resources should be made and distributed of what an investor and homeseeker wants to know, giving the personal experiences of farmers, stock growers, mechanics, professional and business men; and,

Whereas, Such report should include in general terms a statement of the resources of the state, with up to date statistical information compiled from reliable sources such as county auditors, boards of trade and commercial clubs, which report should show the number of flouring mills, coal mines, and the output of each, with a resume of each county as to population, the number and names of its cities and towns, the number of inhabitants of each, the different industries, the number of business houses, etc.; also the acreage and yield of all cereals, number and different classes of live stock, total amount of wheat grown, number of creameries, amount of milk consumed in the manufacture of butter and cheese, kinds and qualities of grasses and forage plants grown, together with a topographical description of each county, the date of its organization, its financial condition, its railroad facilities and the state of its development and such other general information as would be of general and particular value to persons seeking locations for future settlement; and,

Whereas, There is now a bill pending before the legislature relating to the question of irrigation, statistics should be published giving all information obtainable upon this subject as well as that relating to the question of drainage and whether the same is being carried on or in contemplation by the government, state or private means; and,

Whereas, It would be of great benefit to the state to have published statistics regarding the shipment of live stock and all information connected with the same gathered from breeders and live stock men in the state, giving their experience and the results of such experience; and,

Whereas, No state in the union presents so great an opportunity of receiving benefits from this class of advertising, and no state in the union presents as great opportunities for the poor man to secure a home at so small a cost with assurances that he can not make only



a living, but money as well, as in the state of North Dakota; and,

Whereas, There is and has been for some years past carried on by the department of agriculture of other states and countries a system of advertising the benefits to settlers in seeking homes in these parts whose advantages are inferior to ours, but who, because of the dissemination of literature of the character herein referred to have been reaping benefits that naturally belong to the state of North Dakota, because of her superior natural advantages in these regards; and,

Whereas, The legislative assembly has just enacted into a law a provision providing for the sale of the lands belonging to the state held for the purpose of constructing a state capitol; and,

Whereas, It is the policy of the state that its lands belonging to public institutions should be sold as fast as possible with proper regard to the same being sold at their proper market value; and,

Whereas, There still remains unsold of the lands donated by congress to the agricultural college 87,326 acres; to the asylum for the blind, 20,392 acres; for the deaf and dumb, 26,616 acres; hospital for the insane, 12,780 acres; industrial school, 27,000 acres; normal schools, 52,083 acres; reform school, 27,511 acres; scientific school, 26,327 acres; school of mines, 26,674 acres; soldiers' home, 27,000 acres; university, 56,169 acres; common school and indemnity fund, 2,100,000 acres, and state capitol, 59,111 acres, making a grant total of lands held by the state for the benefit of these institutions of 2,548,989 acres, which may be acquired on conditions practically as favorable to the homeseekers as by filing on government homesteads; and,

Whereas, It would be of great commercial value to the state to have these lands occupied by actual settlers, and the great advantages they offer to homeseekers should be advertised so as to give the greatest publicity possible to their advantages, and the moneys to be raised from the sale of capitol lands should be accumulated as fast as can be done with proper regard for the value of the lands; and,

Whereas, The different railroad companies operating lines in this state have agreed to co-operate with this state in the dissemination of all literature that may be prepared by the state and have agreed to mail the same at no expense to this state and have agreed to work with the state, by means of their departments of immigration and publicity, in the work herein referred to, which said offer is hereby accepted and the services of the said immigration agencies of the different railroad companies is hereby requested; therefore,

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any money in the hands of the treasurer not otherwise appropriated the sum of twenty thousand dollars or so much thereof as may be necessary to carry into effect all laws relating to the publication of the advantages offered to settlers and investors for lands in the state of North Dakota.

§ 2. GOVERNOR TO APPROVE EXPENDITURES.] All expenditures by the commissioner of agriculture and labor for the carrying out the provisions of law for which this appropriation is made shall, before being contracted for or incurred, be approved by the governor.

§ 3. EMERGENCY.] Whereas, there are now no funds in the hands of the treasurer available for carrying out of the provisions provided for in this act, therefore an emergency exists and this act shall take effect and be in force from and after its passage and approval.

Approved March 15, 1905.

## CHAPTER 27.

[S. B. No. 100—Thatcher.]

### INDUSTRIAL SCHOOL.

AN ACT to Provide for the Maintenance of the Industrial School and School for Manual Training, Located at Ellendale, and for Making Necessary Improvements, Providing for the Payment of Interest on Certificates of Indebtedness and Making an Appropriation Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] For the maintenance of the industrial school and school for manual training and for making necessary improvements to the same, for the period commencing April 1, 1905, and ending March 31, 1907, there is hereby appropriated out of the state treasury, from any money not otherwise appropriated, the sum of fifty-three thousand nine hundred dollars, as follows:

For salaries of faculty.....	\$24,000
For janitor and engineer.....	2,300
For materials and furnishings.....	3,000
For water supply.....	100
For fuel.....	3,000
For repairs.....	2,500
For domestic science.....	1,500
For fine arts.....	700
For mechanic arts.....	3,000
For commercial department.....	1,000
For chemical department.....	1,000
For lights.....	500
For improvement of grounds.....	500
For library.....	1,000
For sewerage.....	1,000
For dormitory.....	1,000
For armory and gymnasium and equipment of same.....	5,000
For interest on certificates of indebtedness.....	2,800

Total ..... \$53,900

§ 2. EMERGENCY.] Whereas, in the opinion of the legislative

assembly an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

VETO.

This bill is approved except for the following items which are vetoed:

For fuel, \$3,000; for lights, \$500; for dormitory, \$1,000.

These items are disapproved because the excess of the appropriations of the ninth legislative assembly renders necessary the disapproval of all items that can be dispensed with without interference with the proper maintenance of this institution. I believe these items can be supplied from other sources of revenue.

E. Y. SARLES,  
Governor.

Filed March 17, 1905.

CHAPTER 28.

[S. B. No. 41—Sifton.]

INSANE HOSPITAL.

AN ACT to Provide an Appropriation for the Current and Contingent Expenses of the State Hospital for the Insane at Jamestown.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is appropriated out of any money in the state treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the state hospital for the insane at Jamestown for the fiscal years 1905-1906, the sum of one hundred forty-five thousand eight hundred ninety dollars, or so much thereof as may be necessary, as follows:

Maintenance .....	\$ 41,000
Fuel .....	26,000
Employes' wages and mechanical labor.....	40,000
Salaries of resident officers.....	14,000
Drugs and medicines.....	2,000
Return of patients and burial of dead.....	2,000
Incidental expenses and repairs.....	5,000
Beds, bedding and furniture.....	5,000
Library and amusements and chaplain services.....	1,500
Farm machinery .....	500
Additional land .....	2,000
Paints and painting.....	2,000
Steam plant.....	1,840
Plumbing and steam fitting supplies.....	500
Engine room and boiler house.....	600
Electric lamps and repairs.....	650
Laundry repairs and supplies.....	550
Blacksmith supplies.....	300
Fire department .....	450
Total .....	\$145,890

Provided, that before any of the money hereby appropriated for the purchase of land is available, the governor of this state shall give his assent thereto.

§ 2. EMERGENCY.] An emergency exists in this, that the fiscal year for which this appropriation is made shall not begin before July 1, 1905, and the funds hereby appropriated will be needed before that time, therefore this act shall take effect from and after its passage and approval.

#### VETO.

This bill is approved, except as to the following items: \$5,000 for incidental expenses and repairs; \$2,000 for additional land, and \$2,000 for paints and painting. These items are vetoed for the reason that the appropriations of the ninth legislative assembly are largely in excess of the probable revenues of the state, and in my opinion, these items of expense can be dispensed with without interfering with the proper management and maintenance of this institution.

E. Y. SARLES,  
Governor.

Filed March 16, 1905.

### CHAPTER 29.

[S. B. No. 104—Sifton.]

#### INSANE HOSPITAL BUILDINGS.

AN ACT to Provide for the Erection of Necessary Additional Buildings and Other Improvements at the State Hospital for the Insane at Jamestown, North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the purpose of erecting necessary buildings at the state hospital for the insane, at Jamestown, N. D., and other needed and necessary improvements and for the proper equipment of such buildings, the sum of ninety thousand dollars, or so much thereof as can be actually used in the construction of such necessary additional buildings and improvements, as follows:

A new ward building.....	\$30,000
A hospital building.....	55,000
Cold storage building.....	5,000
Total .....	<u>\$90,000</u>

§ 2. EMERGENCY.] Whereas, an emergency exists in that it is necessary to begin the construction of said additional buildings before July 1, 1905, therefore this act shall take effect from and after its passage and approval.

## VETO.

This bill is approved except as to the following item: Five thousand dollars for cold storage building. This item is vetoed because the appropriations of the ninth legislative assembly largely exceed the probable revenues of the state and, considering other liberal appropriations for this institution, the failure of this item will work no serious inconvenience or disadvantage to its maintenance.

E. Y. SARLES,  
Governor.

Filed March 16, 1905.

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CHAPTER 30.

[S. B. No. 77—LaMoure.]

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## INSTITUTION DEFICITS.

AN ACT Making an Appropriation to Pay Certain Indebtedness Incurred by the Trustees of the State University and School of Mines at Grand Forks, the Agricultural College at Fargo, the State Normal School at Valley City, and the School for the Deaf and Dumb of North Dakota at the City of Devils Lake.

Whereas, Acting under supposed legal authority conferred by the legislative assembly of the state of North Dakota, certain bonds of different institutions of this state were authorized, the proceeds of said bonds being appropriated to erect certain buildings and pay off certain indebtedness of said institutions, the said bonds so authorized being a charge, both principal and interest, on certain revenues to come to said institutions from the sale and rental of lands donated to said institutions by the congress of the United States and the state of North Dakota, and,

Whereas, Acting under said supposed authority the trustees of several of our state institutions did, in good faith, enter into contracts for the construction of buildings, and incur other indebtedness, and,

Whereas, By a decision of the supreme court of this state, the said bonds, and all of them, were declared null and void and that the same could not lawfully be issued, and,

Whereas, It is believed that good faith and sound business policy requires that the said institutions should be relieved of the indebtedness heretofore incurred in good faith; now therefore,

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of the treasury of the state of North Dakota, out of any money therein not otherwise appropriated, for the purpose of paying and cancelling the indebtedness incurred by the trustees of the different institutions

enumerated hereafter, the following sum to each of said institutions, as follows:

State University and School of Mines.....	\$ 68,000
Agricultural College .....	30,400
State Normal School at Valley City.....	38,000
School for the Deaf and Dumb of North Dakota.....	18,000
Total .....	\$154,400

§ 2. AVAILABLE FOR PAST INDEBTEDNESS ONLY.] The sums of money hereby appropriated under the provisions of section 1 of this act are to be used solely for the purpose of paying and liquidating the indebtedness now due by each of the different institutions herein named and for no other purpose whatever, it being the purpose and intent of this act that the money hereby appropriated to the different named institutions shall be used solely for past indebtedness and not for current or future indebtedness of any kind whatsoever.

§ 3. EMERGENCY.] Whereas, the different institutions named herein are in need of the money hereby appropriated long before July 1, 1905, therefore an emergency exists, and this act shall take effect and be in force from and after its passage and approval.

Approved March 14, 1905.

## CHAPTER 31.

[S. B. No. 23—Cashel.]

### INSTITUTION FOR FEEBLE MINDED.

AN ACT Making an Appropriation for a Deficiency in the Appropriation for the Institution for the Feeble Minded.

DEFICIENCY DECLARED.] Whereas, a deficiency exists in the amounts appropriated for the institution for the feeble minded at Grafton, such deficiency being caused by an insufficient appropriation for finishing the building, and,

Whereas, A portion of the sum appropriated for the maintenance of the said institution was used for the purpose of finishing the building, causing the appropriation for maintenance to be now exhausted and making a deficiency of nine thousand three hundred and forty-five dollars to March 1, 1905,

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of the state treasury, not otherwise appropriated, the sum of nine thousand three hundred and forty-five dollars for the purpose of relieving such deficiency.

§ 2. EMERGENCY.] Whereas, an emergency exists in that the amount hereby appropriated is needed for immediate use, therefore this act shall take effect and be in force from and after its passage [and approval].

Approved March 15, 1905.

## CHAPTER 32.

[S. B. No. 37—Cashel.]

## INSTITUTION FOR FEEBLE MINDED.

AN ACT to Provide an Appropriation for the Current and Contingent Expenses of the Institution for the Feeble Minded at Grafton, North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, for the purpose of paying the current and contingent expenses of the institution for the feeble minded, at Grafton, for the period beginning March 1, 1905, and ending March 1, 1907, the sum of sixty-four thousand three hundred and twenty-five dollars, or as much thereof as may be necessary, as follows:

Employes' wages, including officers' salaries.....	\$17,000.00	
Maintenance .....	18,000.00	
Fuel and lights.....	6,500.00	
Training school supplies and amusements.....	650.00	
Incidental Expenses.....	500.00	
Drugs, medicines, etc.....	200.00	
Repairs .....	500.00	
Plumbing .....	250.00	
Beds and bedding.....	800.00	
Furniture .....	500.00	
Electric supplies and repairs.....	100.00	
Supplies for engine room.....	200.00	
Laundry machinery and repairs.....	400.00	
Paints and painting.....	500.00	
Farm implements and vehicles.....	550.00	
New buildings and alterations to present as follows:		
Barn .....	\$1,000.00	
Ice house .....	225.00	
Root cellar.....	300.00	
Porches .....	1,000.00	
Coal shed .....	100.00	
Cold storage .....	300.00	
		2,925.00
Stock .....		750.00
Improvements to grounds.....		1,000.00
Sewer and disposal plant.....		7,000.00
Additional land.....		6,000.00
Total .....		\$64,325.00

Provided, that before any of the money hereby appropriated for the purchase of land is available, the governor of this state shall give his assent thereto.

§ 2. EMERGENCY.] An emergency exists in this, that the fiscal

year for which this appropriation is made will not begin before July 1, 1905, and the funds hereby appropriated will be needed before that time, therefore this act shall take effect from and after its passage and approval.

VETO.

This bill is approved except as to the item of six thousand dollars for the purchase of additional land, as proposed in section 1, which item is vetoed for the following reason: The appropriations of the ninth legislative assembly are largely in excess of the probable revenues of the state, and this item can be dispensed with without interfering with the proper management and maintenance of the institution for the ensuing two years.

E. Y. SARLES,  
Governor.

Filed March 15, 1905.

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CHAPTER 33.

[H. B. No. 192—Chapman.]

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REIMBURSING FOR IRRIGATION EXPENSES.

AN ACT Appropriating \$2,000, or So Much Thereof as May Be Necessary, Out of Any Funds in the State Treasury Not Otherwise Appropriated, to Defray Expenses of Irrigation Investigations, and of the Per Diem and Expenses of State Engineer Chandler; and Providing for the Reimbursement of the Counties of Ransom, Ward, McLean, LaMoure and Williams for Money Advanced by Them to Defray Irrigation Investigation Expenses, and to Pay Expenses in Connection With the State Irrigation Congress.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] That there be and is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of two thousand dollars, or so much thereof as may be necessary, to pay the per diem and incidental expenses of E. F. Chandler, state irrigation engineer, in conducting irrigation investigations in the state, and to reimburse the counties of Ransom, Ward, McLean, LaMoure, and Williams for money advanced by them for conducting irrigation investigations, and to pay for the expenses incurred in connection with the irrigation congress, and that the state auditor be and he is hereby directed to audit all of the expense accounts of said state engineer and to draw his warrant on the state treasurer in favor of said state engineer for the amount found due him for his per diem and expenses above mentioned, and also to draw his warrant on the state treasurer for the sum of one hundred dollars each for the following named counties: Ransom, Ward, McLean, LaMoure and Williams.



§ 2. EMERGENCY.] An emergency exists in that there is now no law authorizing the payments provided for in this bill, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 14, 1905.

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## CHAPTER 34.

[S. B. No. 1—Little.]

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### IRRIGATION CODE.

AN ACT Prescribing Regulations for the Appropriation, Distribution and Use of Water in the Construction and Maintaining of Canals, Ditches and Storage Reservoirs for the Purpose of Irrigation, Evaporation and Water Power; for the Diversion and Confining, Retention, Storage and Distribution of Water; the Condemnation of Lands for the Right of Way of Works for Such Purposes; Providing for a State Engineer and One or More Assistant State Engineers, and the Appointment of Officers for the Surveying and Measurement, Fixing Their Compensation and Providing for the Payment of the Same and Making an Appropriation Therefor, Prescribing Their Duties, Powers and Qualifications, and the Appropriation of the Streams of the State and Controlling the Distribution of Water Throughout the State in the Several Water Divisions Thereof, Prescribing Water Divisions and the Management of Water Regulations and Adjudicating the Rights and the Priority of Rights of Those Diverting, Carrying or Storing Water for Irrigation or Other Beneficial Purposes in the Water Districts in the Several Water Divisions, Providing for the Expense of Such Adjudication and for the Apportionment and Payment Thereof, Prescribing Regulations and Ascertaining the Rights of Priorities of Those Entitled to Water for Use for the Irrigation of Lands and to Provide Penalties and for Punishing Persons for Interfering With It or Maliciously Trespassing Upon the Ditches, Reservoirs or Irrigation Works for the Storage and Conveyance of Water and to Regulate the Rights to the Use of Water for Agricultural and Manufacturing and Other Purposes, to Provide for a Board of Water Commissioners, Prescribing Their Duties, Pay, Compensation, Providing for Water Masters, Their Duties, Compensation, Providing for Change of Place of Use of Diversion, Measuring Devices, Bridges Over Ditches or Canals, Providing for Constructing Works, the Disposition of Seepage Water, and Providing for the Disposition of State Lands and Right of Way Over Same, and That the State Engineer Assist County Commissioners in Establishing and Constructing Drains.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WATERS OF THE STATE, PUBLIC WATERS.] All waters within the limits of the state from all sources of water supply belong to the

public and, except as to navigable waters, are subject to appropriation for beneficial use.

§ 2. BENEFICIAL USE. APPURTENANCES. PRIORITY.] Beneficial use shall be the basis, the measure, and the limit of the right to use of water, and all waters appropriated for irrigation purposes shall be appurtenant to specified lands owned by the person claiming the right to use the water, so long as the water can be beneficially used thereon. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to the passage of this act, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. All claims to the use of water initiated after the passage of this act shall relate back to the date of receipt of an application therefor in the office of the state engineer, subject to compliance with the provisions of this act, and the rules and regulations established thereunder.

§ 3. EMINENT DOMAIN.] The United States, the state, or any person, corporation or association may exercise the right of eminent domain to acquire for a public use any property or rights now or hereafter existing when found necessary for the application of water to beneficial uses, including the right to enlarge existing structures and use the same in common with the former owner. Any canal right of way so acquired shall be so located as to do the least damage to private or public property, consistent with proper and economical engineering construction. Such property or rights may be acquired in the manner provided by law for the taking of private property for public uses.

§ 4. RECLAIMING WATERS.] Water turned into any natural or artificial water course by any party entitled to the use of such water may be reclaimed below and diverted therefrom by such party, subject to existing rights, due allowance for losses being made, as determined by the state engineer.

§ 5. STATE ENGINEER. APPOINTMENT, DUTIES, POWERS, QUALIFICATIONS AND SALARY.] There shall be a state engineer, who shall be a technically qualified and experienced hydraulic engineer, to be appointed by the governor and such appointment confirmed by the senate. He shall hold office for the term of four years from and after his appointment, or until his successor shall have been appointed and shall have qualified. He shall have general supervision of the waters of the state and of the measurement and appropriation thereof, and shall receive a salary of \$2,500 per annum and actual and necessary traveling expenses while away from his office in the discharge of official duties. He shall not engage in private practice.

§ 6. ASSISTANT STATE ENGINEER AND EXPENSES OF STATE ENGINEER'S OFFICE.] The state engineer shall have power to appoint from time to time, during the season of the year when field work is practicable, one or more assistant state engineers at a salary not to exceed \$1,800 per annum and actual and necessary traveling expenses

while away from the office in the discharge of official duties. The state engineer may employ other and additional assistants and purchase materials and supplies for the proper conduct and maintenance of his office and department, in pursuance of appropriations as made from time to time for such purposes. The salaries and expenses of the office of the state engineer shall be paid at the same time and in the same manner as those of other officers of the state. The office of the state engineer shall be located at the seat of government.

§ 7. OATH AND BOND OF STATE ENGINEER AND ASSISTANT STATE ENGINEER.] Before entering upon the duties of his office, the state engineer shall take and subscribe an oath of office and give bond with good and sufficient sureties to be approved by the governor, in the sum of five thousand dollars for the faithful performance of his duties, which oath of office and bond shall, upon approval, be filed in the office of the secretary of state. The assistant state engineer shall also take and subscribe an oath for the faithful discharge of his duties, which oath shall be filed with the secretary of state together with his appointment by the state engineer.

§ 8. AUDITING OF CLAIMS.] All claims for services rendered, expenses incurred, or materials or supplies furnished under direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under his direction and supervision, shall be approved by the state engineer and properly vouchered and filed in the office of the state auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrant on the state treasurer in payment thereof.

§ 9. STATE ENGINEER'S REPORT.] The state engineer shall prepare and deliver to the governor, on or before September 30 of the year preceding the regular session of the legislature, and at other times when required by the governor, a full report of his office, including a detailed statement of the expenditures thereof, with such recommendations for legislation as he may deem advisable.

§ 10. FEES OF STATE ENGINEER.] The state engineer shall receive the following fees, to be collected in advance and to be paid by him into the general fund of the state treasury on the last day of March, June, September and December of each year:

(a) For filing and examining an application for permit to appropriate water, map and field notes of the same, five dollars.

(b) For recording any permit, certificate of construction or license issued or any other water right instrument, one dollar for the first hundred words and fifteen cents for each additional hundred words or fraction thereof.

(c) For filing any other paper, one dollar.

(d) For issuing certificates of construction, or license to appropriate water, one dollar each.

(e) For making copy of any document recorded or filed in his office, fifteen cents for each hundred words or fraction thereof.

(f) For blue print copy of any map or drawing, ten cents per square foot or fraction thereof. For other copies of drawings, actual cost of the work.

(g) For certifying to such copies, one dollar for each certificate.

(h) For examining and approving in connection with water right applications, plans and specifications for any dam, not exceeding ten feet in extreme height from the foundation, ten dollars; for a dam higher than ten feet and not exceeding thirty feet, twenty dollars; for a dam higher than thirty feet and not exceeding fifty feet, thirty dollars; for a dam higher than fifty feet, fifty dollars; or for a canal or other water conduit of an estimated capacity exceeding fifty and not more than one hundred cubic feet per second, twenty dollars; for an estimated capacity exceeding one hundred cubic feet per second, thirty dollars.

(i) For inspecting dam sites and construction work when required by law, or when necessary in the judgment of the state engineer, ten dollars per day and actual and necessary traveling expenses. The fees for any inspection deemed necessary by the state engineer and not paid on demand shall be a lien on any land or other property of the owner of the works, and may be recovered by the state engineer in any court of competent jurisdiction.

(j) Rating ditches or inspecting plans and specifications of works for the diversion, storage and carriage of water, at the request of private parties, not in connection with an application for right to appropriate water, actual cost and expenses; and the state engineer shall attach his approval to such plans and specifications if found satisfactory.

(k) For such other work as may be required of his office, the fees provided by law.

(l) In ascertaining actual cost of any work, as the term is used in this section, the salary of any salaried officer for the time employed shall be included.

§ 11. RECORDS OF STATE ENGINEER.] The records of the office of the state engineer are public records, shall remain on file in his office, and shall be open to the inspection of the public at all times during business hours. Such records shall show in full all permits, certificates of completion of construction, and licenses issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in the office of the state engineer shall be evidence equally with the originals thereof; and when introduced as evidence shall be held as of the same validity as the originals.

§ 12. RULES AND REGULATIONS.] The state engineer shall make all necessary general rules and regulations to carry into effect the duties devolving upon his office, and may change the same from time to time in his discretion. All such rules and regulations relating to applications for permits to appropriate water, for the inspection of works, for the issuance of license, and for the determination of rights

to the use of water shall be modified by the state engineer, if required by a vote of the board of water commissioners hereinafter established, at least three of the four water commissioners voting in favor of such modifications.

§ 13. APPEAL TO BOARD OF WATER COMMISSIONERS.] Such modification of the rules and regulations of the state engineer shall be voted upon by the board of water commissioners only on appeal from a decision of the state engineer.

#### DETERMINATION OF WATER RIGHTS.

§ 14. HYDROGRAPHIC SURVEYS AND CO-OPERATION.] The state engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, obtaining and recording all available data for the determination, development and adjudication of the water supply of the state. He shall be authorized to co-operate with the agencies of the federal government engaged in similar surveys and investigations, and in the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of his office, and may accept and use, in connection with the operation of his department, the results of the work of the agencies of the government.

§ 15. SUIT FOR ADJUDICATION OF WATER RIGHTS.] Upon the completion of such hydrographic survey of any stream system, the state engineer shall deliver a copy thereof, together with copies of all data necessary for the determination of all rights to the use of the waters of such system, to the attorney general of the state, who shall within sixty days thereafter enter suit on behalf of the state for the determination of all rights to the use of such water, and shall diligently prosecute the same to a final adjudication; provided, that if suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit; provided, however, that the attorney general shall intervene in any suit for the adjudication of rights to the use of water on behalf of the state if notified by the state engineer that in his opinion the public interest requires such action.

§ 16. PARTIES AND COSTS OF SUITS.] In any suit for the determination of a right to the use of the waters of any stream system, all who claim the right to use such waters shall be made parties. When any suit has been filed, the court shall, by its order duly entered, direct the state engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided, in order to obtain all data necessary to the determination of the rights involved. The cost of such suit, including the costs on behalf of the state, and of such surveys, shall be charged against each of the private parties thereto in proportion to the amount of the water right allotted.

§ 17. FUND FOR HYDROGRAPHIC SURVEYS.] For the purpose of

advancing the money required for any surveys so ordered by the court, there is hereby appropriated and set apart from any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of two thousand dollars, to be known as the hydrographic survey fund, which shall be a permanent fund and which shall be used only for the payment of the expenses of such surveys; and all claims for services rendered, expenses incurred or materials or supplies furnished under the direction of the state engineer in the prosecution of said work shall be approved by the state engineer and properly vouchered and filed in the office of the state auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrants against the hydrographic survey fund on the state treasurer, in payment thereof. The amounts paid by the parties to said suits, on account of such surveys, shall be paid to the state treasurer, who shall credit the same to such fund, which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.

§ 18. FILING OF DECREE ADJUDICATING WATER RIGHTS.] Upon the adjudication of the rights to the use of the waters of a stream system, two certified copies of the decree shall be prepared by the clerk of the court, at the cost of the parties, one copy shall be filed in the office of the state engineer, and the other in the office of the water commissioner of the water division in which the stream system is situated. Such decree shall in every case declare, as to the water right adjudged to each party the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

#### APPROPRIATION OF WATER.

§ 19. APPLICATION FOR WATER RIGHT.] Any person, association or corporation hereafter intending to acquire the right to the beneficial use of any waters, shall, before commencing any construction for such purpose, or before taking the same from any constructed works, make an application to the state engineer for a permit to appropriate, in the form required by the rules and regulations established by him. Such rules and regulations shall, in addition to providing the form and manner of preparing and presenting the application, require the applicant to state all the data necessary for the proper description and limitation of the right applied for, as to the amount of water and periods of annual use, together with such information, maps, field notes, plans and specifications as may be necessary to show the method and practicability of the construction and the ability of the applicant to complete the same. All such maps, field notes, plans and specifications shall be made from actual surveys

and measurements, and shall be retained in the office of the state engineer after the approval of the application. The state engineer may require additional information not provided for in the general rules and regulations, in any case involving the diversion of five hundred cubic feet of water per second, or more, or the construction of a dam more than thirty feet high from the foundation. The owners of works proposing to store or carry water in excess of their needs for beneficial use, may make application for such excess, and shall be held as trustees of such right for the parties applying the water to a beneficial use; and shall be required to furnish the water for such parties at reasonable rates for storage, or carriage, or both, as the case may be.

§ 20. FILING AND CORRECTION OF APPLICATION.] The date of receipt of such application in the state engineer's office shall be endorsed thereon and noted in his records. If the application is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to the showing of the ability of the applicant to carry the construction to completion, it shall be returned with a statement of the corrections, amendments or changes required within thirty days after its receipt, and sixty days shall be allowed for the refileing thereof. If refiled, corrected as required within such time, the application shall, upon being accepted, take priority as of date of its original filing, subject to compliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refileing; provided, that the plans of the construction may be amended, with the approval of the state engineer, at any time; but no such change shall authorize any extension of time for construction beyond five years from the date of the permit, except as provided in section 30; provided further, that a change in the proposed point of diversion of water from a stream shall be subject to the approval of the state engineer, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

§ 21. PUBLICATION OF NOTICE.] Upon the filing of an application which complies with the provisions of this act and the rules and regulations established thereunder, the state engineer shall instruct the applicant to publish notice thereof, in a form prescribed by him, in some newspaper of general circulation in the stream system, once a week for four consecutive weeks. Such notice shall give all essential facts as to the proposed appropriation, among them the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of the applicant and the time when the application will be taken up by the state engineer for consideration. Proof of publication, as required, shall be filed with the state engineer within sixty days from the date of his instructions to make publication. In case of failure to file satisfactory proof of publication in accordance with the rules and regulations applicable

thereto, within the time required, the application shall thereafter be treated as an original application filed on the date of receipt of proofs of publication in proper form.

§ 22. APPROVAL OF APPLICATION.] Upon the receipt of the proofs of publication, the state engineer shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available, and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, he shall endorse his approval on the application, which shall thereupon become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed, not exceeding five years from the date of approval, and the time within which the water shall be applied to a beneficial use, not exceeding four years in addition thereto.

§ 23. REJECTION AND APPEAL.] If, in the opinion of the state engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules and regulations thereunder. He may also refuse to consider or approve an application or to order the publication of notice thereof if, in his opinion, the approval thereof would be contrary to the public interest. Any applicant may appeal from such decision of the state engineer, or from any other decision by him which denies a substantial right, within sixty days from the date thereof, to the district court of the county in which the proposed place of diversion or storage is situated. In the absence of such appeal, the decision of the state engineer shall be final.

§ 24. PROSECUTION OF WORK.] The construction of the works shall be diligently prosecuted to completion, and if one-fifth of the work shall not be completed within one-half the time allowed, the state engineer may accept and approve, as herein provided, an application for the use of all or any of the waters included in the permit issued to the prior applicant and the right to use such waters under the former permit shall thereupon be forfeited; provided, that the state engineer shall allow an extension of time on request of the prior applicant, equal to the time during which work was prevented by the operation of law, beyond the power of the said applicant to avoid.

§ 25. COMPLETION OF WORK.] On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the state engineer shall cause the work to be inspected, after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the work, their safety and efficiency. If not properly and safely constructed the state engineer may require the necessary changes to be made within a reasonable time, not to exceed six months, and shall not issue his certificate of completion until such changes are made. Failure to make such changes shall cause the



postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the state engineer, and applications subsequent in time shall have the benefit of such postponement of priority; provided, that for works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding ten feet in the extreme height from the foundation, the state engineer may, in his discretion, accept the report of an inspection by a reputable hydraulic engineer.

§ 26. CERTIFICATE OF COMPLETION.] When the works are found in satisfactory condition, after inspection the state engineer shall issue his certificate of construction, setting forth the actual capacity of the works and such limitations upon the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

§ 27. INSPECTION OF WORKS.] If the state engineer shall, in the course of his duties, find that any works used for the storage, diversion or carriage of water are unsafe and a menace to life or property, he shall at once notify the owner or his agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition, not exceeding three months. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works; and, if not paid by him within thirty days after the decision of the state engineer, shall be a lien against any property of such owner, to be recovered by suit instituted by the district attorney of the county at the request of the state engineer. The state engineer may, when in his opinion necessary, inspect any works under construction for the storage, diversion, or carriage of water, and require any changes necessary to secure their safety; and the fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided herein; provided, that any works constructed by the United States, or by its duly authorized agencies, shall not be subject to such inspection while under the supervision of officers of the United States.

§ 28. USE OF UNSAFE WORKS.] The use of works for the storage, diversion or carriage of water, at any time after an inspection thereof by the state engineer and receipt of notice from him that the same are unsafe for the purpose for which they are used, until the receipt of notice from him that in his opinion they have been made safe, shall be a misdemeanor and it shall be the duty of the state engineer to give prompt notice to the district attorney of the county in which such works are located in case of such violation. The district attorney shall at once proceed against the owner, and all parties responsible therefor.

§ 29. APPLICATION TO BENEFICIAL USE.] On or before the date set for the application of the water to a beneficial use, the state en-

gineer shall cause the works to be inspected, after due notice to the owner of the permit. Upon the completion of such inspection, the state engineer shall issue a license to appropriate water to the extent and under the conditions of the actual application thereof to a beneficial use, but in no manner extending rights described in the permit; provided, that the inspection to determine the amount of water applied to a beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the state engineer.

§ 30. EXTENSION OF TIME.] The state engineer shall have power to extend the time for the completion of construction, or for application to beneficial use, for three years and two years, respectively, but only on account of delays due to physical or engineering difficulties which could not have been reasonably anticipated, or by operation of law beyond the power of applicant to avoid.

§ 31. ASSIGNMENT OF PERMIT OR LICENSE.] Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the state engineer, upon assignment; provided, that no right to appropriate water for irrigation purposes shall be assigned, or the ownership thereof in any wise transferred, apart from the land to which it is appurtenant, except in the manner specially provided by law; provided, further, that the transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes.

§ 32. TRANSFER OF WATER RECORDS.] It shall be the duty of the county register of deeds and the county auditor of each county in the state, within thirty days after the passage of this act, to prepare and forward by express or registered mail, at the expense of the county, to the office of the state engineer, a transcript of all records relating to water rights; provided, that they may forward any original records in their offices which have been duly recorded. The state engineer shall classify and arrange such records to conform to stream systems, and shall send copies thereof relating to each water division to the water commissioner thereof. He shall likewise forward to the water commissioner copies of all records, permits and licenses to appropriate water relating to his division, and shall advise him of all acts and decisions of the state engineer's office affecting the apportionment of waters in his division.

§ 33. REFEREE IN WATER SUITS.] In any water suit the court may appoint a referee or referees, not exceeding three, to take testimony and report upon the rights of the parties, as in other equity cases.

§ 34. ATTORNEY GENERAL AND DISTRICT ATTORNEY ADVISERS OF STATE ENGINEER.] The attorney general, and the district attorney

of the county in which legal questions arise, shall be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with his work, without other compensation than their salaries as fixed by law, except when otherwise provided.

§ 35. CHARGE FOR CARRYING AND DELIVERING WATER.] The owner or owners of any works for the storage, diversion or carriage of water, which contain water in excess of their needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus, at reasonable rates for storage, or carriage, or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal of such owner or owners to deliver any such surplus water at reasonable rates as determined by the state engineer, they may be compelled to do so by the district court for the county in which the surplus water is to be used.

§ 36. APPROPRIATION OF WATER BY THE UNITED STATES.] Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the state, shall notify the state engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated at the date of such notice, shall not be subject to further appropriation under the laws of this state for a period of three years from the date of said notice, at which time the proper officers of the United States shall file plans for the proposed work in the office of the state engineer for his information, and no adverse claim to the use of the waters required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of this state, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States, thereunto duly authorized; provided, that in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the state engineer shall become public waters, subject to general appropriations.

#### WATER COMMISSIONERS.

§ 37. WATER DIVISIONS.] The state shall be divided into water divisions, as follows:

Water division No. 1 shall consist of all that portion of the state west and south of the Missouri river.

Water division No. 2 shall consist of all lands within the state drained by the Mouse river and its tributaries, and of all lands within the state north and east of the Missouri river drained by the Missouri river and its tributaries from the boundary of the state of Montana as far down as Fort Berthold.

Water division No. 3 shall consist of all lands within the state east of the Missouri river drained by the Missouri river and its tributaries below Fort Berthold, and of all lands within the state drained by the James or Dakota river and its tributaries.

Water division No. 4 shall consist of all lands within the state drained by the Red river and its tributaries, except the Mouse river, as hereinbefore specified, and of all lands within the state drained into Devils Lake.

§ 38. WATER COMMISSIONERS.] The governor may nominate and by and with the advice and consent of the senate appoint a water commissioner for each water division, as hereinbefore established, to serve for the term of six years, or until his successor shall have qualified, and shall be subject to removal by the governor; provided, the water commissioners first appointed after the passage of this act, shall serve for the terms specified as follows:

Water division No. 1, six years; water division No. 2, four years; water division No. 3, two years; water division No. 4, six years; provided, further, that during any temporary or permanent vacancy in the office of water commissioner, the powers and duties of such water commissioner shall devolve on the state engineer.

§ 39. DUTIES OF WATER COMMISSIONERS.] Each water commissioner shall have the supervision of the apportionment of water in his division, according to the licenses issued by the state engineer and the adjudications of the courts. Each commissioner shall have the custody of the records relating to his division, which shall be public records, and shall be transmitted to his successor in office. Each water commissioner, before entering upon the duties of his office, shall take and subscribe an oath of office and give a bond with good and sufficient sureties, to be approved by the supreme court, in the sum of two thousand dollars, for the faithful performance of the duties of this office, which oath and bond shall, upon approval, be filed in the office of the secretary of state.

§ 40. BOARD OF WATER COMMISSIONERS. The water commissioners of all the water divisions, together with the state engineer, who shall be president thereof, shall constitute the board of water commissioners, which shall have general supervision of the apportionment of the waters of the state. The board shall adopt general rules and regulations to govern its proceedings and the operations in the various divisions. The state engineer shall have a vote on all matters coming before the board, except appeals, authorized by law, from his acts as the state engineer. The board shall meet on the first Monday in March of each year, at the office of the state engineer, and at such other times and places as may be agreed upon by a majority of its members, whereupon the state engineer shall give notice of such meeting to all members.

§ 41. PAY OF WATER COMMISSIONERS.] The water commissioners shall be paid from the state treasury out of the moneys appropriated for such purposes at the rate of ten dollars per day for the time actually engaged in official duties, not exceeding two hundred days in any one year, and shall also be paid actual and necessary traveling expenses while away from their homes on official business.

§ 42. WATER DISTRICTS.] The state engineer shall, from time

to time, as may be necessary for the economical and satisfactory apportionment of the water, divide each water division in conformity with drainage areas, into water districts to be designated by names, and to comprise as far as possible one or more distinct stream systems in each district. The districts may be changed from time to time as may in his opinion be necessary for the economical and satisfactory apportionment of the water.

§ 43. WATER MASTERS.] The water commissioners of each division shall appoint, subject to the approval of the state engineer, a water master for each district in his division, who may be removed by the commissioner, or by a majority of the board of water commissioners. The water master shall have immediate charge of the apportionment of the waters in his district under the general supervision of the water commissioner, and he shall so apportion, regulate and control the waters of the district as will prevent waste.

§ 44. APPEALS TO STATE ENGINEER.] Any person may appeal from the acts or decisions of the water master and water commissioner, to the state engineer, who shall promptly and at a stated time and place, to be fixed by him, upon due notice to the parties, hear and determine the matter in dispute, and his decision shall be final, unless and appeal is taken to the courts within thirty days.

§ 45. PAY TO WATER MASTERS.] The water master shall be allowed pay at the rate of four dollars per day and actual and necessary expenses in the performance of his duties. He may employ assistants in cases of emergency, upon the specific authority of and at rates of pay as authorized by the water commissioner, such employment to continue only during the existence of the emergency. The water masters and assistants employed by him shall be paid by the county, upon accounts approved by the water commissioner. If the district is in more than one county, each county shall pay its proportionate part of each account rendered. The accounts of the water master shall in all cases specify the distribution of the amounts charged, based upon the amount of work performed as to each ditch and water right, showing the charges to be allotted to each owner. The amounts paid by the counties shall be a lien upon the property of the water users and ditch owners, in accordance with the distribution thereof, as shown by the accounts of the water master, and shall be collected in the manner provided by law for the collection of taxes.

§ 46. REPORTS OF WATER MASTERS.] Each water master shall report to the water commissioner, as often as may be deemed necessary by the commissioner, as to the amount of water needed to supply the requirements of his district, the amount available, the works which are without their proper supply, the supply required during the period preceding his next regular report, and such other information as the commissioner may require. These reports shall, at the end of each irrigation season, be filed in the office of the state engineer. The water commissioner shall give directions for correcting any errors of apportionment in his division that may be shown by such reports.

## MISCELLANEOUS PROVISIONS.

§ 47. UNITS OF MEASUREMENT.] The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred sixty cubic feet. The miner's inch shall be regarded as one fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been specially stated by contract, or has been established by actual measurement or use.

§ 48. ABANDONMENT.] When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

§ 49. AMOUNT OF WATER FOR IRRIGATION.] In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic foot of water per second for each 80 acres, or the equivalent thereof, delivered on the land, for a specified time in each year.

§ 50. WATER APPURTENANT TO LAND FOR IRRIGATION PURPOSES.] All water used in this state for irrigation purposes shall remain appurtenant to the land upon which it is used; provided, that if for any reason it should at any time become impracticable to beneficially or economically use water for the irrigation of any land to which the right of use of the same is appurtenant, said right may be severed from said land, and simultaneously transferred, and become appurtenant to other land, without losing priority of right theretofore established, if such change can be made without detriment to existing rights, on the approval of an application of the owner to the state engineer. Before the approval of such application the applicant must give notice thereof by publication once a week for four weeks in a newspaper of general circulation in the stream system in which the tracts of land are located, in the form required by the state engineer. Upon the receipt of the proofs of publication, the state engineer shall render his decision thereon in writing, which shall be final, unless some party interested in the same source of water supply shall within sixty days, bring appropriate action in the circuit court of the county in which the land is located, for a review of such decision. If the owner of the land to which water has become appurtenant abandons the use of such waters upon such land, said waters shall become public waters, subject to general appropriation.

§ 51. CHANGE OF USE OR PLACE OF DIVERSION.] Any appropriator of water may use the same for other than the purpose for which it was appropriated, or may change the place of diversion, storage, or

use, in the manner, and under the conditions, prescribed in section 50 of this act.

§ 52. MEASURING DEVICES.] Every ditch owner shall construct and maintain a substantial headgate at the point where the water is diverted, and shall construct a measuring device, of a design approved by the state engineer, at the most practicable point or points for measuring and apportioning the water as determined by the state engineer. The state engineer may order the construction of such device by the ditch owner, and if not completed within twenty days thereafter, the water commissioner shall, upon instructions from the state engineer, refuse to deliver water to such owner. The taking the water by such ditch owner until the construction of such device and the approval thereof by the state engineer shall be a misdemeanor. Such devices shall be so arranged that they can be locked in place, and when locked by the water master or his authorized agent, for the measurement or apportionment of water, it shall be a misdemeanor to interfere with, disturb or change the same, and the use of water through such device after having been interfered with, disturbed or changed shall be prima facie evidence of the guilt of the person benefited by such interference, disturbance or change.

§ 53. UNLAWFUL INTERFERENCE WITH RIGHTS TO USE OF WATER.] Any person, association or corporation interfering with or injuring or destroying any dam, headgate, weir, bench-mark or other appliance for the diversion, storage, apportionment, or measurement of water, or for any hydrographic surveys, or who shall interfere with any person or persons engaged in the discharge of duties connected therewith, shall be guilty of a misdemeanor, and shall also be liable for the injury or damage resulting from such unlawful act. The water master or any authorized assistant within his district, shall have power to arrest any person offending against the provisions of this section, and deliver him to the nearest peace officer of the county. It shall be the duty of the person making the arrest to make complaint at once before the court having jurisdiction thereof. The state engineer, the water commissioners, the water masters and their authorized assistants and agents, may enter upon private property for the performance of their respective duties, doing no unnecessary injury thereto.

§ 54. UNLAWFUL USE OF WATER, AND WASTE.] The unauthorized use of water to which another person is entitled, or the wilful waste of water to the detriment of another, shall be a misdemeanor. It shall also be a misdemeanor to begin or carry on any construction of works for storing or carrying water until after the issuance of permit to appropriate such waters, except in the case of construction carried on under the authority of the United States.

§ 55. BRIDGES OVER DITCHES OR CANALS.] The owner or owners of any ditch, canal or other structure for storing or carrying water, shall construct and maintain a substantial bridge where the same crosses any highway or publicly traveled road, not less than fourteen

feet wide; or reconstruct the road in a substantial manner and in a convenient location for public travel. Any violation of the provisions of this section shall be a misdemeanor. The county commissioners shall be authorized to construct such bridge or road, if not built by the owner of the work within three days after the obstruction of the road, and may recover the expense thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The county commissioners may make reasonable requirements as to the size and character of such bridges along public highways, or for the necessary reconstruction of roads, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the county commissioners.

§ 56. OBSTRUCTING WORKS.] Whenever any appropriator of water has the right of way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violation of the provisions of this section shall be a misdemeanor.

§ 57. PENALTY FOR MISDEMEANORS UNDER THIS ACT.] All violations of the provisions of this act, declared herein to be misdemeanors, shall be punished by a fine not exceeding two hundred fifty dollars nor less than twenty dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; and any justice court of the county in which such misdemeanor has been committed shall have jurisdiction thereof.

§ 58. LIENS ON LAND.] All liens on land, provided for in this act shall be superior in right to all mortgages or other incumbrances placed upon the land and the water appurtenant thereto or used in connection therewith, after the passage of this act.

§ 59. SEEPAGE WATER.] In the case of seepage water from any constructed works, any party desiring to use the same shall make application to the state engineer, as in the case of unappropriated water, and such party shall pay to the owner of such works reasonable charge for the storage or carriage of such water in such works; provided, that the appearance of such seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such works. The state engineer shall not issue a permit to appropriate such seepage waters until an agreement for the payment of such charges shall have been entered into by the said parties.

§ 60. RIGHT OF WAY OVER STATE LANDS.] There is hereby granted, over all the lands now or hereafter belonging to the state, a right of way for ditches or canals and for tunnels, tramways and telephone and electrical transmission lines, constructed by authority of the United States. All conveyances of state lands hereafter made shall contain a reservation of such right of way.

§ 61. DISPOSITION OF STATE LANDS.] No lands belonging to the



state, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state, until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be sold to the United States at the lowest price authorized by law.

§ 62. APPROPRIATIONS.] There is hereby appropriated out of any moneys in the general fund of the state treasury not otherwise appropriated the sum of six thousand dollars annually, or so much thereof as may be necessary, for the payment of the salaries and expenses of the state engineer and assistant state engineers, and the services of assistants and expenses of the office and department of the state engineer, as provided by this act. All claims for services rendered and expenses incurred and materials and supplies furnished under the provisions of this act shall be audited by the state auditor for payment by the state treasurer in accordance with the provisions of the general statutes relating to the auditing of claims against the state.

§ 63. DUTY OF STATE ENGINEER OR ASSISTANT TO CO-OPERATE WITH COUNTY COMMISSIONERS WHEN REQUESTED.] Whenever requested so to do by any of the boards of commissioners of any of the counties of this state, it is hereby made the duty of the state engineer, either by himself, or by any authorized assistant engineer, to co-operate with said county commissioners in the engineering work required to lay out, establish and construct any drain to be used by any county or counties or portions of the same for the purpose of diverting flood waters, lakes, water courses, and in general to aid and assist the counties of this state in making preliminary surveys and establishing systems of drainage.

§ 64. REPEAL.] All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

§ 65. EMERGENCY.] Whereas, an emergency exists, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1905.

## CHAPTER 35.

[S. B. No. 135—Kraabel.]

## MAYVILLE NORMAL SCHOOL.

AN ACT to Provide an Appropriation for the Repairing of and the Building of an Addition to the Present Building and Heating Plant and for the Erection and Equipment of a Dormitory for the State Normal School at Mayville.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated for the state normal school at Mayville, out of any money in the state treasury, not otherwise appropriated, for the purpose of paying for the repairing of and the building of an addition to the present building and heating plant the sum of twenty-five thousand dollars, and for the erection and equipment of a dormitory building the sum of twenty thousand dollars, or so much thereof as may be necessary.

§ 2. EMERGENCY.] Whereas, an emergency exists in this that at present there are not adequate buildings for said school; therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 15, 1905.

## CHAPTER 36.

[H. B. No. 89—Purden.]

## NATIONAL GUARD.

AN ACT to Authorize the Issuance of Faithful Service Medals to Officers and Enlisted Men in the National Guard of the State of North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. COMMANDER-IN-CHIEF MAY PROVIDE MEDALS.] The commander in chief of the national guard of the state of North Dakota may issue an order providing suitable mark of distinction for all officers and enlisted men who have served in the national guard for an aggregate period of ten, fifteen, and twenty years, respectively, and for a like service hereafter.

§ 2. APPROPRIATION.] There is hereby appropriated out of the funds in the state treasury, not otherwise appropriated, the sum of \$100 for the purpose of carrying out the provisions of this act, the same to be paid out on the order of the commander in chief, who shall file vouchers with the state auditor.

Approved February 23, 1905.

## CHAPTER 37.

[S. B. No. 16—Little.]

## PENITENTIARY.

AN ACT Making Appropriations for the Current and Contingent Expenses of the State Penitentiary, and for Making Permanent Improvements Thereto.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] That there is hereby appropriated the following sums of money, or so much thereof as may be necessary, out of the moneys in the state treasury, not otherwise appropriated, for the purpose of paying the current and the contingent expenses of the state penitentiary at Bismarck, as follows, viz:

For warden's salary.....	\$ 4,000
For deputy warden's salary.....	2,400
For salary assistant gatekeeper and clerk.....	1,500
For salary matron and housekeeper.....	1,000
For salary chaplains .....	500
For salaries guards and employes.....	22,000
For maintenance .....	24,000
For heating and lighting.....	7,000
For repairs and improvements.....	2,000
For incidentals .....	1,000
For physician and medicines.....	2,400
For transportation, temporary aid and clothing for discharged inmates.....	4,000
For clothing of inmates.....	4,000
For bedding .....	700
For books and stationery.....	500
For water supply .....	5,000
Total .....	\$82,000

And for making permanent improvements thereto, as follows, viz:

For building and equipping a hospital.....	\$12,000
For building a department for female inmates.....	8,000
Total .....	\$20,000

§ 2. EMERGENCY:] Whereas, an emergency exists in that a portion of the money hereby appropriated is urgently needed for immediate use, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 16, 1905.

## CHAPTER 38.

[S. B. No. 9—LaMoure.]

## PROTECTION TO PROF. LADD.

AN ACT Making an Appropriation of \$1,500 for the Payment of the Expenses of Prof. E. F. Ladd, State Pure Food Commissioner, in Defending a Suit Brought Against Him by an Association of Food Manufacturers.

Whereas, A suit for one hundred thousand dollars damages has been brought against Prof. E. F. Ladd, state pure food commissioner of North Dakota, by an association of food manufacturers, in which suit it is alleged that this association has been libeled by Prof. Ladd in articles written and published to the public, containing statements based upon expert analysis as to the quality of certain food products put forth by this association; and

Whereas, Prof. Ladd has been a diligent and faithful servant of this state, has endeavored by all proper means to improve the character of food products sold in this state, has not hesitated to denounce the adulteration of foods wherever he found such adulteration to exist, and has by his good work raised the standard of food products sold in North Dakota, whereby benefit and advantage has come to the merchants and consumers of this state; and,

Whereas, This legislative assembly believes that the state of North Dakota should not fail to stand firmly behind its pure food commissioner in all legitimate efforts to improve the quality of foods sold in this state; now, therefore,

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of fifteen hundred dollars, or so much thereof as may be necessary, for the purpose of assisting Prof. E. F. Ladd to make his defense in an action for libel brought against him by the association of manufacturers and distributors of food products, which said action is now pending in the federal courts of the jurisdiction of North Dakota; the bills for the defense of Prof. Ladd as provided for in this action, to be audited and paid by the state as other accounts against the state are audited and paid.

§ 2. EMERGENCY.] Whereas, an emergency exists in that the action against Prof. Ladd may be brought to trial and the necessary expenses of his defense be incurred prior to the first day of July of this year, therefore an emergency exists, and this act shall take effect from and after its passage and approval.

Approved February 21, 1905.

## CHAPTER 39.

[S. B. No. 31—Hanna.]

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## PURE FOOD LAWS.

AN ACT Appropriating Money for the Enforcement of the Pure Food Laws and for Investigating the Strength and Purity of Drugs and of Formaldehyde.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of six thousand dollars to the North Dakota government agricultural experiment station at Fargo, the same to be used for the further and better enforcement of the pure food law as the said station may be charged with the enforcement of by acts of the legislative assembly, and for determining the strength and purity of drugs and of formaldehyde sold or offered for sale in the state. The sum herein named shall be paid in equal quarterly installments to the treasurer of the board of trustees of said station upon the order of the state auditor who is hereby directed to draw his order for the same.

§ 2. REPEAL.] All acts and parts of acts, and especially section 2 of chapter 6, of the session laws of 1903, are hereby expressly repealed.

§ 3. EMERGENCY.] Whereas, an emergency exists in that the amount hereby appropriated is needed for immediate use, therefore this act shall take effect and be in force from and after its passage [and approval].

Approved March 14, 1905.

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## CHAPTER 40.

[S. B. No. 106—Voss.]

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## REFORM SCHOOL.

AN ACT to Make an Appropriation for the Current and Contingent Expenses of the State Reform School at Mandan, and Authorizing the Trustees of Said Reform School to Purchase Six Hundred Acres of Land Contiguous to the Present Site of Said Reform School.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated the following sums of money, or so much thereof as may be necessary, out of the moneys of the state treasury, not otherwise appropriated, for the

purpose of paying the current and contingent expenses of the state reform school at Mandan:

For maintenance and salaries of officers and employes....	\$ 5,040
For fuel and lights.....	2,200
For clothing and bedding.....	2,000
For physicians and medicines.....	500
For repairs .....	600
For library .....	200
For finishing third story of main building.....	1,500
For water supply .....	3,500

Total ..... \$15,540

§ 2. TRUSTEES AUTHORIZED TO PURCHASE LAND.] The trustees of the said state reform school located at Mandan are hereby authorized and empowered to purchase not more than six hundred acres of land adjoining said reform school at a price not to exceed fifteen dollars per acre, and there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of nine thousand dollars for the purchase of said lands, or so much thereof as may be necessary; provided, that before any of the money hereby appropriated for the purchase of said lands is available, the governor of this state shall give his assent thereto.

§ 3. EMERGENCY.] Whereas, in the opinion of the legislative assembly, an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

#### VETO.

This bill is approved except for the following items of appropriation: Three thousand five hundred dollars for water supply, as proposed in section 1 of this bill; nine thousand dollars for the purchase of additional land as proposed in section 2. These items are vetoed for the following reasons: The appropriations of the ninth legislative assembly are largely in excess of the probable revenues of the state and these vetoed items can be dispensed with without interfering with the proper management and maintenance of this institution for the ensuing two years.

E. Y. SARLES,  
Governor.

Filed March 15, 1905.

## CHAPTER 41.

[H. B. No. 288—Rose.]

## REVISED CODES 1905.

A JOINT RESOLUTION to Provide for the Compilation and Publication of the Revised Codes of North Dakota, of 1905, Providing for the Payment and Directing the Manner of Sale of the Same.

Whereas, The edition of the revised codes of North Dakota of 1899 is entirely exhausted, and there is a general demand and necessity for a compilation that shall embrace all laws and conform to all amendments made by the legislative assembly since 1899, up to and including the ninth legislative assembly; and,

Whereas, The secretary of state is already empowered by law, in the publication of codes and statutes, to have general supervision over the compilation, renumbering and readjusting of sections, chapters, articles and subdivisions, and general arrangement thereof; and,

Whereas, It is advisable to secure at least expense to the state the compilation of the laws up to date; now, therefore,

*Resolved by the House of Representatives, the Senate Concurring:*

As soon as practicable after the adjournment of the ninth legislative assembly the secretary of state, with the approval of the governor, is authorized, on the general plan of the revised codes of 1899, to eliminate such sections, articles and chapters therein as shall have been repealed by the legislative assemblies of 1901, 1903 and 1905, substitute and incorporate all amendments, without change or modification, renumber the sections, articles and chapters where necessary to perfect and harmonize the statutes, and revise and rearrange the table of contents, and in a general way supervise the compilation and have charge of the publication of a revised edition of the codes to be known as the revised codes of 1905. The said revised codes shall contain, by appropriate references, annotations to each section, so far as decided by the supreme courts of the territory of Dakota, and the state of South Dakota and the state of North Dakota. In order that the said edition of the revised codes may be issued as speedily as possible, and with the least expense to the state, the secretary of state is hereby empowered to employ, with the approval of the governor, one or more competent compilers and digestors, who shall be learned in the law and familiar with the work to be performed, and he may also employ one or more stenographers and typewriters, as may in his judgment, with the approval of the governor, be deemed necessary to facilitate the work and prepare the copy for said publication, the same to be completed and the codes ready for delivery as early as possible. When the revision herein provided for shall be completed and the

books delivered to the secretary of state, the governor shall issue a proclamation, setting forth the fact, and thirty days thereafter said revised codes shall be in full force and effect and be received as evidence of the laws of this state in all courts thereof. The entire cost to the state for the compilation, annotations and printing herein authorized shall not exceed the sum of four dollars and seventy-five cents per volume for two thousand copies, and after allotting a sufficient number of said revised codes of 1905 to supply all state and other officers entitled thereto, and the public libraries and other institutions authorized by law to receive the same, the secretary of state shall keep for sale the remainder for the benefit of the state, at six dollars per volume. All vouchers for the payment of services and furnishing the supplies called for by this act shall be audited by the governor and commissioners of public printing, a sufficient amount being hereby appropriated out of the general fund of the state not otherwise appropriated to pay the same.

Approved March 15, 1905.

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## CHAPTER 42.

[S. B. No. 155—Simpson.]

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### J. G. SAUNDERS.

AN ACT Appropriating to James G. Saunders, Clerk of the District Court of Stark County, North Dakota, \$200 Clerk's Fees for Services Rendered in the Unorganized Territory Attached to Stark County for Judicial Purposes During the Years 1903 and 1904.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of two hundred dollars to James G. Saunders, clerk of the district court of Stark county, North Dakota, as fees for services performed in the prosecution of criminal cases arising in the unorganized territory attached to Stark county for judicial purposes during the years 1903 and 1904.

Approved March 15, 1905.



## CHAPTER 43.

[S. B. No. 34—Stade.]

## SCHOOL FOR THE DEAF AND DUMB.

AN ACT to Provide for New Buildings and for Making Needed Permanent Improvements for the School of Deaf and Dumb, Located at Devils Lake, North Dakota, and Making an Appropriation Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of forty-two thousand, two hundred and fifty-seven dollars for improvements and repairs of the school for the deaf and dumb of North Dakota at Devils Lake.

For completion of present building.....	\$22,266
For purchase of additional land.....	660
For heating plant, including boilers, pumps, machinery, brick corridor and vacuum system.....	10,000
For sewerage .....	5,000
For building barn.....	2,000
For constructing spur track.....	331

Total amount ..... \$40,257

Provided, that before any of the money hereby appropriated for the purchase of land is available, the governor of this state shall give his assent thereto.

§ 2. EMERGENCY.] An emergency exists in this that the fiscal year for which this appropriation is made shall not begin before July first, and the funds hereby appropriated for the making of improvements, and the building of new buildings will be needed before that time; therefore, this act shall take effect immediately after its passage and approval.

## VETO.

The following items in this bill are vetoed: For completion of present building, \$22,266; for heating plant, including boilers, pumps, machinery, brick corridor and vacuum system, \$10,000; for building barn, \$2,000. The following items are approved: For purchase of additional land, \$660; for sewerage, \$5,000; for constructing spur track, \$331. The items vetoed are disapproved for the following reasons: The appropriations of the ninth legislative assembly are largely in excess of the probable revenues of the state. Liberal appropriations are made for this institution by existing laws, and a deficiency building appropriation has been made by enactment of this legislative assembly. Under existing conditions, the approval of large additional items for building can be justified only on the ground of urgent neces-

sity. I cannot see that such a necessity exists in this case. Until the finances of the state will enable it to make a direct appropriation for the carrying out of contemplated improvements, this institution must avail itself to the utmost of present resources and accommodations, which I believe can be done without distress or hardship for the ensuing two years.

E. Y. SARLES,  
Governor.

Filed March 17, 1905.

## CHAPTER 44.

[S. B. No. 168—Movius.]

### SCHOOL OF SCIENCE.

AN ACT Making an Appropriation for Purchasing or Erecting a Building, Furnishing and Equipping the Same, for the Use of North Dakota Academy of Science Located at Wahpeton, North Dakota, and to Provide Funds for the Maintenance of Said School.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] That there is hereby appropriated the following sums of money, or so much thereof as may be necessary, not otherwise appropriated, for the purpose of erecting or purchasing a suitable building and furnishing and equipping the same, for the use of the North Dakota academy of science located at Wahpeton, North Dakota, and for the purpose of maintaining the said school for the period beginning January 1, 1905, and ending December 31, 1906, as follows:

For the purchase or erection of a building.....	\$30,000
For furnishing and equipping said building.....	6,000
For maintenance .....	7,000
Total .....	\$43,000

### VETO.

The following items in this bill are vetoed: For the purchase or erection of a building, \$30,000; for furnishing and equipping said building, \$6,000. The item of \$7,000 for maintenance is approved. The vetoed items are disapproved because the appropriations of the ninth legislative assembly are largely in excess of the probable revenues of the state. Under these circumstances a large appropriation for the erection of a building cannot be approved, except upon the ground of urgent necessity. I cannot see that such a necessity exists. This institution, in its present stage of advancement, will not suffer if its work is done in temporary quarters until such time as the finances of the state will permit the erection or purchase of a building.

The income of the institution from its land endowment, with the item of \$7,000 for maintenance, will enable it to carry on its work in a creditable manner and to build up such an institution as the state shall provide with a fit building at such time as its finances will permit.

E. Y. SARLES,  
Governor.

Filed March 16, 1905.

## CHAPTER 45.

[H. B. No. 1—Buttz.]

### SOLDIERS' HOME.

AN ACT Making Appropriation for the Current and Contingent Expenses of the Soldiers' Home, Located at Lisbon, North Dakota, and for Making Permanent Improvements and Additions Thereto and Erecting a Monument.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] That there is hereby appropriated the following sums of money, or so much thereof as may be necessary, out of moneys in the state treasury, not otherwise appropriated, for the purpose of paying the current and contingent expenses of the soldiers' home, located at Lisbon, North Dakota, and for the purpose of making permanent improvements and additions thereto, for the two years from July 1, A. D. 1905, to June 30, 1907, inclusive, as follows:

For current expense fund.....	\$ 3,000
Household expense fund.....	3,200
Hospital expense fund.....	3,000
Subsistence expense fund.....	7,000
Clothing expense fund.....	1,000
Transportation and burial expenses.....	500
Construction .....	500
Farm .....	1,500
Repairs .....	1,500

For the erection of a central monument in Oakwood cemetery and appropriate markings to commemorate the names and mark the graves of deceased Union soldiers, who have or may die in the soldiers' home and have been or may be buried in such cemetery at Lisbon, N. D., and for the purpose of purchasing and keeping an appropriate record of the names, company and regiment of soldiers dying in the soldiers' home at Lisbon, N. D., said money to be expended for the purpose above set forth under the direction of the board of trustees of said soldiers' home, and to be in addition to the amount of one thousand dollars heretofore appropriated and now in the treasury and available for this purpose. That of the amount herein appropriated the sum of nine thousand

nine hundred dollars shall be taken from this appropriation and charged to the fund now in the treasury and known as the "interest and income fund" realized from the lands belonging to the said soldiers' home; provided, that said nine thousand nine hundred dollars to be taken from said "interest and income fund" be expended for the support and maintenance of said home..... 1,000

Total ..... \$22,200

#### VETO.

This bill is approved except as to the item of \$7,000 for subsistence which is vetoed for the reason that the appropriations of the ninth legislative assembly largely exceed the revenues of the state and makes necessary the disapproval of all items of expense not absolutely necessary. I believe this item of expense can be supplied from other sources of revenue without interfering in any way with the proper maintenance of this institution.

E. Y. SARLES,  
Governor.

Filed March 17, 1905.

#### CHAPTER 46.

[S. B. No. 82—Bacon.]

#### STATE FAIRS.

AN ACT Establishing State Fairs, Locating Them at Grand Forks and Fargo, and Making an Appropriation Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. LOCATION PERMANENTLY AT GRAND FORKS AND FARGO.] For the purpose of promoting and improving the condition of agriculture, horticulture, mechanical, manufacturing and household arts, a state fair or exposition shall be held biennially at or near the city of Grand Forks, in the state of North Dakota, during each odd numbered year, and biennially at or near the city of Fargo, in the state of North Dakota, during each even numbered year, subject to the conditions hereinafter named, and the location of the state fairs as herein provided is hereby declared to be permanent.

§ 2. CONDITIONS TO BE COMPLIED WITH BY GRAND FORKS.] If an organization, to be known and designated as the North Dakota state fair association for Grand Forks, or by some similar name, shall be, during the year 1905, created and organized under and pursuant to the general laws of this state, in relation to corporations, with a paid-up capital stock of not less than twenty thousand dollars, such association shall become entitled to receive the appropriations hereinafter named, upon the conditions set forth in this act. The said association

may acquire the title to not less than seventy nor more than one hundred and sixty acres of ground at or near the city of Grand Forks, in said state, and such association may, and it is hereby empowered and authorized to convey the title to the land so acquired by it, unto the state of North Dakota, which property, when so conveyed, shall be held by the state of North Dakota forever for the following purposes and none other: For the purpose of exhibiting thereon under the management of such association, or its successors, biennially, during each odd numbered year the agricultural, stock breeding, horticultural, mining, mechanical, industrial and other products and resources of the state of North Dakota, including proper exhibits of the arts, sciences and all other public displays pertinent to and dependent upon exhibitions and expositions of human art, industry and skill. The said association may use so much of its paid-up capital stock as may be necessary for the acquisition of title to the land so to be purchased by it for use as fair grounds, and the balance thereof shall be and constitute a fund toward the construction of buildings and other permanent improvements thereon.

§ 3. CONDITIONS TO BE COMPLIED WITH BY FARGO.] If an organization, to be known and designated as the North Dakota state fair association for Fargo, or by some similar name, shall be, during the year 1905, created and organized under and pursuant to the general laws of this state, in relation to corporations, with a paid-up capital stock of not less than twenty thousand dollars, such association shall become entitled to receive the appropriations hereinafter named upon the conditions set forth in this act. The said association may acquire the title to not less than seventy nor more than one hundred and sixty acres of ground at or near the city of Fargo, in said state, and such association may, and it is hereby empowered and authorized to convey the title to the land so acquired by it, unto the state of North Dakota, which property, when so conveyed, shall be held by the state of North Dakota forever, for the following purposes and none other: For the purpose of exhibiting thereon under the management of such association, or its successors, biennially, during each even numbered year, the agricultural, stock breeding, horticultural, mining, mechanical, industrial, and other products and resources of the state of North Dakota, including proper exhibits of the arts, sciences and all other public displays pertinent to and dependent upon exhibitions and expositions of human art, industry and skill. The said association may use so much of its paid-up capital stock as may be necessary for the acquisition of title to the land so to be purchased by it for use as fair grounds, and the balance thereof shall be and constitute a fund toward the construction of buildings and other permanent improvements thereon.

§ 4. CUSTODY AND CONTROL OF GRAND FORKS GROUNDS VESTED IN NORTH DAKOTA STATE FAIR ASSOCIATION FOR GRAND FORKS. OFFICES TO BE MAINTAINED.] The custody and control of the premises upon which said fair at Grand Forks is located shall be vested in said North

Dakota state fair association for Grand Forks, and the general offices thereof shall be located and maintained either upon the premises so acquired or at some suitable place in the city of Grand Forks, and said association is hereby authorized, required and empowered to maintain its said offices as aforesaid, wherein shall be contained the property and records of such association and the entire care, custody, management and control of said premises, and the structures thereon, shall be vested in said association.

§ 5. CUSTODY AND CONTROL OF FARGO GROUNDS VESTED IN NORTH DAKOTA STATE FAIR ASSOCIATION FOR FARGO. OFFICES TO BE MAINTAINED.] The custody and control of the premises upon which said fair at Fargo is located shall be vested in said North Dakota state fair association for Fargo, and the general offices thereof shall be located and maintained either upon the premises so acquired or at some suitable place in the city of Fargo, and said association is hereby authorized, required and empowered to maintain its said offices as aforesaid, wherein shall be contained the property and records of said association, and the entire care, custody, management and control of said premises, and the structures thereon, shall be vested in said association.

§ 6. GOVERNOR AND ATTORNEY GENERAL TO ACCEPT TITLE TO LAND FROM BOTH ASSOCIATIONS. ON FAILURE TO MAKE APPROPRIATIONS LAND REVERTS TO SOCIETIES. NUMBER OF DIRECTORS. WHO SHALL CONSTITUTE.] When the state of North Dakota accepts the title to the land so acquired by either of said associations, which acceptance shall be made by the governor and attorney general, thereupon, and not before such time, shall the deed of conveyance of said property to the state be accepted and recorded. Should the state of North Dakota cease to appropriate the sum of at least five thousand dollars annually to be awarded as premiums in connection with said fairs then the title of said premises shall revert to and become the property of the association that transferred the same to the state; provided, further, that the state shall never become liable for any of the debts and liabilities of said associations, save as appropriations shall be made therefor from time to time by the legislature. This act shall not become binding upon the state as to either fair association until the stockholders of such association shall adopt and file with the secretary of state an irrevocable by-law, consenting and providing that its board of directors shall consist of fifteen persons; that the governor, commissioner of agriculture and labor and the state auditor shall, ex-officio, constitute three of such directors; that five of the directors of such association shall be residents of the judicial district in which said fair is to be held, and that one director shall be selected from each other judicial district of this state, and shall be a resident of the same.

§ 7. DIRECTORS SHALL APPOINT EXECUTIVE COMMITTEE. DUTIES OF.] The board of directors of each association shall appoint an executive committee which shall keep an accurate account of the expenditures of all moneys appropriated to it by the state and of all other

receipts and expenditures, and shall collect, arrange and collate all the information in their power in relation to the nature and preparation of soils, the cultivation and growth of crops, the breeding and management of stock, the application and character of manure and fertilizers, the introduction of new cereals and other grains and other agricultural subjects, and report the same together with a statement of their doings, and such account of their expenditures, to the governor on or prior to the first day of January each year following the holding of a state fair, such report to be audited by the governor, commissioner of agriculture and labor and the auditor, and by the governor laid before the legislative assembly. All moneys hereby appropriated shall be paid over to the treasurer of the association entitled to the same on the order of the president attested by the secretary.

§ 8. APPROPRIATION FOR ENCLOSING GROUNDS AND ERECTION OF BUILDINGS. PROVISIONS.] For the purpose of enabling said associations to suitably enclose their grounds and to aid them in the erection thereon of proper buildings, structures and other improvements suitable for the purposes of giving expositions or fairs the sum of ten thousand dollars is hereby appropriated out of the moneys in the state treasury, not otherwise appropriated, one-half of which amount shall go to each association; provided, nevertheless, that no part of said appropriation shall be payable until after a deed of conveyance of the premises upon which the fair is to be held, has been made and accepted by the state as hereinbefore provided; and provided, further, that this appropriation shall lapse and shall only be available to the association whose conveyance is made and accepted by the state on or prior to June 1, 1906.

§ 9. GENERAL APPROPRIATION.] There is hereby appropriated out of any funds in the treasury of the state of North Dakota not otherwise appropriated, the sum of ten thousand dollars, annually, to be expended by the directors of said association as follows: Not more than five thousand dollars thereof in any one year for the erection of buildings and making of other permanent improvements upon the fair grounds; not less than five thousand dollars in any one year as premiums to the exhibitors at said fair; such appropriation to be paid to the North Dakota state fair association for Grand Forks in odd numbered years and to the North Dakota state fair association for Fargo in even numbered years.

§ 10. CONDITIONS UPON WHICH ACT IS BINDING ON STATE.] This act shall not become binding or effective upon the state as to either of such associations until the stockholders of such association shall adopt a by-law expressly accepting and agreeing to all of the conditions hereof, and file a certified copy of said by-law with the secretary of state.

§ 11. IN EVENT OF FAILURE OF EITHER ASSOCIATION TO COMPLY, OTHER MAY AVAIL ITSELF OF BENEFITS OF THIS ACT AND HOLD ANNUAL FAIRS.] In the event of the failure of such associations to comply with the provisions of this act then the other association shall be

entitled to hold a state fair upon its grounds during each year and receive the appropriation herein made for the association failing thus to comply with this act, and such failure on the part of either association shall operate to permanently establish the state fair upon the grounds of the other association.

§ 12. Provided, that nothing in this act contained shall be construed to prohibit the fair association leasing said grounds and buildings for the purpose of holding stock and agricultural exhibits when they deem it advisable.

§ 13. REPEAL.] All acts and parts of acts in conflict with this are hereby expressly repealed.

§ 14. EMERGENCY.] Whereas, an emergency exists in this, that there is no adequate law providing for the holding of a state fair in the state of North Dakota, and it is desirable that the needed steps be taken to the end that a state fair may be held during the year 1905; therefore this act shall take effect and be in force from and after its approval.

Approved March 14, 1905.

## CHAPTER 47.

[S. B. No. 169—Young.]

### VALLEY CITY NORMAL.

AN ACT to Provide for the Maintenance of Summer School and for New Buildings and for Making Needed and Permanent Improvements for the State Normal School at Valley City, North Dakota, and Making an Appropriation Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPROPRIATION.] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of two thousand five hundred dollars annually for the purpose of conducting a summer school at the state normal school at Valley City, North Dakota.

§ 2. APPROPRIATION.] There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of forty-six thousand one hundred and ninety-five dollars for buildings, improvements, and repairs of the state normal school at Valley City, North Dakota, as follows:

For construction of sewer and making necessary connections .....	\$ 945.00
For installation of closets and plumbing.....	1,000.00
For artesian well.....	1,250.00
For new floors in main building.....	1,000.00
Other repairs to main building and present dormitory and painting.....	2,500.00
For the purchase of real estate.....	2,000.00
For furniture for new model school and dormitory.....	2,500.00
For building a model school.....	35,000.00

Total ..... \$46,195.00



§ 3. EMERGENCY.] An emergency exists in this, that the improvements and buildings provided for will be needed long before July 1, 1905, therefore this act shall take effect from and after its passage and approval.

#### VETO.

This bill is approved except for the following items of the appropriation: Two thousand five hundred dollars annually for the purpose of conducting a summer school, as proposed in section 1; one thousand dollars for new floors in main building, and two thousand five hundred dollars for other repairs to main building and present dormitory and painting. These items are vetoed for the following reasons: The appropriations of the ninth legislative assembly are largely in excess of the probable revenues of the state, and these items can be dispensed with without interference with the proper management and maintenance of this institution for the ensuing two years.

E. Y. SARLES,  
Governor.

Filed March 15, 1905.

#### CHAPTER 48.

[S. B. No. 113—Thatcher.]

#### WHITE STONE HILLS BATTLEFIELD.

AN ACT to Provide for the Care and Improvement of the "White Stone Hills Battlefield," and Making an Appropriation to Pay for the Same.

Whereas, There has been granted to the state of North Dakota by act of congress, six hundred forty acres of land, described as follows, to-wit: The southeast quarter of section seven, the southwest quarter of section eight, the northeast quarter of section eighteen, and the northwest quarter of section seventeen, all in township one hundred and thirty-one, north of range sixty-five west, in Dickey county, North Dakota, embracing the White Stone Hills Battlefield and the burial ground of soldiers killed in that engagement; and,

Whereas, There was fought upon said lands on the third day of September, 1863, a noted battle between soldiers of the United States army and the Sioux Indians; and,

Whereas, The remains of a large number of said soldiers of the regular army, who were killed in said engagement, were buried on said ground; and,

Whereas, It is desired by the citizens of North Dakota to preserve the said burial grounds and to suitably mark the graves and to prevent the land from passing into private ownership; and,

Whereas, Different military organizations, as well as the legislatures of the states to which the soldiers who fell in said battle were

accredited, have expressed a desire to assist in the erection of monuments and the marking of the graves of their dead as soon as the grounds are properly enclosed and protected from trespass ; therefore,

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. GRANT OF GOVERNMENT LAND ACCEPTED.] That the grant of said land, to-wit: The southeast quarter of section seven, the southwest quarter of section eight, the northeast quarter of section eighteen and the northwest quarter of section seventeen, all in township one hundred and thirty-one north, of range sixty-five west, in Dickey county, made by the United States to the state of North Dakota, is with all the emoluments and obligations, connected therewith, hereby in all things accepted.

§ 2. WHITE STONE HILLS BATTLEFIELD COMMISSION CREATED. GOVERNOR TO APPOINT. TERM OF OFFICE.] That the governor be, and he is hereby authorized, directed and empowered of forthwith appoint a commission of three citizens of the state of North Dakota, to be known as the "White Stone Hills Battlefield Commission" and the members of which commission shall hold office for the term of two years from and after the date of their appointment.

§ 3. WHERE BOARD TO ORGANIZE. DUTIES. AUTHORIZED TO ACCEPT CONTRIBUTIONS. ALL PROPERTY TO BE THE PROPERTY OF THE STATE.] It shall be the duty of such commission to meet for organization at the city of Oakes in the county of Dickey, in the state of North Dakota, within thirty days after appointment, and to organize by the election of one of their number as chairman and another as secretary ; that said commission shall then take all the necessary steps to properly enclose said battlefield and to improve the same in so far as may be done consistently with the provisions of this act, and to make and enforce regulations relating to the further improvement, erection of monuments, markers, roads, drives, walks and other means of making the same attractive, and preserving the natural attractions thereof, and regulating the entry of persons thereon and traffic over the same ; that in so doing, the said commission shall be and the same is hereby authorized and empowered to receive for and in the name of the state contributions or gifts of money, work, material, monuments, markers, and other things which may come into its hands in the performance of the things herein contemplated by it to be done. All property of every kind coming into the hands of said commission and all monuments, markers and other improvements made upon and about said premises, shall be forever the property of the state of North Dakota.

§ 4. COMMISSION NOT ENTITLED TO SALARY OR COMPENSATION.] That the members of said commission shall not be entitled to any salary or compensation for services rendered or time expended by them or either of them.

§ 5. TREASURER OF STATE MADE TREASURER OF COMMISSION.] The treasurer of the state of North Dakota is hereby made the treasurer of said commission and all moneys coming into the hands of said

commission, or of the members thereof, shall be by them immediately paid over to the state treasurer for account of the same.

§ 6. VOUCHERS OF COMMISSION FOR DISBURSEMENTS TO BE APPROVED BY CHAIRMAN AND SECRETARY AND FILED WITH STATE AUDITOR.] That the disbursements of said commission shall be at all times evidenced by vouchers approved by the chairman and secretary of said commission and filed with the state auditor.

§ 7. APPROPRIATION.] That for the purpose of carrying out the provisions of this act there is hereby appropriated the sum of one hundred dollars, or so much thereof as may be necessary, out of any moneys in the state treasury not otherwise appropriated.

§ 8. COMMISSION TO KEEP RECORD AND FILE ANNUAL REPORT WITH THE GOVERNOR.] The said commission shall keep a complete record of all its proceedings and shall, on or before the first day of January of each odd numbered year transmit to and file with the governor a report of the same.

Approved March 13, 1905.

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## AUTOMOBILES.

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### CHAPTER 49.

[H. B. No. 9—House Committee on State Affairs.]

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### AUTOMOBILES.

AN ACT Regulating the Operation of Automobiles on the Public Roads, Highways and Streets Within the State of North Dakota, and Providing Penalties for the Violation Thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ SPEED REGULATED.] No person, driver or operator in charge of any automobile or motor cycle on any public road, highway or street within the state shall drive, operate or move or permit to be driven, operated or moved any automobile or motor cycle at a speed faster than eight miles per hour within any town, village or city within this state, or at a rate faster than twenty-five miles per hour on any public road or highway outside of any town, village or city.

§ 2. MUST HAVE BELL OR HORN.] Every automobile or motor cycle shall be provided with a bell or horn which when operated outside of a city or village, shall be rung or blown by the driver or operator when approaching from behind a vehicle propelled by animals so as to give timely notice of the approach of said motor vehicle.

§ 3. MUST USE MUFFLER, WHEN. MUST HAVE LIGHTS.] Every automobile or motor cycle using gasoline, steam, or any other sub-

stance as a motive power shall use a muffler, so-called, when operated, driven or moved upon the streets of any town, village or city within the state, or when meeting or passing animal propelled vehicles on any public road or highway within the state. Every such automobile or motor cycle shall also be provided with lights, the automobile to carry not less than two lights, in front of such machine, one of which to be on either side, and the motor cycle to carry at least one light.

§ 4. LAW OF THE ROAD.] The driver or operator of any automobile, or motor cycle shall be governed by the usual law of the road by turning to the right in meeting vehicles, teams or persons moving or headed in an opposite direction, and by turning to the left when passing vehicles, teams or persons moving or headed in the same direction.

§ 5. MUST STOP WHEN SIGNALLED BY DRIVER OF VEHICLE.] The driver or operator in charge of any automobile or motor cycle on any public road or highway outside the limits of any town, village or city within the state, when signalled by the driver of any vehicle propelled by horses or other animal power shall stop said automobile or motor cycle until the vehicle propelled by such animal power has passed; and if approaching said vehicle from behind, the driver or operator in charge of said automobile or motor cycle shall stop and give the driver of the said animal propelled vehicle a reasonable time for the passage of such automobile.

§ 6. PENALTY FOR VIOLATION.] Any person, driver or operator of any such automobile or motor cycle who shall violate any provisions of this act shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars, and not more than fifty dollars, and if default is made in the payment of such fine such person or persons shall be committed to the county jail until such fine is paid, conditioned, however, that each day's service in jail shall be equal to two dollars of such fine and the driver or owner of such automobile or motor cycle shall be liable for damages in a civil action to any person who shall have been injured in person or property by reason of such violation of this act.

Approved February 23, 1905.

## BAR EXAMINERS.

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### CHAPTER 50.

[H. B. No. 70—Ryan.]

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#### BOARD OF BAR EXAMINERS.

AN ACT Creating a State Board of Bar Examiners and Providing for Their Appointment, Compensation and Duties.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. STATE BOARD OF EXAMINERS IN LAW APPOINTED BY SUPREME COURT.] As soon as possible after the passage, approval and taking effect of this act the justices of the supreme court of this state shall appoint from the members of the bar of this state, resident therein and who shall be learned in the law, three persons to constitute a state board of examiners in law.

§ 2. TERM OF OFFICE. VACANCY, HOW FILLED.] The term of office of the members of the said board shall be as follows: One shall be appointed for two years, one shall be appointed for four years and one shall be appointed for six years, and their successors shall receive their appointment in a like manner for a term of six years each; but in case of a vacancy occurring by death or otherwise there shall be appointed in a like manner a person to serve through the unexpired term of the member to whose place he is appointed.

§ 3. OFFICERS OF THE BOARD. PUBLIC EXAMINATION TO BE HELD AT LEAST TWICE A YEAR. RECORDS OF PROCEEDINGS TO BE KEPT.] The said board shall elect one of its members president. The clerk of the supreme court shall be ex-officio secretary and treasurer of said board. The said board shall, at least two times in each year, hold public examinations for admission to the bar of this state, which examinations shall be both written and oral, in such places and at such times in this state as the said board, or a majority thereof, shall direct. The said board shall keep a record of all its proceedings and also a record of all applications for admission to the bar, and shall enroll in a book kept for that purpose, the name of each person admitted as an attorney at law.

§ 4. REPORT OF EXAMINATIONS TO BE MADE TO SUPREME COURT, WHICH SHALL AUTHORIZE CERTIFICATE OF ADMISSION TO THE BAR TO BE ISSUED.] The said board shall, as soon as practicable thereafter, report the result of all examinations to the supreme court, with such recommendations for admission as to the said board shall seem just, and the supreme court shall, after considering said report and said

recommendations, by order, either in term time or in vacation, authorize the issuance of certificates of admission to the bar, upon taking the oath of office at such time and place as such order may provide.

§ 5. EXAMINATION FEE, HOW APPLIED.] The said board shall receive from each person applying for examination the sum of ten dollars as a fee therefor and all fees received by said board shall be deposited with the treasurer of said board and applied toward the expenses and compensation of the respective members of said board. The secretary of said board shall be allowed such compensation and expenses for his services from the fees so received as the said board shall determine.

§ 6. SALARY OF BOARD.] There shall be paid out of the treasury of said board to each examiner appointed as aforesaid a compensation not exceeding ten dollars per day and his actual necessary expenses in going to, holding and returning from any such examination; provided, that all such expenses shall be paid from the fees received by the board under the provisions of this act and no part of the compensation or expenses provided for herein shall be paid out of the state treasury.

§ 7. NO ONE ALLOWED TO PRACTICE AS AN ATTORNEY HEREAFTER WHO HAS NOT COMPLIED WITH RULES PRESCRIBED BY SUPREME COURT.] No person shall hereafter be admitted to practice as an attorney and counsellor at law, or to commence, conduct or defend any action or proceeding in any of the courts of record of this state, in which he is not a party concerned, unless he has complied with and been admitted under and pursuant to such rules as the supreme court of this state shall prescribe.

§ 8. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are expressly repealed.

§ 9. EMERGENCY.] Whereas, there is no provision of law for the appointment of a state board of examiners in law, and the duties of such board now devolve upon the judges of the supreme court, and it is deemed best to relieve the said judges of this labor, therefore an emergency exists, and this act shall take effect from and after its passage and approval.

Approved February 18, 1905.

## BEAVER.

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### CHAPTER 51.

[H. B. No. 289—McClure.]

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#### PROTECTION OF BEAVER.

AN ACT to Protect Beavers in the State of North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. UNLAWFUL TO KILL BEFORE JANUARY 1, 1920.] It shall be unlawful for any person to trap, catch or kill or otherwise destroy any beaver in the state of North Dakota before January 1, 1920.

§ 2. VIOLATION. PENALTY FOR.] Any person violating the provisions of section 1 of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than one hundred dollars and by imprisonment in the county jail not less than thirty days nor more than six months.

§ 3. EMERGENCY.] An emergency exists in this, that there is nothing in the present laws prohibiting the trapping or killing beaver in the state, therefore this act shall take effect immediately after its passage and approval.

Approved March 7, 1905.

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## BOARDS OF HEALTH.

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### CHAPTER 52.

[H. B. No. 174—Ellison.]

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#### BOARDS OF HEALTH.

AN ACT Amending Section 2581 of the Revised Codes, Relating to Boards of Health.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2581 of the revised codes be amended so as to read as follows:

§ 2581. WHO CONSTITUTE. POWERS OF.] The supervisors of each township, and the trustees of each incorporated village, shall

constitute a board of health and within their respective townships or villages shall have and exercise all the powers necessary for the preservation of public health.

§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. EMERGENCY.] Whereas, there is no provision of law for boards of health in incorporated villages, an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1905.

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## BOARD OF PARDONS.

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### CHAPTER 53.

[H. B. No. 185—Sheils.]

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#### BOARD OF PARDONS.

AN ACT to Amend Section 4 of Chapter 34 of the Laws of 1901, Relating to the Time When the Board of Pardons Shall Meet.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 4 of chapter 34 of the laws of 1901 be amended so as to read as follows:

§ 4. BOARD MEETINGS TO BE HELD, WHEN.] The board of pardons shall hold at least two regular meetings in each calendar year; and may hold such other meetings as it shall deem expedient. Such regular meetings shall be held on the second day of June and the second day of December of each year at the executive office. All other meetings of said board shall be held in the executive chamber at the state capitol, or in such other place as may be ordered by said board.

§ 2. EMERGENCY.] An emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1905.



## BONDS.

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### CHAPTER 54.

[S. B. No. 230—LaMoure.]

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#### MUNICIPAL REFUNDING BONDS.

AN ACT to Authorize Certain Municipal Corporations of This State to Issue Bonds for the Purpose of Refunding or Paying Outstanding Bonds, Regulating the Issuance and Providing for the Payment Thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WHAT CORPORATIONS MAY ISSUE.] Each incorporated town or village, school district or township in this state, that has heretofore issued, or shall hereafter issue bonds, purporting to have been issued for any purpose authorized by law, which bonds have been actually sold and delivered to purchasers for value, so that the same constitute a valid and existing indebtedness, may at any time after maturity or before maturity, with the consent of the holder, and while said bonds are a valid and existing indebtedness against such town or village, school district or township, refund the same and issue and negotiate new bonds for the amount of such indebtedness or any part thereof.

§ 2. AUTHORITY FOR ISSUE.] The necessity for issuing and negotiating bonds under the provisions of this act shall be determined as follows:

In case of incorporated towns or villages, by the board of trustees.

In case of school districts, by the board of school directors.

In case of townships, by the board of supervisors.

§ 3. BONDS. HOW ISSUED.] When in the judgment of the board of any of the municipal corporations herein enumerated, it shall be deemed to be to the best interests of such municipal corporations to issue its negotiable bonds in the name of such corporation for the purpose of refunding or paying the outstanding bonded indebtedness of such corporation, as enumerated in section 1 of this act, refunding bonds may be issued by resolutions duly and legally passed at a regular or special meeting of such board. Such bonds may be signed the same as the bonds refunded or by such officers of the municipal corporation issuing the same as may be designated in the resolutions providing for their issuance. Such bonds shall be made payable in not less than five and not more than twenty years from the date of their issue, and shall not draw a higher rate of interest than the

bonds refunded. Such bonds shall be in such denominations as shall be designated in the resolutions authorizing their issuance, shall bear the date of their issue and date of maturity, and shall recite on their face that they are issued under and by authority of this act, and shall be payable to the purchaser or bearer, and shall have interest coupons attached to each bond representing each interest payment.

§ 4. BONDS MAY BE EXCHANGED OR SOLD.] Said bonds may be exchanged at par for an equal amount of the old bonds of said municipal corporation with the holder of said indebtedness, or may be sold by the board at not less than their par value and the proceeds applied solely to the payment of the indebtedness for which they are issued.

§ 5. BONDS TO BE REGISTERED BY THE TREASURER.] A record of each and every bond issued under this act shall be kept by the treasurer of the municipal corporation issuing the same, showing the number of each bond, its date, amount, rate of interest, date due, where payable, and to whom sold.

§ 6. TAX TO BE LEVIED.] The resolutions authorizing the issuance of such bonds shall provide for the levy and collection of an annual tax sufficient to pay the interest and principal of such bonds, as provided by section 184 of the constitution, and the fund arising from such tax levy shall be kept by the treasurer of such corporation in a special fund to be used solely for the payment of the interest and principal of such bonds.

§ 7. LIMIT OF ISSUE.] No more of such bonds shall be issued than are necessary for the purpose of paying the outstanding bonds of the municipal corporations issuing the same, as stated in section 1 of this act, after applying the cash in the treasury available for the payment of the said maturing bonds, and no bonds issued under authority of this act shall be issued or negotiated for less than their par value.

§ 8. BONDS NEGOTIABLE, WHEN.] Bonds issued in substantial conformity with the provisions of this act, shall in the law be deemed negotiable.

Approved March 13, 1905.

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## CHAPTER 55.

[S. B. No. 234—LaMoure.]

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### STATE BONDS AUTHORIZED.

AN ACT to Provide for Borrowing Money to Defray the Extraordinary Expenditures of the State Government.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. STATE BONDS AUTHORIZED.] The governor, state auditor and state treasurer are hereby authorized and empowered to prepare

for issue negotiable bonds of the state of North Dakota to the amount of one hundred and fifty thousand dollars. Such bonds shall be made payable to the purchaser or bearer and payable in twenty years from date of issue and shall bear interest at a rate not to exceed four per cent per annum, interest payable semi-annually on the first day of January and July of each year, with coupons attached for each interest payment, said interest coupons together with the principal of said bonds to be made payable at the office of the state treasurer in Bismarck. Said bonds shall be executed under the great seal of the state by the governor and treasurer, and shall be attested by the secretary of state, and shall be negotiated by the treasurer.

§ 2. STATE TREASURER AUTHORIZED TO SELL.] The state treasurer is hereby authorized and empowered to offer the bonds herein provided for to the board of university and school lands and said board is authorized to purchase said bonds for cash at not less than their par value, with accrued interest to date of delivery.

§ 3. STATE BOARD OF EQUALIZATION SHALL LEVY ANNUAL TAX TO PAY INTEREST AND PROVIDE SINKING FUND TO PAY BONDS.] The state board of equalization, at the time other taxes are levied, shall levy a sufficient tax annually, to pay the interest on said bonds as the same shall become due, which tax shall be collected in the same manner that other state taxes are collected. Also, five years before the maturity of the said bonds, said board shall provide a sinking fund sufficient to retire and pay said bonds at their maturity, and for such purpose shall annually levy a tax sufficient to provide such funds. No tax or fund provided for the payment of such bonds or the interest thereon shall be used for any other purpose.

§ 4. STATE TREASURER TO PAY INTEREST AND BONDS WHEN DUE AND CANCEL SAME.] When the interest coupons attached to such bonds become due, and whenever said bonds mature, it shall be the duty of the state treasurer to pay the same on presentation out of any funds in the treasury applicable thereto, and to cancel the same when paid.

§ 5. RESIDUE OF FUND AND SUBSEQUENT TAXES COLLECTED TO BE TRANSFERRED TO GENERAL FUND OF THE STATE.] When said bonds are all redeemed and all interest thereon paid, the residue of said fund and all subsequent collections of said tax shall be transferred to the general revenue fund of the state.

§ 6. STYLE OF BONDS.] Said bonds shall be known and styled "North Dakota revenue bonds, series of 1905," and shall be of denominations as may be required by the purchaser of the same.

§ 7. EMERGENCY.] Whereas, an emergency exists in this, that there is no sufficient revenue by which the extraordinary expenditures of the state can be met; therefore, for the reasons stated, this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1905.

## CHAPTER 56.

[S. B. No. 171—Main.]

## STATE TREASURER.

AN ACT to Amend Section 118 of the Revised Codes of North Dakota, 1899, Relating to the Official Bond of the State Treasurer.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 118 of the revised codes of North Dakota, for the year 1899, be amended and re-enacted so as to read as follows:

§ 118. OFFICIAL BOND.) The state treasurer must execute an official bond in the sum of not less than five hundred thousand dollars, which bond shall be paid by the state.

Approved March 14, 1905.

## BRIDGES.

## CHAPTER 57.

[H. B. No. 37—Lyon.]

## BRIDGE OVER LAKE DES LACS.

AN ACT Granting the Consent and Permission of the State of North Dakota to the Construction and Maintenance of a Highway Across, Within, Under and Through the Water of Des Lacs Lake, on Township Line Between Townships 161 and 162 in Ward County, North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CONSENT OF STATE GRANTED.] There is hereby granted to the public, and to each and every municipal corporation and political subdivision interested in, affected or benefited by the provisions hereof, the consent and permission of the state of North Dakota to construct and at all times maintain a public highway, consisting either in whole or in part of grades, fills, embankment or bridges, or any combination thereof, or otherwise, across, within, under and through the waters of Des Lacs lake, on or as near as feasible and practicable to the township line between township 161 and township 162 in Ward county, North Dakota; provided, that said construction does not block nor interfere with the navigation on said lake; and

provided, that plans for said bridge are approved by the department of war of the government of the United States.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is no adequate way of crossing said lake, to the great detriment and inconvenience of a large number of citizens, therefore this act shall take effect and be in force upon its passage and approval.

Approved February 18, 1905.

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## BUCKET SHOP.

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### CHAPTER 58.

[H. B. No. 35—McCrea.]

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#### UNLAWFUL TO OPERATE BUCKET SHOP.

AN ACT to Prohibit the Making Within This State of Any Contract or Pretended Contract to Buy or Sell Grain, Pork, Lard or Any Mercantile or Agricultural Products on Margins Without Any Intention of Future Delivery; to Prohibit the Maintenance Within This State of Any Store, Office or Other Place Wherein is Conducted or Permitted the Pretended Buying or Selling of Grain, Pork, Lard or Any Mercantile or Agricultural Products on Margins Without Any Intention of Future Delivery; and to Provide a Penalty for the Violation Thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DEALING IN OPTIONS. BUCKET SHOPS.] It shall be unlawful for any corporation, association or society, person or persons, to keep within this state any store, office or other place, wherein is conducted or permitted the pretended buying or selling of grain, pork, lard, or any mercantile or agricultural products on margins, without any intention of future delivery, whether such pretended contracts are to be performed within or without this state; and the keeping of all such places is hereby prohibited; and it shall be unlawful for any person, corporation, association or society, within this state, to make or enter into any contract, or pretended contract, such as is above stated and referred to, and all such contracts are hereby prohibited; the intention of this act being to prevent and prohibit within this state the business now engaged in and conducted in places commonly known and designated as bucket shops; provided, however, that this act shall not apply to or in any way affect any contract for the actual buying or selling of any commodity whatever for present or future delivery, where the actual delivery or receipt of the thing sold is contemplated, and in good faith intended by both of the parties to the contract.

§ 2. PENALTY.] Any person whether acting independently, as agent of or as a member of any copartnership, corporation, association or society, guilty of violating any of the provisions of this act, shall, upon conviction thereof, be adjudged to pay a fine for each offense of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or be both fined and imprisoned at the discretion of the court.

Approved February 10, 1905.

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## BUILDING AND LOAN ASSOCIATIONS.

### CHAPTER 59.

[H. B. No. 94—Underwood.]

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#### EXAMINATION OF BUILDING AND LOAN ASSOCIATIONS.

AN ACT to Amend Section 3218 of the Revised Codes of 1899, as Amended by Chapter 46 of the Session Laws of 1901.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 3218 of the revised codes of North Dakota, as the same is amended by chapter 46 of the session laws of 1901, be amended to read as follows:

§ 3218. EXAMINATION BY STATE EXAMINER. FEE.] It shall be the duty of the state examiner, as often as he may deem necessary, and at least once in each year, to examine every building and loan association incorporated under the laws of this state, and for that purpose he shall have and exercise over such corporation, its business, officers, directors and employes, all the power and authority conferred upon him by the laws of this state over banks and other moneyed corporations; provided, that he shall not have the power to suspend the operation of any such corporation, except in the manner provided in this chapter. The state examiner shall have the same supervision and control over the business within this state of foreign corporations of like kind, doing business in this state. Upon the completion of any examination of any association made by the state examiner or under his direction, the association so examined shall pay to the examiner a fee to be determined as follows, viz: For the first one hundred thousand dollars of assets, a fee of twenty dollars, and for each additional one hundred thousand dollars of assets, or major portion thereof, an additional fee of ten dollars.

Approved March 11, 1905.

## CHATTEL MORTGAGES.

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### CHAPTER 60.

[S. B. No. 211—Little.]

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#### RENEWING CHATTEL MORTGAGES.

AN ACT to Amend Section 4737 of the Revised Codes of North Dakota of 1899, Relating to Renewal of Mortgages of Personal Property.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 4737 of the revised codes of North Dakota of 1899 be, and the same is hereby amended and re-enacted so as to read as follows:

§ 4737. HOW RENEWED.] A mortgage of personal property ceases to be valid as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith after the expiration of three years from the filing thereof, except as hereinafter provided, unless within ninety days next preceding the expiration of such term a copy of the mortgage and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien, sworn to and subscribed by him, his agent or attorney, are filed anew in the office of the register of deeds in the county in which the mortgage was originally filed, and in like manner the mortgage and statement of debt must be again filed every three years or it ceases to be valid as against the parties above mentioned; provided, that mortgages of the personal property belonging to street car companies, telephone companies, and telegraph companies need not be renewed.

Approved March 13, 1905.

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### CHAPTER 61.

[S. B. No. 54—Johnson of McLean.]

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#### SALES UNDER CHATTEL MORTGAGES.

AN ACT to Amend and Re-enact Section 5887, Revised Codes of 1899, Providing for Sale of Personal Property Under Foreclosure of Mortgage.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 5887 of the revised codes of 1899 be amended and re-enacted to read as follows:

§ 5887. WHEN SALE MADE. POSTPONEMENT.] All sales under this article shall be commenced between the hours of twelve o'clock noon and four o'clock in the afternoon of the day specified in the notice within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed one week by public announcement at the time of postponement when there are no bidders, or when the amount offered is grossly inadequate, or upon request of the mortgagor; provided, that when any mortgage on crops contains a stipulation to that effect, it may be foreclosed by a sale of such crop, when harvested, in any usual market therefor, at any time, in the usual manner, at the market price thereof, in such market and without the notice hereinbefore provided; and the usual and reasonable charges for such sale and for the transportation of such grain to such market, shall be deemed proper expenses in such foreclosure.

Approved February 17, 1905.

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## CITIES.

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### CHAPTER 62.

[H. B. No. 222—Ryan.]

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#### NEW CHARTER FOR CITIES.

AN ACT for the Organization and Government of Cities, and to Provide for the Limitation of Actions to Vacate Special Assessments Heretofore Made.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

#### ARTICLE I.—ORGANIZATION OF CITIES.

§ 1. HOW CITIES MAY ADOPT THIS ACT.] Any city in this state, and any incorporated town or village therein, having a population of not less than five hundred inhabitants, may become incorporated, under this act, as a city in the manner following: Whenever one-twentieth of the legal voters of such city, or one-tenth of the legal voters of such incorporated town or village, voting at the last preceding general state election, shall petition the mayor and council of such city, or the president and trustees of such incorporated town or village, to submit the question as to whether such city, incorporated town or village, shall become incorporated under this act, to a vote of the electors in such city, town or village, it shall be the duty of such mayor and council of such city, or president and trustees of such incorporated town or village, to submit such question accordingly, and to appoint a time and place or places at which such vote



may be taken, and to designate the persons who shall act as judges and clerks at such election; but such question shall not be submitted oftener than once in two years.

§ 2. NOTICE OF ELECTION.] The mayor of such city and president of such incorporated town or village shall give at least twenty days' notice of such election by publishing a notice thereof in one or more newspapers within such city, incorporated town or village, but if no newspaper is published therein, then by posting at least five copies of such notice in each ward or voting precinct of such city, town or village, if divided into wards and precincts; if not, then within such city, town or village.

§ 3. FORM OF BALLOTS.] The ballots to be used at such election shall be in the following form:

“For city organization under general law, ☐.”

The electors to designate their choice by inserting the words “yes” or “no” within such square. The judges of such election shall make returns thereof to the city council of such city, or trustees of such incorporated town or village, whose duty it shall be to canvass such returns, and cause the result of such canvass to be entered upon the records of such city, town or village. If a majority of the votes cast at such election shall be for city organization under general law, such city shall thenceforth be deemed to be organized under this act; and the city, village or town officers then in office, shall thereupon exercise the powers conferred upon like officials by this act, until their successors shall be elected and qualified.

§ 4. ORGANIZATION OF UNORGANIZED TERRITORY.] Whenever any area of contiguous territory in this state not exceeding four square miles shall have residing thereon a population of not less than five hundred inhabitants, which shall not already be included within any incorporated town or city, the same may become incorporated as a city in manner following: Any fifty legal voters thereof may file in the office of the county auditor of the county in which such inhabitants reside a petition addressed to the board of commissioners of such county, and if the territory described in said petition shall be in more than one county, then the petition shall be addressed to the board of commissioners of the county where the greater part of such territory is situated, which petition shall define the boundaries of such proposed city, and state the number of inhabitants residing within such limits, and also state the name of such proposed city, and shall contain a prayer that the question be submitted to the legal voters residing within such limits, whether they will organize as a city under this act. It shall be the duty of the board to fix a time and place, within the boundaries of such proposed city, at which an election may be held to determine such question; and such commissioners shall name the persons to act as judges in holding such election, and shall give notice thereof by causing ten notices to be posted in public places within such proposed city, and section 3 of this act

shall be applicable to such election; provided, that the returns of such election shall be made to, and canvassed by, the board of county commissioners instead of the city council, and the result of such election shall be entered upon the records of such board of county commissioners. If a majority of the votes cast at such election shall be "for city organization under general law," the inhabitants of such territory described in such petition shall be deemed to be incorporated as a city under this chapter, and with the name stated in the petition.

§ 5. DUTY OF MAYOR AND COUNCIL ON CHANGE OF ORGANIZATION.] It shall be the duty of the mayor and city council of any city, or the president and board of trustees of any town or village, which shall have voted to change its organization to a city under this act, to call and give notice of an election to elect city officers and designate the time and places of holding the same. Such notice shall be published in a newspaper if there is one within the town or village, or if not, then posted in ten public places therein for at least twenty days before such election. The mayor and city council, or president and trustees, as the case may be, shall appoint the judges and clerks to hold such election, canvass the returns thereof, and cause the result to be entered upon the records of the city, town or village; and the provisions of this act relative to the election of city officers shall be applicable thereto; but at such election aldermen may be elected on a general ticket; provided, however, in case of cities organizing under section 4 of this act, the county commissioners shall call and give notice of the election and perform the same duties relative thereto, as is above required to be performed by the mayor and city council or president and trustees of such cities, towns and villages.

§ 6. TERM OF OFFICERS.] The city officers elected under either of the preceding sections shall hold their respective offices until the succeeding regular election for such offices respectively, and until their successors are elected as provided in this act.

§ 7. SPECIAL CHARTER.] Whenever any city in this state shall organize under this act any special charter that may have been granted to such city shall be null and void.

§ 8. COURTS TAKE JUDICIAL NOTICE.] All courts in this state shall take judicial notice of the existence of cities organized under this act, and of the change of the organization of any city from its original organization to its organization under this act; and from the time of organization the provisions of this act shall be applicable to such city, and all laws in conflict herewith shall no longer be applicable. But all laws or parts of laws not inconsistent with the provisions of this act, shall continue in force and be applicable to any such city the same as if such change had not taken place.

§ 9. BODIES CORPORATE.] Cities organized under this act shall be bodies politic and corporate under the name and style of "City of (name)," and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for cor-

porate purposes, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred.

§ 10. VESTED RIGHTS.] All rights and property of every kind and description which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corporation upon its being incorporated under the provisions of this act, but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this act, and no action or prosecution of any kind, shall be affected by such change, but the same shall stand and progress as if no change had been made; provided, that when a different remedy is given by this act, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this act, the same shall be deemed cumulative to the remedies before provided and used accordingly.

§ 11. FILING AND RECORDING PROCEEDINGS.] The corporate authorities of any city which may become organized under this act, shall, within three months after organization hereunder, cause to be filed in the office of the register of deeds in the county in which such city is situated, a certified copy of the entry made upon the records of the city, as to the canvass of the votes, showing the result of such election, whereby such city became so organized, and such register of deeds shall record the same, and such corporate authorities shall also cause a like certificate to be filed in the office of the secretary of state, who shall file the same and keep a registry of cities organized under this act.

§ 12. LEGAL IDENTITY OF CITIES NOT CHANGED.] All ordinances and resolutions in force in any city at the date of its organization under this act shall continue in full force and effect until repealed or amended, notwithstanding such change of organization, and such change of organization shall not change the legal identity of such city as a corporation.

#### ARTICLE 2—THE MAYOR.

§ 13. MAYOR.] The chief executive officer of the city is the mayor, who shall be a qualified elector within the city, and who shall hold his office for two years and until his successor is elected and qualified.

§ 14. VACANCY.] Whenever a vacancy occurs in the office of mayor and the unexpired term is one year or more from the date such vacancy occurs, it shall be filled by an election.

§ 15. VACANCY.] If the vacancy is less than one year the city council shall elect one of its number to act as mayor, who shall possess all the rights and powers of the mayor until the next annual election and until a mayor is elected and qualified.

§ 16. REMOVAL.] If the mayor at any time during his term of office removes from the city, his office shall thereby become vacant.

§ 17. DUTIES.] The mayor shall preside at all meetings of the

city council, but shall not vote except in case of a tie, when he shall give the casting vote.

§ 18. POWER OF REMOVAL.] The mayor shall have power to remove any officer appointed by him whenever he shall be of the opinion that the interests of the city demand such removal; but he shall report the reasons for such removal to the council at its regular meeting.

§ 19. PEACE OFFICER.] He may exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace.

§ 20. RELEASE OF PRISONERS.] He may release any person imprisoned for violation of any city ordinance, and shall report such release, with the cause thereof, to the city council at its first session thereafter.

§ 21. ENFORCEMENT OF ORDINANCES.] He shall perform all such duties as are or may be prescribed by law or by the city ordinances, and shall take care that the laws and ordinances are faithfully executed.

§ 22. INSPECTION OF RECORDS.] He shall have power at all times to examine and inspect the books, records and papers of any agent, employe or officer of the city.

§ 23. MESSAGES TO COUNCIL.] The mayor shall annually, and from time to time, give the council information relative to the affairs of the city, and shall recommend for its consideration such measures as he may deem expedient.

§ 24. POWER TO KEEP THE PEACE.] He shall have power when necessary to call on each male inhabitant of the city over the age of eighteen years to aid in enforcing the laws and ordinances, and to call out the militia to aid in suppressing riots and other disorderly conduct, or to carry into effect any law or ordinance, subject to the authority of the governor as commander in chief of the militia.

§ 25. REMOVAL.] In case the mayor or any other municipal officer shall at any time be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, misconduct or misfeasance in the discharge of the duties of his office, he shall be liable to be prosecuted criminally in any court of competent jurisdiction, and on conviction shall be fined in a sum not exceeding one thousand dollars, and the court in which such conviction shall be had shall enter an order removing such officer from office.

§ 26. REVISING ORDINANCE.] He may appoint, by and with the advice and consent of the city council, one or more competent persons, to prepare and submit to the city council for its adoption or rejection, an ordinance for the revision of the ordinances of such city for the government of such city. The city attorney shall be appointed as one of the persons to prepare and submit such revision, and the compensation of such revisor or revisors, including the city attorney, shall be determined and fixed by the city council and paid out of the city treasury. Such revision may be passed as a single ordinance, and be

published in pamphlet or book form and shall then be valid and effective without publication in a newspaper.

§ 27. MAY SIGN OR VETO.] He shall have power to sign or veto any ordinance or resolution passed by the council.

§ 28. APPOINTMENT OF POLICEMEN AND CHIEF.] He shall have power to appoint any number of policemen which he and the city council may deem necessary to preserve the peace of the city, and shall appoint one of the number as chief of police, which appointment of chief shall be subject to the approval of the council.

#### ARTICLE 3—CITY COUNCIL.

§ 29. CITY COUNCIL.] The city council shall be composed of the mayor and aldermen.

§ 30. NUMBER OF ALDERMEN.] The number of aldermen shall be as follows: In cities of six hundred inhabitants or less, four aldermen who shall be elected at large; exceeding six hundred but not exceeding two thousand inhabitants, six aldermen; exceeding two thousand but not exceeding four thousand, eight aldermen; exceeding four thousand but not exceeding ten thousand, twelve aldermen; exceeding ten thousand but not exceeding fifteen thousand, fourteen; and two additional aldermen for each ten thousand inhabitants over fifteen thousand; provided, that in cities of over one hundred thousand inhabitants there shall be elected thirty-six aldermen and no more, the population to be determined by the last census; provided, however, if an official census has been taken by the federal government within one year it shall govern.

§ 31. TERM OF OFFICE.] Aldermen shall hold their office for two years and until their successors are elected and qualified.

§ 32. VACANCIES.] If a vacancy occurs in the office of alderman by death, resignation or otherwise, within six months prior to the next city election, the board of aldermen shall appoint a person to fill such vacancy from the ward from which the alderman previously holding was elected, or appointed; if earlier then such vacancy shall be filled by election.

§ 33. QUALIFICATIONS.] No person shall be eligible to the office of alderman who is not a qualified elector of and resident within the ward for which he is elected; provided, that in cities where aldermen are elected at large, he shall be a qualified elector of and resident within such city, nor shall he be eligible if he is in arrears in the payment of any tax or other liability due to the city, nor shall he be eligible if he is directly or indirectly interested in any contract whatever to which the city is a party; nor shall he be eligible if he shall have been convicted of malfeasance, bribery or other corrupt practices or crimes; nor shall he be eligible to any office, the salary of which is payable out of the city treasury, if at the time of his appointment he shall be a member of the city council; nor shall any member of the city council at the same time hold any other office under the city government; nor shall he either directly or indirectly,

individually, or as a member of a firm engage in any business transaction, other than official, with such city through its mayor or any of its authorized boards, agents or attorneys, whereby any money is to be paid directly or indirectly out of the treasury to such member or firm.

§ 34. COUNCIL JUDGE OF ELECTION AND QUALIFICATION OF MEMBERS.] The city council shall be judge of the election and qualifications of its own members.

§ 35. RULES OF PROCEDURE.] It shall determine its rules of procedure, punish its members for disorderly conduct, and with the concurrence of two-thirds of the aldermen elect may expel a member, but not a second time for the same offense; provided, that any alderman who shall have been convicted of bribery shall thereby be deemed to have vacated his office.

§ 36. QUORUM.] A majority of the aldermen elected shall constitute a quorum to do business, but a smaller number may adjourn from time to time, and may compel the attendance of absentees under such penalties as may be prescribed by ordinance.

§ 37. REGULAR MEETINGS.] The city council shall hold its regular meetings on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings may be called. The first meeting for organization shall be held on the third Tuesday in April of each year.

§ 38. PRESIDENT AND VICE PRESIDENT.] It shall at the first regular meeting after the annual election in each year proceed to elect from its own members a president and vice president, who shall hold their respective offices for the municipal year. The president of the council shall, in the absence or temporary disability of the mayor, be presiding officer of the council and shall, during the absence of the mayor from the city or his temporary disability, be acting mayor and shall possess all the powers of the mayor. In the absence or disability of the mayor and president of the city council the vice president shall perform the duties of the mayor and president of the council.

§ 39. MEETINGS AND RECORD OF PROCEEDINGS.] It shall sit with open doors and shall keep a journal of its proceedings.

§ 40. PASSAGE OF ORDINANCES.] The yeas and nays shall be taken upon the passage of all ordinances and on all propositions to create any liability against the city or for the expenditure or appropriation of money, and in all other cases at the request of any member, which shall be entered on the journal of its proceedings, and the concurrence of a majority of all the members elected shall be necessary to the passage of any such ordinance or proposition. It shall require a two-thirds vote of all the aldermen elected to sell any city or school property; provided, all ordinances or amendments thereto which have been heretofore adopted and published by any of the cities of this state where the yeas and nays were not taken on the passage thereof,

or were not entered on the journal of its proceedings, as provided by section 2143 of the revised codes, and by section 880, compiled laws, or where at least one week has not intervened between the first and second reading of said ordinance, as provided by section 2147, revised codes, and by section 884, compiled laws, are hereby declared to be hereafter in full force and valid without re-enactment or republication; and all ordinances adopted by any of the cities of this state, which were not authorized by any of the authority conferred by said chapter, but which would be authorized under the provisions of this act, are hereby declared to be in full force and effect, the same as if re-adopted and republished after the adoption of this act.

§ 41. RECONSIDERATION OF VOTE.] No vote of the city council shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of aldermen as were present when such vote was taken.

§ 42. ACTION ON REPORTS.] Any report of a committee of the council shall be deferred for final action thereon to the next regular meeting of the council after the report is made, upon the request of any two aldermen present.

§ 43. JURISDICTION.] The city council shall have jurisdiction in and over all places within one-half mile of the city limits, for the purpose of enforcing health and quarantine ordinances and regulations thereof.

§ 44. PROCEDURE IN PASSING ORDINANCES.] All ordinances shall be read twice and the second reading shall not be had in less than one week after such first reading, and after such first reading, before their final passage such ordinances may be amended and shall then be put upon their second reading and final passage, and if passed by the city council shall before they take effect, be deposited in the office of the city auditor for the approval of the mayor; and if the mayor approves thereof, he shall sign the same, and such as he shall not approve he shall return to the council with his objections thereto in writing at the next regular meeting of the council occurring not less than five days after the passage thereof. Such veto may extend to any one or more items or appropriations contained in any ordinance making an appropriation, or to the entire ordinance; and in case the veto only extends to a part of such ordinance the residue thereof shall take effect and be in force. But in case the mayor shall fail to return any ordinance with his objections thereto by the time aforesaid, he shall be deemed to have approved such ordinance and the same shall take effect accordingly; provided, that upon the return of any ordinance by the mayor, the vote by which the same was passed may be reconsidered by the council; and if after such reconsideration two-thirds of all the members elected to the city council shall agree by yeas and nays to pass the same, it shall go into effect, notwithstanding the mayor may refuse to approve thereof. The vote to pass the same over the mayor's veto shall be taken by yeas and nays and entered in the journal. All ordi-

nances passed by the council and approved by the mayor, or passed over the mayor's veto, shall be published at least once in the official newspaper of the city, and shall become operative immediately upon such publication. The city auditor shall record in a book for that purpose, together with the affidavit of the publisher, all ordinances so passed and published; and such book or a certified copy of the ordinance as so recorded shall be received as evidence in all courts and places without further proof; or if printed in book or pamphlet form by the authority of the city council they shall be so received. All ordinances shall be styled, "Be it Ordained by the City Council."

§ 45. PUBLICATION BY POSTING.] Whenever any ordinance, notice or other instrument is required to be published, in any city where no newspaper is published, all such publication and notice may be given and made by posting, in five public places within said city, for the period for which such publication is to be made; and all ordinances and notices so posted shall have the same force and effect as if published in a newspaper in said city, and such posting shall be proven by affidavit filed in the auditor's office.

§ 46. OFFICIAL NEWSPAPER.] The city council shall annually, by resolution, at its first meeting in May or as soon thereafter as practicable, designate some newspaper published in the city as the official newspaper of the city.

#### ARTICLE 4.—POWERS OF THE CITY COUNCIL.

§ 47. GENERAL POWERS OF CITY COUNCIL.] The city council shall have power:

1. To control the finances and property of the corporation.
2. To appropriate money for corporate purposes only, and provide for the payment of debts and expenses of the corporation.
3. To levy and collect taxes for general and special purposes on real and personal property.
4. To fix the amount, terms and manner of issuing and revoking licenses.
5. To borrow money on the credits of the corporation for corporation purposes, and to issue bonds therefor, in such amounts and form, and on such conditions as it shall prescribe, but no such city shall become indebted in any manner or for any purpose to an amount, including existing indebtedness, exceeding five per cent of the taxable property therein, as determined by the last preceding city assessment; provided, that any incorporated city may, by a two-thirds vote at any special or general election increase such indebtedness to an amount equal to three per cent of such assessed valuation beyond said five per cent limit and may issue bonds therefor; provided, further, that any city, when authorized by a majority vote at a general or special election, may become indebted in any amount not exceeding four per cent of such assessed value without regard to the existing indebtedness of such city for the purpose of constructing or purchasing water works for



the purpose of furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, but for no other purpose whatever, and such city may issue bonds therefor; provided, further, that no bonds issued under the provisions of this section shall be sold for less than their par value, and the city issuing such bonds shall, at or before the time of issuing the same or incurring the indebtedness for which the same are to be issued, provide for the collection of a direct annual tax sufficient to pay the interest on such debt or such bonds when it falls due, and to pay and discharge the principal thereof when the same becomes due, and such provisions for the collection of such annual tax shall be irrepealable until such debt is paid; provided, further, that none of the hereinbefore mentioned bonds shall be issued either for special or general purposes, except as by law otherwise provided, unless at an election after twenty days' notice in a newspaper published in the city, stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of such city shall, by a majority vote, determine in favor of issuing such bonds; provided, further, that no bonds issued under the provision of this act shall be issued for a longer period than twenty years.

6. To issue bonds in place of or to supply means to meet maturing bonds or for the consolidation or funding of the same [or] for the consolidation or funding of any floating indebtedness of such city.

7. To lay out, establish, open, alter, widen, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks and public grounds and vacate the same.

8. To plant trees on the same.

9. To regulate the use of the same.

10. To prevent and remove obstructions and encroachments upon the same.

11. To provide for the lighting of the same, and to provide for the furnishment of lights to the inhabitants of the city.

12. To provide for the cleaning of the same.

13. To regulate the openings therein for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels, and drains, and erecting gas or electric lights; provided, however, that any company heretofore organized under the general laws of this state or any association of persons organized or which may be hereafter organized for the purpose of manufacturing illuminating gas or electricity, to supply cities, or the inhabitants thereof with the same, shall have the right, by the consent of the city council, subject to existing rights, to erect gas or electric light works and lay down pipes or string wires on poles in the streets or alleys of any city in this state, subject to such regulations as such city may by ordinance prescribe.

14. To regulate the use of sidewalks and all structures thereunder; and to require the owner or occupant of any premises to keep the sidewalks in front of or along the same, free from snow or other obstruction.

15. To regulate and prevent the throwing or depositing of ashes,

offal, dirt, garbage or any other offensive matter in, and to prevent injury to any street, avenue, alley or public ground.

16. To provide for and regulate crosswalks, curbs and gutters.

17. To regulate and prevent the use of streets, sidewalks and public grounds for signs, signposts, awnings, telegraph or telephone poles, horse troughs, racks, posting hand bills and advertisements.

18. To regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand bills in the streets or public grounds, or upon the sidewalks.

19. To regulate and prevent the flying of flags, banners or signs across the streets or from houses.

20. To regulate traffic and sales upon the streets, sidewalks and public places.

21. To regulate the speed of horses and other animals, vehicles, cars and locomotives within the limits of the corporation.

22. To regulate the numbering of houses and lots.

23. To name and change the name of any street, avenue, alley or other public place.

24. To permit, regulate or prohibit the locating, constructing or laying of a track of any horse or other street railway in any street, alley or public place; but such permission shall not be for a longer time than fifty years.

25. To provide for and change the location, grade and crossing of any railroad.

26. To require railroad companies to fence their respective railroads, or any portion of the same, and construct cattle guards, crossings of streets and public roads and keep the same in repair within the limits of the corporation.

27. To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property; to compel railroads to raise or lower their tracks to conform to any grade which may at any time be established by such city, and where such tracks run lengthwise of such street, alley or highway, to keep their tracks on a level with the street surface and so that such tracks may be crossed at any place on such street, alley or highway; to compel and require railroad companies to make and keep open and to keep in repair, ditches, drains, sewers and culverts along and under their tracks, so that filthy and stagnant pools of water cannot stand on their grounds or right of way and so that the natural or artificial drainage of adjacent property shall not be impeded.

28. To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.

29. To construct and keep in repair culverts, drains, sewers, catchbasins, manholes and cesspools and to regulate the use thereof.

30. To license, tax, regulate, suppress and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, ticket scalpers and employment agen-

cies, and to revoke such license at pleasure ; provided, however, that the provision of this section with reference to hawkers and peddlers shall not apply to persons selling or offering for sale the products raised or grown on lands within this state.

31. To license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, watermen, and all others pursuing like occupations, and to prescribe their compensation.

32. To license, regulate, tax and restrain runners for stages, cars, public houses or other things or persons.

33. To license, regulate, tax or prohibit and suppress billiard, bagatelle, pigeonhole, or any other tables or implements kept or used for a similar purpose in any place of public resort, pin alleys and ball alleys.

34. To license, tax and regulate plumbers and the business of plumbing, and to provide the manner in which plumbing shall be done, and for the inspection thereof, and the manner in which the connections thereof with the sewers and water mains of the city may be made.

35. To establish markets and market houses and to provide for the regulation and use thereof.

36. To provide for the place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables and all other provisions, and regulate the selling of the same.

37. To regulate the sale of bread in the city and prescribe the weight and quality of the bread in the loaf.

38. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meat and other provisions, and to license and regulate the sale of milk, provide for the inspection of the same, and of all dairies and premises wherever situated from which any milk is offered for sale in such city, and to prohibit the sale of impure or diseased milk.

39. To regulate the inspection, weighing and measuring of lumber, firewood, coal, hay and any article of merchandise.

40. To provide for the inspection and sealing of weights and measures.

41. To enforce the keeping and use of proper weights and measures by vendors.

42. To regulate the construction, repairs and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

43. To regulate places of amusements.

44. To prevent intoxication, fighting, quarreling, dog fights, cock fights and all disorderly conduct.

45. To regulate partition fences and party walls.

46. To prescribe the thickness, strength and manner of constructing stone, brick and other buildings and the construction of fire escapes therein, and to provide for the inspection of all buildings within the city limits.

47. To prescribe the limits within which wooden buildings shall

not be erected or placed, or repaired without permission, and to direct that all and any buildings within said limits, which shall be known as the fire limits, when the same shall have been damaged by fire, decay or otherwise, to the extent of fifty per cent of the value, shall be torn down or removed and to prescribe the manner of ascertaining such damage and to provide for the removal of any structure or building erected contrary to such prescription, and to declare each day's continuance of such structure or building a separate offense, and prescribe penalties therefor; and define fire proof material and by ordinance provide for issuing building permits, and appointment of building inspectors.

48. To prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers and apparatus used in and about any building or manufactory, and to cause the same to be removed or placed in a safe condition when considered dangerous; to regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places; and to cause all such buildings and enclosures as may be in a dangerous state to be put in a safe condition.

49. To erect engine houses and provide fire engines, hose carts, hooks and ladders, and other implements for the prevention and extinguishment of fires, and provide for the use and management of the same by voluntary fire companies or otherwise.

50. To regulate and prevent the storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum or any of the products thereof, and other combustible or explosive material, and the use of lights in stables, shops and other places, and the building of bonfires; also to regulate and restrain the use of fireworks, firecrackers, torpedoes, roman candles, skyrockets and other pyrotechnic displays.

51. To provide for the inspection of steam boilers.

52. To establish and erect a city jail, house of correction and work house for the confinement and reformation of disorderly persons convicted of violating any city ordinance, and make rules and regulations for the government of the same, and appoint necessary jailors and keepers.

53. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law and with the consent of the board of county commissioners; and to regulate the police of the city, and pass and enforce all necessary police ordinances.

54. To prevent and suppress riots, routs, affrays, noises, disturbances and disorderly assemblies in any public or private place.

55. To prohibit and punish cruelty to animals.

56. To restrain and punish vagrants, mendicants and prostitutes.

57. To declare what shall be a nuisance and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.

58. To erect and establish hospitals and medical dispensaries, and control and regulate the same, and provide and enforce quarantine regulations against all contagious and infectious diseases.

59. To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

60. To establish and regulate cemeteries within or without the corporation, and acquire lands therefor by purchase or otherwise, and cause cemeteries to be removed, and prohibit their establishment within one mile of the corporation.

61. To regulate, restrain and prevent the running at large of horses, mules, cattle, swine, sheep, goats and geese; and to provide for the establishment and maintenance of public pounds for the impounding of any such stock running at large, or tethered in any street in the city, in violation of its ordinances, and establish procedure for the impounding and discharging of stock so impounded and make the expenses thereof and fines imposed for the violation of ordinances passed under this subdivision, a lien upon such stock and provide for the sale thereof to satisfy such liens.

62. To license, regulate or prohibit the running at large of dogs, and injuries and annoyances therefrom, and to authorize their summary destruction when at large contrary to any such prohibition or regulation.

63. To direct the location and regulate the management and construction of packing houses, renderies, bone factories, slaughter houses, soap factories, foundries, livery stables and blacksmith shops within, or within one mile of the limits of the corporation.

64. To prohibit any offensive or unwholesome business or establishment within, or within one mile of the limits of the corporation.

65. To compel the owner of any grocery, cellar, stable, pigsty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

66. To provide for the taking of the city census, but no city census shall be taken oftener than once in three years.

67. To provide for the erection and care of all public buildings necessary for the use of the city.

68. To extend, by condemnation or otherwise, any street, alley, or highway, over or across, or to construct any sewer under or through any railroad tracks, right of way or land of any railroad company, within the corporate limits.

69. The city council shall have power to grant the use of, or right to lay down any railroad tracks in any street of the city to any railway company.

70. To tax, license and regulate auctioneers, lumber yards, public scales, money changers and brokers.

71. To prevent and regulate the rolling of hoops, playing of ball, flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams or horses.

72. To regulate or prohibit the keeping of any lumber yard and the placing or piling or selling of any lumber, timber, wood or other combustible material within the fire limits of the city.

73. To provide by ordinance that all the paper, printing, stationery, blanks, fuel and all the supplies needed for the use of the city shall be furnished by contract let to the lowest responsible bidder.

74. To tax, license and regulate second hand and junk stores and to forbid their purchasing or receiving from minors, without the written consent of their parents or guardians, any article whatever, and to prescribe punishment for the violation thereof.

75. To purchase, erect, lease, rent, manage and maintain any system or part of system of waterworks, hydrants and supply of water, telegraphing fire signals, or fire apparatus that may be of use in the prevention and extinguishment of fires, and to pass all ordinances, penal or otherwise, that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected.

76. To redistrict the city into wards and prescribe the boundaries thereof, whenever a census of the city shall show the population to be large enough to require two aldermen more than are in the council at the time of making such census.

77. To adopt such other ordinances, not repugnant to the constitution and laws of the state, as the general welfare of the city may demand.

78. To pass all ordinances, rules and make all regulations proper or necessary to carry into effect the powers granted cities, with such fines, penalties or forfeitures as the city council shall deem proper; provided, that no fine or penalty shall exceed one hundred dollars and no imprisonment shall exceed three months for one offense.

§ 48. POWER TO ENFORCE CHARTER BY ORDINANCE.] When by this act the power is conferred upon the city council to do and perform any act or thing, and the manner of exercising the same is not specifically pointed out, the city council may provide by ordinance the details necessary for the full exercise of such power.

§ 49. POWER OF COUNCIL TO DEFINE ADDITIONAL DUTIES FOR CITY OFFICERS.] The duties, powers and privileges of all officers of every character in any way connected with the city government, not herein defined, shall be defined by the city council, and the defining by this act of the duties of the city officers shall not preclude the city council from defining, by ordinance, further and additional duties to be performed by any such officer.

§ 50. ACTIONS FOR VIOLATING ORDINANCES.] All actions brought to recover any fine or to enforce any penalty under or punish any violation of any ordinance of any city shall be brought in the corporate name of the city as plaintiff, and no prosecution, recovery or acquittal for the violation of any such ordinance shall constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, although the different causes of action existed at

the same time, and if united would not exceed the jurisdiction of the court or justice of the peace.

§ 51. FINES AND LICENSES PAID TO THE CITY TREASURER.] All fines and forfeitures for the violation of ordinances, when collected, and all moneys collected for licenses or otherwise, shall be paid into the city treasury at such time and in such manner as may be prescribed by ordinance.

§ 52. SUMMONS. AFFIDAVIT. PUNISHMENT.] In all actions for the violation of any ordinance the first process shall be a summons; provided, that a warrant for the arrest of the offender may issue in the first instance upon the sworn complaint of any person that any such ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty thereof; and any person arrested under this warrant shall without unnecessary delay be taken before the proper officer to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed, may upon the order of the court before whom the conviction is had, be committed to the county jail, city prison, workhouse, house of correction or other place provided by the city for the incarceration of offenders, until such fine, penalty and costs shall be fully paid; provided, that no such imprisonment shall exceed three months for any one offense. The city council shall have power to provide by ordinance, that each person so committed shall be required to work for the city at such labor as his strength will permit, not exceeding ten hours each working day; and for such work the person so employed shall be allowed, exclusive of his board, one dollar and twenty-five cents for each day's work on account of such fine and costs.

§ 53. JURISDICTION OF POLICE MAGISTRATE.] The police magistrate shall have exclusive jurisdiction in all cases arising under the provisions of this chapter or any ordinance passed in pursuance thereof.

§ 54. WHO MAY SERVE PROCESS.] Any constable or sheriff of the county may serve any process or make any arrests authorized to be made by any city officer.

#### ARTICLE 5—POWERS AND DUTIES OF OFFICERS.

§ 55. ELECTION OF OFFICERS.] There shall be elected in each city organized under this act the following officers: A mayor, two aldermen from each ward, a city treasurer, a police magistrate and a city justice of the peace; provided, that in the cities of six hundred inhabitants or less there shall be elected four aldermen at large; provided, that at the first election held hereafter in the cities heretofore organized under this act in which the number of aldermen is reduced to four, there shall be elected four aldermen who shall be divided into classes as provided in section 30 of this act.

§ 56. TERM OF OFFICE.] The elective officers of a city shall hold their respective offices for two years and until their successors are elected and qualified.

§ 57. APPOINTIVE OFFICERS.] There shall be appointed by the mayor, with the approval of the city council, a city auditor, a city assessor, a city attorney and a city engineer, and such other officers as may by the city council be deemed necessary or expedient.

§ 58. ADDITIONAL ASSESSORS.] The mayor of any city incorporated under the provisions of this act and containing a population of five thousand inhabitants may appoint one or two additional city assessors; provided, that the city council shall by resolution declare their appointment necessary.

§ 59. TERM OF OFFICE.] The appointive officers of a city shall hold their respective offices for two years and until their successors are appointed and qualified.

§ 60. OATH. BOND.] All officers of any city, whether elected or appointed, shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States and the constitution of the state of North Dakota, and that I will faithfully discharge the duties of the office of . . . . ., according to the best of my ability.

Such oath or affirmation so subscribed shall be filed in the office of the city auditor; and all such officers, except the mayor and aldermen, shall before entering upon the duties of their respective offices execute a bond with sureties to be approved by the city council, payable to the city, in such penal sum as may by resolution or ordinance be directed, conditioned for the faithful performance of the duties of the office, and the payment of all moneys received by such officer according to law and the ordinances of said city; provided, that in no case shall the treasurer's bond be fixed at a less sum than the amount of the estimated tax and special assessments for the current year; which bonds shall be filed with the city auditor, except the bond of the city auditor, which shall be filed with the city treasurer.

§ 61. CERTIFICATE OF APPOINTMENT. DELIVERY OF BOOKS TO SUCCESSOR.] All officers elected or appointed under this act, except the city auditor, aldermen and mayor, shall be commissioned by warrant under the corporate seal, signed by the auditor and mayor, or president of the city council; the mayor shall issue a certificate of appointment, under the seal of the corporation, to the auditor thereof; and any person having been an officer of the city shall within five days after notification and request, deliver to his successor in office all property, books and effects of every description in his possession, belonging to the city or appertaining to his office; and upon his refusal to do so shall be liable for all the damages caused thereby, and to such penalty as may by ordinance be prescribed.

§ 62. QUALIFICATION OF OFFICERS.] No person shall be eligible to any office who is not a qualified elector of the city, and who shall not have resided therein at least nine months next preceding his election or appointment; nor shall any person be eligible to any office who is a defaulter to the corporation.



§ 63. OFFICER NOT TO BE INTERESTED IN CONTRACTS.] No officer shall be directly or indirectly interested in any contract, work or business of the city, or the sale of any article, the expense, price or consideration of which is paid from the treasury or by any assessment levied by any act or ordinance; nor in the purchase of any real estate or other property belonging to the corporation or which shall be sold for taxes or assessments, or by virtue of any process at the suit of the corporation, mayor or other person.

§ 64. NOT TO HOLD OTHER OFFICE.] No mayor, alderman, city auditor or treasurer shall hold any other office under the city government during his term of office.

§ 65. COMPENSATION OF MAYOR.] The mayor shall receive such compensation as the city council may by ordinance direct; but his compensation shall not be changed during his term of office.

§ 66. COMPENSATION OF ALDERMEN.] The aldermen may receive such compensation for their services as shall be fixed by ordinance; provided, that such compensation shall not exceed two dollars to each alderman for each meeting of the city council actually attended by him, and no other compensation than for attendance upon such meetings, shall be allowed to any alderman for any services whatsoever; such compensation shall not be changed after it has been once established so as to take effect, as to any alderman voting for such change during his term of office.

§ 67. POLICE MAGISTRATE. COMPENSATION OF OTHER OFFICERS NOT DIMINISHED DURING TERM.] All other officers may receive a salary, fees or other compensation to be fixed by ordinance, and after the same has been once fixed such fees or compensation shall not be diminished to take effect during the term for which any such officer was elected or appointed; provided, that in any city incorporated under the general laws of the state and in which the police magistrate thereof is allowed and paid a salary, such police magistrate shall not be entitled to receive fees of any kind or in any amount whatever from such city, and such police magistrate shall be entitled to, and it shall be his duty to collect in all criminal actions and in all actions instituted under any ordinance of the city, the same fees that are now allowed by law to justices of the peace, and all fees collected by him in criminal actions, and in actions instituted under any ordinance of the city, shall be by him paid over to the city treasurer at the end of each month, and he shall at the same time make and file with the city auditor a report in writing under oath, showing an account of all fees collected by him during the preceding month in such actions, and showing the actions in which the same were collected. The police magistrate shall, before entering upon the discharge of his duties, give to the city a bond in such amount as the city council may prescribe, not less than five hundred dollars, conditioned that he will faithfully discharge the duties of his office and pay over all moneys that may come into his hands belonging to the city, and such police magistrate shall not be entitled to receive, nor shall his salary be paid to him until he has fully complied with the provisions of this section.

§ 68. MAY ADMINISTER OATHS.] The mayor and auditor of each city shall have power to administer oaths and affirmations.

ARTICLE 6—CITY AUDITOR.

§ 69. TO ATTEND MEETINGS OF COUNCIL AND KEEP RECORDS, ETC.] The city auditor shall keep his office at the place of meeting of the city council or such other place convenient thereto as the council may direct. He shall keep the corporate seal and all papers and records of the city, and keep a record of the proceedings of the city council, whose meetings it shall be his duty to attend. Copies of all papers filed in his office and transcripts of all records of the city council certified by him under the corporate seal, shall be competent evidence in all courts. He shall draw and countersign all orders on the treasury in pursuance of any order or resolution of the city council, and keep a full and accurate account thereof in books provided for that purpose, and shall present to the city council for its consideration all communications, claims and other matters filed in his office for that purpose at their next meeting after the same are so filed.

§ 70. REPORTS BY.] The city auditor shall report to the city council on the first days of March and September of each year, the receipts and expenses and financial condition of the city, which report shall be published within thirty days thereafter in the official paper of the city, or such other paper as the council may direct. He shall make and keep a list of outstanding city bonds, to whom issued, for what purpose, when and where payable, and the rate of interest they respectively bear, and recommend such action to the city council as will secure the punctual payment of the principal and interest of such bonds. He shall report annually on or before the first day of September to the city council, an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year.

§ 71. GENERAL DUTIES OF.] He shall countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the city council, or of any city officer; and each contract made in behalf of the city or to which the city is a party shall be void unless countersigned by the auditor. The city auditor shall keep regular books of account in which he shall enter all indebtedness of the city and which shall at all times show the financial condition of the city; the amount of bonds, orders, certificates or other evidences of indebtedness issued by the city council, the amount of all bonds, orders, certificates or other evidences of indebtedness, which have been redeemed, and the amount of each outstanding. He shall countersign all bonds, orders or other evidences of indebtedness of the city, and keep accurate account thereof stating to whom and for what purpose issued and the amount thereof. He shall keep accounts with all receiving and disbursing officers of the city showing the amount they have received from the different sources of revenue, and the amount which they have disbursed under the direction of the city council. He shall keep a list of all certificates issued for work, or any

other purpose. If before the first day of June of any year the amount expended or to be expended chargeable to any city fund, adding thereto the current expenses estimated for the remainder of the fiscal year and chargeable to such fund, shall be equal to three-fourths of the tax authorized to be raised or revenue estimated for such fund, he shall report the same at once to the city council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected is ascertained ; and during the remainder of the fiscal year he shall not countersign any contract, the expense of which shall exceed the revenue actually collected for the fund to which such expenses are properly chargeable. The auditor shall examine all reports, books papers, vouchers and accounts of the city treasurer and from time to time perform such other duties as the city council may direct. All claims and demands against the city, before they are allowed by the city council shall be filed with the auditor and shall be audited and adjusted by the proper committee of the city council. The auditor shall keep a record of his acts and doings, and keep a book in which he shall enter all contracts, with an index thereto, which book shall be open to the inspection of all persons interested.

#### ARTICLE 7—CLAIMS FOR INJURIES.

§ 72. CLAIMS FOR DAMAGES.] All claims against cities for damages or injuries alleged to have arisen from the defective, unsafe, dangerous or obstructed condition of any street, crosswalk, sidewalk, culvert or bridge of any city, or from the negligence of the city authorities in respect to any such street, crosswalk, sidewalk, culvert or bridge shall, within thirty days from the happening of such injury, be filed in the office of the city auditor, signed and properly verified by the claimant, describing the time, place, cause and extent of the damage or injury, and the amount of damages claimed therefor, and upon the trial of an action for the recovery of damages by reason of such injury, the claimant shall not be permitted to prove any different time, place, cause or manner or extent of the injury complained of, or any greater amount of damages. In case it appears by the affidavit of a reputable physician which shall be prima facie evidence of the fact that the person injured was, by the injury complained of, rendered mentally incapable of making such statement during the time herein provided, such statement may be made within thirty days after such complainant becomes competent to make the same, but such affidavit may be controverted on the trial of an action for such damages, and in case of the death of the person injured prior to his becoming competent to make such statement, the same may be made within thirty days after his death, by any person having knowledge of the facts, and the person making such statement shall set forth therein specifically the facts relating to such injury as aforesaid, of which he has personal knowledge, and shall positively verify such statement and shall verify the facts therein stated of which he has no personal knowledge, to the best of his knowledge, information and belief.

§ 73. NO ACTION UNLESS CLAIM FILED.] No action shall be maintained against any city as aforesaid for injury to person or property, unless it appears that the claim for which the action was brought was filed in the office of the city auditor as aforesaid, with an abstract of the facts out of which the cause of action arose, duly verified by the claimant, and that the city council did not, within sixty days thereafter audit and allow the same, and such abstract of facts must be signed and verified as provided in the preceding section, and all provisions of such section with reference to such verification shall be applicable to such abstract of facts, and no action shall be maintained unless the plaintiff therein shall plead and prove the filing of such claim and abstract as hereinbefore provided.

§ 74. LIMITATION OF ACTIONS.] No action shall be maintained upon any claim mentioned in section 72, unless the same shall be brought within six months after the filing of the claim therefor, in the office of the city auditor as hereinbefore provided.

#### ARTICLE 8.—CITY ATTORNEY.

§ 75. DUTIES OF.] The city attorney shall perform all professional services incident to his office and when required shall furnish his opinion upon any subject submitted to him by the city council or its committees.

#### ARTICLE 9.—CITY TREASURER.

§ 76. DUTIES OF. VACANCIES, HOW FILLED. SALARY.] The city treasurer shall receive all moneys belonging to the city, including all taxes, license money, fines and special assessments, and keep accurate and detailed accounts thereof, in the manner provided in this act, or as the city council may from time to time direct. He shall have a settlement with the auditor at the end of each month and turn over all warrants, interest coupons, bonds or other evidences of indebtedness of the city, which may have been redeemed by him during the month, taking the receipt of the auditor therefor, and all such warrants, orders, or other evidences of indebtedness shall be cancelled by him, and have written or stamped thereon the date of their payment or redemption. When, for any cause, a vacancy occurs in the office of the city treasurer, the same shall be filled by appointment, which shall be made by the mayor, by and with the consent of the city council, and the person so appointed, by lawfully qualifying for such office, shall be entitled to hold the same until his successor is elected and qualified. Such successor must be elected at the next succeeding regular city election. The salary of the city treasurer shall be fixed by the mayor and city council within their respective cities.

§ 77. FUNDS. HOW DISBURSED.] Under no circumstances shall any money be paid out or disbursed by the city treasurer, except upon the warrant of the mayor, countersigned by the city auditor; but this provision shall not prevent the payment of city bonds and

interest coupons or either when due, and presented for payment, and the city treasurer shall pay said last mentioned obligations on presentation at maturity, and in case they are payable without the city issuing them, then and in that event the money for their payment shall be by the city treasurer remitted to such place of payment in time to reach that point on or before the date of maturity of said obligations.

§ 78. WARRANTS, HOW PAID.] All warrants shall be paid in the order in which they are presented, from the fund upon which they are drawn, and the treasurer shall note on the back of each warrant presented to him the date of such presentation and, when payment is made, the date of such payment, and in case any warrant is not paid for want of funds, the city treasurer shall so state on such warrant and the same shall thereupon bear interest until paid.

§ 79. CITY TREASURER TO KEEP SEPARATE ACCOUNT OF EACH PARTICULAR CITY FUND.] The city treasurer shall keep a separate and accurate account of each city fund, which shall show the debits and credits of said fund in chronological order.

§ 80. TREASURER TO GIVE DUPLICATE RECEIPTS.] The city treasurer shall give to each person paying money into the city treasury a duplicate receipt therefor, specifying the date and amount of payment, and upon what account paid, and he shall at least once a month file with the city auditor his duplicate of such receipt.

§ 81. TREASURER PROHIBITED FROM USING CITY MONEYS. PENALTY. OFFICE DECLARED VACANT.] The city treasurer shall keep the city's moneys paid to or received by him, separate from his or others' moneys; and under no circumstances shall it be lawful for him to directly or indirectly use the corporation's money or warrants, or other obligations, in his custody and keeping, for his own use and benefit or that of any other person or persons whomsoever. Upon conviction of a violation of this provision the same shall work a forfeiture of his office and said office shall become vacant.

§ 82. TREASURER'S REPORT. WARRANT REGISTER.] He shall report to the city council at such time as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures during and since his last report, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid and person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee of the council at the time of making such report.

§ 83. MONEYS RECEIVED FROM SPECIAL ASSESSMENTS.] All moneys received on any special assessment shall be held by the treasurer as a special fund to be applied to the payment of the improvements for which the assessment was made; and said money shall be used for no other purpose whatever.

## ARTICLE 10.—CITY ASSESSOR AND BOARD OF EQUALIZATION.

§ 84. TERM OF OFFICE OF CITY ASSESSOR. DUTIES. COMPENSATION.] The city assessor shall perform all duties necessary for the assessing of property within the city limits for the purpose of levying city, county, school and state taxes. Upon the completion of the assessment roll he shall return it to the city auditor within the time in this act provided and said auditor shall deliver the same to the city board of equalization at its regular meeting first thereafter held.

§ 85. ASSESSOR'S APPOINTMENT. ASSESSMENT ROLL.] The assessor shall be appointed at the first meeting of the city council in September in each odd numbered year, and shall be governed by the same laws and regulations as county and township assessors, except that he may list any real estate or personal property for assessment on or after the first day of January in the year in which the same is subject to assessment, and for that purpose the county auditor shall furnish him with assessment books prior to said first day of January; and he shall, on the first day of April in each year commence the assessment of property assessable for such year, and shall return his assessment roll to the city auditor on or before the first day of June in each year. Such assessment roll shall be open to the inspection of all persons interested until the meeting of the city board of equalization.

§ 86. BOARD OF EQUALIZATION. MEETING. COMPENSATION.] The board of equalization shall be composed of the mayor and city council, and the auditor who shall act as clerk to the same, and shall meet on the second Tuesday of June in each year. In the absence of the mayor the council shall elect one of its own number to preside. The city auditor shall keep an accurate record of all changes made in the valuation and of all other proceedings. It may adjourn from day to day until its work is completed and a majority of the whole board shall constitute a quorum to transact business. If no quorum is present the clerk may adjourn from day to day and publicly announce the time to which the meeting is adjourned; the compensation of the board shall be three dollars per day while in actual session.

§ 87. DUTIES OF THE BOARD.] The board of equalization shall meet at the usual place of meeting of the city council, and shall proceed to equalize and correct such assessment roll. It may change the valuation and assessment of any real or personal property upon the roll by increasing or diminishing the assessed valuation thereof as shall be reasonable and just to render taxation uniform; provided, that the valuation of any personal property as returned by the assessor shall not be increased more than twenty-five per cent without first giving the owner or his agent notice of the intention of the board so to increase it. Such notice shall be by personal notice served upon the owner or his agent, or by leaving a copy at his

place of business or last place of residence, and shall state the time when the board will be in session to act upon the matter.

§ 88. OTHER DUTIES. TAX NOT TO BE ABATED OR REDUCED.] The board of equalization must place upon and add to the assessment roll any property, real or personal, subject to taxation, which has been omitted therefrom by the owner or by the assessor, and enter the same at a valuation so that it will bear an equal and just proportion of taxation. During the session of said board any person or his attorney or agent, feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any alleged errors in the listing or valuation of his property, whether real or personal, and the board may correct the same as it may deem just; or, if the board has reason to believe that any person has failed to return to the assessor all personal property required by law to be returned, or if any person refuses to swear to the returns so made, the board shall notify the person who has so failed to make return or refused to swear to the return in the same manner as prescribed in the last section, and may examine each person under oath in regard to his property; or if he refuses to appear, it may fix such valuation at a sum which it may deem just. After the adjournment of said board of equalization in each year, neither it nor the city council shall change or alter, or recommend the changing or alteration of any assessment or assessments to the county commissioners, or otherwise; and neither said city council nor said board of equalization shall reduce or rebate or authorize the reduction or abatement, or rebatement of any taxes levied upon such assessments for any cause, excepting that the property assessed was not subject to taxation at the time such assessment was levied.

§ 89. DUTY OF CITY AUDITOR.] Within ten days after the completion of the equalization of the assessment as herein provided, the city auditor shall deliver the same to the county auditor of the county in which such city is situated, with his certificate that the same is correct as equalized by said board of equalization, and the same shall be accepted by the board of county commissioners of such county in lieu of all other assessment rolls for said property in said city, and the board of equalization of such county may increase or diminish the valuation therein placed on any class of property, so as to make such valuation uniform with the valuation of the same class of property throughout such county, but no individual assessment shall be otherwise changed, and a failure of any county or city board of equalization to hold its meetings, shall not vitiate or invalidate any assessment or tax except as to the excess of valuation, or tax thereon, shown to have been unjustly made or levied.

ARTICLE II.—POLICE MAGISTRATE AND CITY JUSTICE OF THE PEACE.

§ 90. JURISDICTION OF POLICE MAGISTRATE.] The police magistrate shall have exclusive jurisdiction of, and it shall be his duty to hear, try and determine all offenses against the ordinances of the

city; and he shall have concurrent jurisdiction with the justices of the peace of the county in all other actions, civil and criminal. All fines, penalties and forfeitures for the violation of any city ordinance shall, when collected, be paid by the officer receiving the same to the city treasurer of such city.

§ 91. WHEN MAGISTRATE SHALL ISSUE WARRANTS.] Whenever complaint shall be made to the police magistrate upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which the police magistrate has jurisdiction, such magistrate shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the chief of police or the sheriff or any constable of the county, or some person specially appointed by said magistrate for such purpose.

§ 92. MAGISTRATE, WHEN TO HEAR COMPLAINT.] When any person shall be brought before such magistrate upon a warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

§ 93. POSTPONEMENT OF TRIALS.] Upon good cause shown such magistrate may postpone the trial of the case to a day certain in which case he shall require the defendant to enter into an undertaking with sufficient surety conditioned that he will appear before such magistrate at the time and place appointed, and then and there answer the complaint alleged against him.

§ 94. TO SUMMON WITNESSES.] It shall be the duty of such magistrate to subpoena all persons whose testimony may be deemed material as witnesses on the trial, and enforce their attendance by attachment, if necessary; and when a trial shall be continued by said magistrate he may verbally notify such witnesses as may be present to attend before him at the time to which the action is continued to testify therein and such verbal notice shall be as valid as a subpoena.

§ 95. TRIALS, HOW GOVERNED.] All trials before said magistrate for misdemeanors arising under the laws of the state shall be governed by the criminal procedure applicable to justices' courts in like cases.

§ 96. CONCERNING JUDGMENT OF CONVICTION.] In all trials for offenses under the ordinances of the city, if the defendant is found [guilty] the magistrate shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until such judgment is complied with, in no case to exceed one day for every one dollar and twenty-five cents of fine and costs assessed against said defendant.

§ 97. COURT OPEN EVERY DAY EXCEPT SUNDAY.] Said magistrate shall be a conservator of peace and his court shall be open every day except Sunday to hear and determine any and all cases cognizable before him; and shall have power to bring persons forthwith before him for trial, and no act shall be performed by him on Sunday, except to receive complaints, issue process and take bail and receive verdicts.



§ 98. APPEALS.] In all actions before such magistrate arising under the ordinances of the city, an appeal may be made by the defendant to the district court of the county; but no appeal shall be allowed unless such defendant shall within ten days in case of fine, and within twenty-four hours, in case of imprisonment, enter into an undertaking with sufficient surety to be approved by the magistrate, conditioned in case of fine for the payment of said fine and costs and costs of appeal, and in case of judgment for imprisonment, that he will render himself in execution thereof if it should be determined against the appellant.

§ 99. NOT TO REMIT FINES.] Any person convicted before such magistrate of an offense against the ordinances of the city shall be punished by fine and imprisonment as may be regulated by ordinance, and under no circumstances shall such magistrate remit fines or penalties or payment of costs or otherwise.

§ 100. CITY JUSTICE OF THE PEACE. JURISDICTION.] The city justice of the peace shall have the same jurisdiction as justices of the peace [within said county in all civil and criminal actions, and] within the jurisdiction hereby conferred the power of said justice as a committing magistrate, and in trial of actions shall be the same as is now or may hereafter be provided by law for justices of the peace, and the process and proceedings of said court shall be governed by the laws regulating proceedings in justices' courts; and in all cases tried in said court, an appeal may be taken to the district court in the same manner and upon the same conditions as provided by law in cases of appeal from justices of the peace, and on such appeal the district court shall have the same powers as in such cases.

§ 101. VACANCY.] In case of a vacancy in the office of police magistrate or city justice of the peace by death, resignation or otherwise, the same shall be filled by an appointment by the mayor, to be confirmed by the council, and such appointees shall qualify as in other cases and hold their offices until the next annual city election and until their successors are elected and qualified, and in case of the temporary absence, interest or disability of such magistrate it shall be the duty of the city justice of the peace to act as police magistrate during such vacancy, absence or disability in the trial of causes cognizable before said police magistrate.

§ 102. DUTY OF MAGISTRATE WHEN PROSECUTION IS MALICIOUS.] If upon any trial under the provisions of this article it shall appear to the satisfaction of the police magistrate or the jury in cases arising under the laws of the state, that the prosecution was commenced without probable cause, or from malicious motives, the jury or magistrate trying the action shall state the name of the complaining witness in the findings, and shall impose the costs of the prosecution upon him, and judgment shall be rendered against such complaining witness that he pay such costs, and stand committed until the same are paid.

§ 103. POWER OF MAGISTRATE. JURY.] The police magistrate shall have power to enforce due obedience to all orders and judgments made by him, and he may fine or imprison for contempt offered to him while holding his court, or to process issued or orders made by him, in the same manner and to the same extent as provided in justices' courts. Appeals may be taken to the district court from all decisions of said court in the same manner as is provided for taking appeals from justices' courts, and the district court shall, on such appeals, take judicial notice of all the ordinances of said city. Actions before the police magistrate arising under the city ordinances shall be tried and determined by the magistrate without the intervention of a jury except in cases where, under the provisions of the ordinances of the city, imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be over twenty dollars, and the defendant shall demand a trial by jury before the commencement of said trial; and when a demand shall be so made it shall be the duty of said magistrate to write down the names of eighteen persons, residents of the city and having the qualifications of jurors in the district court, and the defendant and the attorney for the city shall each strike off three names, or in case the defendant shall neglect or refuse to do so then the police magistrate, with the attorney for the city, shall strike off such names, and the magistrate shall at once issue his venire to the chief of police, commanding him to summon the twelve persons whose names remain upon the list as jurors. And in all trials by jury in said court challenges shall be allowed in the same manner and for the same causes as in the district court in cases of misdemeanor; and in case the number shall be reduced below twelve by such challenges, or any portion of said number should fail to attend, then the chief of police shall summon a sufficient number of talesmen having the qualifications of jurors to complete the panel, which shall, in all cases, consist of twelve jurors. If either party objects to the competency of a juror the question thereon must be tried in a summary manner by the magistrate, who may examine the juror or other witnesses under oath. Each person summoned as a juror in any case shall be entitled to a fee of fifty cents, and in case of conviction such fees shall be taxed against the defendant as a part of the costs of the case.

§ 104. PROCEEDINGS, HOW GOVERNED.] In all cases not herein specially provided for, the process and proceedings of said court shall be governed by the laws regulating proceedings in justices' courts in criminal cases.

§ 105. OFFICE HOURS OF MAGISTRATE.] Said magistrate shall be in attendance at his office for the transaction of business at such reasonable hours as the city council may prescribe, and complaints may be made to, and writs and process issued by him, at all times in court or otherwise.

## ARTICLE 12.—CITY ENGINEER.

§ 106. QUALIFICATIONS.] The city engineer shall be a practical surveyor and engineer. He shall keep his office in some convenient place in such city, and the council shall by ordinance prescribe his duties, and fix his compensation for services performed for the city. All surveys, profiles, plans or estimates made by him for the city shall be the property of the city, and shall be carefully preserved in the office of the engineer, open to inspection of all persons interested, and the same, together with all books and papers appertaining to said office, shall be delivered over by the engineer at the expiration of his term of office, to his successor, or to the city council.

## ARTICLE 13.—POLICE OFFICERS.

§ 107. POWERS OF.] The chief of police shall perform such duties as shall be prescribed by the city council for the preservation of the peace. All police officers and watchmen of any city shall possess, within the city limits, the powers of constables by the laws of this state, and it shall be their duty to execute and serve all warrants, process, commitments and all writs whatsoever issued by the police magistrate, or city justice of the peace, for any violation of the laws of the state, or of the ordinances of said city, or any provision of this act; and also all writs and process whatsoever issued by said justices in civil actions; and they shall have authority to pursue and arrest any person fleeing from justice in any part of the state; and when performing the duties aforesaid shall be entitled to the same fees as constables for like service; watchmen shall have authority to arrest and detain any person guilty of any breach of the peace, or any violation of the laws of the state, or of the ordinances of the city, and for these purposes shall possess the powers of constables under the laws of this state while on duty.

§ 108. WARRANTS.] All warrants issued by the police magistrate or city justice, for the violation of any general law of this state shall run to the sheriff or any constable of the county or to the chief of police or any policeman of the city; but no chief of police or policeman, when he goes outside of the city to make an arrest, shall receive any fees therefor unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy, or a constable to make the arrest might endanger an escape.

## ARTICLE 14.—ELECTIONS.

§ 109. TIME AND PLACE OF ELECTION.] There shall be an annual election for elective officers herein provided, held on the first Monday in April of each year, at such place or places in each ward as the council shall designate; except in cities where aldermen are elected at large, the council shall designate one polling place only. The polls shall be kept open continually from eight o'clock in the forenoon until five o'clock in the afternoon, and no longer, and ten days' previous

notice shall be given by the council of the time and place of holding such election, by publication in at least two of the city papers published in said city, if two shall be published therein.

§ 110. ELECTION DISTRICTS AND PRECINCTS.] Each city in which aldermen are elected at large shall constitute an election district, and in all other cities each ward shall constitute an election district; but whenever the number of legal voters in any ward shall exceed three hundred, the council may by ordinance divide such ward into two or more precincts for voting purposes, and whenever the number of legal voters in any two or more contiguous wards shall not exceed one hundred, as determined by the last annual election, the council may, by ordinance, consolidate such two or more wards into one precinct for voting purposes; provided, that such ordinance shall be passed and take effect before the time of giving notice of an election; and such wards and precincts shall constitute election districts for all state and county elections.

§ 111. QUALIFIED VOTERS.] Every legal voter of the county in which such city is situated, who shall have been a resident of the city ninety days next preceding a city election, is declared a citizen of said city and shall be entitled to vote at all city elections; provided, that the city council shall provide for the registration of all voters as required by the laws of the state, and no person shall be entitled to vote in any other place than the ward or precinct where he resides.

§ 112. EFFECT OF ELECTION.] This act shall in no case affect the term of office of any officer heretofore elected or appointed in any city, but all such officers shall hold their offices during the term for which they were originally elected or appointed.

§ 113. OATH AND DUTIES OF JUDGES AND CLERKS OF ELECTION.] The manner of conducting and voting at elections to be held under this act, and contesting the same, the keeping of poll lists, and canvassing the votes, shall be the same, as nearly as may be, as in the case of the election of county officers under the general laws of this state. The judges of election shall appoint clerks when necessary to fill vacancies, and the judges and clerks shall take the same oath and have the same powers and authority as the judges and clerks of general state elections. After the closing of the polls the ballots shall be counted, and the returns made out, and returned under seal to the city auditor, within two days after the election, and thereupon the city council shall examine and canvass the same, and declare the result of the election and cause a statement thereof to be entered on its journal.

§ 114. WHAT ELECTS. TIE, HOW DECIDED.] The person having the highest number of votes for any office shall be declared elected. In case of a tie in the election of any city officer, it shall be determined by lot, in the presence of the city council, in such manner as it shall direct, which candidate or candidates shall hold office.

§ 115. CITY AUDITOR TO NOTIFY OFFICERS ELECTED OR APPOINTED.] It shall be the duty of the city auditor, within five days after the

result of the election is declared or appointment made to notify all persons elected or appointed to office of their election or appointment, and unless such persons shall respectively qualify within ten days after such notice, the office shall become vacant.

§ 116. NEW ELECTION ON FAILURE TO QUALIFY.] If there is a failure to elect an officer herein required to be elected, or the person elected should fail to qualify, or for any other cause that may arise, the city council may forthwith order a new election therefor, and in all cases, when necessary for the purposes of this act, may call special elections, canvass the returns thereof, and provide by ordinance for the mode of conducting the same; and shall give notice of such special elections, in which shall be stated the questions to be voted upon, and cause such notices to be published for the same length of time, and in the same manner as is required in the case of regular annual elections in such city, unless herein otherwise provided.

§ 117. WHEN TERM OF OFFICE COMMENCES.] The term of each officer elected under this act shall commence on the third Tuesday of April of the year for which he was elected.

§ 118. WHEN OFFICE DEEMED VACANT.] Any officer removing from the city or ward for which he is elected, or any officer who shall refuse or neglect for ten days after notice of his election or appointment to enter upon the discharge of the duties of his office, shall be deemed to have vacated his office and the city council shall proceed to fill the vacancy as herein prescribed.

#### ARTICLE 15.—FINANCE.

§ 119. FISCAL YEAR.] The fiscal year of each city organized under the general laws of this state shall commence on the first day of September of each year.

§ 120. APPROPRIATION FOR GENERAL EXPENSES. HOW MADE.] The city council shall, at its regular meeting in September or within ten days thereafter, pass an ordinance to be termed the annual appropriation bill, in which it may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, during the ensuing fiscal year, and such ordinance shall specify the purpose for which such appropriations are made, and the amount appropriated for each purpose, and the city council may, in addition to such specific appropriations, appropriate a sum not exceeding five per cent of the total amount so specifically appropriated for general purposes in such appropriation bill, for contingent expenses not otherwise provided for. No further appropriations shall be made for any of the expenses or liabilities of such fiscal year, unless the provisions to make such appropriation has been first sanctioned by a majority of the legal voters of such city, either by a petition signed by them or by special election called for that purpose. Any balance of any appropriation for general purposes, remaining unexpended at the close of the fiscal year, shall be deemed

a part of the general fund of the city, and shall be reappropriated to such general purposes as the city council may deem best.

§ 121. SPECIAL APPROPRIATION FOR IMPROVEMENTS. HOW MADE.] Neither the city council, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year, anything over and above the amount provided for in the annual appropriation bill of that year, except as herein otherwise specially provided; and no expenditure for an improvement to be paid for out of the general fund of the corporation shall exceed in any one year the amount provided for such improvement in the annual appropriation bill; provided, that nothing herein contained shall prevent the city council from ordering by a two-thirds vote, any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made, and the expense of such improvement may be paid wholly or in part from the appropriation for contingent expenses, or whenever the city shall not have reached its constitutional debt limit, the city council may order the mayor and finance committee to borrow a sufficient amount to provide for the expense necessary to be incurred in making any improvement, the necessity of which has arisen, as is last above mentioned, for a space of time not exceeding the close of the fiscal year, which sum and interest shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein.

§ 122. CONTRACTS PRIOR TO APPROPRIATION FORBIDDEN.] No contract shall be made by the city council and no expense shall be incurred by any officer or department of the corporation, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise provided; provided, however, that the city council is authorized to enter into contracts with persons, associations or corporations for the furnishing of water for fire protection to the city, and in case such contract shall extend over a term of years, then and in that case it shall not be necessary that an appropriation shall have been previously made concerning such expense, except sufficient to cover the amounts payable under such contract for the first year thereof; provided, further, that such contract shall not be made for a longer period than twenty years.

§ 123. TAX LEVY, HOW AND WHEN MADE.] The city council shall, at its first regular meeting in September, or within ten days thereafter, levy a tax for general purposes sufficient to meet the expenses of the fiscal year, and not exceeding twenty mills on the dollar of the assessed valuation of property in the city, based upon, and itemized as in the annual appropriation bill for the year, and in addition thereto, shall levy a tax for interest and sinking fund as required by this act, and also a sufficient tax for the payment of any final judgment that may have been recovered against the city, and such levy shall be forthwith, and not later than September twentieth, certified by the city auditor, with any levy made by the board of edu-

cation of such city for school purposes, to the auditor of the county in which such city is situated. Such levy shall be made in specific amounts, and the county auditor of such county shall extend the same upon the tax lists of the county for the current year, in the same manner and with the same effect as other taxes are extended, except that the city taxes may be included in one amount, and the school taxes in one amount, for each person or lot, or parcel of land. The levy herein provided for may be made at the same meeting at which the annual appropriation bill is finally passed, and the provisions of law fixing the time at or within which any act or proceeding in the assessment or levy of any taxes shall be done or taken, shall be deemed and held to be directory and not mandatory.

§ 124. COUNTY TREASURER TO COLLECT TAXES AND PAY OVER TO CITY TREASURER.] The county treasurer of such county shall collect and enforce the collection of the city and school tax with and in the same manner as other taxes, and shall pay over to the city treasurer on the first of every month on demand, all such taxes so collected during the preceding month, with interest and penalties collected thereon, and shall forthwith notify the city auditor of the amount so paid over. He shall take duplicate receipts for all such amounts so paid to the city treasurer, one of which shall be forthwith sent to the city auditor.

§ 125. MONEY PAID TO THE CITY TREASURER, HOW PROPORTIONED.] The city treasurer and auditor shall each proportion said amounts so received by the city treasurer, and credit each fund with its proportion or share according to the levy made by the council; and the city [county] treasurer, at the time of paying over such funds shall furnish the city treasurer and auditor with a statement of the amount collected for each year separately, and the same shall be credited to the proper fund for the year for which it was collected. All money received by the city treasurer for licenses, license or occupation taxes and fines shall be credited to, and become a part of the contingent fund of the city, and shall be used for the payment of such liabilities and necessary expenses of the city as are not otherwise specially provided for in the annual appropriation bill.

§ 125½. PROVISIONS NOT APPLICABLE TO CITIES OPERATING UNDER GENERAL LAW.] The provisions of sections 2454, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2495, 2497 and 2498, revised codes, and section 2494, revised codes, as amended by chapter 160, laws of 1903, and section 2496, revised codes, as amended by chapter 149, laws of 1901, do not apply to any city organized under the general laws of the state for the incorporation of cities, and when any of the provisions of this act are inconsistent with any of the provisions of the revised codes, or of any other law heretofore enacted, the provisions of this act shall be deemed to supersede all others.

#### ARTICLE 16.—OPENING OF STREETS, ALLEYS, ETC.

§ 126. SURVEYS.] Whenever the city council shall deem it necessary to open, lay out, widen or enlarge any street or alley or public

place within the city, it shall cause an accurate survey and plat of the same to be made by the city engineer, with an estimate of the probable cost of the improvement, and the city engineer shall file the same in the office of the city auditor, and retain a copy in his office.

§ 127. TAKING PRIVATE PROPERTY.] Whenever it shall be necessary to take private property in order to open, lay out, widen or enlarge any street or alley or any public place in any city, the same shall be done by purchase, or under the provisions of the code of civil procedure providing for the exercise of the right of eminent domain; and, whenever any judgment for damages to property so taken for any such improvement shall be entered, the city council shall cause special assessments to be levied upon the property benefited thereby to pay such judgment; provided, that not more than one-fourth thereof may be paid by the levy of a general tax upon all taxable property in the city.

§ 128. FIXING GRADES.] The city council may by ordinance establish the grade of all streets, alleys and sidewalks in the city as the convenience of the inhabitants may require, and a record of the same shall be kept, together with a profile thereof in the office of the city engineer; provided, that after the grade of any street has been established as provided in this section, the city shall, if it change the grade, be liable to the abutting property owners for any damage they may sustain by reason of any permanent improvements having been made by them to conform to the grade as first established.

§ 129. VACATION OF STREETS AND ALLEYS. PETITION TO VACATE STREETS AND ALLEYS, HOW MADE. PARTY AGGRIEVED MAY APPEAL TO DISTRICT COURT.] No public grounds, streets, or alleys, or parts thereof, over, under or through which shall have been constructed lengthwise sewers or water mains by the city, or water mains, gas, steam or other pipes, or telephone or telegraph lines by the city's grantees of the right of way therefor, shall be vacated and no other public grounds, streets or alleys, or parts thereof, within the city shall be vacated or discontinued by the city council except upon a petition of a majority of the owners of property on the line of such public grounds, streets or alleys, resident within the city. Such petition shall set forth the facts and reasons for such vacation accompanied by a plat of such public grounds, streets or alleys proposed to be vacated, and shall be verified by the oath of at least two of the petitioners, and the consent in writing of all the owners of the property adjoining the plat to be so vacated. The city council shall thereupon, if they deem it expedient that the matter should be proceeded with, order the petition to be filed with the city auditor, who shall give notice of publication in the official newspaper of the city for four weeks, at least once each week, to the effect that such petition has been filed as aforesaid, and stating in brief its object and that said petition will be heard and considered by the council or a committee thereof on a certain day therein specified, not less than thirty days after the first publication of such notice. The city council or such



committee as may be appointed by it for the purpose, at the time and place appointed, shall investigate and consider the matter, and shall hear the testimony and evidence of persons interested. The city council, thereupon, after hearing the same or upon the report of such committee favoring the granting of such petition, may, by resolution passed by a two-thirds vote of all of the members elect, declare such public grounds, streets or alleys or highways vacated; which resolution, before the same shall go into effect, shall be published as in the case of ordinances and thereupon a transcript of such resolution duly certified by the city auditor shall be filed for record and duly recorded in the office of the register of deeds of the county, and shall have the effect to convey to the abutting property owners all the right and title of the city to the property so vacated. Any person aggrieved thereby may within twenty days after publication of such resolution appeal to the district court of the county under the same regulations as in the case of opening streets and alleys, and the judgment of the court therein shall be final. All expenses incurred in vacating any such public grounds, streets or alleys, must be paid by the petitioners, who shall deposit with the city treasurer such sum as may be necessary therefor before any such expense is incurred, and the amount so to be deposited shall be determined by the city council, and any part thereof not used for such expenses shall be returned.

#### ARTICLE 17—SIDEWALKS.

§ 130. SPECIFICATIONS FOR SIDEWALKS.] The city council shall by ordinance prescribe the width of sidewalks and may establish different widths in different locations, and shall determine and prescribe the kind and quality of material of which, and the manner in which, they shall be constructed, having regard to the business and amount of travel in the vicinity of each, and such ordinance shall be specific, and all contracts for the construction of sidewalks shall be let with reference to the same.

§ 130½. NOTICE TO BUILD OR REPAIR.] Whenever the city council shall deem it necessary to construct, rebuild or repair, except as hereinafter provided, any sidewalk in the city, it shall notify each owner and occupant of any lot or parcel of land adjoining such sidewalk, to construct, rebuild or repair the same at his own expense, and subject to the approval of the street commissioner, within the time designated in such notice, by the publication in the official paper of the city twice, once in each week for two successive weeks, of a notice to said owner or occupant, setting forth what work is to be done, and the character of the same as specified in the ordinance provided for in the preceding section, and the time within which he is required to do the same. Such notice may be general as to the owner, but must be specific as to the description of the lot or parcel of ground in front of which such sidewalk is to be built, and a copy thereof shall also be served in the manner provided in section 133 of this act.

§ 131. BUILDING BY CITY.] If such work is not done and the

sidewalk is not built, repaired or rebuilt, in the manner and within the time prescribed in said notice, the city council shall order the same to be done by such person as they may have contracted with therefor, under the direction of the city engineer, or street commissioner in cities having no city engineer, at the expense of the lot or parcel of land adjoining such sidewalk, and such expense, including the expenses of all notices in connection with such work and the assessment therefor, and any other expense incurred for such work, shall be assessed upon the lot or parcel of land properly chargeable therewith, by the city engineer, or by the street commissioner in cities having no city engineer; and such assessment shall be returned by him, and filed in the office of the city auditor, and the city auditor shall cause to be published the said assessment, together with a notice of the time and place when and where the city council will meet to approve the same, and said notice shall be published once in the official newspaper of the city at least ten days prior to the meeting of the city council to approve such assessment.

§ 132. LETTING CONTRACTS FOR SIDEWALKS.] The city auditor shall, on or before the fifteenth day of March in each year, advertise in the official newspaper of the city twice, once in each week for two consecutive weeks, for bids for the construction of the various kinds of sidewalks in the city during the ensuing year, in accordance with the specifications of the ordinance provided for in section 130 of this act, and such bid shall be received and opened and if accompanied by a check and bond as hereinafter provided, such contract shall be awarded to the lowest bidder, at the regular meeting of the city council in April and contracts may be awarded to different bidders for the different kinds of sidewalks required.

§ 133. REPAIRS.] Whenever the necessary repair of sidewalks will not, in the judgment of the street commissioner, exceed in cost the sum of five dollars for each twenty-five feet in front of land belonging to the same owner, he shall notify the city auditor thereof, and the city auditor shall forthwith prepare a notice in writing, which may be general as to the owner of the lot or parcel of land, but describing it specifically, requiring him to repair such sidewalk to the satisfaction of the street commissioner, within a time to be fixed in such notice not exceeding three days. The auditor shall deliver such notice to the street commissioner, who shall forthwith serve it by delivering a copy thereof to the occupant or owner of the parcel of land, if the same is occupied, or by leaving such notice at the dwelling house upon such lot or parcel of land with some person over the age of fourteen years residing therein, or if such lot or parcel of land is not occupied, by posting a copy of such notice in a conspicuous place thereon or immediately in front thereof, and if such sidewalk is not so repaired within the time fixed in such notice, the street commissioner shall, as soon as practicable, repair the same and certify the cost thereof, with his return of service of such notice to the city auditor; and the cost of such repairs shall be paid out of the "sidewalk special assessment fund."

§ 134. DUTY OF AUDITOR.] The city auditor shall keep in his office a book called "sidewalk repair special assessment book," and shall enter such cost so certified by the street commissioner therein, as a special assessment, against the lot or parcel of land adjoining such sidewalk, with the name of the owner, if known to him; and at its regular meeting in August of each year, the city council shall review all assessments, and hear all complaints against the same, and approve the same as finally adjusted.

§ 135. SIDEWALK SPECIAL ASSESSMENT FUND.] All money collected from special assessments for building or repairing sidewalks shall be kept in a fund to be called "sidewalk special assessment fund," and warrants shall be drawn on such fund for the payment of the costs of building and repairing all sidewalks, and the city shall in no case be liable on any contract for the building or repairing of sidewalks for any sum whatever, to be paid by money raised by general taxation.

ARTICLE 18—SEWERS, PAVING AND WATER MAINS.

§ 136. SYSTEM OF SEWERAGE.] The city council shall have power to establish and maintain at any time a general system of sewerage for the city, in such manner and under such regulations as the city council shall deem expedient, and to alter or change the same from time to time as the council shall deem proper; provided, that no action shall be taken for the establishment of such system of sewerage except upon the affirmative vote of two-thirds of the members of the city council; provided further that when such system of sewerage is established all measures necessary for the construction of sewers, as a part of such system may be taken by a vote of the majority of the city council; provided, further, that when it shall be necessary to conduct the sewerage of the city beyond the city limits, the council shall have power, by purchase or condemnation proceedings, to acquire private property over which to construct such sewer; and the cost thereof and of building such sewer over the same shall be included in the cost of such system of sewerage, and in the special assessment levied therefor; and provided, further, that any city may empty or discharge its sewerage into any river, but where a dam on such river is located within the corporate limits of any city, the sewerage shall, in all cases, be discharged below such dam.

§ 137. TO CREATE IMPROVEMENT DISTRICTS.] Any city shall have power to create sewer, paving and water main districts within the limits of such city, which shall be consecutively numbered.

§ 138. SIZE AND FORM OF SEWER DISTRICTS.] Such sewer districts shall be of such size and form as the city council, after consultation with the city engineer, shall decide most practicable for the purpose of the drainage of such portion of such city as may be included in the respective districts as established by the city council.

§ 139. FORM OF PAVING DISTRICTS.] Such paving districts shall be in compact form as nearly as practicable, and include all streets within their respective boundaries, and nothing in this article con-

tained shall be construed as authorizing and empowering the city council to create one street, by length, as a district, except when it shall be necessary to repave any street which shall not, when originally paved, have been included in any paving district.

§ 140. WATER MAIN DISTRICTS.] Such water main districts shall be of such size and number as the city council, after consultation with the city engineer, shall decide most practicable for the purpose of furnishing water to such portions of the city as may be included in the respective water main districts as formed by the city council.

§ 141. POWER TO IMPROVE STREETS.] All cities shall have power to grade, curb, pave, repave, gravel, macadamize or gutter any street, highway, avenue, alley or public place in such city, and to extend, improve, enlarge, relay or replace the water mains and hydrants of such city, and to lay new or additional water mains therein, and to defray the expenses of all such work as hereinafter provided.

§ 142. PLANS, SPECIFICATIONS AND ESTIMATES.] When the city council shall deem it necessary to construct or alter any sewer or to open, widen, extend, pave, repave, macadamize or curb any street, alley, avenue, lane, highway, or other public grounds, within the city limits, or to extend, relay or replace any water mains, the city council shall direct the city engineer, or in case the city has no competent city engineer, shall employ a competent engineer, to prepare plans and specifications, for such work, including the grading of the street, if not already established, and all details of the work to be done, and make an estimate of its probable cost, which plans, specifications and estimates shall be approved by resolution of the city council, which approval shall be deemed to establish the grade of the street as shown in such plans and specifications, if the grade of the street has not previously been established by ordinance. In case the improvement shall consist in paving or repaving any street, alley or public place, the city council may require such plans, specifications and estimates to be made of such different kinds of pavement as they may deem advisable. Such plans, specifications and estimates shall be the property of the city and be filed in the office of the city auditor and remain on file in his office subject to the inspection of all persons. The city engineer shall retain a copy of such plans, specifications and estimates, and file the same in his office and shall furnish to any person applying therefor copies of the same, and may charge and receive for such copies at the rate of one dollar an hour for the time necessarily employed in making the same.

§ 143. RESOLUTION DECLARING WORK NECESSARY.] After the plans, specifications and estimates mentioned in the preceding section shall have been filed in the office of the city auditor, and approved as provided in the preceding section, the city council shall by resolution declare such work or improvement (except the construction or alteration of sewers), necessary to be done, according to such plans and specifications, as filed in the office of the city auditor; and in case of paving, such resolution shall designate the kind of pavement proposed

to be constructed and refer intelligently to the plans, specifications and estimates therefor; which resolution shall be published twice, once in each week for two consecutive weeks, in the official newspaper of the city, and if a majority of the owners of property, liable to be specially assessed therefor, shall not, within thirty-five days after the first publication of such resolution, file with the city auditor a written protest against such improvement, then the city council shall have power to cause such improvement to be made according to such plans and specifications, and to contract therefor, and to levy and collect assessments therefor as hereinafter provided and all such work shall be let by contract to the lowest bidder therefor.

§ 144. PAVING. COUNCIL MAY TAKE FURTHER PROCEEDINGS.] In case the improvement designated in such resolution consists in paving or repaving any street, alley or other public place, and a majority of the owners of property liable to be especially assessed therefor shall protest against the same, that fact shall not prevent the city council from taking the proceedings designated in the two preceding sections to pave such streets, alleys or public places, with pavement of a kind different from that designated in such resolution.

§ 145. DUTY OF COUNCIL.] The city council shall then cause proposals for said work to be advertised for in the official paper of such city twice, once in each week for two successive weeks, which advertisement shall specify the work to be done, according to the plans and specifications therefor on file in the auditor's office, and shall call for bids therefor upon a basis of cash payment for said work, and state the time within which such bids will be received, and within which such work is to be completed. Bids for such work shall be forwarded to the city auditor of such city, securely sealed, so as to prevent their being opened without detection, and shall have endorsed upon the outside thereof a statement of what work such proposals are for. Such bids shall be opened by the city council at the expiration of the time limited in said advertisement for receiving the same, which shall not be less than fifteen days after the first publication of said advertisement, or at such other time as the city council may appoint therefor, and if accompanied by the check and bond hereinafter provided for, shall be considered, and if not accompanied by such check and bond, shall be rejected.

§ 146. BIDS.] Each bid for any work to be done under the provisions of this act shall be accompanied by a certified check, in case of sidewalks for the sum of fifty dollars, and in the case of other work for the sum of five hundred dollars, endorsed or payable to the mayor, as a guarantee that the bidder will enter into a contract for the performance of such work in case such contract is awarded to him, and in case any bidder to whom such contract shall be awarded, fails or refuses to enter into such contract when requested so to do, such check accompanying his bid shall be retained by the city, and be deemed to be liquidated damages for such failure, and shall be delivered to the city treasurer and credited by him to the fund from which the consideration for such work is payable.

§ 147. BONDS.] Each bid for any such work shall also be accompanied by a bond running to the city, in case of sidewalks for a sum of five hundred dollars, and in all other cases a sum equal to the amount of such bid, executed by such bidder, and a surety company as surety or by two freeholders of the state, who shall justify as required in arrest and bail, and the aggregate of such justification shall equal the amount of such bond, and such bond shall be conditioned, that in case such bid is accepted, and such contract awarded to such bidder, he will well and faithfully perform the work bid for in accordance with the terms of, and within the time provided for in such contract, and pursuant to the plans and specifications for such work on file in the auditor's office, and pay for all labor and material used in such work, and that in case of default on the part of such bidder to perform such work as provided in his contract, the sum named in said bond shall be taken and held to be fixed and liquidated damages in favor of said city; and that the full amount thereof may be recovered from such bidder and his sureties, in an action by the city against them on such bond. Such bond shall be approved by the city council and filed in the office of the city auditor, and shall thereupon be and remain in full force and effect. Upon the award of the contract the checks of all unsuccessful bidders shall be returned to them, and upon the filing of such bond the check of the successful bidder shall be returned to him.

§ 148. COUNCIL MAY REJECT BIDS.] The city council shall have the right to reject any and all bids for work to be done under this act, if, in its opinion the interests of the city will be best subserved by so doing, and readvertise for further bids, but if all such bids are not rejected the contract shall then be awarded to the lowest bidder upon the basis of cash payment therefor; provided, such bidder shall have complied with the foregoing requirements and furnished the bond hereinbefore provided for.

§ 149. CONTRACTS.] All contracts entered into for any work provided for in this act, shall be entered into in the name of the city, and shall be executed on the part of the city, by the mayor thereof, and countersigned by the auditor with the corporate seal of the city affixed, and when signed by the contractor shall be filed in the office of the city auditor. Such contract shall require the work to be done thereunder, to be done pursuant to the plans and specifications therefor on file in the office of the city auditor, or in case of sidewalks, pursuant to the specifications of the ordinance provided for by section 130 and subject to the approval of the city engineer, who shall personally supervise and inspect such work during its progress, and there shall be reserved in each contract the right of the city council, in case of the improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or order a reconstruction of said work on any part thereof improperly done.

Each contract so entered into shall state the time on or before which such work must be completed, and must state from what fund the amount to be paid thereon by the city is to be paid, and that the consideration of such contract is payable only in warrants drawn on such fund, and that such city assumes and incurs no general liability under such contract.

§ 150. CONTRACTOR, HOW PAID.] In case the contractor to whom any such contract shall be let shall properly perform the work therein designated, the city council may, from time to time in its discretion, as the work progresses, pay to such contractor upon an estimate made by the city engineer of the amount already earned thereunder, eighty-five per cent of the amount shown by such estimate to have been so earned, in warrants drawn on the fund from which the same is to be paid.

§ 151. SPECIAL ASSESSMENT FUNDS. WARRANTS.] All special assessments levied under the provisions of this act shall constitute a fund for the payment of the cost of the improvement for the payment of which they are levied, and shall be diverted to no other purpose, and those for payment of sewer improvements shall be designated respectively "Sewer District No. .... Fund," and such fund shall be numbered according to the number of the sewer district in which it is raised. Those collected for paving improvements shall be designated as "Paving District No. .... Fund," and such fund shall be numbered according to the paving district in which it is raised; and those levied for the payment of water mains shall be known as "Water Main District No. .... Fund," and such fund shall be numbered according to the number of the water main district in which it is raised, and in anticipation of the levy and collection of such special assessments the city may, at any time after the making of a contract for any such improvements, issue warrants on such funds, payable at specified times, and in such amounts as, in the judgment of the city council, the taxes and assessments will provide for, which warrants shall bear interest at the rate of not to exceed seven per cent per annum, payable annually, and may have coupons attached representing each year's interest. Such warrants shall state upon their face for what purpose they are issued, and the fund from which they are payable, and shall be signed by the mayor, and countersigned by the city auditor under the seal of the city, and be in denominations of not more than one thousand dollars each. Such warrants may be used in making payments on contracts for making such improvements or may be sold for cash, at not less than the par value thereof, and the proceeds thereof credited to such fund, and used for paying for such improvements. It shall be the duty of the city treasurer to pay such warrants and interest coupons as they mature and are presented for payment, out of the district funds on which they are drawn, and to cancel the same when paid.

§ 152. ERRORS AND MISTAKES.] In case errors or mistakes in making an assessment, in respect to the total cost of such improve-

ments, or otherwise, occur, or in case of any deficiency in any assessment or otherwise, the city council shall have power, and it shall be their duty from time to time, to cause additional assessments to be made in the manner hereinafter provided, to supply such deficiencies, or correct such errors or mistakes; the total of such assessments not to exceed the benefit to such property, and any such assessment shall be a lien upon the lots and lands on which it is levied as herein provided for the original assessments, and shall be payable in the same manner, and in the same installments, and shall draw interest at the same rate, and shall be enforced in the same manner as herein provided with respect to the original assessment.

§ 153. REASSESSMENT.] In all cases where any assessment, or any part thereof, as to any lot, lots or parcels of land assessed under any of the provisions of this act, or of any law of any city prior to this act, for any cause whatever, whether jurisdictional or otherwise, shall be set aside, or declared void by any court, the city council shall, without unnecessary delay, cause a reassessment or new assessment to defray the expense of such improvement to be made, whether such improvement was made under this act or under any law of any city prior to this act, and such reassessment or new assessment shall be made as nearly as may be, as herein provided for making the assessment therefor in the first instance; and may bear interest from the date of the approval of such assessment so set aside, and when the same shall have been made and confirmed by the city council, it shall be enforced and collected in the same manner that other assessments are enforced and collected under this act, and in all cases where judgment shall hereafter be refused or denied by any court for the collection or enforcement of any special assessment, or where any court shall hereafter set aside or declare void any assessment upon any lot or parcel of land for any cause, the said lot or parcel of land may be reassessed or newly assessed from time to time, until each separate lot, piece or parcel of land has paid its proportionate part of the costs and expenses of such improvement, as near as may be; provided, that when any special assessment shall be declared void, or set aside by judgment of the supreme court, for a cause affecting other like assessments, all assessments so affected may be vacated by resolution of the city council, and thereupon a reassessment of the property affected thereby shall be made as herein provided, and may bear interest as hereinbefore provided.

§ 154. ERROR OR OMISSION SHALL NOT VITIATE.] No error or omission which may be made in the proceedings of the city council, or of any officer of said city in referring, reporting upon, ordering or otherwise acting concerning any local improvement provided for in this act, or in making or certifying any assessment, shall vitiate or in any way affect any such assessment, but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced.



§ 155. ACTION TO AVOID TAX JUDGMENT.] Whenever any action or proceeding shall be commenced and maintained before any court to prevent or restrain the collection of any special assessment or part thereof, made or levied by the officers of any city for any purpose authorized by law, and whenever any action or proceeding shall be commenced and maintained as aforesaid to vacate or set aside any sale of real estate for such special assessment, or to cancel any tax certificate or deed given under such sale, and such assessment shall be held to be void by reason of noncompliance with this act, the court shall determine the true and just amount which the property attempted to be so assessed by said special assessment should pay, to make the same uniform with other special assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the party liable for such special assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which a special assessment shall have been levied, of equal force and effect as the lien of special assessments, and the lien of such special judgment shall be enforced by the court in such action; provided, that no action for either of said purposes shall be maintained unless it is commenced within six months after such special assessment is approved, and in case of such assessment heretofore approved, within six months after this act takes effect.

§ 156. PAYMENT OF DEFICIENCY.] Whenever all special assessments levied for a specific improvement shall have been collected and applied in payment of the warrants issued for such improvement, and a deficiency remains, the city council shall levy a tax upon all the taxable property in the city for the payment of such deficiency, and in case of a balance of such special assessments remaining unexpended, it may be used for repairs of such improvement.

§ 157. SEWER ASSESSMENTS EXTENDED TWENTY YEARS.] The special assessments herein provided for the payment of the cost of constructing any sewer shall be payable in equal annual amounts extending over a period not exceeding twenty years, and shall bear interest at a rate not to exceed seven per cent per annum on the total amount of such assessments remaining from time to time unpaid.

§ 158. WATER MAIN ASSESSMENTS EXTENDED TEN YEARS.] The special assessments herein provided for the payment of the cost of any water mains shall be payable in equal annual amounts, extending over a period of not exceeding ten years, and shall bear interest at a rate not to exceed seven per cent per annum on the total amount of such assessments remaining from time to time unpaid.

§ 159. PAVING ASSESSMENTS EXTENDED TEN TO THIRTY YEARS.] The special assessments herein provided for the payment of the cost of paving and repaving shall be payable in equal annual amounts, and in case such paving shall be made on a perishable foundation of wood,

such amounts shall be extended over a period not to exceed ten years, and in case such pavement shall be constructed with a concrete or other permanent foundation, such amount shall be extended over a period not exceeding twenty years; provided, that whenever the city council shall determine to pave upon such permanent foundation, otherwise than with ordinary wooden pavement, such amounts may, in the discretion of the city council, be extended over a period not to exceed thirty years, and the said assessment shall bear interest at the rate of not exceeding seven per cent per annum on the total amount thereof remaining from time to time unpaid, and the rate to be fixed by the city council.

§ 160. SIDEWALK ASSESSMENTS.] All special assessments for sidewalks and for the expense of opening, widening or extending streets shall be payable in a single amount.

§ 161. CERTAIN ASSESSMENTS COLLECTED BY SUIT.] Whenever by reason of the exemption of any real property from special assessments, or when any real property cannot be specially assessed as herein provided, in any improvement district, by reason of the title thereof being in the United States, or from other cause, and such real property would otherwise be assessable for any improvements provided for herein, an assessment may be levied against such property and collected from the owner, or person enjoying the beneficial use of such property, by suit in any court in this state.

§ 162. SPECIAL ASSESSMENTS DUE. INTEREST.] All special assessments levied under the provisions of this act shall become due and payable ten days after the same shall have been approved by the city council, and shall thereafter bear interest at the rate of seven per cent per annum.

§ 163. PAYMENT OF ONE-FIFTH BY GENERAL TAXATION.] Any city which shall have power under the debt limit provision of the constitution to create valid obligations, may, at its election, provide for the payment of not exceeding one-fifth of the cost of any work hereinbefore provided for, other than sidewalks, and opening and widening of streets, by general taxation of all taxable property in such city, and may contract with reference thereto, and make appropriations and levy taxes therefor, in installments annually, and extending over the same period as provided for special assessments for the same improvement, and such appropriation and tax levy shall state the specific improvement for which such tax is levied and the district in which such improvement is made, and when such tax is collected and paid over to the city treasurer, he shall credit it to the district fund for which it was so levied.

§ 164. SPECIAL ASSESSMENT COMMISSION.] The mayor of each city shall, as soon as practicable after this act takes effect, appoint a commission, to be composed of three reputable residents and freeholders of the city, to be known as the "Special Assessment Commission." Such commission shall hold their offices for the terms of two, four and six years respectively, such terms to be designated by

the mayor in making such appointment, and thereafter the mayor shall, in each odd numbered year at the first meeting of the city council in April, or as soon thereafter as practicable, appoint one member of such commission to fill the vacancy occasioned by the expiration of such term, who shall hold his office six years, and vacancies occurring in said commission by removal, resignation or death shall be filled by like appointment, to be made as soon as practicable after such vacancy occurs. All such appointments herein provided for shall be subject to the confirmation of the city council. Each member of such commission shall, upon his appointment and confirmation as aforesaid, file with the city auditor a written acceptance of such appointment, and shall take and subscribe the oath provided by section 60 of this act, which oath shall be filed with the city auditor; and the member of such commission having the shortest time to serve, shall act as chairman thereof, and no member of such commission shall hold any other city [office] during the term for which he is so appointed. The city engineer, city auditor and city attorney shall each at all times give to such commission such information, advice or assistance as he may be requested by such commission to give. Each member of such commission shall receive as compensation for his services while actually engaged in the duties of such commission, the sum of five dollars per day. Any member of such commission may be removed by the mayor, with the consent of the majority of the members of the city council, for neglect or refusal to perform the duties of his office or for misconduct in office.

§ 165. NOTICE TO COMMISSION.] Whenever the work for which a special assessment shall be required to be made by such commission, shall have been completed, and approved by the city engineer, and the total cost of such work shall have been ascertained as near as practicable, the city auditor shall notify the chairman of such commission of the completion of such work, and shall certify to him the items of the total cost thereof, to be paid by special assessments, so far as the same have been ascertained, and the chairman of such commission shall thereupon immediately call a meeting of such commission, and such commission shall thereupon as expeditiously as possible proceed to make and return such special assessment as hereinafter provided.

§ 166. SPECIAL ASSESSMENTS, HOW MADE. REVIEW.] It shall be the duty of such commission, whenever required under the provisions of this act to make any special assessment, to personally inspect any and all lots and parcels of land which may be subject to such special assessment and determine from such inspection the particular lots and parcels of land which will, in the opinion of such commission, be especially benefitted by the construction of the work for which such assessment is to be made, and thereupon determine the amount in which each of said lots and parcels of land will be especially benefitted by the construction of the work for which such special assessment is to be made, and thereupon assess against each of such lots and parcels of land, such sum, not exceeding such benefits, as

shall be necessary to pay its just proportion of the total cost of such work, or such part thereof as is to be paid by special assessment, including all expenses incurred in making such assessment, and publishing necessary notices with reference thereto, including the per diem of such commission; and such commission shall thereupon make or cause to be made a complete list of such benefits and assessments, setting forth each lot or tract of land assessed, and the amount such lot is benefitted by the improvement, and the amount assessed against each, and shall attach to said list a certificate signed by a majority of the members of such commission, certifying that the same is a true and correct assessment of the property therein described to the best of their judgment, and stating the several items of expense included in such assessment, and shall thereupon cause the same to be published twice, once in each week for two consecutive weeks, in the official newspaper of the city, together with a notice of the time and place when and where such commission will meet to hear objections which may be made to any such assessment, by any person interested therein, or his agent or attorney, which time shall not be less than fifteen days after the first publication of such notice; and such commission may thereupon alter the same as may in their opinion be just or as may be necessary to correct any errors therein, and they may increase or diminish any such assessment as may be just and as is necessary to make the aggregate of all such assessments equal to the total special assessment to be made for the cost of the work for which they are made; provided, that no assessment shall exceed the benefits to the parcel of land assessed, as determined by the commission. Such commission shall thereupon confirm such list and attach thereto their further certificate certifying that the same is correct as confirmed by them. Such commission shall thereupon file such assessment list in the city auditor's office. The city auditor shall thereupon publish once, in the official newspaper of the city, a notice stating that such assessment list, describing it, has been confirmed by the special assessment commission, and filed in his office, and is open to public inspection, and shall state in said notice the time and place when and where the city council will act upon such assessment list; and in case such notice shall have been given more than fifteen days prior to the next regular meeting of the city council, such assessment list shall be acted upon by such council, at its next regular meeting; and, in case such notice shall not have been published more than fifteen days prior to the first regular meeting of the council thereafter, such assessment list shall be acted upon by the city council at its second regular meeting, after the publication of such notice, and any person aggrieved may appeal from the action of said commission by filing with the city auditor prior to the meeting at which the city council will act on such assessment, a written notice of such appeal, and stating therein the grounds upon which the same are based.

§ 167. HEARING OF APPEALS FROM COMMISSION.] At the regular meeting of the city council at which such assessment list is to be acted

upon, any person aggrieved by the determination of such commission in regard to any such assessment, and who has appealed therefrom, as hereinbefore provided, may appear before the city council and present their reasons why the action of such commission should not be confirmed by the city council, and the city council shall then hear and determine such appeals and objections, if any, and may alter and increase or diminish any of such assessments as they may deem just; provided, that the aggregate amount of all such assessments as returned by the commission shall not be changed; and provided, further, that no assessment as so adjusted shall exceed the benefits to the parcel of land on which it is assessed as determined by the assessment commission, and shall thereupon confirm such assessment list, and the city auditor shall thereupon attach to such list his certificate that the same is correct as confirmed by the city council, and shall thereupon file such assessment list in his office; and such assessment with interest and penalties accruing thereon shall be and remain a paramount lien upon the property upon which such assessment is levied, from the time such assessment list is approved by the city council, and shall remain a lien thereon until fully paid and shall have precedence over all other liens except ordinary taxes to which it shall be subject, and such lien shall not be divested by any judicial sale, and no mistake in the description of the property, or in the name of the owner, shall obviate such lien, provided the property assessed can be identified by the description in such assessment list.

§ 168. AUDITOR SHALL CERTIFY ASSESSMENTS.] The city auditor shall, annually, at the time he certifies to the county auditor the amount of the city taxes to be levied for the current year, also certify to such auditor all sidewalk, and all sidewalk repair assessments, and all assessments for opening or widening streets, remaining in his office uncertified, and shall also certify to such county auditor a list of the lots and tracts of land specially assessed for any other purpose as hereinbefore provided, designating the purpose of such assessment, and the fund to which it belongs, with the proportion of such assessment for such year against each lot, and shall add thereto one per cent of all such assessments so certified; and the county auditor shall thereupon extend the same upon the tax list for the current year, and the amount, with all interest and penalties, shall be collected and paid over to the city treasurer in the same manner as other city taxes, and when so paid over shall be credited by the city treasurer and city auditor to the fund for which it was collected.

§ 169. WARRANTS MAY BE USED TO PAY ASSESSMENTS.] Any matured special assessment warrants or interest coupons may be used in the payment of special assessments levied for the payment of the improvement for which such warrants or interest coupons were issued, and such warrants or coupons so used shall be cancelled and retired by the city treasurer.

§ 170. RIGHT OF PROPERTY OWNERS TO PAY ASSESSMENTS.] The owner of any property against which an assessment shall have been made for the cost of any improvement under this act shall have the

right to pay the same, or any part thereof remaining unpaid, in full, with the unpaid interest thereon, and such payment in full shall constitute a discharge of the lien of such assessment upon his property. Such payment may be made to the county treasurer upon all installments of such assessments which have been certified to the county auditor, and may be made to the city treasurer upon all portions of such assessments which have not been so certified. The person desiring to pay any portion of such assessment of the city treasurer shall obtain from the city auditor a certificate of the amount due upon such assessment which has not been certified to the county auditor, and shall thereupon present such certificate to the city treasurer, and the city treasurer shall thereupon receive and collect such amount, and issue duplicate receipts therefor, one of which he shall deliver to the party paying such assessment, and thereupon deposit the other in the office of the city auditor, and the city auditor shall thereupon note upon his records the payment of such assessment.

§ 171. PENALTIES TO BE ADDED.] The county treasurer shall add to all such special assessments the same interest and penalties that are provided to be added in the case of general taxes, and at the same time, and shall collect such interest and penalties with such special assessments, and shall pay over to the city treasurer all such interest and penalties.

§ 172. DELINQUENT SPECIAL ASSESSMENT SALES.] If the real property against which any assessment is levied is sold to enforce the collection of a special assessment which has become delinquent, the sale shall be made by the same officer, and upon like notice and subject to the same provisions in relation to redemption, and the same record thereof shall be kept by the officer making the sale, as in cases of real property for delinquent taxes; but if any real property is subject to sale at the same time for delinquent taxes, and also for delinquent special assessments it shall be sold separately for each, and a separate certificate of sale shall be issued upon each of said sales, although both sales are made to the same person, and the certificates issued upon the sale for special assessments shall so state; and if no redemption is made from such sale, a deed shall be issued to the purchaser or his assigns, which shall be, as nearly as practicable, in the same form as deeds issued upon sales for general taxes, except that it shall state that such sale was made for special assessments; and in case the sale for special assessments is made to a different purchaser from the sale for general taxes, such purchaser may redeem said premises from the purchaser of the same for delinquent general taxes, and upon such redemption shall be subrogated to all the rights of such purchaser from whom such redemption is made. Such redemption shall be made at the office of the county auditor, and the auditor shall issue to the redemptioner a certificate of such redemption, which shall state that such redemption is made by the holder of a certificate of sale of the premises for delinquent special assessment, and that the person to whom such certificate is issued or his assigns, is subrogated to all the

rights of the original purchaser, and such certificate shall entitle the holder to a tax deed of said premises under such sale for delinquent general taxes, subject to the same conditions, and at the same time as the original certificate of sale.

§ 173. WHEN NO BIDDERS. TAX DEED.] Whenever any parcel of land shall be offered for sale for a special assessment, as provided in the preceding section, and there shall be no bidder therefor, the county auditor shall strike off such parcel of land to the city, making such assessment, and issue a certificate of sale therefor to such city, which certificate shall be assignable as hereinafter provided, and, if no redemption be made from such sale, or such certificate be not assigned within three years from the date of such certificate of sale, the piece or parcel of land so bid off shall become the absolute property of the city at the expiration of said three years, without any further act upon its part, and may be disposed of by the city at public or private sale, as may be provided by the city council and the city may redeem any parcel of land from a purchaser thereof under a sale for general taxes as is hereinbefore provided for such redemption in other cases, and any assignee of the city's certificate of sale may likewise, and in like manner redeem any such parcel of land from any such sale for delinquent general taxes, and such redemption shall have the same force and effect as provided in the preceding section. The city may at any time before its title to said land becomes absolute, by resolution of the city council, assign said certificate of sale to any person except the city auditor and city treasurer, their deputies and clerks, who shall pay the amount for which the same shall have been bid in, and the amount of all subsequent special assessments thereon then due, and all penalties, interest and costs upon the same, and the city auditor shall thereupon execute to the purchaser of such certificate of sale an assignment thereof, substantially as provided in section 1272 of the revised codes. In case such lands are not redeemed from such sale, and any amount paid by the city for the redemption of such premises from sale for general delinquent taxes with interest thereon at the date of such assessment, the county auditor shall, at the expiration of the period of redemption, issue a deed thereof to such city if such certificate has not been assigned by it, and if so assigned, then to the holder of such certificate; provided, that no deed shall be issued on any such certificate except to the city, until notice of expiration of the period of redemption has been given as provided for sales for general taxes.

§ 174. VACATION OF JUDGMENT IN CONDEMNATION PROCEEDINGS.] Whenever any property is to be taken under this act by condemnation proceedings, the court shall upon request by resolution of the city council call a special term of court for the purpose of the trial upon such proceedings and may summon a jury for such trial whenever necessary and such proceedings shall be determined as speedily as practicable and any appeal from the judgment in such action shall be taken within sixty days after the entry of such judgment and such

appeal may be determined at either a special or regular term of the supreme court and shall be given precedence of all other civil causes before the court, except election contests, and in case any judgment which shall be rendered in condemnation proceedings, for damages to property used by any city for street, sewer or other purposes, is entered, it shall not be vacated or set aside, provided the city council shall within three months after its entry, levy special assessments for its payment in whole or in part, and shall at the time of the next annual tax levy, levy a general tax for the payment of such part of the same as is not to be paid by special assessment ; and provided, further, that upon failure of the city council to make such assessments and levy as hereinbefore stated, said judgment may then be vacated.

§ 175. RECORDS. DUTY OF AUDITOR.] It shall be the duty of the city auditor to keep in his office a complete record of all proceedings taken in the matter of making any improvements under this act, including all reports and the confirmation thereof, and all petitions, orders, appointment of commissioners, notices and proofs of publications and orders and resolutions of the city council. Such record or certified transcript thereof or the original papers, proofs of publication, orders or resolutions on file in his office, shall be admitted in evidence without further proof, as evidence of the fact therein contained, in any court or place in this state.

§ 176. ABBREVIATIONS.] In all proceedings taken for the levy and collection of any special assessments, abbreviations, letters and figures may be used to denote lots, lands and blocks, sections, townships, ranges and parts thereof, years, days of the month, and amounts of money.

§ 177. CONNECTIONS WITH SEWER AND OTHER MAINS.] Whenever the city council shall determine to pave any street in which water mains, gas mains, sewers, steam pipes or other pipes, or either of them shall have been previously laid and constructed, they may, by resolution, require the owners of all property abutting on the said street, to cause water and gas, steam and other service pipes, and sewer pipes to be first constructed and laid in such street, at the cost of the property fronting thereon, from the sewer, water, gas, steam or other mains in said street, to a point two feet inside of the curb line on either side of such street at such intervals along the whole length of such street as shall be necessary to supply and serve each lot, or part of a lot, which has been separately built upon, the whole length of such street except at street and alley crossings. Upon the adoption of such resolution, the city auditor shall cause the same to be published once, in the official newspaper of such city, and unless such work is done and completed within thirty days after such publication, the city engineer shall cause the same to be done, and shall certify the cost of each connection so made to the city auditor, designating the lot or parcel of land against which such cost is properly assessable, and the city auditor shall, prior to the making of the special assessment for such paving, certify the same to



the special assessment commission, and the special assessment commission shall, after having made their assessment against each of said lots add thereto by separate items the assessment for the cost of making each such connection, designating the same, and such cost shall thereupon become and be a part of such special assessment. All work done under the provisions of this section, shall be done under the supervision and approved by the city engineer, and all excavations made in any street for such service connections shall be so filled that the same shall not settle after such street has been paved.

§ 178. PROCEEDINGS HERETOFORE COMMENCED, HOW COMPLETED.] Any special assessment or other proceeding hereinbefore provided for, which shall have been commenced by any city officer or committee appointed under the laws heretofore existing, may be completed by such officer or committee in the manner provided by such law, and shall have the same force, effect and validity as though taken or completed under this act, but all future steps and proceedings not so commenced, taken for any purpose hereinbefore provided for, shall be taken under the provisions of this act, and no special assessment, or other proceeding heretofore had with reference to any improvement or assessment hereinbefore provided for, shall be in any manner affected by the provisions of this act.

§ 179. WATER MAIN PROVISIONS. APPLICABLE WHEN.] The provisions of this act with reference to water mains shall apply only to cities which own a system of water works and water mains.

§ 180. SPECIAL ASSESSMENTS. LIEN BETWEEN VENDOR AND VENDEE.] As between vendor and vendee, all special assessments upon real property for local improvements shall become and be a lien upon the real property upon which the same are assessed, from and after the first day of December, next after such assessments shall have been certified and returned to the county auditor, to the amount so certified and returned, and no more.

#### ARTICLE 19—IMPROVEMENT OF ROADS LEADING TO CITIES.

§ 181. ROADS LEADING TO CITIES. HOW IMPROVED.] Whenever ten per cent of the electors, as shown by the last municipal election, of any city, shall petition the city council to call an election for the purpose of raising money or the issuing of bonds to repair or construct any road or bridge within such city, or approaching or leading thereto, whether the same is adjacent thereto or not, or to pay for any bridge heretofore constructed or built on any such road or highway; and if such petition shall state first, the purpose of raising such money and the object for which the same is to be expended; second, the amount thereof, it shall be the duty of such city council to call an election in said city for the purpose of submitting to the electors therein the question of raising the money, and the amount thereof as stated in the petition, and which election may be called at any regular or special meeting of such city council, and such city council shall cause notice of such election to be published twice in the official

paper of the city, once in each week for two consecutive weeks, and such election shall not be held until at least twenty days after the first publication of such notice ; and such notice shall state :

First. The purpose of raising such money.

Second. The object for which the same is to be expended.

Third. The amount thereof.

Fourth. That the amount thereof that shall be raised by the issuing of bonds in payment thereof, or by the customary and usual method of raising money by assessment and levy, as such electors may designate on their ballots at such election ; and if at such election a two-thirds majority of all the electors voting shall vote in favor of raising such sum of money, and a majority of the electors voting at such election shall vote in favor of raising such money by the issuing of bonds therefor, then the city council is authorized to issue and negotiate the sale of such bonds without any other election ; but if a two-thirds majority of the electors voting at such election shall vote in favor of raising such sum of money, and a majority of the electors voting at said election shall vote in favor of raising the same by levy and assessment, then the same shall be raised by levy and assessment as in other cases provided by the law governing cities. And such money, when so raised, shall be used and expended by the city council for the purpose stated in the notice of election, and for no other ; provided, however, that any money coming into the city treasury from the county treasury, on account of road taxes collected from residents of any incorporated city and all road taxes collected on account of real or personal property situated within an incorporated city, or which may come into the city treasury from the bridge fund of such county from any such taxes, levied, assessed and collected from persons and property in such city, may be, at the discretion of the city council expended in the repair or construction of any such road within such city, or approaching or leading thereto, or for the repair or building of any bridge thereon, or any bridge heretofore constructed thereon whether the same is adjacent to such city or not.

#### ARTICLE 20—CORPORATE LIMITS.

§ 182. POWER TO EXTEND CITY LIMITS.] Any city in this state that shall become incorporated under this act may extend its corporate limits in the manner hereinafter provided.

§ 183. How.] When a majority of the property owners adjacent to the corporate limits of any city in this state petition the mayor and city council to have any of their property included within the corporate limits of said city, it shall be the duty of the city council to publish such petition in the official paper of the city for four consecutive weeks, and unless a written protest signed by at least twenty-five property owners of said city is filed with the mayor opposing such proposed annexation, within ten days after the publication of said petition, such proposed annexation shall be included in and become a part of said city.

§ 184. PLAT OF CITY TO BE RECORDED.] The mayor of any city incorporated under this act shall cause to be filed in the office of the register of deeds in the county wherein said city is located a plat showing the corporate limits and boundaries of his city at the time of its incorporation under this act, and any change in said city limits made subsequent to its incorporation under this act.

§ 185. EXTENSION OF LIMITS.] Any city in the state, having not less than fifteen hundred inhabitants, may so extend its boundaries as to increase the territory within the corporate limits not to exceed one-fourth of its present area, by a resolution of the city council, passed by two-thirds of the entire members-elect, particularly describing the land proposed to be incorporated within the city limits, setting forth the boundaries and describing the land platted by blocks and lots provided that at least two-thirds in area of the territory described in such resolution and proposed to be incorporated within such limits shall have previously been platted into blocks and lots.

§ 186. PUBLICATION OF RESOLUTION.] The resolution of the city council shall be published in the official newspaper of the city twice, once in each week for two successive weeks, and unless a written protest signed by a majority of the property owners of said proposed extension is filed with the city clerk or auditor within ten days after the last publication of such resolution, the territory described in the resolution shall be included within and become a part of said city.

§ 187. PLAT FILED.] When the city limits of any city have been extended, as provided by the last two sections, the mayor shall forthwith cause to be filed in the office of the register of deeds in the county wherein said city is located, a plat showing the corporate limits and boundaries of the city.

#### ARTICLE 21—MISCELLANEOUS.

§ 188. MAYOR AND CITY AUDITOR TO SIGN BONDS AND CONTRACTS.] All bonds of the city and all contracts and conveyances, except as herein otherwise provided, shall be signed by the mayor and countersigned by the auditor, who shall affix the seal of the city thereto, and shall keep an accurate record of all bonds issued in a book to be provided for that purpose.

§ 189. PROPERTY OF CITY EXEMPT FROM TAXATION AND SALE ON EXECUTION.] Lands, houses, moneys, debts due the city, and property and assets of every kind and description belonging to the city shall be exempt from taxation and from sale on execution.

§ 190. FINES, PENALTIES AND FORFEITURES.] All fines, penalties and forfeitures collected for offenses against the ordinances of the city and all fines, penalties and forfeitures collected within the city for misdemeanors against the laws of the state, shall be paid to the officer entitled by law to receive the same.

§ 191. PENALTY FOR BEING INTERESTED IN CONTRACT.] Any officer of the city or member of the city council who shall by himself or agent become a party to or in any way interested in any contract

work or letting under the authority of the city, or who shall either directly or indirectly by himself or other parties accept or receive any valuable consideration or promise for his influence or vote, shall be fined in a sum not exceeding one thousand dollars, one-half of which shall go to the informer and the balance be paid into the city treasury by the officer collecting or receiving the same, and the said contract shall be null and void.

§ 192. CONSTRUING ACT.] The provisions of this act, so far as they are the same as existing statutes, must be construed as continuations thereof and not as new enactments.

§ 193. REPEALS.] Chapter 28 of the revised codes, as revised, amended and republished under the provisions of chapter 123 of the laws of 1899, and chapters 35, 53 and 210, laws of 1903, are hereby repealed, except as hereinbefore otherwise provided.

§ 194. EMERGENCY.] Whereas, an emergency exists in that the general laws in force for the incorporation of cities are conflicting in their provisions, and difficult of construction; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved February 28, 1905.

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## CHAPTER 63.

[S. B. No. 93—Little.]

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### CITY WATER CONTRACT.

AN ACT to Amend Section 2264 of the Revised Codes of the State of North Dakota, Relating to Power of City Councils to Make Contracts for Water for Fire Protection, and Provide Appropriations for the Same.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2264 of the revised codes of 1899 be amended to read as follows:

§ 2264. CONTRACTS, HOW MADE.] No contract shall be made by the city council, and no expense shall be incurred by any officers or departments of the corporation, whether the object of the expenditures shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise provided; provided, however, that the city council is authorized to enter into contracts with persons, associations or corporations for the furnishing of water for fire protection to the city, and in case such contract shall extend over a term of years, then and in that case it shall not be necessary that an appropriation shall have been previously made concerning such expense, except sufficient to cover the amounts payable under such contract for the first year thereof; provided, further, that such contract shall not be made for a longer period than twenty years.

Approved February 17, 1905.

# CITIES AND VILLAGES.

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## CHAPTER 64.

[H. B. No. 77—Blank.]

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### CORRECTING VILLAGE PLATS.

AN ACT to Correct Errors in Town, Village or City Plats.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DISTRICT COURT EMPOWERED TO CORRECT ERRORS.] The district court is authorized and empowered on application made by the trustees of any village, or the mayor, or aldermen of any city to correct errors that may have been incurred in any town, village or city plat.

§ 2. OFFICERS OF VILLAGE OR CITY MAY MAKE APPLICATION FOR CORRECTION.] The trustees of any village or the mayor or aldermen of any city may make application to the district court of the county in which such village or city may be located to correct errors in the plat of such village or city. Said trustees, mayor or aldermen shall give notice in writing of such intended application, in a newspaper printed and published in the county wherein such village or city may be situated, at least forty days prior to the sitting of the court to which such application shall be presented, and to all persons directly affected by the proposed corrections, notice shall be given and served in the manner provided by law for the service of summons in district court.

§ 3. PERSONS HAVING ADVERSE INTERESTS MAY INTERVENE.] That any person or persons having an adverse interest or who would be affected by such proposed correction, alteration or change in said plat shall have the right to intervene and appear in person or by attorney, and make defense in such manner as in civil actions.

§ 4. PROCEDURE BY COURT.] If satisfactory proof shall be produced to the court that the notice required by the preceding section has been given, the court shall proceed to hear and determine such petition, and the defense made thereto may correct the error in the plat of the village or city set forth in said application, and order the proceedings thereon to be recorded by the clerk with the records of the court, and a certified copy of the judgment correcting such error recorded in the office of the register of deeds of the proper county.

Approved March 7, 1905.

# CORPORATIONS.

## CHAPTER 65.

[H. B. No. 21—Stevens of Burleigh.]

### ANNUAL REPORTS BY CORPORATIONS.

AN ACT Requiring Corporations to Make Annual Report to the Secretary of State, and Providing for the Cancellation of Articles of Incorporation for Failures to Do So.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CORPORATIONS TO GIVE POST OFFICE ADDRESSES BEFORE RECEIVING CHARTER.] That every corporation hereafter organized under the laws of the state of North Dakota shall before receiving a certificate of organization file with the secretary of state, a statement setting forth the post office address of its business office.

§ 2. REQUIRED TO MAKE ANNUAL REPORT. FEES. PENALTY FOR FAILURE. DUTIES OF SECRETARY OF STATE.] Every incorporated company or joint stock company, other than railroads, banking, insurance, religious corporations and corporations not organized for pecuniary profit and authorized to do business in this state, shall annually between the first day of July and the first day of August report to the secretary of state the location of its principal office in this state, the names of its officers with their residence and post office address, the date of the expiration of their respective terms of office, whether or not the corporation is pursuing active business under its charter, and the kind of business engaged in, if any, which said report shall be made under the seal of the company and be signed and sworn to by the president, secretary, managing agent or other officer of the corporation, and in case said corporation is in the hands of an assignee or receiver, then such report shall be signed and sworn to by such assignee or receiver, which said report, together with a fee of two dollars and a half for filing the same shall be sent to the secretary of state in whose office it shall be filed. The secretary of state shall in no case receive or file said report until said fee is paid and a failure to make said report and pay said fee shall be prima facie evidence that said corporation is out of business. And it is made the duty of the secretary of state to notify such corporation by registered letter of its default, and unless such corporation shall within sixty days thereafter file such report and pay such fee, he shall enter upon the records of

his office the cancellation of such charter or certificate to do business of the corporation failing to make report at the time and in the manner herein provided.

§ 3. SECRETARY OF STATE TO MAIL BLANKS.] The secretary of state is hereby required on or before the first day of June of each year to mail to every corporation embraced in this act proper blanks to be used in making the report hereinbefore provided for; also a copy of this act together with a notice that a failure on the part of said corporation to make such report within the time prescribed by law, shall be prima facie evidence that such corporation is out of business and that upon such failure its articles of incorporation will be cancelled upon the records in the office of the secretary of state.

§ 4. CORPORATIONS MAY BE RESTORED, HOW.] Any corporation which is pursuing an active business under its charter or certificate of authority to do business in the state of North Dakota failing to make said report at the time provided by law, may at any time within six months from such default be reinstated upon the record of the office of the secretary of state upon the payment of a fee in the sum of five dollars for such reinstatement and filing in said office an affidavit stating all the facts required in section 2 of this act, and in addition thereto the fact that it was at the time of such default and still is in active business in the state of North Dakota.

§ 5. SECRETARY OF STATE TO KEEP RECORD OF FORFEITURES AND PUBLISH SAME ANNUALLY.] The secretary of state shall keep a record in his office showing all forfeitures and shall publish annually a list of the names and location of all corporations whose authority to do business have been forfeited by virtue of the provisions of this act.

§ 6. FEES UNDER ACT, HOW DISPOSED OF.] The secretary of state shall keep an accurate account of all expenses incurred by him in carrying out the provisions of this act, and he shall render to the state board of auditors bills of the expenses so incurred, the amount of which shall, when approved by the state board of auditors, be paid out of any moneys coming to the hands of the secretary of state by the provisions of this act, and he shall turn over and pay to the state treasurer any and all moneys coming to his hands for fees collected under the provisions of this act and not paid out as hereinbefore specified.

Approved March 9, 1905.

## CHAPTER 66.

[S. B. No. 132—Little.]

## CHANGING CORPORATE HEADQUARTERS.

AN ACT to Amend Section 2911 of the Revised Codes, Relating to Changing Corporate Headquarters.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2911 of the revised codes be amended so as to read as follows:

§ 2911. CHANGING CORPORATE HEADQUARTERS.] Every private corporation created and existing, or which may hereafter be created under the laws of the state of North Dakota, except banking and building and loan associations, annuity, safety deposit and trust companies, and all corporations subject under the laws to examination by the state examiner, may change the place where its principal business is to be transacted at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object, must be served in the manner specified in section 2905.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the change of the place where the principal business of the corporation is to be transacted.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the place to which the place where the principal business of the corporation is to be transacted has been changed, the amount of stock or the number of the members represented at the meeting, and the vote by which the object was accomplished.

4. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the place where the principal business of the corporation is to be transacted shall be so changed.

5. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize such change as if a meeting was called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

Approved March 2, 1905.



## CHAPTER 67.

[H. B. No. 124—Chapman.]

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## CORPORATION CHARTERS.

AN ACT to Amend Section 2865 of the Revised Codes of 1899.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2865 of the revised codes of 1899 be amended so as to read as follows:

§ 2865. FEES FOR ARTICLES.] Every corporation for profit, except corporations organized for the purpose of irrigation, water users' associations, building and loan associations, county mutual insurance companies, corporations for the manufacture of dairy products, agricultural fair corporations, and corporations whose capital stock does not exceed five thousand dollars formed for the purchase and maintenance of male animals for the improvement of stock, shall at or before the filing of the articles of incorporation pay into the state treasury, the sum of fifty dollars for the first fifty thousand dollars, or fraction thereof, of the capital stock of such corporation, and the further sum of five dollars for every additional ten thousand dollars, or fraction thereof, of its capital stock.

§ 2. EMERGENCY.] An emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 24, 1905.

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## CHAPTER 68.

[H. B. No. 96—Underwood.]

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## FOREIGN CORPORATIONS.

AN ACT Amending Section 3261 of the Revised Codes of the State of North Dakota, of 1899, Relating to Foreign Corporations Doing Business in This State.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 3261 of the revised codes of 1899 is hereby amended and re-enacted so as to read as follows:

§ 3261. CONDITIONS OF FOREIGN CORPORATIONS DOING BUSINESS IN THIS STATE.] No foreign corporation, association or joint stock company, except an insurance company, shall transact any business within this state, or acquire, hold or dispose of property, real or personal within this state, until such corporation shall have filed in the office of the secretary of state a duly authenticated copy of its charter

or articles of incorporation, and shall have complied with the provisions of this chapter; provided, that the provisions of this chapter shall not apply to corporations created for religious or charitable purposes solely nor to the holding and disposing of such real estate as may be acquired only by foreclosure or otherwise, in liquidation of mortgages or other securities by corporations which may not have complied with the provisions of this act.

Approved March 13, 1905.

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## CHAPTER 69.

[H. B. No. 55—Ryan.]

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### GARNISHMENT OF CORPORATIONS.

AN ACT to Amend Section 5382 of the Revised Codes of North Dakota, 1899, Relating to Creditors May Proceed by Garnishment.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 5382 of the revised codes of North Dakota, 1899, be amended so as to read as follows:

§ 5382. CREDITORS MAY PROCEED BY GARNISHMENT.] Any creditor shall be entitled to proceed by garnishment in any court having jurisdiction of the subject of the action against any person, including a public corporation, who shall be indebted to or have any property whatever, real or personal, in his possession or under his control, belonging to such creditor's debtor, in the cases upon the conditions and in the manner prescribed in this chapter. The term plaintiff is used in this chapter to embrace every judgment creditor, and the term defendant, a judgment debtor.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is now no law subjecting public corporations to garnishment, this act shall be in full force and effect from and after its passage and approval.

Approved March 11, 1905.

## COUNTIES.

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### CHAPTER 70.

[H. B. No. 86—Johnson of Ward.]

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#### AID TO COUNTY FAIRS.

AN ACT to Provide for the Levy of a Tax in Certain Counties to Aid in Establishment and Maintenance of County Agricultural Fair Associations.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. COUNTIES WHOSE ASSESSED VALUATION IS \$5,000,000 MAY GRANT AID TO COUNTY FAIRS. APPLICATION FOR, HOW MADE.] If in any county the taxable real and personal property within which has an assessed value of not less than five million dollars, there may be organized a county agricultural association all of whose executive officers and directors, or trustees, are resident freeholders of such county, such association may apply to the board of county commissioners of any such county for a grant to aid in the erection of suitable buildings and improvements to accommodate its patrons and the exhibits to be made at any fair to be held by any such association and to pay expenses and premiums awarded. Application for such grant must be made in writing and must show that such association is duly incorporated, the names and places of residence of all its executive officers, that it is the owner in fee of real property in such county, sufficient in area for the purpose of its fairs and of the value of at least twenty-five hundred dollars. If such board of county commissioners shall be satisfied that the statements in said application are true and that such association intends in good faith to hold a fair within said county annually for the exhibition of agricultural, horticultural, mechanical and manufactured products of the county, live stock and such articles as are usually exhibited at such fairs, they may at the time specified in section 1222 of the revised codes, levy a tax not to exceed, for the first year's grant of such aid, one-half of a mill on all the taxable property within such county, and the same shall be collected as other taxes. If such tax be levied, the board of county commissioners shall not later than July 31 thereafter pay to the secretary of such association the amount of the tax so levied and take the receipt of such association therefor.

§ 2. FAIRS RECEIVING AID MUST MAKE ANNUAL REPORT TO COUNTY COMMISSIONERS.] Any county fair association which has received the aid provided for herein, shall at the regular meeting of

the board of county commissioners held in the month of February following the holding of such county fair, make a full report to such board of all moneys received by it from all sources and of all disbursements thereof, which report shall show the amount of the debts, the amount of moneys in the treasury of such association and the amount of any deficit after the payment of its expenses; such report shall contain an estimate of the amount, if any, which it will be necessary to raise above the estimated ordinary receipts of the association for the purposes of its fair for the ensuing year, and such report and estimate shall be verified by the oath of the president or vice-president, the secretary, treasurer and a majority of the board of directors of such association. Upon the filing and approval of such report such board of commissioners shall, if such report shall show that the funds of such association have not been illegally expended, levy a tax for the then current year equal to the estimate contained in such association's report; provided, that such tax shall not exceed one-fourth of one mill upon the taxable property in said county, and the amount so levied shall be paid over to such association as provided in section I of this act.

§ 3. COUNTY COMMISSIONERS SHALL LEVY ANNUAL TAX.] Upon the filing and approval of such annual reports by such county fair association the board of county commissioners of such county shall levy a tax annually, for the aid of such association; the same shall be levied, paid and collected in the manner and upon the basis provided in the preceding section.

§ 4. BUT ONE ASSOCIATION ENTITLED TO BEBEFITS; EXCEPTION.] The aid provided for by this act shall not be granted to more than one such agricultural association in any one county, and shall not be given to any association organized for profit; provided, however, that should there be two such agricultural fair associations, in any county, that have held fairs for three successive years prior to the going into effect of this act, then and in that case the amount of taxes so collected shall be divided equally between each of such agricultural fair associations.

§ 5. IF ASSOCIATION FAILS TO HOLD FAIR COMMISSIONERS SHALL REFUSE TO MAKE FURTHER LEVY. OFFICERS LIABLE FOR MISAPPROPRIATION OF FUNDS. DUTY OF COMMISSIONERS.] If any such association shall fail to hold a fair within such county in any year for which it has received aid from such county, the board of county commissioners shall refuse to make further levy of taxes for its benefit; and in such case it shall be the duty of such county commissioners to inquire into the disposition of moneys paid by such county to such association after its last annual report and, if there has been any misappropriation thereof, to at once institute proceedings to recover the same, and for any such misappropriation the officers and trustees or directors of such association shall be personally liable to such county.

§ 6. TAX HEREIN PROVIDED FOR SUBMITTED TO VOTE.] Whenever the county commissioners shall have voted and ordered a tax levied

in aid of an agricultural fair then at the next general election the question of continuing the annual levy and collection of said tax shall be submitted to a vote of the people affected thereby, and the county auditor shall certify and give notice of the submission to vote of said question as in such cases provided by law. The ballots to be used at such election shall be in the following form:

For tax in aid of county fair ☐ Yes.  
☐ No.

In voting upon such question the elector in favor of continuing said tax shall place a cross "X" in the square marked "yes" and the electors opposed to continuing such tax shall place a cross in the square marked "no." If a majority of the ballots cast at such election is in favor of continuing said tax the county commissioners may continue to levy the same annually, but if a majority is against levying said tax the county commissioners shall not thereafter levy any tax under this act; provided, however, the provisions of this act may be submitted by said county commissioners to the electors of the county at any general election, but the result of any election held under the provisions hereof shall remain in force until changed at some subsequent election held hereunder.

§ 7. EMERGENCY.] Whereas, an emergency exists in that there is now no adequate provision by law for facilitating the organization of county fair associations and granting aid to them in their efforts to encourage agriculture, horticulture and kindred industries, this act shall be in force from and after its passage and approval.

Approved March 11, 1905.

## CHAPTER 71.

[S. B. No. 53—Simpson.]

### COMMISSIONER DISTRICTS.

AN ACT Providing for the Redistricting of Commissioner Districts in Organized Counties Which Have Enlarged Their Boundaries by the Addition Thereto of Unorganized Territory.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REDISTRICTING PROVIDED FOR.] Whenever the boundaries of any organized county in this state shall have been enlarged by the addition thereto of any unorganized territory, it shall be the duty of the county commissioners of such organized county forthwith to re-district the said county into commissioner districts, and such re-districting may be done at a regular or special meeting.

§ 2. DISTRICTS TO BE MADE COMPACT AND REGULAR.] In re-districting such county it shall be the duty of the county commissioners to make the districts as regular and as compact in form as practicable, and as equal in population as possible, but no new district shall be so formed that any two of the then acting commissioners shall reside in the same district.

§ 3. EMERGENCY.] Whereas, the boundaries of certain organized counties within the state at the last general election, were enlarged by the addition thereto of unorganized territory and it is necessary that such counties be redistricted long prior to July 1st, next, an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 25, 1905.

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## CHAPTER 72.

[S. B. No. 143—Hanna.]

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### CONTRACTS FOR COUNTY BUILDINGS.

AN ACT to Amend Section 1925 of Chapter 26 of the Revised Codes of 1899, Relating to Contracts for County Buildings and Improvements.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1925 of the revised codes of 1899 be amended to read as follows:]

§ 1925. CONTRACTS LET ONLY ON COMPETITIVE BIDS.] The board shall cause an advertisement for bids for the erection of such building to be published for at least thirty days prior to the opening of bids by at least four publications in some newspaper published in the county and such other newspaper as may seem to them advisable. Such advertisement shall state where the plans and specifications may be examined and the time allowed for the completion of such building, also the time when bids will be opened and passed upon by the board, which may be at a regular or duly adjourned session of the board or at a meeting duly called by the auditor, as provided in section 1898 of this chapter. Each bid must contain a certified check in a sum equal to five per cent of the amount of the bid, made payable to the chairman of the board of county commissioners, as a guarantee that the bidder will enter into contract should it be awarded to him and furnish a bond as herein provided; and the lowest responsible bid must in all cases be accepted and the contract for such building shall be so conditioned that not more than seventy per cent of the contract price for the same shall be made until the contract shall be executed and the buildings completed to the satisfaction and acceptance of the board, their architect or authorized superintendent, and payments to the extent of the per cent above stated may be made from time to time

during the process of construction and divided into such installments as the board may agree upon. The board must further require a bond from the contractor in a sum equal to the contract price conditioned, the contractor will execute his contract and complete the building according to the plans and specifications and to the full satisfaction of the board, and account for all moneys paid to him and pay all bills and claims on account of labor or materials furnished in and about the performance of said contract, including all demands of subcontractors, and said bond to stand as security for all such bills, claims and demands. The sureties on such bond shall be as required in paragraph 3, chapter 133, of the revised laws of 1901, except however, the board may demand a surety bond, in which case the expense of procuring such bond shall be paid for by the county requiring such. The provisions of this section shall apply to all contracts for fuel, stationery and all other articles for the use of the county, or labor to be performed therefor, when the amount to be paid for the same during any year exceeds the sum of one hundred dollars; provided, that in all cases advertisements for bids therefor need not be for more than three consecutive weeks in some weekly newspaper published in such county; and provided, also, that all contracts for the furnishing of stationery, blank books and supplies generally for all county officers shall be let at the first regular meeting in April to run for the period of one year. All contracts shall be made and set forth in writing and may be signed on behalf of the board by the chairman with the county seal affixed, after such contract has been voted upon and carried by a majority of the board. The board shall, by virtue of this section, be empowered to engage some competent architect to prepare plans and specifications, details, etc., for such building and for which services they shall pay a compensation in a sum not to exceed five per cent of the cost of the building.

§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. EMERGENCY.] Whereas, an emergency exists in that the present law is inadequate and that the time required for receiving bids is impractical, now, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1905.

## CHAPTER 73.

[S. B. No. 165—Senate Committee on State Affairs.]

## CREATING MCKENZIE COUNTY.

AN ACT to Create and Organize the County of McKenzie, to Fix the County Seat of Said County, to Provide for the Appointment of County Officers in Said County, for Transcribing a Portion of the Records of Stark and Williams Counties, and for Terms of the District Court Therein.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. MCKENZIE COUNTY CREATED.] There shall be formed out of the unorganized counties of McKenzie, Allred and Wallace a new county to be called McKenzie county, to be organized as hereinafter provided.

§ 2. BOUNDARIES OF.] The boundaries of said McKenzie county shall be as follows, to-wit: Commencing at the southeast corner of township 145, north of range 98 west; thence running north between ranges 97 and 98 west to the twelfth standard parallel; thence east and along said twelfth standard parallel to the southeast corner of township 149 north, or range 94 west; thence north between ranges 93 and 94 west to the Missouri river; thence up and along the west bank of the Missouri river to the west boundary line of North Dakota; thence south and along the west boundary line of North Dakota to the eleventh standard parallel; thence east and along the eleventh standard parallel to the southeast corner of township 145, north of range 98 west and the place of beginning.

§ 3. GOVERNOR TO LOCATE TEMPORARY COUNTY SEAT AND APPOINT OFFICERS.] The governor of this state is hereby authorized and directed, within sixty days after this act becomes a law to locate a temporary county seat and to appoint for the said McKenzie county the following officers, to-wit: Three county commissioners; one sheriff; one auditor; one treasurer; one register of deeds; one clerk of the district court; one superintendent of schools; one state's attorney; one county judge; one public administrator; one coroner; one surveyor; three assessors; four justices of the peace and four constables, and the officers so appointed shall immediately qualify and enter upon the discharge of their respective duties. The officers so appointed shall hold their respective offices and shall discharge the duties of such until their successors are elected and qualified.

§ 4. DUTIES OF REGISTERS OF DEEDS OF STARK AND WILLIAMS COUNTIES. FEES FOR TRANSCRIBING. ACCOUNTS, HOW AUDITED.] The register of deeds of Stark county and the register of deeds of Williams county, shall within ninety days after the organization of McKenzie county, transcribe all matters of record from the record



books of the counties of Stark and Williams, respectively, that should be of record in McKenzie county, and deliver the same to the register of deeds of McKenzie county, and when so transcribed and delivered, they shall be the official records of all property and other matters to which they refer, and shall have the same force and effect as the original. The county of McKenzie shall pay to the register of deeds of Stark and Williams counties, respectively, for the work that each shall do under this act, which shall be over and above the maximum compensation and regular fees of each of said offices, twenty cents per folio, for transcribing said records, including the indexing of said records. Said account shall be audited and allowed by the commissioners of McKenzie county as other proper accounts against said county.

§ 5. MADE A PART OF TWENTY-NINTH SENATORIAL AND LEGISLATIVE DISTRICT.] The county of McKenzie hereby created and organized is hereby declared to be within and a part of the twenty-ninth senatorial and legislative district until a new apportionment shall be made by the legislature.

§ 6. MADE A PART OF SIXTH JUDICIAL DISTRICT.] The county of McKenzie is hereby declared to be within and a part of the sixth judicial district of the state of North Dakota, and shall be known as the tenth subdivision thereof, and the terms of court of and for said county shall be fixed by the judge of said sixth judicial district in the manner now provided by law for fixing terms of the district court in counties where the terms of court are not fixed by statute.

§ 7. LAWS GOVERNING COUNTIES MADE APPLICABLE.] All laws of a general nature applicable to the several counties of this state and the officers thereof, are hereby made applicable to the county of McKenzie and the officers who may hereafter be appointed or elected therein.

§ 8. EMERGENCY.] Whereas, an emergency exists, this act shall take effect and be in force from and after its passage and approval.

Approved March 16, 1905.

## CHAPTER 74.

[H. B. No. 284—Cooper of Stutsman.]

### DEPOSITORIES OF COUNTY FUNDS.

AN ACT to Amend Sections 1944 and 1949 of the Revised Codes of North Dakota of 1899, Relating to Depositories of County Funds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That sections 1944 and 1949 of the revised codes of North Dakota of 1899 be amended to read as follows:

§ 1944. DUTY OF BOARD IN DESIGNATING DEPOSITORIES.] Further to secure the safety of the county funds deposited under the provisions of this article, the board of county commissioners shall satisfy

itself of the responsibility of the several banks proposing to act as depositories, and no bank offering more than three or less than two per cent per annum on deposits subject to check shall be designated as a depository under the provisions of this article.

§ 1949. DEPOSITORIES WHERE ONLY ONE OR NO BANK IS LOCATED.] It is the duty of the officers mentioned in this article to comply with the provisions hereof; provided, that, in counties where only one bank is located, the board of county commissioners shall designate such bank or other banks within this state a depository without advertising for bids, if such bank agrees to pay interest at the rate of at least two per cent per annum, and complies with the provisions of the foregoing section. In counties where there is no bank, or where no bank offers to comply with the requirements of this article, the board must designate some bank or banks outside of such county and within this state as such depositories, but such bank or banks must furnish bonds in the same manner as other depositories.

Approved March 13, 1905.

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## CHAPTER 75.

[H. B. No. 255—Rose.]

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### ORGANIZING NEW COUNTIES.

AN ACT to Amend and Re-enact Section 1855, Revised Codes of 1899,  
Relating to the Formation of New Counties.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1855 of the revised codes of 1899 be amended and re-enacted to read as follows:

§ 1855. GOVERNOR TO APPOINT COUNTY COMMISSIONERS.] If it shall appear that the majority of all votes cast at such election in each of the counties, proposed new counties, and the remaining part of the county or counties interested is in favor of the formation of such new county, the county auditor of each of such counties shall certify the name, territorial contents and boundaries of such new county, whereupon the secretary of state shall notify the governor of the result of such election, whose duty it shall be to appoint three persons, residents of the county so formed, possessing the qualifications of electors, who will accept and qualify in such office, county commissioners for such new counties, who shall hold their office until the first general election thereafter and until their successors are elected and qualified; and upon the qualifying of such commissioners such county shall be deemed to have existence as such, and to be governed by the laws of the state relating to counties.

§ 2. REPEAL.] That all acts or parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1905.

## CHAPTER 76.

[S. B. No. 187—LaMoure.]

## PAYMENT BY COUNTIES FOR CARE OF PATIENTS AT INSANE HOSPITAL AND INSTITUTION FOR FEEBLE MINDED.

AN ACT Providing for the Payment by the County of a Portion of the Expense Whenever a Person is Sent to the Hospital for the Insane and to the Institution for Feeble Minded, and to Provide for Reimbursing Said County.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. COUNTIES REQUIRED TO PAY \$50 TO INSANE ASYLUM AND INSTITUTION FOR FEEBLE MINDED IMMEDIATELY ON ADMISSION OF EACH PATIENT TO SAID INSTITUTIONS AFTER JANUARY 1, 1906. DUTY OF COUNTY COMMISSIONERS AND COUNTY AUDITORS.] Whenever any resident of this state shall, after January 1, 1906, be sent or committed to the hospital for the insane at Jamestown and to the institution for feeble minded at Grafton, it shall be the duty of the superintendents of said institutions, respectively, immediately upon the admission of any such person thereto, to make a voucher, duly verified, against the county where such person resided for fifty dollars and file the same with the auditor of the county where such person resided. Thereupon it shall be the duty of the board of county commissioners to allow said amount of fifty dollars and the auditor shall draw his warrant for said sum in favor of the institution treasurer to which said person has been committed; the proceeds of said warrant shall be placed to the credit of the general maintenance fund of the respective institutions.

§ 2. FIFTY DOLLARS TO BE PAID SEMI-ANNUALLY THEREAFTER.] If any such person be held in the institution above named for a period of more than six months the superintendent of such institution shall again make a voucher against the proper county for fifty dollars in the manner and form as above set forth, which shall be paid by the county and placed in the general fund of the institution making the voucher, and such sum shall be paid semi-annually so long as such person shall remain an inmate of any of the institutions mentioned in this act.

§ 3. COUNTY COMMISSIONERS AUTHORIZED AND REQUIRED TO COLLECT FROM ESTATE OF PATIENTS OR PARTIES RESPONSIBLE FOR SUPPORT AMOUNT SUFFICIENT TO REIMBURSE COUNTY FOR OUTLAY.] In any case in which, in the judgment of the county commissioners, the person on account of whom the county has paid the money in this act required, his or her estate, relatives, parents, guardians or other person responsible for the said person's support, should be required to meet all or any part or portion of said person's cost for board and treatment at any of said institutions, such board of county commis-

sioners are hereby authorized and required to collect by suit or otherwise from the estate of such person or from the husband, parent or guardian of a married woman or minor child, as the case may be, such amount as will reimburse the county for any money paid under the provisions of this act; provided, however, payments made under the provisions of this act shall be in lieu of all requirements or demands upon counties for the support and care of persons committed to the institutions herein named, under the provisions of any other law.

§ 4. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 6, 1905.

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## CHAPTER 77.

[H. B. No. 287—Chapman.]

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### REMOVAL OF COUNTY SEATS.

AN ACT to Provide for the Removal of the County Seat in Organized Counties Within This State, Which, Prior to the Taking Effect of This Act, Have Constructed No Court House.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WHEN NO COURT HOUSE HAS BEEN ERECTED IN ANY COUNTY, COUNTY COMMISSIONERS MAY, UPON PETITION, CALL SPECIAL ELECTION TO VOTE ON QUESTION OF REMOVAL OF COUNTY SEAT.] In all organized counties in this state wherein prior to the taking effect of this act no court house has been constructed or is owned by such county, the county commissioners shall upon the petition of the inhabitants of such county, equal in number to one-third of the votes cast therein for governor at the last preceding election, submit to the electors of such county at a special election to be called in sixty days, or at the next general election, as may be required by said petition, the question of moving the county seat from the place where it is located by law or otherwise, to another place. Such petition must be verified by the affidavit of each of the signers thereof, stating that he is a resident of the county and a qualified elector therein and that he personally signed such petition.

§ 2. NOTICE OF, HOW GIVEN.] Notice of such election shall be given in the manner prescribed by section 1882, of the revised codes of North Dakota, for the year A. D. 1899.

§ 3: BALLOTS, HOW MARKED. IF MAJORITY FAVOR A PARTICULAR PLACE, COMMISSIONERS TO PUBLISH NOTICE DESIGNATING SUCH PLACE AS COUNTY SEAT.] In voting on the question each elector must vote for the place in the county which he prefers by placing opposite the name of the place the mark "X." When the returns have been received, compared, and the result ascertained by the board of county

commissioners, if more than one-half of all the legal votes cast by those voting on the proposition are in favor of any particular place, the board must give notice of the result by publishing a notice thereof, in each newspaper in the county, at least once a week for four consecutive weeks, and the place so selected as the county seat shall be designated in such notice as the county seat, from a date specified therein not more than sixty days after the election.

§ 4. COMMISSIONERS TO PUBLISH RESULT OF ELECTION.] The board of county commissioners shall cause a statement of the result of said election to be deposited and transmitted as provided by section 1885, of the revised codes of North Dakota for the year A. D. 1899.

§ 5. REPEAL.] All acts and parts of acts inconsistent with this act are hereby repealed; provided, however, that this act shall not apply in counties having more than six thousand five hundred inhabitants according to last census.

§ 6. EMERGENCY.] Whereas, there is now no law covering the subject matter named in this act, therefore, an emergency exists and this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1905.

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## CHAPTER 78.

[H. B. No. 227—Lillie.]

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### SALARY COUNTY JUDGES.

AN ACT to Amend Section 6615 of the Revised Codes of North Dakota.  
*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 6615 of the revised codes of 1899 be amended to read as follows:

§ 6615. SALARY OF JUDGE.] As compensation for their services under this act, there shall be allowed and paid to the judges of county courts having civil and criminal jurisdiction in addition to the salary provided for such judges of county courts, in counties not having increased jurisdiction, the sum of one hundred dollars for each one thousand inhabitants or fraction thereof; provided, that in no case the compensation for services under the increased jurisdiction provided for in this act, exceed the sum of two thousand five hundred dollars, and said sum shall cover all services under the prohibition law.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is no law to determine the salaries of judges of the county court in counties having increased jurisdiction, therefore this act is to take effect and be in force from and after its passage and approval.

Approved March 11, 1905.

## CHAPTER 79.

[H. B. No. 23—Ellison.]

## SALARIES OF DEPUTY COUNTY OFFICERS.

AN ACT to Fix the Salary of Deputies in County Offices.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. HOW DETERMINED.] In all counties having an assessed valuation of two million dollars or over there shall be allowed or paid to a deputy or clerk in the office of the county auditor, county treasurer and register of deeds not less than fifty dollars per month for work done by such deputy or clerk.

§ 2. DEPUTIES AND CLERKS ALLOWED, WHEN.] In all counties under the classification given in section 1 the county auditor may employ a deputy for the months of July, August, September, October and November, in each year. The county treasurer may employ a deputy during the months of November, December, January and February of each year, and the register of deeds may employ a deputy during the entire year. The salaries of such deputies and clerks shall be paid by the county as other salaries of county officers are paid; provided, that such deputies or clerks are not employed unless sufficient work is on hand to warrant such assistance.

§ 3. COUNTY COMMISSIONERS MAY EMPLOY ADDITIONAL HELP.] The provisions of this act shall in no wise deprive the board of county commissioners in the various counties of the state of any authority to furnish any additional help, beyond the limitations of this act, that may be required to properly do the business work of such officers and at salaries named by such board, but each county officer for whom a deputy or clerk is provided by the provisions of this act or by a board of county commissioners, shall be entitled to choose such deputy or clerk.

§ 4. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 5. EMERGENCY.] Whereas, an emergency exists inasmuch as there is no law fixing the deputies' salaries in county offices, therefore this act shall take effect and be in force from any after its passage and approval.

Approved March 7, 1905.

## CHAPTER 80.

[S. B. No. 97—Johnson of McLean.]

## TAX FOR LIVE STOCK PROTECTIVE ASSOCIATION.

AN ACT Authorizing County Commissioners in Counties Having a Regular Organized Live Stock Protective Association to Create a Special Fund and to Appropriate and Set Aside Moneys to be Expended and Used for the Protection of Life Stock From Theft.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. COUNTY COMMISSIONERS AUTHORIZED TO LEVY TAX FOR COUNTY LIVE STOCK PROTECTIVE FUND, UPON PETITION.] That in any county in this state having a regular organized live stock protective association composed of residents of the county, the county commissioners of such county may, upon being petitioned by at least five per cent of the personal property tax payers of said county, appropriate and set aside an amount annually not exceeding two thousand dollars out of the general fund of the county into a special fund, to be known as the county live stock protective fund, to be expended and used for the protection of live stock from theft.

§ 2. PETITION, HOW AND WHEN ACTED UPON. WHAT TO CONTAIN.] Such petition may be presented and acted upon at any regular meeting of the board of county commissioners, and must be accompanied with a roll of the membership of the county live stock protective association, together with the name and post office address of its secretary and treasurer and the name of the association, which association shall be the only one that the county commissioners shall recognize in connection with the disbursements of the appropriation herein provided for.

§ 3. ASSOCIATION TO FILE ANNUAL REPORT.] Annually at the regular January meeting of the board of county commissioners, the county live stock protective association shall file with the board of county commissioners of their county an itemized report, showing the expenditures of the association for the preceding year, which report shall be verified by its secretary and treasurer, and which report shall be accompanied by the original voucher in each item of expenditure. The county commissioners shall then proceed to classify the expenditures of the association, and ascertain the amount which the association has actually expended in the apprehension of live stock thieves, and shall then reimburse the association to the extent of such expenditure, which amount, however, must not exceed the amount then in the special fund herein created for that purpose.

§ 4. APPROPRIATION TO BE MADE A PART OF GENERAL TAX LEVY.] At the time of making the annual tax levy and in estimating the

amount of the expenses for general county purposes, the amount of the appropriation herein provided for may be made a part of said estimate and levy.

Approved March 2, 1905.

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## COURTS.

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### CHAPTER 81.

[S. B. No. 136—Kraabel.]

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#### APPEALS FROM JUSTICE COURTS.

AN ACT to Amend Section 6771 of the Revised Codes of This State, Relating to Appeals in Civil Actions in Justices' Courts.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 6771 of the revised codes of the state of North Dakota be, and the same is hereby amended to read as follows:

§ 6771. APPEALS TO DISTRICT COURT.] Any party dissatisfied with a judgment rendered in a civil action in a justice's court, whether the same was rendered on default or after a trial, may appeal therefrom to the district court of the county or subdivision at any time within thirty days after the rendition of the judgment. The appeal is taken by serving the notice of appeal on the adverse party or his attorney and by filing the notice of appeal together with the undertaking required by law with the clerk of the district court of the county in which the appeal was taken; provided, however, that if at the time the service of the notice of appeal and undertaking as provided for in this chapter, the party is not within the state, or cannot conveniently be found and such fact appears by the return of the sheriff filed with the justice, and has not appeared by attorney, the service of such notice of appeal and undertaking may be made upon the justice rendering the judgment.

Approved March 2, 1905.



## CHAPTER 82.

[H. B. No. 120—Martin.]

## COURT IN BILLINGS COUNTY.

AN ACT to Fix Dates for Holding Terms of District Court in the County of Billings.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WHEN HELD.] Two terms of the district court shall be held in the county of Billings at the county seat thereof, commencing on the third Tuesday in April, and the first Tuesday in October of each year.

§ 2. REPEAL.] All acts and parts of acts inconsistent with this act are hereby repealed.

§ 3. EMERGENCY.] An emergency exists in that there is no law fixing terms of court in Billings county; therefore this act shall be in force from and after its passage and approval.

Approved February 28, 1905.

## CHAPTER 83.

[H. B. No. 7—Streeter.]

## COURT IN EMMONS AND McLEAN COUNTIES.

AN ACT to Fix the Dates for Holding Terms of the District Court in the Counties of Emmons and McLean.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WHEN HELD IN EMMONS COUNTY.] The third subdivision of the Sixth judicial district consists of the county of Emmons, and two terms of the district court thereof shall be held at the county seat, commencing on the first Tuesday of May and the first Tuesday of October in each year.

§ 2. WHEN HELD IN McLEAN COUNTY.] The sixth subdivision of the Sixth judicial district consists of the county of McLean, and two terms of the district court thereof shall be held at the county seat commencing on the second Monday of June and the second Monday of December in each year.

§ 3. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

§ 4. EMERGENCY.] Whereas, an emergency exists in that there

is but one regular term of court to be held in Emmons or McLean county, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 14, 1905.

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#### CHAPTER 84.

[H. B. No. 163—Meidinger.]

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##### COURT IN FOURTH DISTRICT.

AN ACT to Amend Chapter 63 of the Session Laws of 1903, Relating to Fixing the Time of Holding the Terms of the District Court in the Counties of the Fourth Judicial District.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That chapter 63 of the session laws of 1903 be amended to read as follows:

§ 1. WHEN HELD.] Terms of the district court in the various counties comprising the Fourth judicial district shall be held as follows:

In Richland county, commencing on the first Tuesday in June, and the first Tuesday in December.

In Ransom county, commencing on the first Tuesday in May and the second Tuesday in January.

In Sargent county, commencing on the third Tuesday in May and the third Tuesday in November.

In Dickey county, commencing on the fourth Tuesday in June, and the first Wednesday after the first Tuesday in November.

In McIntosh county, commencing on the second Tuesday in March, and the third Tuesday in October.

§ 2. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 9, 1905.

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#### CHAPTER 85.

[S. B. No. 18—Regan.]

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##### COURT IN FIFTH DISTRICT.

AN ACT to Amend Section 407 of the Revised Codes of 1899, With Reference to the Boundaries and Terms of Court in the Fifth Judicial District.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 407 of the revised codes of 1899 be and it is hereby amended and re-enacted so as to read as follows:

§ 407. BOUNDARIES AND TERMS OF COURT.] The fifth judicial district shall consist of the counties of Stutsman, Barnes, LaMoure, Griggs, Foster, Eddy, Wells and Logan, and two terms of the district court shall be held each year at the county seat of each of such counties as follows:

In Stutsman county, commencing on the first Monday in January and the first Monday in July.

In Barnes county, commencing on the second Monday in June and the second Monday in December.

In LaMoure county, commencing on the first Monday in February and the fourth Monday in September.

In Griggs county, commencing on the second Monday in May and the second Monday in November.

In Foster County, commencing on the first Monday in May and the second Monday in October.

In Eddy county, commencing on the fourth Monday in May and the fourth Monday in November.

In Wells county, commencing on the third Monday in January and the third Monday in July.

In Logan county, commencing on the fourth Monday in April and the fourth Monday in October.

§ 2. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 6, 1905.

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## CHAPTER 86.

[H. B. No. 30—Stevens of Burleigh.]

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### EXEMPTIONS FROM JURY DUTY.

AN ACT to Amend Section 441 of the Revised Codes of North Dakota, Relating to Jurors.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 441 of the revised codes of the state of North Dakota, be amended to read as follows:

§ 441. QUALIFICATIONS OF JURORS.] All male citizens residing in any of the counties of this state having the qualification of electors, and of sound mind and discretion, and not judges of the supreme, district or county court, sheriff, coroner, jailer, attorney at law engaged in practice, and who are not subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and not subject to disability on account of the commission of any offense which by special provision of law disqualifies him, are competent to serve on all grand and petit juries within their respective counties or

judicial subdivisions; provided that persons over sixty years of age, ministers of the gospel, county commissioners, registers of deeds, county auditors, county treasurers, county superintendents of schools, clerk of the supreme court, clerks of the district court, clerks of the county court, county judges, practicing physicians, practicing dentists, registered pharmacists, postmasters, carriers of United States mail, and members in good standing of any regularly organized fire company, shall not be compelled to serve as jurors in any of the courts of this state.

Approved February 15, 1905.

## CHAPTER 87.

[S. B. No. 19—Regan.]

### FEEs IN COUNTY COURTS.

AN ACT to Amend Section 2071 of the Revised Codes of 1899, Relating to Reimbursing Counties for Salaries Paid to Judges of County Courts.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 2071 of the revised codes of 1899, relating to reimbursing counties for salaries paid judges of county courts, is hereby amended so as to read as follows:

§ 2071. COUNTY TO BE REIMBURSED, HOW.] For the purpose of reimbursing the county for the salaries provided in the foregoing sections to be paid the judges of the county courts, each petitioner for letters testamentary, of administration or guardianship, before filing the same in the county court, shall pay or cause to be paid into the county treasury, for the use and benefit of the county in whose county court proceedings are to be instituted to settle the estate of a deceased person, or for the appointment of a guardian, the sum of five dollars, and when the value of said estate has been ascertained by the court, through the inventory and appraisement or upon hearing of same, as legally required, within thirty days after the issuance of letters testamentary, of administration or guardianship, the judge of said court shall require an additional fee to be paid from said estate into said county treasury, of five dollars for each and every one thousand dollars or fraction thereof of value therein found, as shown by said inventory and appraisement; and in all cases in addition thereto, all sums necessarily expended in publishing or serving notices required by law. In all civil and criminal actions the same fees and costs shall be paid as in like actions in the district court, the same to be paid to the clerk of the county court, a record to be kept thereof and the same turned over by him to the county treasurer.

Approved February 27, 1905.

## CHAPTER 88.

[H. B. No. 61—Streeter.]

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## FEES OF WITNESSES.

AN ACT Amending Section 2097 of the Political Code, Relating to the Fees of Witnesses.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2097 of the political code, relating to the fees of witnesses, be amended so as to read as follows:

§ 2097. PER DIEM AND MILEAGE.] Witnesses are entitled to receive for each day's attendance before the district court, or before any other court, board, or tribunal, in all civil and criminal cases, the sum of two dollars, and for each mile actually traveled, one way, ten cents; provided, that in all criminal cases witnesses fees on the part of the state shall be paid out of the county treasury of the proper county.

§ 2. EMERGENCY.] Whereas, the present compensation of witnesses in the various courts of the state is inadequate, an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved February 23, 1905.

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## CHAPTER 89.

[H. B. No. 133—Rose.]

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## MUNICIPAL COURTS ABOLISHED.

AN ACT to Repeal Sections 2209 to 2247, Both Inclusive, of the Revised Codes of 1899, Relating to Municipal Courts.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REPEAL.] That sections 2209 to 2247 of the revised codes of 1899, both inclusive, relating to municipal courts, be, and the same are hereby repealed.

§ 2. EMERGENCY.] Whereas, an emergency exists in this that said sections are unconstitutional, and have been so declared by the supreme court of this state, and therefor should be no part of the statutes of this state, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1905.

## CHAPTER 90.

[H. B. No. 4—Casey.]

## PROCEEDINGS IN COUNTY COURT, WHEN JUDGE DISQUALIFIED.

AN ACT to Amend Sections 6188, 6189, 6190 and 6191 of the Revised Codes of North Dakota, Being Article 3 of Chapter 1, of the Probate Code, Relating to the Disqualification of County Judges and Transfers of the Administration of Estates From One County to Some Other, or the Calling in of the County Judge of an Adjoining County to Hear the Same, by the Judge Disqualified.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That sections 6188, 6189, 6190, and 6191, of the revised codes of 1899, be amended to read as follows:

§ 6188. WHEN COUNTY JUDGE NOT TO ACT.] No will shall be admitted to probate, or letters testamentary or of administration granted, before any county judge who is interested, is next of kin to the decedent or is a legatee or devisee under the will, or when he is named as executor or trustee in the will, or is a witness thereto, or in any other manner interested or disqualified from acting.

§ 6189. COUNTY JUDGE BEING DISQUALIFIED PROCEEDINGS TO BE TRANSFERRED, AND WHERE.] When a petition is filed in the county court, praying for admission to probate of a will, or for granting of letters testamentary or of administration, or when proceedings are pending in the county court for the settlement of an estate, and the county judge is disqualified to act, an order must be made transferring the proceedings to the county court of an adjoining county; and the county judge ordering the transfer must transmit to the county court to which the proceedings are ordered to be transferred a certified copy of the order and all papers on file in his office in the proceedings; and thereafter the county court to which the proceedings are transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof as if it had original jurisdiction of the estate; provided, there shall not be any necessity for transferring such proceedings, or any of them when a county judge of some other county qualified to act attends at the request of the county judge of the county where such proceedings are pending, to hold court, and conduct and try such proceedings; and such county judge, when so called upon to preside, shall exercise the same jurisdiction over any proceedings in the estate as is exercised in other cases under like circumstances.

§ 6190. TRANSFER NOT TO CHANGE RIGHT TO ADMINISTER—RETRANSFER.] The transfer of a proceeding from one county court to another, as provided for in the preceding section, does not affect the

right of any person for letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration of the estate, in the order hereinbefore provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed, and qualified as judge of the county court wherein such proceeding was originally commenced, who is not disqualified to act in the settlement of the estate, and the cause for which the proceeding was transferred no longer exists, any person interested in the estate may have the proceeding returned to the county court from which it was originally transferred, by filing a petition setting forth these facts, and moving the court therefor.

§ 6191. WHEN PROCEEDING TO BE RETURNED TO ORIGINAL COURT.] On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of the parties interested would be promoted by such change, the county judge must make an order transferring the proceeding back to the court where it was originally commenced; and the county judge of the court ordering the transfer must transmit to the county court in which the proceeding was originally commenced a certified copy of the order, and all original papers on file in his office in the proceeding; and the county court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is no law for the calling in of an adjoining county judge to hear a case in which the presiding judge is disqualified, this act shall take effect and be in force from and after its passage and approval.

Approved February 23, 1905.

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## CHAPTER 91.

[S. B. No. 7—Kraabel.]

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### PROCEDURE IN JUSTICE COURT.

AN ACT to Amend Chapter 4 of the Laws of 1903, Relating to Procedure in Civil Actions in Justice Court.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That chapter 4 of the session laws of 1903, being section 6633 of the revised codes of North Dakota, 1899, be amended and re-enacted to read as follows:

§ 6633. COUNTY IN WHICH ACTION MUST BE COMMENCED.] The county in which a civil action in justice's court must be commenced and tried is as follows:

1. An action of forcible detainer or for trespass or any other injury to real property, or an action to recover specific personal property, or to foreclose or enforce a lien upon chattels or trespassing animals, must be brought in the county in which the subject of the action or property upon which the lien was claimed is situated.

2. An action to recover a penalty or forfeiture prescribed by statute, or to recover of a public officer, or his deputy, agent or surety for a violation of official duty, or any act done by color of his office, must be brought in the county in which the cause of action arose.

3. Every other action must be tried in the county in which the original defendant, or one of the several defendants, resides, or is served with summons, in a county contiguous to that of his residence, or in which a warrant of attachment is levied on property of the defendant.

§ 2. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

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## CHAPTER 92.

[S. B. No. 80—Stade.]

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### SERVICE OF PAPERS IN COUNTY COURT.

AN ACT to Amend Sections 6207, 6208 and 6210 of the Revised Codes, Relating to the Service of Citations and Other Papers in the County Court.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 6207 of the revised codes be amended so as to read as follows:

§ 6207. SERVICE BY PUBLICATION, WHEN.] Service by publication may be substituted for personal service by a direction of the court authorizing such service, in either of the following cases:

1. When the party who is required to make or procure service or his attorney files an affidavit stating that he cannot obtain personal service on a person to be served, because he is unable to ascertain where such person may be found, he having no known place of residence within the state, if the court is further satisfied upon an examination as prescribed in section 6195 that the statements of the affidavit are true.

2. When it is established in like manner or appears upon the records in the case, that the person to be served is a nonresident of this state.

§ 2. That section 6208 of the revised codes be amended so as to read as follows:

§ 6208. MODE OF SERVICE INDORSED ON CITATION OR NOTICE.] Every direction for service by publication or other direction given by



the court respecting the mode of service must be indorsed on the citation or notice.

§ 3. That section 6210 of the revised codes be amended so as to read as follows:

§ 6210. SERVICE BY PUBLICATION. HOW MADE AND PROVED.] Service by publication is effected by printing and publishing the citation or notice to be served three times, once each week for three successive weeks in a newspaper, published in the county to be selected by the petitioner or his attorney, and is deemed complete on the day of the last publication and may be proved by affidavit as provided by section 5693 of the code of civil procedure.

Approved February 24, 1905.

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## CHAPTER 93.

[S. B. No. 216—Simpson.]

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### SERVICE OF PROCESS ON SHERIFF.

AN ACT Providing for the Service of Process Upon the Sheriff When Such Officer is a Party to Any Action or Proceeding by Virtue of His Office.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CORONER OR CONSTABLE EMPOWERED TO SERVE.] In all actions or proceedings where the sheriff of any county in this state is, or hereafter may be, a party to any action or proceeding by virtue of his office, it shall be lawful for the coroner or any constable of the county of which such sheriff is an officer to serve all necessary process on such sheriff, and then make return thereon.

§ 2. REPEAL.] All acts and parts of acts inconsistent with this act are hereby repealed.

Approved March 9, 1905.

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## CHAPTER 94.

[S. B. No. 39—Sharpe.]

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### SUMMONS IN COUNTY COURT.

AN ACT to Amend Section 6608 of the Revised Codes, Relating to the Issue of Summons in County Courts With Increased Jurisdiction.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 6608 of the revised codes be amended so as to read as follows:

§ 6608. SUMMONS.] The summons may be issued by the judge or clerk of the county court or by the plaintiff or his attorney. If the summons is not issued by the judge or clerk of the county court it must contain the title of the action, specifying the court in which the action is brought, the names of the parties to the action and the name of the county, and shall be subscribed by the plaintiff or his attorney, who must add to his signature his post office address. The summons, if not issued by the judge or clerk of the county court, exclusive of the title of the action and the subscription, must be substantially in the following form, the blanks being properly filled:

"The state of North Dakota to the above named defendant:

"You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer upon the subscriber within ten days after the service of this summons upon you, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

"Dated ....."

In all cases where the summons is not issued by the judge or clerk of the county court, the complaint must be served at the same time as the summons.

§ 2. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 24, 1905.

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## DAIRY COMMISSIONER.

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### CHAPTER 95.

[H. B. No. 158—Weigel.]

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#### DAIRY COMMISSIONER.

AN ACT to Regulate the Manufacture and Sale of Dairy Products and Imitations and Substitutes Therefor, Prescribing Penalties for Violations, to Create the Office of Assistant Dairy Commissioner, Prescribing His Duties and Fixing His Salary.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. OFFICE OF ASSISTANT DAIRY COMMISSIONER CREATED. DUTIES. SALARY.] In order to secure the better enforcement of the provisions of this act, and to promote the improvement of the products of the dairy, the commissioner of agriculture, by and with the advice and consent of the governor, shall appoint one deputy in his department to be known officially as assistant dairy commissioner, who shall

have a practical knowledge of, and experience in, the manufacture of dairy products, and hold his office during the term of the commissioner of agriculture, subject to removal from office for inefficiency, neglect or violation of duty. The said assistant commissioner shall receive a salary of twelve hundred dollars per annum and his actual and necessary expenses in the discharge of his duties under this act. It shall be the duty of the assistant dairy commissioner to enforce, under the direction of the commissioner of agriculture, all laws that now exist or that hereafter may be enacted in this state regarding the production, manufacture and sale of dairy products, their imitation and substitutes; to inspect every creamery, cheese factory or renovating or "process butter factory" at least once each year; to assist the butter makers, cheese makers and managers of such factories, and patrons of the same, in order to improve the quality of the dairy products sold to or manufactured in said factories; and to cooperate with the dairymen in testing their dairy herds both individually and collectively. The sum of two thousand dollars is hereby appropriated to which shall be added the amount collected from the sale of licenses hereinafter provided for in this act, to be paid for such purposes out of any moneys in the treasury not otherwise appropriated. All charges, accounts and expenses authorized by this act shall be paid by the state treasurer of the state upon the warrant of the state auditor. The entire expense of said assistant commissioner shall not exceed the sum appropriated for the purpose of this act.

§ 2. COMMISSIONER OF AGRICULTURE TO MAKE DETAILED REPORT.] The annual reports of the commissioner of agriculture shall contain a detailed report of the work and proceedings, together with an account of expenses and disbursements of said assistant commissioner, since the preceding report, with such facts and statistics in regard to the production, manufacture and sale of dairy products with such suggestions as he may regard of public importance connected therewith.

§ 3. POWERS OF ASSISTANT DAIRY COMMISSIONER.] The said assistant commissioner and such persons as shall be duly authorized for the purpose shall have access, ingress and egress to all places of business, factories, farms, buildings, carriages, cars, vessels and cans used in the manufacture and sale of any dairy product or in any imitation thereof. They shall also have power and authority to open any package, can or vessel containing such articles which may be manufactured, sold or exposed for sale in violation of the provisions of this act, and may inspect the contents therein and may take samples therefrom for analysis. All clerks, bookkeepers, express agents, railroad officials, employes or common carriers shall render to them every assistance in their power when so requested, in tracing, finding or discovering the presence of any prohibited article named in this act. The assistant commissioner, and such persons as shall be duly authorized for the purpose shall have free access to any barn or stable where any cow is kept or milked, or to any factory, building or dairy or premises where any dairy products are manufactured, handled or stored,

when the milk from such cow or product is to be sold or shipped to any creamery or cheese factory in the state and may enforce such measures as are necessary to secure perfect cleanliness in and around the same and of any utensil used therein.

§ 4. CREAMERIES, CHEESE FACTORIES, ETC., REQUIRED TO TAKE OUT LICENSE ANNUALLY. FEES FOR.] Every person, firm or corporation owning and operating a creamery, cheese factory or renovating or "process butter factory" in the state shall on the first day of July of each year, or within thirty days thereafter, be licensed by the assistant dairy commissioner and shall pay for said license the sum of ten dollars for each and every factory owned and operated by said person, firm or corporation. No license shall be sold or transferred. Each license shall record the name of the owner, firm or corporation, place of business, the location of the factory and number of same. All fees for licenses collected under this act shall be paid, when collected, into the state treasury and shall be added to the appropriation made for the purpose of carrying out the provisions of this act.

§ 5. MUST HAVE STENCIL OR BRAND. WHAT TO CONTAIN. WHERE PLACED.] Every creamery, cheese factory, combined creamery and cheese factory or renovating or "process butter factory," shall procure a stencil or brand bearing a suitable device and words which shall clearly designate the quality of the product manufactured, and the number and location of the factory, and it may contain a special or private brand or name of said factory; every brand shall be used upon the outside of the cheese and also upon the package containing the same, but in the case of butter on the package only; and, shall on the first day of July or within thirty days thereafter of each year report to the assistant dairy commissioner the name, location and number of each factory using the same brand, and the name or names of the persons at each factory authorized to use the same, together with a copy of each stencil or brand and the assistant commissioner shall keep a book in which shall be registered the same; provided, that any creamery, cheese factory or renovating or "process butter factory" shipping its products to a particular or a special market, may not be required to use said brand as provided for in this act.

§ 6. BLANKS TO BE FURNISHED FACTORIES.] The said assistant commissioner shall provide blanks which shall be furnished to all proprietors or managers of creameries, cheese factories and renovating or "process butter factories," which shall be licensed under the provisions of this act, for the purpose of making a report of the amount of milk and dairy goods handled and all owners or managers of such creameries, cheese factories and renovating or "process butter factories" shall send to the assistant dairy commissioner not later than the last day of each month, a full and accurate report of the amount of business done during the preceding month as designated under the different headings of such printed blank.

§ 7. ADULTERATED MILK OR SKIMMED MILK NOT TO BE FURNISHED CREAMERIES OR CHEESE FACTORIES. OTHER CREAM AND MILK

PROHIBITED.] No person by himself or his agents or servants shall sell, supply or bring to be manufactured to any creamery or cheese factory any adulterated milk or cream or skimmed milk, or milk from which has been held back what is commonly known as "strippings" (except pure skim milk to skim cheese factories) or milk taken from an animal having disease, sickness, ulcers, abscess or running sores, or which has been taken from an animal within fifteen days before or five days after parturition; or cream which has been taken from milk, the sale of which has been prohibited; or cream which shall contain less than the amount of butter fat as prescribed in this act.

§ 8. WHAT CONSTITUTES ADULTERATION.] For the purpose of this act the addition of water or any so called preservative or anything to whole milk, or skimmed milk, or partially skimmed milk or cream is hereby declared an adulteration; and milk, or cream, which is obtained from animals fed upon any substance of an unhealthy nature, is hereby declared impure and unwholesome; and milk which has been proved by any reliable method of test or analysis to contain less than twelve per cent of milk solids to the hundred pounds of milk or less than three pounds of butter fat to the hundred pounds of milk shall be regarded as skimmed or partially skimmed milk, and every article not containing fifteen per cent or more of butter fat shall not be regarded as cream.

§ 9. STATE STANDARD MILK AND CREAM MEASURES. USE OF OTHER SIZES DECLARED A MISDEMEANOR.] The state standard milk measures or pipettes shall have for milk a capacity of seventeen and six-tenths cubic centimeters, and for cream shall have a capacity of eighteen cubic centimeters, and the state standard test tubes or bottles for milk shall have a capacity for two cubic centimeters of mercury at a temperature of sixty degrees Fahrenheit between "zero" and ten on the graduated scale marked on the necks thereof; and the standard test tubes or bottles for cream shall have a capacity of six cubic centimeters of mercury at a temperature of sixty degrees Fahrenheit between "zero" and thirty on the graduated scale marked on the necks thereof, and it is hereby made a misdemeanor to use any other sizes of milk measure, pipette, test tube or bottle to determine the per cent of butter fat, where milk or cream is purchased by or furnished to, creameries or cheese factories, and where the value of said milk or cream is determined by the per cent of butter fat contained in the same. Any manufacturer, merchant, dealer or agent in this state who shall offer for sale or sell, a cream or milk pipette or measure, test tube or bottle which is not correctly marked or graduated as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 17 of this act.

§ 10. UNLAWFUL TO UNDER-READ TESTS.] It shall be unlawful for the owner, manager, agent or any employe of a creamery or cheese factory to manipulate or under-read the Babcock test, or any other contrivance used for determining the quality or value of milk.

§ 11. ADULTERATED BUTTER, ETC., PROHIBITED FROM SALE. OLEO-

MARGARINE EXCEPTED.] No person by himself or his agents or servants shall render or manufacture, sell, offer for sale, expose for sale, take orders for the future delivery of, have in his possession, keep in storage, distribute, deliver, transfer or convey with intent to sell within this state any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same; provided, that nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character free from coloration or ingredient that causes it to look like butter.

§ 12. PROVISIONS REGARDING OLEOMARGARINE, BUTTERINE, ETC.] No person by himself or his agents or servants shall sell or expose for sale oleomargarine, butterine or any substance made in imitation or semblance of pure butter in tubs, firkins or other original packages not distinctly, legibly and durably branded, stamped or marked in a conspicuous place with the word "oleomargarine" or "butterine" or "imitation butter" as the case may be, in letters not less than one inch in length and one-half inch in width, or in retail packages not plainly and conspicuously labeled with said words "oleomargarine" or "butterine" or "imitation butter" as the case may be.

§ 13. PROVISIONS REGULATING RENOVATED BUTTER.] No person by himself, or his agents or servants, shall manufacture, sell, offer or expose for sale butter that is produced by taking original packing stock or other butter, or both, and melting the same, so that the butter fat can be drawn off, then mixing the said butter fat with skimmed milk, or milk or cream, or other milk product, and rechurning the said mixture; or that is produced by any similar process and is commonly known as boiled or process butter, unless the tub, firkin or other original package in which the same may be put up, be distinctly, legibly and durably branded, stamped or marked in a conspicuous place with the words "renovated butter" in printed letters not less than one inch in length and one-half inch in width; or be in prints, boxes or rolls not plainly and conspicuously labeled on the wrapper thereof with said words "renovated butter" in printed letters not less than one-half inch in length and one-quarter inch in width.

§ 14. PROVISIONS REGARDING SKIMMED MILK CHEESE.] No person by himself or his agents or servants shall sell or offer for sale any cheese manufactured from skimmed milk, or from milk that is partially skimmed, without the same being plainly branded, stamped or marked on the side or top of both cheese and package, in a durable manner in the English language the words "skimmed milk cheese," the letters of the words to be not less than one inch in height and one-half inch in width.

§ 15. PROVISIONS REGARDING FILLED CHEESE.] No person, by himself or his agents or servants, shall sell or offer for sale or make or manufacture out of any oleaginous substance or substances or any compound of the same or any other compound other than that produced from unadulterated milk, any article designed to take the place of cheese, produced from pure milk or any article termed "filled-cheese," shall stamp each package of the same on the top and side with lampblack and oil the words "filled-cheese" or words that shall designate the exact character and quality of the product in printed letters at least one inch long and one-half inch wide.

§ 16. CITY COUNCILS MAY PROVIDE FOR INSPECTION OF MILK AND DAIRY HERDS.] The council of any city or incorporated town may, by ordinance, provide for the inspection of milk and of dairies and of dairy herds kept for the production of milk within its limits and issue licenses for the sale of milk within its limits and regulate the same and may authorize and empower the board of health to enforce all laws and ordinances relating to the production and sale of milk and the inspection of dairies and dairy herds producing milk for sale within such city.

§ 17. VIOLATION CONSTITUTES MISDEMEANOR. PENALTY.] Whoever violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for each offense by a fine of not less than five dollars nor more than fifteen dollars, or by imprisonment of not less than ten days nor more than thirty days, or both.

§ 18. REPEAL.] All acts and parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed.

§ 19. EMERGENCY.] This act shall take effect and be in force from and after its passage and approval.

Approved March 16, 1905.

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## DIPPING TANKS.

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### CHAPTER 96.

[H. B. No. 17—Duncan.]

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#### PUBLIC DIPPING TANKS.

**AN ACT** to Provide for the Establishment, Construction and Maintenance of Public Dipping Stations for Live Stock in the Various Counties of the State.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. COUNTY COMMISSIONERS MAY ESTABLISH PUBLIC DIPPING TANKS ON PETITION OF TEN PER CENT OF FREEHOLDERS OF COUNTY.

COST TO BE PAID FROM GENERAL FUND. WORK TO BE MADE CO-OPERATIVE.] That in any county of the state on the presentation of a petition signed by at least ten per cent of the freeholders of said county, to the board of county commissioners of such county, petitioning for the establishment and construction of public dipping stations for livestock within such county, the board of county commissioners of such county shall within ninety days from the presentation of such petition proceed to establish and construct under the supervision of the district veterinarian in whose district such stations may be located, public dipping stations at convenient places within such county. The cost of such stations shall be paid from the general fund, and warrants drawn on the county treasurer for such work shall be paid only when signed by the county auditor and approved by the board of county commissioners of such county. In the construction of such dipping stations it shall be the duty of the county commissioners to make the work co-operative among farmers or live stock owners as far as possible, and give to the farmers or live stock owners credit against dipping charges for necessary labor performed, it being the purpose of this act to have this work done in the most efficient manner by those most interested in maintaining a good standard of health in the flocks and herds of the community interested, at the least expense; which cost shall be paid from the general funds of such county.

§ 2. COUNTY COMMISSIONERS SHALL APPROPRIATE NECESSARY AMOUNT FOR PURCHASE OF MATERIAL AND CHEMICALS UNDER DIRECTION OF DISTRICT VETERINARIANS.] The board of county commissioners of such county shall upon the establishment of such dipping station or stations appropriate the necessary amount of money under the directions of the district veterinarian for the purpose of purchasing material and chemicals used in the operation of such stations.

§ 3. COMMISSIONERS SHALL LEVY PRO-RATA DIPPING FEE.] The board of county commissioners shall, in their discretion, levy a dipping fee pro rata, in no case to exceed the actual cost to the county, for material and labor used in constructing and operating such station.

§ 4. FEE SHALL BE CHARGED AGAINST OWNER, AGENT OR PERSON IN CHARGE AND BECOME A LIEN AGAINST STOCK. IF UNPAID SHERIFF SHALL FORECLOSE. FEES TO BE PAID TO COUNTY TREASURER.] The fee for dipping such animals shall be charged against the owner, agent, or person in charge of such animals and together with the cost of seizure and the expense of holding thereof become a lien upon such animals and if not paid within five days from the dipping of such animals, the same shall be foreclosed by the sheriff of such county, the same as any other lien upon personal property. All fees collected under this act shall be paid in to the county treasurer and placed in the general fund.

§ 5. FORMULA OF U. S. BUREAU OF ANIMAL INDUSTRY TO BE USED FOR DIPPING SOLUTION.] The dipping solution used in operating such station or stations shall be in accordance with the rules and formulas adopted by the United States bureau of animal industry.



§ 6. DUTY OF DISTRICT VETERINARIAN.] The district veterinarian acting with the board of county commissioners of such county, or the person by them designated to oversee and superintend such dipping station or stations and the dipping thereat, shall at the completion of such dipping and the payment of the fees hereunder charged issue a certificate to the owner, agent, or person in charge of such animals certifying to such dipping, which certificate must contain the date of such dipping, the number and kind of such animals so dipped, the formula of the solution used in such dipping thereunto attached, stating the amount of fees so charged and collected for such dipping.

§ 7. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 8. EMERGENCY.] Whereas, there is no adequate provision for dipping stations and the operation of the same, therefore, this act shall be in full force and effect from and after its passage and approval.

Approved March 11, 1905.

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## DRAINS.

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### CHAPTER 97.

[H. B. No. 47—Arnold.]

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#### DRAINS FROM ONE COUNTY TO ANOTHER.

AN ACT to Amend Chapter 21 of the Political Code of North Dakota,  
Relating to Drains.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That chapter 21 of the political code of the state of North Dakota, be and the same is hereby amended by inserting in said chapter, after paragraph 1461 and before paragraph 1462 thereof, the following:

§ 1461a. WHENEVER DEEMED NECESSARY THE BOARDS OF DRAIN COMMISSIONERS OF TWO OR MORE COUNTIES ARE EMPOWERED TO CONSTRUCT DRAINS INTO OR THROUGH SUCH COUNTIES. PETITION TO BE PRESENTED TO THE COUNTY COMMISSIONERS, WHO SHALL DETERMINE THE NECESSITY OF SAME. DRAIN COMMISSIONERS TO APPORTION COST. REPORTS FILED.] Whenever it shall be deemed necessary by the boards of drain commissioners of two or more counties in this state, to construct or extend a drain through or into two or more counties in this state, it shall be lawful and the several boards of drain commissioners in the counties into or through which such proposed drain may extend when completed, are empowered to establish, construct and maintain such drain through or into two or more counties in

manner following, to-wit: There shall first be presented to the several boards of drain commissioners in each of such counties a petition for the establishment of such drain in their several counties as provided by law and such commissioners of such several counties shall determine upon the necessity or expediency of the establishment of such drain as provided by law. The several boards of drain commissioners of all counties through or into which such proposed drain may run shall then meet and agree upon the proportion of damages and benefits to accrue to the lands affected in each county affected and for this purpose they shall consider the entire course of said drain through all said counties as one drain. They may apportion the cost of establishing and constructing such entire drain ratably and equitably upon the lands in each such county in proportion to the benefits to accrue to such lands, and when they have so apportioned the same they shall make written reports of such apportionment to the auditors of the several counties affected, which reports shall show the portion of cost of such entire drain to be paid by tax upon the lands in each of such counties and such reports shall be signed by the boards of drain commissioners of all counties affected. Upon the filing of such reports, the several boards of drain commissioners shall meet and assess against the lands in each of such counties ratably and equitably as provided by law an amount sufficient to pay the proportion of cost of such drain in each of such counties so fixed by all said commissioners. And in all things pertaining to the establishment, construction and maintenance of such drain all of said chapter 21 of the political code and acts amendatory thereof applicable thereto shall have full force and effect.

§ 2. EMERGENCY.] Whereas, there is now no law providing for the establishment, construction or maintenance of drains in two or more counties of this state, therefore an emergency exists and this act shall take effect from and after its passage and approval.

Approved March 1, 1905.

# DRUGGISTS.

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## CHAPTER 98.

[S. B. No. 151—Taylor.]

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### REGULATING DRUGGISTS' PERMITS.

AN ACT to Amend Sections 7594 and 7596 of the Revised Codes of North Dakota, 1899, as Amended by Chapter 82 of the Session Laws of 1903, Relating to the Method of Obtaining Druggists' Permits to Sell Liquor, Regulating Sales of Liquor Under Such Permit and Regulating Life of Same.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 7594 of the revised codes of North Dakota, 1899, be, and the said section is hereby amended to read as follows:

§ 7594. DRUGGIST'S PERMITS, HOW OBTAINED. APPLICATION TO BE PUBLISHED. BOND AND APPROVAL. APPEAL.] It shall be unlawful for any person or persons to sell or barter, for medicinal, scientific or mechanical purposes any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having secured a druggist's permit therefor from the county judge of the county wherein such druggist may be doing business at the time; and such county judge is hereby authorized in his discretion to grant a druggist permit for the period of one year, to any person of good moral character who is a registered pharmacist under the laws of this state, and lawfully and in good faith engaged, personally and individually, in the business of a druggist in his county, and who in his judgment can be entrusted with the responsibility of selling such liquors for the purposes aforesaid in the manner hereinafter provided. In order to obtain a druggist permit under this act, the applicant shall file in the office of the county judge of the county wherein he is doing business, not less than thirty days prior to the hearing thereof, a petition signed by the applicant and sixty per cent of the reputable freeholders, having the qualifications of electors of the town, village, township or ward of any city, and fifty per cent of the reputable women over twenty-one years of age, who are residents of the town, village, township or ward of any city wherein such business is located. All petitions shall set forth:

1. The town, village, city or township, and particular place therein wherein such business is located, and that the applicant is a person of good moral character and does not use intoxicating liquors as a beverage, and can be entrusted with the responsibility of selling the same.

2. That said applicant is a pharmacist as aforesaid, and is lawfully and in good faith engaged personally in the business of a druggist, as the proprietor thereof, at the place designated in the petition, and well versed in the profession.

3. That said applicant has, in his said business, exclusive of intoxicating liquors and fixtures, a stock of drugs and druggist's sundries, if in any city, of the value of at least two thousand dollars, and if elsewhere, of the value of at least fifteen hundred dollars.

Before any such petition shall be heard, or any permit issued to such applicant, he shall publish for at least thirty days, next prior thereto, a notice in some newspaper in the town, village, township or city, where such business is located, or if none is published therein, then in some paper of general circulation in the county, stating the time and place set by said judge for the hearing of such petition. The applicant shall be required to prove the truthfulness of each and every statement contained in such petition, and the state's attorney of the county shall, and any other citizen of the county may, appear and cross-examine the witnesses of the applicant, and may introduce evidence in rebuttal of the evidence offered by the applicant. If satisfied that the signatures of such petition were signed by such persons, and that such petitioners are freeholders and citizens of such town, village, township, city or ward as above expressed, and that the statements in such petition are true, the county judge may, in his discretion, grant a permit to the applicant to sell intoxicating liquors for medicinal, mechanical and scientific purposes only; and such permit shall be recorded upon the journal of the county court, and a certified copy thereof shall be posted in a conspicuous place in the store wherein said business is carried on before it shall be of any validity. Before such permit shall be of any validity, such druggist shall file with the county judge, to be approved by him, a good and sufficient bond to the state of North Dakota, in the sum of one thousand dollars, executed by five freeholders of the county, who shall justify in double the amount of such bond, conditioned that such applicant and any one in his employ will neither use, sell, barter or give away any intoxicating liquors in violation of law, and on violation of any of the provisions of said bond the same shall thereby become forfeited in the full amount thereof; and the conviction of said pharmacist or anyone in his employ shall be deemed prima facie evidence of such violation. Any applicant or any citizen feeling himself aggrieved by the decision of the county judge may, within ten days thereafter, upon filing a bond, made payable to the state of North Dakota, in the sum of fifty dollars, to be approved by the county judge, conditioned that he will prosecute the same to a speedy determination, and pay the costs occasioned by such appeal if the order of the county judge shall be sustained, prosecute the cause upon appeal to the district court. The procedure in any case taken on appeal to the district court from the order of the county judge shall be as prescribed by article 9, of chapter 3, of the probate code, so far as applicable, and a statement of the case with exceptions

may be made, signed and certified by the county judge. If the district court shall find that the county judge has abused his discretion, or if it deems the permit to have been improperly granted or refused, it shall have power to reverse the judgment of the lower court and cause the county judge to comply with its judgment, otherwise the order of the county judge shall be by the district court affirmed. If the order of the county judge shall be reversed, the costs shall be paid by the county. If at any time there shall be filed with the county judge a petition stating that any druggist, naming him, who has a permit to sell intoxicating liquors, is not in good faith conforming to the provisions of this chapter, verified by the affidavit of at least one of the petitioners hereinafter named, and signed by the state's attorney or ten reputable men, all of whom reside in the town, village, township or city in which the business of said druggist is carried on, requesting that the permit of said druggist be cancelled, the county judge shall immediately issue an order citing such druggist to appear before him on the day named, not more than ten days from the issuing of such order at which time the question of cancellation of such permit shall be considered. Such examination shall be conducted in the same manner in all respects as herein provided for the hearing of the original petition for granting such permit, and such county judge shall, if there are reasonable grounds for believing that such druggist is not in good faith carrying out all the provisions of this chapter, cancel such permit. An appeal may be had from the decision of the county judge to the district court as herein provided for appeals from the application for a permit; provided, the permit of such druggist shall be inoperative till such appeal is finally decided. If any county judge shall issue a permit to any person not registered as a pharmacist, or shall knowingly grant the same to a person in the habit of becoming intoxicated, or not in good faith engaged in the business of druggist as a proprietor thereof, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars; and if any person shall sign a petition, as provided herein, of any applicant known by such person to be in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty nor more than one hundred dollars. Before the petition of a druggist for a permit to sell intoxicating liquors shall be heard by the county judge, the applicant shall pay a fee of five dollars to the county judge, who shall pay the same into the county treasury on or before the first day of the following month for the benefit of the general revenue fund.

§ 2. AMENDMENT.] That section 7596 of the revised codes of North Dakota, 1899, be, and the said section is hereby amended:

§ 7596. DRUGGIST SALE REGULATED. AFFIDAVITS. OATHS. BLANKS FURNISHED. SALES RECORDED. PENALTY.] Any druggist having a permit to sell intoxicating liquors under the provisions of

this chapter, may sell the same only by himself in person, or by a clerk who is a registered pharmacist or assistant pharmacist under the laws of this state, for medicinal purposes only, upon the printed or written affidavit of the applicant, setting forth the particular medical purposes for which such liquor is required, the kind and quantity desired; that it is necessary and actually needed for the particular purpose, by the patient to be named; and that it is not intended for a beverage, nor to sell or give away; that the applicant is over twenty-one years of age; which affidavit shall be in the following form and subscribed by the applicant in ink:

No. .... Date .....

State of North Dakota, county of .....ss.

I, the undersigned, do solemnly swear that my real name is. .... ; that I reside at..... (if in a city the street number must be given; if in a town or village, name of street must be given; if in the country the quarter section, township and range); county of..... state of..... that..... of..... is necessary and actually needed by..... to be used as a medicine for the disease of.....; that it is not intended as a beverage, nor to sell nor to give away, and that I am over twenty-one years of age. I therefore make application to..... druggist, for said liquor.

....., Applicant.

Subscribed in my presence and sworn to before me this. .... day of....., 190...

....., Pharmacist.

State of North Dakota, county of .....ss.

On this..... day of..... in the year..... before me personally appeared..... known to me (or proved to me on oath of.....) to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

....., Pharmacist.

And such druggist may sell intoxicating liquors for mechanical, scientific, and wine for sacramental purposes only, upon the written or printed or written affidavit of the applicant, setting for the particular purpose for which such liquor is required, the kind and quantity desired, that it is not intended to be used as a beverage, not to sell nor to give away, and that it is intended only for his own use, and that the applicant is over twenty-one years of age. Such affidavit shall be in the following form and subscribed by the applicant in ink:

No. .... Date .....

State of North Dakota, county of .....ss.

I, the undersigned do solemnly swear that my real name is. .... ; that I reside at..... (if in a city the street and number must be given, and if in a town or village the name of the street must be given; if in the country, the quarter section, township and range); county of..... state of.....; that..... of..... is required by myself to be used for .....

purposes, to be used for . . . . . ; that it is not intended for a beverage, nor to sell nor to give away, and that I am over twenty-one years of age.

I therefore make application to . . . . . druggist, for said liquor.  
 . . . . ., Applicant.

State of North Dakota, county of . . . . . ss.

On this . . . . . day of . . . . . in the year . . . . ., before me personally appeared . . . . ., known to me (or proved to me on the oath of . . . . .) to be the person who executed the within instrument, and acknowledged to me that he executed the same.

. . . . ., Pharmacist.

And there shall be but one sale, and one delivery, of not to exceed one pint of any intoxicating liquors, on any one affidavit, to any one person in each twenty-four hours, but no druggist shall permit the drinking on his premises, nor in any apartment connected therewith, and under his control, any intoxicating liquors purchased by affidavit or otherwise; provided, such druggist shall be permitted to sell any of the liquors mentioned herein, in quantities not less than one gallon, to any other druggist within the state holding a permit as provided in this chapter. The affidavits provided for in this section shall be made before the pharmacist or assistant pharmacist making sale of such liquors, upon properly printed blanks, which it is hereby made the duty of the county auditor of the county in which such sales are made, to furnish to such druggist at a cost equal to the actual and necessary outlay made therefor by him. Such blanks shall be in series of one hundred each, numbered from one to one hundred consecutively, and bound in book form, each series being of uniform style throughout, except that no two blanks of the same series shall be of the same number. It shall be the duty of the county auditor to endorse each such book with the date of delivery, and to whom made, to sign such endorsement and attest to the same with the official seal, and to keep two exact printed copies, except as to the numbers, of the blanks of each series, one of which shall be filed in his office, and one in the office of the county judge; he shall also keep a record of the series, and of the number of each series of such blanks furnished to each druggist, and shall, within ten days after the same are delivered to said druggist, file a copy thereof, together with a copy of the blank affidavits, in the office of the county judge of his county. For such services the county auditor shall be entitled to a fee of twenty-five cents for each series of blanks so furnished, to be paid by the druggist obtaining such blanks. All pharmacists and assistant pharmacists are hereby empowered to administer oaths for the purpose of this chapter, and no such affidavit shall be received by any pharmacist or assistant pharmacist until it shows on its face that it has been properly subscribed and sworn to by the applicant. The affidavits provided for in this section, shall be retained by the druggist in the original book form,

and on or before the first day of each month shall, together with the affidavit of such druggist that the liquors therein mentioned are all the intoxicating liquors sold by him during the month, except the liquors sold to other druggists, be returned intact and filed in the office of the county judge who issued the permit, where they shall be safely kept for the period of two years from the date of filing. Before said affidavit shall be received or filed by the said county judge, he shall make strict examination of the copies of the affidavits and record of numbers thereof furnished him by the county auditor, and ascertain whether such druggist has returned all affidavits furnished him in blank by the county auditor, and if any such affidavit or blank is missing said county judge shall require such druggist to file instead thereof his affidavit showing as near as he can what has become of such affidavit or blank. And any person having a permit to sell intoxicating liquors under the provisions of this chapter, shall each month, at the time he files the affidavit herein provided for, also file with the county judge an affidavit setting forth the amounts and kinds of liquors, as nearly as can be done, which such person or firm of which he is a member, has on hand on the day such affidavit is made, as well as the amounts and kinds of liquors he has purchased or procured during the preceding month, and the name or names of the persons, companies or corporations and their place of doing business, from whom, and the dates on which such liquors were purchased or procured.

For each series of affidavits filed under the provisions of this chapter, the county judge shall collect one dollar and fifty cents from the druggist filing the same, or the proportionate part thereof for the number filed, which shall be paid by him on the first day of each month into the county treasury for the benefit of the general county fund.

The county judge shall receive no fees for his services under this chapter, except a salary of fifteen dollars per annum for each one thousand inhabitants in such county, the number to be determined by the last census return of such county, but in no case shall such salary exceed in the aggregate the sum of one thousand dollars per annum, to be paid by the county commissioners as other salaries.

Every person whose affidavit so made for the purpose of obtaining intoxicating liquors shall be false in any material matter, shall be deemed guilty of perjury, and is punishable by imprisonment in the penitentiary not less than one and not exceeding two years, or in the county jail not less than six months. Any person who shall subscribe any name or character other than his own name to any affidavit for the purpose of obtaining intoxicating liquors as provided herein, shall be deemed guilty of forgery in the fourth degree, and punished therefor by imprisonment in the penitentiary not exceeding two years and not less than one year. Any person who shall sell or furnish any intoxicating liquors so obtained by him upon affidavit or certificate, to others as a beverage, or shall use the same as a beverage, shall be



deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty nor more than ninety days. Every such druggist shall keep a book wherein shall be recorded daily, all sales of intoxicating liquors made by him or his employes, showing the name and residence of the purchaser, the kind and quantity of liquor sold, the purpose for which it was sold, and the date of sale.

Such record and affidavit shall be open for the inspection of the public at all reasonable times during business hours, and any person so desiring may take memoranda or copies thereof.

Approved March 6, 1905.

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## EDUCATION.

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### CHAPTER 99.

[H. B. No. 251—Glasgow.]

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#### ATTACHING OUTSIDE TERRITORY TO CITY SCHOOLS.

AN ACT to Amend Section 786 of the Revised Codes of 1899, Relating to Education.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 786 of the revised codes of 1899 be amended to read as follows:

§ 786. ADJACENT TERRITORY, HOW ATTACHED FOR SCHOOL PURPOSES.] When any city, town or village has been organized for school purposes and provided with a board of education under any general law, or a special act, or under the provisions of this article, territory, outside the limits thereof but adjacent thereto, may be attached to such city, town or village for school purposes by the board of education thereof, upon application in writing signed by a majority of the voters of such adjacent territory; provided, that no territory shall be annexed which is at a greater distance than three miles from the central school in such special district, except upon petition signed by two-thirds of the school voters residing in the territory which is at a greater distance than three miles from the central school in such special district; and, upon such application being made, if such board shall deem it proper and to the best interests of the school of such corporation and of the territory to be attached, an order shall be issued by such board attaching such adjacent territory to such corporation for school purposes, and the same shall be entered upon the records of the board. Such territory shall from the date of such order be and compose a part of such corporation for school purposes only;

such adjacent territory shall be attached for voting purposes to such corporation, or, if the election is held in wards, to the ward or wards or election precinct or precincts to which it lies adjacent; and the voters thereof shall vote only for school officers and upon such school questions; provided, that the county commissioners shall detach any part of such adjacent territory which is at a greater distance than three miles from the central school in such special district and attach to any adjacent school or special district or districts upon petition to do so, signed by three-fourths of the legal voters of such adjacent territory, and all assets and liabilities shall be equalized according to section 731.

Approved March 9, 1905.

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## CHAPTER 100.

[S. B. No. 46—Talcott.]

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### EDUCATION.

AN ACT to Amend Sections 370, 652, 653, 657, 695, 757, 759 and 761 of the Revised Codes of 1899.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 370 of the revised codes of 1899 be amended to read as follows:

§ 370. DEPUTIES MAY BE APPOINTED BY CERTAIN OFFICERS. The state auditor, treasurer, superintendent of public instruction and secretary of state, the county treasurer, county auditor, sheriff, register of deeds, surveyor, clerk of the district court, county superintendent of schools and district and city assessors may each appoint a deputy for whose acts as such he shall be responsible; and each officer required to give a bond may require a bond from any deputy appointed by him, which bond shall be in the penal sum of not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection. Such appointment shall be in writing and shall be revocable in writing at the pleasure of the principal and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal.

§ 2. AMENDMENT.] That section 652 of the revised codes of 1899, as amended by chapter 88, laws of 1903, be amended to read as follows:

§ 652. SALARY. DEPUTY. TRAVELING EXPENSES.] The salary of the county superintendent of schools shall be as follows: In each county having one school and not over five, one hundred and fifty dollars; six schools and not over ten, three hundred dollars; eleven schools and not over fifteen, four hundred dollars; sixteen schools and not over twenty, five hundred dollars; twenty-one schools and not

over twenty-five, six hundred dollars; twenty-six schools and not over thirty, seven hundred dollars; thirty-one schools and not over thirty-five, eight hundred dollars; thirty-six schools and not over forty, nine hundred dollars; forty-one schools and not over fifty, one thousand dollars, and for each additional school, ten dollars additional; provided, that in computing the salary of such superintendent no school shall be included unless the same shall have been taught at least four months during the preceding school year; provided, further, such salary shall not exceed one thousand five hundred dollars in any county where the number of schools does not exceed one hundred thirty, and in counties where the number of schools exceeds one hundred thirty, the county superintendent shall be allowed in computing such salary, five dollars additional for each school above one hundred thirty; provided, always, that such salary shall in no case exceed two thousand dollars. In addition thereto he shall receive ten cents a mile for the distance actually and necessarily traveled by him in the discharge of his duties. He shall, at the end of every three months, make and furnish to the county commissioners an itemized statement, subscribed and sworn to, of the distance so traveled in the discharge of his duties, which shall be audited and ordered paid by the board of county commissioners. The amount of his salary and the appropriation for deputy shall be determined each year by the actual number of schools or separate departments in graded and high schools, over which said superintendent had official supervision during the preceding year, and the same shall be paid out of the county general fund monthly, upon the warrant of the county auditor; provided, that whenever the number of schools in a county is diminished by reason of the consolidation of schools or other provision for the instruction of pupils in any district or districts, in computing the salary of the county superintendent as existed before said consolidation or other provision, until such time as the number of separate departments in the general school or schools provided for the pupils of vacated schools shall equal the number of original schools vacated. In each county which shall be organized for school purposes after the adoption of this code, the county superintendent shall be paid a salary at the rate of one hundred dollars a year until the first Monday in January, next following his election, after which his salary shall be as provided for in this section. In counties having fifty or more schools, the county superintendent may appoint a deputy for whose acts as such he shall be responsible, which deputy shall be entitled to a salary equal to fifty per cent of the county superintendent's salary.

§ 3. AMENDMENT. That section 653 of the revised codes of 1899 be amended to read as follows:

§ 653. QUALIFICATIONS OF COUNTY SUPERINTENDENT OF SCHOOLS.]

1. No person shall be deemed qualified for the office of county superintendent, in any county where the salary is one thousand dollars or more per year, who is not a graduate of some reputable normal

school or higher institution of learning or who does not hold a state normal or a state professional certificate, and who has not had at least three years' successful experience in teaching in this state.

2. No person shall be deemed qualified for the office of county superintendent in counties where the salary is less than one thousand dollars per year, unless he holds a certificate of the highest county grade or its equivalent; provided, however, that no part of this section shall be construed to affect any person now holding the office of county superintendent.

§ 4. AMENDMENT.] That section 657 of the revised codes of 1899 be amended to read as follows:

§ 657. NOT APPLICABLE IN EVERY COUNTY.] None of the provisions of sections 654 and 655 shall be applicable to counties in which the salary of county superintendent of schools is less than one thousand dollars per annum.

§ 5. AMENDMENT.] That section 695 of the revised codes of 1899 be amended to read as follows:

§ 695. TEACHERS, HOW EMPLOYED, HOW GRADED.] It shall employ the teachers of the school district and may dismiss a teacher at any time for plain violation of contract, gross immorality or flagrant neglect of duty. No person shall be permitted to teach in any public school who is not the holder of a teacher's certificate or a permit to teach, valid in the county or district in which such school is situated, and every contract for the employment of a teacher must be in writing and such contract must be executed before such teacher begins to teach in such school. It shall grade the salaries of teachers for the district in accordance with the grades of certificate and no teacher holding a certificate of a lower grade shall receive a salary equal to or in excess of that paid to a teacher holding a certificate of a higher grade in the same district; provided, further, that no teacher holding a second grade certificate shall receive less than forty-five dollars per month on and after the passage and taking effect of this act. And nothing in this section shall be construed to mean that teachers holding the same grade of certificate must necessarily receive the same wages.

§ 6. AMENDMENT.] That section 757 of the revised codes of 1899 be amended to read as follows:

§ 757. INSTITUTE FUNDS, HOW PAID OUT.] It shall be the duty of the county superintendent of schools in all cases to consult with the state superintendent of public instruction in reference to the management of such institute or teachers' training school, and he shall carry out the suggestions of such state superintendent as to the modes of instruction. No salary shall be paid to any conductor or instructor not previously appointed or employed as herein provided. The money hereby appropriated from the state treasury for the support of teachers institutes or teachers' training schools shall be paid to the persons to whom it is due by warrant of the state auditor upon the state treasurer, which shall be issued upon the presentation of an account in due

form, receipted by the person to whom due and approved by the state superintendent of public instruction; provided, that no county shall receive more than ten dollars from such appropriation for the payment of conductor's salary for each day its institute is in session; provided, that the state and county institute funds specified by section 755 and 756, and the appropriation specified by section 758 of one or more counties, may be applied to the support of a teachers' training school for such county or counties at the request of the county superintendent for such county or counties, with the consent and under the direction of the state superintendent of public instruction; provided, further, that where a teachers' training school of not less than three weeks' duration is held within or for any county, the conductor of such training school shall file a certified statement with the county auditor specifying the time and place of such teachers' training school and also certifying the total number of schools in said county in which school has been taught at least four months during the preceding school year. The county auditor shall file a copy of said statement with the county treasurer who shall thereupon transfer from the county general revenue fund to the county institute fund the sum of two dollars for each school in the county, as per specified statement filed with the county auditor.

§ 7. AMENDMENT.] That section 759 of the revised codes of 1899 be amended to read as follows:

§ 759. SCHOOL AGE. WHO EXEMPT FROM COMPULSORY ATTENDANCE.] Every parent, guardian or other person who resides in any school district or city who has control of any child or children of or between the ages of eight and fourteen years shall send such child or children to a public school in each year during the entire time the public schools of such district or city are in session, and every parent, guardian or other person, having control of any deaf or feeble minded child or youth between seven and twenty-one years of age shall be required to send such deaf child to the school for the deaf at the city of Devils Lake, and any feeble minded child to the institution for the feeble minded at Grafton, for at least eight months in each school year; provided, that such parent, guardian or other person having control of any child shall be excused from such duty by the school board of the district, or by the board of education of the city or village, whenever it shall be shown to their satisfaction, subject to appeal, as provided by law, that one of the following reasons therefor exists:

1. That such child is taught for the same length of time in a parochial or private school, approved by such board; that no school shall be approved by such board unless the branches usually taught in the public schools are taught in such schools.

2. That such child is actually necessary to the support of the family.

3. That such child has already acquired the branches of learning taught in the public schools.

4. That such child is in such a physical or mental condition (as declared by the county physician, if required by the board), as to render such attendance inexpedient or impracticable. If no school is taught the requisite length of time within two and one-half miles of the residence of such child by the nearest route, such attendance shall not be enforced, except in cases of consolidated schools where transportation may be arranged for by the school board. In districts having consolidated schools where transportation is arranged for by the school board, or in other districts providing transportation, attendance shall be required of pupils residing within four miles of such school or schools, but this provision shall not apply to deaf or feeble minded children in this state. The common schools provided for in this chapter, shall be at all times equally free, open and accessible to all children over six and under twenty years of age, residents of the school districts where they are held or entitled to attend school, under any special provisions of this chapter, subject to the regulations herein made, and to such regulations as the several school boards and boards of education may prescribe, equitably and justly and not in conflict with the provisions of law.

Provided, that this section shall not be construed to apply to parents, guardians or other persons having control of any child or children between the ages of eight and fourteen who desire to send such child or children for a period not exceeding four months in any year, to any parochial school for the purpose of preparing such child or children for certain religious duties.

§ 8. AMENDMENT.] That section 761 of the revised codes of 1899, as amended by laws of 1903, be amended to read as follows:

§ 761. PROSECUTION FOR NEGLECTING THIS DUTY.] It shall be the duty of the clerk or secretary of the board of education of any city, town or village, or the clerk of the school board of any district to inquire into all cases of neglect of the duty prescribed in this article and to ascertain from the person neglecting to perform such duty the reason therefor, if any, and to notify the county superintendent of schools of such neglect; and said county superintendent, upon proper presentation of facts, shall lay the matter before the state's attorney whose duty it will be to proceed forthwith to secure the prosecution for any offense occurring under this article; provided, further, that the board of education in any city of over five thousand inhabitants may employ a truant officer who shall perform the duties implied in this section.

Approved March 13, 1905.

## CHAPTER 101.

[S. B. No. 56—Garnett.]

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## PROPOSED CONSTITUTIONAL AMENDMENT.

*Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:*

§ 1. That the following proposed amendment to section 162 of the constitution of the state of North Dakota be referred to the legislative assembly, to be chosen at the next general election in said state, to be by said last mentioned legislative assembly submitted to the qualified electors of the state for approval or rejection, in accordance with the provisions of section 202 of the constitution of the state of North Dakota.

§ 2. That section 162 of the constitution of the state of North Dakota be amended so as to read as follows:

§ 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations, or of counties, or of townships, or of municipalities within the state, bonds issued for the construction of drains under authority of law within the state, bonds of the United States, bonds of the state of North Dakota, bonds of other states, provided, such states have never repudiated any of their indebtedness, or on first mortgages on farm lands in this state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands.

Passed by the ninth legislative assembly and filed in the office of the secretary of state February 25, 1905.

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## CHAPTER 102.

[H. B. No. 152—Briden.]

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## MEETINGS OF SCHOOL BOARDS.

AN ACT to Amend and Re-enact Section 681 of the Revised Codes of 1899, Relating to Education.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 681 of the revised codes of 1899 be amended to read as follows:

§ 681. MEETINGS OF BOARD. FEES.] The board shall, on the second Tuesday in January, April, July and October of each year, hold regular meetings for the transaction of business at such hour and

place as may be fixed by the board. A special meeting may be held upon the call of the president or the other two members. Written notice of the time and place of any special meeting shall be given to each member of the board at least forty-eight hours before the time of such meeting. Each member of the board shall be paid the sum of eight dollars per annum, less two dollars for each regular meeting he fails to attend; provided, that in any common school district which contains a graded school of three or more departments the board shall hold regular meetings for the transaction of business on the second Tuesday of each month at such time and place as may be fixed by the board, and in such districts, the members of the board shall receive a compensation of one dollar for each meeting attended; provided, further, that in counties having the district system, the president and clerk, and in counties having the township system, the members and clerks or such officers as such president and board may appoint to represent them shall receive ten cents a mile for the distance necessarily traveled in attending general meetings of the presidents, members and clerks of school boards convened by the county superintendent, and also a salary of two dollars, but the total sum of such salary and mileage shall not exceed five dollars for each representative in attending any one meeting.

Approved March 1, 1905.

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## CHAPTER 103.

[S. B. No. 213—LaMoure.]

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### SCHOOL CENSUS.

AN ACT to Amend Section 707 of the Revised Codes of 1899.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 707 of the revised codes of 1899 be amended to read as follows:

§ 707. SCHOOL CENSUS. ANNUAL SCHOOL REPORT.] The school board shall cause the clerk to make an enumeration at the close of each school year of all unmarried persons of school age, being over six and under twenty, having their legal residence in the district, who have attended school for a period of not less than sixty days, exclusive of any unmarried person of school age who has attended any model school, school for defective children, manual training school, school of forestry, normal school, school of science, agricultural college or university, supported directly or in any part by the state, giving the names and ages of such persons and the names of parents and guardians having the care and custody of each; also the names, ages and post office addresses of parents and guardians of each deaf and dumb, blind and feeble minded person between the ages of five and twenty-five years, residing in the district, including all such per-



sons as may be too deaf or feeble minded to acquire an education in the common schools. The enumeration shall be made upon and in accordance with the blanks furnished therefor by the county superintendent, and shall be returned to the county superintendent prior to the tenth day of July. A copy of the enumeration of such deaf and dumb person shall be furnished the superintendent of the school for the deaf; a copy of the enumeration of such blind person shall be furnished to the superintendent of the school for the blind, and the enumeration of such feeble minded persons shall be furnished to the superintendent of the institution for the feeble minded by the county superintendent immediately upon receipt of the same. A copy of such enumeration shall also be kept in the office of the district clerk. The board shall also cause the district clerk to make out an annual report for the year beginning July 1 and ending June 30, containing such financial and statistical statements and items as shall be required by the superintendent of public instruction upon and in accordance with the blanks furnished therefor by the county superintendent. Such report shall be carefully examined and certified as correct by the board at its regular meeting in July and transmitted to the county superintendent prior to the first day of August following. A copy of such report shall be filed in the district clerk's office.

Approved March 13, 1905.

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## CHAPTER 104.

[S. B. No. 221—Senate Committee on Education.]

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### SCHOOL ELECTIONS.

AN ACT to Amend Sections 670 and 674 of the Revised Codes of the State of North Dakota, 1899, Relating to the Election of School Officers and Notices of Annual Election.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 670 of the revised codes, 1899, be amended so as to read as follows:

§ 670. OFFICERS TO BE ELECTED.] On the first Tuesday in June of each year there shall be elected one school director for the term of three years and on the first Tuesday in July [June] of each even numbered year a school treasurer for the term of two years. Such officers shall hold their respective offices from the second Tuesday in June [July] following their election for the number of years respectively for which they were elected, and until their successors are elected and qualified. At the first election for the organization of a new school district there shall be elected at large for such school district three directors, one to serve until the first annual election, one to serve until the second annual election and one to serve until the third

annual election thereafter, and a school treasurer to serve until the annual election in the next even numbered year and until the successor is elected and qualified.

§ 2. AMENDMENT.] That section 674 of the revised codes, 1899, be amended so as to read as follows:

§ 674. NOTICE OF ANNUAL ELECTION.] At least fifteen days before the first Tuesday in July [June] of each year the district school board of each school district shall designate one polling place, as convenient as possible to the voters of such district, at which such annual election shall be held, and shall cause notice of such election to be posted in at least three of the most public and conspicuous places within the district. Such notices shall be signed by the clerk, or in his absence by the president of the district school board, and shall state the time and place of holding such election and the officers to be elected and their term of office, and shall be substantially in the following form:

Notice is hereby given that on Tuesday, the.....day of June, ..... an election will be held at.....(here insert polling place) for the purpose of electing.....(here insert officers to be elected and term each is to serve) for school district No. .... or for ..... (here insert name of school district). The polls will be opened at 2 o'clock p. m. and closed at 5 o'clock p. m. of that day.

By order of the school board.

Signed.....

Clerk.

Approved March 7, 1905.

## CHAPTER 105.

[H. B. No. 252—McCrea.]

### SCHOOL FUNDS.

AN ACT Providing for Proposals for Loaning City and School Funds and Defining the Duties of the Various Officers of the City or School Districts With Reference Thereto.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SCHOOL FUNDS REQUIRED TO BE DEPOSITED.] All funds of each and every city or school district of this state shall be deposited by the treasurer of the city, county or school district, as soon as received by him, in the name of the city or school district of which he is an officer, in such bank or banks as shall have been designated as city or school district depositories in accordance with this act, as hereinafter provided.

§ 2. DEPOSITORY TO BE DESIGNATED.] The city council or school

board of each and every city or school district of this state, at its first regular meeting after this act shall take effect and at its first regular meeting in July of each odd numbered year thereafter, shall designate one or more national or state banks in its city or district or county as city or school district depositories, in which all the funds of such city or school district shall be deposited.

§ 3. CITY AUDITOR OR SCHOOL CLERK TO ADVERTISE FOR PROPOSALS.] The city auditor or school clerk of each city or school district shall advertise in one or more newspapers of the city, county or village, for at least two weeks immediately prior to such meeting for sealed proposals for the deposit of funds of such city or school district, which advertisements shall state the date up to which such proposals will be received, which date shall be the day of the meeting of the city council or school board, at which such proposals are to be opened. Such proposals shall state in writing, what rate of interest will be paid on average daily balances during the month, interest to be paid monthly on condition that such funds, with accrued interest, shall be held subject to draft at all times on demand. Such proposals shall be enclosed in sealed envelopes, addressed to the city auditor or school clerk and marked "proposals for deposit of city or school funds," and shall be by the city auditor or school clerk filed in his office.

§ 4. HOW PROPOSALS ACTED ON. BONDS REQUIRED.] Such proposals shall be presented to the city council or school board at such meetings, and then, but not until then, shall be opened by the city auditor or school clerk in the presence of the council or school board, and the council or school board shall thereupon proceed to accept the proposal of the bank or banks offering the highest rate of interest, not inconsistent therewith, subject to the filing of a satisfactory bond as hereinafter provided, the amount of which bond shall then and there be fixed by the city council or school board. Before any bank shall be designated as such depository, it shall submit to the city council or school board for its approval a bond payable to the city or school district, conditioned for the safe keeping and repayment of any and all funds deposited in such banks, which bond shall be signed by not less than five freeholders of the county or state as sureties; such bond to be in the sum required by the city council or school board, but in no case less than double the probable amount of funds to be deposited in such bank. If at any time the amount of funds on deposit in any of such depositories shall exceed one-half of the amount named in such bond, it shall be the duty of the city council or school board at its next regular meeting thereafter to require from such depository an additional bond in a sum not less than twice the amount of such excess. Such bond shall be approved by the city council or school board and the approval thereof indorsed thereon by the mayor or president of the school board, and by him deposited with the city auditor or the school district clerk; and any bank whose bond shall have been so approved shall thereupon be designated by the city coun-

cil or school board as a city or school district depository and shall continue as such until such time as the city council or school board shall advertise for bids as aforesaid. If the city council or school board fails or refuses to approve such bond, the same may be presented to the judge of the district court, upon three days' notice to the city auditor or school district clerk, who shall proceed to hear and determine the sufficiency of such bond, and may approve such bond and the said bank shall be declared a city or school district depository as aforesaid. The sureties on such bond shall be required to justify as required by law in arrest and bail proceedings; provided, however, that in lieu of such personal bond, the city council or school board may require such banks or bank to file a surety company bond for a sum equal to the amount of funds such bank may receive according to the provisions of this act. If at any time the amount of funds on deposit in such depositories shall exceed the amount named in such surety company's bond, it shall be the duty of the city council or school board at its next regular meeting thereafter to require from such depositories an additional surety bond in the sum of not less than the amount of such excess. Such surety company's bond shall be approved as provided by law.

§ 5. IN CASE BIDS ARE EQUAL, HOW DECIDED.] When two or more banks in the same city or village, proposing to be city or school district depositories, offer the same rate of interest, it shall be the duty of the city council or school board to select, impartially, as many of such banks as depositories as offer ample security for such deposits. In estimating the value of the security, offered by any proposed depository, the capital, surplus and general credit of the bank shall be taken into consideration, as well as the bonds proposed to be given.

§ 6. TWO OR MORE BANKS MAY BE DESIGNATED.] In case two or more banks be designated as depositories, the city or school district treasurer shall, as far as practicable, keep in each of the several depositories equal balances at all times; provided, that in cities or villages where two or more banks are designated as depositories, the amount deposited in any bank shall not exceed the capital of such bank; provided, further, that in cities or villages where the city or school board deposits exceed the capital of the banks in said city or village, then the city council or school board shall deposit the funds of the city or school district in the banks of the city or village upon their giving a bond according to law.

§ 7. WHEN TIME DEPOSITS MAY BE MADE.] Whenever there shall be accumulated in the sinking fund, or any other revenue, city or school district fund, established by law, in any of the cities or school districts of this state, an amount of money exceeding three thousand dollars, and for which there is no immediate use, the city council or school board of such city or school district is authorized and empowered to direct a time deposit of such funds for a period of one year or six months, as they may deem expedient, either in one or more of the city or school district depositories, created by law, or such

state or national bank as the city council or school board may designate.

§ 8. HOW DEPOSITORIES FOR TIME DEPOSITS SELECTED.] The depositories for such time deposits of the city or school district funds may be designated at any regular meeting of the city council or school board of such city or school district upon the advertisement and proposals as provided by law for designating the depositories of the general city or school district funds, and the bank or banks designated as the depository or depositories of such time deposits of such city or school district funds shall be required to furnish a bond in the same amount, manner and form as prescribed by law for the several city and school district depositories.

§ 9. MAXIMUM RATE OF INTEREST CONSIDERED ON CALL DEPOSITS.] To further secure the safety of the city or school district funds deposited under the provisions of this act, the city council or school board shall satisfy itself of the responsibility of the several banks proposing to act as depositories, and any bank offering more than two per cent per annum on deposits, subject to check, shall not be designated as a depository under the provisions of this act.

§ 10. IN WHOSE NAME DEPOSITED.] All funds of the city or school district shall be deposited in the name of the city or school district by the city treasurer or treasurer of the school district, as soon as received by him, in such bank or banks as shall have been designated as city or school district depositories.

§ 11. PENALTY FOR VIOLATION.] If any city or school district treasurer shall deposit any of the funds of his city or school district or loan the same in any manner except according to the provisions of this article, he shall be liable to a penalty of five hundred dollars for each deposit or loan so made.

§ 12. BANKS TO FURNISH MONTHLY STATEMENTS.] Each depository shall furnish to the city auditor or clerk of the school district on the first day of each month an itemized statement of the account of the city or school district with such depository, duly verified by the affidavit of the cashier of such bank, which statement shall be filed and carefully preserved in the office of the city auditor or school clerk. All sums of interest accruing on the funds deposited as aforesaid shall be credited to such deposit account on the first day of each month for the preceding month, and a statement of such interest shall be rendered by such depository to the city auditor or school clerk on the first day of each month and the auditor or clerk shall charge the treasurer with the amount thereof and credit the sum to the general funds of the city or school district.

§ 13. HOW CHECKS SHALL BE SIGNED.] All checks drawn upon the city or school district depositories shall be signed by the city or school district treasurer in the name of the city or school district, by himself as treasurer.

§ 14. WHEN BIDS NOT REQUIRED.] It is the duty of the officers mentioned in this article to comply with the provisions hereof; pro-

vided, that in cities or villages where only one bank is located, the city council or school board shall designate such bank or other bank within this state as depository without advertising for bids, if such bank agrees to pay interest at the rate of at least two per cent per annum and furnishes a bond as hereinbefore provided for the safe keeping and repayment of any funds deposited in such bank. In cities or villages or counties where there is no bank or where no bank offers to comply with the requirements of this act, the city council or school board must designate some bank or banks outside of such city or village and within this state as such depositories, but [such] bank or banks must furnish a bond in the same manner as other depositories.

§ 15. TREASURER NOT LIABLE FOR FUNDS DEPOSITED, BY REASON OF BANK FAILURE.] When the funds of any city or school district are deposited by the city or school district treasurer as provided herein, such treasurer and his sureties shall be exempt from all liability thereon by reason of the loss of any funds from the failure, bankruptcy or any other act of such bank to the extent only of such funds in the hands of such bank or banks at the time of such failure or bankruptcy.

§ 16. EXCEPTIONS TO LAW.] It shall not be incumbent upon the city council or school board to designate depositories as herein provided for until the amount in such city or school treasury equals or exceeds the sum of one thousand dollars.

§ 17. VIOLATION CONSTITUTES MISDEMEANOR.] Any officer violating any of the provisions of this article shall be deemed guilty of a misdemeanor.

§ 18. REPEAL.] All acts or parts of acts in conflict herewith are repealed.

Approved March 16, 1905.

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## CHAPTER 106.

[H. B. No. 34—McCrea.]

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### SUBJECTS TAUGHT IN PUBLIC SCHOOLS.

AN ACT to Amend Sections 648 and 750 of the Revised Codes of 1899,  
Relating to Education.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 648 of the revised codes of 1899 be amended to read as follows:

§ 648. PHYSIOLOGY, HYGIENE AND THE NATURE AND EFFECT OF ALCOHOLIC DRINKS TO BE TAUGHT IN PUBLIC SCHOOLS. ON FAILURE TO COMPLY COUNTY SUPERINTENDENT SHALL REVOKE TEACHER'S CERTIFICATE.] He shall see to it that the pupils are instructed in the

several branches of study required by law to be taught in the schools, as far as they are qualified to pursue them. If any teacher neglects or refuses to give instruction as required by law in physiology and hygiene and the nature and effect of alcoholic drinks and other narcotics, the county superintendent shall promptly revoke such teacher's certificate and cause him to be discharged. If the teacher so neglecting or refusing to give instruction in said branches holds a state certificate the county superintendent shall immediately certify such refusal or neglect to the state superintendent of public instruction.

§ 2. AMENDMENT.] That section 750 of the revised codes of 1899 be amended to read as follows:

§ 750. OTHER SUBJECTS TO BE TAUGHT.] Each teacher in the common schools shall teach pupils as they are sufficiently advanced to pursue the same, the following branches: Orthography, reading, spelling, writing, arithmetic, language lessons, English grammar, geography, United States history, civil government, physiology and hygiene, giving special instruction concerning the nature of alcoholic drinks and other narcotics and their effect upon the human system. Physiology and hygiene, including the nature of alcoholic drinks and other narcotics and their effect upon the human system, shall be taught as thoroughly as any branch is taught. All pupils in the above mentioned schools below the high school and above the third year of school work, computing from the beginning of the lowest primary year, shall receive instruction in this subject every year from text books adapted to grade in the hands of pupils, for not less than four lessons per week for ten weeks of each school year. In all schools above mentioned, all pupils in the lowest three primary school years shall each year be instructed orally in this subject for not less than three lessons per week for ten weeks of each school year by teachers using text books adapted to grade for such instruction as a guide or standard. Each teacher in the schools in special districts and in cities organized for school purposes under special law shall conform to and be governed by the provisions of this section.

Approved March 13, 1905.

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## CHAPTER 107.

[S. B. No. 125—Talcott.]

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### TEACHERS' CERTIFICATES.

AN ACT to Amend Sections 737, 738, 739, 741, 742 and 744 of the Revised Codes of North Dakota of 1899, Relating to Education.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 737 of the revised codes of 1899 be amended to read as follows:

§ 737. LIFE PROFESSIONAL CERTIFICATE, WHO ENTITLED.] He may issue a state certificate, to be valid for life, unless it lapse or be revoked, to be known as a life professional certificate. Such certificate shall be issued only to persons of good moral character who pass a thorough examination in all the branches included in the course of study prescribed for the common and high schools of the state, including pedagogics and such other branches as the superintendent of public instruction may direct, and to persons who have received degrees in liberal arts, granted by any college or university of recognized standing. Such certificate shall in no case be granted unless the applicant has had an experience as a teacher of at least five years; provided, that any person who is a graduate of the normal college of the university of North Dakota or of the state normal schools of North Dakota, and has had three years' successful experience after graduation, may be granted such certificate without further examination; provided, further, that if the holder of a professional certificate shall at any time cease to teach or be engaged in other educational work for a period of five years, such certificate shall lapse and the lapse, with date and cause shall be made a matter of record in the office of the state superintendent of public instruction. Such certificate, however, may be reinstated under such rules as may be prescribed by the superintendent of public instruction.

§ 2. AMENDMENT.] That section 738 of the revised codes of 1899 be amended to read as follows:

§ 738. STATE CERTIFICATES. FIRST AND SECOND CLASS. SPECIAL. WHO ENTITLED.] 1. He may issue a state certificate, to be valid for a term of five years, unless sooner revoked, to be known as a state certificate of the first class. Such certificate shall be issued only to persons of good moral character who have completed the prescribed curriculum of study in the normal college of the state university or in one of the normal schools of the state or in a normal school elsewhere, having a reputation for thoroughness or to those persons who have degrees in liberal arts, granted by any college or university of recognized standing, but the superintendent of public instruction may examine any such applicant in his discretion. Such certificate shall not be granted unless the applicant shall have taught school successfully for at least eighteen months after graduation.

2. He may issue a state certificate, to be valid for a term of three years, unless sooner revoked, to be known as a state certificate of the second class. Such certificate shall be issued only to persons of good moral character who have completed the prescribed curriculum of study in any reputable normal school or who have received degrees in liberal arts from a college or university of good standing in this state and have made at least one year's study in pedagogics, such as shall be prescribed by the superintendent of public instruction, but the superintendent of public instruction may examine any such applicant in his discretion.

3. Any person who is a graduate of the normal college of the uni-



versity of North Dakota or of one of the normal schools of North Dakota, and who has had nine months' successful experience as a teacher after graduation may be granted the state certificate of the first class; provided, that a diploma from the normal department of the university of North Dakota or of either of the normal schools of this state shall be the equivalent of a state certificate of the second class, if the party holding such diploma have the required age specified in section 742.

4. He may issue special certificates authorizing the holders thereof to teach music, drawing, kindergarten, primary subjects or manual and industrial training, which certificates shall be valid throughout the state, each for a term of three years, under such regulations as the superintendent of public instruction may prescribe; provided that graduates from the state manual training school shall be entitled to certificates authorizing them to teach manual and industrial training without further examination.

§ 3. AMENDMENT.] That section 739 of the revised codes of 1899 be amended to read as follows:

§ 739. FEE FOR CERTIFICATE. CERTIFICATE, HOW REVOKED.] The superintendent of public instruction shall require a fee of five dollars from each applicant for a life professional certificate; a fee of three dollars for a state certificate of the first or second class, and a fee of two dollars from each applicant for a special certificate, which fee shall be used by him to aid in the establishment and maintenance of teachers' reading circles and in the professionalizing of teaching in the state in such other ways as he may deem advisable. He shall revoke at any time any certificate issued in this state for any cause which would have been sufficient ground for refusing to issue the same had the cause existed or been known at the time it was issued.

§ 4. AMENDMENT.] That section 741 of the revised codes of 1899 be amended to read as follows:

§ 741. GRADE OF CERTIFICATES, HOW ESTABLISHED. RE-EXAMINATION, WHEN ALLOWED.] County certificates shall be of three regular grades: First grade for a term of three years; second grade for a term of two years, and third grade for a term of one year, according to the ratio of correct answers for each applicant, and other evidence of qualification; provided, that after January 1, 1908, county certificates shall be of two regular grades: First grade for a term of three years; second grade for a term of two years. No certificate shall be granted unless the applicant shall be found proficient in and qualified to teach the common branches of a common English education, reading, writing, orthography, language lessons and English grammar, geography, United States history, civil government, physiology and hygiene and can pass a satisfactory examination in physical culture and theory and practice of teaching. In addition to the above, an applicant for a first grade certificate shall pass a satisfactory examination in physical geography, elementary physics, psy-

chology, elementary algebra and geometry. The percentage required to pass any branch shall be prescribed by the superintendent of public instruction. The county superintendent may grant permission to teach until the results of the next regular examination are received from the superintendent of public instruction, to any person applying at any other time than at a regular examination, who can show satisfactory reasons for failing to attend such examination and satisfactory evidence of qualification, subject to such rules and regulations as may be prescribed by the superintendent of public instruction. Subsequent permits may be granted by the county superintendent with consent and approval of the superintendent of public instruction. The written answers of applicants for county certificates, after being duly examined by the superintendent of public instruction, shall be kept by him for a period of six months after such examination, and any candidate, thinking an injustice has been done him, may, by paying a fee of two dollars into the institute fund of the county and notifying both the county superintendent and the superintendent of public instruction of the same, have his papers reviewed by the superintendent of public instruction, in person, and, if such answers warrant it, he shall instruct the county superintendent to issue such applicant a county certificate of the proper grade and the county superintendent shall carry out such instructions.

§ 5. AMENDMENT.] That section 742 of the revised codes of 1899 be amended to read as follows:

§ 742. QUALIFICATIONS OF TEACHERS. CONTRACTS, WHEN VOID.] No certificate or permit to teach shall be issued to any person under eighteen years of age, and no first grade certificate to any person who is under twenty years of age, and who has not taught successfully twelve school months, and no person shall be allowed to teach more than fifteen school months on third grade certificates. First and second grade certificates may be renewed without examination, under such requirements as shall be imposed by the superintendent of public instruction. The certificate issued by a county superintendent shall be valid only in the county where issued; provided, that a county superintendent shall indorse for the full period for which they are valid when presented to him for indorsement first and second grade certificates. A fee of one dollar shall be paid into the institute fund of the county for each renewal or indorsement. No person shall be employed or permitted to teach in any of the public schools of the state, except those in cities organized for school purposes under special laws, or organized as independent districts, under the general school laws, who is not the holder of a lawful certificate of qualification or a permit to teach, and no teacher's certificate, issued by the superintendent of public instruction, nor a teacher's diploma granted by any institution of learning in this state shall entitle a person to teach in such public schools of any county, unless such certificate or diploma shall have been recorded in the office of the county superintendent and it shall be the duty of the county superintendent to record

such certificate or diploma; provided, further, that no certificate or permit to teach in the schools of the state shall be granted to any person who is not a citizen of the United States, unless such person has resided in the United States for one year, at least, prior to the time of such application for such certificate or permit. Any contract made in violation of this section shall be void.

§ 6. AMENDMENT.] That section 744 of the revised codes of 1899 be amended to read as follows:

§ 744. CERTIFICATES, WHEN REVOCABLE.] The county superintendent is authorized and required to revoke and annul, at any time, a certificate granted by him or his predecessor for any cause which would have authorized or required him to refuse to grant it, if known at the time it was granted, and for incompetency, immorality, intemperance, cruelty, crime against the laws of the state, breach of contract, refusal to perform his duty or general neglect of the work of the school. The revocation of the certificate shall terminate the employment of such teacher in the school where he may be at the time employed. Such teacher must be paid up to the time of receiving notice of such revocation. The county superintendent shall immediately notify the clerk of the school district where such teacher is employed and he may notify the teacher, through the clerk, of such revocation, and he shall also notify the state superintendent of public instruction and each county superintendent in the state, and shall enter his action in such case in the books of record in his office.

Approved March 13, 1905.

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## CHAPTER '108.

[S. B. No. 145—Hanna.]

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### TEACHING HUMANE TREATMENT OF ANIMALS.

AN ACT Providing That a System of Humane Treatment of Animals  
Shall be Taught in the Public Schools of North Dakota.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. HUMANE TREATMENT TO BE TAUGHT IN PUBLIC SCHOOLS.] That there shall be taught in the public schools of North Dakota, in addition to the other branches of study now prescribed, a system of study of the humane treatment of animals; such instruction shall be oral and to consist of not less than two lessons of ten minutes each per week. The principal or teacher of every school shall certify in each of his or her reports that such instruction has been given in the school under his or her control.

§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 6, 1905.

# ELECTIONS.

## CHAPTER 109.

[Sub. for S. B. No. 88—House Committee on Elections.]

### PRIMARY ELECTION.

AN ACT Providing for the Selection of Candidates for Election by Popular Vote, and Relating to Their Nomination and the Perpetuation of Political Parties.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. OBJECTS.] It is the intention of this act to purify and reform the methods by which organized political parties shall make nominations of candidates for the several public offices, to perpetuate and strengthen political parties by eliminating therefrom the evils hereby sought to be corrected, and to secure to each individual member and delegate of such party an absolute freedom and independence in the expression of his preferences relating to nominations by such parties, and to prevent and prohibit the use and influence of the methods similar to that known as the unit rule, and this statute shall be so construed as to give force and effect to this expressed intention.

§ 2. WHEN HELD, WHO NOMINATED.] On the Tuesday following the third Monday of June of each year during which occurs a general election, there shall be held, in lieu of caucuses and conventions, a primary election in the various voting precincts of this state for the nomination of candidates for the following offices, to be voted for at the ensuing general election, viz: County officers, members of the legislative assembly, county commissioners, and city officers; and also for the election of delegates to the state and judicial district conventions as herein provided.

For special elections for the officers enumerated herein, the nomination shall be made as otherwise provided by law.

§ 3. PETITION OF CANDIDATES, CONTENTS, AUDITOR'S DUTY.<sup>1</sup> Every candidate for a member of the legislative assembly shall, not more than thirty nor less than fifteen days prior to said primary election, present to the county auditor of the county in which such legislative district shall be situated, and if such legislative district shall be composed of two or more counties, then in that event to the county auditor of each of said counties, a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of ten per cent of the total vote cast for the candidate of the party with which he affiliates, receiving the greatest number of votes for

the same position at the last general election; provided, however, that in no case shall more than one hundred names be required. Each name on the petition shall be that of a legal voter and be subscribed under a certified party heading.

Upon receipt by the county auditor of such petition, and when accompanied by the following affidavit, he shall place the applicant's name upon the primary election ballot of his party, as hereinafter provided.

Said affidavit may be substantially as follows:

STATE OF NORTH DAKOTA,

COUNTY OF..... ss.

I,.....being duly sworn, depose and say that I reside in the county of....., and state of North Dakota; that I am a qualified voter therein and a .....; that I am a candidate for nomination to the office of ..... to be chosen at the primary election to be held on ..... 19...., and I do hereby request that my name be printed on the primary election ballot as provided by law as a candidate of the party for said office.

Subscribed and sworn to before me this ..... day of ..... 19....

.....

Notary Public.

§ 4. PETITION, HOW SIGNED, FEES AND HOW DISPOSED OF.] Every candidate for a county or district office shall, not more than thirty days nor less than twenty days prior to any primary election, present to the county auditor a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of five per cent of the total vote cast for the candidate of the party with which he affiliates for the same position at the last general election; provided, however, that in no case shall more than three hundred names be required.

Each name on the petition shall be that of a qualified voter and be subscribed under a certified party heading.

Each signer of a nomination paper shall sign but one paper for the same office; he shall add his residence, with the street number, if any, and the date of the signing.

Upon the receipt of such petition by the county auditor and the payment to him of an amount equal to two per cent of the annual salary of the office to which he aspires, (excepting candidates for state senator who shall pay thirty dollars, and candidates for legislative representative who shall pay ten dollars), and in no case less than five dollars, excepting candidates for county commissioners, surveyor and coroner who shall pay three dollars, and the candidates for county constables and county justices of the peace who shall pay one dollar, as provided in this act, and when accompanied by an affidavit as provided in section 3 of this act, he shall place the name of such applicant upon the primary election ballot of his party as hereinafter provided.

For the purpose of this act, candidates for the office of sheriff shall pay the same fee as candidates for the office of county auditor.

The money so received by the county auditor shall be turned over by him to the county treasurer to be covered into the general fund.

§ 5. CONTINUOUS LIST OR AGGREGATE.] The petitions required in sections 3 and 4 of this act may be one continuous list of names under the proper political title or principle or there may be a number of such petitions using the same title, giving the aggregate of names required.

§ 6. NOMINATION WITHOUT PETITION.] A candidate may be nominated by having his name written on, or by printed stickers placed in a blank line left for that purpose underneath the group in each official position.

§ 7. DUTY CHAIRMAN STATE CENTRAL COMMITTEE. ELECTION STATE DELEGATES, HOW.] It shall be the duty of the chairman of the state central committee of each party or principle entitled to make nominations as such under the provisions hereof, to certify to the county auditor of each county on or before the first day of May of each year during which state officers may be elected, the number of delegates which have been apportioned to such county as the representation to which such county is entitled in the succeeding state convention of such party or principle, and such county auditor shall thereafter include in the notice of the primary election to be held under the provision of this act a notice of the election at such primary election of the number of delegates apportioned to said county as aforesaid, and thereafter the same proceedings shall be had relating to the election of delegates to state conventions as is provided herein for the nomination of candidates for county offices; provided, that candidates for the office of delegates to the state convention shall not be required to pay any fee to become candidates as such delegates; and provided, further, that a petition for the nomination of candidates for the office of delegate to the state convention shall contain at least ten per cent of the vote cast at the last general election for the candidate of such party or principle for the office of governor in such county; and provided, further, that such petition may contain the names of one or more candidates for office of delegate to the state convention.

§ 8. STATE CONVENTION, MANNER OF CONDUCTING. VACANCIES, HOW FILLED.] The delegates for the state convention chosen by each party or principle in the manner provided in the preceding section shall meet at a time and place designated by the state central committee of each of said parties or principles, respectively, and shall nominate by majority vote the candidates of said party or principle for the respective state offices to be filled at the succeeding general election held in this state, including members of congress and presidential electors.

The state central committee shall provide the manner of filling vacancies occurring at the time of holding the convention in the delegations of the several counties, but no person shall be chosen except a resident of the county in which such vacancy occurs.

All nominations by such convention shall be made by secret ballot and not otherwise. The use or observance or enforcement of the practice commonly known as the unit rule is hereby strictly forbidden and any person who shall cast or receive or cause to be cast or received or counted any vote whatever in violation of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be punished as provided by law for misdemeanors.

In case of any vacancy by death, resignation or otherwise, in any of the nominations made by such state convention the state central committee of such party shall have power to fill such vacancy.

No promise of appointment of or preference to or for any position in the federal or state service shall be given to any delegate to the state or district convention to be holden under this act, and no inducement direct or indirect shall be offered to any such delegate for his vote or influence as such in connection with the nomination of any person, by such convention; and any person violating this provision shall be deemed guilty of a misdemeanor and on conviction thereof be fined in any such sum not less than \$50, or more than \$500, and imprisonment in the county jail not less than ten days or more than one year.

§ 9. WHO QUALIFIED AS CANDIDATES.] All persons nominated in accordance with the provisions of this act shall be eligible and qualified as candidates to be voted for at the ensuing general election.

§ 10. BALLOTS, HOW PROVIDED, HOW ENTITLED, FORM OF, HOW MARKED.] The primary election and primary election ballot shall be provided for, arranged and conducted and all expenses paid as now provided by law for general elections, except as otherwise provided for in this act.

There shall be separate ballots for each party or principle and they shall all be of the same size, texture and color.

The ballot shall be entitled "primary election ballot."

The names of all aspirants for nomination of each political party or principle for the different offices shall be arranged in separate groups in their order, on separate ballots under a proper political designation, leaving one or more blank lines or spaces below each group of names on which may be written or placed a name or a printed sticker attached for the nomination of the candidate. No squares shall be left at the head of the ballot.

At the head of each ballot shall be placed the title of the political party or principle that it represents.

At the left of each group shall be placed the title of the office followed by a bracket indicating the number of names in such group. Above each group there shall be a space in which shall be printed the number of names in that group to be voted for as follows: "Vote for.....name (or names) only."

The voter shall place his cross (X) in the square following the name to the right of every candidate he desires to vote for.

The judges and inspectors of election when handing a ballot to a voter shall inform him that he must vote for the candidates of the political party such ballot represents only and the voter shall call for the ballot representing the party or principle with which he affiliates and he shall receive such ballot and no other.

§ 11. DUTY OF VOTER.] Any citizen otherwise eligible by law affiliating or representing the principles enumerated in the national platform of the following parties are eligible to nomination under this act: The republican party, the democratic party, or any party designation that cast five per cent of the votes cast for governor at the last general election and it shall be unlawful for any person to call for or vote a ballot at the primary election herein provided for except a ballot representing the party, or principle, with which he affiliates and any person who has reason to believe that the ballot called for by the voter does not represent the party or principle with which said voter affiliates may challenge such vote, and he shall not be entitled to cast his ballot unless he makes and files with the inspector of such primary election an affidavit to the effect that such ballot represents the political party with which he affiliates.

§ 12. VACANCY, HOW FILLED.] Should a vacancy occur by resignation, death or otherwise where there is only one aspirant for such office, in any office for which candidates are to be nominated in this act, or should there be no applicant for such office before printing the primary election ballots such vacancy may be filled by the regularly constituted committee of the party in which such vacancy occurs, and no petition or fee shall be required therefor.

§ 13. PRIMARY BALLOTS, HOW PREPARED.] The primary election ballots of each party or principle shall be prepared, unless otherwise provided in this act, as prescribed in section 491 of the revised codes of 1899.

§ 14. ARRANGEMENT OF NAMES.] The names of candidates for each office upon the sample and official ballot shall be arranged alphabetically according to surnames.

§ 15. JUDGES OF DISTRICT COURT, HOW NOMINATED.] Between the first day of May and the first day of June of each year during which an election shall be held for the purpose of electing, among other officers, judges of the district court in the several districts of this state it shall be the duty of the state central committee of each party or principle entitled to make nominations under the provisions hereof to designate a time and place at which a convention shall be held for the purpose of nominating candidates of such party or principle for the office of judge of the district court of each judicial district. Notice of the time and place so designated shall be given in such manner as the state central committee shall determine and at the time and place so designated the persons elected as delegates to the state convention of such party or



principle in such year, from the several counties composing each judicial district, shall meet in convention and nominate by majority vote the candidate of such party or principle for the office of the judge of the district court. The vote by which such nominations shall be made shall be by secret ballot. The chairman and secretary of such convention shall immediately issue a certificate of the nomination showing the name and residence of the person so nominated, and forthwith transmit the same to the secretary of state. Such convention shall have power to provide the method by which any vacancy shall be filled by reason of the death, resignation or failure of the person so nominated to accept or otherwise.

§ 16. DUTY OF SECRETARY OF STATE.] The secretary of state shall between the first day of April and the fifteenth day of May in such year, direct and cause to be delivered to the county auditor of each county a notice specifying the officers to be nominated under this act, specifying the several officers to be nominated in such county at the next primary election.

The auditor to whom such notice is delivered, shall cause notice of the same to be given as provided in section 512 of the revised codes of 1899.

§ 17. ELECTION LAW APPLICABLE.] Except as herein otherwise provided the following sections of chapter 8 of the political code of 1899 entitled "elections" are hereby made applicable to primary elections and primary election ballots under this act, to wit: Sections 480, 481, 483, 484, 485, 486, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 505, 510, 513, 514, 515, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 529, 531, 533, 535, 536, 537, 545, 547, 548, 549, 556, 557, 558, 559, 560, 561 and 562.

§ 18. TALLY SHEETS AND BOOKS.] Two tally books or two sets of tally sheets shall be provided for each political party or principle, having candidates to be voted for at each voting precinct, the same to be furnished by the county auditor, at the same time and in the same manner that the poll books and ballots are furnished. The names of the candidates shall be placed on the tally sheets in the order in which they appear on the official sample ballots and in each case shall have the proper party designation at the head thereof.

§ 19. POLLS OPEN AND CLOSE, WHEN. CANVASS OF VOTE, HOW MADE.] The polls shall be opened at nine o'clock a. m. and shall remain open continuously until four o'clock p. m.

When the polls are closed the judges and inspectors of such primary election shall open the ballot boxes, count the votes and compare the same with the clerk's list and should any irregularities appear they shall proceed as now provided by law.

When the ballots compare with the clerk's list they shall proceed to canvass and place those of each political party in separate piles.

The tally of the votes shall be separate for each political designation or principle and so returned by the judges and inspectors of election, giving the full vote for each candidate.

The men's and women's vote shall be kept separately and so returned by the judges.

The county canvassing board shall aggregate those for each of the candidates voted for.

§ 20. JUDGES MAKE STATEMENT.] The judges of such primary election in each precinct shall make a statement on blanks to be provided for that purpose which shall be subscribed to by them and filed in the office of the county auditor with the returns as follows: They shall contain the names of all persons voted for at the primary election with the number of votes cast for each candidate and for what office.

A separate statement shall be made for each political party or principle.

§ 21. DUTY OF CLERKS.] The clerks of primary election shall keep a list of names of all persons voting at such primary election, and shall return one list as now required and one tally sheet that shall be a part of the records, and deliver the other list to the board of registration within thirty days following any primary election.

No registration of votes shall be required under this act to vote at any primary election.

The poll lists so kept at the primary election and delivered to the boards of registration shall take the place of the first registration of the voters now required, and notice only shall be given of the second day of registration which shall be held and conducted as now provided and no other shall be required to vote at the general election following

§ 22. CANVASSING BOARD, WHO COMPOSED OF.] The county canvassing board shall be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners and the chairmen of the county committee of the two political parties that cast the highest vote for governor at the preceding general election.

The members of said board shall meet in the county auditor's office in the court house, at ten o'clock a. m., on the eighth day after any primary election, and shall proceed, after taking the usual oath of office, to open and publicly canvass the primary election returns made to the county auditor.

Any three members of said board shall constitute a quorum and are authorized to make the canvass herein provided and to certify to the results thereof.

§ 23. DUTY OF CANVASSING BOARD.] The canvassing board shall make and prepare a statement the same to be signed by said board and filed in the office of the county auditor as follows:

First. A statement containing the names of all the candidates voted for at the primary election, with the number of votes received by each and for what office or position, said statement to be made as to each political party or principle separately.

Second. A statement of the names of the persons or candidates of each political party who are nominated, towit: Those persons or

candidates of such political party or principle who received the highest number of votes for the respective office, and where there is more than one person to be elected to a given office at the ensuing general election there shall be included in said statement of nomination the names of so many candidates of such party receiving the next highest number of votes for that office as there are persons to be elected to such office at said ensuing general election, including delegates to the state convention. Said statement shall in like manner be made separately as to each political party.

Third. A statement of the whole number of electors registered and the number of ballots cast, men's and women's separately, at such primary election.

Fourth. It shall be the duty of the county auditor upon the completion of the canvass to mail or deliver in person, to each candidate so nominated for any county or district office, including delegates elected to the state convention, a notice of such fact except as to delegates, and that his name will be put upon the official ballot except as otherwise provided. He shall, also, cause a copy of the findings of said board to be published in a newspaper at the county seat, if such there be.

§ 24. DUTY OF AUDITOR.] It shall be the duty of the county auditor of each county under his official seal, except as provided in section 26 of this act, immediately upon the completion of the canvass as provided by section 23 hereof, to issue certificates of nomination for the persons of each political party or principle having the highest number of votes, for the members of the legislative assembly, which certificate of nomination shall be forwarded without delay to the secretary of state by registered mail.

§ 25. LEGISLATIVE DISTRICTS OF MORE THAN ONE COUNTY.] When two or more counties are embraced in one legislative district, the respective county auditors shall attend at the office of the county auditor of the senior county of such district, within fifteen days after a primary election, and in conjunction with the auditor of the senior county shall compare the votes cast in the several counties comprising such district; and such auditor shall immediately make out certificates of nomination for the persons of each political party or principle having the highest number of votes in such district for the members of the legislative assembly as provided in section 24 of this act, which certificate of nomination shall be forwarded without delay to the secretary of state by registered mail, by the county auditor of the senior county who shall give notice in writing to all the members of the legislative assembly nominated in such district.

§ 26. When a vacancy occurs by death or resignation of any aspirant for nomination before the primary election ballots are printed in legislative districts containing more than one county, the members of the county central committees of the party in which such vacancy occurs, of the counties of which such district is composed, shall meet and by majority vote may fill such vacancy, and by a certificate

of nomination notify the county auditors of the several counties of which such district is composed. Should a nomination be so made the auditors of such counties shall place the name on the primary election ballots where the vacancy exists.

Should a vacancy occur in a legislative office in a county composed of more than one district, or in a commissioner's district, then the county central committee of the party in which such vacancy occurs shall meet and fill such vacancy. On receipt of a certificate of nomination from such committee, the county auditor shall place the name of such nominee upon the primary election ballot where such vacancy exists.

§ 27. The provisions of this act shall apply to cities in this state containing a population of five thousand or more according to the last government census.

§ 28. Primary elections for the nominations of all municipal officers shall be held on the first Tuesday of March of each year and conducted the same as city elections.

Nominations shall then be made of all officers, city and ward, where the terms of office expire at the municipal election following.

§ 29. Thirty days prior to such election it shall be the duty of the city auditor or recorder to give public notice thereof by two publications following in the official paper of the city, and by posting three notices in each ward, in conspicuous places specifying the officers to be nominated at the primary election following, giving the date of such election and the title and term of such office.

§ 30. All aspirants for nomination shall, not more than twenty nor less than ten days prior to such primary election, present or have presented to the city auditor or recorder a petition and affidavit as required in sections 3 and 4 of this act; provided, that the fee required to be paid shall be five dollars for nominations at large and two dollars for nominations in wards, which shall be paid to the city treasurer and a receipt taken therefor; provided, further, that the petition required shall contain the names of at least five per cent of the votes cast for mayor at the preceding election for officers at large, and five per cent of such vote cast in each ward shall be required to place a name on the primary election ballot for nominations in such ward.

§ 31. It shall be the duty of the city auditor or recorder to prepare the primary election ballots as provided in this act and deliver the same as now provided by law.

§ 32. The city council shall compose the canvassing board, and shall meet within five days after any primary election and canvass the votes as required in subdivisions first and second of section 23 of this act and make returns of same as herein provided.

§ 33. When the result of such election is announced it shall be the duty of the city auditor or recorder to notify the candidates declared nominated by written notice thereof and by publishing the same in the official paper of the city, one week prior to the municipal election.

§ 34. All the provisions of chapter 5 of the penal code, in so far as the same relates to crimes against the elective franchise, are hereby made applicable to elections held pursuant to the provisions of this act.

§ 35. COMMITTEES UNCHANGED, WHO MAY BE.] Every state, county and city committee of each political party now eligible under the provisions of this act, shall remain the regularly constituted committee of the respective parties until succeeded as provided for in this act.

§ 36. CENTRAL COMMITTEES, HOW CONSTITUTED.] Between the first day and tenth day of August of each year following a primary election for the election of delegates to a state convention, it shall be the duty of the persons elected as delegates to the state convention of each party or principle in such year, to meet at the county seats in each county, respectively, at a time and place to be designated by the chairman of the county central committee (ten days' notice whereof shall be given by mail to each of said delegates by such chairman of the county central committee) and elect a county central committee representing such party or principle which committee shall be composed of such number as said delegates to the state convention shall at said time and place determine, and the members of such committee shall be so selected as to give as nearly as practicable equal representation to each portion of the county containing an equal number of electors who shall be members of said party or principle.

No candidate shall be a member of such committee.

Each member shall retain such position until his successor is chosen.

Every member so selected shall be a legal voter.

Such members shall meet within five days after their election and organize by selecting a chairman, a secretary and a treasurer from among their members and shall adopt rules and modes of procedure.

Vacancies shall be filled by a majority of the committee, by appointment from the district in which such vacancy exists.

§ 37. USAGE AND CUSTOMS PREVAIL.] It is not the intention hereof to destroy or impair the organization of any party or principle now existing or hereafter to exist, therefore, each of such parties or principles, and each and all of the state, county, and other committees thereof shall possess all of the ordinary powers and authority heretofore established by the usages and customs of such parties not inconsistent with any of the provisions hereof.

§ 38. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved Febraury 21, 1905.

# ELEVATORS AND WAREHOUSES.

## CHAPTER 110.

[H. B. No. 160—Davis.]

### GRAIN STORAGE RECEIPTS.

AN ACT to Amend Section 1791 of the Revised Codes of 1899, Relating to Public Warehouses.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1791 of the revised codes of 1899 be amended so as to read as follows:

§ 1791. WHAT STORAGE RECEIPTS SHALL EXPRESS.] Each storage receipt issued in this state shall expressly provide that at the option of the holder of such receipt the kind, quality and quantity of grain for which such receipt was issued shall be (on his demand) delivered back to him (at any terminal point) or at the same place where it was received upon the payment of a reasonable charge per bushel for receiving, handling, storage, and insurance charges; and in case of terminal delivery the payment (in addition to the above of the regular freight charges on the gross amount called for by the tickets being surrendered.) Such charges to be fixed by express terms in the storage receipt at the time of receiving the grain at the elevator or warehouse, and at the time of issuing the receipt, but no charges shall be made for cleaning grain unless such grain has been actually cleaned; and nothing in this section shall be construed to require the delivery of the identical grain specified in the receipt so presented, but an equal amount of the same grade of grain or in lieu thereof a receipt issued by a bonded warehouse or elevator company doing business at terminal points, for an equal amount of grain of the same grade; provided, further, that grain placed in a special bin be excepted from the provisions of this act.

Approved March 9, 1905.

# EMBALMERS.

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## CHAPTER 111.

[H. B. No. 129—Gilbert.]

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### STATE BOARD OF EMBALMERS.

#### AN ACT Establishing a State Board of Embalmers.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. GOVERNOR TO APPOINT.] That the governor shall as soon as practicable after the passage of this act, appoint the president and secretary of the state board of health, and three persons who shall be practical and practicing embalmers in this state, who shall constitute a state board of embalmers. One of the embalmers so appointed shall hold office for two years, one for three years, and one for four years, unless sooner removed. Appointments to fill vacancies caused by death, resignation or removal before the expiration of terms, shall be made for the residue of such terms by the governor, and all the appointments to fill vacancies caused by expiration of terms shall be made in same manner and shall be for a period of four years.

§ 2. OATH OF OFFICE.] The members of said board, before entering upon their duties shall respectively take and subscribe the oath required by other state officers, which shall be filed in the office of the secretary of state, who is hereby authorized to administer same. They shall have power to elect out of their own number a president, secretary and treasurer, and adopt such regulations for the transaction of the business of the board and the management of its affairs, as they may deem expedient. The members of such board shall receive no salary as such, except the secretary, who shall have fifty dollars a year for services; but the actual traveling and necessary expenses of the board and its members shall be paid, but only out of the receipts as hereinafter directed.

§ 3. MEETINGS OF THE BOARD.] Said board shall meet at least once a year, and may also hold special meetings as frequently as the proper and efficient discharge of its duties shall require, at a time and place to be fixed by the rules and by-laws of the board; and the rules and by-laws of the board shall provide for the giving it timely notice of all meetings to every member of the board, and to all applicants for license. Three of the members shall at any meeting constitute a quorum for the transaction of business.

§ 4. BOARD TO EXAMINE CANDIDATES.] The members of this board, or such number thereof as shall be designated by said board, shall examine candidates for license on the subjects of embalming,

and care, disposition and preservation of deceased persons, also on the subject of sanitation for the prevention and spread of infectious and contagious diseases, in accordance with the rules of the state board of health. And they shall adopt such rules and regulations for the disinfection of dead bodies, their bedding, clothes and surroundings, as they shall think proper, and shall cause such rules to be made known to every person engaged in the profession of embalming and the business of undertaker. And it is the intention that this board shall be an aid to the state board of health.

§ 5. LICENSE ISSUED, WHEN.] Every person who wishes to practice the profession of embalming the bodies of persons having died of any infectious or contagious disease in the state of North Dakota or prepare for shipment the body of any person having died of any infectious or contagious disease, shall appear before the state board of embalmers, or such member thereof designated, as hereinbefore provided, for examination on their knowledge of embalming, sanitation, preservation of the dead, disinfection of a deceased person and the apartments, bedding, clothing, excretion and anything likely to be affected in case of death from infectious or contagious disease, in accordance with the rules and regulations of the state board of health. Such examination shall be in writing and all examination papers shall be kept on record by said state board of embalmers; and if the applicant be of good moral character and passes a satisfactory examination, then the said board shall issue to said applicant, on payment of the sum of five dollars to the treasurer of said board, a license to practice the profession of embalming for the term of one year. If the applicant desires the renewal of the license, the said board shall grant it, except for cause, and the annual fee for the renewal of the license shall not exceed three dollars.

§ 6. MAY USE A COMMON SEAL.] Said board is hereby authorized to adopt and use a common seal, and any transcript of any matter of record in the office of said board, with the certificate of the secretary thereof attached, under the seal of said board, shall be competent evidence of such matter of record in any court in this state. All licenses shall be signed by a majority of the state board of embalmers and attested by its seal, and shall specify by name, the person to whom issued. Every such license shall be non-assignable and non-transferable, and shall be displayed by such embalmer in a conspicuous place in his or her office or place of business.

§ 7. VIOLATION OF LAW. PENALTY.] Any person who shall practice or hold himself or herself out as practicing the art of embalming the dead in accordance with the provisions of section 5 of this act, without having complied with the provisions of said section 5, shall be guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be sentenced to pay a fine of not less than fifty dollars, or more than five hundred dollars, or undergo an imprisonment of not exceeding one year, or both, at the discretion of the court, for each and every offense, but the penalties of this section named shall not be enforced until after an ex-



amination of applicants has been held under the provisions of this act.

§ 8. FEES AND FINES TO BE PAID TO THE TREASURER. BOND OF.] All fees collected and fines paid under the provisions of this act shall be paid to the treasurer of the state board of embalmers, to be used for the purpose of defraying the necessary expenses, and the treasurer of the state board shall give bond in the sum of five hundred dollars to the approval of said board for the honest and faithful discharge of his duties. It shall be the duty of said state board on or before the first Monday in November of each and every year to make a report in writing to the governor of this state, containing a detailed statement of the nature of the receipts and the manner of the expenditures and balance of money remaining at the end of the year after the payment of the necessary expenses, including the salary of the secretary and the traveling and other necessary expenses of the members of the board, incurred in the discharge of their duties as such, may be used by the state board of embalmers for educational purposes in their profession.

§ 9. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 28, 1905.

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## ESTRAYS.

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### CHAPTER 112.

[H. B. No. 18—Tofsrud.]

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### ESTRAYS.

AN ACT to Amend Section 1 of Chapter 96 of the Laws of 1903 (Being an Amendment of Section 1572 of the Revised Codes) Relative to Giving Notice Upon Taking Up Estrays and Providing Penalty for Failure to Give Such Notice.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That chapter 96 of the laws of 1903 (being an amendment of section 1572 of the revised codes) be and the same is hereby amended so as to read as follows:

§ 1572. NOTICE OF TAKING UP ESTRAYS.] Each person taking up an estray horse, mare, colt, ass, mule or neat cattle, sheep, hog or goat, shall within ten days thereafter give notice of the finding and taking up of the said animal in a weekly newspaper, if there is such a newspaper published in the county, if not, in the nearest newspaper, which advertisement shall give a description of such estray and the marks and brands thereon. Any person taking up such estray shall also file, within ten days, with the county auditor of the county where-

in such estray is taken up, a description of such estray and the marks and brands thereon. Such person shall, also, within ten days from the time of taking up such estray mail to the commissioner of agriculture and labor, at his office in Bismarck, by registered mail, a true copy of the notice hereinbefore required to be given to the county auditor of the respective counties. The receipt for the registered letter and proof of publication of the notice as herein provided must be filed with the county auditor of the county where such estray was taken up before said estray can be appraised or before appraisers can be appointed. Any person taking up such an estray who fails to advertise such estray or who fails to file a description thereof with the county auditor or fails to mail a copy of said notice to the commissioner of agriculture and labor as herein provided, shall be guilty of a misdemeanor and shall be liable to the owners of such estray for all damages caused by neglecting to advertise as herein provided.

Approved March 9, 1905.

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## EXPERIMENT STATION.

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### CHAPTER 193.

[S. B. No. 163—Young.]

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#### TESTS OF WHEAT AND FLOUR.

AN ACT to Provide for the Making of Tests of Wheat and Flour to Determine the Comparative Milling Values of the Different Grades of Wheat.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. NORTH DAKOTA AGRICULTURAL STATION TO MAKE EXPERIMENTS TO DETERMINE COMPARATIVE MILLING VALUES OF DIFFERENT GRADES OF WHEAT. RECORD TO BE KEPT AND PUBLISHED.] It shall be the duty of the North Dakota government agricultural experiment station to conduct experiments and determine the comparative milling values of the different grades of wheat by making chemical analysis of the different grades of wheat and baking tests of the flours made therefrom. A record shall be kept and published of the different grades of wheat received and by whom graded, the name of the person from whom received with address, the nature of the soil, previous cropping, and number of years which the land has been cropped, unless it appears that the wheat tested has been received from a dealer and consists of blended or mixed wheat, in which case the record shall so state. The result of the chemical analysis of each sample shall be kept, which shall show the total weight of the sample, total weight of flour, total weight of feed, total weight recovered and per

cent of flour, also data as to the moisture and proteids in the different grades of wheat, and analysis of the flour made from the different grades of wheat and the yield and quality of bread made from the different grades of wheat. In addition to such information it shall be the duty of the said North Dakota government agricultural experiment station to obtain, tabulate and publish such other and further information in relation to the comparative values of the different grades of wheat and flour made therefrom as shall be of value to the wheat growers of this state.

§ 2. EMERGENCY.] Whereas, an emergency exists in this, that there is now no method provided by law for determining the comparative milling values of wheat and flour, now, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1905.

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## GOPHER TAX.

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### CHAPTER 114.

[H. B. No. 176—Spangberg.]

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### GOPHER TAX.

AN ACT to Amend Chapter 107 of the Session Laws of 1901, Relating to Gopher and Prairie Dog Tax.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That chapter 107 of the session laws of 1901 be amended to read as follows:

§ 107. COUNTY COMMISSIONERS MAY LEVY GOPHER TAX.] The board of county commissioners of every county in this state may, at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one-half of one mill on the dollar of assessed valuation upon all real estate in such county, the proceeds of which shall be used solely for the purpose of promoting the destruction of gophers and prairie dogs in said county; the fund provided to be raised in accordance with this section shall be denominated the "gopher and prairie dog destruction fund," and shall be kept separate and distinct by the county treasurer and shall be expended by the board of county commissioners at such time and in such manner as is by said board deemed best to secure the abatement and extermination of the gopher and prairie dog pest.

§ 2. PETITION REQUIRED.] It shall be the duty of the board of county commissioners of any county, on receiving a petition signed by not less than thirty-five per cent of the total number of votes cast at the last general election held in such county request-

ing them to do so, to offer a bounty or reward for each gopher and prairie dog destroyed during the months of April and May. The board of county commissioners when so petitioned, as herein provided, shall publish in the local papers of the county during the month of March of each year, the amount of bounty or reward to be paid for each gopher and prairie dog destroyed, the manner of ascertaining the number of gophers and prairie dogs destroyed and the manner of procedure necessary to obtain such reward.

§ 3. EMERGENCY.] Whereas, an emergency exists, in that the season when the gophers and prairie dogs are most destructive to crops will be passed before July 1st, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1905.

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## GRAIN INSPECTION.

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### CHAPTER 115.

[S. B. No. 177—Young.]

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#### GRAIN INSPECTION.

AN ACT Providing for the Recommendation by the Governor of North Dakota of a Member of the Grain and Warehouse Commission for the City of Superior, Wisconsin, and Providing for His Compensation for the Period of Two Years.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. GOVERNOR TO RECOMMEND SUITABLE PERSON OR PERSONS TO THE GOVERNOR OF WISCONSIN AS GRAIN INSPECTOR. QUALIFICATIONS.] That the governor of this state shall, within sixty days after receipt by him of a request by the governor of the state of Wisconsin so to do, recommend one or more persons who shall have had at least five years' experience in the handling or grading of grain, for appointment upon the grain and warehouse commission for the city of Superior, Wisconsin, and shall, within said period, forward to the governor of said state of Wisconsin, the name or names of the person or persons so recommended.

§ 2. TERM OF OFFICE. SALARY.] The person appointed by the governor of Wisconsin, if he has been recommended by the governor of North Dakota, shall be paid the sum of three hundred dollars per annum from the date of his appointment for the period of two years, which shall be in addition to all sums paid him under the laws of the state of Wisconsin.

§ 3. REPEAL.] Chapter 191 of the laws of North Dakota for the year 1903 is hereby repealed.

Approved March 7, 1905.

## GUARDIANS.

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### CHAPTER 116.

[S. B. No. 11—Pierce.]

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#### SPECIFIC PERFORMANCE BY GUARDIANS.

AN ACT Providing for Specific Performance by Guardians of Contracts for Sale of Real Estate in Certain Cases.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ I. SPECIFIC PERFORMANCE BY GUARDIANS.] When a person who is bound by contract in writing to convey any real estate, dies before making the conveyance, and such real estate or the interest therein of the decedent shall have passed by inheritance or devise to any minor, the county court may make a decree authorizing and directing the guardian of such minor to convey such real estate to the person entitled thereto, in all cases when the decedent, if living, might be compelled to make such conveyance. The same proceedings shall be had, and the effect thereof shall be the same as in proceedings to compel specific performance by an executor or administrator, as provided in sections 6457, 6458 and 6459 of the revised codes and acts amendatory thereof.

Approved February 10, 1905.

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## HIGHWAYS.

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### CHAPTER 117.

[H. B. No. 73—Morgan.]

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#### DESTRUCTION OF WEEDS.

AN ACT for the Destruction of All Weeds on All Graded or Cultivated Highways.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ I. ROAD OVERSEER TO DESTROY WEEDS.] All weeds of every name and nature and description shall be cut by the road overseer of public highways on such roads that are graded or otherwise cultivated.

§ 2. WEEDS SHALL BE CUT 16 FEET FROM CENTER OF ROAD.] Such weeds shall be cut for a distance extending at least 16 feet from the center on each side of the road.

§ 3. WHEN TO BE CUT. HOW PAID FOR. OWNER OF ADJOINING PREMISES WHO CUTS TO BE CREDITED ON HIS ROAD TAXES.] Such weeds shall be cut not earlier than July 15 and not later than August 5 of each year and said work shall be paid for out of the road fund the same as any other road work; provided, that if the owner of adjoining premises shall cut the weeds therein required to be cut, he shall be credited on his road taxes with the cost of cutting said weeds, said cost to be determined by the road overseer.

§ 4. DUTY OF OVERSEERS.] All overseers of public highways shall file their bill for road work with the board of township supervisors in organized townships and with the board of county commissioners in unorganized townships, but such bill shall not be allowed until such cutting of weeds is completed, and at the time said bill is filed it shall be accompanied by an affidavit of the overseer that the said weed cutting has been completed.

Approved March 9, 1905.

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## CHAPTER 118.

[S. B. No. 36—Stade.]

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### HIGHWAY GRADES.

AN ACT Providing for Establishment of Grades and Highways in Certain Cases.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. GRADES, HOW ESTABLISHED.] That in all places where highways are improved and graded under the contract system, in a township where land contiguous to, adjoining and outside of the limits of any city or village has been surveyed into a block or blocks and divided into city or village lots, the person to whom such contract is awarded shall comply strictly with the ordinances of such city or village as to roads, streets, grades, space for sidewalks, berms and gutters, where, in the opinion of the township board having control of the same, the cost of such grading shall be one hundred dollars or upwards. An estimate, profile and cross section of such desired improvement shall be made by the county surveyor of said county, and the contract for such improvement shall be let to the lowest responsible bidder not a member of the said board and the work done under such contract shall not be accepted or paid for until said surveyor has reported that the said contract has been substantially complied with; provided, that all roads and streets in city, town or vil-

lage additions of outlots shall be graded according to the requirements of such city, town or village ordinance or custom as to space for sidewalks, berms and gutters.

Approved February 24, 1905.

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## INSANE HOSPITAL.

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### CHAPTER 119.

[S. B. No. 130—Sifton.]

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#### PAY OF RESIDENT OFFICERS OF INSANE HOSPITAL.

AN ACT to Amend Section 992 of the Revised Codes of North Dakota, 1899, Relating to Powers and Duties of the Board of Trustees of the State Hospital for the Insane.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 992 of the revised codes of North Dakota, 1899, be amended and re-enacted so as to read as follows:

§ 992. POWERS AND DUTIES OF BOARD.] The board of trustees shall have general control and management of the hospital and shall make all by-laws, rules and regulations necessary for the government of the same not inconsistent with the laws of the state. It shall appoint a superintendent, who must be a physician of acknowledged skill and ability, a graduate of a reputable medical college and a person possessing a good moral character. It shall, when the superintendent shall deem such appointment necessary, appoint one or more assistant physicians, who shall possess like skill and ability and be graduates of a reputable medical college; also a steward and matron, all of whom shall be styled the resident officers of the hospital, and who shall reside therein and be governed by the laws and by-laws of such institution. The annual salaries of the resident officers shall be as follows: Superintendent, two thousand five hundred dollars; steward not to exceed fifteen hundred dollars; first assistant physician, not to exceed sixteen hundred dollars; assistant physician, not to exceed twelve hundred dollars per annum for each, according to length and quality of service, which said salaries shall be fixed by the board of trustees; matron, five hundred dollars.

§ 2. REPEAL.] All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 13, 1905.

# INSTITUTION FOR FEEBLE MINDED.

## CHAPTER 120.

[S. B. No. 51—Cashel.]

### CLOTHING FURNISHED INMATES INSTITUTION FEEBLE MINDED.

AN ACT to Amend Section 8 and Section 12 of Chapter 108, Session Laws of 1903, Entitled "An Act to Establish an Institution for the Feeble Minded, and Provide for its Support and Management."

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 8 and section 12 of chapter 108, session laws of 1903, be amended so as to read as follows:

§ 8. SUPERINTENDENT TO FURNISH CLOTHING.] When the pupils of such institution are not otherwise provided or supplied with suitable clothing, or the necessary transportation they shall be furnished therewith by the superintendent, who shall make out an account thereof in each case against the county from which the pupil shall have come, which account shall state the name of the pupil for whom the same is furnished and shall be certified to be correct by the superintendent and when so certified shall be presumed to be correct in all the courts. The superintendent shall thereupon transmit such account by mail to the auditor of the proper county, and the auditor of such county shall present the same to the county commissioners of said county at their next meeting after its receipt by him, who shall thereupon audit and allow the same, and charge it to the general fund of the county, and thereupon there shall arise in favor of said county a right of action for the amount so paid as against the parent or guardian, if the pupil be a minor, and against the pupil if he or she has no parent or guardian or has attained the age of majority, which may be enforced by civil action at the election of the board of county commissioners. The superintendent shall render to the board of trustees biennially, or oftener if required, an itemized statement of such funds.

§ 12. COMPENSATION.] Each member of the board shall receive as full compensation for his services as such trustee, three dollars per day for each day necessarily and actually employed in his duties as such trustee, together with five cents per mile for every actual and necessary mile traveled in going to and returning from the place of meeting of said board; provided, however, that the secretary and treasurer shall each receive for his services annually a sum not to exceed fifty dollars, as may be allowed by the board.



§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 16, 1905.

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## INSURANCE.

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### CHAPTER 121.

[S. B. No. 103—Sifton.]

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#### COUNTY MUTUAL INSURANCE COMPANIES.

AN ACT to Amend and Re-enact Section 3134 of Chapter 14 of the Revised Codes of 1899, Relating to the Organization of County Mutual Fire Insurance Companies.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 3134. WHO MAY FORM COMPANIES.] Any number of persons, not less than fifty, residing in not more than ten counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure, or any number of persons not less than twenty-five, residing in any one county, owning property of not less than twenty-five thousand dollars in value which they desire to insure, may form a corporation for mutual insurance against loss or damage by fire, lightning, hail and cyclone, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as herein otherwise provided. The principal office of the company must be located within the limits of the county or counties in which the incorporators reside. The name of the county together with the word "county" shall be embraced in the corporate name of the company when organized by the residents of a single county.

Approved March 2, 1905.

## CHAPTER 122.

[H. B. No. 188—Meiklejohn.]

## INVESTMENT OF INSURANCE COMPANY FUNDS.

AN ACT to Amend Section 3094 of the Revised Codes of North Dakota for 1899, Relating to Investments of Funds of Domestic Insurance Corporations.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 3094 of the revised codes of the state of North Dakota for the year A. D. 1899 be and hereby is amended and re-enacted to read as follows:

§ 3094. HOW CAPITAL AND SURPLUS MAY BE INVESTED.] A domestic insurance company may invest its capital, and the funds accumulated in the course of its business, or any part thereof, in bonds or mortgages on improved unincumbered real estate within this state, or within any state in which such company is or becomes duly authorized and licensed to transact business, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policies made payable to the company as its interests may appear, and also in the bonds of the state, or bonds or treasury notes of the United States, and also in the bonds of any county or incorporated city or school district in this state, or within any state in which said company is or becomes duly authorized and licensed to transact business, authorized to be issued by legal authority, and loan such capital and funds, or any part thereof, on the security of such bonds, treasury notes, or upon bonds or mortgages as aforesaid, and change and re-invest the same in like securities as occasion may from time to time require; but the surplus money over and above the capital stock of such insurance company may be invested in or loaned upon the pledge of bonds of the United States or any of the states, or stocks, bonds, or other evidence of indebtedness of any solvent dividend paying institution, incorporated under the laws of this state, or of any state in which such company is or becomes duly authorized and licensed to transact business, or of the United States, except its own stock; provided, always, that the market value of such stock, bonds or other evidence of indebtedness shall be at all times during the continuance of such loan at least ten per cent more than the amount loaned thereon. No domestic insurance company shall invest or loan its capital, or the funds accumulated in the course of its business, or any part thereof, except as provided in this section.

Approved February 27, 1905.

## CHAPTER 123.

[H. B. No. 69—Burgum.]

## LIVE STOCK INSURANCE COMPANIES.

AN ACT to Provide for the Organization of Mutual Insurance Companies for the Purpose of Insuring Against Loss to Pure Bred Registered Live Stock, by Reason of the Death of the Property Insured.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. GENERAL LAWS TO GOVERN WHERE APPLICABLE.] Companies organized under this act shall be subject to the general statutes of this state relating to domestic mutual insurance companies, in so far as the same are applicable and not in conflict with the express provisions of this act.

§ 2. LIVE STOCK INSURANCE COMPANIES. HOW ORGANIZED.] Any number of persons not less than ten, of whom at least five shall be residents of this state, may form a corporation for mutual insurance against loss or damage to pure bred live stock occasioned by the death of the property insured by fire, lightning, accident or disease, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as herein otherwise provided. The term "pure bred live stock," as used in this act includes horses, cattle, sheep and swine of either sex and any breed; provided, that the animals insured must be duly registered in the recognized stud or herd book of such breed; and provided, further, that corporations may be organized under this act for the purpose of insuring either or all of said live stock, against loss or damage to the property insured by reason of fire, lightning, accident or disease, or any or all of them.

§ 3. MANAGEMENT TO BE IN BOARD OF DIRECTORS.] The general management of the business of such company shall be vested in a board of directors of not less than five or more than nine directors, each of whom shall during his term of office be a policy holder in the company. Such directors shall be elected annually and shall hold their offices for one year and until their successors are elected and qualified.

§ 4. BOARD OF DIRECTORS TO ELECT OFFICERS AND FIX BONDS THEREOF.] It shall be the duty of the board of directors to annually elect such officers of the corporation as may be provided in the articles of incorporation and by-laws of the company. It shall also be the duty of the said board of directors to fix the amount of the bonds required of the treasurer and other officers having or likely to have control of any funds belonging to the company, which bonds, in the case of the treasurer, shall not be less than ten thousand dollars, and in the case of the secretary, not less than two thousand five hundred

dollars, and as near as may be shall equal twice the amount of money likely at any one time to be in the hands of the respective officers.

§ 5. MEMBERS MAY VOTE BY PROXY.] Members may vote by proxy dated and executed within three months and returned and recorded on the books of the company three days or more before the meeting at which they are to be used.

§ 6. AMOUNT OF SUBSCRIBED INSURANCE REQUIRED.] No policy shall be issued by an insurance company organized under this act until not less than thirty thousand dollars of insurance in not less than fifteen separate risks have been subscribed for and entered on its books.

Approved March 1, 1905.

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## CHAPTER 124.

[S. B. No. 122—Swenson.]

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### REVOCATION OF INSURANCE COMPANY LICENSE.

AN ACT to Amend Section 3128 of the Revised Codes of 1899, Relating to the Revocation of Authority of Foreign and Domestic Insurance Corporations to Transact Business in This State, and Providing for the Revocation of Authority of Foreign Insurance Corporations to Transact Business Within the State of North Dakota, Upon the Removal by Any Such Foreign Insurance Corporation of Certain Cases From the State to the United States Courts.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 3128 of the revised codes of North Dakota for 1899 be amended and re-enacted to read as follows:

§ 3128. WHEN AND HOW AUTHORITY REVOKED. FOREIGN COMPANY. DOMESTIC COMPANY. INJUNCTION. POWER OF COURT.] If the commissioner of insurance is of opinion upon examination or other evidence that a foreign insurance company is in an unsound condition, or if it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination, or to perform any legal obligation in relation thereto, or if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities, he shall revoke or suspend all certificates of authority granted to it or to its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the commissioner; provided, further, that if any insurance corporation organized under the laws of any other state or country and having been authorized to transact business in this state, shall remove or make application to re-

move into any court of the United States any action or proceeding begun in any court of this state upon a claim or cause of action arising out of any business or transaction done in this state, or upon any contract made, executed or to be performed herein, the commissioner of insurance shall revoke all certificates of authority granted to such insurance corporation, or to its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government, and no new business shall thereafter be done by it or its agents in this state until after the expiration of three years from the date of such last publication. If upon examination he is of the opinion that any domestic insurance company is insolvent, or has exceeded its powers or has failed to comply with any provisions of law, or that its condition is such as to render its further proceedings hazardous to the public or its policy holders, he shall apply to the district court of the county in which the principal office of the company is located to issue an injunction restraining it in whole or in part from further proceeding with its business. The court or judge may, in discretion, issue an injunction forthwith or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify such injunction or make it perpetual, and may make all orders and decrees needful in the premises and may appoint agents or receivers to take possession of the property and effects of the company and to settle its affairs according to the course of proceedings in equity.

Approved March 13, 1905.

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## JUDGMENTS.

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### CHAPTER 125.

[H. B. No. 25—Midgarden.]

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### CANCELLATION OF JUDGMENTS.

AN ACT to Provide for the Cancellation of Judgments Against Persons Discharged Under the United States Bankruptcy Law, and the Mode of Procedure to Obtain Such Relief.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CANCELLATION OF JUDGMENT AGAINST BANKRUPTS; PROCEDURE.] Any person discharged from his debts pursuant to the act of congress known as "an act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898," may, at any time, after obtaining such discharge in bankruptcy, file in the office of the clerk of any court of record in which a judgment shall

have been rendered, or a transcript thereof filed against him, a certified copy of such discharge in bankruptcy, and may make application to the judge of such court for a discharge of such judgment from record; and, if it shall appear to the court that the applicant has thus been discharged from the payment of such judgment, the court may order and direct that such judgment be discharged and satisfied of record; and, when such order is filed in the office of the clerk of such court, the said clerk shall immediately enter a satisfaction of such judgment upon his records; provided, however, that no such application shall be made, or order granted, except upon thirty days' notice to the judgment creditor whose judgment is sought thereby to be satisfied of record, or his executors, administrators or assigns, served in the manner provided for the service of notices in civil actions; or, in case such judgment creditor or his executors, administrators or assigns shall not reside within the state of North Dakota, in such manner as the court shall provide by order; provided, further, that nothing in this act shall be construed to apply to judgments not listed among the liabilities of the bankrupt in his petition in bankruptcy under said act of congress.

§ 2. CERTIFICATE OF CLERK OF BANKRUPTCY COURT TO BE PRIMA FACIE EVIDENCE OF FILING.] A certificate from the clerk of the bankruptcy court stating the names and addresses of the persons to whom notices of the hearing of the application for discharge in bankruptcy has been mailed by him, shall be prima facie evidence of service under said act of congress.

§ 3. AFFIDAVIT OF APPLICANT TO BE SERVED WITH NOTICE OF MOTION.] It shall not be necessary to serve, with the motion papers, a copy of the discharge in bankruptcy, or a copy of the certificate of the clerk of the bankruptcy court, but all the necessary facts may be incorporated in an affidavit of the applicant, or his attorney, which affidavit shall be served with the notice of motion.

§ 4. REPEAL.] All acts or parts of acts in conflict with this act are hereby expressly repealed.

Approved March 13, 1905.

## JURIES.

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### CHAPTER 126.

[H. B. No. 13—Johnson.]

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#### MANNER OF DRAWING GRAND JURIES.

AN ACT Amending Section 7989 of the Code of North Dakota of 1899, Providing for the Manner and the Time of Drawing and Summoning of Grand Juries.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 7989 of the code of North Dakota of 1899 be amended to read as follows:

§ 7989. WHEN GRAND JURY MAY BE CALLED.] No grand jury shall be drawn or summoned to attend at any session of the district court within this state unless the judge thereof shall so direct by order in writing under his hand and filed with the clerk of the court in the county wherein the said grand jury is required to attend. The judge of any district court in and for any county or judicial subdivision must, in the manner herein provided, direct that a grand jury be drawn and summoned to attend at a term of said court whenever: (1) he shall deem the attendance of such grand jury necessary for the due enforcement of the laws of the state; or (2) the board of commissioners of the county wherein the court is to be held, in writing, requests him so to do; or (3) a petition in writing requesting the same is presented to said judge, signed by at least ten per cent of the total male vote cast in said county for the office of governor of the state at the last general election preceding the calling of said grand jury. The request provided for in subdivision 2 of this section and the petition mentioned in subdivision 3 hereof, must be presented to such judge at least fifteen days before the commencement of the term at which the attendance of a grand jury is requested; and, provided, that the said petition shall be verified on information and belief by three legal electors of such county or judicial subdivision; and, provided further, that the formation of any grand jury called hereunder shall not be invalidated should it appear or be proven after the said grand jury has been called or summoned that any of said petitioners therefor were not such electors, and that said petition was not signed by the full ten per cent of electors of the county or judicial subdivision as aforesaid; provided, further, that no grand jury shall remain in session for a longer period than ten days at any one term of the district court, except as the judge of the said court may

in his discretion by written order filed with the clerk of said court, continue the session of said grand jury to such further time and such further term as he may deem necessary; otherwise said grand jury shall be by law discharged at the close of the tenth day of their session; provided, that Sundays and legal holidays shall not be included in computing the said ten days' limitation.

Approved February 23, 1905.

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## LAND COMMISSIONER.

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### CHAPTER 127.

[S. B. No. 205—Kirkeide.]

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#### COMMISSIONER SCHOOL LANDS.

AN ACT Amending Section 180 of the Revised Codes of 1899, Relating to Salary of Commissioner of University and School Lands.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 180 of the revised codes of 1899 is amended to read as follows:

§ 180. SALARY OF COMMISSIONER.] The commissioner shall receive an annual salary of one thousand eight hundred dollars.

§ 2. EMERGENCY.] Whereas, the salary now provided by law for the commissioner of university and school lands is less than other state officers, and it is deemed best that the same be more nearly equalized with other salaries, therefore an emergency exists and this act shall take effect and be in force from and after its pasage and approval.

Approved March 9, 1905.



# LIBEL.

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## CHAPTER 128.

[H. B. No. 286—Streeter.]

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### LIBEL.

AN ACT Defining Criminal Libel and Conspiracy to Libel, and Providing Punishment Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. LIBEL DEFINED.] A libel is the malicious defamation of a person made public by any printing, writing, sign, picture, representation or effigy tending to expose him to public hatred, contempt or ridicule or to deprive him of the benefits of public confidence and social intercourse, or any malicious defamation made public as aforesaid, designed to blacken and villify the memory of one who is dead and tending to scandalize or provoke his surviving relatives and friends.

§ 2. MAKER, COMPOSER OR CIRCULATOR OF LIBEL GUILTY OF FELONY.] Every person who makes or composes, dictates or procures the same to be done or who wilfully publishes or circulates such libel or in any way knowingly or wilfully aids or assists in making, publishing or circulating the same is guilty of a felony.

§ 3. DEFENDANT SHALL BE ACQUITTED IF, ON TRIAL THE MATTER CHARGED AS LIBEL BE PROVEN TO BE TRUE.] In all prosecutions or indictments for libel the truth thereof may be given in evidence to the jury, and if it appears to them that the matter as charged as a libel was true and was published with good motives and for justifiable ends the defendant shall be acquitted.

§ 4. IF TWO OR MORE PERSONS CONSPIRE TO UTTER A LIBEL EACH OF THEM IS GUILTY OF A FELONY.] If two or more persons conspire together to maliciously publish by writing, printing, picture, effigy, sign or otherwise than by mere speech, anything which exposes any living person or the memory of any deceased person to hatred, contempt, ridicule or obliquy or which causes or tends to cause any person to be shunned or avoided or which has a tendency to injure any person or association of persons in his or their business each of them is guilty of a felony.

§ 5. WHAT CONSTITUTES A PUBLICATION UNDER THE MEANING OF THIS ACT.] The delivery, selling, reading or otherwise communicating a libel or causing the same to be delivered, sold, read or otherwise communicated to one or more persons, or to the party libeled is a publication thereof.

§ 6. EMERGENCY.] An emergency is hereby declared to exist, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 2, 1905.

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## LIENS.

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### CHAPTER 129.

[H. B. No. 230—Davis.]

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#### COSTS ON FORECLOSURE OF LIENS.

AN ACT to Amend Section 5577 of the Revised Codes, Relating to Costs on Foreclosure of Liens.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] To amend section 5577 of the revised codes of the state of North Dakota, relating to costs on foreclosure of liens and that the same read as follows:

§ 5577. COSTS ON FORECLOSURE OF LIENS.] In all actions or proceedings for the foreclosure of a mortgage upon personal property or of a mortgage or other lien upon real property the plaintiff or person commencing such action or proceeding shall be entitled to tax as a part of his costs, when the amount of the debt secured by such mortgage or liens does not exceed the sum of five hundred dollars, the sum of twenty-five dollars; when the amount of the debt so secured exceeds five hundred dollars and does not exceed one thousand dollars, the sum of fifty dollars; when the amount of the debt so secured exceeds one thousand dollars and does not exceed two thousand dollars, the sum of seventy-five dollars; when the amount of the debt so secured exceeds two thousand dollars the sum of seventy-five dollars, and in addition thereto two per cent on the amount so secured in excess of two thousand dollars; provided, that none of the above fees shall be allowed unless the foreclosure proceedings shall be conducted under the supervision of an attorney duly authorized to practice in the courts of this state.

Approved March 11, 1905.

## CHAPTER 130.

[S. B. No. 24—Fox.]

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## MECHANICS' LIENS.

AN ACT to Repeal Section 4795 of the Revised Codes of North Dakota of 1899, and Chapter 122 of the Session Laws of 1903, and to Amend Section 4796 of the Revised Codes of North Dakota of 1899, Relating to Mechanics' Liens.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REPEAL.] That section 4795 of the revised codes of 1899 and chapter 122 of the session laws of 1903 be, and the same is hereby repealed.

§ 2. AMENDMENT.] That section 4796 of the revised codes of 1899 be, and the same is hereby amended and re-enacted to read as follows:

§ 4796. ACTION TO ENFORCE.] Any person having a lien by virtue of this chapter may bring an action to enforce the same in the district court in the county or judicial subdivision in which the property is situated, and any number of persons claiming liens against the same property may join in the same action and when separate actions are commenced the court may consolidate them. Whenever in the sale of the property subject to the lien there is a deficiency of the proceeds, judgment may be entered for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages.

Approved February 24, 1905.

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## CHAPTER 131.

[H. B. No. 112—Richmond.]

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## SATISFACTION OF MECHANICS LIENS.

AN ACT to Provide for the Filing of Satisfaction of Mechanic's Lien and Penalty for Failure to Do So.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SATISFACTION FILED WHEN, WHERE AND HOW.] Every holder or owner of a mechanic's lien shall within twenty days after the payment of the same cause to be filed a properly executed satisfaction of such lien and file the same with the clerk of the district court of the county in which such lien has been filed, which satisfaction shall be filed and entered by said clerk without fee or charge.

§ 2. FAILURE TO FILE SATISFACTION. PENALTY.] Every person, firm or corporation failing to comply with the provisions of section 1 of this article shall be subject to a fine of not less than ten or more than fifty dollars and in addition thereto the costs and damages sustained by reason of such failure.

§ 3. REPEAL.] Any acts or parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1905.

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## LIGNITE COAL.

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### CHAPTER 132.

[H. B. No. 159—Belden.]

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#### USE OF LIGNITE COAL.

AN ACT to Amend Section 1030 of the Revised Codes of 1899, Relating to Public Institutions.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1030 of the revised codes of 1899, relating to public institutions, be amended to read as follows:

§ 1030. PUBLIC INSTITUTIONS TO USE.] The various state institutions, county buildings and public school houses of this state shall use for fuel, native or lignite coal, and it shall be unlawful for any officer to purchase for use in institutions, county buildings and public schools any coal other than that taken from the mines within the boundaries of this state; provided, that the comparative cost of such fuel is not greater than that of lignite coal. This section shall not be construed, however, as prohibiting the use of wood at such institutions, county buildings and public schools, when the cost thereof does not exceed that of native coal, or the use of coal other than native lignite coal at such public schools as are located six miles or more from any mine or railroad station within the boundaries of this state; provided, that the comparative cost of such fuel is not greater than that of lignite coal.

Approved March 11, 1905.

## MALICIOUS INJURY.

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### CHAPTER 133.

[S. B. No. 232—Spoonheim.]

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#### MALICIOUS INJURY TO FREEHOLD.

AN ACT to Amend Section 7569 of the Revised Codes of 1899, Relative to Malicious Injury to Freehold.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 7569 of the revised codes of 1899 be amended so as to read as follows:

§ 7569. MALICIOUS INJURY TO FREEHOLD.] Every person who wilfully commits any trespass by either: .

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another, or driving or riding through, into or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or,

2. Carrying away any kind of wood or timber that has been cut down and is lying on such lands; or,

3. Maliciously severing from the freehold any produce thereof or anything attached thereto; or,

4. Digging, taking or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil or stone, being a part of the freehold or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away was personal property; or,

5. Digging, taking or carrying away from any land in any incorporated city or town of this state, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue without the license of the mayor and common council, or other governing body of such city or town, or owner of the fee thereof, any earth, soil or stone, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away was personal property; or,

6. Hauling upon the real estate, lot or farm of another any dead horse, dog, cow, or other animal, or any manure, offal, putrid or unsound beef, pork, fish, hides or skins, or flesh of any kind or description, or any tin cans, filth, offal, vegetables, or other unsound or offensive matter or thing whatsoever, or any matter or thing which

by putrefaction or decomposition will produce an offensive smell or effluvia, or any other substance of any kind, nature or discription, without first obtaining the consent of the owner or occupant thereof in writing, is guilty of a misdemeanor.

§ 2. EMERGENCY.] An emergency is hereby declared to exist, and this act shall take effect and be in force on and after its passage and approval.

Approved March 6, 1905.

## MEDICINE AND SURGERY.

### CHAPTER 134.

[S. B. No. 72—Taylor.]

#### PROMOTING ANATOMICAL KNOWLEDGE.

AN ACT to Promote Anatomical Knowledge and the Science of Medicine and Surgery and to Provide for Anatomical Material for Such Purposes, and Penalties for Neglecting to Comply With the Provisions of This Act.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. BODIES OF DECEASED PERSONS WHO ARE BURIED AT PUBLIC EXPENSE TO BE GIVEN TO PHYSICIANS AND SURGEONS TO PROMOTE ANATOMICAL KNOWLEDGE.] That superintendents of penitentiaries, hospitals, insane asylums and poor houses, coroners, sheriffs, jailors, city and county undertakers, and all other state, county, town and city officials who shall have custody of any body, of any deceased person required to be buried at public expense, shall give permission to any physician or surgeon who is a licentiate of the state board of medical examiners, or to any medical school or college, public or private, of any city, town or county within this state, upon his or their request therefor, to receive and remove free of charge or expense, after having given proper notice to the relatives or guardians of the deceased, the bodies of such deceased persons to be buried at public expense, to be by him or them used within the state for advancement of anatomical knowledge and medical science, preference being given to medical colleges or schools, public or private; such bodies to be distributed to, and among the same equitably; the number assigned to each being in proportion to the students of each college or school; provided, however, that if any person claiming to be, and satisfying the proper authorities that

he is of kindred of the deceased, shall ask to have, within thirty-six hours after death, the body for burial, it shall be surrendered for interment; and provided, further, that any medical college or school, public or private, or any officers of the same that shall receive the bodies of deceased persons for the purpose of scientific study under this act, shall furnish the same to students of medicine and surgery who may be under their instruction.

§ 2. BONDS TO BE GIVEN.] Any physician or surgeon who is a licentiate of the state board of medical examiners, or any medical college or school, public or private, before receiving any dead body or bodies, shall give to the proper authorities, surrendering the same to him or them, a sufficient bond that said bodies shall be used only for the promotion of medical science within this state; and whoever shall use such dead body or bodies for any other purpose, or shall remove the same beyond the limits of this state, and whoever shall buy or sell any such bodies or body, or shall traffic in the same shall be deemed guilty of a misdemeanor, shall, upon conviction thereof, be fined in the sum of one hundred dollars, and any officer refusing to deliver the remains or body of any deceased person, when demanded under the provisions of this act shall be guilty of a misdemeanor and shall pay a fine of not less than fifty dollars.

§ 3. BODIES REQUIRED TO BE BURIED OR BURNED AFTER HAVING SERVED THE PURPOSE. PENALTY FOR NEGLIGENCE.] It shall be the duty of preceptors, professors and teachers, and all officers of medical colleges and schools, public or private, and all others who shall receive any dead body or bodies in pursuance of the provisions of this act, decently to bury in some public cemetery or to cremate the same in a furnace properly constructed for that purpose, the remains of all bodies after they shall have answered the purposes aforesaid, and for any neglect or violations of the provisions of this act the party or parties so neglecting shall be guilty of a misdemeanor, and on conviction shall pay a penalty of one hundred dollars.

§ 4. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 2, 1905.

# MILITIA.

## CHAPTER 135.

[H. B. No. 88—Purden.]

### NATIONAL GUARD.

AN ACT Providing for the Retirement of Officers in the National Guard of the State of North Dakota, Who Have Rendered Faithful Service Therein for a Period of Ten Years or More.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WHO MAY BE RETIRED.] Any commissioned officer in the national guard of the state of North Dakota, who has become disabled and incapable of longer performing the act of his office may, upon his own application to the governor of the state be placed upon the retired list.

§ 2. LENGTH OF SERVICE REQUIRED.] Any commissioned officer who has served faithfully for a period of ten years or more in the national guard of this state may upon his own application be placed upon the retired list with the next higher rank, and withdrawn from active service and command upon being officially notified by the regimental commander, attested by the adjutant general of the state. The commander in chief shall cause orders to be issued promoting and retiring the officer who makes application therefor in accordance with the provisions of this section.

§ 3. PROCEDURE.] Any officer desiring to be placed upon the retired list, either because of disability, or because of continuous service, shall make application to the adjutant general of the state, and upon approval of such application by the adjutant general, the governor of the state shall issue orders promoting and retiring such officer.

§ 4. OFFICERS ON RETIRED LIST SUBJECT TO ORDERS OF COMMANDER IN CHIEF ONLY.] The officers on the retired list shall only be subject to detail for duty by orders from the commander in chief, and he shall cause to be issued such orders as he may deem necessary detailing them for duty upon boards of officers for military purposes, courts martial, and courts of inquiry, and for such other military duties as in his judgment may be advisable. When, however, officers on the retired list are detailed for active duty, other than upon boards of officers, courts martial, and courts of inquiry, they shall only be entitled to the rank which properly belongs to the office the duties of which they are detailed to perform. When the



duty ends, or the detail is cancelled, the officer shall again return to the retired list, with his former retired rank. A roster of all officers on the retired list shall be kept in the adjutant general's office.

§ 5. PERMITTED TO WEAR UNIFORMS.] Officers on the retired list shall, on all occasions of duty, and on all occasions of ceremony, be permitted to wear the uniform of their respective rank.

§ 6. EMERGENCY.] An emergency exists in this that there is no provision of law for retiring officers of the national guard, therefore this act shall take effect and be in full force from and after its passage and approval.

Approved February 23, 1905.

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## CHAPTER 136.

[H. B. No. 109—Purden.]

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### NATIONAL GUARD.

AN ACT Providing That All Appointments to the Various Departments of the National Guard of the State of North Dakota Shall Be Made From Officers of the Field or Line.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. APPOINTMENTS TO BE MADE FROM OFFICERS OF THE FIELD OR LINE.] Whenever a vacancy shall occur in any of the departments of the national guard of the state of North Dakota, towit: The adjutant general's department, the supply department, the engineer and ordinance department, or judge advocate and inspector general's department, an officer shall be appointed and promoted thereto from the officers of the field or line of the national guard of the state of North Dakota.

§ 2. TERM OF OFFICE.] No appointment to any department of office shall be for a longer period than two years.

§ 3. OFFICERS AT THE END OF TERM OF OFFICE TO BE PLACED UPON RETIRED LIST OF NATIONAL GUARD.] Any commissioned officer either of the field or line who has been promoted to any one of the departments of the national guard of this state shall, at the end of his tour [term] of duty, towit, two years, be placed upon the retired list of the national guard of this state.

§ 4. EMERGENCY.] An emergency existing, in that there is no provision for the appointment of officers for the various departments of the National Guard of this state, either from the field or line of officers, therefore this act shall take effect and be in force from and after its passage and approval as provided by law.

Approved February 23, 1905.

# MINORS.

## CHAPTER 137.

[S. B. No. 26—Hagen.]

### MINORS NOT ALLOWED IN POOL ROOMS.

AN ACT to Prohibit Persons Under the Age of Eighteen Years to be Allowed to Play In, or Visit, Any Pool, Billiard or Card Resorts.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. MINORS NOT ALLOWED IN POOL ROOMS, BILLIARD HALL OR BOWLING ALLEY UNLESS BY WRITTEN CONSENT OF PARENT OR GUARDIAN.] It shall be unlawful for any owner or keeper of any pool or billiard hall, or any bowling alley or any temperance saloon or any place under any name whatever, where the games of pool, billiards, bowling or cards are played, to allow any person under the age of eighteen years to either play any of the games mentioned or to be employed in said places, or be allowed to visit said places unless by written consent of one or both parents or guardians, or when accompanied by parent or guardian.

§ 2. PENALTY FOR VIOLATION.] Any person found guilty of violating this act shall be fined not less than five dollars nor more than fifty dollars, or not to exceed thirty days in the county jail, or both such fine and imprisonment.

§ 3. REPEAL.] All acts or parts of acts in conflict with this act are hereby repealed.

Approved February 24, 1905.

## NEGOTIABLE INSTRUMENTS.

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### CHAPTER 138.

[H. B. No. 291—Stevens of Burleigh.]

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#### NEGOTIABLE INSTRUMENT ACT REPEALED.

AN ACT Repealing Chapter 88 of the Revised Codes of 1899, Relating to Negotiable Instruments in General.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REPEAL. EXCEPTIONS.] Chapter 88 of the revised codes of 1899, relating to negotiable instruments, is hereby repealed; provided, that all actions that are now pending under the provisions of said chapter shall in no manner be affected by this repeal.

Approved March 11, 1905.

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## NEWSPAPERS.

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### CHAPTER 139.

[H. B. No. 201—Streeter.]

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#### LEGAL NEWSPAPERS.

AN ACT to Amend Section 1804 of the Revised Codes Prescribing the Requirements of Newspapers Qualified to Do Legal Printing.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1804 of the revised codes be amended so as to read as follows:

§ 1804. REQUIREMENTS OF NEWSPAPERS QUALIFIED TO DO LEGAL PRINTING. TWO COPIES OF EACH ISSUE TO BE FILED WITH STATE HISTORICAL SOCIETY.] Before any newspaper in this state shall be qualified to publish any legal notice, or any matter required by law to be printed or published in some newspaper in the state, or any public notices for any county, city or other municipality within this state, such newspaper must have been established at least six months, and hereafter for one year, at least one page of the same actually printed at the place designated in the date line, and have been in regular and continuous circulation during that time with a bona fide

subscription list of at least one hundred and fifty regular and continuous subscribers. Such newspaper must contain at least four pages of five columns to the page, said columns to be not less than eighteen inches in length and twelve ems pica in width, with not less than four columns of reading or news matter; or must contain eight pages of four columns to the page, or its equivalent, the columns thereof to be not less than twelve inches in length; provided, that in counties where there is no newspaper published having the above prescribed qualifications, any newspaper at the county seat of said county shall be entitled to publish such legal notices even though it may not have been established six months; provided, further, that in counties in which no newspaper is published any notices required by law to be published may be published in a newspaper printed in an adjoining county having a general circulation in said county. It shall be the duty of the owner or publisher of every legal newspaper in the state to send to the state historical society of North Dakota, to such address as shall be designated by the secretary thereof, two copies of each issue of such newspaper.

§ 2. EMERGENCY.] An emergency exists in that it is desirable that the state historical society shall be furnished with files of all state publications, beginning at once, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1905.

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## OFFICERS.

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### CHAPTER 140.

[H. B. No. 220—Johnson of Ward.]

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#### WHEN OFFICERS SHALL QUALIFY.

AN ACT to Amend Section 354 of the Revised Codes of North Dakota, 1899, Relating to Offices and Officers, and the Qualification of Officers.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 354 of the revised codes of North Dakota, 1899, be, and the said section is hereby amended to read as follows:

§ 354. WHEN OFFICERS SHALL QUALIFY.] Except when otherwise specially provided, all state, district, county and precinct officers shall qualify on or before the first Monday in January next succeeding their election, or within ten days thereafter, and on said first Monday of January or within ten days thereafter, enter upon the discharge of the duties of their office; provided, that county auditors

shall qualify on or before the first Monday in April next succeeding their election, or within ten days thereafter, and on said first Monday of April, or within ten days thereafter, enter upon the discharge of the duties of their office.

§ 2. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. EMERGENCY.] Whereas, an emergency exists in this, that the present law makes no provision for the qualification and entry of county auditors, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1905.

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## OIL INSPECTION.

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### CHAPTER 141.

[S. B. No. 63—Simpson.]

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#### OIL INSPECTION.

AN ACT Concerning the Inspection of Illuminating Oils and Gasoline; for the Appointment of a State Inspector and Deputies of Oils and Gasoline, Prescribing Their Duties, Designating Their Salary, etc.; Providing for the Making of Chemical Tests; Providing Penalties for the Violation of This Act; Requiring the State Inspector and Deputies to Make Reports, Designate Ports of Entry Where Illuminating Oils and Gasoline Shipped Into This State Shall Be Inspected, and Repealing Conflicting Laws.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. GOVERNOR TO APPOINT INSPECTOR. DUTIES.] The governor shall, by and with the advice and consent of the senate, appoint a suitable person, a citizen of this state, who is not engaged directly or indirectly in the manufacturing, dealing or vending of illuminating oils, whose title shall be state inspector of oils, and whose term of office shall be two years, commencing on the first Tuesday in April succeeding his appointment, or until his successor shall be appointed and shall qualify. Said inspector may appoint not more than six deputy inspectors, whose salary shall be as hereinafter stated. The said state inspector of oils and his deputies shall have the right and it shall be his duty to enter into or upon the premises of any manufacturer, dealer or vendor of illuminating oils or gasoline at any time for the inspection of such oils or gasoline, and to inspect any books or papers of such manufacturer, dealer or vendor pertaining to the shipment or sale of such oils or gasoline and all receptacles in

which such oils are or may be contained. Such inspector shall receive an annual salary of two thousand five hundred dollars (payable monthly), which shall be in full for all his services, and each of said deputies shall receive an annual salary of not less than one hundred dollars, nor more than three hundred dollars, at the discretion of the inspector of oils. He shall make and file with the state auditor monthly statements, under oath, of all fees collected under the provisions of this act, and pay the amount so collected to the state treasurer on or before the tenth day of each month, taking the state treasurer's receipt therefor, and file such receipt with the state auditor on or before the fifteenth day of each month; the money so received by the treasurer to be kept as a separate fund known as the "Oil Inspection Fund."

§ 2. BONDS.] The state inspector of oils and his deputies shall each, before entering upon the discharge of his duties, take oath or affirmation according to the constitution of this state and the laws thereof, and shall file the same with the secretary of state. The state inspector of oils shall execute a bond to the state of North Dakota in the penal sum of five thousand dollars, with such surety as shall be approved by the governor of the state, conditioned for the faithful performance of the duties herein imposed, which bond shall be for the use of the state of North Dakota, and of all persons aggrieved by the act or failure to act of the state inspector of oils, and the same shall be filed with the secretary of state. Each of said deputy inspectors of oils shall, before entering upon the discharge of his duties, execute a bond to the state of North Dakota in the penal sum of not less than one thousand dollars, nor more than five thousand dollars, as the state inspector of oils shall prescribe, which bond shall be approved by the governor and shall be filed with the secretary of state; and such bond shall be conditioned for the faithful performance of the duties herein imposed and shall be for the use of the state of North Dakota and all persons aggrieved by the act or failure to act of the said deputy inspector of oils.

§ 3. APPARATUS.] The state inspector of oils shall, immediately upon the appointment and qualification of the deputies named in section 1 of this act, procure and furnish to such deputies such apparatus as may be necessary to carry out the provisions of this act. He may also purchase from time to time the apparatus for making tests of illuminating oils and gasoline as hereinafter provided. The funds for the purchase shall be taken from the oil inspection fund.

§ 4. OILS TO BE INSPECTED.] All mineral and petroleum oils or any fluid or substance which is a product of petroleum, or into which petroleum or any product produced thereof enters as a constituent element, whether manufactured in this state or not, shall be inspected by the state inspector of oils, or his deputies, before being used or offered for sale or consumption in this state.

§ 5. BRANDS REQUIRED.] Every person, firm or corporation offering for sale to the trade, or manufacturing within this state such

illuminating oils or gasoline, shall stamp or brand every package, barrel or cask, containing such illuminating oils, with the name of the brand of the oil contained in such package, cask or barrel. Every package, cask or barrel which contains gasoline shall be branded before being shipped into this state. "Unsafe for Illuminating Purposes."

§ 6. METHODS OF INSPECTION.] It shall be the duty of the oil inspector or his deputies to examine and test within this state all oil and gasoline offered for sale by any manufacturer, vendor, or by any person or corporation in this state, as follows:

For oil: All illuminating oil, a product of petroleum, shall be inspected as follows:

First. The color shall be water white when viewed by transmitted light through a layer of oil four inches long.

Second. It shall not give a flash test below one hundred and five degrees Fahrenheit, closed cup test (Elliott or Foster) and shall not have a fire test below one hundred and twenty-five degrees Fahrenheit.

Third. The gravity test shall not be less than forty-six degrees, measured by the Beaume hydrometer.

Fourth. It shall not contain water nor tar-like matter, nor shall it contain more than a trace of any sulphur compound.

Fifth. It shall be the duty of the state inspector of oils or his deputies to at least once in each ninety days have a chemical test made at the state university and the state agricultural college, demonstrating whether or not such oils contain more than four per cent residuum, after being distilled at a temperature of five hundred and seventy degrees Fahrenheit, and shall not contain more than six per cent of oil distilling three hundred and ten degrees Fahrenheit; also a determination of the amount of sulphur compounds in said oils, together with such burning tests as may be necessary to determine the photometric value of the oils. The result of such chemical tests shall be included in the state oil inspector's annual report to the governor. The failure of the oil inspector to have the above tests made shall render him liable to a fine of one hundred dollars for each offense. If, upon such testing and examining such oil such oil shall meet the requirements as to the various tests herein specified such oil shall be marked upon the package, barrel or cask containing the same, "Approved," giving the date of such inspection and the name of the inspector or deputy. If upon such examination and testing, such oil shall not meet the requirements as to the flash, fire and gravity tests and the chemical tests herein specified, such oils shall be marked upon the barrel, package or cask containing the same, "Rejected for Illuminating Purposes," giving the date of such examination and the official signature of the inspector or deputy making such inspection. And it shall be unlawful for any person or persons, or corporations, to sell any such oil so rejected for illuminating purposes for consumption in this state.

For Gasoline: All gasoline offered for sale within the state shall be tested for gravity. All gasoline which tests 68 degrees (Beaume) or higher shall be branded "Approved for Sale." And any gasoline which tests below 68 degrees (Beaume) shall be marked "Rejected for Sale." All gasoline, whether it is of required test or not, shall be branded "Unsafe for Illuminating Purposes." But this clause shall in no way be construed as preventing the sale or use of said gasoline, providing it has been inspected and branded as above, "Approved for Sale."

§ 7. RECORDS AND FEES.] Each and every inspector and deputy inspector who shall inspect any consignment of oils or gasoline as provided in this act, shall demand and receive from the owner of such oils and gasoline, at the [time] such inspection is made, the sum of twenty cents for testing a barrel or less quantity. Fifty gallons shall constitute a barrel. Every such inspector and deputy inspector shall keep an accurate record of all the oils inspected, rejected, branded or certified to by him, which record shall state: Date of each inspection; the number of packages, barrels, casks or tanks approved; the number rejected; the manufacturer's brand; the name of the person for whom inspected; the name of the person to whom consigned, with his address; the sum of money received for such inspection; and such record shall be open to all persons interested. On the first day of each and every month every deputy inspector of oils shall transmit to the state inspector of oils all inspection fees received during the preceding month, and shall at the same time forward to the auditor of state and to the state inspector of oils true copies of said record for the month preceding. The state inspector of oils shall, in the month of January of each year, make and deliver to the government a report of his acts, and those of his deputies during the year preceding, together with remarks and suggestions for the benefit of the service, which report shall include a copy and summary of the reports submitted by the said deputies as provided in this section.

§ 8. INSPECTORS MUST NOT TRAFFIC IN OILS.] It shall be unlawful for the state inspector of oils or any of his deputies to directly or indirectly while in office traffic in any of the oils which he has been appointed to inspect. Any person violating the provisions of this section shall be subject to a penalty of not exceeding five hundred dollars and be removed from office.

§ 9. DUTIES OF INSPECTOR AND DEPUTIES IN CASES OF VIOLATION. PENALTY FOR NEGLECT.] It shall be the duty of the state inspector of oils, or any of his deputies, or any person having cognizance of the violation of the provisions of this act, to forthwith make complaint to the state's attorney for the county in which the offense is alleged to have been committed, against the person or persons so offending, and it is hereby made the duty of such state's attorney to represent and prosecute on behalf of the people in his county all cases of offense arising under the provisions of this act. Any inspector or state's attorney who wilfully refuses or neglects to carry



out the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be removed from office.

§ 10. PENALTY.] It shall be unlawful for any person, firm or corporation, whether vendor, dealer or manufacturer, to knowingly use, sell, attempt to sell or deliver to any person in this state any of the illuminating oils or gasoline hereinbefore mentioned until the same shall have been inspected and approved according to the provisions of this act. It shall be unlawful for any person to falsly brand any package, barrel or cask or falsely certify to any tank car containing illuminating oils or gasoline for the purpose of deceiving the purchaser thereof, in any manner as to the contents of the same. It shall be unlawful for any person to sell or dispose of any empty barrel, cask or package that has once been used for illuminating oils or gasoline, and has been branded in accordance with the provisions of this act before thoroughly cancelling, removing or effacing the inspection brand on the same. It shall be unlawful for any person, firm or corporation to adulterate with parafine or other substance for the purpose of sale, or use any of the illuminating oils and gasoline specified in this act in such manner as to render them unsafe for use, nor shall any person knowingly use, sell or offer for sale for illuminating purposes any oil which shall emit a combustible vapor at a temperature of less than one hundred and five degrees (Fahrenheit) according to the test herein prescribed, nor any gasoline which is below sixty-eight degrees gravity (Beaume). Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to a penalty of not exceeding five hundred dollars fine, or imprisonment in the state penitentiary not exceeding one year, or both fine and imprisonment.

§ 11. RESPONSIBILITY FOR DAMAGE.] Whoever shall knowingly use, sell or cause to be sold unlawfully any of the illuminating oils specified in this act which are below one hundred and five degrees Fahrenheit, as tested by the official tests herein prescribed, shall be liable to any person purchasing such oil or to any person injured thereby for any damage to person or property arising from any explosion thereof.

§ 12. EXAMINATION OF DEPUTIES' ACCOUNTS.] It shall be the duty of the state inspector of oils to at least once in thirty days make a thorough examination of the books and other accounts of each of his deputies, to determine whether such deputies are fully complying with the law, and to make such other examinations as may be necessary to ascertain, as far as practicable whether any of the provisions of this act are being violated. When the state inspector of oils shall discover any violation of the provisions of this act, he shall at once make complaint and institute prosecutions thereunder.

§ 13. REMOVALS.] It shall be the duty of the governor, whenever he shall find that the state inspector of oils is guilty of refusal or neglect to discharge any of the duties enjoined upon him by this act, to promptly remove him from office. It shall be the duty of

the state inspector of oils to promptly remove from office any of his deputies who shall prove himself to be unfaithful or dishonest in the discharge of his duties.

§ 14. PORTS OF ENTRY.] All illuminating oils and gasoline when shipped into this state shall be inspected on entering the state, the following points being designated as ports of entry: Farimount, Wahpeton, Fargo, Grand Forks, Hankinson, Oakes and Ellendale. For making inspections other than at said points, the inspector or his deputy shall be entitled in addition to the fees prescribed, to actual traveling expenses, such expenses to be paid by the party for whom the inspection is made.

§ 14a. SALARIES OF INSPECTOR AND DEPUTIES TO TAKE EFFECT APRIL 1, 1906.] The provisions of section 1 of this act in so far as it relates to the salary of the oil inspector and his deputies shall not take effect until April 1, 1906.

§ 15. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed except as provided therein relating to the fees of the oil inspector and his deputies, and as to such fees the present existing laws shall remain in force until April 1, 1906.

§ 16. EMERGENCY.] Whereas, there is now no adequate law requiring the inspection of gasoline, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1905.

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## OPTOMETRY.

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### CHAPTER 142.

[S. B. No. 144—Hanna.]

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### OPTOMETRY.

AN ACT to Amend Sections 1, 2, 4, 5, 8, 13 and 16 of Chapter 130 of the Session Laws of North Dakota of 1903, Regulating the Practice of Optometry.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1 AMENDMENT.] Section 1 of chapter 130 of the session laws of North Dakota for the year 1903, is hereby amended to read as follows:

§ 1. DEFINED.] The practice of optometry is defined as follows, namely: The employment of subjective and objective mechanical means to determine the accommodative and refractive states of the eye and the scope of its functions in general, and the applying of lenses as correctives.

§ 2. AMENDMENT.] Section 2 of chapter 130 of the session laws of North Dakota for the year 1903, shall be amended to read as follows:

§ 2. UNLAWFUL TO PRACTICE WITHOUT CERTIFICATE.] It shall be unlawful for any person to practice optometry in the state of North Dakota unless he shall first have obtained a certificate of registration.

§ 3. AMENDMENT.] Section 4 of chapter 130 of the session laws of North Dakota, for the year 1903, shall be amended to read as follows:

§ 4. GOVERNOR TO APPOINT OFFICERS. MEETINGS.] The governor shall appoint one of the members of said board president, and one member secretary, who severly shall have the power during the term of office to administer oaths and take affidavits, certifying thereto under their hand and the seal of the board. Said board shall meet at least once in each year at a place designated by the board, and in addition thereto, whenever and wherever the president and secretary thereof shall call a meeting. A majority of said board shall at all times constitute a quorum. The secretary of said board shall keep a full record of the proceedings of said board, which records shall at all reasonable time be open to public inspection. Such records shall also contain a registry list of all persons registered by said board, together with renewals and revocations of licenses, which record shall constitute the official register of all persons licensed to practice optometry in this state.

§ 4. AMENDMENT.] Section 5 of chapter 130 of the session laws of North Dakota, for the year 1903, shall be amended to read as follows:

§ 5. EXAMINATIONS.] Every person before beginning to practice optometry in this state, after the passage of this act, shall pass an examination before said board of examiners. Such person shall make written application to said board of examiners and such application shall be accompanied by the affidavit of two freeholders of this state, to the effect that the person is of good moral character and a resident of this state. Such person shall also furnish to the board satisfactory proof that he is a graduate of some school of optometry, to be approved by the board, or that he has practiced optometry for two full years as a student practioner under the supervision of a regular optician, or has practiced as a regular optician for two full years outside this state. Such examination shall be confined to such knowledge as is essential to the practice of optometry. Any person having signified to said board his desire to be examined by them shall appear before them at such time and place as they may designate, and before beginning such examination shall pay to the secretary of said board, for the use of said board, the sum of ten dollars, and if he shall successfully pass such examination, shall pay to the said secretary, for the use of said board, a further sum of five dollars on the issuance to him of a certificate. All persons successfully

passing such examination shall be registered in the board register, which shall be kept by said secretary, as licensed to practice optometry, and shall receive a certificate of such registration to be signed by the president and secretary of said board.

§ 5. AMENDMENT.] Section 8 of chapter 130 of the session laws of North Dakota, for the year 1903, shall be amended to read as follows:

§ 8. Such board shall be entitled to a fee of one dollar for the reissue of any certificate.

§ 6. AMENDMENT.] Section 13 of chapter 130 of the session laws of North Dakota, for the year 1903, shall be amended to read as follows:

§ 13. CERTIFICATE REVOKED. WHEN.] Said board shall have power and must revoke any certificate of registration granted by it under this act, for conviction of crime, habitual drunkenness, or the excessive use of intoxicating liquors or narcotic drugs for six months immediately before a charge is made, contagious or infectious disease, gross incompetency, or for advertising himself as an eye specialist or doctor, or member of this board, or for designating himself in any manner as other than an optician or optometrist, skilled in the art of optometry; provided, that before any certificate shall be so revoked the holder thereof shall have notice in writing from the secretary of the charge or charges against him and at a day specified in said notice, at least five days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person whose certificate has been so revoked may after the expiration of sixty days, apply to have the same re-granted, and the same shall be re-granted him upon a satisfactory showing that the disqualification has ceased.

§ 7. AMENDMENT.] Section 16 of chapter 130 of the session laws of North Dakota for the year 1903, shall be amended to read as follows:

§ 16. WHO EXEMPT.] Nothing in this act shall be construed so as to require physicians and surgeons authorized to practice under the laws of the state of North Dakota to be registered under the provision of this act, but such persons shall be deemed to be regularly licensed to practice optometry by virtue of their license to practice medicine and surgery; nor to apply to persons who sell spectacles or eyeglasses as any other article of merchandise without attempting to practice optometry as in this act defined, nor to student practioners under the supervision of registered opticians.

Approved March 6, 1905.

## PARK COMMISSIONERS.

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### CHAPTER 143.

[S. B. No. 180—Bacon.]

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#### PARK COMMISSIONERS.

AN ACT Creating Park Districts and for the Government Thereof, Creating a Board of Park Commissioners, Conferring Power and Authority Upon Such Board and District, and Providing Rules for the Government Thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. PROCEDURE.] Any incorporated city of the state of North Dakota, may, by a two-thirds vote of its council by yeas and nays at a regular meeting thereof, take advantage of the provisions of this act.

§ 2. PARK DISTRICTS, HOW CREATED.] Any city desiring to take advantage of this act shall do so by ordinance expressing its intent and desire so to do, whereupon the territory embraced in such city shall be deemed and it is hereby declared to be a park district of the state of North Dakota.

§ 3. HOW DESIGNATED. POWERS OF.] Each park district of the state shall be known as "park district of the city of . . . . . " and as such shall have a seal and perpetual succession, with power to sue and be sued; contract and be contracted with; acquire by purchase, gift, devise or otherwise and hold, own, possess and maintain real and personal property in trust for the purpose of parks, boulevards and ways, and to exercise all the powers hereinafter designated or which may be hereafter conferred upon it.

§ 4. COMMISSIONERS HOW ELECTED. EX-OFFICIO MEMBERS OF BOARD. VACANCIES, HOW FILLED.] The power of each park district shall be exercised by a board of park commissioners consisting of five members who shall hold office for the period of three years from the date of their appointment, and until their successors are duly appointed and qualified, except the members of the first board who shall hold office as follows: One member until the succeeding January, two members until a year from that date and two members until two years from that date; the members of the park commission shall qualify by taking and filing with the city auditor of the city the oath prescribed by section 211 of the constitution; the city auditor, treasurer, attorney and engineer of the city shall be ex officio clerk, treasurer, attorney and engineer of the park district and for their

services as such shall receive such compensation as may be determined by the park commission. They shall each take the oath prescribed by section 211 of the constitution and shall furnish such bond as may be required by the commission. The members of the commission shall be elected by a majority vote of the city council at the regular January meeting thereof and shall within ten days after such election organize by the selection of a president and vice-president. Within thirty days after accepting the act, the city council shall elect the first board who shall qualify and organize as herein set forth. The members of the commission shall receive no compensation for their services as such and shall have the qualification of electors of the city constituting such district. They shall not be interested in any contract entered into by said commission. Any vacancies in the commission by death, resignation or otherwise for the period of more than three months shall be filled by election of the city council. Change of residence from the park district by any member of the commission shall create a vacancy.

§ 5. POWERS OF COMMISSION.] The park commission shall have power:

1. To acquire by purchase, gift, devise, condemnation or otherwise, land within its territorial limits, or within two miles therefrom for parks, boulevards and ways, and shall have sole and exclusive authority to maintain, govern, erect and improve the same.

2. To lay out, open, grade, curb, pave and otherwise improve any path, way or street in, through or around said parks and to construct, erect, build, maintain, manage, govern and erect any and all buildings, pavilions, play and pleasure grounds or fields and such other improvements of a like character as may be deemed necessary.

3. To pass all ordinances necessary, requisite and needful for the regulation and government thereof and to make, change and enforce any order with reference thereto.

4. To levy special assessments on all property specially benefitted by the purchase, opening, establishing and improvement of such parks, boulevards and ways or streets or ways about the same.

5. To appoint such engineers, surveyors, clerks and other officers including such police force as may be necessary and to define and prescribe their respective duties and authority and to fix their compensation.

6. To issue the negotiable bonds of the park district in a sum not to exceed two per cent of the value of the taxable property therein situated, for the sole and exclusive purposes of purchasing and acquiring lands for such parks, boulevards and ways; and for the permanent improvement thereof, including the erection and construction of buildings, pavilions, play and pleasure fields; provided, such bonds shall not bear a rate of interest to exceed six per cent; and provided, further, that upon the affirmative vote of the electors of

such district as by law provided, such commission may be authorized to issue such bonds in an amount in the aggregate, not to exceed five per cent of such assessed value.

7. To levy taxes upon all the property within said district for the purpose of maintaining and improving said parks, boulevards and ways and to defray the expenses of such board; provided, that such tax so levied shall in no year exceed the sum of five mills on each dollar of the taxable property within said division.

8. To establish building lines for all property fronting on any park, boulevard and way under the direction and control, and to control the subdivisions and platting of property within four hundred feet thereof.

9. To borrow money in anticipation of taxes already levied to defray the expenses of the year and to issue therefor the notes or obligations of the district.

10. To connect any park or parks owned or controlled by it with any other park or parks and for that purpose to select and take charge of any connecting street or streets or parts thereof, and the said park commission shall have sole and exclusive charge and control of such street or streets so taken for such purpose.

§ 6. MEETINGS, WHERE HELD. ORDINANCES, HOW READ AND ADOPTED.] The park commission shall hold a regular meeting on the first Tuesday of each month at such hour as it may by rule designate and such special meetings as it may deem necessary. Special meetings may be called by the president, and must be by him called upon the request in writing of two members of the board. The commission shall have power to adopt such rules of procedure as it may deem necessary. The powers of the commission shall be exercised by ordinance unless otherwise provided. All ordinances shall be read twice and at least eight days shall intervene between the readings. They shall be adopted by yea and nay vote and shall be approved by the president and published in the official newspaper of the city and shall go into effect upon such publication. The enacting clause of all ordinances shall be as follows: "Be it enacted by the park commissioners of the park district of the city of ..... The yea and nay votes shall be taken on all propositions involving the expenditure of money, and levying of taxes or the issuance of bonds or other certificates of indebtedness. All contracts shall be let to the lowest responsible bidder after advertisement in the official newspaper of the city for three successive weeks, once in each week; provided, that such commission shall have the power to reject all bids. All contracts shall be in writing and signed by the president and clerk of the board and unless so executed shall be void. At no time shall the debt of the park district exceed five per cent of the taxable property within the district, according to the last preceding assessment. No bill, claim, account or demand against the district shall be audited, allowed or paid until a full itemized statement in writing properly verified shall

be filed with the park commission. All claims against the park district arising out of negligence shall be in writing and verified by the claimant and shall contain a full, clear and concise statement of the transaction out of which it is alleged to arise, giving time, place, extent of injury and damage and shall be filed within thirty days from the date thereof with the clerk of the board. No action shall be maintained unless begun after thirty days and within six months from the date of the filing of the claim.

§ 7. POLICE MAGISTRATE TO HAVE JURISDICTION.] The police magistrate of the city shall have exclusive jurisdiction to try and determine all causes of action for violation of the rules or ordinances enacted by the board and the procedure therein with the right of appeal shall be as prescribed by general law.

§ 8. COMMISSIONERS, HOW GOVERNED.] In the issuing of bonds, warrants, certificates of indebtedness and in levying any tax or special assessment and in otherwise carrying out, enforcing or making effective any of the powers herein granted, the park commissioners and their officers and the park district shall be governed by and shall follow the laws enacted for the government of cities except as herein otherwise specially provided.

§ 9. EMERGENCY.] Whereas an emergency exists, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1905.

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## PERSONAL PROPERTY.

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### CHAPTER 144.

[H. B. No. 149—Martin.]

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#### UNLAWFUL TO DISPOSE OF PERSONAL PROPERTY WITHOUT PAYING TAXES.

AN ACT Making It a Misdemeanor to Move Personal Property From the State or Dispose of the Same, With the Intention of Avoiding the Payment of Personal Property Taxes.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. REMOVAL OR DISPOSAL OF PERSONAL PROPERTY ON WHICH TAXES ARE UNPAID A MISDEMEANOR.] Any person who shall remove from the state or dispose of any personal property that has been assessed for the purposes of taxation while such person shall be owing any personal property taxes within the state shall be deemed



guilty of a misdemeanor ; provided, such property be so removed or disposed of with the intention of avoiding the payment of personal property taxes.

§ 2. EMERGENCY.] Whereas, the present laws of this state relating to collection of personal property tax are inadequate, therefore an emergency exists, and this law [act] shall take effect and be in force from and after its passage and approval.

Approved March 9, 1905.

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## PERSONAL PROPERTY TAXES.

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### CHAPTER 145.

[H. B. No. 26—Davis.]

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#### PERSONAL PROPERTY TAXES

AN ACT to Amend Sections 1243 and 1244 of the Revised Codes of North Dakota of 1899, Relating to Delinquent Personal Taxes, and Amending Chapter 134 of the Session Laws of 1903.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That sections 1243 and 1244 of the revised codes of North Dakota and chapter 134 of the session laws of 1903 be amended to read as follows :

§ 1243. DELINQUENT PERSONAL PROPERTY TAXES. WHEN DUE. PENALTY. DISTRESS.] All personal property taxes shall become due on the first day of December in each and every year, for which the tax was levied and becomes delinquent on the first day of March next after they become due, and thereupon a penalty of five per cent shall attach and be charged upon all such delinquent taxes, and thenceforth there shall be charged interest at the rate of one per cent per month on the original amount of the tax until the same is paid. The county treasurer shall, during the month of January preceding the time when such tax shall become delinquent, give notice of the fact by mailing to each person, firm or corporation, a written notice stating the amount of tax due from such person, firm or corporation, and the date when the same shall become delinquent. On or before the fifteenth day of August in each year the county treasurer shall make out a list of the unpaid delinquent personal property taxes, in the same order as they appear on the tax list, and deliver the same to the sheriff of his county, who shall notify by mail on or before September 15 each of the delinquents that such taxes have been placed in his hands for collection, and unless same are paid on or before October 15 he shall immediately proceed to collect all such

delinquent personal property taxes, and if such taxes are not paid upon demand he shall distrain sufficient goods and chattels belonging to the person, firm or corporation charged with such taxes, if found within the county, to pay the same, with the said penalty of five per cent and all accruing interests and costs, and shall immediately proceed to advertise the same by putting [posting] notices in three public places in the town or district where such property is taken, stating the time when, and the place where, such property shall be sold, and the amount of said delinquent tax, together with the penalty and accruing interest, which place of sale shall be at the residence or place of business of the person, firm or corporation whose goods have been distrained, or in case such person, firm or corporation has no residence or place of business within the town or district where such goods have been distrained, then at the place of sale of mortgage chattel property within such town or district, and no personal property shall be exempt from such distrain and sale; and if the tax for which said property is distrained, together with the penalty and accrued interest and cost is not paid, before the day appointed for such sale, which shall not be less than ten days after the taking of such property, such sheriff or his deputy shall proceed to sell such property at public vendue, or so much thereof as will be sufficient to pay such taxes, penalty, interest and costs of such distress and sale, and any surplus arising from said sale shall be disposed of as in case of sale of mortgaged personal property. On the first day of each month after receiving such list from the county treasurer, such sheriff shall make out and file with the county treasurer a statement of the personal property tax collected by him since the date of his last preceding statement, giving the name, town or district and post office address of each person, firm or corporation from whom collected, and the amount of the tax, including the penalty and interest, collected from each and at the same time turn over to such county treasurer the moneys collected as shown by such statement, and the treasurer shall issue receipts for the same as provided in section 1235, mailing such receipt to the person, firm or corporation entitled thereto. Such sheriff shall at the time of filing such statement with the county treasurer file a duplicate thereof with the county auditor, and shall on or before the first day of January next after receiving such list from the county treasurer file his annual statement of taxes collected as herein provided, together with the list of uncollected taxes as provided in section 1244; provided, that in case any person having personal property assessed, and upon which the taxes are unpaid, shall in the opinion of the sheriff, be about to move out of the county, it shall be the duty of the sheriff to collect such taxes at any time after the tax list shall have been made up. The sheriff shall retain in his office the original delinquent list furnished him by the county treasurer, and it shall be his duty to collect at any time any taxes remaining uncanceled, unabated or unpaid, and on sending his notice for each succeeding year he shall include any unpaid bal-

ance together with interest, penalties and costs, with the new delinquent amount, and they shall be collected in the same manner as the current delinquent tax.

§ 1244. LIST OF UNCOLLECTED TAXES. HOW DISPOSED OF.] If the sheriff is unable to collect any of the taxes appearing in the list of delinquent taxes delivered to him by the treasurer, he shall write on the margin opposite the name of each person against whom such tax is assessed the word "uncollected," and append to such list his affidavit, or the affidavit of his deputy entrusted with the collection thereof, stating that he has made diligent search and inquiry for goods and chattels out of which to make collections of the taxes so remaining uncollected, and is unable to make or collect the same; he shall also note on the margin of such list the place to which any delinquent taxpayer has moved, with the date of removal, if he can ascertain such facts, and shall on or before the first day of January following the receipt of such lists, deliver the same with the affidavit aforesaid to the county auditor. The county auditor shall exhibit such list to the board of county commissioners, at its next meeting, and the board shall thereupon examine and compare the same with the sheriff's return of taxes collected, to the auditor and treasurer, and may cancel on said list such taxes as they are satisfied cannot be collected, furnishing such lists of cancellation to the sheriff, who shall note on his list that such taxes have been cancelled, and it shall be the duty of the county auditor to certify to the state auditor the amount of state taxes so cancelled and the state auditor shall enter the same to the credit of the county accordingly.

§ 2. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 27, 1905.

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## PHARMACY.

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### CHAPTER 146.

[H. B. No. 162—Vernon.]

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#### REGISTRATION OF PHARMACISTS.

AN ACT to Amend Section 286 of the Revised Codes of North Dakota of 1899, Relating to the Registration of Pharmacists.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 286 of the revised codes of the state of North Dakota be amended to read as follows:

§ 286. WHO ENTITLED TO REGISTRY.] To entitle a person to reg-

istry he must be a graduate in pharmacy from a college approved by the board or have been engaged for a period of not less than four years in the preparation of physicians' prescriptions; provided, that if an apprentice in pharmacy has served two years as such apprentice, and afterwards takes a college course of two years, the board shall allow one-half of the time of the college course in the computation of the four years hereinbefore specified, and may, in its discretion allow two-thirds of such time.

§ 2. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 6, 1905.

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## CHAPTER 147.

[S. B. No. 152—Taylor.]

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### PHARMACY.

AN ACT to Amend Section 7280 and Section 7285 of the Revised Codes of North Dakota, 1899, Relating to Violations of the Pharmacy Law and Prescribing Penalties Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 7280 of the revised codes of North Dakota, 1899, be, and the same is hereby, amended and re-enacted so as to read as follows:

§ 7280. UNLAWFULLY ACTING AS PHARMACIST.] Every person who is not a registered pharmacist, or who has not a registered pharmacist in his employ and who, either:

1. Takes, uses or exhibits the title or certificate of a registered pharmacist; or,

2. Retail, compounds or dispenses medicine; or,

3. Permits the compounding or dispensing of prescriptions, or the vending of drugs, medicines or poisons in his store or place of business except under the supervision of a registered pharmacist; or,

4. Violates, or fails, or neglects to comply with and observe any provisions of law relating to or regulating the practice of pharmacy; and every person who,

5. Wilfully makes any false representation to procure registration as a pharmacist for himself or for any other person, is guilty of a misdemeanor and upon conviction thereof, is punishable by a fine of not less than fifty dollars and not exceeding one hundred dollars, and all necessary costs, including the costs and expenses of procuring evidence necessary to secure conviction.

§ 2. AMENDMENT.] That section 7285 of the revised codes of North Dakota, 1899, be, and the same is hereby amended and re-enacted so as to read as follows:

§ 7285. HOW VIOLATIONS PUNISHED.] Every person convicted of any of the offenses mentioned in sections 7282 and 7284, is punishable by a fine of not less than fifty dollars and not exceeding one hundred dollars, and all necessary costs, including the costs and expenses of procuring evidence necessary to secure conviction.

§ 3. REPEAL.] All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 6, 1905.

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## PHYSICIANS AND SURGEONS.

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### CHAPTER 148.

[S. B. No. 174—Taylor.]

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#### PRACTICE OF MEDICINE.

AN ACT to Amend Section 277 and Section 280 of Chapter 4, of Article 6, of the Revised Codes of 1899, Relating to the Practice of Medicine, Surgery and Obstetrics.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 277 and section 280 of chapter 4, of article 6, of the revised codes of 1899, be amended so as to read as follows:

§ 277. EXAMINATIONS, HOW CONDUCTED. LICENSES, TO WHOM GRANTED AND HOW REVOKED.] All persons before commencing the practice of medicine, surgery or obstetrics in this state shall apply to the board of medical examiners for a license so to do, and such applicant shall submit to an examination in the following subjects: Anatomy, physiology, chemistry, pathology, therapeutics, diseases of women and children, nervous diseases, diseases of the eye and ear, medical jurisprudence and such other subjects as the board deems advisable, and present evidence of having graduated from a reputable medical college and attended three courses of lectures of at least six months each; provided, however, that after the year 1904, applicants must present evidence of having graduated from a reputable college and attended four courses of lectures of at least eight months each; and the board shall cause such examination to be practical and scientific and sufficient to test the candidate's fitness to practice medicine, surgery and obstetrics; provided, however, that the examination of any applicant in therapeutics shall be conducted by the member or members of said board who represent the system of medicine of which such applicant has been a student. If there be no representative of the school or system of which the applicant has been a student, the examination in therapeutics shall be conducted by an ex-

aminer appointed for that purpose by the governor of North Dakota, but all other examinations other than that in therapeutics shall be conducted as heretofore provided by this act. If such applicant passes the prescribed examination, the board shall grant him a license to practice medicine, surgery and obstetrics in this state, which license shall be signed by the president and secretary of the board and attested by the seal thereof. The fee for such examination shall be twenty dollars, to be applied by the board toward paying the expenses thereof. The board, in its discretion, may grant license for the same fee without examination to applicants examined and licensed by other state examining boards maintaining standards not lower than those provided for in this article. The board may revoke or refuse a license for dishonorable or immoral conduct, chronic or persistent inebriety or mental aberration, excessive use of narcotics, or for the practice of criminal abortion. In complaints for violating the provisions of this section the accused shall be furnished with a copy of the complaint and be given a hearing before the board in person or by attorney.

§ 280. PENALTY FOR PRACTICING WITHOUT A LICENSE.] Any person practicing medicine, surgery and obstetrics, without a license or otherwise violating the provisions of this article is guilty of a misdemeanor and upon conviction thereof, is punishable by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both. Nothing in this act shall be construed so as to prohibit gratuitous assistance to a sick or injured person in case of emergency.

§ 2. REPEAL.] That section 277 and section 280 of article 6 of chapter 4 of the revised codes, 1899, are hereby repealed and this act re-enacted in lieu thereof and nothing in this act shall be so construed as to repeal any other existing article or law.

Approved March 6, 1905.

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## PROPERTY.

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### CHAPTER 149.

[H. B. No. 131—Burgum.]

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#### ASSESSING OMITTED PROPERTY.

AN ACT to Amend Section 1283 of the Revised Codes and to Repeal Chapter 156 of the Laws of 1903.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1283 of the revised codes of North Dakota be and the same is hereby amended to read as follows:

§ 1283. PROPERTY OMITTED FROM ANY ASSESSMENT. TAXES NOT COLLECTED TO BE ADDED TO SUBSEQUENT YEARS' TAXES.] The county auditor of each county shall keep a book to be called, "assessment roll of property which has escaped taxation," in which he shall each year enter all property, real or personal, which shall have been omitted in the assessment of any previous year or years, or the assessment of which shall have been set aside by the judgment of any court, and such property shall have thereby escaped taxation, noting therein the year or years in which such property shall have escaped taxation as aforesaid; and such auditor shall present such assessment roll to the county board of equalization at its first regular meeting in July for review and equalization, and said board of equalization shall thereupon, during its session, proceed to equalize such assessments and hear all complaints that may be made with reference thereto, and for the purpose of equalizing the same shall have power to change and reduce or increase such assessments as it deems just; and the county auditor shall at the time of making the annual tax list, enter and extend against such property so assessed, taxes for the year or years in which the same has escaped taxation at the same rate and for all the purposes for which taxes were levied upon property in his county in said year or years designating therein the year or years for which such taxes are so entered in said tax list; and if any taxes on any property liable to taxation are prevented from being collected for any year or years by reason of any erroneous proceedings or other cause, the amount of such taxes which such property should have paid shall be likewise entered and extended upon such tax list, and all taxes entered upon such tax list, under the provisions of this section, shall be collected as other taxes.

§ 2. REPEAL.] Chapter 156 of the laws of 1903, and all acts and parts of acts in conflict which this act are hereby repealed.

§ 3. EMERGENCY.] There being no adequate provision for the reassessment of property which has escaped taxation, this act shall take effect and be enforced from and after its passage and approval.

Approved March 13, 1905.

# RAILROADS.

## CHAPTER 150.

[H. B. No. 277—Lillie.]

### RAILROADS.

AN ACT to Amend Section 2947 of the Revised Codes of North Dakota for the Year 1899, Relating to the Powers of Railroad Corporations.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2947 of the revised codes of the state of North Dakota for the year 1899 is hereby amended and re-enacted to read as follows:

§ 2947. POWERS.] Every corporation formed under this article, and every railroad corporation authorized to construct, operate or maintain a railroad within this state, shall have in addition to the powers mentioned in section 2882 the following powers:

1. To cause such examination and surveys for its proposed railroad, as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants to enter upon the lands or waters of any person, but subject to responsibility for all damage which shall be done thereto.

2. To take and hold such voluntary grants of real estate and other property as may be made to it to aid in the construction; maintenance and accomodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

3. To acquire under the provisions of the chapter on eminent domain or by purchase all such real estate and other property as may be necessary for the construction, maintenance and operation of its railroads and the stations, depot grounds and other accommodations reasonably necessary to accomplish the objects of its incorporation; to hold and use the same, to lease or otherwise dispose of any part or parcel thereof, to sell the same when not required for railroad uses and no longer necessary to its use.

4. To lay out its road not exceeding one hundred feet in width and to construct the same; and for the purpose of cuttings and embankments and of obtaining gravel and other material to take as much land as may be necessary for the proper construction, operation and security of the road, and for the protection of such road from snow, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided by law for land taken for the use of the corporation.



5. Subject to the provisions of section 2956, to construct its railroad across, along or upon any stream of water, water course, street, highway, toll or wagon road, plank road, turnpike, wharf, levee, river front, steamboat or other public landing or canal which its route shall intersect or touch; to carry any highway, street, toll or wagon road, plank road or turnpike which it shall touch, intersect or cross, over or under its track, as may be most expedient for the public good; to change the course or direction of any highway, street, turnpike, toll or wagon road or plank road when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad and to take land necessary therefor; provided, such highway or road is not so changed from its original course more than six rods nor its distance thereby lengthened more than five rods.

6. To cross, intersect, join and unite its railroad with any railroad heretofore or hereafter constructed at any point on its route and upon the grounds of such railroad corporation, with the necessary turn-outs, sidings and switches and other conveniences in furtherance of the objects of its connections. And every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the ascertainment and determination of damages for the taking of real property. But the making of such crossing by the railway corporation constructing said new railroad shall not be hindered, delayed or prevented pending the ascertainment and determination of said matter; provided, said railroad company proposing to make such crossing shall execute and file with the clerk of the district court in which such proceedings are pending, a bond in such amount as the judge of said court may order, conditioned that the railroad company executing the same shall pay whatever amount may be so ascertained and determined, and shall abide any judgment or order of the court made in relation to the matter in controversy; the sufficiency of said bond and the sureties thereof shall be approved by said judge, but no corporation which shall have obtained the right of way and constructed its road at the point of intersection before the commencement of an action under the provisions of the chapter on eminent domain shall be required to alter the grade or change the location of its road or be required to bear any part of the expense of making and maintaining such crossing.

7. To have and use equal room, ground rights, privileges and conveniences for tracks, switches, sidings and turn-outs upon any levee, river bank, or front, steamboat or other public landing and upon any street, block, alley, square or public ground within any

incorporated town or city, any charter or ordinance of any such city or town to the contrary notwithstanding; and to accomplish this may adjust with other corporations the ground to be occupied by each with such tracks, switches, sidings and turn-outs, and if such corporations cannot agree upon such adjustment and the amount of compensation to be paid for the purchase or necessary change of location and removal of any track previously laid, the same shall be ascertained and determined and the common, mutual and separate rights adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The court, or a judge thereof, may employ a competent engineer and define, locate and plat the ground and assign to each corporation the part for the tracks and other conveniences for each, and may require the removal or purchase of tracks previously laid so as to justly settle the rights of such corporation upon such ground, the damages to be paid being assessed in accordance with the chapter on eminent domain.

8. To take and convey persons or property over its road by the power or force of steam, or of animals, or by any mechanical power and to receive compensation therefor; and to do all business incident to railroad corporations.

9. To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business, subject to the statutes in relation thereto.

10. To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor.

11. To borrow from time to time such sums of money at such rates of interest and upon such terms as the corporation or board of directors shall agree upon and authorize as necessary or expedient, and to execute deeds or mortgages, or both, as occasion may require on any railroads or parts thereof constructed or in process of construction, for amounts borrowed or owing by the corporation, and therein to make provisions granting, transferring or mortgaging its railroad track, right of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, implements, appendages and appurtenances used in connection with such railroads, in any manner whatever then belonging to the corporation or which may thereafter belong to it as security for any bonds or evidences of debt therein mentioned, in such manner as the corporation or directors shall think proper, and such instruments shall fully convey the same, or so much thereof as shall be therein described. In case of sale by virtue of any such trust deed, or upon foreclosure of any such mortgage the persons acquiring title under such sale and their associates, successors and assigns, or such corporation as they shall organize according to section 2944, with all the powers conferred upon corporations by this

chapter, shall thereafter have, exercise and enjoy all such described grants which were purchased at such sale, including all rights, privileges, grants, franchises, immunities and advantages mentioned in such instruments which were possessed by such corporation making the same or contracting such debts, so far as the same relate or appertain to that portion or line of road granted or mortgaged and purchased at such sale, and no further, as fully and absolutely in all respects as such corporation, its shareholders, officers and agents might have done if such sale had not taken place. And whenever the person so acquiring title under any such sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage, and shall also include the persons who owned at the time of the sale a majority in amount of the capital stock of such mortgagor corporation such purchasers and such corporation as they shall organize as aforesaid, shall also have, possess and enjoy any exemption, privilege or immunity previously granted by any law to such former corporation relating to any of the property so acquired to the same extent as if such latter corporation had been named in such law as the grantee thereof.

§ 2. REPEAL.] All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 3. EMERGENCY.] Whereas, there is no adequate provision of law relating to the crossing of one railroad by another, where such railroad companies are unable to agree as to the compensation to be made and the manner of such crossing, therefore an emergency exists, and this act shall take effect and be in force after its passage and approval.

Approved March 7, 1905.

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## CHAPTER 151.

[S. B. No. 140—Sharpe.]

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### ASSESSMENT OF RAILROADS.

AN ACT Amending Section 1313 of the Revised Codes of North Dakota of 1899, Providing for the Assessment of Railroad Property in This State, and Prescribing the Manner of Levying and Collecting the Tax on the Same.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1313 of the revised codes of North Dakota be amended so as to read as follows:

§ 1313. RAILROADS, HOW ASSESSED.] The state board of equalization shall at its annual meeting in August in each year, assess at its actual value the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this state, including electric and all

other street and interurban railways. To enable said board to make a correct valuation of such property, they shall have access to all reports, estimates and surveys of such lines of railroads as may be on file in the office of the commissioners of railroads and shall have power to summon and compel the attendance of witnesses, and may examine such witnesses under oath in any matter relating to the value of such property. In estimating the value of such railroads, branches and sidetracks thereof they shall be governed by the same rules as are provided for the government of county and township assessors in valuing other property in this state. They shall cause a record to be made of the estimated value placed upon each of the items set forth in this section which go to make the aggregate valuation of such assessments.

§ 2. EMERGENCY.] Whereas, an emergency exists in this, there is now no adequate provision of law fully providing for the assessment of taxes on all of the classes of property herein mentioned and described, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1905.

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## CHAPTER 152.

[H. B. No. 79—Phelan.]

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### BRANCH LINE TRAINS.

AN ACT to Amend Section 2967, Chapter 12 of Civil Code, Relating to Railway Corporations.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2967 of the revised codes be amended to read as follows:

§ 2967. TRAIN TO BE RUN EACH WEEK DAY.] Every railway company owning or operating a railway line in this state, excepting railways or branch lines that may hereafter be constructed or extensions of railways or branch lines now in operation, for five years after construction of same, and also railways or branch lines whose total length does not exceed twenty-five miles, is required to run a train of cars over its lines and branches of any line one way during each week day of the year unless prevented by storm, accident or other cause over which the railroad company has no control.

Approved March 9, 1905.

## CHAPTER 153.

[S. B. No. 214—Hanna.]

## RIGHT OF WAY FOR ELECTRIC ROADS.

AN ACT to Provide for the Granting of the Right-of-way by Municipal Corporations for Constructing and Maintaining Electric and Other Railways On, Over and Upon Public Grounds and Highways, and Regulating the Use of the Same.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. BOARD OF COUNTY COMMISSIONERS, BOARD OF SUPERVISORS OR BOARD OF TRUSTEES MAY GRANT RIGHT OF WAY IN, OVER OR UPON PUBLIC HIGHWAY.] The board of county commissioners of any county, board of supervisors of any township, or board of trustees of any town or village in this state may, when deemed for the best interest of their respective municipal corporations, grant to any person, persons, company or corporation the right of way for the construction and operation of an electric or other railway in, over or upon any public grounds, streets, alleys or highways under the care or supervision of such board granting such right of way.

§ 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. EMERGENCY.] Whereas, an emergency exists in that the business interests of the state demand the rapid extension of inter-urban, electric and other railways, and no law now existing for the granting of franchises therefor; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1905.

# REAL ESTATE.

## CHAPTER 154.

[S. B. No. 115—Wagner.]

### CANCELLING REAL ESTATE MORTGAGES OF RECORD.

AN ACT to Amend Chapter 125 of the Session Laws of 1901, to Amend Section 4719 of the Revised Codes of North Dakota, 1899, Relative to Discharge of Real Estate Mortgages.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That chapter 125 of the session laws of 1901, being section 4719 of the revised codes of North Dakota, 1899, be amended to read as follows:

§ 4719. REAL ESTATE MORTGAGES, HOW DISCHARGED BY CERTIFICATE.] A recorded mortgage must be discharged upon the record by the register of deeds having custody thereof on the presentation to him of a certificate of discharge, signed by the mortgagee, his executors, administrators, guardians, trustees, assigns or personal representatives, properly acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid in full, or otherwise satisfied and discharged, and authorizing the officer to cancel same of record, giving a brief description of the mortgage; provided, however, that any person acting as personal representative of the mortgagee as aforesaid, must first file and have recorded a power of attorney in the register's office where such mortgage is recorded, showing his authority to discharge mortgages in behalf and for the mortgagee and in his name and stead. A certificate of the satisfaction of a mortgage may be made in substantially the following form:

This certifies that a certain mortgage executed by ..... of ..... mortgagor to ..... of ..... mortgagee dated the ..... day of ..... A. D. .... upon the ..... (here describe the property covered by the mortgage) and recorded in the office of the register of deeds in and for the county of ..... and state of North Dakota, in book ..... of mortgages on page ..... is paid and satisfied; and ..... hereby authorize and require said register of deeds to discharge the same of record in his office.

Witness ..... hand this ..... day of ..... A. D. .... (Acknowledgment.)

§ 2. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 9, 1905:

## CHAPTER 155.

[S. B. No. 99—Pierce.]

## DEEDS LEGALIZED.

AN ACT to Legalize the Execution and Acknowledgment of Certain Deeds, Mortgages and Other Instruments in Writing, and the Record Thereof, and Making the Same or Certified Copies Thereof Admissible in Evidence.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. EXECUTION, ACKNOWLEDGMENT, FILING AND RECORDING LEGALIZED.] That the execution, acknowledgment, filing and recording of all deeds, mortgages and other instruments in writing, affecting the title to real property in this state, in good faith made, taken or certified to prior to the first day of January, 1905, and which have been filed or recorded in the proper counties of this state, be and the same are hereby declared to be legal and valid for all purposes; anything in the laws of the territory of Dakota or the state of North Dakota, or of any other state, territory or country at the time of such execution, acknowledgment, witnessing, filing or recording, to the contrary notwithstanding.

§ 2. ACTS OF EXECUTORS, ADMINISTRATORS, DEPUTIES, OFFICERS OR ATTORNEYS IN FACT LEGALIZED.] The acts of all properly appointed and constituted executors, administrators, officers of corporation, deputy public officials, and attorneys in fact, done in good faith, in the execution and acknowledgment of such instruments, are hereby declared to be legal and valid for all purposes, notwithstanding the fact that such executor, administrator, officer, deputy officer, or attorney in fact may not have signed the same in the form provided by laws in force at the time, or that the same was not sealed or stamped as required by laws in force at the time of such execution, and notwithstanding the fact that the certificate of acknowledgment thereon may not be in the form required or sealed as required by any laws in force at the time of making the same.

§ 3. ACKNOWLEDGMENTS LEGALIZED.] That the acts of all notaries public or other officers, done in good faith in taking and certifying to the acknowledgment of such instruments, whether such officers were qualified or authorized by law at the time to do so or not, are hereby declared legal and valid for all purposes.

§ 4. GOOD FAITH PRESUMED.] Good faith shall be presumed on the part of all persons and officers in the execution, acknowledgment, filing and recording of such instruments.

Approved March 13, 1905.

## CHAPTER 156.

[S. B. No. 150—Taylor.]

## LEGALIZING CERTAIN DEEDS.

AN ACT to Ratify and Confirm the Conveyance of the Family Homestead in Any Case in Which the Same Has Been Heretofore Deeded by Both Husband and Wife in Separate Instruments, Neither Having Joined in the Deed With the Other, Where the Respective Deeds Purport to Convey to the Same Person or Their Grantees, and Validating Such Deeds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SEPARATE DEEDS OF HUSBAND AND WIFE TO SAME PROPERTY LEGALIZED.] That in all cases where a married man has heretofore conveyed real property belonging to him, which may have been the homestead of himself or family, by a deed duly signed and acknowledged but not signed by his wife and his wife has either before or afterwards conveyed the same real estate by a deed duly signed and acknowledged but not signed by her husband, to the grantee named in her husband's deed or a subsequent grantee from him, the conveyance by such separate deeds shall be valid and effectual to pass the title to such grantee, the same as if the conveyance had been made by a single instrument duly executed and acknowledged by both husband and wife.

§ 2. EMERGENCY.] Whereas an emergency exists in that there are many titles outstanding at this time that are supposed by their owners to be perfect, but are open to objection upon the grounds corrected in this bill, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1905.

## CHAPTER 157.

[S. B. No. 73—Carroll.]

## RECORD OF TAX DEEDS.

AN ACT to Provide a Record for Perpetuating Proceedings and Instruments in Applications for Tax Deeds, and for Payment of Services Connected Therewith.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. COUNTY AUDITOR TO KEEP "TAX DEED RECORD." That it shall be the duty of the county auditor to keep a record to be known



as the "Tax Deed Record," in which the county auditor shall record at length all tax certificates as they may be presented for tax deed, the notice of expiration of the time for redemption issued thereon, and the return of such service of the notice of the expiration of the time for redemption as may be made.

§ 2. CERTIFIED COPY PRIMA FACIA EVIDENCE.] That a certified copy of said record, or any part thereof, under the hand and seal of the county auditor shall be prima facie evidence of the matters and things therein contained in the courts of North Dakota.

§ 3. FEES OF AUDITOR.] That for services of and recording these instruments the auditor shall be entitled to receive from the applicant for such deed the same fees as are allowed by law to the register of deeds for placing instruments of record.

Approved March 13, 1905.

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## CHAPTER 158.

[H. B. No. 24—Stavens.]

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### REDEEMING LAND SOLD FOR TAXES.

AN ACT to Amend Section 1267 of the Revised Codes of 1899, Relating to Redemptions From Sale of Real Estate for Taxes, Time of Payment of Subsequent Taxes, and Rate of Interest Thereon.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1267 of the revised codes be and the same is hereby amended so as to read as follows:

§ 1267. WHEN AND HOW REDEEMED. IF NOT SOLD WHO MAY REDEEM. COUNTY AUDITOR TO CERTIFY AMOUNT DUE TO COUNTY TREASURER. DUTY OF COUNTY TREASURER.] If at said sale any piece or parcel of land shall be sold to a purchaser the same may be redeemed at any time within three years from the date of sale by any person or corporation having an interest therein who shall pay into the treasury of the county for the credit of the person thereto entitled, the amount paid by the purchaser at the time of sale, with a penalty of five per cent and interest thereon at the rate specified in such certificate of sale, together with all amounts of subsequent taxes, penalties and interest paid by the holder of such certificate of sale up to the date of redemption with interest at the rate of two per cent per month from the date of payment of such subsequent tax, which date of payment shall not be prior to the day upon which such subsequent tax became delinquent. In case any piece or parcel of land was not sold for want of bidders, then any person or corporation having an interest therein shall have the same right of redemption from the county, and on the same terms as from a purchaser at a tax sale. The county auditor shall certify to the amount due

upon such redemption, and on payment of the same to the county treasurer, he shall make duplicate receipts for the certified amount, describing the property redeemed, one of which shall be filed with the county auditor, which shall have the effect to annul the sale. If the amount so paid for the purpose of redemption be less than required by law it shall not invalidate such redemption, but the county auditor shall be liable for the deficiency to the person entitled thereto. Minors, insane persons, or persons in captivity, or in any country with which the United States is at war, having an estate in, or liens on lands sold for taxes, may redeem the same within three years after such disability ceases; but in such case the right to redeem must be established in a suit for that purpose, brought against the party holding the title under sale. Any person who has or claims an interest in, or lien upon, any undivided estate in any piece or parcel of land sold, may redeem such undivided estate by paying into the treasury a proportionate part of the amount required to redeem the whole; and in such case the certificate of redemption shall express the estate or interest redeemed.

§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 9, 1905.

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## REGISTER OF DEEDS.

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### CHAPTER 159.

[H. B. No. 14—Purden.]

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#### WHAT INSTRUMENTS ENTITLED TO RECORD.

AN ACT to Amend Section 3563 of the Revised Codes of North Dakota of 1899, Relative to the Recording of Instruments in the Office of the Register of Deeds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 3563 of the revised codes of North Dakota of 1899 be and the same is amended as follows:

1. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

2. Judgments affecting the title to or the possession of real property, authenticated by the certificate of the clerk of court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

3. Letters patent from the United States, final receivers' receipts from the United States land offices, contracts between the state and

purchasers of school and institution lands for the purchase and sale of such lands and assignments of such contracts, when such assignments have been approved by the board of university and school lands, may be recorded without acknowledgment or further proof; and certified copies of such patents and receivers' receipts, certified and proved according to the laws of the United States and of this state in such manner as to entitle them to admission as evidence in the courts of this state are likewise entitled to be recorded without acknowledgment or further proof, and when so recorded shall be notice in like manner and to the same extent as the originals thereof would have been if the same had been recorded, and the record of all such instruments, or copies thereof, heretofore recorded which are certified in accordance herewith, is hereby validated, and from the passage and approval of this act, such record shall operate as notice to the same extent as hereinbefore provided for such certified copies of such instruments to be hereafter recorded.

§ 2. EMERGENCY.] Whereas, there is no law for the recording of certified copies of patents and other like instruments in this state, and the record thereof is a necessity, therefore an emergency exists and this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1905.

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## ROAD TAX.

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### CHAPTER 160.

[H. B. No. 115—Adams.]

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AN ACT to Amend Section 1 of Chapter 162 of the Laws of 1903, Relating to the Expenditure of Money by Contract for Road Improvements in Counties Organized Into Civil Townships, and in Counties Not So Organized, and Prescribing the Duties of Supervisors of Townships and Boards of County Commissioners With Reference Thereto; Also to Repeal Section 3 of Said Chapter.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1 of chapter 162 of the laws of 1903, amending section 1081 of the revised codes be amended and re-enacted so as to read as follows:

§ 1081. COUNTY ROAD FUND.] In each county of this state having a population of two thousand or more according to the latest United States or state census, there may be levied or collected, a property tax of not less than one mill on each dollar of the assessed valuation of all taxable property in the county, except in any cor-

porated city and village, which when collected, shall be kept in a distinct fund to be known as the county road fund and to be levied and expended in the improvement of highways as provided in this act. All sums levied and collected in townships organized into civil townships shall be levied and expended under the direction of the board of supervisors in such townships and in counties or parts of counties not organized into civil townships, the levy and expenditure of all sums collected for the improvement of highways, under the provisions of this act, shall be expended under the direction of the board of county commissioners under the provisions of section 1082, of the political code of 1899, as amended by section 2 of chapter 162 of the session laws of 1903. Such taxes shall be in addition to all other taxes for highway purposes otherwise prescribed by law; provided, that in counties not organized into civil townships the board of county commissioners of any such counties may contract to expend, and expend all moneys levied and collected under the provisions of section 1229 of the revised codes, as amended by section 1 of chapter 151 of the laws of 1901.

§ 2. REPEAL.] That section 3 of chapter 162 of the laws of 1903 is hereby repealed.

§ 3. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 4. EMERGENCY.] An emergency exists in this that the provisions of this act transfer expenditures for highways in certain cases from the board of county commissioners to the board of supervisors of townships and it is necessary that the proposals for contracts should be advertised prior to July 1st, therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1905.

## SCHOOL LANDS.

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### CHAPTER 161.

[S. B. No. 183—Little.]

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#### SCHOOL LANDS.

AN ACT to Amend Section 185 of the Revised Codes of North Dakota for 1899, Relating to the Publication of Notices of Sale of School and State Lands.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 185 of the revised codes of North Dakota for 1899, be amended and re-enacted to read as follows:

§ 185. NOTICE OF SALE TO BE PUBLISHED.] The board of university and school lands shall cause to be published in a newspaper of general circulation in the vicinity of the lands to be offered for sale as prescribed by section 158 of the constitution, a notice of such sale with the list of lands properly described that are to be offered for sale, together with the appraised value thereof and the terms and conditions of sale, and also publish notices of all sales for the same length of time in one newspaper published at the seat of government.

Approved March 6, 1905.

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## SESSION LAWS.

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### CHAPTER 162.

[S. B. No. 156—LaMoure.]

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#### SESSION LAWS COPYRIGHTED.

AN ACT Authorizing the Secretary of State of Secure Copyright of Session Laws.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DUTY OF SECRETARY OF STATE.] It shall be the duty of the secretary of state to correct proof and supervise the publication of the laws and to secure a copyright of the session laws of each session of the legislative assembly before the same are distributed, for the

exclusive use and benefit of the state, the procurement of such copy-right to be properly printed in each volume of said session laws.

§ 2. EMERGENCY.] An emergency exists, therefore this act shall be in force and take effect from and after its passage and approval.

Approved March 6, 1905.

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## SOLDIERS' HOME.

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### CHAPTER 163.

[S. B. No. 61—Pierce.]

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#### ESTATES OF INMATES OF SOLDIERS' HOME.

AN ACT to Provide for the Care and Disposition of Estates of Deceased Inmates of the Soldiers' Home.

*Re It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DISPOSITION OF ESTATES OF INMATES OF SOLDIERS HOME WHEN VALUED AT \$100 OR LESS.] Whenever any inmate of the soldiers' home shall die, leaving property of the value of one hundred dollars or less, it shall be the duty of the commandant of the home to immediately take charge of the same, and if no valid claim of any heir or legatee is made therefor, and no application for letters of administration be made within one year, he shall convert it into cash and without probate or other proceedings, cover the same into the state treasury where it shall be credited to the institution, and he shall make a report of his action to the board of trustees, which report shall be audited and spread upon the records of the board.

§ 2. WHEN IN EXCESS OF \$100. COMMANDANT TO APPLY FOR LETTERS OF ADMINISTRATION.] Whenever any inmate of the said soldiers' home shall die leaving property in excess of one hundred dollars in value, and not disposed of by will, the commandant of the institution shall be entitled to letters of administration upon his estate, and it shall be his duty to make application to the proper court for the same, to qualify as such administrator and to distribute and dispose of such estate as otherwise by law provided; except that when no valid claim shall be made to said estate, by heirs or next of kin, for a period of one year after the granting of such letters of administration, the residue of such estate shall revert to the state for the benefit of the said soldiers' home.

§ 3. NO BOND REQUIRED NOR COMPENSATION ALLOWED FOR SERVICES.] The commandant of the home, upon becoming administrator of any such estate, shall not be required to give any bond as

otherwise required by law, nor shall he be entitled to charge or receive any compensation for his services as such, nor shall the county court of the county in which proceedings are had make or allow any charge or fee in connection therewith, other than the actual disbursements of the administrator.

Approved February 24, 1905.

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## CHAPTER 164.

[S. B. No. 209—Pierce.]

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### SOLDIERS' HOME.

AN ACT Directing the State Auditor to Pay Over Funds Belonging to the Soldiers' Home at Lisbon to the Institution Treasurer, and Providing for the Application of Such Funds.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. MONEYS RECEIVED OTHER THAN FROM SALE OF LAND TO BE PAID TO INSTITUTION TREASURER, WHEN.] All moneys received as interest, rents, penalties, permits or from any other source than from the principal of sale of soldiers' home lands, shall be paid over to the institution treasurer of said soldiers' home, upon the warrant of the state auditor on the first day of January, April, July and October in each year.

§ 2. SHALL BE SUBJECT TO ORDER OF BOARD OF TRUSTEES OF HOME, HOW USED.] The money herein referred to shall be subject to the order of the board of trustees of the soldiers' home, and shall be used for the support and maintenance of said institution.

§ 3. EMERGENCY.] Whereas, in the opinion of the legislative assembly, an emergency exists; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1905.

# STATE BANKS.

## CHAPTER 165.

[S. B. No. 161—Pierce.]

### STATE BANKS.

AN ACT Relating to Banks and Banking, Providing for the Organization, Management, Control, Regulation and Supervision of Banking Corporations, Providing Penalties for the Violation of the Provisions of the Same, and Repealing Laws Inconsistent Therewith.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CREATION, ORGANIZATION AND DUTIES OF BANKING BOARD.] The governor, secretary of state and attorney general shall be and they are hereby made a board which shall be known as the state banking board. The governor shall be chairman of said board, the state examiner shall be ex-officio the secretary, and the attorney general shall be ex-officio the attorney for said board. A majority of the members of said board shall constitute a quorum. Said board shall hold regular meetings on the first Wednesday of each month at the executive offices in the state capitol at Bismarck, and special meetings at the call of the governor. Said board shall have charge and control of any and all associations organized for the purpose of carrying on the business of banking, and of all savings banks and trust companies organized under the laws of the state of North Dakota. Said board shall make such rules for the government of such corporations as in its judgment may seem wise and expedient, which rules shall not conflict with any laws of the state of North Dakota, or of the United States. It shall be the duty of the said board at each regular meeting to examine all reports made by said banking associations, savings banks, and trust companies, of their condition, and all reports of regular and special examinations of such institutions made by the state examiner and filed with said board during the preceding month, or such period as shall have elapsed since the last meeting of said board, and to approve or disapprove the same. Said board shall have the power to subpoena witnesses, administer oaths, make orders and generally to do and perform any and all acts and things necessary to a complete performance of the duty herein imposed and to enforce all of the provisions of this act, and for the purpose of enabling such board to perform the duties imposed upon it, the provisions of section 5953 of the revised codes shall be held to be ap-



plicable to its proceedings. Any and all orders made by said board shall immediately become operative and remain in full force until modified, amended or annulled by such board or a court of competent jurisdiction in an action to be commenced by the party against whom such order may have been issued. The state examiner shall file all reports of such banking associations, savings banks and trust companies made to or by him with the said board. Said board shall keep a full and complete record of all its proceedings and of all orders made by it. The records of said board and any and all reports filed with it, shall, under proper restrictions, during regular business hours, be open to inspection and examination by stockholders, depositors, creditors and sureties on any bond of said corporations, or on the bonds of any officer or employe thereof.

§ 2. WHO MAY FORM.] Associations for carrying on the business of banking under this chapter may be formed by any number of natural persons, not less than three, two-thirds of whom shall be residents of this state. They shall enter into articles of association which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed and acknowledged by the persons uniting to form the association and shall be filed in the office of the secretary of state of the state of North Dakota.

§ 3. ORGANIZATION CERTIFICATE. CONTENTS.] The persons uniting to form such an organization shall, under their hands, make an organization certificate which shall specifically state:

1. The name assumed by such association, which name shall not be the name of any other bank in the state, nor of any bank heretofore incorporated in the state of North Dakota or in the territory of Dakota.

2. The place where the business of discount and deposit is to be carried on.

3. The amount of the capital stock and the number of shares into which the same shall be divided.

4. The names and places of residence of the shareholders and the number of shares held by each of them.

5. The period at which such bank shall commence and terminate business.

§ 4. ACKNOWLEDGMENT AND RECORD.] The organization certificate shall be acknowledged before a clerk of some court of record, or a notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, recorded in the office of the register of deeds in the county where such bank may be established, and such certificate thus authenticated shall be transmitted to the secretary of state who shall record and carefully preserve the same in his office, certify the facts to the state examiner and issue a certificate of authority to the corporation.

§ 5. POWERS.] Upon making and filing articles of association and an organization certificate, the association shall become as from the date of the execution of the same, a body corporate, and as such and in the name designated in the certificate, it shall have the power :

1. To adopt and use a corporate seal.
2. To have succession for a period of twenty-five years from its organization, unless it is sooner dissolved according to the provisions of this chapter, or unless its franchise becomes forfeited by some violation of law.
3. To make contracts.
4. To sue and be sued.
5. To elect or appoint directors, two-thirds of whom must be residents of this state, and by its board of directors to appoint a president and vice-president, who shall be members of said board, a cashier and assistant cashier and such other employes as may be required ; define their duties, require bonds of them and fix the penalty thereof ; dismiss such officers or any of them, and appoint others to fill their places.
6. To provide by its board of directors by-laws, not inconsistent with the laws of this state, to regulate the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its business conducted and the privileges granted it by law exercised and enjoyed.
7. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, bills of exchange, drafts and other evidences of debt, by receiving deposits, by buying and selling exchange, coin and bullion, by loaning money upon real or personal security, or both ; but no association shall transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the secretary of state to commence the business of banking, and the secretary of state may withhold from any association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than legitimate objects as contemplated by this chapter.
8. No such association shall have or carry among its assets at any one time loans dependent wholly upon real estate security, (and they shall only be upon first mortgages) in an amount exceeding one-half of its capital stock and surplus, and in selling or disposing of said loans so made upon real estate security, no such association shall have power to guarantee the payment or collection thereof, and any such guaranty made in violation of this provision shall not be binding upon such association, but shall be upon the person or officer making the same.

§ 6. POWER AS TO REAL ESTATE.] Banking corporations formed

under this chapter shall have power to purchase, hold and convey real estate for the following purposes and no other:

1. Such as may be necessary for its immediate accommodation in the transaction of its business, not exceeding twenty-five per cent of its capital stock, if over ten thousand dollars, and thirty per cent if the capital stock is ten thousand dollars or less, and any bank now doing business in this state and owning real estate within the meaning of this subdivision in excess of said amount, shall reduce the same by converting the excess into cash, or other bankable assets, within six months after the passage of this act.

2. Such as shall be mortgaged to it in good faith by way of security for loans, or for debts previously contracted.

3. Such as shall be conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.

4. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it; but no association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure an indebtedness, for a longer period than five years from the date of acquiring title thereto. And all real estate heretofore or hereafter conveyed by any such banking association shall be deemed to have been acquired, held and disposed of in conformity with the provisions of this chapter.

§ 7. CAPITAL PROPORTIONATE TO INHABITANTS.] Hereafter no association shall be organized under this chapter in cities, towns or villages containing one thousand inhabitants or less with a capital of less than ten thousand dollars; in cities, towns or villages of over one thousand, and not exceeding two thousand, with a capital less than twenty thousand dollars; in cities, towns or villages of over two thousand, and not exceeding three thousand inhabitants, with a capital less than thirty thousand dollars; in cities, towns or villages of over three thousand, and not exceeding four thousand inhabitants, with a capital of less than thirty-five thousand dollars; in cities, towns or villages of over four thousand, and not exceeding five thousand inhabitants, with a capital less than forty thousand dollars; and in cities, towns or villages of over five thousand inhabitants, with a capital less than fifty thousand dollars. At least fifty per cent of the capital stock of every association shall be paid in before it shall be authorized to commence business, the balance of which shall be paid in by installments of not less than ten per cent of the capital stock, at the end of each succeeding month from the time it is authorized to commence business. The payment of each installment shall be certified to the secretary of state under oath of the president or cashier of the association, a copy of which certificate shall be filed with the state banking board. For the purpose of this section, the population of the city, town or village shall be determined by multiplying by four the total vote cast for member

of congress at the last general election held in such city, town or village. The result shall be taken as the population of such city, town or village. No such association having been organized to transact business in a certain city, town or village, and which may have sold or converted its business to a national bank, or other banking business which is continued at the same place, shall be allowed to remove its charter or articles of incorporation to and recommence business at another place; but where it can be clearly shown that a banking association which has not changed, sold or converted its business as hereinbefore recited, is located at a place where there is not sufficient business for the profitable conduct of a bank, such association may apply to the secretary of state for authority to remove its business to some other place within the state and to change its name if desired; and upon the approval of such application by the state banking board, the secretary of state may issue authority for such removal and change; provided, that no such association shall be allowed to remove its business to any city, town or village without having the full amount of capital stock required by this chapter for a new organization in such city, town or village.

§ 8. CERTIFICATE AND AUTHORIZATION PUBLISHED.] The association shall cause the organization certificate and the certificate of authority of the secretary of state, issued under this chapter, to be published in some newspaper in the city or county where the association is located, for at least four consecutive weeks next after the issuing thereof, and proof of such publication to be filed with the state banking board.

§ 9. ARTICLES AS EVIDENCE.] A certified copy of the articles of incorporation of any banking association, organized under the provisions of this chapter, may be used as evidence in all courts for or against any person or such banking association for or against whom such evidence is necessary, whether on civil or criminal trials.

§ 10. DELINQUENT STOCK. HOW SOLD.] Whenever any share holder or his assignee fails to pay any installment on the stock when the same is required to be paid, the directors of such association may sell the stock of the delinquent shareholder, or as much thereof as is necessary to satisfy the debt, at public auction after having given three weeks' previous notice thereof in a newspaper published and in general circulation in the city or county where the association is located to any person who will pay the highest price therefor, to be not less than the amount due thereon, with the expenses of the advertisement and sale, and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the costs of advertisement and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order within three months from the time of such forfeiture, and if not so sold it shall be cancelled and deducted from the capital stock of the association.

§ 11. SHARES. VALUE. LIABILITY OF SHAREHOLDERS.] The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property and transferable on the books of the association in such manner as may be prescribed by the by-laws or articles of such associations; but no transfer of such stock shall be valid against a bank or any creditor thereof, so long as the registered holder of such stock shall be liable as principal debtor, surety or otherwise to the bank for any debt which shall be due and unpaid; nor in any case shall any dividend, interest or profit be paid on such stock so long as such liability continues, but such dividend, interest or profit shall be retained by such bank and applied to the discharge of such liabilities. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of prior holders of such shares, and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired.

§ 12. CAPITAL STOCK. HOW INCREASED OR REDUCED.] Any association formed under this chapter may, by its articles of association, or by subsequent resolution or written agreement of holders of a majority of its stock, provide for an increase of its capital stock from time to time as may be deemed expedient, subject to the rules and limitations of this chapter, and upon approval of the state banking board. But no increase of capital stock shall be valid until the whole amount shall be paid in in cash, and such payment certified under oath by the president or cashier of such association to the secretary of state, who shall give his certificate that the provisions of this section have been complied with and specifying therein the amount of such increase in capital stock, and that it has been duly paid in as part of the capital thereof and file a copy of such certificate with the state banking board. Any association formed under this chapter may, by vote of its shareholders owning two-thirds of its stock, reduce its capital to any sum, not below the amount required by this chapter to authorize the formation of the association, but no such reduction shall be made until the amount of the proposed reduction is reported to the state banking board and their approval thereof obtained in writing, and no such reduction shall be construed as affecting the liability of shareholders for any debts of the association incurred prior to such reduction, and every such reduction before the same shall become valid must be certified to in the same manner as an increase of capital stock.

§ 13. HOW DISSOLVED. DUTIES OF STATE EXAMINER.] Any association organized under the provisions of this chapter, may be dissolved by the district court of the county where its office or principal place of business is situated upon its voluntary application for that purpose. The application must be in writing, and must set forth that at a meeting of the stockholders or members called for that purpose, the dissolution was resolved upon by a two-thirds vote of

all the stockholders or members, and that all claims and demands against the association have been satisfied and discharged. The application must be signed by a majority of the board of directors, or other officers having the management of the affairs of the association, and must be verified in the same manner as a complaint in a civil action. A certified copy of the application shall be filed with the state examiner, or such state officer as is by law authorized to examine such association, within ten days after the filing of such application with the district court. If the court is satisfied that the application is in conformity with this chapter, it must order the application to be filed, and that the clerk give not less than thirty nor more than sixty days' notice of the application by publication in some newspaper published in the county, and if there are none such, then by advertisement posted up in five of the principal public places in the county. At any time before the expiration of the time of publication, any person may file his objections to the application. Before the final hearing and determination of the application, the state examiner shall make a thorough examination of the affairs of such association, and file a certified statement of such examination with the clerk of court of the county where such application is made, which statement shall be part of the papers in the case. After the time of publication has expired the court may, upon five day's notice to the persons who have filed objections or without further notice if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true, the court must declare the association dissolved. No stockholder or officer of such association shall be allowed to withdraw from such association, or surrender or dispose of his shares of stock after the filing or making of such application for dissolution and prior to the final determination of the case. Upon the dissolution of such association by the district court, the clerk of said court shall forthwith notify the secretary of state of such dissolution, by sending a copy of the order of the court, and said order and notice shall be filed by the secretary of state with the original certificate of organization. The application, notices and proof of publication, objections, if any, and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions. The secretary of state shall immediately certify such dissolution to the state examiner.

§ 14. DIVIDENDS. SURPLUS FUNDS.] The directors of any association organized under this chapter may, semi-annually or annually declare a dividend of so much of the net profits of the association as they shall deem expedient, but each association shall, before the declaration of a dividend, carry one-tenth of its net profits to its surplus fund until the same shall amount to twenty per cent of its capital stock.

§ 15. QUALIFICATION OF DIRECTORS.] Every director must own in his own right and retain in his possession and control free from hypothecation or pledge for any debt, at least ten shares of the capital stock of the association for which he is a director; any director who ceases to be the owner and in possession of ten shares of the stock free and non-hypothecated, or who becomes in any manner disqualified, shall thereby vacate his place. Every such director when elected or appointed shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such association, and will not knowingly violate or willingly permit to be violated, any of the provisions of this chapter, and that he is a bona fide owner of the number of shares of stock required by this chapter to become a director, standing in his own name on the books of the association, and that said stock is in his own possession and control and is not hypothecated or in any way pledged as security for any debt. Such oath, subscribed by the director making it, and certified by the officer before whom it was taken, shall at once be transmitted to the state examiner to be filed in his office.

§ 16. NO DIVIDENDS, WHEN. BAD DEBTS.] No association shall nor shall any member thereof, during the time it shall continue its banking operations, withdraw or permit to be withdrawn, either in form of dividends or otherwise, any portion of its capital, if losses have at any time been sustained by such association, equal to or exceeding its undivided profits then on hand. No dividend shall be made, and no dividends shall be made by any association while it continues its banking business to an amount greater than its net profits on hand, deducting therefrom its losses and bad debts. All debts due to an association made or continued in violation of any of the provisions of this act, shall be considered bad debts within the meaning of this section, and the state banking board is empowered, and it is made the duty of such board, to ascertain and designate such bad debts, to make and enforce such orders and to institute such proceedings as may be deemed necessary to dispose of the same or to convert them into good assets.

§ 17. RATE OF INTEREST.] Such association may demand and receive for loans on personal security, or for notes, bills or other evidences of debt, discounted, such rate of interest as may be agreed upon, not exceeding the amount authorized by law to be contracted for, and it shall be lawful to receive such interest according to the ordinary usage of banking associations and for not more than one year in advance.

§ 18. REGULAR AND SPECIAL REPORTS. PENALTIES FOR FAILURE TO MAKE.] Every banking association, savings bank and trust company organized under this chapter, shall make at least five reports each year to the state examiner, in such form as the state banking board shall prescribe; such forms to be as nearly as possible like those prescribed by the comptroller of the currency for similar reports for national banks. Such report shall exhibit in detail, under

appropriate heads, the resources and liabilities of the association at the close of business on a past day by him specified, which shall, if practicable, be the same day for which similar reports are required from national banking associations within the state by the comptroller of the currency of the United States. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the examiner within seven days after receipt of the request for the same, and an abstract of the same in a form prescribed by the board shall be published, at the expense of the association, in some newspaper in the city, town or village where such bank is located, and in case there is no such newspaper, then in any other newspaper in the county in which such association is located. The state banking board shall also call for a special report from any association whenever in their judgment the same is necessary, in order to obtain full and complete knowledge of its condition. Every association which fails to make and transmit any report required in pursuance of this section, shall forfeit and pay to the state a penalty of two hundred dollars for each delinquency.

§ 19. RESPONSIBILITY OF SHAREHOLDERS.] The shareholders of every association organized under this chapter shall be individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association made or entered into to the extent of the amount of his stock therein at the par value thereof, in addition to the amount invested in and due on such shares. Such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

§ 20. LOANS ON SHARES PROHIBITED.] No association shall make any loan or discount on the security of the shares of its own stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall within six months be sold or disposed of at public or private sale. If such stock is not sold within the period last herein provided, the same shall be cancelled and deducted from the capital stock of said association.

§ 21. RESERVE FUND.] Each association shall at all times have on hand in available funds an amount which, after deducting therefrom the amount due to other banks, shall equal twenty per cent of its total deposits; three-fifths of this amount may consist of balances due to the association from good solvent state or national banks or trust companies, which carry sufficient reserve to entitle them to act as such depository banks, and are located in such commercial centers as will facilitate the purposes of banking exchanges, and which depository banks shall have been first approved by the state banking board, and the remaining two-fifths of such reserve shall consist of actual cash on hand; cash items shall not be included in computing



reserve, and no association shall carry as cash or cash items, any paper or other matter except legitimate bank exchange, which will be cleared on the same or next succeeding business day. Whenever the available funds, within the meaning of this section, shall be below twenty per cent of its deposits, such association shall not increase its liabilities by making any new loans or discounts other than by discounting or purchasing bills of exchange, payable at sight, nor make any dividend of its profits, until the required proportion between the aggregate amount of the deposits and its lawful money reserve has been restored; and the state banking board must notify any association whose lawful money reserve shall be below the amount required to be kept on hand, to make good such reserve, and if such association shall fail to do so for a period of thirty days after such notice, the state banking board may impose a penalty of not less than one hundred dollars, or more than five hundred dollars, which shall be collected in the same manner as other penalties prescribed in this chapter.

§ 22. PENALTIES, HOW RECOVERED.] All fines and penalties herein provided for, to which any association under this chapter may become subject, shall be recovered on complaint of the state examiner, before any court having competent jurisdiction, and all fines and penalties so established shall be paid into the state treasury.

§ 23. LIMIT OF LOAN TO ONE CONCERN.] The total liability to any association of any person, corporation, company or firm, including in the liabilities of a corporation or firm the liabilities of the several members, stockholders or directors thereof, for money borrowed, and paper of the same parties as makers thereof, purchased, shall not at any time exceed fifteen per cent of the capital stock of such association actually paid in, but the discount of bills of exchange drawn in good faith against actual existing values, or loans upon produce in transit or actually in store as collateral security; provided, that all paper relating to such transactions be made payable to and such paper and the security therefor, be and remain in the possession and control of such association until the advance or debt be paid, shall not be considered as money borrowed, and such association may discount commercial or business paper actually owned by the person negotiating the same without it being deemed an addition to the loans to said negotiator.

§ 24. PENALTY FOR VIOLATIONS.] Any officer of any banking association, savings bank or trust company violating or knowingly permitting to be violated, the provisions of this chapter, not herein specially provided for, shall upon conviction thereof, pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense, to be recovered before any court having competent jurisdiction, and all fines and penalties so recovered shall be paid into the state treasury.

§ 25. PENALTY FOR FALSE STATEMENTS OR ENTRIES.] Every officer, agent or clerk of any association organized under this chapter,

who wilfully and knowingly subscribes or makes any false statements or entries in the books of such association, or knowingly subscribes or exhibits any false paper with intent to deceive any person authorized to examine as to the condition of such association, or wilfully subscribes or makes any false report, shall be guilty of forgery as defined in the penal code of the state of North Dakota and punished accordingly.

§ 26. INSOLVENT BANK NOT TO RECEIVE DEPOSIT.] No banking association shall accept or receive on deposit with or without interest, any money, bank bills or notes, or United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, when such banking association is insolvent.

§ 27. PENALTY FOR VIOLATING THE LAST SECTION.] If any such banking association shall receive or accept on deposit any such deposits as aforesaid when insolvent, any officer, director, cashier, manager, member, party or managing party thereof, who shall knowingly receive or accept, be accessory or permit or connive at the receiving or accepting on deposit therein or thereby of any such deposits as aforesaid, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars or by imprisonment in the penitentiary not exceeding five years, or by both such fine and imprisonment.

§ 28. BANKING MUST BE DONE IN COMPLIANCE WITH THIS CHAPTER. PENALTY.] No person excepting national banking corporations shall transact a banking business nor use the words bank, banking company or banker in any sign, advertisement, letter head or envelope or in any corporate or firm name, without complying with and organizing under the provisions of this chapter. Any person violating the provisions of this section, either individually or as an interested party in any association or corporation, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not less than ninety days, or both, in the discretion of the court.

§ 29. FORFEITURE OF FRANCHISE.] Every association organized under this chapter which shall refuse or neglect to comply with any requirements, lawfully made upon it by the state banking board, or by the state examiner, pursuant to this chapter, for a period of ninety days (or for a lesser period if specified in the order) after demand in writing by such board or examiner is made, shall be deemed to have forfeited its franchise and any failure on the part of such association to comply with, or any violation of any of the provisions of this chapter, shall work a forfeiture of its franchise, and in either case the attorney general, upon demand of the state banking board, must commence an action for the purpose of annulling the existence of said association.

§ 30. EXAMINATION OF BANKS. FEES. REPORT TO STATE BANKING BOARD.] The state examiner shall be ex-officio superintendent

of banks. He shall, as often as shall be deemed necessary and proper by the state banking board, and at least once a year, duly examine every banking association, savings bank and trust company organized under this law, or the law of the state of North Dakota, for which he shall charge the association so examined a fee for each annual examination only and turn the same into the state treasury as follows: Associations of ten thousand dollars capital or less, a fee of twenty dollars; associations with a capital from twenty thousand dollars to thirty thousand dollars, twenty-five dollars; associations with capital from thirty thousand dollars to forty thousand dollars, thirty dollars; associations with capital from forty thousand dollars to fifty thousand dollars, thirty-five dollars; associations with capital from fifty thousand to sixty thousand dollars, forty dollars, and all associations having a capital of sixty thousand dollars or over, fifty dollars. He shall have power to make a thorough examination into the affairs of the association, and in so doing may examine any of the officers, agents, or clerks thereof, under oath, and he shall ascertain what are the proper assets and accounts for such association to carry, and shall direct to be disposed of or charged off any stock, bonds, notes, accounts or any assets of whatever nature which he deems to be improper or not for the best interest of said association. And he shall make a full and detailed report in writing of the conditions of the association so examined, including therein a statement of any direction or recommendation made in conformity herewith, and of all matters and things relating to the general conduct of the association, and shall forthwith transmit the same to the state banking board. The state examiner shall not be directly or indirectly interested in any association organized under this chapter.

§ 31. OATH OF OFFICERS.] Every active officer of any bank organized under this chapter shall, before entering upon the duties of his office, take and subscribe an oath that he will so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and that he will not knowingly violate, or willingly permit to be violated any of the provisions of this chapter. All such oaths shall be presented to the board of directors and a synopsis thereof recorded in the director's record and then filed with the state banking board.

§ 32. BONDS OF OFFICERS AND EMPLOYEES.] All officers and employees of any banking association, savings bank or trust company shall, before entering upon their duties, furnish a good and sufficient bond to the association in such sum and upon such conditions as may be required by the board of directors. All such bonds shall be approved by the board of directors of such association and shall be subject to the approval of the state banking board. A record of the approval of such bonds by the board of directors of such association shall be made on the records of the bank, and then such bonds shall be filed with the state banking board. Stockholders of such banks shall not be eligible as bondsmen for such officers.

§ 33. EXAMINATION BY DIRECTORS AND REPORT.] It shall be the duty of the board of directors in January and July of each year to make a careful and thorough examination of the assets of the bank, examine stocks, checks, certificates of deposit and cashier's checks, count cash, examine loans and discounts of every nature, with the securities and collaterals belonging thereto, compare the aggregate with the records and make a complete report of such examination in such form as may be designated by the state banking board, with suggestions and criticisms, if in their judgment such are necessary, which report shall be spread on the records of the bank the same as the minutes of a regular meeting of the board of directors, and a duplicate thereof transmitted to the state banking board.

§ 34. ACTION AGAINST INSOLVENT BANKS.] The state banking board on being satisfied of the insolvency of any banking association organized under the provisions of this chapter, or of the violation of any of the provisions of this chapter by any such association, after an examination of the same, shall forthwith take charge of such insolvent bank pending the action of the court. For that purpose it is made the duty of the board to appoint a temporary receiver, who shall qualify in such manner as may be directed in the order appointing him. Immediately upon taking charge the receiver shall prepare and submit a statement of the conditions of the banking association to the state banking board, who shall thereupon institute an action against the association in accordance with the provisions of chapter 26 of the code of civil procedure.

§ 35. OVERDRAFTS.] Any bank officer or employe who shall pay out [of] the funds of any bank upon the check, order or draft of any individual firm, corporation or association, which has not on deposit with such bank a sum equal to such check, order or draft, shall be personally liable to such bank for the amount so paid.

§ 36. LIST OF SHAREHOLDERS TO BE KEPT AND FILED.] The president and cashier of every bank formed pursuant to the provisions of this chapter, shall at all times keep a true and correct list of the names of all the shareholders of such bank, with the amount of stock held by each, the time of transfer and to whom transferred, and shall file a copy of such list in the office of the county auditor and in the office of the state examiner on the first Monday of January and July in each year.

§ 37. IMPAIRMENT OF CAPITAL.] If any portion of the capital of any banking association is reduced without the approval of the state banking board or impaired for any purpose whatever, while any debts of the association remain unsatisfied, no dividend or profit on the shares of the capital stock of the association shall thereafter be made until the deficit of the capital is made good, either by subscription of the stockholders or out of the subsequently accruing profits of the association. And, if at any time, it shall appear that the capital stock of any banking association has become impaired, the state banking board must immediately issue and enforce the nec-

essary order restraining the declaring of dividends and requiring the deficit to be made good.

§ 38. ASSETS NOT TO BE USED IN OTHER BUSINESS.] No bank shall as principal employ its money or other of its assets, directly or indirectly, in trade or commerce, nor employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm or association, nor shall it invest any of its assets in speculative margins of stocks, bonds, grain, provisions, produce or other commodities, except that it shall be lawful for banks to make advances for grain or other products in store or in transit to market.

§ 39. BANKS EXEMPT FROM ATTACHMENT AND EXECUTION.] Every banking association in this state shall be exempt from the legal process of attachment and execution. But if any bank fails, neglects or refuses to pay any valid final judgment or decree that may be rendered against it by any court of competent jurisdiction, not properly stayed by an appeal bond within the time prescribed by statute or order of court after rendition thereof, the state banking board shall declare such bank insolvent or in failing circumstances and shall forthwith cause a receiver to be appointed to wind up its affairs.

§ 40. INSOLVENT, WHEN.] A bank shall be deemed insolvent: First, when the actual cash market value of its assets is insufficient to pay its liabilities; second, when it is unable to meet the demands of its creditors in the usual and customary manner; third, when it shall fail to make good its reserve as required by law; fourth, when it shall fail to comply with any lawful order of the state banking board within any time specified therein.

§ 41. SECRETARY TO KEEP BANK RECORD.] It shall be the duty of the secretary of the state banking board to keep a "bank record" wherein shall be recorded the name and location of each bank in the state, its capitalization and changes thereof, its officers, and its reserve agents, and changes of the same, and in docket form such other proceedings as may have been had relative to the same, by the state banking board, and by the state examiner.

§ 42. REPEAL AND SAVING CLAUSE.] All laws and parts of laws repugnant to and inconsistent herewith are hereby repealed; provided, that this act shall not affect any offense committed or right accruing prior to the taking effect hereof, but all such offenses or rights of action shall remain and be prosecuted under the law existing at the time such offense was committed or such right of action accrued.

Approved March 6, 1905.

# STATE CAPITOL.

## CHAPTER 166.

[S. B. No. 21—Little.]

### CAPITOL BUILDING.

AN ACT Providing for the Reconstruction of the Capitol Building of the State of North Dakota and the Erection of an Executive Mansion, and for That Purpose Creating a Board of Capitol Commissioners, Defining Its Powers and Duties, Providing for and Appropriating the Proceeds of Sales of the Capitol Building Lands and Authorizing the Issuance of Interest-bearing Certificates Against Said Fund.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. BOARD OF STATE CAPITOL COMMISSIONERS CREATED. APPOINTED BY GOVERNOR. VACANCIES HOW FILLED.] The governor of the state shall forthwith appoint, by and with the advice and consent of the senate, three suitable persons, no two of whom shall be residents of the same judicial district, who shall act as state capitol commissioners, and who shall constitute a board to be known as the "Board of State Capitol Commissioners," and whose duty it shall be to remodel and reconstruct upon its present site, the capitol building of the state of North Dakota at Bismarck, and erect a suitable residence for the governor on the lots now owned by the state, according to the provisions of this act. The governor may remove any member of the board for misconduct, but only after a public hearing upon written charges, at which the member shall have the right to be present and adduce testimony, and to be attended by counsel, and the governor, by and with the advice and consent of the senate, shall fill all vacancies occurring at any time. And in case a vacancy occurs between the sessions of the legislative assembly, the person appointed by the governor to fill it shall exercise the duties of such office until the session of the legislative assembly, at which time such appointment shall be rejected or confirmed by the senate.

§ 2. SALARY OF MEMBERS.] The chairman of said board shall receive an annual salary of two thousand five hundred dollars, payable quarterly, and each other member of the board shall receive ten dollars per day while in the actual performance of his duties as a member of said board.

§ 3. COMMISSIONERS TO FILE BOND WITH SECRETARY OF STATE.] Each of said commissioners, before entering upon the duties of his office, shall enter into and file with the secretary of state, a bond payable to the state of North Dakota, in the penal sum of twenty-

five thousand dollars, with two or more good sureties (except where a surety company licensed to do business in this state acts as surety, in which case one such surety shall be sufficient), each justifying to the full amount of the bond, to be approved by the governor, which bond shall be conditioned for the faithful performance of his duties as such commissioner, and shall also subscribe and file with the secretary of state an oath in substance as follows:

"I, A. B., do solemnly swear that I will support the constitution of the United States and the constitution of the state of North Dakota, and that I will well and faithfully discharge the duties of state capitol commissioner; that I will not directly or indirectly be interested or [or] concerned in any manner whatever in the purchase from the state of any personal property to be sold under this act; and I will not directly or indirectly be interested or concerned in any manner with any contractor or any person whatsoever in the reconstruction of the state capitol or construction of the residence of the governor, or in the proceeds or profits growing out of the same, or in any work or labor done or material furnished in the construction of the same. So help me God."

In case of a violation of any of the conditions of said bond an action thereon may be maintained by the state in the district court of Burleigh county.

§ 4. MEETINGS OF BOARD. SHALL APPOINT SECRETARY WHO SHALL FILE BOND WITH SECRETARY OF STATE.] Within ten days after qualification the members of said board shall meet at the call of the governor, at the seat of government for the completion of their organization, and shall elect of their number a president, and vice president, and may provide for the manner of calling subsequent meetings of the board. The members of the board shall at the first or some subsequent meeting appoint a secretary, not of their number, whose duties shall be by them prescribed, and who shall receive for his services a reasonable compensation to be fixed by the board, and who, before entering upon the discharge of his duties, shall subscribe and file with the secretary of state, an oath of office similar in form to that prescribed for the commissioners, and a bond in the penal sum of ten thousand dollars, with a surety or sureties approved by the board, each justifying to the full amount of the bond, conditioned for the faithful performance of his duties. The board may remove its secretary and make a new appointment at any time. The meetings of said board shall be conducted according to the usual parliamentary rules.

§ 5. UNLAWFUL FOR MEMBER OF BOARD OR SECRETARY TO BE INTERESTED IN CONTRACTS. PENALTY FOR VIOLATION.] It shall be unlawful for either of the said commissioners, or for the secretary of the said board, to be interested, either directly or indirectly, in any manner whatsoever, in the purchase of any personal property sold by the state under this act, or in any contract for the construction of said capitol building or governor's residence, or for

any work connected therewith, or for the furnishing of any supplies or material therefor so as to receive any benefit therefrom or for the promise of any benefit therefrom of any kind whatsoever, and any of said persons who shall violate this section of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to imprisonment not exceeding one year, or to a fine not exceeding ten thousand dollars, or both, and in addition thereto shall thereafter be incapacitated from holding any office of trust or profit in this state.

It shall be unlawful for said board to employ or continue in its employment in the supervision or superintendence of the building of said capitol, or of any work connected therewith, any person who is in any manner connected with or interested in, directly or indirectly, any contract for the erection of said capitol building or governor's residence, or for the furnishing of any supplies or material therefor; and the said commissioners are hereby charged with the rigid enforcement of this provision of this act.

§ 6. BOARD TO PROCURE AND SELECT PLANS AND SPECIFICATIONS FOR REMODELING CAPITOL AND ERECTION OF RESIDENCE FOR GOVERNOR.] The board of state capitol commissioners as soon as practicable after the passage of this act shall proceed, in such manner as it deems best, to procure and select plans and specifications for the remodeling and reconstruction of the capitol building of the state of North Dakota and the erection of a suitable residence for the governor, and to receive bids for the performance of the work thereunder. No plan and specifications shall be adopted nor bid accepted unless a majority of all members of the board shall vote in favor thereof.

In the plans and specifications for the reconstruction the board shall utilize the newly constructed north wing of the present capitol building, and so much of the other portions of the present building and its materials as, in the opinion of the said board, can be used to advantage, with due regard to the appearance and serviceableness of the building. The plan selected shall be so far as practicable for a fire proof building, and the plans and specifications adopted for such alterations and reconstruction shall be such as will not make necessary an expenditure in excess of the amount which can be realized from the sale of all the capitol building lands hereinafter mentioned.

No plans for alterations and reconstruction shall be adopted until careful estimate has been made of the cost of supervision, labor, material and other expenditures necessary to complete the same, it being the object of this act to restrict the aggregate and entire cost of all expenditures to be made under this act, to the amount which can be realized from said lands, and all contracts awarded and plans adopted shall be awarded and adopted only after the board shall be satisfied that the cost of carrying out the provisions of this act shall not exceed this amount.



§ 7. ALL LABOR, MATERIAL, CONSTRUCTION, JOB PRINTING, ADVERTISING, ETC., TO BE DONE BY CONTRACT.] All labor, material, transportation, (excepting transportation by rail) or construction, required by the provisions of this act, as well as all job printing, advertising or other work which can be so done under this act, shall be done or furnished by contract. The board is authorized to contract for the performance of the entire work by a contractor who may undertake the whole work, or it may divide the work into appropriate classes and make separate contracts as to either of them as may seem to it to be for the best interests of the state. All lettings of work exceeding in amount the sum of one thousand dollars shall be advertised in two daily newspapers of general circulation in this state, for not less than fifteen days, and shall call for sealed bids accompanied by such security as said board shall prescribe. Any or all bids received by the board may be by it rejected, and whether accepted or rejected shall within thirty days after decision thereon by the board be deposited in the office of the state auditor. All contracts for labor and material shall be in writing, and shall be signed by the contractor and by the president or vice president of the board. The plans and specifications of the work shall be executed by skilled and reputable architects, contractors, artists, mechanics and laborers.

No contract shall be made which shall bind the state to make payment of any sum before the same shall be by law made applicable thereto.

§ 8. CONTRACTOR TO GIVE BOND. ACTION AGAINST BY SUB-CONTRACTORS OR OTHERS, HOW COMMENCED.] Before any contract for the doing of any work or labor, or furnishing any skill or material in the reconstruction of said capitol building or erection of said governor's residence, shall be entered into by the board, the contractor shall be required to furnish to the board a bond for the use of the state of North Dakota, and also for the use of all persons who may perform any work or labor or furnish any skill or material in the execution of said contract, to be approved by the board, which bond shall have two or more sureties (except that where a surety company licensed to do business in this state acts as surety, no other surety will be required), which bond shall be in an amount fixed by the board, but in no case less than one-half of the contract price, and which shall be conditioned to complete such contract according to the terms thereof, and to pay as they become due all just claims for all work and labor performed and all skill and material furnished in the execution of such contract.

If personal sureties are furnished each shall make oath that he is a resident of the state of North Dakota, and that he is seized in fee of real estate situated in said state and not exempt from sale on execution of the value, over and above all incumbrances thereon, of the sum for which he is to justify on said bond. Each surety shall justify in the full amount of the bond. No subletting of such contract, or any part thereof, and no modification of the structure or work

covered thereby, and no payments to the contractor prior to the time specified in the contract, and no extension of time in the performance of the work shall operate to release the surety or sureties on said bond.

Whoever shall perform or cause to be performed any work or labor or furnish or cause to be furnished any skill or material, including any work, labor, skill or material necessary in the repair of any tool or machine, and including the use of any tool or machine or material, furnished particularly for such contract and used therefor in the execution of such contract at the request of the contractor, or his agents, or at the request of any subcontractor, or his agents, shall be considered a party in interest in said bond, and may bring an action thereon for the reasonable value or agreed price, as the case may be, of the work or labor performed, or skill or material furnished in the performance of such contract, whenever his claims are not paid when due. At the time of bringing of such suit the plaintiff shall cause a copy of his complaint to be filed with the secretary of the board. Any party having a cause of action on such bond may intervene or be impleaded in any action which may be brought thereon, and in such case the court shall determine the rights of all parties, and if the amount realized on such bond shall be insufficient to discharge all claims in full, all claims of the state of North Dakota shall be first paid, and claims for labor not exceeding \$300 for any one claimant shall next be paid, and the balance, if any, of the proceeds of the bond shall be distributed pro rata among the remaining claims.

A subcontractor, within the meaning of this section, is a person who enters into a specific contract to perform all or some part of the work required to be done under the original contract.

No action shall be maintained on any such bond, nor intervention be allowed in any action pending thereon, by any person, firm or corporation other than the state of North Dakota, unless the plaintiff or intervenor, as the case may be, within ninety days after performing the last item of work or furnishing the last item of skill or material, shall have served upon the principal in said bond, and upon one of the officers of said board, a written notice, specifying the nature and amount of his claim and the date of furnishing the last item of work, skill or material. No action on such bond shall be commenced nor intervention allowed in any pending action thereon by any claimant, except the state of North Dakota, after one year from the time such claim became due.

The provisions of sections 4802, 4803 and 4804 of chapter 78, revised codes of North Dakota, 1899, and the provisions of chapter 133 of the laws of 1901, approved February 27, 1901, shall not apply to contracts provided for by this act.

§ 9. UNAVAILABLE PARTS OF PRESENT BUILDING OR MATERIALS TO BE SOLD AND PROCEEDS PAID TO STATE TREASURER.] Such parts of or materials in the present state capitol building as shall be determined

by the board to be unavailable for use in the work of reconstruction shall be disposed of by the board, either by sale, in which case bids shall be advertised for and received in the manner hereinabove provided for letting contracts, or by agreement with the person contracting to remove the same, by some appropriate provision in the contract. The proceeds of all such sales shall be paid to the state treasurer by the vendees, before the title to such property sold shall pass, and shall be credited to the capitol building fund, to be used in carrying out the provisions of this act.

§ 10. BOARD OF UNIVERSITY AND SCHOOL LANDS DIRECTED TO SELL SUFFICIENT LAND BELONGING TO THE STATE TO PROVIDE NECESSARY FUNDS TO ERECT BUILDINGS.] To the end that funds may be provided for carrying out the provisions of this act, it is hereby made the duty of the board of university and school lands to proceed with as much dispatch as can be used without sacrificing the lands, to sell and dispose of all lands remaining to the state, of those granted to the state for the purpose of erecting public buildings at the capitol of the state, by the provisions of sections 12 and 17 of the act of congress approved February 22, 1889, known as the enabling act, under which this state was admitted to the union. Such sales shall be conducted in the manner and upon the terms provided by the existing law of this state. The proceeds of such sales, together with the proceeds of sales of such lands heretofore made, shall be credited to and form a part of the capitol building fund, to be used for the purpose of carrying out the provisions of this act. It is hereby made the duty of said board of university and school lands, in the manner and upon the terms provided by existing law, to offer for sale, from time to time, a sufficient quantity of said lands to produce the funds necessary to pay when due the principal and interest of the capitol land grant certificates hereinafter authorized to be issued.

§ 11. BOARD OF COMMISSIONERS AUTHORIZED TO ISSUE CERTIFICATES OF INDEBTEDNESS.] In addition to the other powers granted them by this act, the board of capitol commissioners is hereby authorized for the purpose of anticipating the receipt of the proceeds of the sales of the lands referred to in section 10 of this act, to issue certificates of indebtedness bearing interest at a rate not to exceed five per cent per annum payable annually or semi-annually, which shall be known as capitol land grant certificates, and which shall be exempt from taxation.

1st. The aggregate amount of the par value for such certificates issued shall not exceed the sum of six hundred thousand dollars, and the aggregate of such certificates at any time outstanding, including interest to maturity, shall at no time exceed the amount in the capitol building fund realized from the sale of such lands and available for the payment of such certificates, added to the value of the unsold remainder of said lands and the amount of unpaid installments of principal and interest on outstanding contracts for the sale of said lands. Said certificates shall mature at such time or times as the

board of capitol commissioners and state auditor shall determine, but care shall be used that no more of the principal and interest of said certificates shall fall due in any year than can be paid when due out of the capitol building fund, and in any event no more than seventy-five thousand dollars of the principal of such certificates shall mature in any year, but every such certificate shall mature in not to exceed fifteen years from the date of its issue.

2nd. The said certificates shall be in such denominations and shall be in such form as the said board and state auditor shall determine, but shall plainly show upon their face the purpose for which they are issued, the time of maturity, and shall contain a proper reference to this section of this act, and shall be made payable at the office of the state treasurer.

3rd. The said certificates shall only be issued from time to time as the work of reconstruction of the capitol progresses, and only in such sums as the board may deem necessary to provide the necessary funds to pay for material and labor and carry out the provisions of this act. The said certificates shall be signed by the president or vice president of said board and the state auditor, who shall keep a proper register thereof and who shall deliver them to the state treasurer.

4th. The board shall advertise each proposed sale of such certificates for not less than fifteen days in two daily newspapers of general circulation, and shall call for sealed proposals of purchase, and shall sell the certificates to the highest bidder, but no bid for less than par value shall be accepted, and the certificates shall be delivered by the treasurer to purchasers only on payment into the state treasury of the amount for which they are sold. The proceeds of the sales of such certificates shall be placed in the capitol building fund, and shall be used for carrying out the provisions of this act.

5th. In lieu of selling all or any part of the certificates as above provided, the said board may, if it deems best, at the time of employing any person, or of making or letting any contract, or at any time thereafter, offer all or any part of such certificates to the person, firm or corporation employed or contracted with, in payment of the work, labor, skill or material performed or furnished by such person, firm or corporation. But in such case the certificates shall not be offered or received in payment for less than the par value thereof, and shall only be delivered by the state treasurer to such person, firm or corporation, upon full and complete statements or accounts, certified and audited as provided in section 13 of this act. Nothing herein contained shall be construed to compel any such person, firm or corporation to receive such certificates in payment for work, labor, skill or material unless it is so provided in the contract under which such work, labor, skill or material is performed or furnished.

6th. The principal and interest of said certificates when due shall be paid by the state treasurer on the warrant of the state auditor,

out of any funds in the capitol building fund, derived from sales or said lands, or from the issuance of certificates under this section, and sufficient of such funds shall be set apart to meet the maturing certificates in each and every year that such certificates shall mature. Said certificates shall constitute a first charge upon the proceeds of said lands, and the liability of the state shall be limited to the faithful and ratable application to the payment thereof of the proceeds of the sales of said lands.

§ 12. PREVIOUS OBLIGATIONS OF STATE PAYABLE OUT OF SALES OF LANDS RECOGNIZED.] Nothing in this act shall be construed to repeal or affect any existing law directly or indirectly providing for the payment out of the proceeds of the lands referred to in section 10 of this act of any obligations of this state heretofore issued. But all obligations of this state heretofore issued, payable directly or indirectly under the provisions of the existing law out of the proceeds of the sales of said lands shall be paid or provided for before any part of the proceeds of said lands shall be used as in this act provided.

§ 13. BOARD AUTHORIZED TO EMPLOY ARCHITECTS AND OTHERS WHEN DEEMED NECESSARY. PAYMENTS, HOW MADE.] For the due prosecution of the work hereby committed to their charge, the said board are hereby authorized to employ such architects, mechanics and laborers as may be deemed necessary, and payment of all expenditures made in or connected with the reconstruction of the capitol building or erection of said governor's residence and the carrying out of the provisions of this act shall be made upon full and complete statements of accounts, which shall be made and certified to by a majority of the members of said board, and shall be laid before the state auditor for examination, and if found correct and in compliance with this act, shall be audited and paid by the state treasurer, upon the warrant of the state auditor, out of any money in the capitol building fund available for that purpose, such warrant to be drawn in favor of and to the order of the person or persons entitled to receive the amount therein named.

§ 14. ATTORNEY GENERAL.] The attorney general shall be the legal adviser of the said board.

§ 15. EMERGENCY.] Whereas the present capitol building is inadequate, and unsafe for public records on account of the absence of fire proofing, now, therefore, an emergency exists and this act shall take effect and be in full force from and after its passage and approval.

Approved February 3, 1905.

## CHAPTER 167.

[S. B. No. 139—LaMoure.]

## CAPITOL BUILDING.

AN ACT Authorizing the Board of Capitol Commissioners Created for the Reconstruction of the Capitol Building, and the Erection of an Executive Mansion for the State of North Dakota, to Utilize Such Labor of the Convicts in the State Penitentiary as Can Be Used Profitably in Erecting Said Capitol and Executive Mansion, or in the Manufacture of Material to be Used Therein.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. BOARD OF CAPITOL COMMISSIONERS AUTHORIZED AND EMPOWERED TO UTILIZE CONVICT LABOR IN ERECTION OF NEW CAPITOL BUILDING. DUTY OF WARDEN TO FURNISH SAME.] The board of capitol commissioners, appointed under the provisions of an act "providing for the reconstruction of the capitol building of the state of North Dakota, and the erection of an executive mansion, and for that purpose creating a board of capitol commissioners, defining its powers and duties, providing for and appropriating the proceeds of sales of the capitol building lands, and authorizing the issuance of interest-bearing certificates against said fund," approved February 3, 1905, are hereby authorized and empowered and shall, so far as the same can reasonably and profitably be done, utilize such labor of the convicts in the state penitentiary, not otherwise employed in the necessary maintenance of said penitentiary and twine plant connected therewith, and it is hereby made the duty of the warden of said penitentiary, whenever requested by the said board of capitol commissioners, referred to herein, to place any or all available convicts of proper character and condition that he may have in his charge, with proper guards and attendants therefor, at the disposal of said board of capitol commissioners, to be used in performing such labor required in erecting said capitol and executive mansion, or in the manufacture of material to be used therein.

§ 2. EMERGENCY.] Whereas, in the opinion of the legislative assembly an emergency exists; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1905.

# STATE CENSUS.

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## CHAPTER 168.

[S. B. No. 33—Johnson of McLean.]

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## STATE CENSUS.

AN ACT to Provide for the Census or Enumeration of the Inhabitants of This State.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WHEN ENUMERATION OF INHABITANTS TO BE TAKEN.] That an enumeration of the inhabitants of this state, and of each county, city, village and township thereof, shall be taken during the present year, nineteen hundred and five, and during every tenth year hereafter, under the direction of the secretary of state.

§ 2. BLANKS, ETC., TO BE PRINTED BY THE SECRETARY OF STATE.] That the secretary of state shall, as soon as may be after the passage of this act, and also every tenth year hereafter, cause uniform blank returns and abstracts, together with copies of this act and such instructions as he may deem necessary, to be printed for the purpose of taking such enumeration.

§ 3. WHEN BLANKS TO BE TRANSMITTED TO COUNTY AUDITOR.] That the secretary of state shall, on or before the first day of April, instant, and on or before the first day of April in every tenth year hereafter, transmit in such manner as he may think proper, to each of the county auditors, twice as many of such blank returns, and as many copies of this act and of said instructions as there are assessor districts in their respective counties.

§ 4. WHEN COUNTY AUDITORS TO DELIVER BLANKS TO ASSESSORS.] That it shall be the duty of each county auditor at the time of delivering the assessor supplies to the various district, city, village and township assessors of his county in the year nineteen hundred and five, and in every tenth year thereafter, a sufficient number of blank returns and copies of this act and instructions so as aforesaid transmitted to him by the secretary of state to supply each assessor of such district, city, village and township with duplicate sets of said blank returns, and one copy of this act and one copy of said instructions.

§ 5. WHEN AND HOW ENUMERATION TO BE MADE.] That during time of making the assessments for the year nineteen hundred and five, and in every tenth year hereafter, every such assessor shall proceed to enumerate truly and accurately, the inhabitants residing in

the district or territory for which he shall have been elected or appointed, by making actual inquiry at every dwelling house, or the head of every family residing therein, and that in making this enumeration he shall ascertain and state in separate lines or columns, according to the schedules and instructions to be furnished by the secretary of state, viz:

1. The number of dwelling houses numbered in order of visitation.
2. The number of families numbered in order of visitation.
3. The names of individuals.
4. The number of inhabitants arranged, as far as practicable, according to families and dwelling-houses, and classified as follows: Native white males; native white females; native colored males; native colored females; foreign males—all other nationalities; foreign females—all other nationalities; children of five years of age and under—males; children of five years of age and under—females; all males five to twenty years of age; all females five to twenty years of age; all males twenty to sixty years of age; all females twenty to sixty years of age; all males over sixty years of age; all females over sixty years of age.

§ 6. WHAT ASSESSOR TO ENTER IN BLANK RETURN.] That each assessor shall enter in the blank return received the particulars of the enumeration so made, according to the instructions of the secretary of state.

§ 7. WHAT PERSONS TO BE RETURNED AS RESIDENTS.] That every person whose abode shall be in any place or in any family on the first day of April next, and on the first day of April in every such tenth year hereafter, shall be returned as of such place or family, and not otherwise; and every person casually absent at the time of taking the enumeration as belonging to that place in which he usually resides.

§ 8. RETURNS CERTIFIED BY ASSESSOR.] That the returns so made out shall be certified by each assessor taking the enumeration to be true and accurate, to the best of his knowledge and belief, and shall state the number of pages of which it consists, which certificate shall be subscribed and sworn to by him before some officer authorized to administer oaths.

§ 9. WHEN ASSESSOR TO TRANSMIT RETURNS TO SECRETARY OF STATE.] That each assessor shall, on or before the tenth day of July next, and on or before the tenth day of July in every such tenth year hereafter, cause the returns so certified, to be transmitted to the secretary of state through the county auditor of his county, by express, carefully boxed in such manner as to protect them; and if the assessor shall neglect, for five days after the tenth day of July, to make his return as aforesaid, the secretary of state shall immediately dispatch a messenger to procure such return and the expense thereof shall be deducted from the account of such assessor by the board of county commissioners, if they shall think proper.



§ 10. SECRETARY OF STATE TO REPORT GENERAL ACCOUNT OF ENUMERATION TO LEGISLATURE.] That the secretary of state, after receiving such returns, shall prepare and report to the two houses of the legislature, on or before the fifteenth day of January at the next following session succeeding the taking of such census, a general account of the enumeration, specifying the result thereof, in the several townships, cities, villages and counties of the state, with a full recapitulation of the whole, and after making such report it shall be the duty of the secretary of state to deposit all of such returns in the state library, with a copy of the said general account and recapitulation thereof.

§ 11. APPOINTMENT OF ENUMERATOR WHERE ASSESSOR HAS DIED, ETC.] That in case of the death of any assessor, or in his inability from any cause, or his neglect or refusal to perform the duties required by this act at the time therein specified, it shall be the duty of the board of county commissioners immediately to appoint some suitable and proper person residing in said district, city, village or township to act as an enumerator in the place of such assessor so failing to act, which person, so appointed, shall perform the duties imposed by this act on such assessor.

§ 12. ACCOUNTS OF ASSESSORS AND ENUMERATORS, HOW PAID.] That the accounts for the services of the assessors done under this act and the enumerators appointed under the provisions of this act shall be audited by the board of county commissioners, and shall be assessed, collected and paid as part of the contingent expenses of such county.

§ 13. FEES FOR SERVICES.] That the assessors shall be entitled as enumerators, for their services, to two dollars per hundred inhabitants, enumerated as aforesaid, to be paid by the respective counties, and such fees to be in addition to compensation received for services performed as assessor.

§ 14. COSTS OF PRINTING, ETC.] That all liabilities incurred for printing, postage and transmission of returns shall be paid out of the state treasury on the warrant of the auditor, and charged to a special account.

§ 15. EMERGENCY.] Whereas, an emergency exists inasmuch as the first census herein provided for must be performed prior to July 1st, 1905, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 13, 1905.

## STATE EXAMINER.

### CHAPTER 169.

[S. B. No. 116—Little.]

#### BOND OF STATE EXAMINER AND DEPUTIES.

AN ACT to Amend Section 146 of the Revised Codes, Relating to Official Bonds of State Examiner and His Deputies.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 146 of the revised codes be and is hereby amended so as to read as follows:

§ 146. OFFICIAL BOND.] The state examiner shall execute an official bond to the state in the sum of ten thousand dollars and each of his deputies execute a like bond in the sum of five thousand dollars, all to be approved by the governor and filed in the office of the secretary of state.

Approved March 7, 1905.

### CHAPTER 170.

[S. B. No. 117—Little.]

#### DEPUTY PUBLIC EXAMINERS.

AN ACT to Amend Section 3 of Chapter 170 of the Laws of 1901, Being an Amendment of Section 145 of the Revised Codes, Relating to the Salary of the State Examiner, the Appointment of Deputies and for Penalties for Malfeasance in Office.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 3 of chapter 170 of the laws of 1901 (being an amendment of section 145 of the revised codes) be amended so as to read as follows:

§ 145. SALARY. DEPUTIES. PENALTY FOR MALFEASANCE.] The only salary of the state examiner for all services rendered in any capacity whatever, shall be two thousand dollars per year, and his actual and necessary expenses incurred in the discharge of his official duties, to be audited and paid in the same manner as the salary and expenses of the state officers are paid. He is authorized, with the approval of the governor, to appoint deputies, three, who shall receive an annual salary of eighteen hundred dollars, and one

who shall receive an annual salary of fifteen hundred dollars, and their actual and necessary traveling expenses to be audited and paid as hereinbefore stated. And if said examiner or his deputies, or either of them, shall directly or indirectly receive any compensation or pay for his services, or extra services, or neglect of service, other than is provided in this act, he shall be deemed guilty of felony.

§ 2. EMERGENCY.] Whereas the state examiner must report before the first of July next, this act shall take effect and be in force from and after its passage and approval.

Approved February 25, 1905.

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## CHAPTER 171.

[S. B. No. 206—Young.]

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### DUTY OF PUBLIC EXAMINER.

AN ACT to Amend Section 137 of the Revised Codes of 1899, Relating to the Examination of the Accounts of Public Officers by the State Examiner.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 137 of the revised codes of 1899 be amended to read as follows:

§ 137. DUTY TO EXAMINE ACCOUNTS OF PUBLIC OFFICERS.] The duties of the state examiner are to examine at least once a year the books and accounts of the secretary of state, state auditor, state treasurer, clerk of the supreme court, commissioner of insurance, commissioner of agriculture and labor, department of university and school lands, supply department of the national guard, county treasurer, county auditor and upon request of the board of county commissioners of any county or by the governor, other county officers.

Approved March 6, 1905.

# STATE DEPOSITORIES.

## CHAPTER 172.

[S. B. No. 235—Thatcher.]

### STATE DEPOSITORIES.

AN ACT Prescribing Duties of State Depositories.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. STATE EXAMINER EMPOWERED TO EXAMINE AND INSPECT NATIONAL BANKS WHO ARE DESIGNATED AS STATE DEPOSITORIES.] Every national banking corporation, heretofore or hereafter designated as a state depository, under the provisions of section 237 of the revised codes of 1899, and acts amendatory thereto, or which shall have at any time on deposit any of the public funds or moneys of the state of North Dakota or of the public institutions thereof, is hereby required to permit the examination and inspection by the state examiner of any report or reports made to the comptroller of the currency, relating to the financial condition of such associations. The state examiner may also call for special reports from any such depository whenever in his judgment the same is necessary in order to obtain full and complete knowledge of the condition of the public funds therein deposited.

§ 2. ON FAILURE TO ALLOW INSPECTION, EXAMINER TO NOTIFY STATE TREASURER, WHO SHALL WITHDRAW ALL PUBLIC FUNDS.] In case of the failure or refusal of any such state depository to comply with the provisions of section 1 of this act, it shall be the duty of the state examiner to so certify to the state treasurer, and it shall be the duty of the state treasurer to forthwith withdraw from such depository any public funds on deposit in the same.

§ 3. EMERGENCY.] Whereas, an emergency exists, in that there is now no provision of law whereby it is possible for the state examiner's office to ascertain the condition of public funds deposited in other than state banking corporations, nor to verify the accounts of the state treasurer's office with the state depositories, therefore, this act shall take effect upon its passage and approval.

Approved March 13, 1905.

## CHAPTER 173.

[H. B. No. 114—Dickinson.]

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## STATE DEPOSITORIES.

AN ACT to Amend Section 237 of the Revised Codes 1899.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 237 of the revised codes of 1899 be amended to read as follows:

§ 237. STATE DEPOSITORIES.] All funds of the state shall be deposited by the treasurer in one or more designated state or national banks in the state of North Dakota on or before the first day of each month in the name of this state; such bank or banks shall be designated by the board of auditors in conjunction with the governor after advertising in one or more newspapers published in this state for at least thirty days for proposals, and receiving proposals, stating what interest will be paid on monthly balances of such funds on condition that such funds with accrued interest shall be subject to draft and payment at all times on demand; provided, that the amount deposited in any bank shall not exceed fifty per cent of its paid up capital and surplus. Interest on the fund so deposited, shall be not less than two nor more than three per cent per annum, payable on the average daily balance. Each bank, so designated, shall continue to be a depository unless revoked by the board until the board of auditors designate new depositories which shall be done at a meeting to be held on the second Tuesday in January of every even numbered year, and until depositories so designated shall have qualified.

§ 2. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 11, 1905.

# THRESHING MACHINES.

## CHAPTER 174.

[H. B. No. 45—Piper.]

### INJURIES TO THRESHING MACHINES.

AN ACT Prohibiting the Secreting of Any Stone, Wood, Iron or Other Substance in Any Sheaf, Shock, Pile, Load or Stack of Grain, That Might or Could Injure or Destroy Any Threshing Machine or Cause the Death or Injury to Any Person or Any Damage to Personal Property and Prescribing the Measure of Damages That May Be Recovered, and Prescribing Punishment for the Violation of the Provisions Hereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. PLACING OF SUBSTANCES IN GRAIN THAT WOULD CAUSE INJURY TO PERSONS OR MACHINE MADE A MISDEMEANOR OR FELONY. [PUNISHMENT FOR.] Every person who shall wantonly, maliciously, or mischievously put, place or conceal in any sheaf, shock, pile, load or stack of wheat, oats or other grain, any stone, wood, iron or other substance, which if fed into a threshing machine would or could injure such machine or any part thereof or that could or might cause the death, maiming or injury of any person employed about said machine, shall on conviction thereof be deemed guilty as follows: If the injury caused by the violation of this section results in the death of any person, of manslaughter in the first degree; if the injury caused as aforesaid results in maiming or injury to any person or breaking of the machine, of a felony. In all other cases he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars or imprisonment in the county jail not more than one year, or by both such fine and imprisonment.

§ 2. VIOLATORS RESPONSIBLE TO OWNER OF MACHINE FOR DAMAGES.] Every person violating the provisions of section 1 of this act shall be liable to the owner of the machine injured for all the damages arising from such violation including the actual damage caused and all damage and loss such owner may sustain by reason of stoppage caused by such breakage, to be recovered in the same manner that civil damages for an injury are now recoverable.

Approved February 14, 1905.

## TOWNSHIPS.

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### CHAPTER 175.

[H. B. No. 81—Morgan.]

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#### ASSESSMENT ROLLS FURNISHED TOWNSHIP CLERKS.

AN ACT to Provide for Copies of the Assessment Rolls to be Furnished Township Clerks by the County Auditor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. COUNTY AUDITOR TO FURNISH COPY OF TAX LIST MARCH 1ST TO TOWNSHIP CLERK FOR PRECEDING YEAR.] It shall be the duty of the county auditor of each county within this state to make and transmit to the township clerk of each civil township within such county on the first day of March of each and every year, a copy of the tax list of each township for the preceding year showing the owner and description of each piece or parcel of land assessed and the valuation thereof, also a list of the valuation of personal property assessed to each person or corporation within such township.

§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved March 9, 1905.

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### CHAPTER 176.

[H. B. No. 157—Braaten.]

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#### CARE OF TOWNSHIP ROADS AND BRIDGES.

AN ACT to Amend Section 1114 of the Revised Codes of North Dakota, 1899, Relating to the Duty of Supervisors.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1114 of the revised codes of North Dakota, 1899, be amended and re-enacted so as to read as follows:

§ 1114. SUPERVISORS HAVE CARE OF ROADS.] The supervisors in the several townships in this state shall have the care and superintendence of roads and bridges therein, shall give directions for the repairing of the roads and bridges in their respective townships, regulate roads already laid out and alter such of them as they deem proper, as hereinafter provided; divide the respective townships into

as many road districts as they deem convenient, by an order in writing under their hands, to be filed with the township clerk and by him entered in the township records, such division to be made annually, if they deem it necessary, and in all cases to be made within at least twenty days before the annual township meeting. They shall assign to each of the road districts such of the inhabitants liable to work on highways as they think proper, having regard to proximity of residents and require the overseers of highways as often as they deem necessary to warn all persons liable to work on roads, to perform work thereon, with such tools, carriages, cattle or teams, as the overseers or either of them shall direct. It shall be the duty of the supervisors of every township to inspect the roads, bridges, and culverts in their respective townships so far as they may deem necessary, between the first day of May and the first day of June, each year, and to ascertain what repairing and grading on roads is necessary; they shall make plans and specifications of all bridges and culverts to be constructed or repaired, stating the size of the same, also to make plans and specifications of the grading of roads, stating the shape, width and length of said grade or grades; and furnish to each of the road overseers in their townships copies of such plans and specifications of the work to be done in their respective road districts on printed or written forms not later than the first day of June of each year. It shall be the duty of such supervisors to see that any grade or grades so started shall be finished according to such plans and specifications. The supervisors shall inspect such roads between the twenty-fifth day of July and the tenth day of September of each year and see that all work is done according to their instructions. The supervisors shall at the annual township meeting make a detailed report of all culverts, bridges and all road work performed by every road overseer, stating in said report whether or not in their opinion said work has been well and properly done in accordance with their plans and specifications. In fulfilling all their duties, as in this act provided, the supervisors of townships shall be governed and guided by the amount of road tax available.

§ 2. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. EMERGENCY.] Whereas there exists an emergency in this, that there is no existing law covering the provisions of this act, relating to the making of plans and specifications by township supervisors, therefore this act shall take effect and be in full force from and after its passage and approval.

Approved March 9, 1905.



## CHAPTER 177.

[S. B. No. 142—Hanna.]

## CIVIL TOWNSHIPS.

AN ACT to Provide for Paving, Curbing or Macadamizing the Highways in Civil Townships Adjoining Incorporated Cities of Not Less Than 6,000 Inhabitants, and for the Construction of Sewers and Water Mains Therein, Connecting With Such City Sewers and Water Mains.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. WHAT CIVIL TOWNSHIPS MAY PAVE, GRADE OR MACADAM ITS STREETS.] Any civil township in this state adjoining an incorporated city having by the last census at least six thousand inhabitants and which shall have paved, graded, curbed or macadamized its streets leading to the boundaries of such civil township or shall have constructed sewers or water mains in such streets, may pave, grade or macadamize the highways of such township connecting with such city streets, or with such highways so paved or highways running along the boundaries of such city, or construct sewers or water mains therein as provided by this act; provided, that such township shall not so improve any portion of such highways not lying within its boundaries.

§ 2. HOW ACCOMPLISHED.] Whenever the owners of real property abutting on such highway, or part thereof, in such civil township, sought to be improved as provided in this act, and representing a majority by feet of the frontage of said property so abutting, shall desire to improve such highway, or part thereof, as herein provided, they shall petition the board of supervisors of such township in writing, setting forth and describing specifically in such petition, the kind, character and extent of the improvement desired, specifying the width and material of pavement, if any, and the size and material of any sewers or water mains, the number and location of manholes and catch basins for such sewers, and the number and location of fire hydrants for such water mains, which petition shall be accompanied by an affidavit of each signer thereof, stating his place of residence, and that he is the owner of certain real property abutting on the part of such highway sought to be improved, describing such property, and stating the number of feet frontage thereof abutting on such street, which petition shall be filed in the office of the township clerk.

§ 3. TOWNSHIP BOARDS TO HAVE WORKING PLANS MADE.] The board of township supervisors shall, upon the filing of such petition, procure the making, by some competent civil engineer, of complete working plans and specifications for the improvement designated in such petition, together with an estimate of the probable cost thereof,

which plans, specifications and estimate, when completed, shall be filed in the office of the township clerk.

§ 4. TOWNSHIP CLERKS TO ADVERTISE FOR BIDS.] The township clerk shall thereupon advertise in some newspaper of general circulation, published in such adjoining incorporated city, for bids for the construction of such improvement according to such plans and specifications, stating the time and place at which such bids will be received and opened, which time shall not be less than twenty-five days after the first publication of such advertisement, which shall be published in such newspaper three times, once in each week for three successive weeks, and such advertisement shall state that such improvement is to be paid for by special assessments made for that purpose.

§ 5. BIDS TO BE ACCOMPANIED BY CERTIFIED CHECK.] Each bid for such work shall be accompanied by a certified check payable or endorsed to said civil township for at least fifty per cent of the amount thereof and no bid shall be considered which is not accompanied by such check.

§ 6. CONTRACTS, HOW LET.] At the time stated in such advertisement for opening such bids, the board of township supervisors shall meet at the place designated in such advertisement, and open said bids, and award the contract for the construction of such improvements to the lowest bidder therefor, and shall thereupon return to each of the unsuccessful bidders the certified check accompanying his bid, and shall retain the certified check of the successful bidder until the making of the contract and giving of the bond hereinafter provided, and when such contract and bond shall have been executed and filed, the said certified check shall thereupon be returned, but in case the successful bidder fails or refuses to enter into such contract or to give such bond, said certified check shall be retained by said civil township as liquidated damages for such failure to enter into said contract, and give said bond. When such contract has been awarded, the board of township supervisors shall have the same prepared and may employ a competent attorney for that purpose, and such contract shall state the time on or before which such work shall be finished, and shall provide that such work shall be done in accordance with the plans and specifications therefor on file in the office of the township clerk, and in accordance with the bid of the contractor therefor and subject to the approval of such engineer as shall be selected by the board of township supervisors for inspecting and approving such work, and shall further contain a clause that the consideration of said contract is to be paid in warrants, drawn upon the special assessment fund created for the payment of such improvement, and no such civil township shall be or become in any way liable for the payment of any part of the consideration of such contract by general taxation, or from the funds of said township, or otherwise than from such special assessment fund. Such contract shall be entered into in the name of such civil

township and be signed on behalf thereof by the chairman of its board of supervisors, and attested by the township clerk, and when signed by the contractor shall be filed in the office of the township clerk.

§ 7. CONTRACTOR TO GIVE BOND.] The contractor under said contract shall at the time of making the same, execute and file with the township clerk a bond in a penal sum equal to the consideration of said contract, conditioned for the faithful performance of said work according to such plans, specifications and contract, and within the time fixed in said contract, subject to the approval of said engineer, and further conditioned for the payment by said contractor for all material and labor used in said work, which bond shall be signed by the contractor and two sufficient sureties and shall be subject to the approval of the board of township supervisors, and when approved by them shall be filed in the office of the township clerk.

§ 8. TOWNSHIP CLERK TO APPORTION COST OF WORK.] When such contract shall have been fully performed, and the work thereunder approved by such engineer as hereinbefore provided, and the expense connected with such work has been determined, the township clerk shall compute the same, and ascertain the total cost of said improvement, including all expenses in connection therewith of every kind and character, and shall thereupon forthwith calculate the amount to be assessed for such improvement against each lot and parcel of ground abutting on such improvement. And in estimating such assessment he shall take the entire cost of such improvement and divide the same by the number of feet front abutting upon the same, and the quotient shall be the sum to be assessed per foot upon all land so bounding or abutting. And the township clerk shall make and file in his office an assessment list containing the names of the owners of said lands as appears from said affidavits, and of other owners if known to him, together with a description of the lands assessed, which description shall include all such lands between the line of such highway and a line three hundred feet distant therefrom and parallel therewith, and no others. The township clerk shall thereupon cause said assessment to be published in the newspaper in which said advertisement for bids was published, with a notice of the time and place when and where the board of township supervisors will meet to approve such assessment, which notice shall be published in said newspaper once, at least ten days prior to the date fixed therein for the meeting of said township board of supervisors. Said assessment list shall contain or have attached thereto the certificate of the township clerk that the same is correct, and the township clerk shall file in his office with said assessment, an itemized statement of all the expenses of such improvement included therein.

§ 9. COUNTY AUDITOR TO ASSESS AMOUNT AGAINST PROPERTY.] When such assessment shall have been approved by the board of township supervisors, the township clerk shall thereupon transmit to the county auditor a certified copy thereof, and the county auditor

shall thereupon enter the amount of such assessment, against the property assessed therefor, on the tax list of the current year, and shall add thereto one per cent of the amount so assessed for the expense of the collection thereof, and such assessment shall be collected and paid over to the township treasurer, with interest and penalties collected, in the same manner as other township taxes, and shall be credited by the township treasurer to the special assessment fund for such improvement, and shall be diverted to no other purpose.

§ 10. PENALTY FOR NON-PAYMENT.] In case such assessments are not paid the same penalties shall be added thereto and the same proceedings shall be had for the sale of said lands upon which the same are levied, as are had in case of special assessments in incorporated cities, and all the provisions of the statutes with reference to such sales and redemption therefrom in incorporated cities shall apply to special assessments under this act.

§ 11. ASSESSMENTS A LIEN AGAINST PROPERTY.] Such assessments shall be a lien, from the time they are approved by the board of township supervisors, upon the lands abutting upon said improvement to a distance of three hundred feet from the line of such highway and parallel thereto, which lien shall be paramount to all other liens upon such land except ordinary taxes, and such assessments shall become due and payable fifteen days after their approval, and shall bear interest at the rate of seven per cent per annum after they become due.

§ 12. HOW CONTRACTOR PAID.] When any work contracted for under this act shall have been completed according to the contract therefor and approved as hereinbefore provided, the contractor shall be paid therefor in warrants drawn on the special assessment fund herein provided and not otherwise.

§ 13. CITIES AND TOWNSHIPS TO PAY FOR IMPROVEMENTS ON STREETS AND HIGHWAYS. The expense of improving streets and highways lying on the boundary line between any such city and township under this act may be done and paid for by such city and by such township, in such proportion as may be mutually agreed on between them, and any such incorporated city may permit such township to connect with its sewer system and water mains, on such terms as shall be just, and fully compensate said city therefor and for all water furnished to said township mains.

§ 14. EMERGENCY.] There being no method for the improvement of highways as provided herein, in townships adjoining incorporated cities, this act shall take effect and be in force from and after its passage and approval.

Approved March 2, 1905.

## CHAPTER 178.

[H. B. No. 265—Ryan.]

## CONSOLIDATING TOWNSHIPS.

AN ACT for the Consolidation of a Fractional or One or More Townships Attached to Another Civil Township, by the County Commissioners.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SUPERVISORS AND CLERKS OF TOWNSHIPS THAT HAVE BEEN DISSOLVED MUST DETERMINE AMOUNT DUE ON ANNEXATION.] When a township or a fraction of a township has been dissolved and attached to another township, by the county commissioners as now provided by law, it shall be the duty of the several boards of supervisors with the clerks of the townships affected by the change to meet prior to the annual town meeting at the usual meeting place and according to the notice of the township clerk of the township to which annexation has been made for the purpose of determining the financial amount due consequent to the said annexation.

§ 2. TO DETERMINE VALUE OF PROPERTY BELONGING TO TOWNSHIP.] At such meeting, such boards of supervisors, with the clerks, shall determine the value of town hall, jail, graders, plows, scrapers and all other property legally owned and used by said township in conducting the business of said township, to which said annexation has been made, together with the moneys in the treasury and also the money due said township from the county and other sources, and also all back or unpaid taxes shall constitute the assets and they shall deduct therefrom all bonds and legal debts against said township which shall constitute the liabilities and the difference between the two shall constitute the net assets or net liabilities.

§ 3. TO DETERMINE THE PRO RATA AMOUNT DUE FROM ANNEXED TERRITORY.] When it is shown that there is a net asset it shall be the duty of the several boards of supervisors with the clerks to determine the pro rata amount due from the annexed territory in proportion of the assessed valuation of one to the other. All questions herein shall be determined by a majority vote of board hereinbefore provided.

§ 4. TAX TO BE LEVIED AGAINST TERRITORY ANNEXED.] At the first annual township meeting there shall be levied against the fractional township or township annexed, the sum hereinbefore found to be due the township affected by the annexation, thereby in addition to the levies provided by law.

§ 5. EMERGENCY.] Whereas there is no law by which a fractional township or township dissolved and annexed to another township pays anything towards the net assets of the township to which

annexed although deriving all the benefits incident thereto and whereas when a fractional township or township withdrawing and organizing under the law demands an equitable settlement of assets and whereas the annual town meetings are held long prior to July 1, 1905, therefore this act to take effect at once, immediately after its passage and approval.

Approved March 7, 1905.

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## CHAPTER 179.

[S. B. No. 55—Johnson of McLean.]

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### ORGANIZATION OF TOWNSHIPS.

AN ACT to Amend and Re-enact Section 2526 of the Revised Codes of 1899, Relating to Organization of Townships.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2526 of the revised codes of 1899 be amended and re-enacted to read as follows:

§ 2526. PETITION FOR ORGANIZATION OF TOWNSHIP.] Whenever a majority of the legal voters of any congressional township in this state having an assessed valuation exceeding forty thousand dollars and containing twenty-five legal voters petition the board of county commissioners to be organized as a township under this article such board shall forthwith proceed to fix and determine the boundaries of such new township and to name the same; and the board shall make a full report of all its proceedings in relation to laying off such township and file the same with the county auditor.

Approved March 9, 1905.

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## CHAPTER 180.

[S. B. No. 134—Plain.]

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### PERPETUATING SECTION CORNERS.

AN ACT to Allow Township Boards to Perpetuate the Government Surveys, and to Authorize the Erection of Permanent Monuments on Section Corners, and Providing Penalties for the Destruction of, Damage to, or Removing Said Monuments When So Erected.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. TOWNSHIP SUPERVISORS TO EMPLOY SURVEYORS TO RUN LINES AND ERECT MONUMENTS ON CORNERS.] Whenever it appears advis-

able to any board of township supervisors in this state to erect permanent monuments to perpetuate the boundaries as fixed by the United States survey, they may employ a competent surveyor or civil engineer to run the lines and to mark the section corners, and may on the corners so marked place a stone monument eight inches square on each end, and fifteen inches long, which monument shall be buried in the earth so that one end thereof eight inches square shall be flush with the surface of the road or grade, and so that the center thereof shall mark the intersection of the four section lines converging at that point, and so that the said lines shall run diagonally across the face of the said stone monument.

§ 2. WHEN PETITIONED, SUPERVISORS SHALL CALL ELECTION TO VOTE ON QUESTION OF PLACING MONUMENTS.] Whenever the township supervisors of any organized township in this state shall be petitioned by not less than twelve free holders of the said township to call an election to ascertain the will of the majority of the voters of said township on the question of erecting such monuments, the said board of township supervisors shall submit the question of whether or not such monuments shall be placed in said township, which election shall be held the same time as the usual spring election for township officers, and if a majority of those voting in said township at such spring election vote in favor of erecting said monuments, then the said board of township supervisors shall immediately thereafter cause such monuments to be placed as provided in section 1 of this act.

§ 3. COST OF MONUMENTS TO BE CHARGED TO TOWNSHIPS.] Whenever it is decided by the board of township supervisors of any organized township to erect such monuments, or whenever, as the result of an election, the township board proceeds to erect said monuments the cost thereof shall be a proper charge upon the funds of said township and the township board is authorized to pay the cost thereof, or to lay a tax upon the property of the township for the purpose of paying the same.

§ 4. PENALTY FOR DESTROYING OR REMOVING.] Any person who shall destroy, remove, deface, or in any way injure or damage such monuments, when so erected, shall be deemed guilty of a misdemeanor.

§ 5. BOARD AUTHORIZED TO ESTABLISH MONUMENTS IN UNORGANIZED TOWNSHIPS.] The board of county commissioners shall have the same authority to establish, fix and erect monuments in unorganized townships as is given township boards of supervisors under the provisions of this act, and also for the establishment of lost corners.

§ 6. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 7, 1905.

## CHAPTER 181.

[S. B. No. 35—Fox.]

## ROAD MACHINERY.

AN ACT to Amend Section 2673, Revised Codes of North Dakota, Relating to Township Boards.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2673, revised codes of North Dakota, be and the same is hereby amended to read as follows:

§ 2673. ROAD MACHINERY.] In townships owning road machinery, the township board shall have authority to make such disposition of the same as in its discretion is best for the interests of the township, or it may purchase or lease such machinery as may be necessary for the purpose of carrying out the provisions hereof, and the performance of contracts in reference thereto; provided, that no machinery shall be purchased or sold, to exceed in value the sum of one hundred dollars, except such sale or purchase shall be ordered at the annual township meeting by a majority vote of the legal voters of such township assembled at such meeting.

§ 2. REPEAL.] All acts and parts of acts inconsistent herewith are hereby repealed.

Approved March 13, 1905.

## TOWNSHIP SUPERVISORS.

## CHAPTER 182.

[H. B. No. 78—Oveson.]

## TERMS OF OFFICE OF TOWNSHIP SUPERVISORS.

AN ACT to Amend and Re-enact Section 2541 of the Revised Codes of 1899, Relating to Election of Township Officers and Their Terms of Office.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2541 of the revised codes of 1899 of the state of North Dakota be hereby amended to read as follows:

§ 2541. TOWNSHIP OFFICERS, WHEN ELECTED. TERM OF OFFICE.] There shall be elected at the annual township meeting in each town-



ship one supervisor for the term of three years, one township clerk, one treasurer, one assessor, one overseer of highway for each road district in such township, each for the term of one year, and two justices of the peace and two constables for the term of two years, but justices of the peace and constables shall be elected only once in two years except to fill vacancies. At the first annual township meeting in each township after the passage and approval of this act there shall be elected at large for such township three supervisors, one to serve until the first annual township meeting, one to serve until the second annual township meeting, and one to serve until the third annual township meeting thereafter. The board of supervisors at their first regular meeting shall elect one of their members as chairman to serve for the period of one year.

Approved March 1, 1905.

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## TOWNSITES.

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### CHAPTER 183.

[S. B. No. 207—Little.]

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#### TOWNSITES ON PUBLIC LANDS.

AN ACT to Amend Sections 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, of Chapter 30, Article 19, Entitled "Townsites Located on Public Lands," as Published in the Revised Codes of 1895, and Providing Who Can Sue and Maintain Actions Against Corporate Authorities Acting as Trustees Under the Townsite Laws.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2516 be amended so as to read as follows:

§ 2516. UNCLAIMED LOTS OR PARCELS OF LAND.] That before any of the unclaimed lots or parcels of land are sold or disposed of, it shall be the duty of the corporate authorities of such city, town or village, by a vote of the city council of such city, town or village, as the case may be, to lay out and set aside, if it has not been done, a reasonable portion of the unclaimed lots or parcels of land into public squares and to reserve for future public use of such city, town or village, such lots and parcels of land as they deem advisable for the immediate or future use of such city, town or village.

§ 2. AMENDMENT.] That section 2517 be amended so as to read as follows:

§ 2517. UNCLAIMED LANDS TO BE APPRAISED.] The corporate authorities or county judge aforesaid shall appoint three competent

and suitable freeholders of such city, town or village a board of appraisers whose duty it shall be to make a careful inspection and examination of all the unclaimed lots or parcels of land aforesaid, and upon each of such lots or parcels of land they shall affix a reasonable and just valuation, and upon the completion of their appraisalment they shall make and return a full and complete report of their proceedings and appraisalment to the corporate authorities or county judge, which said report shall contain a full schedule of each and every lot or parcel of land remaining unclaimed, giving an exact description of said lots by their numbers and the number of the block and all parcels of land not so numbered shall be described by metes and bounds, and upon each lot or parcel of land separately they shall designate the valuation thereof as fixed by their appraisalment; said appraisalment and report shall be subscribed and sworn to by at least two of said appraisers.

§ 3. AMENDMENT.] That section 2518 be amended so as to read as follows:

§ 2518. PUBLIC SALE OF UNCLAIMED LANDS.] The corporate authorities or county judge shall within thirty days after the receipt of the aforesaid report of said board of appraisers give public notice that all such unclaimed lots or parcels of land, or so much thereof as may be considered for the best interest of such city, town or village, will be sold at public auction to the highest bidder for cash; said notice to be given by publication in not less than three newspapers of general circulation in the state and for a period of not less than thirty days immediately prior to such sale, specifying the time and place when said unclaimed lots or parcels of land will be sold, together with a description of the same as returned by the board of appraisers.

§ 4. AMENDMENT.] That section 2519 be amended so as to read as follows:

§ 2519. BIDS. PRIVATE SALE.] At the time and place appointed in such notice the corporate authorities or county judge shall offer for sale at public auction subject to competitive bids all the lots and parcels of land or so much thereof as may be considered for the best interest of the city, town or village, returned by the report of said board of appraisers as unclaimed, without reference to the appraisalment before mentioned, and such sale shall continue open from day to day until all such lots or parcels of land, or so much thereof as may be considered for the best interest of the city, town or village, shall have been offered for sale. Any lots or parcels of land remaining unsold at the close of such sale for want of bids may be sold as follows: Provided, that all lots or parcels of land remaining unsold, and not reserved or unclaimed, may, after ten years from the date of the entry of the townsite, be sold by the city council of such city or by the board of trustees of any town or village, at either public or private sale, without reference to the appraisalment before mentioned, and on such notice as they may deem advisable; provided,

further, that no person not a beneficiary under the townsite laws of the United States and this state at the time of the entry of the townsite shall be permitted to sue or maintain any action in the courts of this state against the corporate authorities or their grantees, nor shall any city, town or village attorney be authorized to institute or maintain any action against the corporate authorities or their grantees without first having been authorized so to do by a majority vote of the city council or board of trustees of such city, town or village, as the case may be, nor shall any law of this state regulating the sale of trust property be held to apply to sales by the corporate authorities made under the provisions of this act.

§ 5. AMENDMENT.] That section 2520 be amended so as to read as follows:

§ 2520. PURCHASER SHALL PAY FOR DEED.] Any purchaser at such sale, in addition to the amount of purchase money paid for any lot, lots or parcel of land, shall pay to the corporate authorities or county judge the sum of two dollars as a fee for making, executing, and acknowledging a deed of conveyance therefor, and all such lots or parcels of land purchased by any one person may be conveyed to such purchaser in one deed, which fee shall be in full for all charges for conducting sale, giving notice, appointing appraisers, and other services; provided, further, that when any city, town or village holding property in trust for the use and benefit of the occupants under any law of the United States or this state, has sold any or a part of such trust property and the deed of conveyance thereof, for any cause, has not been executed and delivered to the purchaser or purchasers by the proper officer or officers of such city, town or village, the purchaser or purchasers having deposited with the treasurer of such city, town or village, the purchase price therefor, the successors in office of such officers may at any time within five years from the date of sale execute to such purchaser or purchasers of such property, a deed of such property in the name of such city, town or village, or the purchaser or purchasers of such property is empowered to get from the proper officer of such city, town or village, an exemplified copy of the record of the sale of such property and to file the same with the register of deeds of the county in which such city, town or village is located and such recorded record of the proceedings of sale shall be considered by all courts of this state as sufficient evidence of the sale and transfer of such trust property to the purchaser or purchasers.

§ 6. AMENDMENT.] That section 2521 be amended so as to read as follows:

§ 2521. PROCEEDS OF SALE, HOW APPLIED.] The proceeds derived from the sale of such lots or parcels of unclaimed land, after first paying the expenses of advertising, printing and a per diem of not more than three dollars per day to each member of the board of appraisers for the time actually and necessarily employed by them in making such appraisalment and report as aforesaid,

and other expenses actually and necessarily incurred in the proper conduct and management of such sale, shall be immediately turned over at the close of said sale by the corporate authorities of such city, town or village, or county judge to the treasurer of the city, town or village, and by said treasurer placed to the credit of the general fund of such city, town or village.

§ 7. AMENDMENT.] That section 2522 be amended so as to read as follows:

§ 2522. SURPLUS, HOW DISPOSED OF.] In case there should be found any surplus on hand over and above receipts for fees and awards for expenses arising from the conveyances of lots as provided in section 2514, then such surplus shall as soon as ascertained by the corporate authorities of such city, town or village, or county judge, be accounted for and turned over to the treasurer of such city, town or village to be by such treasurer placed to the credit of the general fund of such city, town or village, then to be disbursed and applied as follows: To aid school districts within their incorporate limits, to construct, repair and furnish school houses, to erect and repair public buildings within their incorporate limits, to construct and repair roads, to lay down and repair sidewalks and crossings, to construct sewerage and irrigation canals within their incorporate limits, to purchase other lots or parcels of land either within or without their incorporate limits, or any other general purpose that will conduce to the interest of the community; provided, however, that no part of this fund shall ever be appropriated for salaries of any city, town or village officer.

§ 8. EMERGENCY.] An emergency exists in this that the supreme court of Colorado in the case of the city of Denver vs. Kent et al., decided that an act of the legislative assembly by which unclaimed lots under the United States townsites laws, were granted to the city of Denver for the use of common schools, was repugnant to the acts of congress relating thereto and therefore void, and if the courts of this state should follow such decision, section 2516 of the revised codes of this state and other sections of the code carrying out the provisions of section 2516 would be likewise void; therefore, that the statutes may be made clear, this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1905.

## TOWNS AND VILLAGES.

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### CHAPTER 184.

[S. B. No. 10—Sharpe.]

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#### CONSTRUCTION OF VILLAGE SIDEWALKS.

AN ACT Authorizing the Construction or Reconstruction and Repairing of Sidewalks in Incorporated Villages in This State and the Manner of Assessment and Levy Thereof and Collection of the Same.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SIDEWALKS TO BE BUILT OR REPAIRED. NOTICE OF, HOW GIVEN. POWERS OF TRUSTEES. DUTY OF OWNERS.] It is hereby made the duty of all owners of land adjoining any street, lane or alley in any incorporated village, in this state, to construct, reconstruct and maintain in good repair, such sidewalks along the side of the street, lane or alley next to the lands of such owner respectively as may have been heretofore constructed, or shall hereafter be constructed, or directed by the board of trustees to be built, and of such material and width, and upon such place and grade as the board of trustees may, by resolution prescribe. Whenever the board of trustees shall deem it necessary that any sidewalk shall be constructed or reconstructed, it shall by resolution direct such construction or reconstruction, specifying the width thereof and the material of which the same is to be constructed or reconstructed. The publication of such resolution twice in some paper printed or published in said village shall be sufficient notice to the owner of the land along which such sidewalk is to be built to construct the same, and unless such owners shall, each along his respective land construct and fully complete such sidewalk within two weeks after the last publication of such resolution, as aforesaid, the board of trustees shall cause such portion of such sidewalks as have not been built by the owners of such lands to be built by the street commissioner, or upon contract, or in any other manner as the board may determine. The board of trustees shall assess and levy upon and against such lot and parcel of land along which such sidewalk has been constructed or reconstructed a sum sufficient to cover the cost of such sidewalk along and fronting upon the same lots and parcels of land respectively, which shall be in the following form:

The board of trustees of the village of ..... doth hereby assess and levy upon and against the several lots and parcels of land below described the respective sums of money set against each lot

or parcel. This assessment is made to defray the cost of ..... a sidewalk along the ..... side of ..... from ..... to ..... in accordance with a resolution of the board of trustees, passed the ..... day of ..... A. D. 19...., and duly published in ..... on the ..... days of ..... A. D. 19.... The amount assessed against and levied upon each lot or parcel being the amount that it cost to construct or reconstruct such sidewalk along and fronting upon the same lot or parcel of land.

Name of Owner, if Known	Description of Land		Amount	
	Lot	Block	Dollars	Cents

Done at a meeting of the board of trustees, this ..... day of ..... A. D. 19....

.....  
President.

Attest:

.....  
Village Clerk.

§ 2. DUTIES OF VILLAGE CLERKS, AND COUNTY AUDITORS.] The village clerk shall on or before the first day of September of each year deliver to the county auditor a duplicate of all such assessment rolls, and the county auditor shall extend the assessments in proper column against the property assessed, and each assessment shall be collected and the payment thereof enforced, as county and state taxes are collected and enforced, and such assessment shall be paid over by the county treasurer when collected to the village treasurer in like manner as other taxes.

§ 3. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 4. EMERGENCY.] Whereas, an emergency exists requiring that this act take effect immediately, in that there is no valid enactment now in force covering the provisions herein contained, this act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1905.

## CHAPTER 185.

[S. B. No. 8—Kraabel.]

## POLICE FOR UNORGANIZED TOWNS.

AN ACT to Provide Police for Towns and Villages Not Organized for Civil Government, and Provide Revenues to Support the Same.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. VILLAGE POLICEMEN TO BE APPOINTED BY BOARD OF SUPERVISORS IN UNORGANIZED TOWNS UPON PETITION.] Whenever sixty per cent of the electors of any town or village of this state within the limits of any platted town, which village or town has no organized city or village government, shall petition the board of supervisors of the township in which it, or a greater portion thereof, is situated, praying for the appointment of a village policeman to serve as a night watchman, in such town or village, and for the levy of a tax upon the property therein to pay such officer, which petition shall state the period for which such appointment is to be made, the name of such townsite, in which such police officer is to be appointed, and if it appears that sixty per cent of the electors residing within such townsite, have signed said petition, it shall be the duty of said supervisors to fix the compensation of such officer for the period named in such petition, for which such appointment is asked.

§ 2. POLICE TAX TO BE LEVIED BY BOARD OF SUPERVISORS. DUTY OF COUNTY AUDITOR.] The said board of supervisors, if the petition is by them found sufficient under the provisions of section 1 of this act, shall at the time the general township tax levy is made, levy upon all the property within said townsite from which said petition is received, the specific amount fixed by them as the compensation of such officer, under the provisions of said section 1, and the amount so levied shall be certified at the time of certifying other township taxes, by the proper authority to the county auditor, who shall calculate and fix the rate per cent necessary to raise that sum, and extend the same upon the tax list of such township against the property within said townsite in a column therein to be provided headed "Police Tax."

§ 3. TAX TO BE COLLECTED AND PAID TO TOWNSHIP TREASURER.] The tax so levied shall be collected and paid over as other township taxes are collected and paid, and the treasurer of the township shall keep a separate account thereof.

§ 4. POLICEMEN SHALL QUALIFY AND GIVE BOND IN AMOUNT FIXED BY BOARD.] In season to serve at the time named in said petition, said board of supervisors shall appoint some suitable person as village policeman, who shall give bond and qualify as township

constables are required, which bond shall be in the sum to be fixed by said board and approved and filed as other township officers' bonds.

§ 5. POWERS AND DUTIES OF POLICE.] Said village policeman shall have all the powers, duties and authority as the constable of such township, and during the period for which he is appointed, he shall patrol said townsite each night from eight o'clock p. m. to six o'clock a. m., guard against fire, theft and burglary, preserve the peace and execute the laws of the state therein.

§ 6. HOW POLICEMEN ARE TO BE PAID.] From the fund herein provided such police officer shall be paid the compensation fixed by said supervisors by warrants drawn by their authority each month upon the township treasurer payable out of the fund herein created upon verified bills submitted by him.

§ 7. TAX LEVY AND APPOINTMENT MUST BE MADE BEFORE JULY 1ST. SUPERVISORS SHALL HAVE POWER TO REMOVE OFFICER.] No tax levy or appointment shall be made as herein provided in any year, in which the petition herein provided for shall not be presented to such supervisors before the first day of July in each year, and said supervisors shall have authority to remove such police officer whenever they shall deem it expedient.

§ 8. EMERGENCY.] Whereas an emergency exists in that no adequate provision of law exists, for the proper police protection in villages not having any local civil government, this act shall take effect upon its passage and approval.

Approved February 15, 1905.

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## CHAPTER 186.

[S. B. No. 22—Cashel.]

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### VILLAGE TRUSTEES.

AN ACT to Amend Section 2365 of the Revised Codes of 1899. Relating to the Powers and Duties of Boards of Trustees, and the Levy and Collection of Taxes in Villages.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 2365 of the revised codes of the state of North Dakota be amended so as to read as follows:

§ 2365. GENERAL POWERS.] The board of trustees shall have the following powers:

1. To have a common seal, and alter the same.
2. To purchase, hold or convey any estate, real or personal, for the use of the corporation so far as such purchase may be necessary to carry out the objects contemplated by this chapter, to provide for the erection and care of all public buildings necessary for the use of the village, and to control the finances and property of the corporation.



3. To organize fire companies, hook and ladder companies, to regulate their government and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires, to make owners of buildings provide ladders and fire-buckets, which are hereby declared to be appurtenances to the real estate and exempt from execution, seizure or sale; and if the owner shall refuse to procure suitable ladders or fire-buckets after reasonable notice, the trustees may procure and deliver the same to him; and in default of payment therefor may recover of said owner the value of said ladder or fire-buckets, by suit before the justice of the peace of the village, and the costs accruing thereby; to regulate the storage of gunpowder and other materials; to direct the construction of a place for the safe deposit of ashes; and may under any order by it entered upon the proper book of the board, visit, or appoint one or more firewardens to visit and examine at all reasonable hours dwelling houses, lots, yards, enclosures and buildings of every description, discover if any of them are in a dangerous condition and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stovepipes; to prevent out-fires and the use of fireworks and the discharge of firearms within the limits of said corporation, or such parts thereof as it may think proper; to compel the inhabitants of such village to aid in the extinguishment of fire and prevent its communication to other buildings, under such penalties as are in this chapter provided; to construct and preserve reservoirs, wells, pumps and other waterworks, and to regulate the use thereof and generally to establish other measures of prudence for the prevention or extinguishment of fires as it shall deem proper.

4. To construct and keep in repair culverts, drains, sewers, catch-basins, manholes and cesspools, and to regulate the use thereof, and to regulate the construction and use of any culvert, drain, sewer, catchbasin, manhole or cesspool within the corporate limits and to declare what shall constitute a nuisance and to abate and remove the same, and impose fines upon persons who may create, continue or suffer nuisances to exist, and take such other measures for the preservation of the public health as it shall deem necessary; to license, tax, regulate, suppress and prohibit hawkers, peddlers, salesmen, pawnbrokers, keepers of ordinaries, theatricals, and other exhibitions, shows and amusements within the corporation.

5. To regulate, restrain and prohibit the running at large of horses, cattle, swine, sheep, goats, geese and dogs, and to impose a tax or license on dogs, not to exceed two dollars on each male dog, and three dollars on each female dog owned or kept within such village.

§ 6. To license, regulate, tax or prohibit and suppress pool, billiards, bagatelle, pigeonhole or any other tables or implements kept or used for a similar purpose in any place or public resort, pin-alleys and ball-alleys, to restrain, suppress and prohibit gaming and gambling houses, and other disorderly conduct and places, lotteries

and all fraudulent devices and practices for the purpose of gambling or obtaining money or property, and to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations, and authorize the seizure and destruction of gambling apparatus; to suppress bawdy and disorderly houses, houses of ill fame or assignation, within the limits of the village, and within one mile of the outer boundaries of the village.

7. To license, regulate or restrain auction establishments, traveling peddlers and public exhibitions within the corporation.

8. To establish and regulate markets and build market houses.

9. To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair and to vacate the same.

10. To appoint street commissioners and also firewardens, not exceeding three.

11. To regulate the building and use of sidewalks and all structures thereunder; to require the owner or occupant of any premises to keep the sidewalks in front of or along the same free from snow and other obstructions, and to prohibit the riding or driving thereon except to cross the same; to provide for the building, use and regulation of crosswalks, curbs and gutters; to regulate and prevent the use of streets, alleys, sidewalks and public grounds for signs, signposts, awnings, telegraph or telephone poles, horse troughs, scales, racks, posting handbills and advertisements, to regulate and prevent the throwing or depositing of ashes, offal, manure, dirt, garbage or anything offensive in, and to prevent injury to any street, avenue, alley or public ground; to regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand bills in the streets or public grounds or upon the sidewalks; to regulate and prevent the flying of flags, banners or signs across the streets or from houses, to regulate traffic and sales upon the streets, sidewalks and public places, to regulate the speed of horses and other animals, vehicles, bicycles, cars, locomotives and traction engines within the limits of the corporation.

12. To establish and erect a jail for the confinement of disorderly persons, vagrants, tramps and idle persons, and persons convicted of violating any village ordinance, and make rules and regulations for the government of the same, and appoint necessary jailors and keepers, to prevent and suppress riots, routs, affrays, noises, disturbances and disorderly assemblies in any public or private place.

13. To insure the public property of such village.

14. To establish and regulate cemeteries within, or within one mile of the corporation and acquire lands therefor by purchase or otherwise, and cause cemeteries to be removed and prohibit their establishment within one mile of the corporation.

15. To plant trees upon public grounds and along the streets of such village and to provide for their culture and preservation, and to enclose any public square or other public grounds within said corporation.

16. To levy and collect annual taxes, not exceeding ten mills on the dollar, assessed valuation.

17. To direct the location, and regulate the management and construction of packing houses, smoke houses, renderies and slaughter houses; and prohibit any offensive or unwholesome business or establishment within, or within one mile of the limits of the corporation; to compel the owner of any grocery, cellar, stable, pigsty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and regulate the location thereof.

18. To make and establish by-laws, ordinances and regulations not repugnant to the laws of this state as may be necessary to carry into effect the provisions of this chapter, and to repeal, alter or amend the same as shall seem to the board of trustees of such village to require; but every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such village, if one is printed therein, or posted in five public places at least ten days before the same shall take effect.

19. To prescribe fines, penalties and forfeitures for violations of this chapter, or of any by-laws or ordinances by it established, not exceeding ten dollars for any one offense, which may be recovered by action in the name of the corporation, but such board may remit the whole or any part of the fine, penalty or forfeiture; provided, that the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license, although it may exceed the sum of ten dollars.

20. To authorize the construction and maintenance of street railways, water mains and water pipes, and gas mains and gas pipes, along or through the streets and alleys within the corporate limits, and to grant franchises and rights to persons, associations or corporations for such purposes, and to regulate the same.

§ 2. EMERGENCY.] Whereas, an emergency exists in that the present law does not provide for a sufficient levy of taxes for villages, therefore this act shall take effect and be in operation from, and after its passage and approval.

Approved February 25, 1905.

## TREE CULTURE.

### CHAPTER 187.

[H. B. No. 22—Scheer.]

### TREE CULTURE.

AN ACT to Promote Forest Tree Culture.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. BOUNTY FOR TREE PLANTING.] That any person who shall hereafter plant, cultivate and keep in a growing, thrifty condition one acre and not more than ten acres of prairie land with any kind of forest trees and shall plant or have planted said trees not more than eight feet apart each way shall be entitled to three dollars for each acre so planted and cultivated to be deducted annually from the taxes levied against real estate comprising of eighty acres, one hundred sixty acres or three hundred twenty acre farm as the case may be upon which said trees are growing, but such bounty shall not be paid unless such grove shall have at least four hundred living trees on each acre so maintained and kept in growing condition.

§ 2. Every person planting such forest tree or trees suitable for hedge in rows as boundary lines along the public highways or on any other portion of his premises which rows shall contain not less than two living trees to each rod and who shall in other respects comply with the provisions of this act shall annually receive a bounty at the rate of two dollars for every eighty rods of each row in length; provided, however, that no bounty shall be paid or deduction allowed under the provisions of this act for a longer period than five years upon any one tract or row of trees.

§ 3. PROOF OF PLANTING.] Any person wishing to secure the benefit of this act shall during the month of June next after expiration of one year after planting such grove, row or rows of trees and annually thereafter file with the county auditor or clerk of the county in which the same is located, a correct plat of the land describing the section or fraction thereof on which said grove, row or rows have been planted or cultivated and shall make due proof of such planting and cultivation as well as of title to the land by oath of the owner and the affidavit of two freeholders residing in the vicinity setting forth the facts in relation to the growth and cultivation of the grove, row or rows of trees for which such bounty is demanded; provided, this act shall not apply to any railroad company for planting trees within two hundred feet of its track for the

purpose of making a snow fence, nor to any trees planted upon land held and acquired under the timber culture laws of the United States.

§ 4. EXAMINATION AND REPORT OF ASSESSOR.] It is hereby made the duty of the assessor of every town or county at the time of making his assessment to ascertain whether or not trees have been planted by any land owners in his town or county and for which compensation is claimed under this act and in case trees have been planted and such compensation is claimed the assessor shall personally examine the grove or line of trees and make report to the extent and conditions thereof according to the prescribed form, the same to be returned to the county auditor with the other returns and assessment book.

Approved February 28, 1905.

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## TRUSTS.

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### CHAPTER 188.

[H. B. No. 178—Sheils.]

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#### ANTI-TRUST LAW.

AN ACT Defining Trusts and Conspiracy Against Trade, Declaring Contracts in Violation of the Provisions of This Act Void, and Making Certain Acts in Violation Thereof Misdemeanors, and Prescribing the Punishment Therefor and Matters Connected Therewith.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DEFINING TRUSTS.] That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations, or associations of persons, or two or more of them for either, any or all of the following purposes: First. To create or carry out restrictions in trade. Second. To limit or reduce the production, or increase or reduce the price of merchandise or commodities. Third. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, upon any article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this state; or to establish any pretended agency whereby the sale of any such article or commodity shall be covered up or made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor or manufacturer to control the wholesale or retail price of any article or commodity after the title to such article or commodity shall have passed from such vendor or manufacturer. Fourth. To make or enter into, or examine or carry out any contract, obligation or agree-

ment of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card price list, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any article or commodity that its price might in any manner be affected.

§ 2. CORPORATIONS VIOLATING THIS ACT SHALL CEASE TO EXIST.] That any corporation incorporated under the laws of this state or authorized to do business therein which shall violate any of the provisions of this act, shall thereby forfeit its articles of incorporation and franchise and its corporate existence shall cease and determine.

§ 3. DUTY OF ATTORNEY GENERAL UPON VIOLATION.] For a violation of any of the provisions of this act by any corporation mentioned herein, it shall be the duty of the attorney general upon his own motion or upon the sworn complaint of any person aggrieved to institute a suit or quo warranto proceedings in any county in this state in which such corporate existence does business or may have an office, for the forfeiture of its charter, rights, franchise, and a dissolution of its corporate existence.

§ 4. FOREIGN CORPORATIONS VIOLATING PROVISIONS OF ACT PROHIBITED FROM DOING BUSINESS.] Every foreign corporation authorized to do business in the state of North Dakota, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business within this state and the authority granted by the filing of its articles of incorporation in this state authorizing it to do business therein, shall cease and become void, and it shall be the duty of the attorney general to enforce this provision by injunction or other proper proceedings instituted in the county of Burleigh or in any county in which such foreign corporation does business, in the name of the state on his relation.

§ 5. SECRETARY OF STATE TO REQUIRE AFFIDAVIT AS TO VIOLATION.] It shall be the duty of the secretary of state on or before the first day of September of each year to address to the president, secretary or treasurer of each corporate company doing business in this state and the person designated by the articles of incorporation filed with the secretary of state by foreign corporations, as the person on whom service of process may be had, whose post office address is known or may be ascertained, a letter of inquiry as to whether the

said corporation has all or any part of its business or interests in or with any trust, company, association of persons, or stockholders as named in section 1 of this act, and to require answer under oath of the president, secretary or treasurer or any director of said company or any agent of any foreign corporation authorized to do business in this state, a form of affidavit which shall be inclosed in said letter of inquiry as follows:

STATE OF NORTH DAKOTA, }  
COUNTY OF..... } ss.

I, ....., do solemnly swear that I am the ..... (president, secretary, treasurer, or director, or agent), of the corporation known and styled as ..... duly incorporated under the laws of ..... (name of state) on the ..... day of ..... 19...., and now transacting or conducting business in the state of North Dakota, and that I am duly authorized to represent said corporation in the making of this affidavit; and I do further solemnly swear that the said ....., known and styled as aforesaid, has not, since the ..... day of ..... (naming the day on which this act takes effect) created, entered into or become a member or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state; and that it has not issued and does not own any trust certificates, and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sales of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

.....  
(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a ..... within  
and for the county of ..... this ..... day of .....,  
19....

(Seal) .....

And on refusal to make such oath in answer to said inquiry or failure to do so within thirty days from the mailing thereof, the

secretary of state shall certify that fact to the attorney general, whose duty it shall be at the earliest possible moment, in the name of the people of the state of North Dakota, at the relation of the attorney general, to proceed against such corporation for the recovery of a penalty of fifty dollars for each day after such refusal to make oath or failure to make said oath within thirty days from the mailing of said notice, or the attorney general upon such failure or refusal may have proper proceedings instituted within any county in the state of North Dakota forfeiting such articles of incorporation or authority to do business within the state of North Dakota and revoke the right of foreign corporations located herein to do business in this state.

§ 6. VIOLATION DECLARED A MISDEMEANOR. PUNISHMENT FOR.] Any violation of either or all of the provisions of this act shall be and is hereby declared to be a conspiracy against trade and a misdemeanor, and any person who may be or may become engaged in any such conspiracy or taking part therein, or aid or advise in its commission or who shall as principal, manager, director, agent, servant or employe, or in any other capacity knowingly carry out any of the stipulations, purposes, prices, rates, orders thereunder or in pursuance thereof shall be punished by a fine not less than two thousand dollars.

§ 7. WHAT NECESSARY IN INFORMATION.] In any information or indictment for any offense named in this act it is sufficient to state the purposes of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how or where it was created.

§ 8. WHAT NECESSARY TO PROVE IN PROSECUTION.] In prosecutions under this act it shall be sufficient to prove that a trust or combination exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any articles of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all.

§ 9. CONTRACTS IN VIOLATION VOID.] That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or in equity.

§ 10. WHAT EXEMPT.] The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

§ 11. PURCHASERS OF ARTICLES FROM VIOLATORS NOT LIABLE.] Any purchaser of any article or commodity, from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity and may plead this act as a defense to any suit for such price or payment.

§ 12. HOW FINES RECOVERED.] The fines herein provided for



may be recovered in an action of debt in the name of the people of the state of North Dakota, and a preponderance of evidence in favor of the state shall be sufficient to authorize a verdict and judgment for the state.

§ 13. WHO DEEMED GUILTY OF VIOLATION.] All agreements between corporations, associations, or individuals seeking to control or regulate the price of any article of merchandise or any material to be used for constructive purposes, and all combinations between persons, firms, or corporations bidding for the doing of work of any kind or description to be let by the state, any firm, co-partnership, corporation or individual within this state seeking to control or regulate the price at which said work shall be taken or the bids to be made therefor by different firms, co-partnerships, corporations or individuals, shall be considered as a violation of section 1 of this act and punished accordingly, and it shall be the duty of the attorney general to enforce the provisions of this section in the same manner as that hereinbefore provided for enforcing the provisions of this act.

Approved March 13, 1905.

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## UNLAWFUL OBLIGATIONS.

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### CHAPTER 189.

[S. B. No. 50—Stade.]

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### PATENT RIGHT NOTES.

AN ACT to Amend Chapter 206 of the Session Laws of 1901, Amending Section 7671 of the Revised Codes of 1899, Relating to Unlawful Obligations.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That chapter 206 of the session laws of 1901, amending section 7671 of the revised codes of the state of North Dakota, be amended to read as follows:

§ 7671. OBLIGATION IN WRITING. SIGNED ACROSS FACE.] Every person who takes any obligation in writing for any lightning rod, or any of its attachments, or for any patent right or claimed to be a patent right, or for which any stallion or jackass shall form the whole or any part of the consideration, or for any patent medicine, or for which the whole or any part of the consideration shall be the future cure of any disease or ailment, shall, before it is signed by the maker stamp or write in red ink across the face of such written obligation in plain, legible writing, or print, the words "given for

a lightning rod," or "given for a patent right," or, "given for a stallion," or, "given for a jackass," or, "given for patent medicine," or, "given for the cure of disease," as the case may require. Such obligation so stamped shall not be negotiable and shall be subject to defenses in the hands of every holder or owner thereof. Any person who shall violate the provisions of this section is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than two hundred and fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment, and shall be liable in a civil action to the party injured for all damages sustained by him.

Approved February 24, 1905.

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## VETERINARY DISTRICTS.

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### CHAPTER 190.

[H. B. No. 99—Phelan.]

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#### VETERINARY DISTRICTS.

AN ACT to Amend Sections 1595 and 1596 of the Revised Codes, as Amended by Chapter 207 of the Session Laws of 1901 and Section 1600 of the Revised Codes of 1899, Relating to District Veterinarians.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That sections 1595, 1596, as amended by chapter 207, session laws of 1901, and section 1600 of the revised codes be amended to read as follows:

§ 1595. DIVISION OF STATE INTO DISTRICTS.] The state shall be divided into twelve veterinarian districts, in each of which there shall be appointed by the governor, by and with the advice and consent of the senate, one competent veterinarian, who shall be known as the district veterinarian, who shall hold his office for a term of two years from the date of his appointment unless sooner removed for cause, and who upon entering upon his duties shall take an oath well and truly to perform his duties as provided by law, which oath shall be taken before any judge of the district court or notary public within the district of the state for which he is appointed, and shall be filed with the secretary of state; provided, that if there is no veterinary residing in the district, then any competent veterinary may be appointed.

§ 1596. DISTRICTS DEFINED.] District number one shall consist of the first judicial district.

District number two shall consist of the counties of Ramsey, Towner and Rolette.

District number three shall consist of the third judicial district.

District number four shall consist of the fourth judicial district.

District number five shall consist of the counties of Stutsman, Barnes, LaMoure and Griggs.

District number six shall consist of all the counties of the sixth judicial district lying and being upon the west side of the Missouri river, east of the west line of range 90, and that portion of the Sioux Indian reservation lying north of the 7th standard parallel.

District number seven shall consist of the seventh judicial district.

District number eight shall consist of all that part of the sixth judicial district lying east of the Missouri river and lying south of the south line of township 143, and the county of Logan.

District number nine shall consist of the counties of Bottineau, McHenry, Ward and Williams.

District number ten shall consist of the counties of Benson, Pierce, Foster, Eddy and Wells.

District number eleven shall consist of that portion of the sixth judicial district lying west of the west line of range 90.

District number twelve shall consist of all of the sixth judicial district lying east of the Missouri river and lying north of the south line of township 143.

§ 1600. QUARANTINE.] In all cases of contagious or infectious diseases among domestic animals in this state the district veterinarian shall have authority to order the quarantine of the infected premises and animals within his district, and it shall be his duty to determine the existence of, and employ the most efficient and practical means to prevent, suppress, control and eradicate the disease known as scabies, among horses, mules, asses and cattle, and to direct and regulate the handling, dipping or treating of any of the aforesaid classes of live stock when infected with or exposed to the said disease, in accordance with the regulations, that shall so far as practicable conform to the regulations in that regard of the department of agriculture of the United States as they shall be from time to time promulgated, and render a report of his orders and actions to the chief state veterinarian, and in case such disease shall become epidemic in any locality within the state, it shall be the duty of the district veterinarian of the district where such epidemic may exist or become known, immediately to notify the chief state veterinarian, who shall thereupon have authority to enforce a permanent quarantine and prevent the removal therefrom of any animals of the kind among which said epidemic exists until the district veterinarian of such district shall report such animals to be in a healthy condition, and upon such report a certificate shall be issued by the chief state veterinarian permitting the removal of the animals that are reported to be healthy. The expense of holding and taking care of all animals quarantined under the provisions of this article shall be paid by the owner, agent or person in charge of the same.

§ 2. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. EMERGENCY.] Whereas an emergency exists in that the territory embraced within the eleventh district as herein defined is now without adequate supervision for eradication and prevention of infectious diseases among live stock, therefore this act shall be in force and effect from and after its passage and approval.

Approved February 28, 1905.

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## VETERINARIANS.

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### CHAPTER 191.

[H. B. No. 244—Phelan.]

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#### VETERINARIANS.

AN ACT to Amend Section 1605 of the Revised Codes of 1899, Relating to Compensation, Bonds and Qualification of District Veterinarians.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1605 of the revised codes be amended to read as follows:

§ 1605. COMPENSATION. BONDS.] Each district veterinarian shall receive for his services the sum of six hundred dollars per annum. The payment of such salary shall be made from any funds in the state treasury not otherwise appropriated, monthly, upon itemized vouchers signed and sworn to by each for his separate district and submitted to the state auditor, who shall draw warrants upon the state treasurer for the amount thereof, if found correct, separately. No person shall be competent under this article to receive the appointment of a district veterinarian who is not at the date of his appointment a graduate in good standing of a recognized college of veterinary surgeons or who does not hold a certificate from the state board of veterinary medical examiners. Before entering upon the discharge of his duties he shall give a bond to the state of North Dakota, with good and sufficient surety, in the sum of two thousand dollars, conditioned on the proper discharge of the same. No constructive mileage shall be paid under this article, nor shall the district veterinarian receive any mileage except when called in cases of consultation as hereinbefore provided, when he shall receive actual expenses paid by him.

§ 2. EMERGENCY.] An emergency existing in that a proper and ample qualification for district veterinarians is not now provided by law, therefore this act shall take effect on and after its passage and approval.

Approved March 9, 1905.

## CHAPTER 192.

[H. B. No. 105—McLain.]

## REGISTRATION OF VETERINARIANS.

AN ACT to Amend Section 1619 of the Revised Codes of 1899, Relating to Diplomas and Certificates for Veterinarians.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 1619 of the revised codes of 1899 be amended to read as follows:

§ 1619. DIPLOMAS AND CERTIFICATES.] Persons presenting diplomas or certificates for examination and registration shall pay to the secretary of said board a fee of fifteen dollars in advance, and annually thereafter for such time as he shall continue in practice, on such dates as the board may determine, pay a renewal registration fee of three dollars. This renewal registration fee of three dollars applies to and shall be paid by all practicing veterinarians heretofore registered or hereafter under this act. The fees received by said board shall be paid to the state treasurer within thirty days after the receipt of same; said fees shall constitute a special fund for the payment of the expenses of the state board of veterinary examiners. Each member of said board shall receive from the state treasurer all necessary traveling expenses actually incurred in attending such meetings. The secretary shall certify to the state auditor after each meeting of the board, the amount due each member for the necessary expenses in attending such meetings, and other necessary expenses of said board. The state auditor shall thereupon issue his warrant on the state treasurer for such sum, providing there has been a sufficient sum paid into the treasury in fees to redeem said warrants, but if there is not an amount equal to said certified expenses to the credit of said fund, he shall issue his warrant for the amount in said special fund, and deficiencies in payment of said expenses may be made up from subsequent receipts. Nothing in this article shall be [so] construed as to prevent any person who has been registered and who may have forfeited his registration by non-payment of fees, from renewing his registration within two years by paying such fees, without examination.

§ 2. REPEAL.] All acts or parts of acts conflicting with this act are hereby repealed.

Approved March 9, 1905.

# WATER USERS' ASSOCIATIONS.

## CHAPTER 193.

[H. B. No. 280—Stevens, of Burleigh.]

### WATER USERS' ASSOCIATIONS.

AN ACT Authorizing the State, Through the Board of University and School Lands, and the Counties, Townships, Cities, Towns and Villages of the State, Through Their Corporate Authorities, to Become Members of Water Users' Associations and Authorizing and Granting Rights of Way Over State and School Lands for Irrigation Flumes, Ditches and Canals, and the Right to Construct Reservoirs Thereon for the Storage of Water for Irrigation Purposes, and Providing for the Recording of Subscriptions of Water Users' Associations.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. STATE OR MUNICIPALITIES MAY JOIN WATER USERS' ASSOCIATIONS. FEE FOR RECORDING ARTICLES BY REGISTER OF DEEDS.] That the state of North Dakota may, through the board of university and school lands, and the counties, townships, cities, towns and villages of the state, through their corporate authorities, join water users' associations. That the register of deeds is hereby authorized to accept from water users' associations organized in conformity with the requirements of the United States under the reclamation act, books containing printed copies of their articles of incorporation and forms of subscription to stock, and to use such books for recording the stock subscriptions of such association; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein.

§ 2. RIGHT OF WAY GRANTED.] That a right of way is hereby granted to all duly incorporated water users' associations by and with the consent of the state board of university and school lands, to construct over and across all state, school and institution lands, flumes, ditches and canals for irrigation purposes and to construct on such lands reservoirs for the storage of water for irrigation purposes.

§ 3. EMERGENCY.] An emergency exists in this that there is now no law authorizing the state, counties, townships, cities, towns and villages in the state, to join water users' associations, and no law granting the right of way across state lands for flumes, ditches and canals for irrigation purposes, and no law authorizing the construc-

tion of reservoirs for the storage of water for irrigation purposes on such lands; therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1905.

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## WEIGHTS AND MEASURES.

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### CHAPTER 194.

[S. B. No. 215—Carroll.]

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#### WEIGHTS AND MEASURES.

AN ACT Regulating Weights and Measures, Creating the Office of Inspector of Weights and Measures, Providing for the Appointment of Inspector and Prescribing His Powers, Duties and Compensation.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. OFFICE OF INSPECTOR CREATED.] There is hereby created the office of inspector of weights and measures. An inspector shall be appointed by the governor and shall hold his office for the term of two years unless sooner removed for cause by the governor.

§ 2. MUST GIVE BOND.] The said inspector shall, before entering upon the duties of his office, execute a bond to the state of North Dakota in the sum of five thousand dollars with two or more securities, to be approved by the governor, conditioned for the faithful performance of the duties of his office and which said bond shall be further conditioned to pay any and all damages caused to any citizen of the state of North Dakota by reason of his having violated any of the duties of his office, and any person aggrieved shall have a right of action on said bond in the same manner as though the same had been given for his individual protection.

§ 3. DUTIES OF INSPECTOR.] It shall be the duty of said inspector or one of his deputies to inspect and examine at least once in six months, all weights, measures, scale beams, patent balances, steel yards, and other instruments used for weighing and measuring any commodity sold by weight or measure in the state of North Dakota, or to determine the amount due any person for the doing of anything which is dependent upon the weight or measurement of the thing to be done or to be delivered within this state. The inspector shall have power, or a deputy inspector authorized by him who has a commission signed and sealed by the inspector, to test any and all scales, at any time, but shall not collect fees therefor oftener than twice in each calendar year.

§ 4. COMPENSATION.] The inspector of weights and measures

shall be entitled to demand and receive as his compensation for the inspection herein provided for and the furnishing to the person whose weights and measures are inspected a certificate of such inspection, the following fees: For inspecting and sealing railroad and track scales of the capacity of twenty tons and upwards, each three dollars; for inspecting and sealing scales of from three to twenty tons capacity, each two dollars; for inspecting and sealing dormant scales, each one dollar; for inspecting and sealing movable platform scales, each fifty cents; for inspecting and sealing beams weighing one hundred pounds and upwards, each fifty cents; for inspecting and sealing hopper scales, each one dollar; for inspecting and sealing counter scales, each twenty-five cents; for inspecting and sealing every patent balance beam, steel yard or other instrument used for weighing other than the above enumerated, twenty-five cents; and with each scale sealed by him he shall inspect and seal one set of weights without any additional charge or compensation; for inspecting and sealing any two bushel or one bushel measure, each fifty cents; for inspecting and sealing any other dry measure, each ten cents; for inspecting and sealing liquid measures of a capacity of five gallons and upwards, each twenty-five cents; for inspecting and sealing liquids in less than one gallon or more than five gallons, each twenty cents; for inspecting and sealing any measure of less than one gallon capacity, ten cents; for inspecting and sealing any board or cloth measure, each ten cents; and in any case where he may at the request of the owner employ labor or material in making any scale, weight or measure accurate, he shall be entitled to just compensation therefor.

§ 5. STANDARD OF WEIGHTS AND MEASURES.] The standard of weights and measures shall be the standard adopted by the government of the United States, and any person who knowingly uses for the purpose of purchase or sale or keeps for public use a weight, measure, scale, balance or beam which does not conform to the standard of weights and measures adopted by the state, or who alters a weight, measure, scale, balance, or beam, after it has been adjusted and sealed, so that it does not conform to such standard, and fraudulently makes use thereof, shall be fined for each offense fifty dollars; to go to the state.

§ 6. SECRETARY OF STATE TO FURNISH WEIGHTS.] The inspector shall provide and keep the following weights which shall be furnished, sealed and approved by the secretary of state: One set of weights from one ounce to four pounds; one ten pound weight; one twenty pound weight; and thirty fifty pound weights; one half bushel, one peck, one gallon, two quart, one quart, one pint and one-half pint wine measure.

§ 7. PENALTY FOR USING FALSE WEIGHT.] If any person knowingly uses a false weight, measure, scale, balance or beam, after such weight, measure, balance or beam has been adjusted and sealed, alters it so that it does not conform to the public standard and frau-



duently makes use of it, he shall forfeit for each offense fifty dollars, which fine to go to the state, and every sealer who has reasonable cause to believe that a weight, measure, balance or beam has been altered since it was last adjusted and sealed, shall enter the premises in which it is kept or used and shall examine the same, and if found tampered with shall have power to seal them in such a manner that they cannot be used until said disability is removed, and said scale, balance or beam shall be kept sealed until said fine is paid. The inspector shall in no case seal or mark as correct any weights, measures or balances which do not conform to the standard; if such weights, measures or balances can be readily adjusted by such means as he has at hand, he may adjust and seal them, but if they cannot be readily adjusted he shall affix to such weights, measures or balances a notice forbidding their use until he is satisfied they have been so adjusted as to conform to the standard, and whoever removes said notice without the consent of the officer affixing the same shall for each offense forfeit a sum not exceeding fifty dollars. A sealer or deputy sealer of weights and measures may seize without a warrant such weights, measures or balances as may be necessary to be used as evidence in case of violation of the law relating to the sealing of weights and measures, such weights, measures or balances to be returned to the owner or forfeited as the court may direct.

§ 8. PENALTY FOR OBSTRUCTING OR MISLEADING INSPECTOR.] Any person who shall wilfully obstruct or mislead the inspector in the execution of his duties as hereby prescribed, shall be subjected to conviction and punishment therefor in the same manner as is now provided for the conviction and punishment of persons obstructing or hindering any officer, ministerial, judicial or executive, under the laws and authorities of the state, and the inspector shall have full power and authority for the various purposes named to examine any weights, measures, scales, balances or beams.

§ 9. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 10. EMERGENCY.] An emergency exists in this, that there is now no law providing for the office of inspector of weights and measures for this state, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 4, 1905.

## PROPOSED AMENDMENTS TO CONSTITUTION.

### CONCURRENT RESOLUTION.

[S. B. No. 29—Little.]

A CONCURRENT RESOLUTION Amending the Constitution of the State of North Dakota, Relating to the Investment of School Funds.

*Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:*

That the following amendment to the constitution of the state of North Dakota, adopted by the eighth legislative assembly of the state of North Dakota, and by it referred to the ninth legislative assembly of said state for approval or rejection, is hereby agreed to, and such amendment shall be submitted to the qualified electors of the state for approval or rejection, in accordance with the provisions of section 202 of the constitution of the state of North Dakota.

#### AMENDMENT.

That section 162 of the constitution of the state of North Dakota be amended so as to read as follows:

§ 162. The moneys of the permanent school fund, and other educational funds, shall be invested only in bonds of school corporations or of counties or townships within the state, bonds of the United States, bonds of the state of North Dakota, municipal bonds, or on first mortgages on farm lands in the state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands.

Filed in the office of the secretary of state March 2, 1905.

## CONCURRENT RESOLUTION.

[S. B. No. 133—Hanna.]

A CONCURRENT RESOLUTION Amending the Constitution of the State of North Dakota, Relating to the Sale of University and School Lands.

*Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:*

That the following proposed amendment to section 158 of the constitution of the state of North Dakota be referred to the legislative assembly to be chosen at the next general election in said state, to be by last mentioned legislative assembly submitted to the qualified electors of the state for approval or rejection, in accordance with the provisions of section 202 of the constitution of the state of North Dakota:

## AMENDMENT TO CONSTITUTION.

That section 158 of the constitution of the state of North Dakota is amended to read as follows

§ 158. AMENDMENT. MINIMUM PRICE OF STATE LANDS.] No land shall be sold for less than the appraised value and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years, with interest at the rate of not less than six per centum, payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale, and not sold within two years after appraisal shall be re-appraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall, at the election of the board of university and school lands, become null and void; and no such contract heretofore made shall be held void for non-payment of taxes accruing on the lands described therein; provided, such taxes shall have been paid before this amendment takes

effect; provided, further, that any school or institution lands that may be required for townsite purposes may be paid for at any time and patent issued therefor.

Filed in the office of the secretary of state March 6, 1905.

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### CONCURRENT RESOLUTION.

[S. B. No. 166—Little.]

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A CONCURRENT RESOLUTION Amending the State Constitution.  
*Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:*

That the following amendment to the constitution of the state of North Dakota be agreed to and referred to the ninth [tenth] legislative assembly of said state, for approval, to be by said last mentioned legislative assembly submitted to the qualified electors of the state, for approval or rejection, in accordance with the provisions of section 202 of the constitution of the state of North Dakota:

AMENDMENT.] That section 89 of the constitution of the state of North Dakota be amended so as to read as follows:

§ 89. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.

Filed in the office of the secretary of state March 6, 1905.

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### CONCURRENT RESOLUTION.

[S. B. No. 56—Garnett.]

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A CONCURRENT RESOLUTION Amending the State Constitution.  
*Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:*

§ 1. That the following proposed amendment to section 162 of the constitution of the state of North Dakota be referred to the legislative assembly, to be chosen at the next general election in said state, to be by said last mentioned legislative assembly submitted to the qualified electors of the state for approval or rejection, in accordance with the provisions of section 202 of the constitution of the state of North Dakota.

§ 2. That section 162 of the constitution of the state of North Dakota be amended so as to read as follows:

§ 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations,

or of counties, or of townships, or of municipalities within the state, bonds issued for the construction of drains under authority of law within the state, bonds of the United States, bonds of the state of North Dakota, bonds of other states, provided, such states have never repudiated any of their indebtedness, or on first mortgages on farm lands in this state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands.

Passed by the ninth legislative assembly and filed in the office of the secretary of state February 25, 1905.

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