

# POLITICAL CODE

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§ 1. **Title.** This act shall be known as the political code of the state of North Dakota, and is divided into chapters as follows:

Constitutional. Tribune Co. v. Barnes, 7 N. D. 591, 75 N. W. 904.

## CHAPTER 1.

THE SOVEREIGNTY OF THE STATE AND THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.

§ 2. **Territorial jurisdiction, limitations on.** The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States, is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made. [R. C. 1895, § 2.]

§ 3. **Legislative consent to purchase of lands by United States. Jurisdiction over.** The legislative assembly consents to the purchase or condemnation by the United States of any tracts within this state for the purpose of erecting forts, magazines, arsenals, dock yards and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime may be served and executed thereon in the same manner and by the same officers, as if the purchase or condemnation had not been made. [R. C. 1895, § 3.]

§ 4. **Jurisdiction ceded.** Jurisdiction is hereby ceded to the United States over any tract of land that may hereafter be acquired by the United States on which to establish a military post; provided, that legal process, civil and criminal, of this state shall extend over such land acquired by the United States to establish a military post, in all cases in which exclusive jurisdiction is not vested in the United States, and in all cases of crimes not committed within the limits of such reservation. [1895, ch. 81, § 1; R. C. 1899, § 4.]

§ 5. **Rights over persons enumerated.** The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime;
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety;
3. To imprison or confine for the purpose of enforcing civil remedies;
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards and other persons of unsound mind;

5. To establish custody and restraint of paupers for the purposes of their maintenance;

6. To establish custody and restraint of minors unprovided for by natural guardians for the purposes of their education, reformation and maintenance.

7. To require services of persons, with or without compensation, in military duty, in jury duty, as witnesses, as township or village officers, in highway labor, in maintaining the public peace, in enforcing the service of process, in protecting life and property from fire, pestilence, wreck or flood, and in such other cases as are provided by law. [R. C. 1895, § 5.]

§ 6. **Original and ultimate title.** The original and ultimate right to all property, real or personal, within the limits of this state is in the state. [R. C. 1895, § 6.]

§ 7. **Property escheats when.** All property, real and personal, within the limits of this state, which does not belong to any person or to the United States, belongs to the state. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. [R. C. 1895, § 7.]

§ 8. **Acquisition by taxation and assessment.** The state may acquire property by taxation in the modes authorized by law. [R. C. 1895, § 8.]

§ 9. **By right of eminent domain.** It may acquire or authorize others to acquire title to property, real or personal, for public use in the cases and in the mode provided by law. [R. C. 1895, § 9.]

§ 10. **Who are the people.** The people, as a political body, consist:

1. Of citizens who are electors;
2. Of citizens not electors. [R. C. 1895, § 10.]

§ 11. **Who are citizens.** The citizens of the state are:

1. All persons born in this state and residing within it, except the children of transient aliens and of alien public ministers and consuls;
2. All persons born out of this state and who are citizens of the United States and residing within this state. [R. C. 1895, § 11.]

§ 12. **Residence, rules for determining.** Every person has in law a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian;
7. The residence can be changed only by the union of act and intent. [R. C. 1895, § 12.]

§ 13. **All persons within the state subject to its jurisdiction.** Every person while within this state is subject to its jurisdiction and entitled to its protection. [R. C. 1895, § 13.]

§ 14. **Allegiance.** Allegiance is the obligation of fidelity and obedience which every citizen owes to the state. [R. C. 1895, § 14.]

§ 15. **Allegiance, may be renounced.** Allegiance may be renounced by a change of residence. [R. C. 1895, § 15.]

§ 16. **Persons not citizens.** Persons in this state not its citizens, are either:

1. Citizens of other states; or,
2. Aliens. [R. C. 1895, § 16.]



§ 17. **Eligibility to office.** Every elector is eligible to the office for which he is an elector, except when otherwise specially provided; and no person is eligible who is not such an elector. [R. C. 1895, § 17.]

§ 18. **Rights and duties of citizens not electors.** An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office. [R. C. 1895, § 18.]

§ 19. **Rights and duties of citizens of other states.** A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector. [R. C. 1895, § 19.]

## CHAPTER 2.

### THE LEGISLATIVE ASSEMBLY.

#### ARTICLE 1.—MEETING AND ORGANIZATION OF THE LEGISLATIVE ASSEMBLY.

§ 20. **Legislative assembly meets, when.** The legislative assembly shall meet at the seat of government at twelve o'clock noon on the first Tuesday after the first Monday in January in the year next following the election of the members thereof. [Const. § 53; R. C. 1899, § 20.]

§ 21. **Secretary of senate and chief clerk of house to make roll of members.** It shall be the duty of the secretary of the senate and the chief clerk of the house, at the opening of each session of the legislative assembly to make a correct roll of the members of their houses respectively to whom certificates of election have been issued by the proper officers, which certificates shall be filed by such secretary and chief clerk, and the same shall be prima facie evidence of the right to membership of the person certified therein to be elected for all purposes of the organization of either branch of the legislative assembly. [Pol. C. 1877, ch. 2, § 14; R. C. 1899, § 21.]

§ 22. **Legislative sessions called to order by secretary and chief clerk.** In all cases the secretary of the senate and chief clerk of the house serving at the close of a session shall remain in office until the organization of the next regular session of the legislative assembly, and at twelve o'clock noon on the day appointed by law for the meeting of the legislative assembly the said officers, or in the absence of either, then some member or other person appointed by the members present, shall call the members of their respective houses so enrolled to order, when the members may proceed to the election of the necessary officers. The term of office of all officers of the senate and house of representatives shall expire with the close of the session at which they were elected, except the secretary of the senate and the chief clerk of the house for the purposes herein designated. [Pol. C. 1877, ch. 2, § 15; R. C. 1899, § 22.]

§ 23. **Punishment by each house for offenses.** Each house may punish by imprisonment, as for contempt, a breach of its privileges or the privileges of its members; but only for one or more of the following offenses:

1. Knowingly arresting a member or officer of the house, or procuring such member or officer to be arrested in violation of his privilege from arrest.
2. Disorderly conduct in the immediate view of the house and directly tending to interrupt its proceedings.
3. Refusing to attend and be examined as a witness either before the house, or a committee thereof, or before any person authorized to take testimony in legislative proceedings.
4. Giving or offering a bribe to a member, or attempting by menace or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same; but the term

of imprisonment which such house may impose for any contempt specified in this section shall not continue beyond thirty days, nor extend beyond the same session of the legislative assembly. [Pol. C. 1877, ch. 2, § 4; Const. § 48; R. C. 1895, § 23.]

§ 24. **Contempt a misdemeanor.** Every person who shall be guilty of any contempt specified in the preceding section shall also be deemed guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars, or by both, at the discretion of the court. [Pol. C. 1877, ch. 2, § 5; R. C. 1899, § 24.]

§ 25. **Administering oath to members and officers of the legislative assembly.** The speaker of the house and the president of the senate, the governor, or any of the judges of the supreme or district courts are authorized to administer the oath of office to the members and officers of the respective bodies. [Pol. C. 1887, ch. 2, § 6; R. C. 1895, § 25.]

§ 26. **Chairman of committee may administer oath, when.** Any member of the senate or house of representatives, while acting as chairman of a committee of the house of which he is a member, shall have authority to administer oaths to such persons as shall be examined before the committee of which he is a member. [Pol. C. 1877, ch. 2, § 9; R. C. 1899, § 26.]

§ 27. **Contested seats. Each house sole judge of member's qualifications.** In case the right of any person to a seat in either house of the legislative assembly shall be contested, the right of such person to a seat as aforesaid shall be determined by the house in which he claims such seat as a member; and each house shall in all cases be the sole judge of the qualifications of its members. [Pol. C. 1877, ch. 2, § 9; R. C. 1899, § 27.]

#### ARTICLE 2.—LEGISLATIVE OFFICERS AND EMPLOYES.

§ 28. **Officers and employes. Compensation.** The following shall be the officers and employes of the senate and the house of representatives of the legislative assembly, with the compensation as herein provided for:

For the senate:

A president pro tempore, whose compensation shall be two dollars per day.

One secretary, whose compensation shall be six dollars per day.

Two assistant secretaries, whose compensation shall be five dollars per day.

One enrolling and engrossing clerk, whose compensation shall be five dollars per day.

One bill clerk, whose compensation shall be five dollars per day.

One stenographer, whose compensation shall be five dollars per day.

One stenographer for the senators, whose compensation shall be five dollars per day.

One sergeant-at-arms, whose compensation shall be five dollars per day.

One doorkeeper, whose compensation shall be four dollars per day.

One messenger, whose compensation shall be four dollars per day.

One postmaster, whose compensation shall be four dollars per day.

Four pages, whose compensation shall be two dollars per day.

One proof reader, whose compensation shall be five dollars per day.

One chaplain, whose compensation shall be three dollars per day.

One janitor, whose compensation shall be three dollars per day.

One watchman, whose compensation shall be four dollars per day.

One clerk of the judiciary committee, whose compensation shall be five dollars per day.

One clerk of the appropriation committee, whose compensation shall be five dollars per day.

One bill room clerk, whose compensation shall be four dollars per day.

One journal clerk, who shall be under the supervision of the secretary of the senate, and whose compensation shall be five dollars per day.

One assistant journal clerk, whose compensation shall be five dollars per day.

The journal of the senate shall be completed and indexed by the secretary of the senate within ten days after adjournment thereof, and for such completion and indexing he shall be allowed the sum of fifty dollars.

In addition to the above, there shall be appointed by the president, when deemed necessary by the senate, such assistant enrolling and engrossing clerks as may be actually necessary, who shall each receive a compensation of four dollars per day, and such janitors as may be necessary by the senate, who shall receive three dollars per day.

For the house of representatives:

A speaker, whose compensation shall be two dollars per day.

One chief clerk, whose compensation shall be six dollars per day.

Two assistant clerks, whose compensation shall be five dollars per day.

One chief enrolling and engrossing clerk, whose compensation shall be five dollars per day.

One bill clerk, whose compensation shall be five dollars per day.

One stenographer, whose compensation shall be five dollars per day.

One stenographer for members of the house, whose compensation shall be five dollars per day.

One sergeant-at-arms, whose compensation shall be five dollars per day.

Two doorkeepers, whose compensation shall be four dollars per day, and who shall be assistants to the sergeant-at-arms.

One messenger, whose compensation shall be four dollars per day.

One postmaster, whose compensation shall be four dollars per day.

One chaplain, whose compensation shall be three dollars per day.

Six pages, whose compensation shall be two dollars per day.

Two janitors, whose compensation shall be three dollars per day.

Two clerks in charge of bill room, whose compensation shall be four dollars per day.

One watchman, whose compensation shall be four dollars per day.

One clerk of the judiciary committee, whose compensation shall be five dollars per day.

Two attendants on cloak room, whose compensation shall be three dollars per day.

One journal clerk, whose compensation shall be five dollars per day, and who shall be under the supervision of the chief clerk of the house.

One assistant journal clerk, whose compensation shall be five dollars per day.

The journal of the house shall be completed and indexed by the chief clerk of the house within ten days after the adjournment thereof, and for such completion and indexing he shall be allowed the sum of fifty dollars. In addition to the above there shall be appointed by the speaker, when deemed necessary by the house, such assistant enrolling and engrossing clerks as are actually necessary, who shall receive four dollars per day, and such janitors as may be deemed necessary by the house, and who shall receive three dollars per day. [1899, ch. 104, § 1; R. C. 1899, § 28; 1901, ch. 117.]

**§ 29. Officers, how elected. Oath.** The officers of each house shall be elected by a roll call vote of the members thereof, at such times after the meeting of such house as the members thereof shall deem proper, and they shall be required to take and subscribe the oath prescribed in section 211 of the constitution. Neither house shall transact any business other than the election or appointment of officers, until such officers are elected or appointed pro tem. [1899, ch. 104, § 2; R. C. 1899, § 29.]

**§ 30. Salaries, how audited and paid.** The respective amounts due each clerk, officer or employe so employed and appointed shall be audited and paid out of the state treasury upon an account certified as correct by the presiding officer of the respective houses, duly attested by the secretary and chief clerk

thereof, and when so audited and attested the state auditor is authorized and directed to draw his warrants therefor upon the state treasurer. [1890, ch. 86, § 6; 1895, ch. 76, § 4; R. C. 1899, § 31.]

**§ 31. Discharge of officers, clerks and employes.** Whenever any officer, clerk or employe through neglect or incompetency shall fail properly to discharge the duties of his office or position, it shall be the duty of the respective body to declare the office or position vacant and to fill the vacancy so created. [1890, ch. 86, § 6; 1895, ch. 76, § 5; R. C. 1899, § 32.]

**§ 32. Secretary of senate and chief clerk of house to keep journals, preserve and file documents.** It shall be the duty of the secretary of the senate and chief clerk of the house of representatives, to keep correct journals of the proceedings of their respective houses; to have the custody of all records, accounts, and other papers committed to them, and at the close of each session of the legislative assembly to deposit for safe keeping in the office of the secretary of state all books, bills, documents, resolutions and papers in the possession of the legislative assembly, correctly labeled, folded and classified, and generally to perform such duties as shall be assigned them by their respective houses; provided, that the journals need not be deposited as above provided until they are fully completed and indexed. [Pol. C. 1877, ch. 2, § 12; R. C. 1895, § 33.]

**§ 33. Secretary of senate and chief clerk of house to prepare and index journals.** It shall be the duty of the secretary of the senate and the chief clerk of the house at the close of each session to prepare for the press and superintend the publication of the journals of the proceedings of the respective houses, and to affix an index thereto; and to transcribe into a book kept for that purpose the documents accompanying the messages of the governor, or by him sent to either house, other than those entered in the journal, or the documents reported to either branch of the legislative assembly by any public officer of the state in pursuance of law, for which service they shall be allowed the compensation provided in section 28. The state auditor is hereby instructed to draw his warrants on the state treasurer in favor of each of said officers for such sum on proof being made that the record has been completed and the journals indexed as above required. [Pol. C. 1877, ch. 2, § 13; 1883, ch. 79, § 1; 1885, ch. 110, § 1; R. C. 1899, § 34.]

**§ 34. Either house may remove its officers.** It shall be competent at any time during a session of the legislative assembly for either house by a majority vote to remove from office any of the officers or employes provided for in this article; but in case of the removal of any officer by either house his place shall be filled by an election viva voce; and in all elections under the provisions of this article for officers of either house of the legislative assembly a majority of all votes cast shall be necessary to a choice. [Pol. C. 1877, ch. 2, § 17; R. C. 1899, § 35.]

**§ 35. Mileage and per diem of members, salaries of officers and employes.** There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, as a standing and continuing appropriation, such a sum as may be necessary to pay the mileage and per diem of members and the salaries of the officers and of the employes of the legislative assembly; and the state auditor is authorized to draw his warrants on the state treasurer for such sums as may from time to time become due to such members and employes. [1891, ch. 8, §§ 1, 2; R. C. 1899, § 36.]

### ARTICLE 3.—SENATORIAL AND REPRESENTATIVE DISTRICTS AND LEGISLATIVE APPORTIONMENT.

**§ 36. State legislative apportionment.** Until otherwise provided by law under the terms of the constitution the senatorial and representative districts

in the state of North Dakota shall be formed, and the senators and representatives shall be apportioned as follows:

The first district shall consist of the townships of Walhalla, St. Joseph, Neehe, Pembina, Bathgate, Carlisle, Joliet, Midland, Lincoln and Drayton, in the county of Pembina, and be entitled to one senator and three representatives.

The second district shall consist of the townships of St. Thomas, city of St. Thomas, Crystal, city of Crystal, Hamilton, town of Hamilton, Cavalier, town of Cavalier, village of Canton, Avon, Liberty, Akra, Beaulieu, Thingvalla, Gardar, Park, Elora and Lodema, in the county of Pembina, and be entitled to one senator and three representatives.

The third district shall consist of the townships of Perth, Latona, Adams, Silvesta, Cleveland, Norton, Vesta, Tiber, Medford, Vernon, Golden, Lampton, Eden, Rushford, Kensington, Dundee, Ops, Prairie Center, Fertile, Park River, village of Edinburg, village of Conway, village of Hoople, village of Pisek, Glenwood, Kinloss, Shepherd, Sauter, and the unorganized township one hundred fifty-seven, range fifty-nine, in the county of Walsh, and be entitled to one senator and three representatives.

The fourth district shall consist of the townships of Forest River, village of Forest River, Walsh Center, Grafton, city of Grafton, Farmington, Ardoch, village of Ardoch, Harrison, Oakwood, Martin, Walshville, Pulaski, Acton, Minto, village of Minto, and St. Andrews, in the county of Walsh, and be entitled to one senator and three representatives.

The fifth district shall consist of the townships of Gilby, Johnstown, Strabane, Wheatland, Hegton, Arvilla, Avon, Northwood, city of Northwood, Lind, Grace, Larimore, city of Larimore, Elm Grove, Agnes, Inkster, Elkmount, Oakwood, Niagara, Moraine, Logan and Loretta, in the county of Grand Forks, and be entitled to one senator and three representatives.

The sixth district shall consist of the third, fourth, fifth and sixth wards of the city of Grand Forks, as now constituted, and the townships of Falconer, Harvey, Turtle River, Ferry, Rye, Blooming, Mekinock, Lakeville and Levant, in the county of Grand Forks, and be entitled to one senator and two representatives.

The seventh district shall consist of the first and second wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Oakville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentru, Americus, Michigan, Union, Washington, and the first and second wards of the city of Reynolds, in the county of Grand Forks, and be entitled to one senator and three representatives.

The eighth district shall consist of the townships of Belmont, Buxton, Caledonia, Elm River, Eldorado, Ervin, Hillsboro, City of Hillsboro, Kelso, Logan, Norway, and the city of Reynolds, in the county of Traill, and be entitled to one senator and two representatives.

The ninth district shall consist of the township of Fargo and the city of Fargo, in the county of Cass, and the fractional township number one hundred thirty-nine, range forty-eight, and be entitled to one senator and three representatives.

The tenth district shall consist of the townships of Noble, Wiser, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, village of Mapleton, Warren, Norman, Bell, Harmony, Durbin, Addison, Davenport, village of Davenport, Casselton, and the city of Casselton, in the county of Cass, and be entitled to one senator and three representatives.

The eleventh district shall consist of the townships of Webster, Rush River, Hunter, Arthur, Amenia, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walburg, Watson, Page, Rich, Ayr, Buffalo, village of Buffalo, Howes, Eldred, Highland, Rochester, Lake, Cornell, Tower, Hill,

Clifton and Pontiac, in the county of Cass, and be entitled to one senator and three representatives.

The twelfth district shall consist of the townships of Eagle, Abercrombie, Dwight, Ibsen, Center, Mooreton, Brandenburg, Summit, Fairmount, village of Fairmount, DeVillo, LaMars, Waldo, Greenfield and the city of Wahpeton, in the county of Richland, and be entitled to one senator and three representatives.

The thirteenth district shall consist of the county of Sargent, and be entitled to one senator and two representatives.

The fourteenth district shall consist of the county of Ransom, and be entitled to one senator and two representatives.

The fifteenth district shall consist of the townships of Baldwin, Dazey, Pierce, Uxbridge, Edna, Minnie Lake, Hobart, Potter, village of Sanborn, village of Wimbledon, city of Valley City, and the unorganized townships one hundred forty-three, range fifty-six, township one hundred forty-three, range fifty-eight, township one hundred forty-three, range sixty, township one hundred forty-two, range fifty-nine, township one hundred forty-two, range fifty-eight, township one hundred forty-two, range fifty-seven, township one hundred forty-one, range fifty-eight, township one hundred forty-one, range fifty-nine, township one hundred forty-one, range sixty, township one hundred forty-one, range sixty-one, township one hundred forty, range sixty-one, township one hundred forty, range fifty-eight, in the county of Barnes, and be entitled to one senator and two representatives.

The sixteenth district shall consist of the counties of Steele and Griggs, and be entitled to one senator and three representatives.

The seventeenth district shall consist of the county of Nelson, and be entitled to one senator and two representatives.

The eighteenth district shall consist of the townships of Cypress, Linden, Dresden, Langdon, city of Langdon, South Dresden, Gray, Glenila, Huron, Moscow, Berlin, Jackson, Perry, Billings, Storlie, Weber, Trier, Gordon, Henderson, and the unorganized townships one hundred fifty-nine, range sixty-four, and township one hundred sixty-one, range sixty-four, in the county of Cavalier, and be entitled to one senator and two representatives.

The nineteenth district shall consist of the county of Rolette, and be entitled to one senator and two representatives.

The twentieth district shall consist of the county of Benson, and be entitled to one senator and three representatives.

The twenty-first district shall consist of the county of Ramsey, and be entitled to one senator and three representatives.

The twenty-second district shall consist of the county of Towner, and be entitled to one senator and two representatives.

The twenty-third district shall consist of the county of Stutsman, and be entitled to one senator and three representatives.

The twenty-fourth district shall consist of the county of LaMoure, and be entitled to one senator and two representatives.

The twenty-fifth district shall consist of the county of Dickey, and be entitled to one senator and two representatives.

The twenty-sixth district shall consist of the counties of Emmons and Kidder, and be entitled to one senator and two representatives.

The twenty-seventh district shall consist of the county of Burleigh, and be entitled to one senator and two representatives.

The twenty-eighth district shall consist of the county of Bottineau, and be entitled to one senator and two representatives.

The twenty-ninth district shall consist of the counties of Ward and Williams, and be entitled to one senator and three representatives.

The thirtieth district shall consist of the county of Morton, and be entitled to one senator and three representatives.

The thirty-first district shall consist of the counties of Stark and Billings, and be entitled to one senator and three representatives.

The thirty-second district shall consist of the counties of Eddy and Foster, and be entitled to one senator and two representatives.

The thirty-third district shall consist of the county of Wells, and be entitled to one senator and three representatives.

The thirty-fourth district shall consist of the counties of McHenry and Pierce, and be entitled to one senator and three representatives.

The thirty-fifth district shall consist of the counties of McLean, Mercer and Oliver, and be entitled to one senator and two representatives.

The thirty-sixth district shall consist of the counties of McIntosh and Logan, and be entitled to one senator and two representatives.

The thirty-seventh district shall consist of the townships of Walcott, Colfax, Barrie, Helendale, Sheyenne, Viking, Garborg, Freeman, West End, Homestead, Grafton, Antelope, Danton, Garfield, Dexter, Wyndmere, Belford, Liberty, Brightwood, village of Hankinson, Elma, Park, village of Lidgerwood, Moran and Grant, in the county of Richland, and be entitled to one senator and three representatives.

The thirty-eighth district shall consist of the townships of Weimer, Noltimer, Alta, Oriska, Spring Vale, Cuba, Svea, Skandia, Norman, Binghampton, Raritan, Thordenskjold, Oakville, Spring Creek, Lincoln, Greenland, Green, Herman, and the unorganized townships one hundred thirty-eight, range sixty-one, township one hundred thirty-eight, range fifty-eight, township one hundred thirty-nine, range fifty-eight, township one hundred thirty-nine, range sixty-one, in the county of Barnes, and be entitled to one senator and two representatives.

The thirty-ninth district shall consist of the townships of Bohnsack, Blanchard, Bloomfield, Garfield, Galesburg, Mayville, city of Mayville, Morgan, Norman, Roseville, city of Portland, and village of Hatton, in the county of Traill, and be entitled to one senator and two representatives.

The fortieth district shall consist of the townships of Mt. Carmel, Hope, Fremont, Olga, Loam, Harvey, Easby, Alma, East Alma, Montrose, villages of Milton and Osabrock, in the county of Cavalier, and be entitled to one senator and two representatives. [Const. § 214; 1890, ch. 1, § 1; R. C. 1899, § 37; 1901, ch. 143.]

#### ARTICLE 4.—PRINTING AND DISTRIBUTION OF LAWS AND DOCUMENTS.

§ 37. **Printing commission.** The secretary of state, state treasurer and state auditor shall be ex officio commissioners of public printing during their terms of office respectively. [1890, ch. 119, § 1; R. C. 1899, § 38.]

§ 38. **Classes of printing.** The printing of the state is hereby divided into five classes, the first and second to be let in one contract, and the third, fourth and fifth classes in separate contracts as follows:

1. The printing of bills, resolutions and other documents for the use of and incident to the legislative assembly shall constitute the first class.

2. The printing and binding of the journals of the senate and house of representatives shall constitute the second class.

3. The printing and binding of executive and public documents and reports shall constitute the third class.

4. The printing and binding of the volume of laws, with the joint resolutions, which shall be included in said volume, shall constitute the fourth class.

5. The printing of all blanks, circulars and other miscellaneous job work necessary for the use of the executive departments, other than such as are printed in pamphlet form and not entering into the volumes of executive documents, and all printing not included in the foregoing classes shall constitute the fifth class. [1890, ch. 119, § 2; R. C. 1899, § 39.]

§ 39. **Proposals for printing.** The commissioners of public printing shall at least six months immediately preceding each regular session of the legislative assembly advertise for four weeks successively in two daily papers in the state, one of which shall be at the seat of government, inviting sealed proposals for doing all printing and binding required by the legislative assembly and by the several state departments for the two succeeding years commencing with the first day of January next following the date of the contract, and such bids shall specify at what per cent below the maximum rates severally prescribed in the next section the bidder will perform the work and furnish the stock. [1890, ch. 119, § 3; R. C. 1899, § 40.]

§ 40. **Maximum prices for composition, press-work, binding and paper.** The following prices are hereby established as the maximum prices for doing such work:

Composition: Sixty cents for each one thousand ems of plain composition; ninety cents for each one thousand ems of figure work; one dollar and twenty cents for each one thousand ems of rule and figure work.

Press-work: For the first one hundred impressions of form, one dollar; and twenty-five cents for each additional one hundred impressions or fraction thereof—one side of the sheet of flat cap, folio or medium, two pages on bill work, and eight pages of pamphlet or journal work, or fraction thereof, to constitute a form.

Folding and pasting on the first and fifth classes, for one fold, eight cents per hundred sheets; for two folds on one sheet, twelve cents per hundred sheets; for two folds and pasting and tipping, twenty-five cents per one hundred sheets, including trimming. On the second, third and fourth classes, when no charge is made for binding, ten cents per one hundred of eight pages or fraction thereof.

For stitching for all classes, including folding, collating, stabbing, stitching and trimming per one hundred copies, for eight pages or less, thirty-five cents per one hundred copies, and for each additional signature of eight pages, ten cents per one hundred copies.

For binding for all classes, including folding, collating, stabbing, stitching and pamphlet covering for books of eight pages or less, per one hundred copies, forty cents; for each additional signature of eight pages, ten cents per one hundred copies; if sewed instead of stitched, twelve cents per one hundred copies for each additional signature.

For binding: Book-work in tar board covered with paper, leather backs, lettered on back with ink, in addition to the pamphlet binding, thirty-five cents per volume.

For binding book-work in cloth, gilt lettering on back, in addition to pamphlet binding, thirty-five cents per volume.

For binding in full law sheep, and lettering, in addition to the pamphlet binding, seventy-five cents per volume.

The printing under the fifth class, which includes miscellaneous job work for the executive departments and other miscellaneous printing not covered by this article shall be under the control of the commissioners of printing, who shall secure the same at the lowest rates and upon the most advantageous terms.

For printing blank books, either ruled and printed or ruled without printing, the paper used to be sized and calendared, and of standard brands:

Cap paper, eighteen pounds to the ream, plain ruled, half-bound, one dollar and twenty-five cents per quire; ditto, printed heads, one dollar and seventy-five cents per quire; ditto, plain ruled extra full bound, two dollars per quire; ditto, printed heads, two dollars and fifty cents per quire.

Demy paper, twenty-eight pounds to the ream, ruled, half-bound, one dollar and fifty cents per quire; ditto, printed heads, two dollars per quire; ditto,



plain ruled, extra full bound, two dollars and fifty cents per quire; ditto, printed heads, three dollars per quire.

Medium paper, thirty-six pounds to the ream, plain ruled, half-bound, two dollars per quire; ditto, printed heads, two dollars and fifty cents per quire; ditto, plain ruled extra full bound, three dollars per quire; ditto, printed heads, three dollars and fifty cents per quire.

Medium paper, forty pounds to the ream, plain ruled, extra full bound, four dollars per quire; ditto, printed heads, four dollars and fifty cents per quire.

Super-royal paper, fifty-four pounds to the ream, plain ruled, extra full bound, four dollars and fifty cents per quire; ditto, printed heads, five dollars per quire. [1890, ch. 119, § 4; R. C. 1899, § 41.]

§ 41. **Paper, quality, price.** All paper used for printing and binding of whatever nature shall be standard weights and grades and approved by the commissioners of printing. The maximum price of sized and calendered book paper shall be ten cents per pound; of linen ledger paper, twenty-five cents per pound; common flat paper, eighteen cents per pound; best bond paper twenty-five cents per pound. [1890, ch. 119, § 4; R. C. 1899, § 42.]

§ 42. **Proposals, how made. Bond required.** Each proposal shall be in writing sealed and addressed to the secretary of state, and shall be accompanied by a bond, executed in due form by the bidders, with at least two good and sufficient sureties, satisfactory to the commissioners, in the penal sum of four thousand dollars, conditioned for the faithful performance pursuant to this article of such class or classes of the state printing as may be awarded to him, and for the payment, as liquidated damages by such bidder to the state of any excess of cost over the bid of such bidder, which the state may be obliged to pay for such work by reason of the failure of such bidder to complete his contract. No bid unaccompanied by such bond shall be considered, and the right is reserved to the commissioners to reject any bid made by any other than regularly established and thoroughly competent printers, and shall also have the right to reject any or all bids if in their judgment the best interests of the state would be subserved thereby. [1890, ch. 119, § 5; R. C. 1899, § 43.]

§ 43. **Opening of bids. Awards.** The commissioners, or any two of them, shall within two days after the expiration of the term for receiving proposals as aforesaid, and not later than the first Tuesday after the first Monday in August proceed to open in public all such proposals received by them and to award the contract for each class of printing to the lowest bidder therefor, subject to the reservations of the preceding section; provided, that nothing herein contained shall be construed so as to prevent the same person from becoming contractor for two or more classes of printing, if he shall be the lowest bidder therefor. If two or more persons bid the same, and the lowest price for any class, or classes of printing, the commissioners shall award the contract to such one or more of them as in their opinion will best subserve the interests of the state. [1890, ch. 119, § 6; R. C. 1899, § 44.]

§ 44. **Bills to be printed, how.** Work of the first class shall be printed on first-class sized and calendered paper, from small pica type, with double the space between each line, the printed pages to be thirty-three ems pica wide and fifty-five ems pica long; one hundred and fifty copies of each bill shall be printed unless otherwise ordered by resolution of either house. [1890, ch. 119, § 7; R. C. 1899, § 45.]

§ 45. **Journals to be printed, how.** The journals of the legislative assembly shall be printed on first-class sized and calendered paper, of not less than forty pounds to the ream, size 25x38, from long primer type set solid (except that extracts, table-work, roll-calls, etc., may be set in brier or smaller type); the printed pages to be twenty-five ems pica in width and forty-three ems pica

in length. Double the contract price will be allowed upon the journals when printed daily for the use of the members, but nothing shall be charged for composition or correction, or reimposition of the same matter for the bound journal, nor shall extra charge for composition be made when extra or additional copies are ordered printed. [1890, ch. 119, § 8; R. C. 1899, § 46.]

**§ 46. Executive documents, how printed.** The pamphlets and volumes of executive or public documents and reports shall be printed on first-class sized and calendered paper of not less than forty pounds to the ream, size 25x38, from long primer type, set solid; provided, that extracts and tabular work may be set in brevier or smaller type, the printed pages to be twenty-five ems pica in width and forty-three ems pica in length. The reports of the officers of the various departments, required to be made out for the use of the legislative assembly and for the information of the public, shall be printed and bound as elsewhere in this article provided, and the various reports, communications and other documents shall be reimposed and form the volumes of executive and public documents. There shall be no charge for the composition of matter used in the volumes of executive documents or as separate pamphlets, or as parts of reports that are to be used, or have been previously used and paid for in the pamphlet form; provided, that the order for the same is given before the forms of type are distributed; but the maximum rate of one dollar for reimposition of each form of eight pages may be allowed. The volumes of the executive documents shall be paged consecutively, and the reports therein made up in as close and compact order as is consistent with good workmanship, without intervention of unnecessary blanks or separate title or half title pages, and at the conclusion of each volume there shall be an index referring to the particular page at which each separate document commences. The commissioners shall determine what reports and documents shall be printed in pamphlet form, and the number of copies of each report or document when not specified by law. There shall be printed and bound three hundred copies of each volume of the executive documents. [1890, ch. 119, § 9; R. C. 1899, § 47.]

**§ 47. Laws, how printed.** The laws specified in the fourth class shall be printed in substantially the same form as to type, paper and form, as is prescribed for the printing of public documents in the preceding section. [1890, ch. 119, § 10; R. C. 1899, § 48.]

**§ 48. Expert, duties and compensation of.** The commissioners of public printing may employ an expert, familiar with all classes of printing, the material used therein, measuring the work done and computing the price to be paid therefor, for such period of time each year as may be necessary for the performance of the duties devolving upon him, whose duty it shall be to confer and advise with such commissioners relative to advertising and letting contracts, to examine all work and supplies for the purpose of ascertaining whether the same conforms to the contract, to examine all accounts for public printing for the purpose of determining whether the charges contained in such accounts are correct, and to report the result of his examination to the commissioners and to perform such other duties as may be required of him by the commissioners. He shall receive the sum of six dollars per day for each day in which he is engaged in such employment, to be audited by the auditor upon the certificate of the commissioners and paid out of the state treasury as in other cases. [R. C. 1895, § 49.]

**§ 49. Printing, how done.** All printing shall be done by established printing houses in this state, which shall have been doing business in the state not less than one year, and all work shall be executed in a style consistent with good workmanship and with due reference to economy. [1890, ch. 119, § 11; R. C. 1899, § 50.]

Not repugnant to federal constitution. *Tribune Co. v. Barnes*, 7 N. D. 591, 75 N. W. 904.

§ 50. **Duty of commissioners in case of failure on contract.** If from death or any unforeseen cause there shall be a failure on the part of any successful bidder to execute his contract, the commissioners, or a majority of them, may enter into a contract with the next lowest bidder. If any contractor after commencing upon his contract fails to execute the work embraced therein with reasonable expedition, and in a suitable manner, the commissioners may notify him for reasons they may specify that his contract is cancelled, and they may then contract with some other person to do the work at the lowest practicable rate; provided, that the commissioners may give written notice to any contractor who is delaying the execution of the work in a manner they may deem unreasonable, that the same must be completed within a specified time, and for failure to complete the same within the time specified, that for every twenty-four hours delay thereafter the contractor shall suffer a penalty of one-quarter per cent to be deducted from the net amount of the printing so delayed. [1890, ch. 119, § 12; R. C. 1899, § 51.]

§ 51. **Number of volumes to be printed and style of binding.** Five hundred volumes of the laws required by this article to be printed shall be bound in full law sheep, and fifteen hundred copies shall be half bound. The volumes of executive documents provided for in section 46 of this article shall be bound in half binding. Two hundred copies of the biennial reports of the state auditor, state treasurer, commissioner of insurance and superintendent of public instruction shall be bound in cloth, the remainder authorized by law, to be bound in pamphlet form, unless otherwise ordered by the commissioners of printing. [1890, ch. 119, § 13; R. C. 1899, § 52.]

§ 52. **Unnecessary delay, how extension granted.** All contractors under the provisions of this article shall promptly and without unnecessary delay execute all orders issued to them by the legislative assembly, or either branch thereof, or by the commissioners of printing on behalf of the executive officers of the state; and the laws and volumes of public documents shall be delivered to the secretary of state within seventy days, and the journals of the two houses of the legislative assembly within sixty days after the index shall have been made out and delivered to the contractor; provided, that the commissioners may on good cause shown extend the time, not exceeding twenty days, for the execution of his contract. [1890, ch. 119, § 14; R. C. 1899, § 53.]

§ 53. **Commissioners may reject inferior printing and work.** The commissioners may reject any and all printing that is not done in a workmanlike manner, or with good material and with ordinary promptness; and may require contractors to present specimen pages of the type they propose to use, and may reject the same, in their discretion, and require new material, and their ruling and determination shall be final and conclusive on the contractor. Only good, clean and satisfactory work shall be accepted, and it must be done within a reasonable time. To accomplish this end the commissioners may withdraw the work from any contractor for unreasonable delay, or for neglect or refusal to use new material, if so required, or for neglect or refusal to furnish good, clean, or satisfactory work, and may, by their agent or otherwise, go into the open market and contract for and have the same done; and if by reason thereof the cost of having any such work done is greater than the original contract price, the excess shall be charged to and collected from the original contractor, or shall be made payable by and collected from the bondsmen of such original contractor; and the action of the commissioners in this matter shall be final and conclusive upon such contractor and his sureties. [1890, ch. 119, § 15; R. C. 1899, § 54.]

§ 54. **Legislative journals, who keep and furnish copy.** The secretary of the senate and the chief clerk of the house shall keep a journal of the

proceedings of their respective houses, and furnish a copy immediately upon each daily adjournment to the contractor for printing the same, who shall print and deliver the same at the commencement of the next day's session for the use of the members of the legislative assembly—the number of copies of each daily journal to be determined by resolution of each branch of the legislative assembly. After being read in the house to which the journals respectively belong, and examined and compared with the minutes of the record or bill clerk or the clerk having charge of the record of bills, memorials and joint resolutions, and in the presence and with the sanction of the house, corrected as found and declared to be correct the proceedings of each day shall be attested by the secretary and chief clerk, and immediately thereafter delivered to the printer of the journals, who shall make the authorized corrections, if any, and print the sheets for the bound volumes of the journal. Each journal shall be recorded in books to be furnished by the secretary of state for that purpose. After the journals are recorded said books shall be deposited with the secretary of state, who shall carefully preserve the same, and such records shall be considered the true and authentic journal. [1890, ch. 119, § 16; 1899, § 55.]

Enrolled statutes not impeached by journals. *Power v. Kitching*, 10 N. D. 254, 86 N. W. 737; *Narregand v. Brown County*, 14 S. D. 357, 85 N. W. 602.

**§ 55. Copies of laws and journals to be furnished printer, by whom.** The secretary of state shall furnish a true and accurate copy of the laws as they may be demanded by the printer thereof, and the secretary of the senate and the chief clerk of the house shall each furnish for the printer, who is bound by his contract to print the same, copies of the journal, bills, reports and other papers and documents without unnecessary delay and no contractor shall be accountable for any delay occasioned by the want of such copy. [1890, ch. 119, § 17; R. C. 1899, § 56.]

**§ 56. Authentication of laws, memorials and resolutions.** All laws printed or published by authority of this state shall be printed or published without any certificates or additions to the same, except the word "approved" and the date of such approval, and in each volume of the session laws hereafter published there shall be a general certificate made by the secretary of state to the effect that all laws, memorials and resolutions contained therein have been compared by him with the originals thereof, in his office, and that they are correct copies. [1890, ch. 119, § 18; R. C. 1899, § 57.]

**§ 57. Governor's messages, how printed and number.** All regular messages from the governor and all inaugural messages of the governor-elect shall be printed, in pamphlet form and there shall be printed in such form for the governor's use five hundred copies, and for the use of the legislative assembly two thousand copies without any order by either house for the printing thereof. [1890, ch. 119, § 19; R. C. 1899, § 58.]

**§ 58. Biennial and special reports, how printed.** There shall be printed one thousand copies of the biennial reports of the state auditor, commissioner of agriculture and labor, two thousand copies of the report of the superintendent of public instruction, six hundred copies of the annual report of the commissioner of insurance, five hundred copies of the annual report of the state examiner, one thousand copies of the annual report of the state treasurer; and five hundred copies of the biennial and annual reports of other state officers and public boards required to make reports, except where otherwise specified by law; provided, that on request of the commissioner of agriculture and labor, such request to be approved by the governor, there shall be printed separately in pamphlet form such parts of the biennial report of said commissioner of agriculture and labor, or such special papers or articles in connection therewith, and such crop reports or other papers or pamphlets from time to time as such commissioner and the governor may jointly recom-

ment for such separate publication; and the number of copies to be printed of each of said separate publications, crop reports or other papers or pamphlets shall be determined by the commissioner of agriculture and labor and the governor jointly. [1890, ch. 119, § 20; 1893, ch. 95, § 9; 1897, ch. 75; R. C. 1899, § 59; 1903, chs. 185, 187.]

§ 59. **Journals and laws, number printed.** There shall be printed one hundred and fifty copies of each journal for the daily use of the legislative assembly and three hundred copies of the bound edition which shall be in half binding; provided, that the legislative assembly may by resolution increase such number; two thousand copies of the session laws and joint resolutions shall be printed in one volume and bound in accordance with the provisions of this article. [1889, ch. 124; R. C. 1899, § 60.]

§ 60. **Authority to increase number of laws, etc.** The commissioners of public printing shall have authority to increase the number of session laws authorized by law to be printed to not exceeding three thousand copies, which shall be disposed of by the secretary of state according to law. The commissioners shall also have authority to increase the number of the bound editions of the journals of the legislative assembly to five hundred. The commissioners may also authorize the printing of an extra number of such statistical, historical or immigration documents, maps and pamphlets as may be deemed of value to the state, when the same shall have first been approved by the governor. [1899, ch. 124; R. C. 1899, § 60; 1903, ch. 33.]

§ 61. **Commissioners have charge of all printing paid for by the state.** The commissioners shall have charge of all the printing and binding required to be done for the several departments of the government; receive the proper orders for the same, and have the same properly executed according to law; keep a record of all work ordered from the several contractors under the law, and of all printing and binding ordered by the legislative assembly; examine and supervise the work of printing in progress, and see that it is executed with due economy to the state; make or authorize to be made the necessary indices for the volumes of the executive documents and reports; examine all accounts for printing and binding that may be presented, and adjust the same according to the terms of the contracts and in accordance with law and such rulings as may be determined by the commissioners. No printing required by any state officer as provided under this article shall be paid for unless the same shall have first been authorized by the legislative assembly or by the commissioners of printing. [1890, ch. 119, § 22; R. C. 1895, § 61.]

§ 62. **Copies of documents to accompany bills for printing.** Every contractor for public printing shall file and preserve one copy of each document or other matter printed by him for the state, which he shall deliver to the commissioners of printing at the same time the completed work is delivered together with a memorandum bill of the same. In the account submitted for the payment of the work the contractor shall at the same time submit his order for the work and state specifically the nature of the work performed, the number of copies, the number of ems of composition, the extra charge, if any, for rule or figure and rule and figure work; the number of impressions of press work, the cost of folding and binding and any other charges for which he claims payment; and if there is a charge for any alterations or changes from copy, the proofs of original composition and changes must be presented. [1890, ch. 119, § 23; R. C. 1899, § 62.]

§ 63. **Printing accounts, how certified and paid.** When the account of any contractor under this article shall have been adjusted, the commissioners shall certify the same to the state auditor, who on receipt thereof shall draw his warrant upon the state treasurer for the amount thereof; provided, that in the current execution of such contracts the commissioners are empowered, in their discretion, to deliver to such contractor a certificate for an amount not exceeding seventy-five per cent of completed work upon the contractor

filing with the commissioners a statement of the amount of work done, for which amount the state auditor shall give his warrant upon the state treasurer to such contractor. [1890, ch. 119, § 24; R. C. 1899, § 63.]

§ 64. **Distribution of journals and executive documents.** Each member and officer of the legislative assembly, for himself and each clerk of a court of record, and each county auditor, for the use of their offices respectively, is entitled to one copy of each journal, and the volumes of the executive documents. Each university, college, academy or other literary institution within the state is entitled to one copy of the general laws passed at each session of the legislative assembly and also to the volumes of executive documents. [1890, ch. 119, § 25; R. C. 1899, § 64.]

§ 65. **Laws, who entitled to. Penalty for refusing to turn over same by officers to successors.** Each member and officer of the legislative assembly, for himself, shall have a copy of the laws; each judge and clerk of a court of record; each justice of the peace, each auditor or clerk in any city or incorporated village; each county auditor, treasurer, sheriff, register of deeds and state's attorney is entitled to receive one copy of the general laws passed at each session of the legislative assembly for his use while filling such offices, but every such officer, except members and officers of the legislative assembly, shall deliver the same to his successor in office for his use while filling such office; and if any person refuses on demand, to make such delivery, he shall forfeit and pay not less than five nor more than fifteen dollars to be recovered in a civil action brought by the successor in office of any such person in the name of the state for the use of the county where such action is brought before any justice of the peace in such county. [1890, ch. 119, § 26; R. C. 1895, § 65.]

§ 66. **Secretary of state to furnish laws, journals and documents to state officers, libraries, etc.** The secretary of state shall deliver to the governor, state auditor, state treasurer, attorney general, adjutant general, railroad commissioners, commissioner of insurance, commissioner of agriculture and labor, clerk of the supreme court, supreme court reporter, superintendent of public instruction, the superintendent of every state benevolent society, each public institution, United States circuit judge, United States district judge, clerk of each of the United States courts, United States attorney for North Dakota and the United States marshal, each, one copy of the laws and of the journals and documents. He shall supply each state and each of the departments and territories of the United States and the general government of the United States with a copy. He shall furnish the state library with ten copies of the general and special laws, the journals and the volumes of executive documents. [1890, ch. 119, § 27; R. C. 1895, § 66.]

§ 67. **Secretary of state to forward laws, journals and documents.** The secretary of state shall as soon as the laws, journals and executive documents of each session are printed and ready for distribution box up the number of each to which each county is entitled and forward the same by public conveyance to the county auditor of the county. If any county seat is so situated that the laws, journals and documents cannot be forwarded by public conveyance, they shall be forwarded to a secure place as near such county seat as practicable, and the secretary of state shall notify the county auditor in writing of the delivery of the same at such points, and the county auditor shall contract with some person to convey the same to the county seat. [1890, ch. 119, § 28; R. C. 1899, § 67.]

§ 68. **Document fund, appropriation for.** For the purpose of defraying the expenses incident to the provisions of the four preceding sections there is hereby annually appropriated the sum of two hundred dollars to be designated "Document Fund," upon which the secretary of state can draw at such times and for such amounts as may be necessary in the discharge of the duties imposed by such sections. [1890, ch. 119, § 29; R. C. 1899, § 68.]

§ 69. **County auditors to deliver documents, etc., when.** The county auditor shall deliver the laws, journals and documents to such persons and institutions as are entitled to receive them, when requested so to do, and shall take receipts therefor and file the same in his office subject to inspection. [1890, ch. 119, § 30; R. C. 1899, § 69.]

§ 70. **Documents officially printed, when. Faith and credit given.** All laws, journals and documents printed and published by any contractor under the provisions of this article, and duly certified by the secretary of state as provided herein, shall be deemed to be officially printed and published, and full faith and credit shall be given to them as such. [1890, ch. 119, § 31; R. C. 1899, § 70.]

§ 71. **Laws, journals and documents preserved, where.** All copies of the journals, executive documents and laws which are not distributed under the provisions of this article shall be preserved in the office of the secretary of state, subject to distribution by law. [1890, ch. 119, § 32; R. C. 1899, § 71.]

§ 72. **Official reports to be made, when.** All county, township, city and village officers, and all officers and boards of state institutions and all officers connected with the public works of the state, and all corporations, except such as are required to make their reports at some other specified time, which are required by law to make annual or biennial reports for any purpose to any state officer, shall make out and transmit the same on or before the fifteenth day of August of each year to the proper officer except where otherwise specifically provided by law. For the purpose of making out such reports the year shall begin on the first day of July of each year and end on the last day of June of the succeeding year. [1890, ch. 119, § 33; R. C. 1895, § 72.]

§ 73. **Reports to governor and legislative assembly to be made, when.** All officers and boards required to make reports to the governor or to the legislative assembly shall make such reports on or before the first day of September, and all such reports, whether required annually or biennially, shall be made to and include the thirtieth day of June preceding, except when otherwise specifically provided by law. The governor upon receiving such reports, shall deliver the same to the commissioners of public printing to be printed, and he shall lay such printed reports before the legislative assembly at its next session, together with his biennial message; provided, that the governor and the commissioners of public printing shall have the authority to revise and eliminate such matter from any report as in their judgment will not seriously detract from the usefulness of such reports, and may also restrict the number of such reports to be printed, when deemed advisable in the interest of economy. any provisions of law regulating public printing to the contrary notwithstanding. [1890, ch. 119, § 34; R. C. 1889, § 73; 1901, ch. 139, § 1.]

§ 74. **Bids received, when.** No bids shall be received after the hour specified in the published notice, and no bid shall be changed after the same is received. [R. C. 1895, § 74.]

§ 75. **Penalty for violation.** Any member of such board who violates any of the provisions of this article is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than one thousand nor more than five thousand dollars. [R. C. 1895, § 75.]

§ 76. **Printing accounts.** All accounts for printing and binding required for any officer or department of the state government and authorized by law, shall be certified according to law and before payment be approved by the commissioners of public printing. It shall be the duty of the secretary of state to keep a record of all proceedings of the commissioners of public printing, and also a record of all public printing which shall be duly authorized by law, and issue requisitions for the same and see that the provisions of law governing the same are faithfully observed. He shall receive all completed work from the contractors for public printing, and deliver the same to the respective

departments for which it is ordered. When vouchers for public printing shall have been approved and verified according to law, it shall be the duty of the state auditor to draw his warrant on the state treasurer for such sum or sums as may be found due. All accounts for public printing shall be audited according to law and a sufficient sum is hereby appropriated out of the state treasury, not otherwise appropriated, to pay for the public printing and binding of the state, not exceeding twenty thousand dollars annually. [1889, ch. 123, § 1; R. C. 1899, § 76; 1901, ch. 139, § 2; 1903, ch. 33.]

§ 77. **Secretary to arrange and correct laws.** In arranging the laws, memorials and resolutions for publication the secretary of state is authorized to make such corrections in orthography, grammatical construction and punctuation of the same as in his judgment shall be proper; but when any words or clauses are inserted, the same shall be enclosed in brackets. [Pol. C. 1877, ch. 3, § 2; R. C. 1899, § 77.]

§ 78. **Copyright.** 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 copyright to be properly printed in each volume of said session laws. [1905, ch. 162.]

§ 79. **Officers to deliver laws to successors.** Whenever any person shall be elected to fill any of the county, township or district offices in this state it shall be such person's duty before taking possession of the office to procure from the county auditor of his county a copy of the receipts filed with such auditor by the outgoing officer for any volumes of the laws of this state; which copy of receipt the person so elected shall exhibit to his predecessor in office at the time he assumes the duties of his office, and shall require from his predecessor all the volumes of laws which he may have received, as shown by such receipt, and it shall be the duty of such officer after having received from his predecessor the volumes of laws to make out duplicate receipts of the same, one of which receipts he shall give to his predecessor in office, and the other he shall forthwith transmit to the county auditor of the county, who is hereby required to file the same in his office. [Pol. C. 1877, ch. 3, § 7; R. C. 1899, § 78.]

§ 80. **Secretary of state to sell statutes.** The secretary of state shall sell to any person applying therefor the volumes of laws of this state for the cost and ten per cent added, and pay over to the state treasurer all sums so received, taking the official receipt of such treasurer therefor. [Pol. C. 1877, ch. 3, § 10; R. C. 1899, § 79.]

§ 81. **Copies of laws for state library.** Ten volumes of the laws passed by each legislative assembly shall be placed in the state library by the secretary of state, and shall be kept therein for the use of any person visiting such library, but shall not be loaned or otherwise disposed of. [Pol. C. 1877, ch. 3, § 11; R. C. 1899, § 80.]

§ 82. **Conflicts adjusted.** If the provisions of any code, chapter or article, conflict with or contravene the provisions of any other code, chapter or article, the provisions of each code, chapter or article must prevail as to all matters in question arising thereunder out of the same subject matter. [Code '77, p. 900, § 17; R. C. 1899, § 81.]

§ 83. **Secretary of state authorized to arrange statutes, etc.** In the publication of codes and general statutes the secretary of state has power without altering the general plan to renumber and readjust sections, chapters, articles and subdivisions, and also to place and distribute the general statutes not now embraced in the codes in the same under the appropriate chapter or other heading. [Code '77, p. 900, § 18; R. C. 1899, § 82.]



## ARTICLE 5.—ENGROSSING AND ENROLLING BILLS.

§ 84. **By contract.** The secretary of state shall, not less than sixty nor more than seventy-five days, before the meeting of the legislative assembly in regular session, give notice by advertising for three successive weeks, in a newspaper at the seat of government, that sealed bids will be received for the engrossing and enrolling of all bills passed by each house of the legislative assembly. The work to be done at a fixed price per folio, the engrossing to be done on typewriter, enrolling to be done with pen and ink. The services to be performed under the direction, and in the time set by, and to the satisfaction of, the committees of the senate and house of representatives, or their agent. Upon the day set in the advertisement, which shall not be less than thirty days before the meeting of the legislative assembly, the bids shall be opened by a board consisting of the governor, secretary of state and state auditor. [1901, ch. 83, § 1.]

§ 85. **Bids to be accompanied by certified check.** No bids shall be considered unless accompanied by a certified check in a sum to be named by the secretary of state, such check to be security that the successful bidder shall enter into a contract, and shall give a bond, with sureties to be approved by said board before mentioned, for the proper performance of the work. No bid shall be considered from a person not a bona fide resident of this state. Upon opening of the bids the board shall award the contract to the lowest responsible bidder and enter into a contract with him for the performance of the work, subject to the conditions herein above set forth; provided, further, that nothing in this article shall prevent the awarding of separate contracts for the engrossing and enrolling provided for herein, if deemed advantageous to the state by such board. [1901, ch. 83, § 2.]

## CHAPTER 3.

## EXECUTIVE DEPARTMENT.

## ARTICLE 1.—THE GOVERNOR.

§ 86. **Powers and duties of governor.** In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers.
2. He is to see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedies as the law allows. If the remedy is imperfect, acquaint the legislative assembly therewith at its next session.
3. He is to make appointments and fill vacancies as required by law.
4. He is the sole official organ of communication between the government of this state and the government of any other state of the United States.
5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state, and may employ such additional counsel as he may deem expedient.
6. He may require the attorney general or state's attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.
7. He may require the attorney general to aid any state's attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the penitentiary, or of any person who has committed or who is charged with the commission of an offense punishable with death.

9. The duty of the governor respecting fugitives from justice is prescribed by the code of criminal procedure.

10. He must issue patents for land as prescribed by the provisions of this code.

11. He must discharge the duties of a member of the following state boards: Equalization; university and school lands; trustees of public property; state historical society; state auditing board; state banking board; state board of pardons; high school board, and trustees of the normal schools.

12. He has such other powers and must perform such other duties as are or may be devolved upon him by law. [R. C. 1895, § 83; 1901, ch. 33; 1905, ch. 25, § 1; 1905, ch. 165, § 1.]

§ 87. **Records in office.** The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. An account of all his official expenses and disbursements including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

3. A register of all appointments made by him, with date of commission, names of appointees and predecessors.

These records and the originals of all applications, petitions, recommendations and reports therein mentioned shall be preserved in the office of the governor; but whenever any application for appointment to office is refused by him, he may in his discretion return the papers relating to the application. [R. C. 1895, § 84.]

§ 88. **Persons acting as governor.** Every provision of the laws of this state in relation to the powers and duties of the governor, and in relation to the acts and duties to be performed by others towards him extends to the persons performing for the time being the duties of governor. [R. C. 1895, § 85.]

§ 89. **Salary of governor.** The annual salary of the governor, to include all services rendered ex officio as member of any board or commission, as now required or which may be by law devolved upon him, is three thousand dollars. [R. C. 1895, § 86.]

#### ARTICLE 2.—THE LIEUTENANT GOVERNOR.

§ 90. **Duties of lieutenant governor.** The duties of the lieutenant governor are as prescribed in the constitution. [R. C. 1895, § 87.]

§ 91. **Salary of lieutenant governor.** The lieutenant governor shall receive an annual salary of one thousand dollars, and when he acts as governor, he is entitled to receive during the time he so acts the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled as lieutenant governor to any other compensation. [1903, ch. 93, § 1; R. C. 1895, § 88.]

§ 92. **President pro tem, to act as, when.** In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office or the disability of the lieutenant governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted or the disability removed, shall devolve upon the president pro tempore of the senate; and when presiding over any meeting of the senate, all the powers and duties of the office of lieutenant governor shall devolve upon the president pro tempore of the senate. [1891, ch. 84, § 1; R. C. 1899, § 89.]

## ARTICLE 3.—THE SECRETARY OF STATE.

§ 93. **Custody of records.** The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution.
2. Of all the acts and resolutions passed by the legislative assembly.
3. Of the journals of the legislative assembly.
4. Of the great seal.
5. Of all books, records, deeds, parchments, maps and papers kept or deposited in his office pursuant to law. [R. C. 1895, § 90.]

§ 94. **Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1. To attend every session of the legislative assembly for the purpose of receiving bills and resolutions therefrom, and to perform such other duties as may devolve upon him by resolution of the two houses, or either of them.
  2. To keep a register of and attest the official acts of the governor.
  3. To affix the great seal with his attestation to commissions, pardons and other public instruments to which the official signature of the governor is required.
  4. To record in proper books all conveyances made to the state and all articles of incorporation filed in his office.
  5. To receive and record in proper books the official bonds of all state officers, from whom bonds are required by law, including his own, and then deliver the originals to the state treasurer, excepting the bond of the state treasurer, of which he shall remain the custodian.
  6. To take and file in his office receipts for all books distributed by him and to direct the county auditor of each county to do the same.
  7. To certify to the governor the name of any person who has received at any election the highest number of votes for any office the incumbent of which is commissioned by the governor.
  8. To furnish on demand to persons paying the fees therefor a certified copy of all or any part of any law, record or other instrument filed, deposited or recorded in his office.
  9. To keep a fee book in which must be entered all the fees, commissions and compensation of whatever nature or kind by him earned, collected or charged, with the date, name of payor, paid or unpaid and the nature of the services in each case, which book must be verified annually by his affidavit entered therein.
  10. To file in his office descriptions of the seals in use by the different state officers, and to furnish such officers with new seals when they may be required.
  11. To discharge the duties of a member of the following state boards: State board of canvassers; trustees of public property; university and school lands; commissioners of public printing; state banking board; state historical society; state board of auditors; and to perform such other duties as are now or may be hereafter prescribed by law.
  12. To report to the governor at the time prescribed by law for other state officers to report all moneys received from any source for services performed and accompany such report with a detailed statement under oath of the manner in which the appropriations for his office have been expended.
  13. He must distribute the bound volumes of the decisions of the supreme court as provided in section 469. [1897, ch. 126, § 47; R. C. 1899, § 91; 1901, ch. 33: 1905, ch. 165.]
- § 95. **Distribution of laws, resolutions and journals.** Immediately after the laws, resolutions and journals of the legislative assembly are bound he shall distribute the same to the persons entitled thereto under the provisions of article 4 of chapter 2 of this code. [R. C. 1895, § 92.]

§ 96. **To mark books distributed.** The secretary of state must indelibly mark each book distributed to officers of this state, except members of the legislative assembly, with the name of the county to which, and the official designation of the officer to whom the same is sent, and such book shall remain the property of the state and must be by the officers receiving them delivered to their successors. [R. C. 1895, § 93.]

§ 97. **To receive, keep and distribute supplies.** It is the duty of the secretary of state to receive and keep the supplies and articles purchased by the commissioners of printing for the legislative assembly and state officers, and he shall distribute the same from time to time as required, on the requisition of the proper state or legislative officer, taking a receipt therefor and filing such requisition in his office. He must keep a book to be known as a book of supplies in which he must enter a complete list of all stationery, books, articles or other supplies furnished him by such board, making a separate list of each class of articles, and all purchases made by the board, the amount and cost of each article and the amount and cost of each article furnished each officer or board and each member and officer of the legislative assembly. He must embody in his report to the legislative assembly a statement showing the amount of supplies purchased and disposed of as aforesaid. [R. C. 1895, § 94.]

§ 98. **Fees.** The secretary of state for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record or other document or paper on file in his office, twenty-five cents per folio.
2. For affixing his certificate and seal to any document, one dollar.
3. For affixing his signature and seal without a certificate, fifty cents.
4. For filing articles of incorporation for domestic corporations, for profit, five dollars; other domestic corporations, two dollars.
5. For filing and recording articles of incorporation of foreign corporations intending to do business in this state, twenty dollars.
6. For filing and recording certificates of appointment of attorney, five dollars.
7. For issuing a certificate of corporate existence of domestic corporations, three dollars.
8. For recording official bonds, two dollars.
9. For each commission or other document, signed by the governor and attested by the secretary of state, except pardons and military commissions, three dollars.
10. For each patent of land issued by the governor, if for one hundred and sixty acres of land or less, one dollar, and for each additional one hundred and sixty acres of land or fraction thereof, one dollar.
11. For searching records and archives of the state, one dollar.
12. For filing and recording notice of removal of place of business, three dollars.
13. For filing certificate of increase or decrease of capital stock, three dollars.
14. For issuing certificate of increase or decrease of capital stock, three dollars.
15. For filing a certificate of continuance of existence of a corporation, three dollars.
16. For issuing such certificate, three dollars.
17. For recording miscellaneous records, papers or other documents, twenty-five cents per folio, and for filing any paper not otherwise provided for, one dollar. But no member of the legislative assembly, or state, or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his

official duties. All fees must be paid in advance, and when collected must be paid into the state treasury at the end of each month and placed to the credit of the salary fund. [R. C. 1899, § 95; 1901, ch. 93.]

§ 99. **Salary of secretary of state.** The annual salary of the secretary of state, to include all services rendered ex officio as member of any boards or commission as now required, or which may be by law hereafter devolved upon him, is two thousand dollars. [R. C. 1895, § 96.]

§ 100. **Official bond.** The secretary of state shall give a bond to the state in the sum of ten thousand dollars. [1890, ch. 192, § 1; R. C. 1899, § 97.]

#### ARTICLE 4.—THE STATE AUDITOR.

§ 101. **Duties of.** It is the duty of the state auditor:

1. To superintend the fiscal affairs of the state.
2. To report to the governor on or before the fifteenth day of November next preceding each regular session of the legislative assembly a statement of the funds of the state, its revenues, of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriation and such as must be provided for by a new statute and suggesting the means from which such expenditures are to be defrayed.
3. To accompany his biennial report with tabular statements showing the amount of each appropriation for the two preceding fiscal years, the amount expended and the balance, if any; also showing the amount of revenue chargeable to each county for such years, the amount paid and the amount unpaid or due therefrom.
4. When requested, to give information in writing to either house of the legislative assembly, relating to the fiscal affairs of the state or to the administration of his office.
5. To suggest measures for the improvement and management of the public revenue.
6. To keep and state all accounts in which the state is interested.
7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation.
8. To keep an account between the state and state treasurer, and charge the state treasurer therein with the balance in the treasury when he came into office and with all money received by him and credit him with all warrants drawn on and paid by him.
9. To keep a registry of warrants showing the fund upon which they are drawn, the number, in whose favor, for what issued, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered, and to register all orders or certificates drawn upon the state treasurer.
10. To audit all claims against the state, the payment of which is authorized by law.
11. To examine and settle the accounts of all persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipts therefor to give such person a release, and charge the treasurer with such amount.
12. To require, in his discretion, any person presenting an account for settlement to be sworn before him, and to answer orally or in writing as to any facts relating thereto.
13. To require all persons who have received any moneys belonging to the state, and who have not accounted therefor to settle their accounts.

14. To inspect, in his discretion, the books of any person charged with the receipt, safe keeping or disbursement of public moneys.

15. To require at such times and in such forms as he may designate all persons, who have received money or securities or who have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him, and all such persons must render such statements when so required by said auditor.

16. To direct and superintend the collection of all moneys due the state and institute suits in the name of the state for all official delinquencies in relation to the assessment, collection and payment of the revenue, and against persons who by any means have become possessed of public moneys or property and who fail or neglect to pay for or deliver the same, and against all persons indebted to the state.

17. To draw warrants on the state treasurer for the payment of money directed by law to be paid out of the treasury; which warrants shall be numbered consecutively in the order in which they are drawn; but no warrants shall be drawn unless authorized by law, nor unless there are funds in the treasury applicable to the payment thereof to meet the same; provided, that in case of emergency, and in anticipation of taxes already levied and in process of collection, the auditor, with the advice and consent of the governor and treasurer, may issue warrants in payment of duly authorized vouchers. Every warrant must be drawn upon the fund out of which it is payable and specify for what it is drawn and when the liability accrued.

18. To furnish the state treasurer monthly with a list of all warrants drawn upon the treasury, specifying the amount and number of each warrant and the name of the person in whose favor it is drawn.

19. To authenticate with his official seal all drafts and warrants drawn by him and all copies of papers issued from his office.

20. To discharge the duties of a member of the following state boards: Equalization; state canvassers; trustees of public property; university and school lands; state auditing board; state historical society; state board of auditors, and commissioners of public printing, and to perform such other duties as are or may be prescribed by law. [R. C. 1895, § 98; 1901, chs. 33, 211; 1905, ch. 25, § 1.]

Auditor may require receipts attached to vouchers before issuing warrants. *Sawyer v. Mahew*, 10 S. D. 18, 71 N. W. 141.

**§ 102. Special duties connected with school fund.** The state auditor must keep a separate account of the school fund and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must on or before the third Monday in February, May, August and November of each year certify to the superintendent of public instruction the amount of the state tuition fund; he shall also at the same time make a statement to such officer of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment and the sources from which the same accrued, and he shall also perform such duties and draw such warrants in reference to the school fund of the state as now are or hereafter may be prescribed by law. [R. C. 1895, § 99.]

**§ 103. Proceedings against defaulters.** Whenever any person has received moneys or has moneys or other personal property which belongs to the state by escheat or otherwise, or has been intrusted with the collection, management or disbursement of any moneys, bonds or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to and make settlement with the state auditor within the time prescribed by law, or when no particular time is specified, fails to render such account and make such settlement, or who fails to pay into the state treasury any money belonging to the state upon being required so to do by the state auditor within twenty days after such request, the state auditor must state

an account with such person, charging interest at the rate of twelve per cent per annum from the time of the failure; a copy of which account shall be prima facie evidence in any suit of the things therein stated; but in case the state auditor cannot for want of information state an account, that fact may be alleged and in such case the amount of money or other property which is due or belongs to the state may be stated generally. [R. C. 1895, § 100.]

§ 104. **To have access to all state offices.** The state auditor shall have access to all state offices during business hours for the purpose of inspecting such books, papers and accounts therein as may concern his duties. [R. C. 1895, § 101.]

§ 105. **Legislative inspection of books.** Whenever required he shall submit his books, accounts and vouchers to the inspection of the legislative assembly or any committee thereof appointed for that purpose. [R. C. 1899, § 102.]

§ 106. **Must transmit lists of taxable lands.** He shall transmit to the county auditor of each county, on or before the fifteenth day of March of each year, a list of lands within such county that shall have become subject to taxation during the preceding year, agreeable to the information by him procured from the land offices in the state. [1897, ch. 127; R. C. 1899, § 103.]

§ 107. **Transmit forms and instructions to auditors.** He shall from time to time prepare and transmit to the county auditor of each county such general forms and instructions in conformity with the laws in force, as, in his opinion, may be necessary to secure uniformity in levying, charging, collecting and accounting for the public revenue; and assessors and treasurers shall observe such forms and instructions. [R. C. 1899, § 104.]

§ 108. **May remit tax penalties.** The auditor is authorized to remit any penalty for the nonpayment of taxes when satisfied that the same is improperly charged, or that such penalty occurred in consequence of the negligence or error of any officer required to do any duty relative to the levy and collection of such taxes; and may from time to time correct all errors which he shall discover in the taxes assessed in any county. [R. C. 1899, § 105.]

§ 109. **Salary.** The annual salary of the state auditor, to include all services rendered as member of any board or commission as now required, or which may be by law hereafter devolved upon him, is two thousand dollars, and all fees received by him shall be paid into the state treasury at the end of each month. [R. C. 1895, § 106.]

§ 110. **Official bond.** The state auditor must execute an official bond in the sum of twenty thousand dollars. [R. C. 1895, § 107.]

#### ARTICLE 5.—THE STATE TREASURER.

§ 111. **Duties of.** It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.
2. To register the orders or certificates of the state auditor delivered to him when moneys are paid or to be paid into the treasury.
3. To deliver to each person paying money into the treasury and to the state auditor a duplicate receipt showing the amount, the source from which the money accrued and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.
4. To pay warrants drawn by the state auditor out of the funds upon which they are drawn and in the order in which they are presented.
5. Upon the payment of any warrant to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.
6. To keep an account of all moneys received and disbursed.
7. To keep separate accounts of the different funds. He shall receive in payment for public dues the warrants drawn by the state auditor in con-

formity with law, or redeem the same, if there is money in the treasury appropriated for that purpose, and on redeeming such warrant or receiving same in payment he shall cause the person presenting such warrant to indorse the same, and the treasurer shall write on the face thereof "Redeemed," and shall enter in his book in separate columns the number of such warrant, its date, amount, and the name of the person to whom payable, date of payment and the amount of interest, if any, paid thereon.

8. To report to the state auditor on the last day of each month the amount disbursed for the redemption of bonds, and any payment of warrants during the month, which report must show the date and number of such bonds and warrants, the funds out of which they were paid and the balance in cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislative assembly or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

10. To report to the governor, on or before the twentieth day of November each year, the exact balance in the treasury to the credit of the state; said report shall show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the fiscal year, which year shall end on October thirty-first; said report shall also show where the funds of the state are deposited and shall be certified by the state treasurer and approved by the governor.

11. To authenticate with his official seal all writings and papers issued from his office.

12. To discharge the duties of a member of the board of state canvassers, equalization and of the board of commissioners of public printing, and to perform such other duties as are or may be prescribed by law.

13. To keep a book in which he must enter all warrants paid, giving the names of the owners, and the number and amounts of the warrants.

14. To keep all moneys belonging to the state in his own possession until disbursed according to law. But nothing in this subdivision prohibits him from making special deposits for the safe keeping of public moneys.

15. To post at the door upon the outside of his office a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the preceding six months.

16. To keep his books open at all times for inspection of the governor, the state auditor, the public examiner and any committee appointed to examine them by either house of the legislative assembly.

17. To report annually to the governor in writing and under oath the amount of all moneys in his hands to the credit of each fund, and the place where the same is deposited, and the number and amount of every warrant paid or redeemed by him during the preceding twelve months. The governor shall verify said report, and cause the same to be immediately published in at least one daily paper printed at the seat of government. [1893, ch. 96, §§ 1, 2, 3, 4, 5, 7; R. C. 1895, § 108; 1903, ch. 187.]

**§ 112. To keep permanent records.** The state treasurer shall keep as permanent records of the state, a cash book in which shall be entered the amount of all moneys received or paid out, showing from whom received or to whom paid, on what account, fund or appropriation; a ledger in which shall be kept an account with each fund and appropriation; a daily balance book in which shall be shown the amount in state depositaries and in cash on hand; and such other books as the state examiner shall prescribe. All checks and drafts, deposit slips, bank books and other books used in the transactions of the state treasurer in his connection with state business, shall be furnished by the state and be kept as the permanent records in his office. [1901, ch. 174.]



§ 113. **Examination. Suspension of treasurer.** If the state examiner upon examination finds that the books of the state treasurer do not correspond with the amount of funds on hand, or do not show the actual condition of the funds, or if it appears to the state examiner that any moneys belonging to the state have been embezzled, diverted or in any manner taken from the treasury without authority of law, or that the state treasurer has been guilty of negligence in keeping his books or taking care of the public moneys, he must certify the fact to the governor; who upon the receipt of such certificate must forthwith take possession of all books, moneys, papers and other property belonging to the state, which have come into the possession of such state treasurer by virtue of his office, or otherwise, and must temporarily suspend him from his office of state treasurer. [1893, ch. 96, § 8; R. C. 1899, § 109.]

§ 114. **Suspension and appointment by governor.** The governor must thereupon, with the auditor and public examiner, examine the books, papers and all matters connected with the office of the state treasurer, so suspended, and if it appears to the said governor, state auditor and state examiner on such examination, that such state treasurer has embezzled or converted to his own use the public moneys, or has been negligent in keeping his books, or in taking care of public moneys, the governor on the certificate of said state auditor and said state examiner to that effect may in his discretion remove and appoint another person to fill the place of said suspended state treasurer, and such person so appointed must execute an official bond and enter upon the office of state treasurer as provided by law. The governor must report all his acts done under this and the next preceding section to the next succeeding legislative assembly, and the state treasurer so appointed holds his office until the suspended state treasurer is reinstated, or his successor is elected and qualified. [1893, ch. 96, § 9; R. C. 1895, § 110.]

Removals may be made, how. *Wishek v. Becker*, 10 N. D. 63, 84 N. W. 590; *Territory v. Cox*, 6 Dak. 501.

§ 115. **Bredeemed warrants deposited with auditor.** He shall on the last day of March, June, September and November deposit in the office of the state auditor all warrants by him redeemed or received in payment at the treasury, and take the auditor's receipt therefor. [1890, ch. 183, § 11; R. C. 1899, § 111.]

§ 116. **Prohibited from purchasing warrants or accounts.** He shall in no case purchase or receive any warrants redeemable at the treasury or any audited account at a less value than is expressed therein; nor shall he receive any fees or reward, aside from his annual salary, for transacting any business connected with the duties of his office. [R. C. 1899, § 112.]

§ 117. **Delinquencies, accountable for.** If in any instance the treasurer shall neglect to call to account any delinquent, whereby the public revenue may suffer a loss, he shall be held and deemed accountable for the sums due by such delinquents to all intents and purposes the same as if the funds had actually been paid into his office. [R. C. 1899, § 113.]

§ 118. **To register state bonds.** The state treasurer upon presentation to him of any bond issued by, or assumed by the state of North Dakota, and upon application to him in writing by the owner of such bond for the registration thereof shall register such bond (first detaching and canceling all unmatured coupons, in case such bond is a coupon bond), in the name of the said owner in a book which he shall keep for that purpose; and after such registration of ownership as aforesaid, duly indorsed by the treasurer upon the bond so registered, no transfer of ownership of such bond shall be deemed valid unless registration of such transfer shall have been made by the state treasurer as aforesaid; and such bond shall continue subject to registration and to transfer at the option of the owner. [R. C. 1895, § 114.]

§ 119. **Registration vests ownership.** The registration of bonds, as provided for in the last section, shall vest the ownership thereof, both principal

and interest, in the person in whose name the last registration is made; and the state treasurer shall remit in current exchange on New York City to the person in whose name the last registration is made the interest on such bonds as it from time to time becomes due, and the principal thereof at maturity. [1891, ch. 38, § 2; R. C. 1899, § 115.]

§ 120. **Fee for registry.** For each registration of ownership or transfer of ownership made as herein provided the treasurer shall be entitled to receive a fee of fifty cents for each bond so registered; provided, that all fees so received shall be covered into the general fund of the state. [1891, ch. 38, § 3; R. C. 1899, § 116.]

§ 121. **Salary of.** The annual salary of the state treasurer, to include all services rendered ex officio as member of any board or commission as now required, or which may hereafter be required of him by law, is two thousand dollars. [R. C. 1895, § 117.]

§ 122. **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 for by the state. [1893, ch. 96, § 10; R. C. 1899, § 118; 1905, ch. 56.]

#### ARTICLE 6.—THE ATTORNEY GENERAL.

§ 123. **Duties of.** The duties of the attorney general shall be:

1. To appear for and represent the state before the supreme court in all cases in which the state is interested as a party.

2. To institute and prosecute all actions and proceedings in favor of or for the use of the state, which may be necessary in the execution of the duties of any state officer.

3. To appear and defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state or of the United States.

4. To consult with and advise the several state's attorneys in matters relating to the duties of their office; and when in his judgment the interests of the state require it, he shall attend the trial of any party accused of crime and assist in the prosecution.

5. To consult with and advise the governor and all other state officers, and give, when requested, written opinions upon all legal or constitutional questions relating to the duties of such officers respectively.

6. To prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.

7. To give written opinions, when requested by either branch of the legislative assembly, upon legal questions.

8. To enforce the proper application of funds appropriated to the public institutions of the state, prosecute breaches of trust in the administration of such funds, and when necessary prosecute corporations for failure or refusal to make the reports required by law.

9. To keep in proper books a register of all cases prosecuted or defended by him, or his assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties, and reported to him, as provided in section 2494 of this code, and to deliver the same to his successor in office.

10. To keep in his office a book in which he shall record all the official opinions given by him during his term of office, which book shall be by him delivered to his successor in office.

11. To pay into the state treasury all moneys received by him for the use of the state.

12. To discharge the duties of a member of the following state boards: State auditing board; state banking board; state board of auditors; equalization; state historical society; board of pardons; university and school lands.

13. To attend to and perform any other duties which may from time to time be required by law. [1890, ch. 21, § 4; R. C. 1895, § 119; 1901, ch. 24.]

Where state is nominal party attorney general need not appear. *State v. Carey*, 2 N. D. 36, 49 N. W. 164.

Tax cases included. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

Prosecutes official bonds. Request of governor presumed. *State v. Welbes*, 11 S. D. 86, 75 N. W. 820.

District court cannot appoint attorney to appear in supreme court. *State v. Marshall County*, 14 S. D. 149, 84 N. W. 775.

§ 124. **Annual report.** He shall make an annual report to the governor on or before the fifteenth day of November, stating the number, character, condition and result of the actions prosecuted or defended by him in behalf of the state, the cost of prosecuting or defending each action and the amount of fines and penalties collected. He shall also direct attention to any defect in the practical operations of the laws relating to revenue and criminal offenses, and suggest such amendments as in his judgment are necessary to subserve the public interests. [1890, ch. 21, § 5; R. C. 1899, § 120.]

§ 125. **Salary of.** The annual salary of the attorney general, to include all services rendered ex officio as member of any board or commission as now required, or which may hereafter be devolved upon him by law, is two thousand dollars. And in addition thereto he shall be paid all his necessary expenses in attending court upon official business, to be audited and paid as provided by law in other cases. [R. C. 1895, § 121.]

§ 126. **Assistant, how appointed.** The attorney general may appoint an assistant, whose appointment shall be in writing and filed in the office of the secretary of state. Such assistant attorney general shall have the same powers and authority as the attorney general. He shall before entering on the duties of his office take and subscribe upon his appointment the official oath prescribed by law. [1889, ch. 17, § 1; R. C. 1895, § 122.]

#### ARTICLE 7.—THE COMMISSIONER OF AGRICULTURE AND LABOR.

§ 127. **Duties of.** It shall be the duty of the commissioner of agriculture and labor to collect, systematize and present in biennial reports to the legislative assembly statistical details relating to all labor departments in the state, such as hours and wages of labor, the estimated number of persons employed by the several industries within the state, the operation of labor saving machinery and its relation to hand labor, a description of the different kinds of labor organizations in existence in this state, and what they have accomplished in favor of the class for which they were organized. Such statistics may be classified as the commissioner of agriculture and labor deems best. [1899, ch. 44, § 1; R. C. 1899, § 123.]

§ 128. **Duty of all officials to furnish certain information. Penalty.** It shall be the duty of all state, county, township and municipal officers to furnish upon the written request of the commissioner of agriculture all the information in their power necessary to assist in carrying out the objects of this article. For the purpose of obtaining statistics relating to manufactures and mining the commissioner of agriculture shall procure in a manner that may seem best to him, the names and addresses of all the manufacturers and mine owners and operators in the state, and shall transmit by mail to each owner, operator or manager of each shop, mill, manufacturing establishment or mine, not later than the first day of July of each year, suitably prepared blanks embodying inquiries into the subjects upon which the commissioner is required or authorized to prepare statistics, which blanks shall be filled out complete and returned to the commissioner not later than the first day of August following. The information so obtained shall be preserved, systematized and tabulated by the commissioner, but no information concerning the business or affairs of any individual, firm, company or corporation shall be

divulged or in any manner made public by the commissioner or any one in the employ of his office, and any violation of this provision shall subject the party violating to a fine of not more than five hundred dollars or to imprisonment of not more than one year, or both such fine and imprisonment. The refusal or neglect of any such owner, operator or manager of any shop, mill, manufacturing establishment or mine to supply the information asked by the commissioner within the time designated shall be construed as a violation of section 129 and shall subject the party so offending to the penalties therein prescribed; provided, that no prosecution shall be begun against such persons for such neglect or refusal until at least twenty days after a second notice and blank shall have been mailed them by the commissioner. [1890, ch. 46, § 2; 1891, ch. 115, § 1; R. C. 1899, § 124.]

**§ 129. Penalty for obstructing commissioner.** Any person who willfully impedes or obstructs the commissioner in the full and free performance of his duties shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten nor more than fifty dollars, or by imprisonment of not less than seven nor more than thirty days in the county jail, or by both. The refusal or neglect of any person for himself or for any person, firm, company or corporation of which he may be a member, or agent, to furnish the information or statistical statement required to be furnished to assessors, shall be construed to be a violation of the provisions of this section, and it is hereby made the duty of the county auditor to report such violation with the names and post office address and place of residence of the violator as furnished him by the assessor to the state's attorney for the county in which such violations occurred, and the state's attorney shall forthwith proceed to enforce the penalty provided in this section against such persons; and he is hereby authorized to subpoena the assessor and such other witnesses as may be necessary, and to introduce the assessor's returns in evidence. [1890, ch. 46, § 3; 1891, ch. 115, § 2; R. C. 1899, § 125.]

**§ 130. Power to send for persons, books and papers.** He shall have power to send for persons, books and papers whenever in his opinion it is necessary, and he may examine witnesses under oath, being hereby authorized to administer the same in the performance of his duty, and the testimony so taken must be filed and preserved in his office. [1890, ch. 46, § 5; R. C. 1899, § 126.]

**§ 131. Duty to promote immigration.** He shall look after and devise means to advance the immigration interests of the state, and to encourage and promote the permanent settlement and improvement of all sections of the state. He shall have charge of the preparation in manuscript, the publication and distribution by mail and otherwise of any and all documents and articles of reading matter designed to convey correct and full information on all matters pertaining to the growth and development of the agricultural, manufacturing, commercial and mining interests of the state. He shall attend to all correspondence relating to immigration and shall do all in his power by letter, by the use of published printed matter and through personal effort to secure the most liberal and extensive advertisement of the resources and opportunities of the state. It shall be his aim to induce the investment of capital in agriculture, in mining and in different industrial and mercantile pursuits, and to facilitate the coming to the state of persons and families seeking permanent location for new homes. He shall procure the most favorable rates of fare obtainable from railroads and other transportation companies for persons coming to the state, and where such persons have formed a colony or party of considerable number, he shall be required to visit them, if necessary, and do all in his power to direct and assist them in making the necessary arrangements for transportation and in reaching the state. [1890, ch. 46, § 8; R. C. 1899, § 127.]

§ 132. **Shall have charge of exhibits.** He shall have charge of any exhibits of the products and resources of the state, which may be made at any fair or exposition held at any point in the United States, and shall have authority to co-operate with any railroad company doing business within the state, and with any persons interested with a view of securing such an exhibit at any fair or exposition held as aforesaid. [1890, ch. 46, § 9; 1899, ch. 44, § 3; R. C. 1899, § 128.]

§ 133. **State statistician.** The commissioner of agriculture and labor shall be the state statistician. It shall be his duty to obtain from assessors and other officers of the organized counties of the state, and to collate and prepare in tabulated form for reference, statistics showing the assessed valuation of all real and personal property, the acreage and yield of all kinds of grain and tame grasses; the number of horses, cattle, sheep and other live stock, and other information pertaining to and showing the condition of the growth, development and resources of the state by counties. [1899, ch. 44, § 2; R. C. 1899, § 129.]

§ 134. **Reports of commissioner. Portions may be given out, when.** The commissioner shall report to the legislative assembly the number of coal mines being operated within the state, the number of tons of coal being mined annually, the number of persons employed in coal mining, the wages paid coal miners and the cost per ton to mine coal at the different mines. The commissioner is hereby authorized to give out to the press of this or other states at any time such parts of any reports in course of preparation as may be sufficiently concluded to admit of publication, or such information regarding the statistics of the state as may in his judgment be of interest or value to the people, the design being to furnish to the people through the press as fresh information regarding the state and its industries and condition as possible without awaiting the official publication through biennial or other reports. [1890, ch. 46, § 11; 1891, ch. 115, § 4; R. C. 1899, § 130.]

§ 135. **Salary of.** The commissioner of agriculture and labor shall receive an annual salary of two thousand dollars. [1890, ch. 47, § 1; R. C. 1895, § 131.]

#### ARTICLE 8.—THE COMMISSIONER OF INSURANCE.

§ 136. **Duties of.** It is the duty of the commissioner of insurance:

1. To see that all laws of this state respecting insurance companies are faithfully executed.

2. To file in his office the articles of incorporation of all insurance companies organized or doing business in this state, and on application to furnish a certified copy thereof.

3. To report in detail to the attorney general any violation of law relative to insurance companies, their officers or agents.

4. To furnish the insurance companies required to make reports to him the necessary blank forms for the statements required.

5. To preserve in permanent form a full record of his proceedings and a concise statement of each company or agency visited or examined.

6. To furnish at the request of any person and on payment of his fees certified copies of any record or paper in his office, when he deems it not prejudicial to the public interests so to do, and to give such other certificates as may be provided by law.

7. To furnish a written report to the governor on or before the fifteenth day of November of each year showing his official acts, the receipts and expenditures of his department during the preceding fiscal year, the condition of the companies doing business in this state and such other information as will exhibit the affairs of his department; which report shall be printed, to the number of five hundred, at the expense of the state, and distributed

among the members of the succeeding legislative assembly, and otherwise as provided by law. Such report must contain only an abstract of the reports of insurance companies.

8. To send a copy of his annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.

9. To communicate on request to the insurance commissioner of any other state any facts which by law it is his duty to ascertain respecting companies of this state doing business within such state.

10. To have an official seal and to employ competent clerks, such clerks to discharge such duties as he may assign, and in case of his sickness or temporary absence from office, his chief clerk shall have authority to sign his name and perform such other duties as are required by law pertaining to the duties of such commissioner of insurance. [R. C. 1895, § 132.]

§ 137. **Fees.** The commissioner of insurance shall charge and collect such fees as are prescribed in chapter 14 of the civil code. [R. C. 1899, § 133.]

§ 138. **Salary.** The annual salary of the commissioner of insurance, to include all services performed by him, is two thousand dollars. [R. C. 1895, § 134.]

§ 139. **Commissioner disqualified, state examiner to act, when.** In case the commissioner of insurance is a director, officer, agent, attorney, a stockholder of or directly interested in any insurance company except as an insured, the examination of such company shall be made by the state examiner, or by some person appointed by him; and no officer or agent of any insurance company doing business in this state shall be deputed to examine the affairs of such company. [R. C. 1895, § 135.]

#### ARTICLE 9.—THE STATE EXAMINER.

§ 140. **Appointment. Qualifications.** There shall be a state examiner who shall be appointed by the governor and confirmed by the senate, who shall hold his office for the term of two years, and until his successor has been appointed and qualified, unless sooner removed as herein provided. The state examiner shall be a skilled accountant, an expert in the theory and practice of bookkeeping, and shall not be an incumbent of any public office in the state, or of any county, municipality or public institution, therein, and shall not own, hold or control any stocks, capital or bonds, or the office of trustee, assignee, officer or employe of any banking, annuity, safe deposit, trust company, moneyed or savings institution or corporation created under the laws thereof, or created under the laws of any other state, or under the laws of the United States. In case of vacancy or death, removal, resignation or otherwise, the governor shall fill the same by appointment. The governor is authorized to remove from office any state examiner who violates, or fails faithfully to discharge the duties of his office, and to appoint his successor, who shall hold office until the end of the next legislative assembly, unless sooner removed as above provided. [1893, ch. 95, § 1; R. C. 1899, § 136; 1901, ch. 170.]

§ 141. **Duties.** 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. [1893, ch. 95, § 2; R. C. 1899, § 137; 1903, ch. 183; 1905, ch. 171.]

§ 142. **Duty to supervise accounts of public institutions.** It shall be the duty of the state examiner to assume and exercise constant supervision over the books and financial accounts of the several public, educational, charitable, penal and reformatory institutions belonging to the state; to prescribe and enforce correct methods of keeping financial accounts of the state institutions by himself or duly appointed deputy, and instruct the proper officer thereof in the due performance of his duty concerning the same; to examine the books and accounts of all public institutions under the control of the state, and of all private institutions with which the state has any dealing, so far only as the same relates to such dealing, once in each six months. [1893, ch. 95, § 3; R. C. 1899, § 138.]

§ 143. **Additional duties.** It shall be his duty to order and enforce a correct and, as far as practicable, uniform system of bookkeeping by state and county treasurers and auditors so as to afford a suitable check upon their mutual actions and insure a thorough supervision and the safety of the state and county funds. He shall have full authority to expose false and erroneous systems of accounting, and when necessary instruct or cause to be instructed the state and county officers in the proper mode of keeping the accounts. It shall be the duty of the state examiner to ascertain the character and financial standing of all present and proposed bondsmen of state and county officers. He shall require county treasurers as often as he shall deem necessary to make verified statements of their accounts, and he shall personally, or by deputy, visit said offices without previous notice to such treasurers, at irregular periods, of at least once a year, or when requested by any board of county commissioners, and make a thorough examination of the books, accounts and vouchers of such officers, ascertaining in detail the various items of receipts and expenditures; and it shall be his duty to inspect and verify the character and amounts of any and all assets and securities held by said officers on public account, and to ascertain the character and amount of any commissions, percentages or charges for services exacted by such officer without warrant of law. He shall report to the attorney general the refusal or neglect of any state or county officer to obey his instructions, and it shall be the duty of said attorney general promptly to take action to enforce compliance herewith. He shall report to the governor the result of his examination, which shall be filed in the executive office, as well as any failure of duty by any financial officers as often as he thinks required by the public interest, and the governor may cause the result of such examination to be published, or at his discretion to take such action for the public securities as the exigencies demand, and if in his opinion the public interest requires it, he may suspend any such officer from further performance of duty, until examination is had, or such security obtained as may be demanded for the protection of the public funds. [1893, ch. 95, § 4; R. C. 1899, § 139.]

Governor may remove delinquent trustees, when. *Territory v. Cox*, 6 Dak. 501.

Governor may suspend but not remove delinquent officer. *State v. Shannon*, 7 S. D. 319, 64 N. W. 175.

§ 144. **Fiscal affairs of counties.** It shall be his duty at the request of the county commissioners of any county in this state to examine and audit, compare and correct any books, records, papers, securities or other documents necessary to be had in any pending settlement of the fiscal affairs, or any necessary correction of the records of any county in this state. He shall have free access to all books, papers, records or other documents of any county in the state, found or deemed to be necessary, and is hereby empowered to take the records of any one county in this state to any other county in this state, when in his judgment it is deemed necessary, to compare and correct the same. And all county officers in this state are hereby required and enjoined to assist said state examiner in the discharge of his duties in

all things which he may require of them as such county officer. [1893, ch. 95, § 5; R. C. 1899, § 140.]

§ 145. **Examination of banks.** It shall be his duty to visit, at least once in each year, without previous notice, each of the banks, banking corporations and savings banks incorporated under the laws of this state, insurance, annuity, safe deposit, loan or trust companies and other moneyed corporations and thoroughly examine into their affairs and ascertain their financial condition. It shall be the duty of such examiner to inspect carefully and verify the validity and amount of the securities held by such institutions, examine into the validity of the mortgages held by savings institutions, and see that the same are duly recorded, and ascertain the amount of any discount or other banking transaction which he may deem foreign to the legitimate and lawful purposes of savings institutions. He shall inquire into, and report any neglect or infringement of the laws governing such banking, annuity, safe deposit, trust companies, moneyed and savings institutions, and for such purposes shall have power to examine the officers, agents and employes thereof, and all persons doing business therewith. He shall forthwith report the condition of such corporation so ascertained to the governor, together with his recommendations or suggestions respecting the same, and the governor may cause the same to be published, or in his discretion take such action as the exigencies may seem to demand. [1893, ch. 95, § 6; R. C. 1899, § 141; 1901, ch. 170.]

§ 146. **Public officers to aid examiner.** All officers of the state and counties of the state and all officers and employes of banking and other institutions mentioned in this article must afford all reasonable facilities for the investigations provided for in this article, and all such officers, managers and employes must make return and exhibit to the examiner under oath in such form and in such manner as he may prescribe, and each and every person so required who shall refuse and neglect to make such return or exhibit, or to make or to give such information as may be required by said examiner, shall be deemed guilty of felony; and if any person in making such exhibit or giving such information or affording any statement required under this article, on his oath, shall knowingly swear falsely concerning the same, he shall be deemed guilty of perjury and punished accordingly. [1893, ch. 95, § 7; R. C. 1899, § 142.]

§ 147. **Obstruction of examiner. Penalty.** Every person who shall willfully obstruct or mislead the state examiner in the execution of his duties as hereby prescribed shall be subject to conviction and punishment therefor in the same manner as is now provided for the conviction and punishment of persons obstructing or hindering any officers, ministerial, judicial, or executive, under the laws and authority of this state. And said examiner shall have full power and authority for the various purposes named to examine any books, papers, accounts, bills, vouchers and other documents, or property of any or all of the aforesaid state institutions, moneyed, banking, insurance, annuity, safe deposit, trust company and moneyed or insurance corporations and county or state officers and custodians of any county or state fund; also to examine under oath any or all trustees, managers, officers, or employes or agents of said institution and moneyed and savings corporations and other persons in the control of or doing business with said moneyed or savings institutions, and the county and state officers and custodians of county and state funds aforesaid. Said examiner is empowered to issue subpoenas and administer oaths in the performance of his duties, and any person refusing access by said examiner to any such books or papers, or any trustee, manager, officer, agent, clerk, employe, or other person aforesaid, who shall obstruct such access or refuse to furnish any required information, or who shall in any manner hinder a thorough examination required by this article of the officers, state, moneyed, banking, insurance, annuity, safe



deposit, trust companies and savings institutions, or pertaining to the county and state officers aforesaid, shall be deemed guilty of felony and shall be liable on conviction to a fine of one thousand dollars or imprisonment in the penitentiary for the term of one year. And when necessary, the state examiner shall employ stenographers or clerical help, the expense incurred therefor to be collected by the examiner from the county or corporation in interest. [1893, ch. 95, § 8; R. C. 1899, § 143.]

Refusal to testify before state examiner not contempt, when. *In re Camp*, 7 N. D. 69, 72 N. W. 912.

§ 148. **Reports, contents of.** The state examiner shall report to the governor the result of his examinations on the first Monday in November of each year; he must also make a report upon any particular matter at any time when required by the governor, and shall embody in such report an abstract of the condition and statistics of the several state institutions and the county and state finances ascertained by him, which report shall be printed to the number of five hundred copies and shall be included with other official reports in the volume of executive documents. The state examiner shall perform such other duties as shall be prescribed by law. [1893, ch. 95, § 9; R. C. 1899, § 144.]

§ 149. **Special state examiner.** The governor may, at such times as he may consider it for the best interests of the state, appoint a special state examiner to examine any of the state institutions or public offices. Such special state examiner shall have all the powers and authority that the state examiner now has in making such examinations, and shall also examine into and report upon such other matters connected with the state institutions and public offices as the governor may direct. He shall receive as compensation for such services the sum of ten dollars per day for the time actually employed upon such examinations, and his actual traveling expenses, to be paid upon vouchers approved by the governor, in the same manner as state officers' salaries are now paid. [1899, ch. 151; R. C. 1899, § 144a; 1901, ch. 171.]

§ 150. **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 article, he shall be deemed guilty of felony. [1893, ch. 95, § 10; R. C. 1899, § 145; 1901, ch. 170; 1905, ch. 170.]

§ 151. **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. [1893, ch. 95, § 11; R. C. 1899, § 146; 1905, ch. 169.]

## CHAPTER 4.

## PUBLIC BOARDS.

## ARTICLE 1.—BOARD OF UNIVERSITY AND SCHOOL LANDS.

§ 152. **Board, how constituted.** The governor, secretary of state, state auditor, attorney general and superintendent of public instruction shall constitute the board of university and school lands. The governor shall be president; the secretary of state, vice president and the superintendent of public instruction, secretary thereof. In the absence of the superintendent of public instruction at any meeting of the board the deputy superintendent of public instruction shall act as secretary, but shall not be entitled to a vote. Such board, when acting as such, must act personally; no member can be represented on such board by any assistant or clerk. [1893, ch. 118, § 2; R. C. 1895, § 169.]

§ 153. **Board, powers of.** Subject to the provisions of article 9 of the constitution and the provisions of this article, such board shall have the full control of the selecting, appraisement, rental, sale, disposal and management of all school and public lands of the state, including the real property donated to the territory of Dakota under the provisions of chapter 104 of the laws of 1883, except such as has been sold, and the investment of the permanent funds derived from the sale thereof, or from any other source, and shall have power to appoint a competent person to act as the general agent of the board in the performance of all its duties pertaining to the selection, sale, leasing or contracting in any manner allowed by law, and the general control and management of all matters relating to the care and disposition of the public lands of the state, all of whose official acts shall be subject to the approval and supervision of the board. The title of such agent shall be "commissioner of university and school lands," and before entering upon his duties as such he shall take the oath prescribed for civil officers and give a bond in the penal sum of ten thousand dollars, with not less than two sureties, to be approved by the board, and recorded in the office of the secretary of state and filed, when recorded, in the office of the state treasurer. [1893, ch. 118, § 3; R. C. 1899, § 170.]

§ 154. **Meetings of board.** Such board shall meet at the office of the commissioner on the last Thursday of each month, at ten o'clock in the forenoon. Special meetings of the board may be held at any time at the written call of the president or any two members of the board. Any three members of the board shall constitute a quorum. [1893, ch. 118, § 4; R. C. 1899, § 171.]

§ 155. **Board to invest school funds.** Such board shall have the power and it is made its duty from time to time to invest any money belonging to the permanent funds of the common schools, university, school of mines, reform school, agricultural college, and school for the deaf and dumb, normal schools, and all other permanent funds derived from the sale of public lands or from any other source, in bonds of school corporations within the state, bonds of the United States, bonds of the state of North Dakota, or in 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 county board of appraisal of the respective counties as provided for in section 167; provided, that at least one-fourth of the whole amount of the several permanent funds aforesaid as computed by the commissioner of university and school lands at the end of each fiscal year, shall

be set apart for investment in first mortgages on farm lands in this state, and only in the manner following, to wit:

1. The said first mortgages and each of them, shall run for a period of time and not to exceed ten years and that the funds so invested shall bear interest at the rate of six per cent per annum, said interest together with ten per cent of the whole amount of the principal to be paid in annual installments and the interest when paid shall be covered into and become a part of the interest and income fund.

2. First mortgage loans shall only be made upon cultivated lands within the state, and to persons who are actual residents thereof. And in no cases on lands of which the appraised value is less than seven dollars and fifty cents per acre, and in sums not more than one thousand dollars to any person, firm or corporation.

3. All or any of said mortgages may be satisfied at any time after five years from the date when made on payment of the full amount due thereon. All proceedings in regard to investments in first mortgages as provided in this chapter, shall conform to and be governed by the laws of the state of North Dakota in such case made and provided. Said board of university and school lands shall not purchase or approve the purchase of any bonds or mortgages except at a legal session thereof, nor unless every member of the board is notified by the secretary of said board in time to be present at such meeting, and notified also that the question of purchasing or acting on a proposition for the purchase of certain bonds or mortgages is to be considered at the meeting, nor unless a majority of all the members vote in favor of such purchase, and the vote on the purchase of every bond and mortgage shall be taken by the yeas and nays and shall be duly recorded in the books of the board. [1897, ch. 128; R. C. 1899, § 172.]

§ 156. **Records to be kept by secretary.** The secretary shall enter in a suitable book kept for that purpose a full and correct record of all the proceedings of said board at each session thereof, which record when approved shall be signed by the president or presiding officer of the meeting and the secretary. [1893, ch. 118, § 6; R. C. 1899, § 173.]

§ 157. **Treasurer custodian of funds.** All moneys belonging to the permanent funds of the common school and other public institutions derived from the sale of any public lands or from any other source shall be paid to and held by the state treasurer, and be subject to the order of such board, and shall be paid over to the order of the board for investment as provided in section 155 of this article, whenever the board requires the same for such investment. The state treasurer shall also be the custodian of all bonds, notes, mortgages and evidences of debt arising out of the management of the permanent funds derived from the sale of any of the public lands of the state or from any other source. [1893, ch. 118, § 7; R. C. 1899, § 174.]

§ 158. **Duty of state treasurer.** It shall be the duty of the state treasurer, from time to time as the same becomes due, to collect all moneys due and owing on any and all of the securities held by him for investment or for permanent funds, and from time to time, whenever required by the board, to make report of the amount of such collections to the board and a duplicate of the same to the state auditor. If any such moneys shall remain unpaid for thirty days after the same shall become due and payable, he shall make report in detail of all such unpaid amounts to the board, who shall place the matter in the hands of the attorney general for collection whenever they shall deem it for the best interests of the state so to do, whose duty it shall be to proceed to collect the same by civil action, to be brought and prosecuted in the name of the state. [1893, ch. 118, § 8; R. C. 1899, § 175; 1901, ch. 193.]

§ 159. **Mortgage loans foreclosure. Assignments.** Mortgage loans made under the provisions of this chapter may be foreclosed either by action or advertisement, in the same manner and upon the same notice as required in

other real estate foreclosures. When foreclosure is made by action, said action shall be brought and prosecuted in the name of the state; provided, that the board of university and school lands may, and it is hereby authorized and empowered to assign any or all of said mortgages, whenever in the judgment of said board it will be for the best interests of the state so to do; provided, however, that said board shall not accept as a consideration for said assignment any amount less than the principal and interest due upon said mortgage or mortgages. Such assignments when made shall be executed by the governor and attested by the secretary of state with the great seal of the state of North Dakota attached. [1893, ch. 118, § 8; R. C. 1899, § 175; 1901, ch. 193.]

§ 160. **Manner of investing permanent funds.** In the investment of the permanent funds under its control such board shall authorize the state auditor to draw his warrant on the state treasurer, payable out of the proper fund, for the purchase of the bonds or mortgages, which warrant, previous to delivery, shall be registered by the state treasurer in a book provided for that purpose. [1893, ch. 118, § 9; R. C. 1899, § 176.]

§ 161. **Incidental expenses of board, how paid.** The necessary incidental expenses of the board shall be paid out of the state treasury, and upon satisfactory vouchers therefor the state auditor shall issue his warrant for the same. [1893, ch. 118, § 10; R. C. 1899, § 177.]

§ 162. **Appropriation for interest.** There is hereby annually appropriated such sums as shall be found necessary for the expenses of purchase, and payment of accrued interest at the time of the purchase, of investment bonds or mortgages for the permanent funds under the control of said board, payable from the respective fund for which said purchase is made. [1893, ch. 118, § 11; R. C. 1899, § 178.]

§ 163. **Term of office of commissioner.** The first term of office of the commissioner provided for in this article shall be for three years from the date of his appointment and until his successor is appointed and qualified, and after the expiration of the first term, all succeeding terms shall be two years, and until his successor is appointed and qualified, subject to removal by the board. In case of vacancy by death, removal, resignation or any other cause, the board shall fill the same by appointment. [1893, ch. 118, § 12; R. C. 1899, § 179.]

§ 164. **Salary of commissioner.** The commissioner shall receive an annual salary of one thousand eight hundred dollars. [1893, ch. 118, § 13; 1897, ch. 144; R. C. 1899, § 180; 1905, ch. 127.]

§ 165. **Deputy commissioner.** By and with the consent of the board, the commissioner may appoint a chief clerk, who before entering upon any of the duties devolving upon him by said appointment shall take and subscribe the oath of office required by law and shall execute to the state a bond with one or more sureties in the penal sum of five thousand dollars conditioned for the faithful discharge of his duties. [1893, ch. 118, § 14; R. C. 1899, § 181.]

#### ARTICLE 2.—LAND COMMISSIONER.

§ 166. **Duties.** The commissioner, under such directions as may be given by the board of university and school lands, shall have general charge and supervision of all lands belonging to the state, of all lands in which the state has an interest or which are held in trust by the state. He shall have the custody of all maps, books and papers relating to any of the public lands mentioned in this chapter. He shall procure the proper books, maps and plats in which to keep a complete record of all lands owned or held in trust by the state for schools, public buildings, and for all purposes, and shall keep true records of all the sales, leases, permits, patents, deeds and other conveyances of such land made by the state, amount of money paid, date of sale and payment, description of lands sold or leased, number of acres thereof, name of

purchaser and designation of the fund that should be credited therewith. He shall direct all appraisements, sales, leases; shall execute all contracts of sale, leases, permits or other evidences of disposal of lands, subject to approval by the board. Upon all contracts, leases or permits issued by the commissioner, he shall certify the book and page where the same is recorded. He shall have an official seal with a proper device thereon; and the seal of the commissioner affixed to any contract of purchase, receipts, or other instruments issued by him, duly countersigned by him as approved by the board, according to the provisions of this chapter, is prima facie evidence of the due execution of such contract or other paper. He shall biennially report to the legislative assembly, through the board, his work during the preceding term, showing the quantity of lands sold or leased, and the amount received therefor, the amount of interest moneys received to the credit of the several funds, expense of administration of his department, and all such other matters relating to his office as shall be necessary. It shall also be the duty of the land commissioner to receive and present to the board of university and school lands all offers for sale of bonds. He shall also prepare all bonds in connection with the investment of the permanent school fund. He shall keep such books as may be necessary to register and describe all bonds and mortgages purchased or taken by the board of university and school lands for the benefit of any of the permanent funds under its control. Such books shall be ruled so as to permit the registry of the name and residence of the person offering to sell any such bonds or mortgages, the district for which such offer is made, a description of the property covered by the mortgage, and a full and detailed description of every bond, whether United States, state or school district, and the date, number, series, amount and rate of interest of each bond, and when the interest and principal, respectively, are payable; and such record shall be made of every such bond and mortgage before the board shall act upon the question of purchasing the same. He shall also keep in suitable books a record showing a detailed quarterly statement of the condition of all the permanent funds under control of said board, the amount of each fund, how invested, when due, interest paid and any other act in any manner connected with the management of such funds, and shall biennially report all such investments to the governor, to be laid before the legislative assembly. All such records and record books shall at all times be open for inspection by the public. [1893, ch. 118, § 15; R. C. 1899, § 182; 1901, ch. 116.]

#### ARTICLE 3.—APPRAISEMENT AND SALE OF SCHOOL LANDS.

§ 167. **County board of appraisal, duties of.** The county superintendent of schools, the chairman of the board of county commissioners and the county auditor of each county shall constitute the "County Board of Appraisers" of the public lands of the state in and for their county. The county board of appraisal in each county shall upon the request of the board of university and school lands, designate on or before such date as it may specify, the public lands of the state in their county, that in its judgment can be sold for ten dollars an acre or upwards on the terms prescribed in this article, designating the tracts separately and giving an approximate estimate of their selling value. Thereupon the commissioner shall, if so ordered by the board of university and school lands, prepare a list and order an appraisal of such lands as shall be designated in such list, and it is made the duty of such board of appraisers within ten days after the receipt of such list to examine such lands and appraise them at their cash value, as nearly as can be determined, describing each tract or subdivision in parcels not greater than one hundred and sixty acres, more or less, according to the government survey, and in smaller subdivisions thereof if so listed by the commissioners, and set opposite each described tract or parcel of land the appraised value per acre thereof; and

when such appraisal is completed, which shall not be later than thirty days after the receipt of the order directing it, the county board of appraisers, or the members of the same who made such appraisement, shall certify to its correctness, and make duplicate copies thereof, one of which shall be forwarded immediately to the board of university and school lands, and the other filed in the office of the county auditor for reference. And in addition to the appraisal of such lands the county board of appraisal shall furnish such other information regarding the lands as may be required by the commissioner in the manner and form prescribed by him. The report of such appraisal shall be verified by each of such appraisers and shall disclose any interest, real or contingent, that any of such appraisers has in any of the lands or improvements so appraised. Any appraiser who willfully makes any false statement in such report, relative to such interest in any of the lands so appraised, or improvements thereon, shall be deemed guilty of a misdemeanor. For all services performed under the requirements of this article the appraisers shall be paid at the rate of three dollars per day and actual traveling expenses, upon vouchers approved by the secretary of the board of university and school lands to be paid by the state treasurer upon warrants issued by the state auditor. [1893, ch. 118, § 16; R. C. 1899, § 183.]

§ 168. **Selecting and certifying lands for sale.** The commissioner shall from the list of lands so appraised and reported by the county board of appraisers select all such tracts as have been appraised at ten dollars per acre and upwards, and upon approval of such selections by the board of university and school lands shall make and certify to the county auditors the list of lands in their respective counties that are offered for sale, and when transmitting such list shall designate the day and hour for the sale thereof; provided, that such sales shall take place only between the hours of ten o'clock a. m. and five o'clock p. m. and to be continued from day to day until all the lands advertised for sale shall have been sold or offered for sale, except that adjournments may be made for any intervening Sunday or legal holiday. [1893, ch. 118, § 17; R. C. 1899, § 184.]

§ 169. **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. [1893, ch. 118, § 18; R. C. 1899, § 185; 1905, ch. 161.]

§ 170. **Manner of sale.** On the day and hour appointed for such sale the commissioner, except as hereinafter provided, shall proceed to sell or offer for sale at public auction to the highest bidder, at the court house or at the place where the terms of the district court are held, of the county where the lands are situated, the lands so advertised, offering them for sale and selling in the order in which they occur in the advertisement for sale. Such lands as have not been specially subdivided shall be offered in tracts of one-quarter section, according to the subdivisions thereof by the United States survey, and those so subdivided in the smallest divisions thereof. No tract shall be sold for less than its appraised value, and in no case for less than ten dollars an acre. Whenever the commissioner cannot attend the sale in person such sale may be made by the deputy land commissioner or any other person designated and authorized by the board of university and school lands. [1893, ch. 118, § 19; R. C. 1899, § 186.]

§ 171. **Terms of sale.** Each tract of land shall be sold upon the following terms: The purchaser shall pay one-fifth of the price in cash at the time of sale, 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 six per cent per annum on all the unpaid principal, annually in advance. The highest bidder for any offered tract shall be declared the purchaser thereof, and shall immediately pay over to the county treasurer the amount of one-fifth of the purchase price as specified in the terms of sale. In case the purchaser fails to pay the amount so required to be paid at the time of such sale, such commissioner or whoever may be conducting the sale, shall immediately re-offer such lands for sale, but no bids shall be received from the person so failing to pay as aforesaid; and the person refusing or neglecting to make such payment shall forfeit the sum of one hundred dollars for each tract so purchased by him. [1893, ch. 118, § 20; R. C. 1899, § 187.]

§ 172. **Adjournment of sale.** No adjournment of the sale can be made after its opening, except as provided in section 168 of this article, but, when the interest of the state will be subserved thereby, the board of university and school lands may, at any time not less than two weeks preceding the dates fixed for opening such sale, make an order postponing the same to such date as may be fixed in such order, which shall not be more than sixty days, giving due notice of the same to the county auditor, who shall publish such notice of adjournment and the day fixed for the same, for two successive weeks in the same papers in which the notice of sale is published; but the adjournment of any sale shall not require continued publication of the list of lands beyond the time specified in this article for such publication. [1893, ch. 118, § 21; R. C. 1899, § 188.]

§ 173. **Withdrawal of lands from sale.** The board of university and school lands may, in its discretion, on or before the day of sale, withdraw any or all lands that may have been advertised for sale or included in any list to be offered in any county, and upon such withdrawal shall notify the auditor of such county, specifying the lands included in such notice of withdrawal, who shall thereupon strike such lands from the lists in his office, and public notice of withdrawal shall be given at the day of sale before any such lands are offered. [1893, ch. 118, § 22; R. C. 1899, § 189.]

§ 174. **County auditor to act as clerk at sale. Approval of sale.** The county auditor shall act as clerk of all land sales and leases made in his county, and it shall be his duty within five days after such sale or lease shall have been concluded to certify to the board of university and school lands a list of lands sold or leased as provided in this article, with the price thereof and the name of the purchaser or lessee of such tract, the amount for which the lands are sold or leased, the amount of money paid by said purchaser, and the amount of principal remaining unpaid, and the board of university and school lands shall approve and confirm the sale or lease of every such tract, as upon examination of such certified lists and such further information and investigation as shall be deemed necessary, shall be found to have been sold or leased in accordance with the law and without fraud or collusion. For the services imposed by this article the county auditor shall be allowed the sum of three dollars per day for each and every day so engaged, to be paid out of any appropriation for the expenses of appraisal and sale of public lands. [1893, ch. 118, § 23; R. C. 1899, § 190.]

§ 175. **Notice to purchaser. Execution of contract.** Immediately upon approval of the sales by the board of university and school lands, the secretary of such board shall prepare and certify a list of said approved sales to the commissioner, who shall without delay execute duplicate contracts in the form prescribed by the board, and forward the same to the county auditor of the county where the land was sold, whereupon it is made the duty of the county auditor to notify each purchaser in writing of the approval of the sale to him, and to appear within ten days after the date of such notice and pay the county treasurer the amount of interest on the deferred payments as specified in the contract and execute the contracts of sale, and a failure so to appear and execute such contract shall act as a forfeiture of the payment made

by the purchaser at the sale. When the contracts are properly executed by the purchaser and the amount of money due thereon shall have been paid to the county treasurer the copy marked duplicate shall be delivered to him and the original returned to the land commissioner, and each contract so returned fully executed shall have on its face in the place noted for such purpose the notation of the date of delivery to the purchaser, and all contracts not executed by the purchaser shall be returned to the land commissioner with a written statement thereon of the reason for such return. [1893, ch. 118, § 24; R. C. 1899, § 191.]

§ 176. **Sales, when void.** Any sale made by mistake, or not in accordance with law, or obtained by fraud, shall be void, and the contract of purchase issued thereon shall be of no effect; but the holder of such contract shall be required to surrender the same to the board of university and school lands, who shall, except in case of fraud on the part of the purchaser, cause the money to be refunded to the holder thereof. [1893, ch. 118, § 25; R. C. 1899, § 192.]

§ 177. **Surveys to be made when necessary.** Whenever it appears to the board of university and school lands necessary in order to ascertain the true boundaries of any tracts or portions of lands, or to enable the commissioner to describe or dispose of the same in suitable and convenient lots, it may order all such necessary surveys to be made and the expenses shall be paid out of the state treasury as other incidental expenses of the board of university and school lands are paid. [1893, ch. 118, § 26; R. C. 1899, § 193.]

§ 178. **Subdividing land into small tracts or lots, when to be made.** Whenever in the opinion of the board of university and school lands the interests of the state will be promoted by laying off any portion of the land under its control into small parcels or city, town or village lots, the board may order such commissioner to cause the same to be done, and have the same appraised in the same manner as hereinbefore prescribed. [1893, ch. 118, § 27; R. C. 1899, § 194.]

§ 179. **Sale of lots. New appraisal.** All parcels or lots so appraised shall be subject to sale in the same manner and upon the same terms and conditions and the contract of purchase shall have the same effect, as in the case of other lands for which provision is made in this article, and at the prices at which the same are severally appraised, until a new appraisal is made, which the board of university and school lands may in its discretion order at any time, in the manner aforesaid, and with the like effect; but no lots or parcels so appraised shall be sold for less than the minimum price of said land, established in this article. [1893, ch. 118, § 28; R. C. 1899, § 195.]

§ 180. **Map to be entered of record.** Whenever the commissioner shall lay off any tract of land into small parcels or lots, as provided in this article, he shall cause a correct map of the same to be entered of record in the county where said lands are situated. [1893, ch. 118, § 29; R. C. 1899, § 196.]

§ 181. **Contracts of purchase. Rights under.** Contracts of purchase, issued pursuant to the provisions of law, entitle the purchaser, his heirs or assigns, to the possession of the lands therein described, to maintain actions for injuries done to the same, or any action or proceeding to recover possession thereof, unless such contract has become void by forfeiture; and all contracts of purchase in force may be recorded in the same manner that deeds of conveyance are authorized to be recorded. [1893, ch. 118, § 30; R. C. 1899, § 197.]

§ 182. **Assignee of purchasers.** Each assignee of a bona fide purchaser of any of the lands mentioned in this article is subject to and governed by the provisions of law applicable to the purchaser of whom he is assignee; and he shall have the same rights in all respects as an original purchaser of the same class of lands. [1893, ch. 118, § 31; R. C. 1899, § 198.]



§ 183. **Contracts may be surrendered and two or more issued, when.** Whenever the holder of any contract of purchase of any state or school land shall surrender the same to the commissioner with a request to have the same divided into two or more contracts, it shall be lawful for the commissioner to issue the same; provided, that the proposed subdivision shall be only in the smallest of the regular government or state subdivisions; and provided, that no new contracts shall issue while there is due and unpaid any interest, principal or taxes on the principal contract of sale, nor in any case where the commissioner shall be of the opinion after an examination of the lands, if necessary, that the security would be impaired and endangered by the proposed division, nor until such proposed change shall have the approval of the board of university and school lands, and for all such new certificates a fee of five dollars for each certificate so issued shall be paid by the applicant, which fee shall be paid into the state treasury and become a part of the expense fund of the board of university and school lands. [1893, ch. 118, § 32; R. C. 1899, § 199.]

§ 184. **Contract voidable on failure to pay principal or interest.** In case the annual interest due on the first day of January in any year shall not be paid within thirty days thereafter by the purchaser or by any person claiming under him, the contract shall, from the time of such failure, be voidable. In case any installment on the purchase price shall not be paid within thirty days after the same becomes due by the provisions of contract of sale, the contract, from the time of such failure shall be voidable. And in all cases where any contract becomes voidable by reason of failure to make the payments required by the contract and the terms of this section, the board of university and school lands may in their discretion declare such contracts of sale void; and in case of such declaration, shall notify the holder thereof, of such declaration, by written notice mailed to his post office address and send a duplicate copy thereof to the auditor of the county in which such land is situated, and order the commissioner to take possession of the land described in such contract. [1897, ch. 143; R. C. 1899, § 200.]

§ 185. **Redemption before re-sale.** In all cases where the rights of a purchaser, his heirs or assigns, become forfeited under the provisions of this article, by failing to pay the amounts required, such purchaser, his heirs or assigns, may, before the re-sale at public auction of the lands described in such contract, pay to the state treasury the amount of interest due and payable on such contract, and all costs which have been incurred in addition thereto, together with interest at the rate of twelve per cent per annum on the interest and costs so due from the date of delinquency to the date of payment, and such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns, and such contract from the time of such payment shall be in full force and effect, as if no forfeiture had occurred; provided, that after the rights of a purchaser, his heirs or assigns shall have become forfeited under the provisions of this article, the board of university and school lands shall have the power, and it is hereby made their duty to provide for the re-sale of said land so forfeited if in their opinion a re-sale of said land shall be most advantageous to the state, otherwise the said board shall provide for the leasing of said land from year to year as herein provided, and after a lease of said land shall be made by said board, the lessee, his heirs and assigns, shall be entitled to the full and absolute possession of all said lands and premises so leased. [1893, ch. 118, § 34; R. C. 1895, § 201.]

§ 186. **Fee in state until contract fulfilled.** The fee of each parcel of such lands shall be and remain in the state until the patents hereinafter provided for are issued for the same respectively, and no patents shall issue until full payment of all sums and full compliance with all the conditions of the contract of purchase, and in case of non-compliance by the purchaser,

his heirs or assigns, with the terms of the contract as aforesaid, or with the provisions of law applicable thereto, any and all persons being or continuing in possession of any such lands after a failure to comply with the terms of the contract as aforesaid, or with such provisions of law, as aforesaid, without a written permission of the commissioner, shall be deemed and held to detain such land forcibly and without right, and to be trespassers thereon. [1893, ch. 118, § 35; R. C. 1899, § 202.]

§ 187. **Recovery of possession.** In case any person holds or continues in possession of any of the land mentioned in this article, contrary to the conditions or covenants of any lease or written agreement, he shall be liable to an action of forcible detainer, or any other proper action for the recovery of possession of such lands and damages for detention of the same. [1893, ch. 118, § 36; R. C. 1899, § 203.]

§ 188. **Reconveyance to the United States.** In all cases where lands have been erroneously or improperly certified or conveyed to the state of North Dakota for school or other purposes by the United States, the governor of the state is authorized to reconvey or relinquish by the execution, under his hand and the seal of the state, of such conveyances as will be necessary to convey or relinquish the title which the state may have to such lands. [1893, ch. 118, § 37; R. C. 1899, § 204.]

§ 189. **Patents, when to issue.** When any land sold under the provisions of this article has been fully paid for, and all terms of the contract of purchase fully complied with, the board of university and school lands shall so certify to the governor, who shall thereupon issue to the purchaser thereof, his heirs or assigns, a patent conveying the title of the state to such land, and the governor shall in like manner issue a patent to any purchaser of the rights, title and interest of the original purchaser, his heirs or assigns, acquired by any execution sale. All such patents shall be signed by the governor and attested by the secretary of state with the great seal of the state of North Dakota, and shall be countersigned by the board of university and school lands with the seal of the secretary of said board. [1893, ch. 118, § 38; R. C. 1899, § 205.]

§ 190. **Patents to be recorded.** The registers of deeds of the several counties of this state are authorized to record all patents issued by the governor pursuant to the provisions of this article; and the records thereof shall have the same effect as the record of other conveyances executed according to the laws of this state. [1893, ch. 118, § 39; R. C. 1899, § 206.]

§ 191. **Taxation of land after sale. Purchaser of tax certificate.** The commissioner shall, as soon as possible, after a sale of land, transmit to the auditor of each county, in which any lands mentioned in this article have been sold, a detailed description of each parcel of the land so sold and the names of the purchasers, and the auditor shall extend the same upon his tax duplicate for the purpose of taxation, and the same shall thereupon become subject to taxation the same as other lands, and the taxes assessed thereon, collected and enforced in like manner as against other lands; provided, however, that the purchaser at tax sale of any such lands sold for delinquent taxes shall only acquire by virtue of such purchase, such rights and interests as belong to the holder and owner of the contract of sale issued by such commissioner under the provisions of this article, and the right to be substituted in the place of such holder and owner of such contract of sale, as the assignee thereof; and upon the production to the proper officer of the tax certificate given upon such tax sale, in case such lands have not been redeemed, such tax purchaser shall have the right to make any payment of principal or interest then in default upon such contract of sale as the assignee thereof. But no tax deed shall be issued upon any tax certificate procured under the provisions of this section while the legal title of said lands remains in the state of North Dakota. Whenever the

contract for the sale of any of said lands has been canceled, it shall be the duty of the commissioner to notify the auditor of the county in which such lands are located, of said cancellation, and thereafter such lands shall not be listed for taxation, but, in the event of the redemption of any such lands, the redemptioner shall pay as taxes, in addition to all other charges, an amount equal to the tax last levied thereon for each year such land was not listed for taxation, together with such interest and penalty as would have been charged, if the same had been regularly listed and taxed. [1893, ch. 118, § 40; R. C. 1899, § 207; 1901, ch. 168.]

**§ 192. Payment to county treasurer. Duty of treasurer.** The purchaser of any land mentioned in this article, or his assigns, may pay to the county treasurer of the county in which such land lies any amount which may be due from time to time on the contract, either for principal, interest, rents or penalty, and for the amounts so paid the county treasurer shall give to such person a duplicate receipt specifying the amount paid, date of payment, whether for principal, interest or penalty, and the fund to which it is applicable, the number of the contract, the name of the original purchaser of the land, or the assignee thereof, which receipt shall be countersigned by the auditor of said county, and have the same force and effect as if given by the state treasurer. All moneys received by the county treasurer, under the provisions of this article, shall be held at all times subject to the order and direction of the state treasurer for the benefit of the funds to which the moneys respectively belong; and during the months of January, March, June and October of each year, and such other times as he may be requested so to do by the state treasurer, he shall pay into the state treasury all moneys received on account of such funds since the last payment he may have made. [1893, ch. 118, § 41; R. C. 1899, § 208.]

**§ 193. Bond of county treasurer, conditions of.** The bond of each county treasurer shall be conditioned for the honest and faithful discharge of all trusts and responsibility imposed by this article, and for the faithful payment of and accounting for all moneys received by him under the provisions of this article to the state treasurer or any other person entitled to receive the same, and the board of university and school lands shall on or before the first day of January, following any election for county officers, certify to the chairman of the board of county commissioners of each county the amount of money liable to come into the hands of the treasurer of the county under the provisions of this article, and the board of county commissioners shall add to the amount of the sum required on his regular official bond to the county double the sum so certified by the board of university and school lands, and the record of the proceedings of such board of county commissioners when fixing the amount of such bond shall specify in two separate items the aggregate amount of the bond so made up, designating one sum as the amount to indemnify the county, and the other to indemnify the state for any losses incurred by reason of failure to comply with the provisions of all laws regulating his duty. [1893, ch. 118, § 42; R. C. 1899, § 209.]

**§ 194. Fees to county treasurer.** County treasurers shall be entitled to a fee of one-half of one per cent on each dollar collected or received and remitted by them in payment of principal or interest, fines, penalties and damages on state lands, which fee shall be payable from the general fund of the class of lands on which payment is made to such treasurer, and such fee shall be paid to the county treasurer on vouchers countersigned by the county auditor and approved by the commissioner of university and school lands and such approved vouchers shall be paid out of any appropriation for the expenses of appraisal and sale of such lands. [1893, ch. 118, § 43; R. C. 1899, § 210.]

§ 195. **Duty of county auditor.** The county auditor shall, at the time he is required by law to return abstracts of settlement to the state auditor, also forward to the land commissioner all duplicate or triplicate receipts of principal, interest, penalty or rental on state lands, with a certified statement of such collection by the county treasurer, specifying the amount of each item; and he shall also make such return at any other time as may be required by the board of university and school lands. [1893, ch. 118, § 44; 1897, ch. 145; R. C. 1899, § 211.]

§ 196. **List of lands sold to be furnished county treasurer.** On or before the first day of December in each year the commissioner shall cause to be made out and transmitted to county treasurers a statement showing the lands sold in their respective counties, the number of the contracts of purchase, the name of the person to whom each contract was issued, and the amount of both principal and interest due on each on the first day of January, together with such directions, instructions and blanks as shall enable the county treasurers to carry out the provisions of this article. [1893, ch. 118, § 45; R. C. 1899, § 212.]

§ 197. **Township assessors to examine state lands.** It shall be the duty of all township and district assessors, whenever required by the commissioner to examine and report on any lands designated to them by him, in the manner and form prescribed by him, and for such examination they shall be paid at the rate of three dollars per day for time actually engaged, upon vouchers approved by the commissioner. [1893, ch. 118, § 46; R. C. 1899, § 213.]

§ 198. **Transfer of records to commissioner.** All abstracts and conveyances of title to the state of North Dakota whether the said lands are held for penal, educational, charitable, school or other purposes, shall be, by those in whose charge such conveyances now are or may come, deposited with and remain in the control of the commissioner of university and school lands. [1893, ch. 118, § 47; R. C. 1899, § 214.]

§ 199. **Permanent and general funds.** The principal accruing from all sales of school, university or other state lands under the control of the board of university and school lands, as provided for in this article, shall become a part of the several permanent funds to which they respectively belong and shall not be reduced by any means whatever. All moneys received as interest, for rents, penalties, permits or from any source other than from the principal of sales shall become a part of the general or current funds to which they respectively belong and shall be distributed as directed by law. [1893, ch. 118, § 48; R. C. 1899, § 215.]

§ 200. **Quantity of lands to be sold.** No more than one-fourth of the common school lands of the state shall be sold within the first five years after they become salable under the provisions of section 155 of the constitution, nor more than one-half of the remainder within ten years after the same become salable as aforesaid. The residue may be sold at any time after the expiration of such ten years; provided, however, that the coal lands of the state shall not be sold, but may be leased under the provisions of any law governing such leases. The words "coal lands" include lands bearing lignite coal. [1893, ch. 118, § 49; R. C. 1899, § 216.]

§ 201. **Expenses of sale, how paid.** The expenses of publishing notices of the sale of the university, school and all other public lands of the state shall be paid by the state treasurer upon the warrant of the state auditor out of the general or current funds of the different institutions as designated in section 199, and such expenses shall be apportioned according to the receipts credited each fund from proceeds of each and every sale. All bills for such publishing shall be verified by the publisher and approved by the board of university and school lands. There is hereby annually appropriated out of any funds in the treasury not otherwise appropriated, the sum of

four thousand dollars, or so much thereof as may be found necessary, for the purpose of paying the expense of appraising, advertising and selling common school, institution or other lands, under the control of the board of university and school lands. [1893, ch. 118, § 70; R. C. 1899, § 234; 1901, ch. 13.]

ARTICLE 4.—LEASE OF SCHOOL LANDS.

§ 202. **Lands subject to lease.** All the common school lands and all other public lands of the state that are not of such value as will admit of appraisal at ten dollars or more per acre, at the time of any regular appraisal, may be leased; provided, that no leases can be granted for a period longer than five years, and only for pasturage and meadow purposes, and at public auction after notice as hereinafter provided; provided, further, that all of such school and public lands now under cultivation may be leased at the discretion and under the control of the board of university and school lands for other than pasturage and meadow purposes until sold; provided, further, that in case of a sale of the lands so leased during the term of the lease, the lessee shall be given ninety days' notice; provided, further, that at the expiration of said lease or within ninety days of the date of receiving the aforesaid notice, the said lessee may remove from said lands so leased, all fences, sheds, water tanks, wind mills, etc., used upon said lands by said lessee. All rents shall be paid annually in advance. [1893, ch. 118, § 50; R. C. 1899, § 217; 1901, ch. 135.]

§ 203. **May lease cultivated lands.** The commissioner of university and school lands is hereby authorized and empowered to lease cultivated school and institution lands in the several counties of the state for the period of two years for the purpose of summer-fallowing the first year and cropping the next, when in his opinion it is necessary so to do in order to clear the same of noxious weeds, said lessee to pay only one year's rent for the same. When any lands are leased as above provided the party so leasing the same, before lease is approved by the board of university and school lands, shall pay to the county treasurer of the county in which the land is situated the total amount of rent therefor. Should the lessee so renting the land as above provided fail or neglect to summer-fallow the same at the proper time, the board of university and school lands in their discretion may declare the lease canceled and the amount paid thereon will thereby become forfeited. [1899, ch. 166; R. C. 1899, § 217a.]

§ 204. **Appraisal for lease by county board.** It shall be the duty of the county board of appraisers, each and every year, if so ordered, to appraise in the same manner as all other lands that are listed for taxation are appraised all the common school and other public lands of the state in their respective districts that may be included in the order, making a return of all such appraisals to the board of university and school lands in the form prescribed on blanks furnished by the board; such returns to be made on or before the first day of July of the same year; and for any services performed as required by this article they shall be paid at the rate of three dollars per day, to be paid by the state treasurer out of the funds appropriated for the current expenses of such board. It shall be the duty of the board of university and school lands to equalize the appraisements so returned as to counties by adding thereto or taking therefrom such a uniform percentage as may in its judgment seem proper and fair in order to arrive at a just and equitable equalization between the several counties, and upon such valuation so fixed the board of university and school lands are authorized to fix a per cent per acre as the minimum price at which the land can be leased; provided, that the lowest price of lands leased for pasturage cannot be below one-half of one per cent of the average value in the county, and for any cultivated lands in the county the lowest price cannot be below two and one-half per cent of the appraised value of each cultivated tract. And when advertising

the same for lease they shall set opposite each description the value thereof as equalized by them, which valuation shall form the basis for leasing the same. [1893, ch. 118, § 51; R. C. 1895, § 218.]

§ 205. **Selection of lands for lease.** The board of university and school lands shall have the power, and it is hereby made its duty to select from the lands so appraised such tracts as in the judgment of the board can be leased with profit to the school and other permanent land funds of the state, or as the legislature may by law order to be leased, and shall at such time as in its judgment is for the best interests of the state, proceed to advertise for lease and offer for lease, in each succeeding year, such lands as have thus been selected. [1897, ch. 145; R. C. 1899, § 219.]

§ 206. **Advertisement for leasing.** All such lands to be leased, or offered for lease, lying within the respective counties, shall by the board of university and school lands, be advertised for lease by publication once a week for not less than sixty days, in some newspaper or newspapers of general circulation in the vicinity of such lands. Such advertisement shall contain the designation or proper description of each tract or parcel of land so to be leased, the appraised value of each tract and the per cent on such valuation fixed by the board as the minimum price at which such land can be leased, and the terms of the lease. A copy of such advertisement shall also be posted in a conspicuous place at the court house of the county, and a notice of the time and place where the said lands are to be leased shall also be published for not less than sixty days in one newspaper at the seat of government by such board of university and school lands; provided, that if in the opinion of the board there will not be sufficient of such lands situate in any county leased, to warrant the expense of advertisement in a newspaper by description of each tract or parcel, the notice may be given by general advertisement. [1893, ch. 118, § 53; R. C. 1899, § 220; 1901, ch. 192.]

§ 207. **Manner of leasing. By whom made. How conducted.** It shall be the duty of the commissioner of university and school lands, or such other person as may be appointed by the board of university and school lands, to conduct the leasing of such lands in accordance with the provisions of this article and such directions as shall be prescribed therefor by the board; provided, that the leasing shall be at public auction to the highest bidder at the court house or place where terms of the district court are held, commencing on the day specified in the advertisement for such lease and between the hours of ten o'clock a. m. and five o'clock p. m. to continue from day to day until all tracts or parcels of land advertised for lease shall have been leased or offered for lease; but the time for leasing the same shall not exceed ten days in any county, except that an adjournment may be made over the Sabbath or any legal holiday. In counties where a large number of tracts of land are to be leased the land situated in certain townships may be designated in the advertisement to be leased on certain specified days and in such case such lands shall be leased or offered for lease on such specified days, or for want of time for the leasing or offering for lease of all such designated lands, the leasing of those unoffered may be adjourned until the following day or days, when they must be the first lands offered for lease. Such lands as shall not have been specially subdivided shall be leased or offered for lease in tracts of one-quarter section each, and those so subdivided in the smallest subdivision thereof. Notice must be given when the land is offered that all bids are subject to approval by the board. At the time of offering the lands for lease the county auditor of the county shall act as clerk, and it shall be his duty to make report thereof, stating the terms of such leasing, as is prescribed in section 174 for making reports of sales. [1893, ch. 118, § 54; R. C. 1899, § 221.]

§ 208. **Bidders to pay first year's rent at time of leasing. Provisions for failure to pay.** The highest bidder for any parcel of land shall at once

deposit the amount of his bid with the county treasurer, who shall act as treasurer of said leasing, failing to do which the bid of the next highest bidder shall be accepted under like conditions; provided, his bid shall not be less than the minimum price as fixed under and in pursuance of section 304. [1897, ch. 145; R. C. 1899, § 222.]

§ 209. **Adjournment of lease.** Whenever the board of university and school lands finds that the interests of the state will be subserved by the adjournment of the time for offering lands for lease, the authority conferred by section 172 for adjournment of sales is made applicable to the leasing of lands. [1893, ch. 118, § 56; R. C. 1899, § 223.]

§ 210. **Approval of lease and execution of contract for lease. Board of university and school lands to have power to lease to applicants in certain cases.** Immediately upon receipt of the report of the county auditor as required by this article, the board of university and school lands shall approve and confirm the lease of all such tracts as in its judgment should be made, and shall at once certify a list of the approved leases to the commissioner who shall without delay execute duplicate contracts of lease in the form prescribed by the board, and forward to the lessee a copy marked "duplicate," the "original" being filed in the office of the commissioner, who shall also forthwith certify to the auditor of the proper county, a list of such leases as have been approved by the board. In case any of the lands in any county may remain unleased after the date advertised for the leasing, the board shall have authority to make contracts of lease for said lands to the first applicant therefor at not less than the minimum price thereof. [1897, ch. 145; R. C. 1899, § 224.]

§ 211. **Lessee not to destroy timber.** No lessee of any of the common school or public lands of this state or his heirs or assigns shall cut down or take away from any such tract any timber, trees or wood, or suffer or cause the same to be done, by any person, except that such lessee may cut down or use such amount of dead or prostrate trees or timber as may be sufficient to supply him with fuel for his family, or the families of his employes actually residing upon said tract: and further, that such lessee, his representatives or assigns may, during his term or within a reasonable time thereafter, remove any pump, curbing, fencing, or any other improvement he may have placed thereon or received from any preceding occupant or lessee of the land. Any lessee violating the provisions of this section shall forfeit his lease and all rights and interests thereunder, and shall be liable to the state for damages sustained by the state by reason thereof, and shall be guilty of a misdemeanor. [1893, ch. 118, § 59; R. C. 1899, § 225; 1901, ch. 137.]

§ 212. **Lessee not to break uncultivated land.** No lessee, or his heirs or assigns of any lessee, of any of the common school or public lands of this state, leased for meadow or pasturage purposes, or of school or public lands leased for the purpose of cultivation, which may contain any uncultivated or unbroken land, shall break, plow or cultivate any unbroken land on any tract so leased, or cause or suffer it to be done by any other person. And any lessee, or his heirs, or assigns, who shall violate the provisions of this section shall incur the same forfeitures and liabilities as are provided in the preceding section, and shall also be guilty of a misdemeanor. [1893, ch. 118, § 60; R. C. 1899, § 226.]

§ 213. **Hay not to be cut before July 1st.** No lessee or his heirs or assigns, shall mow or cut for hay or feed any grass on any unbroken land, or cause or suffer the same to be done by any other person prior to the first day of July in any year. And any lessee or his heirs or assigns, who shall violate the provisions of this section shall incur the same forfeitures and liabilities as are provided in section 211, and shall also be guilty of a misdemeanor. [1897, ch. 145; R. C. 1899, § 227.]

§ 214. **Board of university and school lands to grant permits to cut hay and to remove dead and down timber.** The board shall have authority, when in its judgment it is for the best interests of the state so to do, to sell the right to cut grass on any of the public lands of the state and to sell any down and dead timber on said lands for such price, terms and conditions as they may think proper, but no dead timber, if standing, shall be deemed to be included in the sale unless expressly so specified in the permit. All such permits shall only be for the current season and between the fifteenth day of June and the first day of April of the following year, and no control or rights of occupancy of said land shall be other than what is specified in such permit; said permit shall be sold by the several county treasurers, whose duties and compensation shall be prescribed by the board of university and school lands, but said compensation shall be based upon a percentage of amounts of money collected and remitted to the state treasurer from said sale of grass and timber in their respective counties. All permits shall be paid for in advance. [1897, ch. 145; R. C. 1899, § 228.]

§ 215. **Trespass upon public lands. Civil action for.** Whoever commits any trespass upon any of the lands owned, or held in trust, or otherwise by the state shall be liable in treble damages in an action to be brought in the name of the state, if such trespass is adjudged to have been willful; but single damages only shall be recovered in such action if such trespass is adjudged to have been casual and involuntary. [1893, ch. 118, § 63; R. C. 1899, § 229.]

§ 216. **Board empowered to lease school lands for coal mining.** The board of university and school lands is hereby authorized and empowered to lease, for coal mining purposes, any lands under its control designated as common school lands, and all other public lands of the state owned or held in trust by the state, or granted to any public institution of the state, which contain coal, including therein lignite coal. Any lease so made shall be for such period of time as such board may determine. [1903, ch. 176, § 1.]

§ 217. **How advertised.** The manner of advertising and of leasing such lands for coal mining purposes, and approval and execution thereof, shall be the same as provided in sections 206, 207 and 210. [1903, ch. 176, § 2.]

§ 218. **Minimum price.** Such lands shall not be leased for coal mining purposes for a less sum than ten cents per ton of two thousand, two hundred forty pounds, for each and every ton of coal mined thereon; provided, that no lease of any such land for such purpose shall be made for less than ten dollars per annum for each and every forty acre tract or fraction thereof, it being expressly provided that at the time of the making and execution of such lease, and annually thereafter, there shall be paid by the lessee an amount equal to ten dollars for every forty-acre tract of land so leased, or any fraction thereof, to the person, and in the manner prescribed herein, or by the rules and regulation of the board of university and school lands; it being further provided that upon such lessee mining any coal or lignite coal thereon during a period of one year from and after the date of such payment, such lessee shall have credit upon the amount due under the terms of such lease on tonnage, for the amount paid at the execution of such lease or at the time of the annual payments thereafter made as hereinbefore provided; the amount received for the lease of any such land for coal mining purposes to be used in the same manner, and for the same purpose, as is provided for other money received for the lease of common school and other public lands. [1903, ch. 176, § 3.]

§ 219. **Board authorized to make rules.** The board of university and school lands is hereby authorized to make such rules and regulations, as shall be by it deemed necessary, for the manner of determining the amount of rent due under any such lease, the manner and time of payment, and for



such other conduct of the business of such leasing not in conflict with the provisions of law. [1903, ch. 176, § 4.]

§ 220. **Lease not to interfere with right to lease for pasture or meadow.** The leasing of any such land for coal mining purposes shall not interfere with the right and authority of such board to lease the same land for pasture or meadow purposes, and each and every lease so made for coal mining purposes shall contain therein a provision plainly and explicitly reserving to such board the right to so rent such lands for pasture and meadow purposes, without such renting in any manner affecting the conditions or terms of such lease for coal mining purposes, and reserving to the said board the right to use, occupy and lease the surface of all such lands; provided, that any such lessee for coal mining purposes shall have the right to the use and occupancy of so much of the surface of such lands as may be necessary for entry, dumps, buildings, tramways or other railways, roadways or uses in the mining, storing and shipping of coal mined thereon. [1903, ch. 176, § 5.]

§ 221. **Leasing restricted.** No leases shall be made of any such lands having coal or lignite coal thereon for pasture or meadow purposes, except there shall be contained in such lease a provision authorizing the leasing of the same land for coal mining purposes, and reserving to the said board the right to use and occupy, or lease for use and occupancy, and authorizing the use and occupancy of so much of the surface of said land as shall be required by any lessee of the same for coal mining purposes, for the uses and purposes set forth in section 220. [1903, ch. 176, § 6.]

§ 222. **Board to make schedule of lands.** The board of university and school lands shall, as soon as possible, and by the best means at its command, and with the assistance of the state geologist, proceed to ascertain and determine the quantity and description of all common school, or other public lands under its control, on which coal or lignite coal exists, and make and compile a statement and schedule of all such lands. [1903, ch. 176, § 7.]

§ 223. **Penalty for violation.** Any person, firm or corporation who shall mine, remove or cause to be mined or removed, from any common school land, or other public lands of the state, any coal or lignite coal, except the same shall be so mined or removed under and by virtue of the terms of this article, shall be liable to the state of North Dakota in damages in the sum of one dollar for each and every ton of coal or lignite coal so mined or removed, and shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred and fifty dollars, nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. Each and every day or fraction of a day so occupied in mining or removing such coal or lignite coal from any such land, is hereby declared to be a separate offense against the provisions of this article. [1903, ch. 176, § 8.]

§ 224. **Willful trespass. Penalty.** Whoever commits any willful trespass upon any of the lands owned or held in trust or otherwise by this state, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing or cutting or removing any hay or grass standing or growing or being thereon, or who injures or removes any buildings, fences, improvements or other property belonging or appertaining to said land or unlawfully breaks or cultivates any of said lands or aids, directs or countenances such trespass or other injury shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, in the discretion of the court. And whoever is occupying, residing upon or in possession of any school or other public lands owned or

held in trust or otherwise by the state at the time of the passage, approval and taking effect of this article without a valid lease therefor shall be deemed and held to be a willful trespasser thereon, and guilty of trespass upon such land, and upon conviction thereof shall be punished as provided for in this section for any other act of trespass. [1893, ch. 118, § 64; R. C. 1899, § 230.]

§ 225. **Property to be seized.** In addition to the penalties provided for in this article against those committing trespass upon any of the lands owned or held in trust or otherwise by this state, the commissioner is authorized and empowered without legal process to seize and take, or cause to be seized and taken any and all timber, grass, wood or other property unlawfully severed from such lands, whether the same has been removed from such lands or not, and may dispose of the property so seized and taken, either at public or private sale, in such manner as will be most conducive to the interests of the state; and all moneys arising therefrom after deducting the reasonable and necessary expenses of such seizure and sale shall be made a part of the general fund belonging to the public lands and shall be distributed in accordance with the provisions of this article. [1893, ch. 118, § 65; R. C. 1899, § 231.]

§ 226. **Damages.** All damages recovered for any trespass, or other injury upon or to any of the lands mentioned in this article shall be paid over to the state treasurer for the benefit of the general fund to which the same properly belongs. [1893, ch. 118, § 67; R. C. 1899, § 232.]

§ 227. **State's attorney to prosecute and report.** The state's attorneys of the several counties shall promptly report to the commissioner all cases of trespass committed upon such lands, which may come to their knowledge, and shall, when directed by the attorney general, prosecute all actions for any trespass or injury thereto, or for recovery of possession thereof, or otherwise. [1893, ch. 118, § 68; R. C. 1899, § 233.]

§ 228. **Expense of advertising and leasing.** There is hereby annually appropriated out of any funds in the treasury not otherwise appropriated the sum of two thousand dollars, or so much thereof as may be found necessary, for the purpose of paying the expense of advertising the common school lands for lease and the attendant expense of leasing the same. [1897, ch. 19; R. C. 1899, § 234a.]

§ 229. **Fees. Duty of county treasurers.** It shall be the duty of the commissioner of university and school lands to charge and collect the following fees: For each one year lease of school or other state lands, one dollar and fifty cents; for each lease for a period of more than one year, three dollars; for each contract for lands purchased, five dollars; for each patent, five dollars; for approving and recording each assignment of school land contract, five dollars; for furnishing certified copies of school land contracts, three dollars. All fees must be paid in advance, and when collected must be paid into the state treasury at the end of each month and be placed to the credit of the expense fund of the board of university and school lands. It shall be the duty of the county treasurer of any county where any such lands are leased, or sold, to collect the fees hereinbefore provided for at the time the first payment thereon is made for leases and contracts of sale, and transmit the same to the commissioner on the first day of each month. [1899, ch. 165; R. C. 1899, § 234b; 1901, ch. 191.]

§ 230. **Appropriation for expenses of board.** There is hereby annually appropriated out of any funds in the treasury not otherwise appropriated the sum of five thousand dollars, or so much thereof as may be found necessary, for the salaries and expenses of the commissioner of university and school lands, clerk hire, record books, blanks and all such other expenses as shall be necessarily incurred by the board of university and school lands in carrying out the provisions of this chapter, and such expenses shall be paid out of the treasury, and upon satisfactory vouchers therefor the state

auditor shall issue his warrant for the same. [1893, ch. 118, § 71; 1895, ch. 112, § 1; R. C. 1899, § 235.]

ARTICLE 5.—THE STATE BOARD OF AUDITORS AND STATE DEPOSITARIES.

§ 231. **Membership of board.** There is hereby created a board of auditors for the state of North Dakota, which shall consist of the secretary of state, the state auditor and the attorney general, whose duty it shall be to examine and audit the accounts, books and vouchers of the state treasurer, and to take an account and ascertain the amount of funds in the state treasury or belonging to the state at least twice in each year without previous notice to the treasurer, and make report thereof and of their acts and doings in the premises to the governor, and also to witness and attest the transfer and delivery of accounts, books, vouchers and funds by any outgoing treasurer to his successor in office, and report the same to the governor. [1893, ch. 48, § 1; R. C. 1899, § 236.]

§ 232. **State depositaries.** 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 depositary unless revoked by the board until the board of auditors designate new depositaries which shall be done at a meeting to be held on the second Tuesday in January of every even numbered year, and until depositaries so designated shall have qualified. [1893, ch. 48, § 2; 1899, ch. 150; R. C. 1899, § 237; 1905, ch. 173.]

§ 233. **Bond to be furnished.** Before any bank shall be designated as such depositary it shall deposit with the state treasurer a bond payable to the state and executed by not less than seven freeholders of the state as sureties, or in lieu of such personal bond such bank or banks may file a surety company bond for a sum equal to the amount of funds such bank may receive according to section 232. Such bond shall be approved by the governor and state board of auditors and shall be in such an amount as such board shall direct. If a personal bond is accepted, it shall be for a sum not less than double the amount of the funds to be deposited in such bank at any one time. [1893, ch. 48, § 3; R. C. 1895, § 238; 1901, ch. 169.]

§ 234. **Treasurer exempt from liability.** Whenever any portion of the funds of the state is deposited in any national or state banks in the manner above provided the state treasurer and the sureties on his bond shall be exempt from all liability by reason of the loss of any such deposited funds from failure, bankruptcy or any other act of such bank to the extent and amount of such funds in the hands of such bank at the time of such failure or bankruptcy. [1893, ch. 48, § 4; R. C. 1899, § 239.]

§ 235. **State examiner to examine national banks designated as state depositaries.** Every national banking corporation, heretofore or hereafter designated as a state depositary, under the provisions of section 232 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 association. 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. [1905, ch. 172.]

§ 236. **Refusal to allow examination. Treasurer withdraw funds.** In case of failure or refusal of any such state depository to comply with the provisions of section 235, 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. [1905, ch. 172.]

#### ARTICLE 6.—STATE AUDITING BOARD.

§ 237. **State auditing board. Duties.** The governor, state auditor and attorney general shall constitute a board to be known as the state auditing board. This board shall hold regular monthly meetings on the first day of every month and such other times as shall be deemed necessary, in the executive office at the seat of government. The state auditor shall act as secretary of the board and shall receive and file all claims presented to him for payment in the order in which presented, and bring them before the board at its next meeting. It shall be the duty of this board to audit all claims which may come before it, and no warrant shall be drawn on the state treasury by the state auditor in payment of any claim except such as have been duly passed upon and approved by the state auditing board. [1901, ch. 33.]

#### ARTICLE 7.—BOARD OF TRUSTEES OF PUBLIC PROPERTY.

§ 238. **Board, of whom composed.** The governor, secretary of state and state auditor are constituted a board of trustees of public property, and such board shall have charge and control of the capitol, the executive mansion and the park and public grounds connected therewith. [1897, ch. 162, § 1; R. C. 1895, § 154.]

§ 239. **Board to report estimates to legislative assembly.** Such board shall, at the opening of each session of the legislative assembly, report to it an estimate of the appropriation necessary to defray the expenses of keeping the capitol building, executive mansion and public grounds in repair, and for fuel and other incidental expenses for keeping and maintaining the state offices for the ensuing two years. [1887, ch. 162, § 2; R. C. 1899, § 155.]

#### ARTICLE 8.—STATE HISTORICAL SOCIETY.

§ 240. **State historical society. Powers. 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 article 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. [1895, ch. 70, §§ 1, 2; R. C. 1899, §§ 152, 153; 1905, ch. 25, § 1.]

§ 241. **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. 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 the right and title to the same shall pass to the state. [1895, ch. 70, § 2; R. C. 1899, § 153; 1905, ch. 25, § 2.]

§ 242. **Appropriation.** For the purpose of aiding in the performance of said duties there is hereby annually appropriated to the said society, 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. [1905, ch. 25, § 3.]

§ 243. **Powers of society as to historical sites and relics.** The state historical society may from time to time receive contributions of historical sites and relics, or money for the purchase of such sites or relics, and may purchase such sites or relics. It may purchase not exceeding ten acres of land, embracing the site of old Fort Abercrombie, in Richland county, at a cost not exceeding five hundred dollars, and not exceeding ten acres of land, embracing the site of the first Christian mission grounds, at Walhalla, in Pembina county, at a cost not exceeding five hundred dollars. When land shall be contributed or purchased as herein authorized for historical purposes, title shall vest in the state of North Dakota, and the land may be placed in the custody of the old settlers' associations of the respective counties in which said sites are located, and may be improved and used by them for public park purposes and for the accumulation and care of relics of historical interest. When relics are contributed or purchased they shall be placed in the custody of the state historical society and those of a

local historical nature may be loaned to the county old settlers' associations when proper provision has been made for their care and preservation. Money contributed for the purchase of historical relics or sites shall be placed in the hands of the state treasurer and shall be paid out on warrant of the state auditor when approved by the state historical society, or a majority of its members. [1903, ch. 15, § 1.]

§ 244. **Appropriation.** There is hereby appropriated for the purpose of the preceding section the sum of one thousand dollars, or so much thereof as may be necessary, out of any money in the state treasury not otherwise appropriated; provided, that before said appropriation shall be available there shall have been placed in the hands of the treasurer of the state of North Dakota, to the credit and for the use and benefit of said state historical society the sum of one thousand dollars as a contribution from interested persons for carrying out the provisions of section 243. [1903, ch. 15, § 2.]

ARTICLE 9.—WHITE STONE HILLS BATTLEFIELD COMMISSION.

§ 245. **Grant of government land accepted.** 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 is hereby in all things accepted. [1905, ch. 48, § 1.]

§ 246. **Governor to appoint commission. Term of office.** The governor is hereby authorized, directed and empowered to 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. [1905, ch. 48, § 2.]

§ 247. **Organization. Duties. State property.** 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 organize by the election of one of their number as chairman and another as secretary. Said commission shall then take all necessary steps to properly inclose said battlefield and to improve the same in so far as may be done consistently with the provisions of this article, 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. [1905, ch. 48, § 3.]

§ 248. **No salary or compensation.** 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. [1905, ch. 48, § 4.]

§ 249. **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. [1905, ch. 48, § 5.]

§ 250. **Vouchers for disbursements, how approved. Filed with state auditor.** 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. [1905, ch. 48, § 6.]

§ 251. **Commission report to 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. [1905, ch. 48, § 8.]

#### ARTICLE 10.—BOARDS OF HEALTH.

##### STATE BOARD OF HEALTH.

§ 252. **Board, how composed. Officers of.** There is hereby established a state board of health, composed of a president, vice president and superintendent of public health. The attorney general shall be president of such board. The governor shall appoint some suitable person, a resident of this state, vice president, and he shall also appoint by and with the advice and consent of the senate a superintendent of public health, who shall be learned in medicine, a graduate of some reputable medical college authorized by law to grant diplomas and hold license to practice medicine and surgery within the state, and be a resident of this state. The several persons thus appointed shall hold their offices for two years from the first Tuesday in April succeeding their appointment and until their successors are elected and qualified. [1889, ch. 22, § 1; R. C. 1895, § 240.]

§ 253. **Duties of officers.** The president of the board shall preside at the meetings thereof, and the vice president shall perform the duties thereof in his absence. The superintendent of public health shall be secretary of said board. He shall keep a record of all the proceedings of the state board of health, and of his own acts as such superintendent, and he shall perform such other duties as are prescribed by this article, or which may be prescribed by the state board of health. The records kept by the superintendent shall be at all times open to the inspection of the public. [1885, ch. 63, § 2; R. C. 1899, § 241.]

§ 254. **Meetings of the board.** The several persons composing the state board of health shall meet as often as once in every six months at such place in the state as they may appoint. [1885, ch. 63, § 3; R. C. 1899, § 242.]

§ 255. **Powers and duties of board.** The board shall have power and it shall be its duty:

1. To fix the time and place of the meetings of the board, subject to the provisions of the last section.
2. To make rules and regulations for the government of the board, its officers and its meetings.
3. To make and enforce all needful rules and regulations for the prevention and cure, and to prevent the spread of any contagious, infectious or malarial diseases among persons and domestic animals.
4. To establish quarantine, and isolate any person affected with contagious or infectious disease.
5. To isolate, kill or remove any animal affected with contagious or infectious disease.
6. To remove or cause to be removed any dead, decaying or putrid body, or any decayed, putrid or other substance that may endanger the health of persons or domestic animals.
7. To condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale.
8. To superintend the several boards of health in cities, villages and towns and the county boards of health of the several counties.
9. To empower and direct the superintendent of public health to do or

cause to be done any or all of the things mentioned in subdivisions four, five, six, seven and eight of this section.

10. To make such rules and regulations as it may deem necessary to govern the preparation of dead bodies for transportation and to govern what classes of dead bodies may be transported and the manner thereof. [1899, ch. 30; R. C. 1899, § 243.]

§ 256. **Compensation of officers.** The president and vice president of the board shall receive no compensation, but they shall be paid five cents for every mile actually and necessarily traveled by them in the performance of their official duties, and other necessary expenses incurred by them. The superintendent of public health shall be paid an annual salary of twelve hundred dollars in equal installments at the end of every three months. He shall also be paid five cents per mile actually and necessarily traveled in the performance of his official duties, and such other sum or sums as he may necessarily pay, or become liable to pay (hotel or other incidental expenses), for the official books, clerk hire, records and papers kept by him, and for the printing of his reports and such circulars and blanks as may be required for the proper conduct of the business of his office, not to exceed in the aggregate the sum of fifteen hundred dollars per annum. The accounts of the superintendent for his mileage and said other expenses of his office shall be audited by said board of health, and the same, together with his salary, shall be paid out of the state treasury. [1897, ch. 35; R. C. 1899, § 244; 1903, ch. 181.]

§ 257. **Reports.** The superintendent of public health shall on the first day of December of each even numbered year make a full report to the governor, which report shall show all that has been done by the state board of health and by such superintendent during the two years preceding the making of such report, the number of cases treated by him and in each county by the county superintendent, the character and extent during such time of all contagious or infectious diseases that have been reported to him, all expenditures by the state board, and in each of the organized counties by the county board and such recommendations as he may deem advisable for the better protection of the public health and the prevention and cure of contagious or infectious diseases of persons and of domestic animals. [1885, ch. 63, § 13; R. C. 1895, § 251.]

§ 258. **Vacancies.** In case a vacancy shall occur in the office of vice president or superintendent, such vacancy shall be filled by appointment by the governor, and the person so appointed shall hold the office for the unexpired term. In case a vacancy occurs in the office of vice president or superintendent of health in any county board of health, the president of such county board of health shall appoint some suitable person to fill such vacancy, and the person so appointed shall hold office until a successor to such officer has been appointed by the board of county commissioners. [1899, ch. 58; R. C. 1899, § 252.]

#### COUNTY BOARDS OF HEALTH.

§ 259. **Board, how composed.** There are hereby established county boards of health, composed of a president, vice president and superintendent. The state's attorney in each county shall be president of the county board. The board of county commissioners shall appoint some suitable person, who is a resident of the county, vice president; and it shall also appoint a superintendent of public health for the county, who shall be learned in medicine and hold a license to practice medicine and surgery within the state, and the several persons thus appointed shall hold their offices for one year and until their successors are elected and qualified. [1899, ch. 58; R. C. 1899, § 245.]

§ 260. **Duties of officers of county board.** The president of each county board of health shall preside at the meetings thereof and in his absence the vice president shall perform the duties of president. The county superin-



tendent of health shall be secretary of the board of health of his county. The county superintendent of health shall keep a record of all the proceedings of the board and of his official acts, and he shall at the end of every month make a full report in writing to the superintendent of public health of the proceedings of the county board of health and of his official acts, and shall, whenever the health of persons or domestic animals is endangered, or when any contagious or infectious disease occurs in his county, either among persons or domestic animals, immediately report the same to the superintendent of public health. [1885, ch. 63, § 8; R. C. 1899, § 246.]

§ 261. **Meetings of county boards of health.** The several county boards of health shall meet at the county seat in their respective counties at such time within thirty days after the appointment of the county superintendent of health as he may designate. Notice of the time and place of such meeting shall be by him given to the other members of the county board at least five days prior to such meeting, and thereafter the board shall meet at the county seat as often as once in every three months. [1885, ch. 63, § 9; R. C. 1899, § 247.]

§ 262. **Powers and duties of county boards of health.** The several county boards of health shall have power within their respective counties, outside of the corporate limits of cities having a city board of health, subject to the supervisory control of the state board of health, and the superintendent of public health, to do and perform all the things mentioned in subdivisions three, four, five, six, seven and eight of section 255. All expenses actually and necessarily paid or incurred by the county board of health in carrying out the provisions of this article shall be audited by the board and certified to the county commissioners and shall be paid the same as other county expenses are paid. [1885, ch. 63, § 10; R. C. 1899, § 248.]

§ 263. **Powers and duties of superintendent.** The county superintendent of health shall have charge of and superintend subject to the approval of the board of which he is a member and the supervisory control of the state board of health and the superintendent of public health, all the matters and things mentioned in subdivision four of section 255 within his county, and in case of immediate danger to the health of persons by reason of any contagious or infectious disease, he may act as in his judgment he deems best, without consultation with the other members of the board for the prevention of such danger, and shall immediately report such action to the president of the board and to the superintendent of public health. [1897, ch. 58; R. C. 1899, § 249.]

§ 264. **Compensation.** The president and vice president of the board shall receive three dollars per day for every day in which they may be actually and necessarily engaged in the performance of their duties, and five cents per mile for every mile actually and necessarily traveled in the discharge of their duties. The county superintendent of health shall receive five dollars per day for every day in which he may be actually and necessarily engaged and five cents for each mile actually and necessarily traveled in the performance of his duties. Physicians employed by the county board of health shall not receive less than two dollars per visit for medical attendance upon any patient, and not to exceed ten cents per mile for each mile actually and necessarily traveled in visiting such patient. No member of such board of health shall receive any other or further compensation for his services than as herein provided. [1885, ch. 63, § 12; R. C. 1899, § 250; 1903, ch. 40.]

§ 265. **Boards of health heretofore established, not affected.** Nothing contained in this article shall in any manner affect any board of health heretofore established or that may be hereafter established in any city, village or incorporated town; provided, however, that all such boards of health shall be under the superintending control of the state board. [1885, ch. 63, § 16; R. C. 1899, § 253.]

## CITY BOARDS OF HEALTH.

§ 266. **City board, how constituted.** There is hereby established in each incorporated city in this state a board of health, which shall be constituted as follows: The mayor of such city shall at the first meeting of the city council in April in each year appoint four aldermen, who, together with the city engineer and the health officer as hereinafter provided, shall constitute a board of health and shall have and exercise the powers conferred upon such board by law and by the ordinances of such city. [1893, ch. 34, § 1; R. C. 1899, § 254.]

§ 267. **Health officer. Duties. Salary.** At the first meeting of the city council in April of each odd numbered year there shall be appointed by the mayor and confirmed by the council one health officer, who shall hold his office for two years and until his successor is appointed and qualified. He shall be a competent physician in regular practice and shall perform such duties as may be devolved upon him by law or by the ordinances of such city. Before entering upon the duties of his office he shall take the usual oath of office and give a bond to be approved by the city council in the sum of one thousand dollars, conditioned for the faithful performance of his duties, and shall receive such compensation as the city council may determine. [1893, ch. 34, § 2; R. C. 1899, § 255.]

§ 268. **Local boards of health. Duties of.** Each city board of health shall perform the duties and exercise the powers herein provided within the limits of the city for which it is established. Each county board of health and city board of health shall be known as the local board of health. [1893, ch. 90, § 1; R. C. 1895, § 256.]

§ 269. **Board to make sanitary regulations.** Each local board of health, within its jurisdiction, may examine into all nuisances, sources of filth and causes of sickness, and make such regulations regarding the same as it may judge necessary for the public health and safety of the inhabitants, and every person who shall violate any published order or regulation made by any board of health, shall be guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both. [1893, ch. 90 § 2; R. C. 1899, § 257.]

Knowledge of order essential to prosecution. *State v. Butts*, 3 S. D. 577, 54 N. W. 603.

§ 270. **Regulations published.** Notice shall be given by each local board of health of all general orders and regulations made by them by publishing the same in some newspaper, if there is one published within the jurisdiction of such board; if there is none, then by posting such orders and regulations in five public places therein, and such publication of such orders and regulations shall be deemed a legal notice to all persons. [1893, ch. 90, § 3; R. C. 1899, § 258.]

§ 271. **Nuisance. Owner to remove.** Whenever any nuisance, source of filth or cause of sickness is found on private property any member of the local board of health may order the owner or occupant thereof at his own expense to remove the same within twenty-four hours, and such order may be given to such owner or occupant personally or left at his usual place of abode. [1893, ch. 90, § 4; R. C. 1899, § 259.]

§ 272. **Board to act in default of owner.** Whenever such owner or occupant shall fail to comply with the order of such board, it may cause such nuisance, source of filth or cause of sickness to be removed and all expenses incurred thereby shall be paid by such owner or occupant, or by such other person as has caused or permitted the same. [1893, ch. 90, § 5; R. C. 1899, § 260.]

§ 273. **Complaint to justice, when.** Whenever any local board shall deem it necessary for the preservation of the health of the inhabitants within its

jurisdiction to enter any building or vessel within such jurisdiction for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness and shall be refused entrance, any member of the board may make complaint under oath to a justice of the peace within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. [1893, ch. 90, § 6; R. C. 1899, § 261.]

§ 274. **Justice to issue warrant.** Such justice shall thereupon issue a warrant directed to the sheriff or other peace officer, commanding him to take sufficient aid and accompanied by at least one member of the board of health between the hours of sunrise and sunset to have such nuisance, source of filth or cause of sickness destroyed, removed or prevented under the direction of such of the board of health as accompany him. [1893, ch. 90, § 7; R. C. 1895, § 262.]

§ 275. **Any physician to report cases of contagion.** Whenever it shall come to the knowledge of any physician or other person that a contagious, epidemic or infectious disease exists within the jurisdiction of any local board, he shall immediately report to such board in writing the name and place of residence, if known, of every person afflicted with such disease, and if he is the attending physician of such person he shall report not less than twice in each week the condition of each person so afflicted and the state of such disease. [1893, ch. 90, § 8; R. C. 1899, § 263.]

§ 276. **Duty of physician in case of death.** It shall be the duty of each practicing physician in this state to report in writing to the local board of health the death of each of his patients, who shall have died within the jurisdiction of such board of any contagious, infectious or epidemic disease. Such report shall be made within twenty-four hours after such death and shall state the specific name and character of such disease. [1893, ch. 90, § 9; R. C. 1899, § 264.]

§ 277. **Keeper of house to report.** Each keeper of any private house, boarding house, lodging house, inn or hotel shall report in writing to the local board of health within whose jurisdiction the same may occur each case of contagious, infectious or epidemic disease which may occur in his house, inn or hotel; such report shall be made within twenty-four hours after the existence of such disease shall become known to such person, and shall state the name of each person afflicted with such disease and the nature thereof. [1893, ch. 90, § 10; R. C. 1899, § 265.]

§ 278. **Removal of sick person.** No person shall without a permit from the local or state board of health carry or cause to be removed from without this state to this state, or from one building to another within this state, or from or to any car or vessel, any person afflicted with any contagious, infectious or epidemic disease, or the body of any person who died of such disease. [1893, ch. 90, § 12; R. C. 1895, § 266.]

§ 279. **Vaccination required, when.** Each parent or guardian having the care, custody or control of any minor or other person shall cause such minor or other person to be vaccinated. [1893, ch. 90, § 13; R. C. 1895, § 267.]

§ 280. **Duty of school officials.** No principal, superintendent or teacher of any school, and no parent or guardian of any minor child, shall permit any child having scarlet fever, diphtheria, smallpox, whooping cough, measles or any other dangerous, infectious or contagious disease, or any child residing in any house in which any such disease exists or has recently existed to attend any public or private school until the local board of health shall have given permission therefor. [1893, ch. 90, § 14; R. C. 1895, § 268.]

§ 281. **Burial, case of contagion. Regulations.** No person shall allow to be unburied the body of any human being for a longer time than four days, or, when death has been caused by an infectious or contagious disease, for a longer time than twenty-four hours after the death of such person without a permit from the local board of health, which permit shall specify the length of time

during which such body may be unburied. In all cases where death has been caused by an infectious or contagious disease, the body shall, if directed by said board, be immediately disinfected as may be directed by it. If the body remains unburied for more than twenty-four hours it shall immediately be inclosed in a tightly sealed metallic coffin which shall not thereafter be opened and the funeral of such person shall be strictly private. In the removal of such body for burial, or otherwise, only such hearses or other vehicles shall be employed as may be authorized by said board, and no undertaker or other person shall bury or prepare for burial the body of any human being without a certificate signed by the attending physician or by the coroner, which certificate shall state the name, age, sex and place of abode and date of death of such deceased person, the name and duration of the disease of which such person died and whether or not such disease is contagious, and such certificate shall after the burial of such body be filed with the local board of health, and whenever any such dead body shall be presented to any common carrier within the state for transportation by such carrier, it shall be accompanied by a duplicate of such certificate signed by such attending physician or coroner; and no common carrier shall receive any such body for transportation unless such certificate shall state that the disease of which such person died is not contagious, which duplicate shall be securely attached to and remain upon the outside of the coffin or other receptacle containing such dead body. [1893, ch. 90, § 15; R. C. 1895, § 269.]

§ 282. **Infected persons, removal of.** It shall be the duty of each local board of health, whenever it shall come to its knowledge that a case of small-pox, scarlet fever, diphtheria or other infectious or contagious disease exists within its jurisdiction, immediately to examine into the facts of the case and, if such disease appears to be of the character herein specified, such board shall adopt such quarantine and sanitary measures as in its judgment tend to prevent the spread of such disease, and may immediately cause any person infected with such disease to be removed to a separate house, if in the opinion of the health officer or superintendent of public health, such person can be so removed without danger to his health, and, if such infected person cannot be removed without danger to his health, the local board shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and in such cases may cause the persons in the neighborhood to be removed and take such other measures as it deems necessary for the safety of the inhabitants, and shall immediately notify the state board of health of the existence and nature of such disease and of the measures adopted by it with reference thereto. [1893, ch. 90, § 16; R. C. 1895, § 270.]

§ 283. **Temporary hospital.** Each local board of health may provide such temporary hospital or place of retention for persons afflicted with infectious or contagious diseases as it judges best for their accommodation and the safety of the inhabitants, and all such hospitals and all private houses or other places in which exists any infectious or contagious disease shall during the existence of such disease be under the control and subject to the regulations of the local board of health and all the inmates of such house or other place during the existence of such disease therein must conform to the regulations and obey the instructions of such local board with reference thereto. [1893, ch. 90, § 17; R. C. 1899, § 271.]

§ 284. **Infected clothing, etc. Destruction of.** Any local board of health may cause to be destroyed any bed or bedding, clothing, carpets or other articles which have been exposed to infection from such infectious or contagious disease, and may allow reasonable compensation for the same, or may provide a proper place with all necessary apparatus and attendants for the disinfection of such articles and cause all such articles to be disinfected thereby, and may provide a carriage for the conveyance of such articles or of

persons suffering from such contagious or infectious disease. [1893, ch. 90, § 19; R. C. 1899, § 272.]

§ 285. **Board has full power.** Local boards of health may employ such persons as may be necessary to carry into effect the provisions of this article and the regulations established by them, and such physicians as they deem necessary, and provide such necessaries of life as in their judgment shall be needed for the maintenance, welfare and comfort of persons afflicted with contagious and infectious diseases. All expenses incurred by any local board of health in carrying into effect the provisions of this article, and in providing for the care and maintenance of such sick persons, and all expenses incurred under any of the provisions of this article, shall be audited and allowed by the board incurring the same; such expenses in case of township boards of health shall be certified to the township clerk and paid out of the general fund of the township, and in case of city boards of health shall be certified to the city auditor and paid out of the general fund of the city, and in case of county boards of health, shall be certified to the county auditor and paid out of the general fund of the county. [1893, ch. 90, § 19; R. C. 1899, § 273; 1903, ch. 41.]

§ 286. **Expense, who chargeable.** All expenses incurred by such boards of health for the care, medical attendance or support of any such sick person shall be a charge upon such person and upon the person legally chargeable with the support of such person, and may be collected by suit in the name of the township, city or county, which shall have incurred such expense; provided, however, that in cases where, after due investigation, such township or city board of health is satisfied that such sick person or the person legally charged with the support of such person is too poor to pay the expenses incurred in his behalf, then and in such cases the local board of health shall make an indorsement to such effect on the bill of expenses incurred in such case, and the clerk of such township or the city auditor of such city shall send a certified statement of such bill of expenses with the indorsement of such local board of health to the county auditor. Such statement shall contain the date upon which such claims were allowed, to whom allowed, for what purpose and the amount allowed, and an itemized statement of the expenses incurred. Upon receipt of such statement the county auditor shall refer the same to the county board of health, and if approved by the county board of health, the county auditor shall issue his warrant upon the county treasurer, payable out of the general fund of the county, the amount allowed by such township or city. Such warrant shall be made payable to the treasurer of such township or city, as the case may be. [1893, ch. 90, § 19; R. C. 1899, § 273; 1903, ch. 41.]

§ 287. **Neglect of duty herein. Penalty.** Any health officer, superintendent of public health or any member of any local board of health, who shall neglect or refuse to perform any of the duties required to be performed by him under the provisions of this article, and any person who fails to comply with, or violates any of the provisions of this article, or neglects or refuses to conform to any rules, regulations or measures adopted by the local board of health within whose jurisdiction he shall at the time be and which shall have been published or shall have come to his knowledge, or refuses or neglects promptly to obey any orders, directions or instructions given to him by such board of health, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both. [1893, ch. 90, § 20; R. C. 1895, § 274.]

#### ARTICLE 11.—VITAL STATISTICS.

§ 288. **Vital statistics, collection of.** The health officer of each city, the clerk of each civil township, and in counties not organized into civil townships,

the county commissioner of such county for the district for which he was elected, and the superintendent of the county board of health of each county in the state, shall obtain and register the following facts concerning the births, deaths, and contagious and infectious diseases occurring therein, separately numbering and recording the same in the order in which he obtains them, designating in separate columns, viz: In the registry of births, the date of birth, the name of the child, (if it have any), the sex and color of the child, names and places of birth of parents and date of birth and the date of record in the registry of deaths, the date of death, the name of deceased, the sex and color, and the condition, whether single, widowed or married, the age and place of birth, the names and places of birth of parents, the disease or cause of death, and the date of the record; in the registry of infectious and contagious diseases, the name of the person affected, the sex, color and age of the person, the nature of the disease, and the date of record. The county auditor of each county shall furnish each officer within his county, charged with the duties herein provided, at the expense of the county, a book in which to register the facts concerning the births, deaths and infectious and contagious diseases as herein provided. The superintendent of each county board of health shall keep his records in the office of the county judge of said county. [1899, ch. 169, § 1; R. C. 1899, § 274a; 1903, ch. 205.]

**§ 289. Notice to proper officers.** Where no physician is employed, it shall be the duty of the parents to give notice to the proper officer within whose jurisdiction they reside, of the births and deaths of their children, or of the presence of any infectious or contagious disease occurring within their household, within twenty-four hours, or three days if outside of incorporated limits of cities, towns and villages as to births and deaths only, of such occurrence and the oldest person next of kin, the keeper or other proper officer of every workhouse, poorhouse, reform school, jail, prison, hospital, asylum, or other public or charitable institution, shall give like notice of any birth, death, infection or contagious disease occurring among the persons under his charge. Whoever neglects or refuses to give such notice within the period of twenty-four hours, or three days if outside of incorporated limits of cities, towns and villages as to births and deaths only, after the occurrence of such birth, death or infectious or contagious disease, shall upon conviction forfeit a sum not to exceed twenty dollars, to be collected as other fines are collected by law. [1899, ch. 169, § 2; R. C. 1899, § 274b; 1903, ch. 205.]

**§ 290. Physician's certificate.** Any physician having last attended a deceased person during his illness, shall within twenty-four hours after decease of such person, furnish for registration to the proper officer within whose jurisdiction such death occurs, a certificate of the duration of the last illness, the name of the deceased, sex, color and age, place of birth, names of parents, the disease of which the person died and the date of decease. Any physician having attended a case of confinement shall within twenty-four hours, or three days if outside of incorporated limits of cities, towns and villages, as to births and deaths only, thereafter furnish for registration to the proper officer within whose jurisdiction such event occurred, a certificate of the date of birth, name of child, (if it have any), sex and color, with the names, dates and places of birth of parents. Any physician attending a case of infectious or contagious disease shall immediately notify the health officer within whose jurisdiction such disease exists, giving the name of the patient, place of residence, and the character of the disease, and shall in addition thereto, for the purpose of keeping the record of vital statistics complete, certify the facts to the clerk of the civil township within whose district such disease occurred, or in counties not organized into civil townships, then to the county commissioner having the proper jurisdiction, giving name of patient, place of residence and character of disease. Except as to infectious or contagious diseases, it shall be sufficient within the meaning of this section, to send the certificates of births and

deaths to the proper officers by mail; and it is hereby made the duty of the county auditor to furnish, after each election, the name of the clerk of each organized civil township, with his post office address, and in counties or districts having no organized civil townships, the name of the county commissioner having jurisdiction, with his post office address, to every physician duly registered within his county. Any physician neglecting to perform the duties herein prescribed, shall forfeit a sum not exceeding fifty dollars for each offense, to be collected as other fines are collected. [1899, ch. 169, § 3; R. C. 1899, § 274c; 1903, ch. 205.]

**§ 291. Officers transmit certified copy. Compensation.** It shall be the duty of the health officer of each city and the clerk of each organized civil township of each county in this state, and in counties not organized into civil townships, the county commissioner of such county for the district for which he was elected, to make and send a copy of the registry of births, deaths and infectious and contagious diseases to the superintendent of the county board of health of each county in the state, not later than the tenth of each month, a certified copy of the registry of births, deaths and infectious or contagious diseases occurring within the preceding month; and the superintendent of the county board of health of each county in this state, shall make and send to the state superintendent of health on or before the fifteenth day of each month, a copy of the records showing all births, deaths and infectious or contagious diseases reported to him for the preceding month within his county. The county auditor shall furnish the proper blank for this purpose at the expense of the county. The health officer of each city shall receive for the making of such record and reporting the same, the sum of ten cents for each separate record of births, deaths and diseases so made and reported as herein provided, to be paid out of the general fund of such city in the same manner as other bills and accounts against such city are allowed and paid. The clerk of each organized civil township of any county in this state shall receive for the making of such record and reporting the same the sum of ten cents for each separate record of births, deaths and diseases so made and reported as herein provided, to be paid out of the general fund of such township in the same manner as other bills and accounts against such township are allowed and paid. In counties not organized into civil townships the county commissioner of such county for the district for which he was elected shall receive for the making of such record and reporting the same, the sum of ten cents for each separate record of births, deaths and diseases so made and reported as herein provided, to be paid out of the general fund of said county in the same manner as other bills and accounts against said county are allowed and paid. Any officer charged with making and keeping the record of vital statistics, may upon application of any interested party, prepare a certified copy of any individual and separate record as required, for which he shall be entitled to collect a fee of twenty-five cents, to be paid by the person receiving the same. For neglecting to perform such duties as are herein prescribed, the officer shall forfeit the sum of ten dollars for each offense, to be collected as other fines are collected by law. [1899, ch. 169, § 4; R. C. 1899, § 274d; 1903, ch. 205.]

**§ 292. Registry of births, deaths, infectious and contagious diseases.** The superintendent of each county board of health shall, on or before the fifteenth day of each month, transmit to the superintendent of the state board of health upon blanks furnished him by the state board of health, a certified copy of the registry of births, deaths and infectious and contagious diseases which have occurred in said county within the calendar month immediately preceding, as reported to him by the officers charged with the collection of vital statistics for the districts within his county. For obtaining, registering and returning the facts herein required, the county superintendent of health shall receive the sum of ten cents for each separate record

of births, deaths, infectious and contagious diseases so made and reported as herein provided, to be paid out of the general fund of such county in the same manner as other bills and accounts against said county are allowed and paid. For neglect to perform such duties as are herein required, the county superintendent of health shall forfeit a sum not exceeding fifty dollars for each offense, to be collected as other fines are collected by law. [1899, ch. 169, § 5; R. C. 1899, § 274e; 1903, ch. 205.]

§ 293. **County auditor shall publish.** It shall be the duty of the county auditor to have published once a week for four consecutive weeks during the month of January of each year, in at least one official paper within his county, under the heading of "Vital Statistics," a copy of section 289 of this article. [1903, ch. 205.]

ARTICLE 12.—STATE BOARD OF MEDICAL EXAMINERS.

§ 294. **Board of medical examiners, how appointed. Qualifications.** The governor shall appoint a state board of medical examiners consisting of nine members, of whom eight shall be practicing physicians, graduates of reputable medical colleges, who shall hold their office for three years after such appointment and until their successors are appointed and qualified. Two members of such board shall be homeopathic physicians and one a lawyer. [1890, ch. 93, § 1; R. C. 1895, § 275.]

§ 295. **Officers. Meetings for examinations. Record of licenses.** Such board shall elect a president and treasurer, and shall have a seal. The president and secretary shall have power to administer oaths. The board shall hold meetings for examinations at such place as it may designate on the first Tuesday in January, April, July and October of each year, and such special meetings as it may from time to time appoint. The board shall keep a record of all its proceedings, and also a register of applicants for license together with their ages, time spent in the study of medicine and the name and location of all institutions granting to such applicants degrees or certificates of attendance on lectures in medicine or surgery. Such register shall also show whether the applicant was rejected or licensed under this article. Said books and register shall be prima facie evidence of all matters therein recorded. [1890, ch. 93, § 2; R. C. 1895, § 276.]

§ 296. **Examinations, how conducted. Licenses, how granted and 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 examiner 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 section. 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. [1890, ch. 93, § 3; R. C. 1895, § 277; 1905, ch. 148, § 1.]

§ 297. **License to be recorded.** The person receiving a license shall file the same for record in the office of the register of deeds of the county wherein he resides, and the register of deeds shall record the same in like manner as other instruments required to be recorded. [1890, ch. 93, § 4; R. C. 1895, § 278; 1901, ch. 142.]

§ 298. **Who exempt from provisions of this article.** This article shall not apply to surgeons of the United States army or navy, physicians or surgeons in actual consultation from other states or territories or actual medical students practicing medicine under the direct supervision of a preceptor. [1890, ch. 93, § 5; R. C. 1895, § 279.]

§ 299. **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 section shall be construed so as to prohibit gratuitous assistance to a sick or injured person in case of emergency. [1890, ch. 93, § 6; R. C. 1899, § 280; 1905, ch. 148, § 1.]

§ 300. **Certain dead bodies may be used for dissecting.** It shall be lawful for any medical association, regular physician and surgeon or the professors of any medical college in this state to receive the body of any person executed pursuant to sentence of law and of all persons dying in the penitentiary or county jails while under sentence of law for crime, to be used within the state for the advancement of anatomical science, preference being given to medical colleges established by law within this state. [1890, ch. 92, § 1; R. C. 1895, § 281.]

§ 301. **Remains to be interred.** Every physician, surgeon or professor before receiving any such body shall give to the officer surrendering the same a sufficient bond conditioned that such body shall be used only for the promotion of anatomical science within the state and so as not to outrage public feeling; and that after having been so used the remains thereof shall be interred in some public cemetery. [1890, ch. 92, § 2; R. C. 1895, § 282.]

§ 302. **When body not to be used for dissecting.** If the deceased during his last illness requested to be buried or, if within thirty-six hours after his death any friend or relative asks to have the body buried, the body shall not be so surrendered, but shall be buried. [1890, ch. 92, § 3; R. C. 1895, § 283.]

#### ARTICLE 13.—STATE BOARD OF PHARMACY.

§ 303. **Board of pharmacy, how appointed. Vacancies.** The state board of pharmacy shall consist of three members, who shall hold office for three years and until their successors are appointed and qualified. Annually or whenever a vacancy occurs in such board the governor shall, upon the recommendation of the North Dakota pharmaceutical association, appoint

some member thereof as a member of the board or to fill a vacancy as the case may be. [1890, ch. 108, § 4; R. C. 1895, § 284.]

§ 304. **Organization of board. Examinations.** Such board shall within thirty days after the appointment and qualification of a new member for the full term, meet and organize by the selection of a president and secretary from its own members, who shall be elected for the term of one year and perform the duties prescribed by the board. It shall be the duty of the board to examine all applications for registration submitted in proper form; to grant certificates of registration to such persons as may be entitled to the same under the provisions of this article; to cause the prosecution of all persons violating its provisions; to report annually to the governor and to the North Dakota pharmaceutical association upon the condition of pharmacy in the state, which report shall also set forth the proceedings of the board for the year, as well as the names of all pharmacists registered. The board shall hold at least two and not more than four meetings each year for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties, and it shall give at least thirty days' public notice of the time and place of such meeting in three pharmaceutical journals of general circulation in the state. The board shall make rules for the proper execution of its duties and shall keep a book of registration, in which shall be entered the names and places of business of all persons registered and the facts on which such registration was granted. Two members of the board shall constitute a quorum. The board shall have power to cancel the certificate of any registered pharmacist for intemperance, incompetency, or illegal sale of intoxicating liquors, upon the sworn complaint of three reputable citizens, charging any registered pharmacist with intemperance, incompetency or the illegal sale of intoxicating liquors. The board shall appoint a time and place for hearing such charges and shall give the pharmacist so charged at least ten days' notice by mail of the time and place of the hearing, when he shall appear and answer such charges. If the board finds any of such charges to be true, they shall forthwith cancel the certificate of such pharmacist and his registry as a pharmacist. [1890, ch. 108, § 5; 1893, ch. 80, § 2; R. C. 1895, § 285.]

§ 305. **Who entitled to registry.** To entitle a person to registry 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. [1890, ch. 108, § 2; R. C. 1895, § 286; 1905, ch. 146.]

§ 306. **Certificates. Fees.** Each applicant for registration shall pay to the secretary the sum of five dollars, before examination; provided, that in case of a failure to pass a satisfactory examination, he may be re-examined at any regular meeting of the board upon payment of a fee of three dollars. Registration as a pharmacist entitles the person registered to membership in the North Dakota pharmaceutical association. [1890, ch. 108, § 8; 1893, ch. 80, § 3; R. C. 1899, § 287.]

§ 307. **Registered assistants. Qualifications of. Fees.** Any registered apprentice in pharmacy, or any assistant in pharmacy, over the age of eighteen years, not having the qualifications of a registered pharmacist, who shall have been engaged in good faith for two years in assisting in the compounding of prescriptions of medical practitioners under the supervision of a registered pharmacist, in a drug store where the prescriptions of medical practitioners are compounded, and shall furnish satisfactory evidence to that effect to the state board of pharmacy, and shall upon making

application for registration, pass a satisfactory examination before the said state board of pharmacy, and shall pay to the secretary of said board a fee of three dollars, be entitled to receive a certificate as registered assistant, which said certificate shall entitle him to continue in such duties as clerk or assistant, but such certificate shall not entitle him to engage in business on his own account as a pharmacist. Annually thereafter during the time he shall continue in such duties, he shall pay to the secretary of the state board of pharmacy the sum of fifty cents, for which he shall receive a renewal of such certificate. [1890, ch. 108, § 9; R. C. 1895, § 288; 1903, ch. 136.]

§ 308. **Apprentices required to file certificate.** Any person desiring to register as an apprentice in pharmacy shall, at the date of entering into his apprenticeship, file with the secretary of the state board of pharmacy a certificate, stating that he has entered into an apprenticeship, and stating his age, name and that he has educational qualifications sufficient to enable him to pass an entrance examination to the high schools of the state of North Dakota, and he shall at the same time file with the said secretary a certificate from his employer, who must be a regularly licensed pharmacist of the state of North Dakota, which certificate shall set forth that the applicant has been regularly indentured to him as an apprentice in pharmacy, and that said applicant possess, to the knowledge of such registered pharmacist, educational qualifications which would enable him to pass the entrance examination to the high schools of the state of North Dakota. [1903, ch. 135, § 1.]

§ 309. **Registration of apprentice.** Upon the receipt of the certificate above mentioned by the secretary of the state board of pharmacy, and the sum of twenty-five cents as a fee for filing same, the applicant shall be registered as an apprentice, and at the expiration of two years from the date of such registration the said applicant shall be permitted to take the examination prescribed by the state board of pharmacy for assistant pharmacist upon the conditions imposed by the said board of pharmacy. [1903, ch. 135, § 2.]

§ 310. **Registration fees. Certificates to be posted.** Each registered pharmacist engaged in the practice of his profession shall, annually, during the time he shall continue such practice, on such date as the board of pharmacy shall determine, pay a registration fee, to be fixed by the board, in no case exceeding three dollars, upon which he shall receive a renewal of such registration and of membership in the North Dakota pharmaceutical association. Each certificate of registration and each renewal thereof shall be conspicuously posted at the place of business of the holder. [1890, ch. 108, § 10; 1893, ch. 80, § 4; R. C. 1895, § 289.]

§ 311. **Salaries. Board to make reports.** The secretary of the state board of pharmacy shall receive a salary which shall be determined by such board: he shall also receive his traveling and other expenses incurred in the performance of his official duty. The other members of such board shall each receive the sum of five dollars for each day actually engaged in its service, and all legitimate and necessary expenses incurred in attending the meetings of the board or in performing other official duties. Such expenses shall be paid only from the moneys received by the board under the provisions of this article, and no part of the salary or other expenses of the board shall be paid out of the state treasury. Any moneys remaining after the payment of the salaries and expenses herein provided for shall be held by the secretary of the board as a special fund for meeting the expenses of the board and of the annual meeting and report of the North Dakota pharmaceutical association, and other necessary expenses that may be incurred by such association. The secretary of the board shall give such bonds as the board shall from time to time require. The board shall in its annual report render an account of all moneys received and disbursed by it. [1890, ch. 108, § 11; 1893, ch. 80, § 5; R. C. 1895, § 290.]

§ 312. **Forfeited membership, how renewed.** Nothing in this article shall be so construed as to prevent any person, who has once been a member by examination, and who may have forfeited his membership by non-payment of fees, from renewing his registration within two years by paying such fees, without examination. [1890, ch. 108, § 16; R. C. 1895, § 291.]

ARTICLE 14.—STATE BOARD OF DENTAL EXAMINERS.

§ 313. **Who may practice. License.** It shall not be lawful for any person to practice dentistry in this state without having a license so to do from the board of dental examiners. [1890, ch. 58, § 1; R. C. 1895, § 292.]

§ 314. **Board, how constituted.** The state board of dental examiners, consisting of five members, heretofore created, shall continue to be the state board of dental examiners. Upon the expiration of each member's term of office the governor shall appoint his successor, who shall hold office for five years and until his successor is appointed and qualified. All vacancies in such board shall be filled by appointment by the governor. No person shall be eligible to appointment on such board who is not a practicing dentist in this state. [1890, ch. 58, § 2; R. C. 1895, § 293.]

§ 315. **Power to make rules. Officers. Records.** Such board shall have power to make reasonable rules and regulations for carrying into effect the provisions of this article. It shall choose one of its members president and one secretary thereof, and shall hold regular meetings twice in each year, and such special meetings as the board may by its rules provide. A majority of the members of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by it, and such records together with the list of licensed and registered dentists shall be public records, and shall at all reasonable times be open to public inspection. Such records, or a transcript of the same, or any part thereof, under the seal of the board, duly certified by the secretary thereof, shall be competent evidence of the facts therein stated. A certificate of the secretary under the seal of the board, stating that any person is or is not a registered dentist, shall be prima facie evidence of such fact. The president and secretary of the board shall have authority to administer oaths, and the board shall have power to hear testimony as to all matters relating to the duties imposed upon it by law. If any member of the board shall without cause absent himself from two of its regular meetings consecutively his office shall be deemed vacant and such vacancy shall be filled by appointment as hereinbefore provided. [1890, ch. 58, § 3; R. C. 1895, § 294.]

§ 316. **Certificate of registration. Fee.** It shall be the duty of each person licensed by the board to practice dentistry in this state to procure from the secretary of the board, on or before July first, annually, a certificate of registration. Such certificate shall be issued by the secretary upon payment of a fee to be fixed by the board, not exceeding the sum of two dollars. All certificates so issued shall be prima facie evidence of the right of the holder to practice dentistry in this state during the time for which they were issued. Any certificate or license granted by the board may be revoked by it upon conviction of the party holding it of a violation of any of the provisions of this article. Every person receiving such certificate shall conspicuously expose the same in his place of business. [1890, ch. 58, § 4; R. C. 1895, § 295.]

§ 317. **Examination and qualification of practitioners.** Any person desiring to begin the practice of dentistry in this state must in order to be eligible for examination furnish to the board satisfactory evidence that he has been engaged in the active practice of dentistry for at least three years

immediately preceding such examination, or that he has pursued the study of dentistry in the office or under the supervision of a regularly practicing dentist for such period. He shall be examined by the board with reference to his knowledge and skill in dentistry, and if upon such examination such person is found in the judgment of said board to possess suitable qualifications to practice dentistry, and, if the board is satisfied that the applicant has a good moral character, it shall issue to such applicant a license to practice dentistry in accordance with the provisions of this article; provided, that any person desiring to commence the practice of dentistry in this state and having a diploma issued by any reputable dental college or dental department of any university shall, in person, present the same to the state board of examiners, and the board being satisfied as to the genuineness of the diploma, may without examination issue a license to such person to practice dentistry in this state on payment of the license fee hereinafter provided for. All licenses issued by the board shall be signed by the several members thereof and be attested by its president and secretary under the seal of the board. [1890, ch. 58, § 5; R. C. 1895, § 296.]

§ 318. **Who regarded as practicing dentistry.** A person shall be deemed to be practicing dentistry within the meaning of this article, who shall perform operations or parts of operations of any kind or treat diseases or lesions of the human tooth or jaw or correct malpositions thereof. But nothing in this article contained shall be so construed as to apply to acts of bona fide students of dentistry done in the pursuit of clinical advantages under the direct supervision of a preceptor or a licensed dentist in this state during the period of their enrollment in a dental college and attendance upon a regular course in such college, or to prevent any legally qualified resident physician and surgeon from extracting teeth, or to prevent any person from using any domestic remedy or other means for the relief of pain. [1890, ch. 58, § 7; R. C. 1895, § 297.]

§ 319. **Fee for examination. Annual reports, etc.** The board of dental examiners may require each person applying to it for examination to pay a fee not exceeding ten dollars, which shall in no case be returned. If the applicant shall receive a license to practice, he shall thereupon pay the further sum of five dollars, which shall also entitle him to receive a certificate of registration for the current or registration year in which such license is issued. Thereafter he shall annually obtain a certificate as hereinbefore provided. Out of the funds received by the board each member may be paid the sum of five dollars for each day actually engaged in the duties of his office, and four cents per mile for the distance necessarily traveled in going to or returning from meetings of the board. Such expenses shall be paid from the fees received by the board under the provisions of this article and no part of the salary or other expenses of the board, except the printing of the annual report, shall be paid out of the state treasury. All moneys remaining after the payment of such per diem allowance and mileage as above provided shall be held by the secretary as a special fund for defraying the expenses of the board in carrying out the provisions of this article. The secretary shall give a bond in such sum and with such conditions as the board may from time to time direct. The board shall make an annual report of its proceedings to the governor on or before the fifteenth day of November in each year, which report shall contain an account of all moneys received and disbursed by the board during the preceding year. [1890, ch. 58, § 8; R. C. 1895, § 298.]

§ 320. **Penalty for violation of this article.** Any person violating any of the provisions of this article is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine, not exceeding three hundred dollars, or by imprisonment in the county jail, not exceeding sixty days, or by both. [1890, ch. 58, § 9; R. C. 1895, § 299.]

§ 321. **Penalty for false pretense.** Any person who shall knowingly or falsely claim or pretend to have or hold a certificate of registration, diploma or degree granted by a society or by the board of dental examiners, or who shall falsely and with intent to deceive the public claim or pretend to be a graduate from any dental college, not being such graduate, is guilty of a misdemeanor, and upon conviction is punishable as provided in section 320. [1890, ch. 58, § 10; R. C. 1899, § 300.]

§ 322. **Penalty for practicing under false name, etc.** Any person who shall be licensed under the provisions of this article and who shall practice dentistry under a false name with intent to deceive shall be liable to have his license revoked upon twenty days' notice of such proposed revocation and of the time and place of considering such revocation by the state board of dental examiners. Any person, who after revocation of his license continues to practice dentistry in this state is guilty of a misdemeanor and upon conviction thereof is punishable as provided in section 320. [1890, ch. 58, § 11; R. C. 1895, § 301.]

#### ARTICLE 15.—PRACTICE OF OSTEOPATHY.

§ 323. **Diploma must be recorded.** Any person having a diploma regularly issued by the American School of Osteopathy, of Kirksville, Missouri, or any other legally chartered and regularly conducted school of osteopathy, who shall have been in personal attendance as student in such school for at least four terms of not less than five months each before graduation shall be authorized to treat diseases of the human body according to such system, after having filed such diploma for record with the clerk of the county court of the county in which such person proposes to practice, and having filed with such clerk an affidavit that the diploma is genuine, and that he or she is the person to whom the same was issued, and that all the provisions of this article were fully complied with before the issuing of such diploma; whereupon the clerk shall record such diploma in a book to be provided by him for that purpose, and shall indorse upon such diploma the date of filing and recording the same, for which he shall receive from such person a fee of one dollar. Any person who shall practice or pretend or attempt to practice the system, method or science of osteopathy in treating diseases of the human body without having complied with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than fifty nor more than one hundred dollars for each offense; provided, that nothing in this section shall be construed as prohibiting any legally authorized practitioner of medicine or surgery in this state from curing or relieving disease with or without drugs, or by any manipulation by which any disease may be cured or alleviated. [1897, ch. 105; R. C. 1899, § 301a.]

#### ARTICLE 16.—STATE BOARD OF EXAMINERS IN OPTOMETRY.

§ 324. **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. [1903, ch. 130, § 1; 1905, ch. 142, § 1.]

§ 325. **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. [1903, ch. 130, § 2; 1905, ch. 142, § 2.]

§ 326. **Board created.** There is hereby created a board, whose duty it shall be to carry out the purposes and enforce the provisions of this article, and shall be styled "North Dakota State Board of Examiners in Optometry." Said board shall be appointed by the governor and shall consist of five

resident opticians who are members of the North Dakota Optical association engaged in the actual practice of optometry. Each member of said board shall hold office for a term of three years, and until his successor is appointed. Appointments to fill vacancies caused by death, resignation or removal shall be made for the residue of such term by the governor. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, and said board shall have a common seal. [1903, ch. 130, § 3.]

§ 327. **Governor to appoint officers. Meetings.** The governor shall appoint one of the members of said board president, and one member secretary, who severally shall have the power during their 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 times 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. [1903, ch. 130, § 4; 1905, ch. 142, § 3.]

§ 328. **Examinations.** Every person before beginning to practice optometry in this state 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 practitioner 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 boards 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 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. [1903, ch. 130, § 5; 1905, ch. 142, § 4.]

§ 329. **Fees.** Every person who is residing and engaged in the practice of optometry in the state of North Dakota at the time of the taking effect of this article, shall within six months thereafter, file an affidavit in proof thereof with said board, who shall make and keep record of such person, and shall for the consideration of the sum of three dollars, issue to him a certificate of registration. [1903, ch. 130, § 6.]

§ 330. **Who exempt from provisions of section 328.** All persons entitled to a certificate of registration under the full provisions of section 329 shall be exempt from the provisions of section 328. [1903, ch. 130, § 7.]

§ 331. **Fee for filing certificate.** Such board shall be entitled to a fee of one dollar for the reissue of any certificate. [1903, ch. 130, § 8; 1905, ch. 142, § 5.]

§ 332. **Penalty.** Any person entitled to a certificate, as provided for in section 329, who shall not within six months after the passage thereof make written application to the board of examiners for a certificate of registration, accompanied by a written statement, signed by him, and duly verified before an officer authorized to administer oaths within this state, fully setting forth the grounds upon which he claims such certificate, shall be deemed to have waived his right to a certificate under the provisions of said section. Any failure, neglect or refusal on the part of any person holding such certificate to file the same for record as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. [1903, ch. 130, § 9.]

§ 333. **Certificate to be displayed.** Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted. [1903, ch. 130, § 10.]

§ 334. **Compensation of board.** Out of the funds coming into the possession of said board, each member thereof may receive as compensation, the sum of five dollars for each day actually engaged in the duties of his office and mileage at three cents per mile for all distance necessarily traveled in going to and coming from the meetings of the board. Said expenses shall be paid from the fees and assessments received by the board under the provisions of this article, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said per diem allowance and mileage, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board and carrying out the provisions of this article, and he shall give such bonds as the board shall from time to time direct; and the said board shall make an annual report of its proceedings to the governor on the first Monday of December of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this article. All surplus moneys shall go to the state school fund. [1903, ch. 130, § 11.]

§ 335. **Annual license fee.** Every registered optician shall in every year after 1903, pay to the said board of examiners the sum of two dollars as a license fee for each year. Such payment shall be made prior to the first day of April in each and every year, and in case of default in such payment, by any person, his certificate may be revoked by the board of examiners, upon twenty days' notice of the time and place of considering such revocation. But no license shall be revoked for such non-payment if the person so notified shall pay before or at such time of consideration his fee and such penalty as may be imposed by said board; provided, that said board may impose a penalty of five dollars and no more on any one person so notified, as a condition of allowing his license to stand; provided, further, that said board of examiners may collect any such dues by suit. [1903, ch. 130, § 12.]

§ 336. **Certificate revoked, when.** Said board shall have power and must revoke any certificate of registration granted by it under this article, 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 regranted, and the same shall be regranted him upon a satisfactory showing that the disqualification has ceased. [1903, ch. 130, § 13; 1905, ch. 142, § 6.]

§ 337. **Penalty.** Any person who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction may be fined not less than twenty dollars, nor more than one hundred dollars, or be confined not less than one month nor more than three months in the county jail. And all fines thus received shall be paid into the common school fund of the county in which such conviction takes place. [1903, ch. 130, § 14.]

§ 338. **Justices of peace to have jurisdiction.** Justices of the peace shall have jurisdiction of violations of this article. It shall be the duty of the respective state's attorneys to prosecute all violations of this article. [1903, ch. 130, § 15.]

§ 339. **Who exempt.** Nothing in this article 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 provisions of this article, 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 or any other article of merchandise without attempting to practice optometry as in this article defined, nor to student practitioners under the supervision of registered opticians. [1903, ch. 130, § 16; 1905, ch. 142, § 7.]

#### ARTICLE 17.—STATE BOARD OF EMBALMERS.

§ 340. **Governor to appoint.** The governor shall 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. [1905, ch. 111, § 1.]

§ 341. **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 receive 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. [1905, ch. 111, § 2.]

§ 342. **Meetings of board.** Such 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 of 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. [1905, ch. 111, § 3.]

§ 343. **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. [1905, ch. 111, § 4.]

§ 344. **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. [1905, ch. 111, § 5.]

§ 345. **Seal. Licenses.** 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. [1905, ch. 111, § 6.]

§ 346. **Penalty for violation.** 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 344, without having complied with the provisions of said section 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 examination of applicants has been held under the provisions of this article. [1905, ch. 111, § 7.]

§ 347. **Fees paid to treasurer. Bond of.** All fees collected and fines paid under the provisions of this article 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. [1905, ch. 111, § 8.]

§ 348. **Report.** 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. [1905, ch. 111, § 8.]

ARTICLE 18.—BARBERS' EXAMINING BOARD.

§ 349. **Certificate of registration.** It shall be unlawful for any person to follow the occupation of barber in this state unless he shall have first obtained a certificate of registration as provided in this article; provided, however, that nothing herein contained shall apply to or affect any person who was actually engaged in such occupation on the taking effect of this article, except as hereinafter provided. [1901, ch. 30, § 1.]

§ 350. **Board of examiners, how appointed. Bonds.** A board of examiners to consist of three persons is hereby created to carry out the purposes and enforce the provisions of this article. Said board shall be appointed by the governor, and each person appointed to act on said board must be a practical barber, who has been practicing his profession in the state of North Dakota for a period of five years. Each member of the board shall serve for a term of two years and until his successor is appointed and qualified, except in the case of the first board, whose members shall serve one, two, and three years respectively, as specified in their appointment. Each member of said board shall give a bond of five thousand dollars with sureties to be approved by the secretary of state, conditioned for the faithful performance of his duties, and shall take the oath provided by law for public officers. Vacancies on said board caused by death, resignation or expiration of the term of any member thereof, shall be filled by appointment from the same class of persons to which the deceased or retiring member belonged. [1901, ch. 30, § 2.]

§ 351. **Organization.** Said board shall elect a president, secretary and treasurer, and shall have its headquarters at the state capitol; shall have a common seal, and the secretary and president shall have power to administer oaths. [1901, ch. 30, § 3.]

§ 352. **Compensation.** Each member of said board shall receive a compensation of three dollars per day for actual service and ten cents per mile for each mile actually traveled in attending the meetings of said board, which compensation shall be paid out of any moneys in the hands of the treasurer of said board: provided, that the said compensation and mileage shall in no event be paid out of the state treasury. [1901, ch. 30, § 4.]

§ 353. **Biennial report.** Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts, and disbursements of the board for the preceding two years, also a full statement of its doings and proceedings and such recommendations as to it may seem proper looking to the better carrying out of the intents and purposes of this article, which report shall not be printed except at the expense of the fund herein provided for. Any moneys in the hands of the treasurer of the said board at the time of making such report shall be kept by him for the future maintenance of the board and to be disbursed by him upon warrants signed by the president and secretary of the said board. [1901, ch. 30, § 5.]

§ 354. **Four examinations each year.** Said board shall hold public examinations at least four times in each year in at least four different cities in this state at such times and places as it may determine, notice of such meetings to be given by publication thereof at least ten days before such meetings, in a newspaper published in the county where such meeting is to be held. [1901, ch. 30, § 6.]

§ 355. **Affidavit of residence and name. Fees.** Every person now engaged in the occupation of barber in this state shall, within ninety days after the taking effect of this article, file with the secretary of said board an affidavit setting forth his name, residence and length of time during which, and the

place where he has practiced such occupation, and shall pay the treasurer of said board two dollars, and a certificate of registration entitling him to practice said occupation shall thereupon be issued to him. [1901, ch. 30, § 7.]

§ 356. **Registration, how obtained. Fee.** Any person desiring to obtain a certificate of registration under this article shall make application to said board therefor and shall pay to the treasurer of said board an examination fee of five dollars, and shall present himself at the next regular meeting of the board for the examination of applicants, whereupon said board shall proceed to examine such persons, under such rules and regulations as may be by said board prescribed, which rules and regulations shall require that said applicant shall present to said board a certificate from some reputable physician designated by said board to the effect that said applicant is free from any contagious or infectious disease, and being satisfied that he is above the age of nineteen years, of good moral character, free from contagious or infectious diseases, has either studied the trade for three years as an apprentice under a qualified and practicing barber, or studied the trade for at least three years in a properly appointed and conducted barber school under the instructions of a competent barber, or practiced the trade in another state for at least three years, and is possessed of the requisite skill in said trade to properly perform all the duties thereof, including his ability in the preparation of tools, shaving, hair cutting, and all the duties and services incident thereto, and is possessed of sufficient knowledge concerning the common diseases of the face and skin to avoid the aggravation and spreading thereof in the practice of said trade. His name shall be entered by the board in the register hereinafter provided for, and a certificate of registration shall be issued to him, authorizing him to practice said trade in this state; provided, that whenever it appears that the applicant has acquired his knowledge of said trade in a barber school, the board shall be judges of whether said barber school is properly appointed and conducted and competent to give sufficient training in such trade. All persons making application for examination under the provisions of this article shall be allowed to practice the occupation of barbering until the next regular meeting of said board. Certificates of registration provided for in this article, shall be valid for one year from the date thereof, but shall be renewed by said board upon application within thirty days after the expiration thereof and the payment of one dollar to the treasurer of said board, which application shall be accompanied by a certificate from a physician approved by said board, stating that said applicant is free from contagious or infectious diseases. [1901, ch. 30, § 8.]

§ 357. **Apprentice.** Nothing in this article shall prohibit any person from serving as an apprentice in said trade under a barber authorized to practice same under this article nor from serving as a student in any school for the teaching of such trade under the instruction of a qualified barber; provided, that in shops where there are two or more barbers there shall not be more than one apprentice to two barbers authorized under this article to practice said occupation; provided, further, that all persons serving as apprentices shall within ninety days after the taking effect of this article file with the secretary of said board an affidavit setting forth his name, residence, and the length of time and place he has practiced as such apprentice, and shall pay the treasurer of said board two dollars, and a certificate of registration entitling him to practice as a barber's apprentice shall thereupon be issued to him, which certificate shall be kept posted in a conspicuous place in front of his working chair. [1901, ch. 30, § 9; 1903, ch. 38, § 1.]

§ 358. **Sunday barbering prohibited.** It shall be unlawful for any registered barber or barber's apprentice to practice the occupation of a barber upon Sunday; provided, that nothing in this article shall prevent or prohibit a barber from shaving or otherwise preparing the dead for burial on Sunday. [1903, ch. 38, § 2.]

§ 359. **Certificate of registration.** Said board shall furnish to each person to whom a certificate of registration is issued a card or insignia bearing the seal of the board and the signature of its president and secretary, certifying that the holder thereof is entitled to practice the occupation of barber in this state, for a period of one year from the date thereof, and it shall be the duty of the holder of such card or insignia to post the same in a conspicuous place in front of his working chair, where it may readily be seen by all persons whom he may serve. [1901, ch. 30, § 10.]

§ 360. **Certificates registered by board.** Said board shall keep a register in which shall be entered names of all persons to whom certificates are issued under this article, and said register shall be at all times open to public inspection. [1901, ch. 30, § 11.]

§ 361. **Power to revoke certificates.** Said board shall have power to revoke any certificate of registration granted by it under this article, for conviction of crime, habitual drunkenness for six months immediately preceding the time of receiving notice of a charge thereof duly made, as hereinafter provided, gross incompetency, or contagious or infectious diseases; provided, that before any certificate shall be revoked the holder thereof shall have notice in writing of the charge or charges against him, and shall at a day specified in said notice, at least five days after the service thereof, be given a public hearing and full 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 ninety days apply to have the same regranted and the same shall be regranted to him upon a satisfactory showing that the disqualification has ceased. [1901, ch. 30, § 12.]

§ 362. **Occupation of barber, what constitutes.** To shave or trim the beard or cut the hair of any person for hire or reward received by the person performing such service, or any other person shall be construed as practicing the occupation of barber within the meaning of this article. [1901, ch. 30, § 13.]

§ 363. **Penalty for violation.** Any person practicing the occupation of barber without having obtained a certificate of registration, as provided by this article, or willfully employing a barber who has not such certificate, or falsely pretending to be qualified to practice such occupation under this article, or violation of any of the provisions of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars or more than one hundred dollars, or by imprisonment in the county jail not less than ten days or more than ninety days. [1901, ch. 30, § 14.]

#### ARTICLE 19.—BOARD OF RAILROAD COMMISSIONERS.

§ 364. **How constituted.** The three persons elected commissioners of railroads, pursuant to the provisions of section 82 of the constitution of this state, constitute and shall be known and designated as the "Board of Railroad Commissioners of the State of North Dakota." They shall have power to elect one of their number president of such board and to appoint a secretary. [R. C. 1895, § 3003.]

§ 365. **Who disqualified.** No person in the employment of, or owning any stocks or bonds, or otherwise pecuniarily interested in, or an officer of any railroad, freight or transportation company, public warehouse or elevator operated in this state shall be eligible to the office of commissioner of railroads. [1889, ch. 110, § 2; R. C. 1899, § 3004.]

§ 366. **Oath and bond.** Such commissioners before entering upon the duties of their office shall take and subscribe the following oath, which shall be filed in the office of the secretary of state, viz:

I do solemnly swear (or affirm) that I will support the constitution of the state of North Dakota and that I will faithfully discharge the duties of commissioner of railroads to the best of my ability; that I am not in the employ-

ment of and that I own no stock or bonds of and am not otherwise pecuniarily interested in, nor an officer of any railroad, freight or transportation company, public warehouse or elevator operated in this state.

And each of such commissioners shall give at the same time a bond to the state in the sum of ten thousand dollars with sureties to be approved by the state treasurer, conditioned for the faithful discharge of his duties, which bond shall be filed in the office of the secretary of state. [R. C. 1895, § 3005.]

**§ 367. Salary and expenses. Appropriation.** The salary of each of such commissioners, to be elected after the taking effect of this section, shall be twelve hundred dollars per annum. The commissioners in office, and those hereafter to be elected, shall keep their office at the seat of government, and shall be provided with suitable rooms, necessary office furniture, stationery, books and maps, not exceeding the sum of five hundred dollars per annum, to be paid out of the state treasury. The secretary of said board of railroad commissioners shall receive a salary of one thousand dollars per annum. The accounts for all expenses authorized by this section, except salary of members of the board, shall be audited only when approved by the governor. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of eight hundred dollars per annum, or so much thereof as may be necessary, for the purpose of paying the traveling expenses of the board of railroad commissioners and its secretary when actually engaged in the discharge of their duties. [1897, ch. 119; 1899, ch. 27; R. C. 1899, § 3006.]

**§ 368. Free passage.** Such commissioners, their secretary and the persons in their official employment shall, when in the performance of their official duties, have the right to pass free of charge on all railroads, steamers, vessels and boats and on all vehicles employed in or by any railroad or other transportation company engaged in the transportation of freight and passengers within this state. [1889, ch. 110, § 4; R. C. 1899, § 3007.]

**§ 369. Powers and duties.** The commissioners of railroads shall have the general supervision of all railroads, railroad corporations and common carriers in the state operated by steam, and of all bridge corporations and ferry companies, the property of which is used or operated for railroad purposes, and shall inquire into any neglect or violation of the laws of this state by any such railroad, railroad corporation, bridge corporation, common carrier or ferry company doing business therein, or by the officers, agents or employes thereof, and shall also from time to time carefully examine and inspect, as hereinafter provided, the condition of each railroad and railroad corporation in the state, and of its equipment, and the manner of its conduct and management, with reference to the public safety and convenience. [1897, ch. 115, § 1; R. C. 1899, § 3008.]

**§ 370. Attorney general attorney for board. Duties of state's attorneys.** The attorney general of the state of North Dakota shall be ex officio attorney for the board of railroad commissioners and shall give it such counsel and advice as it may from time to time require; and he shall institute and prosecute any actions which such board may deem it proper and expedient to prosecute; and he shall render such board all counsel, advice and assistance necessary to carry out the provisions of any law of this state according to the true intent and meaning thereof. It shall also be the duty of the state's attorney in every county on request of such board to institute and prosecute and to appear and defend for such board in any and all actions and proceedings which he shall be requested by such board to institute and prosecute and to appear in all actions and proceedings to which the board is a party. Such board shall have power to employ additional counsel to assist such attorney general or state's attorney, when in its judgment the exigencies of the case so require. The fee of such additional counsel shall be determined by the

governor and paid by the state. [1889, ch. 110, § 17; 1890, ch. 122, § 9; R. C. 1895, § 3009.]

§ 371. **Majority vote decides.** All questions arising in the action of such commissioners shall be decided and determined by a majority vote. [1889, ch. 110, § 25; R. C. 1895, § 3012.]

#### ARTICLE 20.—COMMISSIONERS OF DEEDS.

§ 372. **Appointment.** The governor may appoint in each of the states of the United States and the territories thereof, but not more than one in any town or city, one or more commissioners under the seal of this state, to continue in office for the term of six years, who shall have the power to administer oaths, and to take depositions and affidavits to be used in this state, and also to take acknowledgments of any deed or other instrument to be used or recorded in this state. [1903, ch. 57, § 1.]

§ 373. **Oath, seal and fee.** Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any clerk of a court of record, or other officer having an official seal, authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all the duties of his office, which oath shall be filed in the office of the secretary of state, and shall provide and keep an official seal upon which must be engraved his name and the words, "Commissioner of Deeds for the State of North Dakota," and the name of the state or territory for which he is commissioned, with the date on which his commission expires, and shall file an impression of said seal in the office of the secretary of state of North Dakota, and shall furnish a bond to this state by a surety company in the sum of five hundred dollars, conditioned that he will perform the duties of his office, which bond shall be filed in the office of the secretary of state of North Dakota, and shall pay into the state treasury the sum of ten dollars. [1903, ch. 57, § 2.]

§ 374. **Compensation for services.** Such commissioner shall be entitled to collect and charge for his services the same fees as are allowed a notary public in the state for which he is appointed. [1903, ch 57, § 3.]

## CHAPTER 5.

### STATE OFFICERS AND BOARDS.

#### ARTICLE 1.—MISCELLANEOUS PROVISIONS.

§ 375. **Beginning and end of fiscal year.** The fiscal year for the state shall commence the first day of July and end on the thirtieth day of June in each year, and all reports required annually or biennially by any state officer shall be made to and include the thirtieth day of June preceding, and all accounts of said officers shall be closed and balanced to that date, except where otherwise specifically prescribed by law. [1893, ch. 67, § 1; R. C. 1899, § 302.]

Fiscal year ends June 30. *Carter v. State*, 9 S. D. 423, 69 N. W. 523; *Meade Co. v. Reeves*, 13 S. D. 193, 82 N. W. 951.

§ 376. **Appropriations, when available.** All appropriations made for the maintenance of the state institutions or other purposes by the legislative assembly shall become available on the first day of July next succeeding their enactment, unless otherwise specifically prescribed by law. [1893, ch. 67, § 2; R. C. 1899, § 303.]

§ 377. **Penalty for failure to make reports.** Any public officer who is required to make an official report to any other officer, or board, who willfully neglects to make such report at the time and substantially in the manner re-

quired by law, shall forfeit and pay to the state a penalty of not less than twenty dollars nor more than five hundred dollars, to be recovered from such delinquent officer, or from him and the sureties upon his official bond. [1890, ch. 118, § 1; R. C. 1895, § 304.]

**§ 378. Attorney general to prosecute.** Upon the willful neglect of any public officer to make any report required by law it shall be the duty of the officer or board to whom such report should be made promptly to notify the attorney general of such failure to report, whose duty it shall be to investigate the neglect of duty complained of; and, if in his opinion, the officer has not a sufficient excuse for such failure, the attorney general shall prosecute such officer for the recovery of the penalty above provided. [1890, ch. 118, § 2; R. C. 1899, § 305.]

**§ 379. Record of fees. Penalty.** Every state officer or deputy state officer required by section 84 of the constitution of this state, or by any provision of the laws of this state to cover into the state treasury all fees and profits arising from such office, shall keep a record of all such fees or profits in a book kept for that purpose, which book shall be the property of the state. They shall report to the state treasurer monthly the amount of fees or profits received, verified by oath, and at the same time pay the amount of such fees or profits to the treasurer, taking duplicate receipts therefor, one of which shall be filed with the state auditor forthwith, and the auditor shall charge the treasurer with the amount thereof. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in the sum not less than fifty dollars, nor more than one hundred dollars, in the discretion of the court wherein he is convicted. [1890, ch. 183, § 7; 1891, ch. 1, § 2; R. C. 1899, § 327; 1901, ch. 95.]

**§ 380. Apportionment of moneys belonging to counties, how made.** The apportionment of all moneys paid into the state treasury, any part of which is required by law to be paid to the several counties or to municipal corporations, shall be made by the auditor and treasurer, and each shall keep an account with such counties or corporations, crediting them with all such apportionments and charging them with all sums paid to them. The auditor shall draw an order on the state treasurer for the amount so credited, and forward the same to the county treasurer of such county or the clerk of such corporation, and at the same time send a written notice to the county auditor or clerk of such corporation, stating the amount so apportioned. [1890, ch. 183, § 8; R. C. 1899, § 328.]

**§ 381. Moneys, how paid from treasury.** Moneys shall be paid from the state treasury only upon the warrant or order of the auditor, and each warrant shall specify upon what fund or from what apportionment it is to be paid; provided, however, that the treasurer may redeem outstanding bonds or pay interest on bonds when due without the auditor's warrant, retaining such bond or interest coupon as his voucher for such payment until the next succeeding settlement. [1890, ch. 183, § 9; R. C. 1899, § 329.]

**§ 382. Account current between auditor and treasurer.** The auditor shall keep an accurate account current with the treasurer, charging him with all moneys received and crediting him with all sums paid out upon the surrender of the vouchers for such payments. [1890, ch. 183, § 10; R. C. 1899, § 330.]

**§ 383. Monthly statements.** The treasurer and auditor shall on the first day of each month have a full settlement of the business of the preceding month, at which settlement the treasurer shall turn over to the auditor all vouchers for payments made by him, taking the auditor's receipt for the same. [1890, ch. 183, § 11; R. C. 1899, § 331.]

**§ 384. Separate accounts with the several appropriations.** The auditor and treasurer shall keep a separate account with the several appropriations made by the legislative assembly, and also with each fund created by the sale



of bonds and each permanent or current fund created by law. [1890, ch. 183, § 12; R. C. 1899, § 332.]

§ 385. **Auditor and treasurer to procure books, blanks, etc.** The auditor and treasurer are authorized and empowered to procure the necessary books and blanks to enable them to comply with the provisions of this article. [1890, ch. 183, § 13; R. C. 1899, § 333.]

ARTICLE 2.—VOUCHERS FILED TO BE CONSECUTIVELY NUMBERED AND PAID.

§ 386. **Vouchers and warrants, how numbered.** All vouchers which shall be presented to the state auditor for any bills, claims or accounts against any funds in the treasury of this state, shall be numbered consecutively against such fund by the state auditor, in the order in which they shall be presented and filed, and a record shall be kept of the same. All warrants, orders or certificates, which shall be issued by the state auditor, for or upon any such vouchers, and against any fund in the treasury of this state, shall be issued consecutively and in the same order that the state auditor shall have received the same, except when the appropriations made to any fund shall have been exhausted; also for state officers' salary and clerk hire. Each voucher shall show the post office address of the person in whose favor said warrant shall be made, and the state auditor shall mail said warrant to the address as given as soon as issued; provided, that none of the provisions of this section shall apply to moneys in the treasury appropriated for the maintenance of the state capitol; provided, further, that the salary and expenses of the legislative assembly shall not be subject to the provisions of this section. [1899, ch. 170; R. C. 1899, § 338d; 1901, ch. 210.]

ARTICLE 3.—CONTINGENCY FUND.

§ 387. **Appropriation. Contingency fund.** There is hereby annually, on the first Tuesday in January, appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of five hundred dollars for the establishment and maintenance of a contingency fund to be drawn upon by the state auditor at the direction of the executive, for the transaction of such state business or the payment of such state obligations as are not otherwise provided for, and as, in the opinion of the executive are wise or necessary; provided, that if on the first Tuesday in January of any year there shall remain a balance of cash on hand in such fund, then only such sum shall be appropriated in that year as shall be necessary to complete the total of five hundred dollars. [1899, ch. 66; R. C. 1899, § 338a.]

§ 388. **Moneys, how accounted for.** The governor shall, in all cases when directing the issuance of any warrant upon the contingency fund hereinbefore provided, file with the state auditor a written and itemized statement of the material, services or other consideration in payment of which such warrant is ordered drawn, together with the names of person or persons in whose favor the warrant is so ordered and shall certify that the material, services or other consideration therein named are necessary and proper matters for settlement from this fund, and that the amounts charged therefor are proper and right; and the auditor shall file such statement and certificate as his authority for issuing the warrant therein directed. [1899, ch. 66; R. C. 1899, § 338b.]

§ 389. **Appropriation to promote immigration.** There is hereby appropriated, annually, the sum of five hundred dollars, or so much thereof as shall be needed, out of the general funds of the state treasury, not otherwise appropriated to be used by the commissioner of agriculture and labor in getting out maps and other printed matter for the purpose of promoting and inducing immigration into the state of North Dakota. The commissioner of agriculture and labor shall make a verified and itemized statement of his expenses and disbursements incurred under the provisions of this section and file the same with the state auditor, who shall thereupon issue his warrant on the state treasurer therefor. [1899, ch. 101; R. C. 1899, § 338c.]

## ARTICLE 4.—CLERK HIRE FOR STATE OFFICERS.

§ 390. **Clerk hire allowed and fixed. Appropriation.** 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 employes as may be necessary, three thousand dollars per annum.

Secretary of state's office, three thousand nine hundred dollars per annum.

State auditor's office, five thousand seven hundred dollars per annum.

Treasurer's office, five thousand dollars per annum.

Superintendent public instruction's office, four thousand dollars per annum.

Commissioner agriculture and labor's office, two thousand seven hundred dollars per annum.

Attorney general's office, four thousand dollars per annum.

Commissioner of insurance's office, three thousand six hundred dollars per annum.

State bank examiner's office, for stenographer and office clerk, one thousand dollars per annum.

Clerk of supreme court's office, one thousand two hundred dollars per annum.

Secretary of state's office, for care and custody of state libraries, one thousand dollars per annum.

State weather bureau's office, six hundred dollars per annum.

Deputy commissioner of university and school lands, one thousand eight hundred dollars per annum.

Secretary of the board of railroad commissioners, one thousand dollars per annum.

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. 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 article. [1891, ch. 9, § 2; 1897, ch. 24; R. C. 1895, §§ 334, 335; 1903, ch. 186; 1905, ch. 18.]

## ARTICLE 5.—STANDING APPROPRIATIONS.

## FOR SALARIES OF STATE OFFICERS.

§ 391. **Annual appropriation.** There is hereby annually appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary to pay the salaries of the various state officers. [1891, ch. 10, § 1; R. C. 1899, § 336.]

§ 392. **Salaries payable monthly.** Unless otherwise provided by law the state auditor is directed to draw his warrant for such salaries monthly as the same become due. [1891, ch. 10, § 2; R. C. 1899, § 337.]

## FOR MAINTENANCE OF PUBLIC OFFICES.

§ 393. **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. [1889, ch. 26; R. C. 1899, § 338; 1901, ch. 21; 1903, ch. 28; 1905, ch. 17.]

§ 394. **Claims against the state verified, how.** No bill, claim, account or demand against the state, except as otherwise provided by law, and except in cases of salaries fixed by law, shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the officer, or officers, whose duty it may be to audit the same; said statement to be verified by the oath of the party making it, substantially in the following forms: In case the voucher is for services, the oath shall be as follows:

State of North Dakota, }  
County of . . . . . } ss.

I do solemnly swear that the within account and claim is just and true; that the money therein charged was actually paid for the purpose therein stated; that the services therein charged were actually rendered and of the value therein charged; and that the fees or amounts charged therefor are such as are allowed by law, and that no part of such account, claim or demand has been paid.

(Sign here).....

Subscribed and sworn to before me this.....day of .....  
A. D. 19..

In case the voucher is for supplies, the oath shall be as follows:

State of North Dakota, }  
County of . . . . . } ss.

I do solemnly swear that the within account and claim is just and true, that the property therein charged was actually delivered and was of the value therein charged, and that no part of such account, claim or demand has been paid.

(Sign here).....

Subscribed and sworn to before me this.....day of .....  
A. D. 19.. [1901, ch. 49.]

ARTICLE 6.—THE STATE WEATHER BUREAU.

§ 395. **Establishment of service.** There is hereby established in this state a weather and crop service, co-operating with the weather bureau of the United States, for the purpose of collecting crop statistics and meteorological data, and more widely disseminating the weather forecast and storm and frost warning, and to promote a general knowledge of meteorological science and the climatology of the state. [1893, ch. 127, § 1; R. C. 1899, § 147.]

§ 396. **Central station at seat of government.** The central station of said weather and crop service shall be at the seat of government under the charge of a director, such director to be an official of the United States weather bureau, who may be designated for that purpose by the chief of the weather bureau at Washington, D. C. [1893, ch. 127, § 2; R. C. 1899, § 148.]

§ 397. **Director to establish volunteer stations. Monthly reports.** Said director shall establish such volunteer stations throughout the state as he may deem advisable, and shall appoint observers thereat. He shall supervise such volunteer stations, receive reports therefrom of meteorological events and crop conditions, tabulate the same for permanent record, and issue for free distribution a weekly weather crop bulletin during the seasons from April first to October fifteenth, and he shall also edit and cause to be published for free distribution a monthly weather report, containing meteor-

ological and agricultural matter of public interest and educational value; provided, however, that not more than five hundred copies of said report shall be published each month. [1893, ch. 127, § 3; R. C. 1899, § 149.]

§ 398. **Annual report to governor.** Said director shall also compile an annual report, addressed to the governor, to be printed and bound in such numbers as the commissioners of public printing may direct; such reports to contain a complete review and summary of the result of the year's labors and observations. [1893, ch. 127, § 5; R. C. 1899, § 150.]

§ 399. **Appropriation, how expended.** There is appropriated out of any funds in the state treasury not otherwise appropriated, or as much thereof as may be necessary, the sum of six hundred dollars annually for expenses of such weather and crop service. Such appropriation to be expended upon the order of the director, subject to the approval of the governor. [1893, ch. 127, § 6; 1895, ch. 20, § 1; R. C. 1899, § 151; 1905, ch. 18, § 1.]

## CHAPTER 6.

### OFFICES AND OFFICERS.

#### ARTICLE 1.—QUALIFICATION FOR OFFICE.

§ 400. **Civil officers to qualify.** Except as otherwise specially provided, all civil officers shall qualify substantially in the manner and form herein set forth. [R. C. 1899, § 339.]

§ 401. **Certain officers to give bonds.** Each civil officer elected by the people or appointed by the governor or by any other authority provided by law, except the governor and the officers and members of the legislative assembly, judges of the supreme and districts courts, county commissioners, court stenographers, the mayor and aldermen in cities, the president and trustees in villages, but including township treasurers, clerks, justices of the peace and constables, shall, before entering on his duties, give a bond conditioned for the faithful and impartial discharge of the duties of his office, (naming it fully), and render a true account of all moneys and property of every kind that shall come into his hands as such officer and pay over and deliver the same according to law. [1887, ch. 47, § 24; R. C. 1899, § 340.]

§ 402. **Oath of civil officers.** Each civil officer in this state before entering upon the duties of his office shall take and subscribe the oath prescribed in section 211 of the constitution. Such oath shall be indorsed upon the back of or attached to his bond, in case of an officer required to give bond, or indorsed upon the back of or attached to the commission, appointment or certificate of election, in case of an officer not required to give bond. [1890, ch. 105, § 1, R. C. 1895, § 341.]

§ 403. **Approval of bonds.** The bonds of all state and district officers shall be given to the state, shall be approved by the governor as to sufficiency, and by the attorney general as to form, and such bonds, and a duplicate original of the oaths of all other such officers shall be deposited in the office of the secretary of state. The secretary of state shall keep a book in which shall be made a correct copy of such bond, which book shall be called the "bond record," and, when such bonds have been recorded they shall be deposited with and kept on file in the office of the state treasurer, except the bonds of the state treasurer, which shall be deposited with and kept on file in the office of the state auditor. The secretary of state and state treasurer on receipt of such bonds shall issue a receipt therefor, and such receipt shall be filed in the office of the state auditor. The bonds of all county, township and municipal officers shall be given to the county; those of all county and municipal

officers under the county shall be approved by the state's attorney as to form, and by the board of county commissioners as to sufficiency, and such bonds and a duplicate original of the oaths of office of all other such officers shall be filed with the county auditor, except the bond and oath of such auditor, and the bonds and oaths of all county justices of the peace, which shall be filed with the clerk of the district court for the county or judicial subdivision. The bonds of township officers shall be approved by the chairman of the board of supervisors of the township. [1890, ch. 32, § 1; R. C. 1895, § 342; 1903, ch. 128.]

Where state's attorney has given bond approved by county auditor and served fifteen months, commissioners cannot remove for failure to qualify. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

Bond of county treasurer complying with statute except that it runs to county commissioners instead of county, is valid. *Custer Co. v. Alvien*, 7 S. D. 482, 64 N. W. 533.

Bond running to county instead of state enforceable in name of state for use of person injured. *State v. Barnes*, 10 S. D. 306, 73 N. W. 80.

**§ 404. Amounts of bonds of various officers.** The bond of each state officer required to give a bond, the amount of which is not otherwise provided by law, shall be in the penal sum of five thousand dollars; of the county auditor, register of deeds and clerk of the district court in the penal sum of ten thousand dollars each, except in counties having a population of less than ten thousand inhabitants, in which counties such bonds shall be in the penal sum of five thousand dollars each; of the state's attorney and county judge in the penal sum of two thousand dollars each; of the county superintendent of schools, justices of the peace, constables and notaries public in the sum of five hundred dollars each. The bond of the sheriff, coroner and county treasurer shall each be in a penal sum to be fixed by the board of county commissioners; but that of the county treasurer shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be collected by him in any year is less than two thousand dollars, then in double the amount of taxes to be collected. [1879, ch. 6 § 1; 1883, sub-ch. 1, ch. 112, § 38; 1887, ch. 161, § 1; 1890, ch. 132, § 31; R. C. 1899, § 343.]

**§ 405. Official bonds.** Every person hereafter elected to the office of treasurer of any county within the state of North Dakota is hereby required to give an official bond in a penal sum to be fixed by the board of county commissioners, which bond shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be collected by him in any year is less than two thousand dollars, then in double the amount of taxes to be collected; but in no case shall the amount of such bond be less than two thousand dollars, and such bond shall be executed by some responsible surety or fidelity company, authorized and qualified to do business within the state of North Dakota, and subject to approval as provided by law. The amount of the premium for such surety or fidelity bond shall be audited by the board of county commissioners, and paid out of the general fund of the county. [1899, ch. 116; R. C. 1899, § 343a.]

**§ 406. Additional bond may be required of county treasurer.** The board of county commissioners may require the county treasurer to give additional sureties whenever in the opinion of the board the existing security shall have become insufficient; and such board is authorized and empowered to require from the county treasurer an additional bond as required by law with good and sufficient sureties in such sum as the board may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of such treasurer than is or would be recovered by the penalty in the previous bond. [R. C. 1899, § 344.]

**§ 407. Failure to give additional bond. Effect.** If any county treasurer shall fail or refuse to give such additional bond or sureties for ten days from and after the day on which such board shall require him so to do, his office shall

become vacant and another treasurer shall be appointed according to law. [R. C. 1899, § 345.]

§ 408. **Fidelity bonds.** Whenever any county, township, city, village or school district officer, hereafter elected, shall be required by law to give or furnish a bond for the faithful performance of his duties, such bond may be executed by some responsible surety, fidelity insurance or bonding company, authorized and qualified to do business within the state of North Dakota, and approved by the board of commissioners, trustees, supervisors, council or directors charged with the approval of same; the premium for such bond shall be audited by such board and paid out of the general fund of the county, township, city or school district, as the case may be, for whose benefit the same is given. This section shall not affect the provision of section 405 relating to county treasurers, nor the furnishing of a personal bond by any officer as may be provided for by any existing law. [1903, ch. 127.]

§ 409. **Bonds of township officers and school district officers.** It shall be the duty of each county auditor on or before the first day of March in each year to procure the proper blank bonds and send them to the clerk of each township and school district, and all such officers required by law to give bonds shall procure such bonds from the proper clerk; and shall immediately after the execution and approval thereof hand the same to the clerk of the township, whose duty it shall be forthwith to file such bonds, except those of justices of the peace, with the county auditor, and the county auditor shall on receipt thereof examine such bonds and see that they are properly executed and, if he finds that any bonds are not executed according to law, he shall note thereon any errors and return them to the clerk for correction, and it is hereby made the duty of the clerk to have such bonds corrected forthwith and return the same to the county auditor. The county auditor shall not issue any order upon the county treasurer for funds or money belonging to a civil township or school district to any person as treasurer of such township or school district until his bond has been filed as in this section provided. [1893, ch. 94, § 1; R. C. 1895, § 346.]

§ 410. **Township clerk to require officers elected to qualify.** It shall be the duty of the clerk of the township to require all legally elected officers, who accept the office to which they are elected, to qualify within the time prescribed by law and in accordance with all other provisions thereof. If any clerk refuses or neglects to file the bonds of township officers as above provided, he shall be liable to a fine of not less than ten nor more than fifty dollars. [1893, ch. 94, § 2; R. C. 1899, § 347.]

§ 411. **Fee for filing township officers' bonds.** An appropriation of fifty cents for each bond required to be filed shall be made by the township and paid to the county auditor for the proper filing and entering of such bond. [1893, ch. 94, § 3; R. C. 1899, § 348.]

§ 412. **Sureties to bond.** Each official bond shall be given with at least two sureties, but the bond of the state treasurer shall have at least four, and that of the county treasurer at least three sureties. [R. C. 1899, § 349.]

§ 413. **Governor may require additional bond of state officers.** Whenever the governor shall deem the bond filed by any state officer insufficient, he may require another bond to be furnished with sufficient sureties, and for failure to give such bond within ten days after being so required such office shall be deemed vacant. [R. C. 1895, § 350.]

§ 414. **Approval of bond must be signed by officer approving.** The approval shall in all cases be indorsed upon the bond and signed by the officer approving the same: but in case the board of county commissioners or the chairman of the township board of supervisors shall decide that a bond presented to them is insufficient, a reasonable time, not exceeding five days, shall be allowed the officer to supply a sufficient bond, and such board or officer may take three days to consider the approval of any bond. If

such board or officer refuses or neglects to approve a bond of any county or township officer elect, he may upon three days' notice to such board or officer present the same to the judge of the district court, who shall, unless good cause for delay is shown, proceed to hear and determine the sufficiency of such bond, and may approve or disapprove the same as the facts warrant. [R. C. 1899, § 351.]

One who takes no steps to have bond approved after commissioners have refused to approve, forfeits office. *Chandler v. Hughes Co.*, 9 S. D. 24, 67 N. W. 946.

**§ 415. Bonds must be recorded.** The bonds of all county officers shall immediately after the approval of the same be recorded at length in the office of the register of deeds of the county in a book to be provided for that purpose. When such bonds are so recorded they shall be forthwith filed as provided in section 403. [1885, ch. 120, § 1; R. C. 1899, § 352.]

On proof of loss of original, record of bond admissible in evidence. *Connor v. Corson*, 13 S. D. 550, 83 N. W. 588.

**§ 416. When term of office begins.** Except when otherwise specially provided, the regular term of office of each county, township and precinct officer, when elected for a full term, shall commence on the first Monday of January next succeeding his election, but, if the office to which he was elected was vacant at the time of his election, although he was not elected to fill such vacancy, he shall forthwith qualify and enter upon the duties of his office. [R. C. 1895, § 353.]

**§ 417. Officers qualify when.** 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. [R. C. 1899, § 354; 1905, ch. 140.]

**§ 418. Failure to qualify. Vacancy.** If any person elected to any office mentioned in the preceding section shall fail to qualify and enter upon the duties of such office within the time fixed by law, such office shall be deemed vacant and shall be filled by appointment as provided by law; but if there is a contest for such office, or if the person elected to such office is prevented or obstructed in any manner from entering upon the duties thereof, the time above prescribed shall not govern, and he shall be allowed twenty days after the day such contest is determined or such obstruction removed in which to qualify. [R. C. 1899, § 355.]

Refusal to qualify creates a vacancy and commissioners are authorized to fill by appointment, in office of county treasurer. *Stutsman Co. v. Mansfield*, 5 Dak. 78, 37 N. W. 304.

Ineligibility not ground for commissioners to declare vacancy after qualification by state's attorney. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

**§ 419. Bonds construed to cover all duties.** The bonds of all civil officers shall be construed to cover duties required by laws passed subsequent to giving them, and no bond shall be void for failure to comply with the law as to matters of form or substance, but it shall be valid as to all matters contained therein, if it complies substantially with the law. [R. C. 1895, § 356.]

Loss of funds by fire makes treasurer and bondsmen liable. *Clay Co. v. Simonsen*, 1 Dak. 387, 46 N. W. 592.

Bond unsigned by principal not binding upon sureties, when. *Board of Education v. Sweeney*, 1 S. D. 642, 48 N. W. 302.

Bond voluntarily executed for amount greater than statutory requirement, enforceable for full amount. *State v. Taylor*, 10 S. D. 182, 72 N. W. 407.

A bond executed to be delivered only on conditions which are known to obligee, void unless conditions fulfilled. *State v. Welbes*, 12 S. D. 339, 81 N. W. 629.

Real party in interest proper party in action on sheriff's bond. *Guernsey v. Tuthill*, 12 S. D. 584, 82 N. W. 190; *Hollister v. Hubbard*, 11 S. D. 461, 78 N. W. 949.

Where treasurer accounts for money in his hands at end of first term, as turned over to himself at beginning of second term, bondsmen liable for amount admitted to be on hand. Bond liable for moneys received and receipted for by treasurer but not entered on books. *Custer Co. v. Tunley*, 13 S. D. 7, 82 N. W. 84.

**§ 420. Re-elected incumbent to account before qualifying.** When the incumbent of any office is re-elected he shall qualify as above required; but his bond shall not be approved until he has produced and fully accounted for all public funds and property in his control under color of his office during the expiring term to the person or authority to whom he should account, and the fact and date of such satisfactory exhibit shall be indorsed upon the new bond before its approval. [R. C. 1899, § 357.]

**§ 421. Public property must be delivered to successor.** Every officer elected or appointed under the laws of this state shall on going out of office deliver to his successor in office all public moneys, books, records, accounts, papers, documents and property in his possession belonging or appertaining to such office. [R. C. 1899, § 358.]

#### ARTICLE 2.—VACANCIES AND SUPPLYING THE SAME.

**§ 422. Vacancies, how caused.** Every office shall become vacant on the happening of either of the following events:

1. Death of the incumbent.
2. His insanity judicially determined.
3. His resignation.
4. His removal from office.
5. His failure to discharge the duties of his office, when such failure has continued for sixty consecutive days, except when prevented from discharging such duties by sickness or other unavoidable cause.
6. His failure to qualify as provided by law.
7. His ceasing to be a resident of the state, district, county or township in which the duties of his office are to be discharged, or for which he may have been elected.
8. His conviction of a felony or of any offense involving moral turpitude or a violation of his official oath.
9. His ceasing to possess any of the qualifications of office prescribed by law.
10. The decision of a competent tribunal declaring void his election or appointment. [R. C. 1895, § 359.]

#### RESIGNATIONS.

**§ 423. Resignations, to whom made.** Resignations must be in writing and made as follows:

1. Of the governor and lieutenant governor, to the legislative assembly if it is in session, and if not, to the secretary of state.
2. Of all other state and district officers, to the governor.
3. Of all members of the legislative assembly, to the presiding officer of their branches respectively, when in session; and when not in session, to the governor; and when made to the presiding officer he shall at once notify the governor thereof.
4. Of all the officers of the legislative assembly, to the respective branches thereof.
5. Of all elective county officers, by filing or depositing such resignation in the office of the county auditor, except that of county auditor, which shall be filed or deposited with the board of county commissioners, which resignation, unless a different time is fixed therein, shall take effect upon such filing or deposit.



6. Of officers of civil townships, to the board of supervisors of the township, except the members of such board, which shall be to the township clerk; and notice shall forthwith be given by the township clerk to the county auditor of the resignation of all officers whose bonds are filed with such officer.

7. Of all officers holding their office by appointment, to the body, board, court or officer that appointed them. [1881, ch. 137, § 1; R. C. 1895, § 360.]

## REMOVALS.

§ 424. **Removal of officers. Causes for.** All district, county, township, city, municipal or state officers, not liable to impeachment, except representatives to congress and members of the legislative assembly, shall be subject to removal from office for misconduct, malfeasance, crime or misdemeanor in office or for habitual drunkenness or gross incompetency in the manner provided in the codes of civil or criminal procedure. [R. C. 1895, § 361.]

Removal contemplated can be effected only as provided in codes of civil or criminal procedure. *Wishek v. Becker*, 10 N. D. 63, 84 N. W. 590.

Summary removal of person appointed for definite term, without notice, unauthorized. *State v. Hewitt*, 3 S. D. 187, 52 N. W. 875.

Strict construction of statute required in action to remove officer on penal charge. *Minnehaha Co. v. Thorne*, 6 S. D. 449, 61 N. W. 688.

§ 425. **Who may bring action.** The board of county commissioners in the name of the county or any person in his own name may make such a charge and bring the action, and the district court shall have exclusive original jurisdiction thereof. [R. C. 1895, § 362.]

§ 426. **Court may suspend officer.** At any time after the commencement of the action the court may suspend the accused from the functions of his office until the determination thereof, if sufficient cause appears from testimony or affidavits then presented; and if such suspension takes place, the board of county commissioners shall temporarily fill such office by appointment. [1881, ch. 123, § 1; R. C. 1899, § 363.]

Mandamus to inferior court lies only when court refuses to take jurisdiction. Where jurisdiction is assumed and decision rendered, remedy is by appeal. *State v. District court*, 13 N. D. 211, 100 N. W. 248.

§ 427. **Property delivered to successor.** Upon the death, resignation, suspension or removal from office of any officer all books and papers belonging to his office and all moneys and property in his hands of whatever kind shall be delivered to his successor. [R. C. 1899, § 364.]

Sections 424 to 427 inclusive provide no remedy for removal from office. *Wishek v. Becker*, 10 N. D. 63, 84 N. W. 590.

## FILLING VACANCIES.

§ 428. **Vacancies, how filled.** All vacancies, except in the office of a member of the legislative assembly, shall be filled by appointment as follows:

1. In state and district offices, by the governor.
2. In county and precinct offices, by the board of county commissioners, except vacancies in such board.
3. In offices of civil townships, by the justices of the peace of such township, together with the board of supervisors or a majority of them, and if a vacancy occurs from any cause in the board of supervisors, the remaining members of the board shall fill such vacancy. [R. C. 1895, § 365.]

§ 429. **Vacancies in board of county commissioners, how filled.** When a vacancy occurs in the board of county commissioners, it shall be the duty of the remaining members of the board with the county judge and auditor immediately to appoint some suitable person to fill such vacancy from the district in which such vacancy occurred. In case a majority of such officers fail to agree upon a person to fill such vacancy the county treasurer shall

be called in and act as an additional member of such board to fill such vacancy. [1885, ch. 148, § 1; R. C. 1899, § 366.]

*County treasurer refusing to qualify, commissioners may fill vacancy. Stutsman Co. v. Mansfield, 5 Dak. 78, 37 N. W. 304.*

§ 430. **Brief vacancies, not to be filled.** If a vacancy occurs thirty days previous to an election at which it may be filled, no appointment shall be made unless it is necessary to carry out such election and the canvass of the same according to law; in which case an appointment may be made at any time previous to such election to hold until after such election or until his successor is elected and qualified. [R. C. 1899, § 367.]

§ 431. **Appointments to be made in writing. Term.** Appointments under the provisions of this article shall be made in writing and shall continue in force until the expiration of the term in which the vacancy occurs and until his successor is elected and qualified, except as otherwise expressly provided by law. [R. C. 1899, § 368.]

*Appointment of district judge holds for unexpired term. Supreme judge to next general election. State v. Gardner, 3 S. D. 553, 54 N. W. 606; Sec. 98, N. D. Const.*

*"Next general election" defined. In re Supreme Court, 4 S. D. 532, 57 N. W. 495.*

§ 432. **Appointees, how to qualify.** A person appointed to office as herein provided shall qualify within the time and in the manner required of a person elected or appointed to such office for a full term thereof. [R. C. 1895, § 369.]

#### ARTICLE 3.—DEPUTIES.

§ 433. **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. [1890, ch. 59, § 1; R. C. 1895, § 370; 1905, ch. 100, § 1.]

*Constitutional provision prohibiting change of salary during term of office does not apply to deputy. Somers v. State, 5 S. D. 321, 59 N. W. 962.*

*Circuit court has power to appoint assistant to its clerk during term of court. White v. Hughes Co., 9 S. D. 12, 67 N. W. 855.*

*Sheriff need not add official title to his signature to appointment of deputy. Guernsey v. Tutthill, 12 S. D. 584, 82 N. W. 190.*

§ 434. **Sheriff may appoint deputies.** The sheriff may appoint such number of deputies as he may deem necessary. [1883, ch. 43, § 1; R. C. 1895, § 371.]

§ 435. **Oath of deputy.** Each deputy shall take and subscribe the same oath as his principal (naming his deputyship), which shall be indorsed upon and filed with his certificate of appointment. [R. C. 1899, § 372.]

§ 436. **Certain persons ineligible as deputy.** No state officer can appoint as his deputy any other state or district officer, nor can a state treasurer appoint as his deputy any county treasurer, county judge, register of deeds, sheriff, or county commissioner; nor can either the clerk of the district court, the register of deeds or sheriff appoint as his deputy either of the others as their deputies. [R. C. 1899, § 373.]

§ 437. **Officials to be residents.** No person shall be appointed as deputy or employed as clerk or subordinate in any state, county or municipal office,

or as a member, officer, or subordinate upon any official board of the state or of any county or municipality of the state, who is not a citizen of the United States, or, if an alien over twenty-one years of age, who has not declared his intention to become such. [1893, ch. 91, § 1; R. C. 1899, § 374.]

§ 438. **Offices, where kept.** No county, township or municipal officer in this state shall keep his office or any books, papers, records or other property pertaining to his office at any place other than that in which he is required by law to keep such office. [1883, ch. 90, § 1; R. C. 1895, § 375.]

Duty of all officers required to maintain an office, to maintain it at county seat. *State v. Porter*, 15 S. D. 387, 89 N. W. 1012.

§ 439. **Penalty for violation of last section.** Any officer violating any of the provisions of the last section is guilty of a misdemeanor. [1883, ch. 90, § 2; R. C. 1895, § 376.]

## CHAPTER 7.

### THE JUDICIAL DEPARTMENT.

#### ARTICLE 1.—THE SUPREME COURT.

§ 440. **General terms, when held.** There shall be two general terms of the supreme court held each year, to be known as the March and September terms, and to consist of two sessions each. The first session of the March term shall be held in the city of Fargo, county of Cass, commencing on the fourth Tuesday in March of each year. The second session shall be held in the city of Bismarck, county of Burleigh, commencing on the fourth Tuesday in April of each year. The first session of the September term shall be held in the city of Grand Forks, county of Grand Forks, commencing on the third Tuesday in September of each year. The second session shall be held in the city of Bismarck, county of Burleigh, commencing on the third Tuesday of October of each year. Such sessions of the supreme court to be held in the city of Fargo and the city of Grand Forks, shall be held in some suitable place, such place to contain suitable and convenient facilities for the safe keeping of the records of said court, all to be provided by the county commissioners of the county in which such city is located, and in case such place is not provided, without expense to the state, the judges of such court, or a majority thereof, shall adjourn such session to the city of Bismarck. [1899, ch. 153, § 1; R. C. 1899, § 377; 1903, ch. 193.]

§ 441. **Appeals, motions and hearings.** All appeals, motions and hearings of all kinds, except motions for admission to the bar on certificate or by examination, shall be heard in the city of Bismarck as a matter of course, unless notice in writing shall be served by either side on counsel for the opposite party, and filed with the clerk of the supreme court at least twenty days before the opening of any general term, to the effect that such party desires his matter to be heard at the first session of the ensuing term, designating in which place and the time of such hearing, in which event the matter shall stand for hearing at the place so designated. All motions in cases upon the calendar for the Bismarck session of either term shall be noticed for, and heard at Bismarck unless, by consent of parties, they are taken up elsewhere. The court may, by order, for the convenience of parties, set any matter down for hearing at either Bismarck, Fargo or Grand Forks. [1890, ch. 169, § 2; 1895, ch. 108, § 2; 1899, ch. 153, § 2; R. C. 1899, § 378; 1903, ch. 193.]

§ 442. **Special terms.** Whenever, from any cause, it appears to a majority of the judges of said court that the public interest demands that a special

term of said court be held, the majority of said judges have authority to appoint a special term of the supreme court to be held at either of the places aforementioned, giving twenty days' previous notice thereof by advertisement, published in a newspaper at the seat of government of the state. [1899, ch. 153, § 3; R. C. 1899, § 378a.]

§ 443. **Stenographer.** The supreme court or any judge thereof is hereby authorized to employ a stenographer whenever said court or any judge thereof, either in term time or in vacation, shall require the services of a stenographer, in the preparation of the opinions or decisions of the court, or otherwise in connection with their respective official duties. [1897, ch. 137, § 1; R. C. 1899, § 378b.]

§ 444. **Bills for service.** The bills for services rendered by any stenographer so employed, after being verified by the affidavit of the stenographer and certified to as correct by the court or any judge thereof, shall be audited by the state auditor and a warrant drawn therefor; provided, that no more than the aggregate sum of seven hundred dollars shall be paid out or expended in any one year under the provisions of this section. [1897, ch. 137, § 2; R. C. 1899, § 378c.]

§ 445. **Salaries of supreme judges.** The judges of the supreme court shall each receive an annual salary of five thousand dollars. [R. C. 1895, § 379; 1903, ch. 194.]

#### ARTICLE 2.—THE CLERK OF THE SUPREME COURT.

§ 446. **Clerk of supreme court, how appointed.** There shall be a clerk of the supreme court, who shall be appointed by the judges thereof, and who shall hold his office during the pleasure of such judges. [1890, ch. 170, § 1; R. C. 1899, § 380.]

§ 447. **Oath. Bond. Deputy.** Such clerk before entering upon his duties shall qualify by taking the oath provided in the constitution and by giving a bond in the sum of three thousand dollars with sufficient surety to be approved by the governor, conditioned for the faithful performance of his duties. Such clerk may appoint a deputy who shall take and subscribe the oath prescribed in the constitution and file the same in said court. The clerk shall be responsible for the acts of his deputy. [1890, ch. 170, § 2; R. C. 1899, § 381.]

§ 448. **Clerk procures necessary records, seal, stationery, etc.** Such clerk, unless otherwise provided for by law, shall procure the necessary records, seal, stationery, postage, lights, fuel and furniture for the use of the supreme court, and the expenses thereof shall be audited and paid as in other cases. [1890, ch. 170, § 3; R. C. 1899, § 382.]

§ 449. **Clerk personally performs all duties. When deputy can act.** He shall personally perform all the duties assigned him by law and the rules of said court. When he is unavoidably absent or unable for any cause to perform his duties, his deputy may perform the same. [1890, ch. 170, § 4; R. C. 1899, § 383.]

§ 450. **To furnish syllabus for publication.** Whenever a syllabus is filed by the judges of the supreme court as required by law, the clerk shall immediately thereafter make and furnish a copy thereof together with the title of the action in which the same is rendered to the publishers of such daily newspapers in the state of North Dakota as consent to publish the same without charge. [1890, ch. 170, § 5; R. C. 1899, § 384.]

§ 451. **Salary of clerk.** The clerk shall receive an annual salary of fifteen hundred dollars. [1890, ch. 170, § 6; R. C. 1899, § 385.]

§ 452. **Fees in supreme court.** The following fees shall be charged and collected by the clerk:

For drawing any process issued under the seal of said court, one dollar.

Affixing the seal to any process of the court, twenty-five cents.

Filing papers, ten cents each.

Reading and filing any petition relating to any proceeding in court, ten cents.

Entering the appearance or default of appellant or plaintiff, or of defendant or respondent, fifteen cents.

Entering every rule or order, fifteen cents per folio.

A certified copy of every such rule or order, and of all papers, pleadings and proceedings filed with him, ten cents per folio.

Entering a decree or sentence, ten cents per folio.

Entering a judgment or order, fifteen cents for every judgment debtor; ten cents for each folio more than two.

Engrossing a remittitur to be sent to the district court, ten cents per folio.

Every certificate, twenty-five cents.

Taxing costs, fifty cents.

Entering satisfaction of record, fifteen cents.

Taking security, fifty cents.

Entering each cause on the calendar and making a copy for the bar, ten cents.

Searching records and files in his office, twenty cents for the records and files for each year.

For services required by law or the rules of the court not hereinbefore provided for, such fees as the court directs.

Admission of attorneys, three dollars. [1890, ch. 170, § 7; R. C. 1899, § 386.]

§ 453. **Fees covered into state treasury quarterly.** He shall keep an accurate account of all fees received by him, and on the first days of January, April, July and October of each year he shall file with the state auditor a detailed statement of such fees, which statement must be verified by the affidavit of such clerk. He shall also file with such statement a receipt from the state treasurer, showing that all of such fees so received by him have been covered into the state treasury. [1890, ch. 170, § 8; R. C. 1899, § 387.]

§ 454. **When clerk to receive additional fees.** In addition to the salary hereinbefore prescribed he shall receive for his expenses in attending sessions of the supreme court, when held at points other than at the seat of government, the sum of five cents per mile for each mile necessarily traveled in going to and returning from such sessions and the sum of two dollars for each day he is in actual attendance thereat, which mileage and per diem shall be in lieu of all other traveling expenses to be allowed such clerk. Upon filing with the state auditor an itemized statement, verified by oath, showing the mileage and per diem aforesaid, the state auditor shall draw a warrant upon the state treasurer in favor of such clerk for the amount so shown to be due under such statement. [1890, ch. 170, § 9; R. C. 1899, § 388.]

#### ARTICLE 3.—THE SUPREME COURT REPORTER.

§ 455. **Supreme court reporter, how appointed.** The judges of the supreme court shall appoint a person of known integrity, experience and learning in the law, reporter of the decisions thereof, and such person shall hold such office during the pleasure of the judges. [1879, ch. 56, § 2; Const. ch. 93; R. C. 1899, § 389.]

§ 456. **Bond and how approved.** Such reporter shall give a bond to the state, with at least two sufficient sureties, to be approved by the chief justice, in the sum of two thousand dollars, conditioned for the faithful performance of his official duties. [1890, ch. 171, § 1; R. C. 1899, § 390.]

§ 457. **Duties of reporter.** Such reporter shall, as soon as practicable after opinions of the supreme court are filed, prepare accurate copies of such opinions and of all dissenting opinions filed, prefixing thereto copies of the syllabi prepared by the court, the names of counsel in each case, a

statement of the facts or pleadings and an abstract of the briefs of counsel, when he may deem such statement or abstract necessary or helpful to a full understanding of the case. He may, in his discretion, add a brief note referring to prior adjudications. [1890, ch. 171, § 2; R. C. 1899, § 391.]

§ 458. **Clerk to furnish reporter copies of records and opinions.** It shall be the duty of the clerk to furnish the reporter with a copy of the record and opinions in each case at the expiration of twenty days after the decision is filed, except when a rehearing is granted, and such reporter may retain the same for such reasonable time as he may require to prepare the report thereof, when it shall be returned to and remain in the office of the clerk. [1890, ch. 171, § 3; R. C. 1899, § 392.]

§ 459. **To supervise publication of reports. Copyright for state.** It shall be the duty of the reporter to correct proof, prepare suitable indices for and supervise the publication of all volumes of reports of the decisions of the supreme court, which may hereafter be published under the authority of the state; and to secure a copyright of each volume of such reports before the same are distributed for the exclusive use and benefit of the state, the procurement of such copyright to be properly printed in each volume, and until provision for such publication shall have been made, all copies of decisions, syllabi, statements of facts and pleadings, abstracts of briefs and notes prepared by such reporter under the provisions of this article shall be filed with the clerk of such court. [1890, ch. 171, § 4; R. C. 1899, § 393.]

§ 460. **Reports, how printed. Number.** It shall be the duty of the supreme court reporter to publish in book form the opinions of the supreme court, together with other matters as contemplated in section 457, when the judges of said court shall direct such publication to be made; provided, that each book shall contain not less than five hundred and fifty pages octavo of printed matter. The publication shall be let and paid for in the same manner as other public printing; but the printed matter shall be stereotyped and the stereotyped plates shall be the property of the state, and shall be deposited in the office of the secretary of state. The first edition of each volume shall consist of seven hundred and fifty copies, which shall be delivered to the secretary of state to be by him distributed according to law; and volumes remaining undistributed shall be sold by him at three dollars per volume. The reporter's name must not appear on the back of such volumes, but each volume shall be labeled on the back, "North Dakota Reports," and shall be numbered consecutively, beginning with volume 1 heretofore published. [1890, ch. 171, § 7; 1891, ch. 123, § 1; R. C. 1895, § 394.]

§ 461. **Salary of reporter.** The supreme court reporter for performing the duties required of him by law, shall receive an annual salary of fifteen hundred dollars, payable quarterly, and no extra compensation for proof-readers or stenographic assistance shall be allowed, but the expense of such assistance shall be borne by said reporter out of his salary. [1890, ch. 171, § 5; 1899, ch. 154; R. C. 1899, § 395.]

#### ARTICLE 4.—MARSHALS OF THE SUPREME COURT.

§ 462. **Marshals of supreme court. Compensation.** The sheriffs of the counties of Burleigh, Cass and Grand Forks are hereby constituted and made the marshals of the supreme court, and they and each of them are authorized to serve all process of the court, and shall be entitled to charge and receive the same fees and mileage for the service of process issued by the court or otherwise, relating to the business of the court, and the same compensation for attendance upon the court as is now allowed by law to sheriffs for performing similar duties in the district courts of the state, which fee shall be paid out of the state treasury as other expenses are paid. [1890, ch. 90, § 1; R. C. 1899, § 396.]

§ 463. **When respective marshals to act.** The sheriff of each of the counties aforesaid shall act as marshal during the term of such court in his county. [1890, ch. 90, § 2; R. C. 1899, § 397.]

§ 464. **Liability of sheriffs acting as marshals.** Such sheriffs shall be liable on their official bonds given as sheriffs of their respective counties for the faithful and proper performance of their duties as marshals of the supreme court. [1890, ch. 90, § 3; R. C. 1899, § 398.]

#### ARTICLE 5.—DISTRIBUTION OF SUPREME COURT REPORTS.

§ 465. **Supreme court reports, how distributed.** It shall be the duty of the secretary of state to deliver one copy of each volume of the North Dakota reports to the following officers and organizations: Each judge of the supreme court of this state, each of the judges of the district courts of this state, the United States attorney for North Dakota, the attorney general for the state, the library of the congress of the United States, the library of the supreme court of the United States, the attorney general of the United States, the governor of the state, the public library of each state and organized territory of the United States that exchanges reports with this state, and three copies to the clerk of the supreme court of this state for the use of the court when in session, and to deposit ten copies in the state library to be retained therein; provided, that any of the above named officers or bodies which have been once supplied with any of the above named volumes need not be supplied with additional copies; and it is made the duty of each state officer above specified to deliver to his successor in office upon the expiration of his term of office all such volumes in his possession. [1887, ch. 154, § 1; R. C. 1899, § 399.]

§ 466. **Secretary of state to supply auditors.** It is the duty of the secretary of state to furnish to each county auditor in this state three copies of each volume of such reports, and it is the duty of such auditor upon receipt of the volumes above specified to mark conspicuously upon the outside of the cover thereof with red ink or to brand thereon the words "Property of the county of....." (inserting the name of the county of which he is an officer). [1887, ch. 154, § 3; R. C. 1899, § 400.]

§ 467. **County officers supplied.** The county auditor must deliver one copy of each volume so marked or branded into the custody of the clerk of the district court, county judge and state's attorney of his county, and each of such officers shall at the expiration of his term of office deliver such volume to his successor in office. [1887, ch. 154, § 3; R. C. 1899, § 401.]

#### ARTICLE 6.—THE DISTRICT COURTS.

§ 468. **Judicial districts.** The state is divided into eight judicial districts, and terms of court shall be held in each district as provided in this article. There shall be elected in each judicial district a judge of the district court, whose term of office shall be four years from the first Monday in January next succeeding his election and until his successor is elected and qualified. [1895, ch. 103, § 1; R. C. 1899, § 402; 1903, ch. 116.]

#### FIRST JUDICIAL DISTRICT.

§ 469. **Boundaries and terms of court.** The first judicial district consists of the counties of Grand Forks and Nelson, and terms of the district court shall be held each year at the county seat of each of said counties as follows:

In Grand Forks county, commencing on the first Tuesday in each month, excepting the months of August and September; but a jury shall not be called for any term unless in the opinion of the judge there is sufficient business to demand a jury; provided, that a jury shall be called for at least two terms of said court each year.

In Nelson county, commencing on the fourth Monday in May and the third Monday in November. [1897, ch. 62; R. C. 1899, § 403.]

SECOND JUDICIAL DISTRICT.

§ 470. **Boundaries and terms of court.** The second judicial district consists of the counties of Ramsey, Towner, Rolette, Benson, Pierce, and two terms of the district court shall be held each year at the county seat of each of such counties as follows:

In Ramsey county, commencing on the first Monday in January and the first Monday in June.

In Towner county, commencing on the first Monday in December and the first Monday in May.

In Rolette county, commencing on the third Monday in February and the fourth Monday in June.

In Benson county, commencing on the second Monday in June and the third Monday in November.

In Pierce county, commencing on the fourth Monday in January and the third Monday in June. [1899, ch. 49; R. C. 1899, § 404; 1903, ch. 116.]

THIRD JUDICIAL DISTRICT.

§ 471. **Boundaries and terms of court.** The third judicial district consists of the counties of Cass, Steele and Traill, and terms of the district court shall be held at the county seat in each of such counties each year, as follows:

In Cass county, commencing on the first Tuesday after the first Monday in January, the fourth Tuesday in April, the first Tuesday in September, and the first Tuesday in November. A jury must be called for the November term and for the April term, unless a jury shall have been called for the previous January term, in which case a jury at the April term may be dispensed with. No jury shall be called at the September term.

In Steele county, commencing on the third Tuesday in June, and the third Tuesday in October.

In Traill county commencing on the second Tuesday in February and the first Tuesday in June. [1893, ch. 53, § 1; R. C. 1899, § 405; 1903, ch. 62.]

FOURTH JUDICIAL DISTRICT.

§ 472. **Boundaries and terms of court.** The fourth judicial district consists of the counties of Richland, Ransom, Sargent, Dickey and McIntosh, and two terms of the district court shall be held each year at the county seat of each of such counties 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. [1899, ch. 50; R. C. 1899, § 406; 1903, ch. 63; 1905, ch. 84.]

FIFTH JUDICIAL DISTRICT.

§ 473. **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. [1897, ch. 64; R. C. 1899, § 407; 1903, ch. 61; 1905, ch. 85.]

#### SIXTH JUDICIAL DISTRICT.

§ 474. **Boundaries and terms of court.** The sixth judicial district consists of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux Indian Reservation lying north of the seventh standard parallel, and is divided into judicial subdivisions as follows:

1. The first subdivision consists of the county of Burleigh and two terms of the district court shall be held each year at the county seat thereof, commencing on the third Tuesday in May and the fourth Tuesday in November.

2. The second subdivision consists of the county of Billings and two terms of the district court shall be held therein each year at the county seat thereof commencing on the third Tuesday in April and the first Tuesday in October.

3. The third subdivision consists of the county of Emmons, and two terms of the district court shall be held each year at the county seat thereof commencing on the first Tuesday of May and the first Tuesday of October in each year.

4. The fourth subdivision consists of the county of Kidder, and two terms of the district court shall be held each year at the county seat thereof commencing on the third Tuesday in June and the second Tuesday in January.

5. The fifth subdivision consists of the county of Mercer, and two terms of the district court shall be held each year at the county seat thereof at such times as the judge of such court may direct.

6. The sixth subdivision consists of the county of McLean, and two terms of the district court shall be held therein each year at the county seat thereof commencing on the second Monday of June and the second Monday of December in each year.

7. The seventh subdivision consists of the county of Morton and all that portion of the Sioux Indian Reservation lying north of the seventh standard parallel, and south of Morton county, and two terms of the district court shall be held therein each year at the county seat of Morton county, commencing on the third Tuesday in April and the first Wednesday after the first Monday in November.

8. The eighth subdivision consists of the county of Oliver, and two terms of the district court shall be held therein each year at the county seat thereof at such times as the judge of said court shall direct.

9. The ninth subdivision consists of the counties of Stark, Dunn, Hettinger, Bowman, and all that portion of the Sioux Indian Reservation lying south of Hettinger county, and north of the seventh standard parallel, and two terms of the district court shall be held therein each year at the county seat of Stark county on the first Tuesday in April and the second Tuesday in September.

10. The tenth subdivision consists of the county of McKenzie, and terms of court shall be held therein as fixed by the judge of the sixth judicial district. [1890, ch. 82, §§ 1-9; R. C. 1899, § 408; 1905, chs. 82, 83; 1905, ch. 73, § 6.]

## SEVENTH JUDICIAL DISTRICT.

§ 475. **Boundaries and terms of court.** The seventh judicial district consists of the counties of Pembina, Walsh and Cavalier and terms of court shall be held in each of such counties in each year, as follows:

In the county of Pembina, at Pembina commencing on the first Tuesday in January, the first Tuesday in June, the first Tuesday in April and the first Tuesday in October; provided, that at the terms appointed to be held in the months of April and October no jury shall be called unless called by the court for the trial of criminal cases.

In the county of Cavalier, at Langdon on the third Tuesday in May and the first Tuesday in November.

In the county of Walsh, at Grafton on the fourth Tuesday in January, the third Tuesday in June, the third Tuesday in November and the third Tuesday in March; provided, that at the terms appointed to be held in the months of March and November no jury shall be called except in the discretion of the court for the trial of criminal cases. [1895, ch. 103, § 5; R. C. 1899, § 409.]

## EIGHTH JUDICIAL DISTRICT.

§ 476. **Boundaries and terms of court.** The eighth judicial district consists of the counties of Ward, Bottineau, McHenry and Williams and terms of court shall be held in each of said counties at the county seat thereof, as follows:

In Ward county, commencing on the fourth Monday in January, the fourth Monday in April and the fourth Monday in October; provided, that at the said term appointed to be held in the month of January, no jury shall be called, unless called by the court for the trial of criminal cases.

In Bottineau county, commencing on the second Monday in February, the first Monday in June and the fourth Monday in November; provided, that at the said term appointed to be held in the month of February, no jury shall be called except in the discretion of the court for the trial of criminal cases.

In McHenry county, commencing on the second Monday in March, the fourth Monday in June and the third Monday in September; provided, that at said term appointed to be held in the month of June no jury shall be called except in the discretion of the court for the trial of criminal cases.

In Williams county, commencing on the fourth Monday in February, the fourth Monday in July and the fourth Monday in September; provided, that at said term appointed to be held in the month of July, no jury shall be called except in the discretion of the court for the trial of criminal cases. [1903, ch. 116, § 5.]

§ 477. **Chambers, when and where.** The court of the eighth judicial district shall, except at those times when the court shall be actually engaged in the holding of a term of court in any of the counties of the said district, have its chambers for the purpose of hearing and transacting such business as may come before it, in each of the counties comprising the eighth judicial district, in each year, at the county seats of such counties as follows:

In the county of Ward, on the first Monday in the months of January, March, May, July, September and November.

In the county of McHenry, on the first Monday in the months of February, April, June, August, October and December.

In the county of Bottineau, on the third Monday in the months of January, March, May, July, September and November.

In the county of Williams, on the third Monday in the months of February, April, June, August, October and December,

Provided, that any matter or application or motion set for hearing before the judge of the said district, at any of the said times and places designated for the holding of chambers, which do not come on for a hearing and determination at such time and place, by reason of the absence of the judge therefrom, shall be continued until the next regular day set for the holding of chambers at the said place, where said application or motion was noticed for hearing, without any further order or notice to that effect. [1903, ch. 116, § 6.]

#### ARTICLE 7.—GENERAL PROVISIONS RELATING TO DISTRICT COURTS.

§ 478. **Special terms of court.** Nothing contained in article 6 shall be construed to restrict the power of the court or any judge to call and convene other terms of court in any of said counties and require the attendance of jurors at the same in the manner provided by law, but such special terms shall not supersede the requirement to hold any general term hereinbefore provided for. [1893, ch. 53, § 3; R. C. 1899, § 411.]

New cases can be noticed for such term and tried thereat. 3 N. D. 17, 53 N. W. 173.

Jurors may be summoned and criminal cases tried at special terms. *State v. Boucher*, 8 N. D. 277, 78 N. W. 988.

§ 479. **In case of holidays.** In case the day appointed for the commencement of the term in any county shall be a statutory holiday such term may commence on the following day. [1893, ch. 53, § 2; R. C. 1899, § 412.]

§ 480. **Salaries of judges.** The judges of the district court shall each receive a salary of three thousand five hundred dollars per annum, payable quarterly. [1893, ch. 92, § 1; R. C. 1899, § 413.]

#### ARTICLE 8.—COURT STENOGRAPHERS.

§ 481. **Appointment, how made.** The judge of the district court in each judicial district may, whenever in his judgment it will expedite the public business, appoint a competent person to the office of court stenographer within his district. The order of appointment shall be filed in the office of the clerk and entered upon the records of the court in each county of the district, and the person so appointed shall take and subscribe the oath required of other civil officers and file the same in the office of the secretary of state, and shall hold his office and discharge the duties thereof in person until the order for his appointment is revoked, or another person is appointed to such office. In case such stenographer shall be incapacitated from acting the judge may appoint some suitable person to act in his place, whose minutes, transcripts and certificates shall have the same force and effect as though made by such official stenographer, but the certificates made by such person shall be under oath. [1893, ch. 46, § 1; R. C. 1899, § 414.]

§ 482. **Duties.** Such stenographer shall attend the sessions of the court within the district whenever the judge shall so direct, and shall take in shorthand all testimony given orally by the witnesses and all objections and rulings made and exceptions taken, also the instructions given orally

by the court and all other proceedings at the hearing or trial not reduced to writing. [1893, ch. 46, § 2; R. C. 1895, § 415.]

Stenographer must attend court held by judge in circuit other than his own when so ordered. Entitled to mileage outside of his own district. *Underwood v. Lawrence Co.*, 6 S. D. 5, 60 N. W. 147.

§ 483. **Original minutes to be filed, where.** The original shorthand minutes so taken with the indorsement thereon in longhand over the signature of the stenographer, giving the title of the action and stating the contents and time and place of taking, shall in every case be filed in the office of the clerk of the court of the county in which the action is pending at the conclusion of the trial or as soon thereafter as practicable, but the same may be withdrawn by the stenographer at any time for a reasonable period for the purpose of transcribing. [1893, ch. 46, § 3; R. C. 1895, § 416.]

§ 484. **Transcript of minutes, when to be made.** The judge may, in a criminal action on the application of the defendant or the state's attorney, whenever in his judgment there is reasonable cause, order a transcript of the original minutes or any part thereof to be made at the expense of the county, and such stenographer shall plainly transcribe the same into longhand accordingly and file such transcript in the office of the clerk, and he shall at any time at the request of any party to a civil or criminal action, upon payment of his fees as provided by law, in like manner transcribe his original minutes or any part thereof taken in such action, and deliver the same to the party ordering such transcript, who may file the same in the office of the clerk whenever he shall so elect. [1893, ch. 46, § 4; R. C. 1895, § 417.]

§ 485. **Transcript available for either party.** Each transcript filed as herein provided shall be available alike to either party to the action for the purposes hereinbefore set forth. [1893, ch. 46, § 4; R. C. 1895, § 417.]

Rule of district court requiring suitor to file transcript of entire testimony, illegal. *Kaeppler v. Pollock*, 8 N. D. 59, 76 N. W. 987.

Judge not required to settle bill of exceptions without transcript of official stenographer's notes. Not duty of stenographer to read notes. *Myers v. Campbell*, 11 S. D. 433, 78 N. W. 353.

§ 486. **Certificate of transcript.** Such transcript must in each case be certified by the stenographer to the effect that it is a correct transcript of his original shorthand minutes and a full, true and complete statement of the testimony and other proceedings which it purports to contain, and when he has ceased to hold his office as stenographer of the court he must make such certificate under oath. [1893, ch. 46, § 5; R. C. 1899, § 418.]

§ 487. **Compensation.** The stenographer shall be entitled to receive from each county in which he is required to attend court reimbursement for his traveling expenses at the rate of five cents per mile for each mile actually and necessarily traveled in going thereto and returning therefrom and compensation for his time actually employed in attending court therein in such sum as the judge shall allow, not exceeding ten dollars per day, all of which shall be audited and paid by the proper county on the order of the judge. For making transcripts as herein provided he shall be entitled to receive such compensation as the judge shall allow, not exceeding fifteen cents for each folio of one hundred words, and the same, when ordered by the judge, shall be paid by the county chargeable with the costs of the action, and in all other cases by the party requesting such transcript. [1893, ch. 46, § 6; R. C. 1899, § 419.]

#### ARTICLE 9.—STATE BOARD OF BAR EXAMINERS.

§ 488. **Appointment by supreme court.** 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. [1905, ch. 50, § 1.]

§ 489. **Term of office. Vacancy, how filled.** The term of office of the members of the first 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. [1905, ch. 50, § 2.]

§ 490. **Officers of board. Public examination. Record of proceedings.** 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. [1905, ch. 50, § 3.]

§ 491. **Report of examinations. Certificate of admission.** 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. [1905, ch. 50, § 4.]

§ 492. **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. [1905, ch. 50, § 5.]

§ 493. **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 article and no part of the compensation or expenses provided for herein shall be paid out of the state treasury. [1905, ch. 50, § 6.]

§ 494. **Admission and practice dependent upon compliance with rules of court.** No person shall hereafter be admitted to practice as an attorney and counselor 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. [1905, ch. 50, § 7.]

§ 495. **Power to admit vested in the supreme court.** The power to admit persons to practice as attorneys and counselors at law in the courts of this state is hereby vested in the supreme court. [1891, ch. 119, § 1; R. C. 1899, § 420.]

Attorneys admitted before statehood entitled to admission without examination. In re Helwig, 5 S. D. 272, 58 N. W. 674.

In re application for admission to practice. 14 S. D. 429, 85 N. W. 992.

§ 496. **Qualifications of applicants.** Applicants for admission to practice as attorneys and counselors at law must be residents of this state, at least twenty-one years of age, of good moral character, and must have actually and in good faith pursued a regular course of study of the law for at least two full years, either in the office of a member of the bar of this state residing therein, and in regular practice, or in some reputable law school in the United States or partly in such office and partly in such law school. But in computing such period of study the school year of any such law school, consisting of not less than thirty-six weeks, exclusive of vacation, shall be considered equivalent to one full year. [1891, ch. 119, § 2; R. C. 1895, § 421.]

§ 497. **Must take oath.** Upon being admitted to practice as an attorney and counselor at law, he shall, in open court, take the oath prescribed in section 211 of the constitution. In the case of graduates of the law department of the University of North Dakota, however, who shall have been admitted to practice by said court, it shall be sufficient if the said oath be administered by the clerk of the supreme court in or out of term time, and it shall not be necessary for the same to be administered in open court. [1891, ch. 119, § 4; R. C. 1899, § 423; 1903, ch. 188.]

§ 498. **Admission on certificate, how.** Any person becoming a resident of this state, after having been admitted to the bar in any of the states of the United States, in which he has previously resided, may, at the discretion of the court, be admitted to practice in this state without examination or proof of period of study as hereinbefore provided, on proof of the other qualifications by this article required and on satisfactory proof that he has practiced law regularly for not less than three years in the state from which he comes after having been admitted to the bar according to the laws of such state. [1891, ch. 5, § 5; R. C. 1899, § 424; 1903, ch. 37.]

Applicant for admission on certificate must be in good standing in other states, at time of admission here. May revoke license obtained by a fraudulent suppression of facts. In re Olmstead, 11 N. D. 306, 91 N. W. 943.

§ 499. **Foreign attorneys may practice, when.** Any member of the bar of another state, actually engaged in any cause or matter pending in any court in this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state without being subject to the foregoing provisions of this article. [1891, ch. 119, § 7; R. C. 1899, § 426.]

Non-resident attorney may assist in prosecution of criminal case. State v. Kent, 4 N. D. 577, 62 N. W. 631.

#### ARTICLE 10.—ATTORNEYS AND COUNSELORS AT LAW.

§ 500. **Duties of an attorney.** It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.
2. To counsel and maintain no other actions, proceedings or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.
3. To employ for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judges by any artifice or false statement of fact or law.
4. To maintain inviolate the confidence, and at any peril to himself to preserve the secret of his client.
5. To abstain from all offensive personalities and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.
6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.

7. Never to reject for any consideration personal to himself the cause of the defenseless or the oppressed. [R. C. 1899, § 427.]

On the relations of attorney to client, see *Yerkes v. Crum*, 2 N. D. 72, 49 N. W. 422; *Clark v. Sullivan*, 3 N. D. 280, 55 N. W. 733; *O'Neill v. Murry*, 6 Dak. 107, 50 N. W. 619.

Attorney's duty to make full disclosure of facts in settling a collection with client. *Riegl v. Phelps*, 4 N. D. 272, 60 N. W. 402.

Deceit ground for disbarment, what. In re *Simpson*, 9 N. D. 379, 83 N. W. 541.

Deceit and unprofessional conduct reviewed. In re *Freerks*, 11 N. D. 120, 90 N. W. 265.

§ 501. **Punishment for deceit.** An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court, judge or party to an action or proceeding is liable to be disbarred and shall forfeit to the injured party treble damages, to be recovered in a civil action. [R. C. 1899, § 428.]

§ 502. **Power of attorneys.** An attorney and counselor has power:

1. To execute in the name of his client a bond or other written instrument necessary and proper for the prosecution of an action or proceeding about to be or already commenced; or for the prosecution or defense of any right growing out of an action, proceeding or final judgment rendered therein.

2. To bind his client to any agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. To receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise to discharge the claim or acknowledge satisfaction of the judgment. [R. C. 1899, § 429.]

Can acquire no interest adverse to his client in subject matter of litigation while acting as attorney. *Yerkes v. Crum*, 2 N. D. 72.

Attorney having filed answer cannot withdraw same because of non-payment of fees. *Nichells v. Nichells*, 5 N. D. 125, 64 N. W. 73.

Client bound by attorney when acting within scope of his authority. *Feury v. McCormick Co.*, 6 S. D. 396, 61 N. W. 162.

Attorney may bind client for expenses incurred in taking appeal. *Pilcher v. Trust Co.*, 12 S. D. 52, 80 N. W. 151.

§ 503. **Proof of authority.** The court may on motion of either party and on the showing of reasonable grounds thereof require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by his oath or otherwise the authority under which he appears, and until he does so may stay all proceedings by him on behalf of the parties for whom he assumes to appear. [R. C. 1899, § 430.]

§ 504. **Attorney not to be surety.** No practicing attorney and counselor shall be a surety in any action or proceeding which may be instituted in any of the courts of this state. [R. C. 1899, § 431.]

Attorney cannot become surety. *Towle v. Bradley*, 2 S. D. 472, 50 N. W. 1057; *Dennett v. Bradley*, 15 S. D. 466, 90 N. W. 138; *Peck v. Phillips*, 4 Dak. 430, 34 N. W. 63.

§ 505. **Forfeiture of, and what courts may revoke or suspend license.** The revocation of an attorney's license is, and shall constitute, a forfeiture of his office as an attorney, and the supreme court or any district court may revoke or suspend the license of an attorney and counselor at law to practice in the courts of this state, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had, and an opportunity shall have been given to him to be heard in his defense. [1899, ch. 105, R. C. 1899, § 432.]

Court has power to reinstate. Adverse judgment as to character must be overcome by satisfactory proof. In re *Simpson*, 11 N. D. 526, 93 N. W. 918.

**§ 506. Causes for revocation or suspension.** The license of an attorney and counselor at law may be revoked or suspended for either of the following causes:

1. When he has committed a felony, or a misdemeanor involving moral turpitude.

2. When he is guilty of a willful disobedience or violation of an order of the court, requiring him to do or forbear an act connected with, or in the course of, the profession.

3. For a willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. For doing any other act to which such a consequence is by law attached, or upon conviction for any of the offenses mentioned in sections 8744, 8753 and 8754. [R. C. 1895, § 433.]

Statutory grounds only considered. Grounds for disbarment, what. In re Eaton, 4 N. D. 514, 62 N. W. 597.

Cannot be disbarred in summary proceeding. State v. Root, 5 N. D. 487, 67 N. W. 590.

Insult and menace to judge out of court cause for suspension, when. State v. Root, 5 N. D. 487, 67 N. W. 590.

Revocation of license not a criminal prosecution. In re Crum, 7 N. D. 316, 75 N. W. 257.

Supreme court has authority to disbar for embezzlement, deceit and fraudulent concealment of facts and state's attorney for willful omission to prosecute. In re Simpson, 9 N. D. 379, 83 N. W. 541.

Official misconduct sufficient to warrant suspension or disbarment, what. In re Voss, 11 N. D. 540, 90 N. W. 15.

Rendition of professional assistance to defendant by state's attorney violation of his duty as attorney at law. In re Voss, 11 N. D. 540, 90 N. W. 15.

Conviction for felony sufficient cause for revocation of license—record conclusive evidence. In re Kirby, 10 S. D. 322, 73 N. W. 92.

Conviction in federal court equivalent to conviction in state court. In re Kirby, 10 S. D. 414, 73 N. W. 907.

**§ 507. Proceedings to remove or suspend.** The proceeding to remove or suspend an attorney may be commenced by direction of the court, or on motion of any individual. In the former case the court must direct some attorney to draw up the accusation; in the latter the accusation must be drawn up and sworn to by the person making it. [R. C. 1899, § 434.]

Disbarment proceedings commenced in district court, generally. In re Freerks, 11 N. D. 120, 90 N. W. 265.

**§ 508. Accusations how answered.** To the accusation he may plead or demur and the issues joined thereon shall in all cases be tried by the court, all the evidence being reduced to writing, filed and preserved. [R. C. 1899, § 435.]

**§ 509. Judgment of the court.** If the accused fails to answer or pleads guilty, the court shall proceed to render such judgment as the case requires. [R. C. 1899, § 436.]

**§ 510. Appeal from judgment.** An appeal lies to the supreme court from all orders of the district court revoking or suspending the license of an attorney and counselor at law; and upon an appeal being taken from such an order all the original papers, together with the transcript of the record and proceedings therein, shall thereupon be transferred to the supreme court to be there tried and determined as the law and the evidence shall warrant. A judgment of acquittal by the district court is final. [R. C. 1899, § 437.]

Supreme court reviews facts upon appeal. In re Crum, 7 N. D. 316, 75 N. W. 257.

**§ 511. Refusal to pay over money.** An attorney who receives money or property of his client in the course of his professional business and who refuses to pay or deliver the same to the person entitled thereto within a reasonable time after demand is guilty of a misdemeanor. [R. C. 1899, § 438.]



§ 512. **No penalty unless lien secured.** When an attorney claims to be entitled to a lien upon money or property of his client in his possession, he is not liable to the penalty of the preceding section unless he neglects or refuses to pay or deliver such money or property to the person entitled thereto upon his giving a bond with sufficient surety to be approved by the clerk of the district court conditioned for the payment of the amount of such attorney's claim when legally established. [R. C. 1899, § 439.]

§ 513. **No liability if security given.** Nor shall he be liable as aforesaid if he shall give a sufficient bond conditioned that he will pay or deliver the whole or any portion of such money or property to the claimant in the event such claimant shall finally establish his right thereto. [R. C. 1899, § 440.]

#### ARTICLE 11.—JURORS.

§ 514. **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. [1883, ch. 73, § 1; R. C. 1895, § 441; 1901, ch. 114; 1905, ch. 86.]

§ 515. **Jury summoned on order of district court.** No jury shall be summoned except by order of the judge of the district court, who shall issue an order to the clerk of such court requiring a jury to be summoned, and in such order shall specify the number of petit jurors to be summoned and the time and place where they shall appear. Such order may be issued at any time within thirty days prior to the first day of the term of the district court at which the jury is to attend or at any time during the term. [1883, ch. 74, § 1; R. C. 1899, § 442.]

Jurors may be summoned to try criminal actions at special terms. *State v. Boucher*, 8 N. D. 277, 78 N. W. 988.

§ 516. **Grand jury, how summoned.** A grand jury shall be summoned in the same manner provided for summoning petit juries; provided, that in all cases a grand jury shall consist of not less than sixteen nor more than twenty-three jurors. [1895, ch. 62, § 1; R. C. 1899, § 443.]

§ 517. **Drawing jurors in counties wholly or partially organized into civil townships.** In each county in this state wherein terms of the district court are held the names of two hundred persons qualified to act as jurors shall be selected in the manner hereinafter provided, from which to draw the grand and petit jurors; provided, that if in any county there are not two hundred persons qualified to act as jurors then a less number, and the highest number possible, shall be selected. The board of county commissioners in each county, in which only a portion of the civil townships are organized, shall apportion to each of the organized townships and to each incorporated city and village in such county and to the unorganized portion of such county, as near as may be, its pro rata share of such names. The number of names to be selected from the portion of the county not organized into civil townships, and not em-

braced within the limits of any incorporated city or village, shall be selected by the board of county commissioners from the last annual tax list and furnished to the clerk of the district court of such county. In each county, in which all the townships are organized into civil townships, the board of county commissioners shall, as near as may be, apportion pro rata the number of names to be selected among the civil townships in their respective counties and among the incorporated cities and villages therein, if any. The names on the assessors' lists of the several townships, cities and villages for the preceding year shall be the basis for making such apportionment. [1887, ch. 80, § 1; R. C. 1899, § 444.]

§ 518. **Special venire to complete jurors' list, when.** In counties whose assessors' lists contain less than two hundred names of persons qualified to act as jurors for the year preceding the making or filing of such lists of names for jurors, it shall be the duty of the board of county commissioners to select the highest number of names possible and when the number of names so selected shall not furnish a sufficient list from which to draw a grand and petit jury, a special venire shall be issued by the judge of the district court to complete the panels of jurors. [1890, ch. 85, §§ 1, 2; R. C. 1895, § 445.]

§ 519. **Clerks of townships to post notices. What notice contains.** Whenever the county commissioners of any county shall have made the apportionment mentioned in section 517, the county auditor shall forthwith notify the clerk of each township and village and clerk or auditor of each city of the apportionment of his township, city or village, and such clerk or auditor shall immediately thereafter cause to be posted in three public places in his township, city or village a notice that the board of supervisors of the township, or the board of aldermen or city council of the city, or the board of trustees of the village, as the case may be, will meet to draw the names of qualified jurors of the township, city or village to make up the grand or petit jurors' list for the county. Such notice shall state the time and place of such meeting within the township, city or village, designating a day not less than five nor more than ten days from the day of posting such notice. [1887, ch. 80, § 2; R. C. 1895, § 446.]

§ 520. **Council and trustees to select jurors, how.** At the time and place mentioned in such notice the board of supervisors of the township, or the board of aldermen or the city council of the city, or the board of trustees of the village, as the case may be, shall meet and select from the names of the resident tax payers of such township, city or village three times as many names as are apportioned to the township, city or village by the county commissioners, and the township, city or village clerk or auditor shall at such meeting write each name so selected on a separate ticket and shall also record the list of the names so written and selected in a book to be kept for that purpose. Such board shall then compare the names on such tickets with such recorded list of names to satisfy itself that such tickets are correct. The tickets shall then be folded, placed in a box or some other receptacle and shaken up; one of the members of the board shall then select by lot from the tickets in such box or receptacle the proper number of names so apportioned to his township, city or village, as the case may be; and the clerk or auditor shall then record in a book to be kept for that purpose such names in the order in which they were drawn. [1887, ch. 80, § 3; R. C. 1899, § 447.]

§ 521. **Auditor to furnish list to clerk of district court.** Such clerk or auditor shall immediately thereafter forward by mail to the clerk of the district court of his county a list of the names so drawn; and the clerk of the district court shall make out and record in a book to be kept for that purpose a list of the names so forwarded to him; but a failure of the officers of any township, city or village to comply with the provisions of the foregoing section shall not invalidate such list. [1887, ch. 80, § 4; R. C. 1895, § 448.]

§ 522. **Formation of county board to select jurors.** Within three days after the receipt of the order of the judge of the district court directing a jury to be summoned, the clerk of the district court or his deputy and the county auditor, county treasurer and sheriff, or a majority of them, shall meet together at the county seat. In case the sheriff shall be disqualified by reason of being a party to any suit pending in such court, or for any other reason, the coroner shall serve with such officers in the place of the sheriff. Notice of such meeting, stating the object thereof and the time of the meeting must be served by the clerk of the district court upon each of such other officers in the manner provided for the service of a summons and he shall also notify by mail each practicing attorney or firm of attorneys in the county of such meeting at least one day prior thereto, and such meeting must take place within one day after the service of such notice. [1883, ch. 72, § 5; R. C. 1899, § 449.]

§ 523. **Drawing jurors, manner of.** At such meeting the clerk of the district court, or his deputy, shall strike from such juror list the names of any person known to such officers to be dead or to have removed from such county, and said clerk or his deputy, shall then write the name of each person on such juror list on a separate ticket and the remainder of the officers at such meeting shall compare such tickets with such list, and when all of such names on such tickets are found to correspond with such list, such tickets shall be folded and placed in a box or some suitable receptacle and shaken. [1883, ch. 72, § 6; R. C. 1899, § 450; 1901, ch. 113.]

§ 524. **Drawing jurors, manner of, continued.** One of such officers, other than the clerk of court, shall then proceed to draw enough of such tickets to equal the number of jurors directed to be summoned, and such clerk or his deputy shall record such names in the order in which they were drawn, in a book to be kept for that purpose. The jurors first drawn, to the number required in the order, shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder shall serve as petit jurors. [1883, ch. 72, § 7; R. C. 1895, § 451.]

§ 525. **Duty of clerk of court.** Such clerk shall on the day of the drawing aforesaid issue a venire or venires as the case may be, directed to the proper officer of the county, commanding such officer to summon the persons whose names are drawn to appear before the district court at the hour, day and place designated in the order of the judge. A separate venire shall issue for the grand jury when such jury is ordered. [1883, ch. 72, § 8; R. C. 1899, § 452.]

§ 526. **Number of names to be always at maximum.** Such number of two hundred names shall at all times be kept full, when possible, by completing the number after each jury term of court; and at the end of each jury term of the district court the clerk shall make requisition upon the county commissioners for the furnishing of as many names as have been drawn so as to keep such list full. And at the subsequent meeting the board of county commissioners shall proceed to apportion as hereinbefore provided for making up the whole of such list, and the same proceedings shall be had as to such names so required, as are herein directed to be taken in making said list full, except that the posting of notices shall not be required, and that the board of supervisors of any township, the board of aldermen or the city council of any city, or the board of trustees of any village, need not be specially called to draw any such names, but may do so at its next regular meeting. A failure to comply with any of the provisions of this section shall not be ground for challenge of any jury, either grand or petit, or to the panel. [1883, ch. 72, § 9; 1887, ch. 80, § 5; R. C. 1895, § 453; 1901, ch. 113.]

§ 527. **Venire, how served.** The officer receiving a venire shall forthwith serve the same by reading or delivering a true copy thereof to each person therein named, or by leaving such copy at his usual place of residence (such

copy need contain only the name of the juror served) and shall make return thereof, with his proceedings indorsed thereon, to the clerk as soon as he has executed the same. [R. C. 1895, § 454.]

§ 528. **Jurors must appear.** Each grand and petit juror so summoned shall appear before the court on the day and at the hour specified in the summons and shall not depart therefrom without leave of court. [R. C. 1895, § 455.]

§ 529. **Court may order jury forthwith.** If all persons summoned as grand or petit jurors do not appear before the court, or if for any cause the panel of the grand or petit jurors is not complete, or if no jury is drawn as above provided, the judge of the district court shall issue an order to the clerk of such court requiring a sufficient number of persons to be summoned to serve as jurors on the regular panel of grand or petit jurors, and in such order shall specify the number of jurors necessary to complete such panel, and the time and place where they shall appear. Such clerk or his deputy shall forthwith convene the county board to select jurors, being the officers named in section 522, and such board shall forthwith proceed to select the names of the number of persons possessing the qualifications of jurors directed to be summoned, which jurors may be selected by a majority of the members of said board present at the meeting to be convened as aforesaid, and thereupon a venire for the persons whose names shall have been so selected shall be issued by the clerk, or his deputy, and shall be served in like manner as provided for the service of the venire for the jurors of the regular panel. [R. C. 1899, § 456; 1901, ch. 113.]

§ 530. **Summons to complete special panel.** Whenever the panel of petit jurors shall be exhausted by the challenges of either party in any action, the judge of the court shall order the sheriff, deputy sheriff or coroner to summon without delay a sufficient number of persons possessing the qualifications of jurors, to complete the number requisite for a jury in that particular case; provided, that no person who shall have served as a juror in such court within one year next immediately preceding the first day of the term of court, in which such action is triable, shall be called, or be qualified to act as a juror in such case. [R. C. 1899, § 457; 1901, ch. 113.]

§ 531. **Citizens to be selected as jurors in rotation.** It shall be the duty of the respective boards in selecting and furnishing to the clerk the number of persons qualified to serve as grand and petit jurors so to select and arrange the names that no one person shall come on the jury a second time before all qualified persons shall have served respectively in rotation, according to the best information that can be obtained. [R. C. 1899, § 458.]

§ 532. **Penalty for failure or refusal to appear.** If any person summoned to appear as a grand or petit juror fails, refuses or neglects to appear, such person shall be deemed guilty of contempt of court, and may be fined by the court in any sum not less than five nor more than fifty dollars; and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided and imprisoned by the court not longer than ten days in the county jail; and if the board of county commissioners, township board of supervisors, the board of aldermen or city council of any city, or the board of trustees of any village shall willfully neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, the person so offending may be fined by the court not less than five nor more than fifty dollars; and if any officer shall fail to perform any of the duties imposed upon him by this article, he shall be deemed guilty of contempt of court, and may be fined by the court not less than five nor more than fifty dollars, and if guilty of gross misconduct in office and contempt in disregarding the provisions of this article he may be imprisoned in the county jail not longer than thirty days. [R. C. 1899, § 459.]

## ARTICLE 12.—ADMINISTRATION OF OATHS.

§ 533. **Officers authorized to administer oaths.** The following officers are authorized to administer oaths:

Each judge of the supreme court.

Each judge of the district court.

The clerk of the supreme court and his deputy.

Clerks of the district court, county auditors and registers of deeds and their deputies within their respective counties.

County commissioners within their respective counties.

Judges of the county courts.

Justices of the peace within their respective counties.

Notaries public anywhere in the state upon complying with the provisions of sections 545 and 546.

City clerks or auditors, township clerks and village recorders within their respective cities, townships and villages. Each sheriff and his deputy within their respective counties in the cases provided by law. Other officers in the cases specially provided by law. [1890, ch. 106, § 1; R. C. 1899, § 460.]

Notary public has authority to administer oaths in any county of the state, when. *State v. Henning*, 3 S. D. 492, 54 N. W. 536.

§ 534. **Persons may affirm, when.** Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing, [R. C. 1895, § 461.]

## ARTICLE 13.—NOTARIES PUBLIC.

§ 535. **Appointment and qualifications of notaries public.** The governor shall appoint in each county in this state from among the citizens of either sex one or more notaries public, who shall hold office for six years, unless sooner removed by the governor, each of whom shall have power and authority anywhere in the state to administer oaths and perform all other duties required of them by law; but the person to be eligible to such appointment must at the time of appointment have the qualifications of an elector as to age, residence and citizenship. [1893, ch. 76, § 1; R. C. 1895, § 462.]

May perform official acts anywhere in state, when. *State v. Henning*, 3 S. D. 492, 54 N. W. 536.

Affixing of seal and signature necessary to validity of mechanic's lien to constitute constructive notice. *Hill v. Building Co.*, 6 S. D. 160, 60 N. W. 752.

Affixing seal to verification of pleadings not essential to validity. Court takes judicial notice of who are notaries public in county in which court is sitting. *Wiley v. Carson*, 15 S. D. 298.

§ 536. **Commission. Record. Fee and notice.** The secretary of state shall issue a commission and duplicate thereof to each notary public appointed by the governor, one of which shall be by such notary posted in a conspicuous place in his office; and the secretary of state shall collect and receive five dollars for the issuance of such commission and duplicate, which sum shall be paid into the state treasury and credited to the general fund. The secretary shall keep in his office a record of such appointments and the date of the expiration of the same, and shall notify each notary public by mail at least thirty days before the expiration of his term of the date upon which his commission expires, which notice shall be addressed to such notary public at his last known place of residence. [1893, ch. 76, § 2; R. C. 1895, § 463.]

§ 537. **Oath and bond.** Each notary public before entering upon the duties of his office shall take the oath prescribed in section 211 of the constitution; and he shall give a bond to the state with one or more sureties, to be approved by the clerk of the district court of his county or of the county to which the same is attached for judicial purposes, in the penal sum of five hun-

dred dollars conditioned for the faithful discharge of the duties of his office. [1893, ch. 76, § 3; R. C. 1895, § 464.]

§ 538. **Vacancy. Disposition of records.** Whenever the office of any notary public shall become vacant, the record of such notary together with all papers relating to the office shall be deposited in the office of the clerk of the district court of the county or judicial subdivision in which such notary public resides, and any notary public who on resignation or removal from office, or any executor or administrator of any notary public who neglects to deposit such records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty nor more than five hundred dollars, and he shall also be liable in a civil action for damages to any party injured. [1893, ch. 76, § 4; R. C. 1895, § 465.]

§ 539. **Duty of notary.** Each notary public, when any bill of exchange, promissory note or other written instrument, shall be by such notary public protested for non-acceptance or non-payment, shall give notice in writing thereof to the maker, and to each and every indorser of such bill of exchange, and to the maker of each security or the indorsers of any promissory note or other written instrument immediately after such protest shall have been made. [1893, ch. 76, § 5; R. C. 1895, § 466.]

§ 540. **Service of notice.** Each notary public shall serve notice personally upon each person protested against, or by properly folding the notice, directing it to the person to be charged at his place of residence according to the best information that the person giving the notice can obtain, depositing it in the United States mail or post office most conveniently accessible and prepaying the postage thereon. [1893, ch. 76, § 6; R. C. 1899, § 467.]

§ 541. **Protest fee.** The notary public making such protest shall be entitled to charge and receive the sum of twenty-five cents and postage for each notice so made out and served. [1893, ch. 76, § 7; R. C. 1899, § 468.]

§ 542. **Record of notices.** Each notary public shall keep a record of all such notices and of the time and manner in which the same were served and of the names of all the persons to whom the same were directed, also the description and amount of the instrument protested, which record or a copy thereof certified by the notary under seal shall at all times be competent evidence to prove such notice in any court of this state. [1893, ch. 76, § 8; R. C. 1895, § 469.]

Certificate of protest prima facie evidence of presentment, demand and dishonor. *Ashe v. Beasley*, 6 N. D. 191, 69 N. W. 188.

§ 543. **Clerks of district courts to preserve records.** The clerk of the district court shall receive and safely keep all the records and papers directed by this article to be deposited in his office and furnish certified copies thereof when required, and such copies shall have the same force and effect as if the same were certified to by the notary public by whom the record was made. [1893, ch. 76, § 9; R. C. 1895, § 470.]

§ 544. **Impression of seal. Filing oath and bond.** Each notary public before entering upon the duties of his office shall provide an official seal and deposit an impression of the same together with his oath and bond in the office of the secretary of state. [1893, ch. 76, § 10; R. C. 1895, § 471.]

§ 545. **Commission recorded with clerk of the district court.** He shall before entering upon the duties of his office file his commission for record with the clerk of the district court of the county or judicial subdivision and shall deposit with such clerk an impression of his seal together with his official signature; and such clerk shall record the same in a book to be kept for that purpose; and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. [1893, ch. 76, § 11; R. C. 1899, § 472.]

§ 546. **Removal from county. Requirements.** Whenever a notary public shall change his place of residence from the county or subdivision in which he was first appointed to another county or subdivision, it shall be necessary to comply with the preceding section before performing any official act in such county or subdivision. [1893, ch. 76, § 12; R. C. 1899, § 473.]

§ 547. **Revocation of commission. Notice.** In case the commission of any person so appointed is revoked, the secretary of state shall immediately give notice thereof by mail to such person and to the clerk of the district court of the proper county. [1893, ch. 76, § 13; R. C. 1895, § 474.]

§ 548. **Date of expiration.** Every notary public taking an acknowledgment to any instrument shall, immediately following his signature to the jurat or certificate of acknowledgment, indorse the date of the expiration of such commission; such indorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form:

My commission expires.....19.... [1903, ch. 126.]

§ 549. **Acting when disqualified. Penalty.** Any notary public who exercises the duties of his office with knowledge that his commission has expired or that he is otherwise disqualified, or who appends his official signature to any document when the parties thereto have not appeared before him, is guilty of a misdemeanor and on conviction is punishable by a fine of one hundred dollars for each offense, and shall also be removed from office by the governor. [1893, ch. 76, § 15; R. C. 1895, § 475.]

§ 550. **Official acts valid in certain cases.** All acknowledgments, affidavits or protests heretofore taken or made by any officer or stockholder of any corporation, who was at the time of taking the same, a duly appointed and qualified notary public in this state or the former territory of Dakota, and all other official acts of said notary public are hereby declared to be valid, notwithstanding the corporation, of which said notary was an officer or stockholder, was interested in or a party to the instrument acknowledged or protested, or that the affidavit was one that was required to be taken by some person on behalf of, or against, such corporation, or that any other official act performed by said notary, was one that in some manner related to the business of such corporation. [1899, ch. 54; R. C. 1899, § 475a.]

## CHAPTER 8.

### ELECTIONS.

#### ARTICLE 1.—PRIMARY ELECTIONS.

§ 551. **Objects.** It is the intention of this article 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 article shall be so construed as to give force and effect to this expressed intention. [1905, ch. 109, § 1.]

§ 552. **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. [1905, ch. 109, § 2.]

§ 553. **Petition of candidates. Auditor's duty.** 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....

.....  
.....

[1905, ch. 109, § 3.]

Notary Public.

§ 554. **Petition, how signed.** 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 signing. [1905, ch. 109, § 4.]

§ 555. **Fees. Duty of county auditor.** 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 representative in the legislature 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 article, and when accompanied by an affidavit as provided in section 553, he shall place the name of such applicant upon the primary election ballot of his party as hereinafter provided. For the purpose of this article 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. [1905, ch. 109, § 4.]

§ 556. **Continuous list or aggregate.** The petitions required in sections 553 and 554 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. [1905, ch. 109, § 5.]

§ 557. **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. [1905, ch. 109, § 6.]

§ 558. **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 provisions of this article 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 votes 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. [1905, ch. 109, § 7.]

§ 559. **State convention, manner of conducting.** The delegates for the state convention chosen by each party or principle in the manner provided in section 558 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. [1905, ch. 109, § 8.]

§ 560. **Vacancies in delegations, how filled.** 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. [1905, ch. 109, § 8.]

§ 561. **Nominations by secret ballot.** 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. [1905, ch. 109, § 8.]

§ 562. **Vacancy in nominations, how filled.** 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. [1905, ch. 109, § 8.]

§ 563. **Undue influence of delegates. Penalty.** No promise of appointment or of 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 article, 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 fifty dollars, or not more than five hundred dollars, and imprisonment in the county jail not less than ten days or more than one year. [1905, ch. 109, § 8.]

§ 564. **Who qualified as candidates.** All persons nominated in accordance with the provisions of this article shall be eligible and qualified as candidates to be voted for at the ensuing general election. [1905, ch. 109, § 9.]

§ 565. **Ballots, how provided.** 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 article. 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." [1905, ch. 109, § 10.]

§ 566. **Form of ballots.** 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. [1905, ch. 109, § 10.]

§ 567. **Ballot, how marked.** 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. [1905, ch. 109, § 10.]

§ 568. **Party ballots.** 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. [1905, ch. 109, § 10.]

§ 569. **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 article: 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. [1905, ch. 109, § 11.]

§ 570. **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 article, 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. [1905, ch. 109, § 12.]

§ 571. **Primary ballots, how prepared.** The primary election ballots of each party or principle shall be prepared, unless otherwise provided in this article, as prescribed in section 616. [1905, ch. 109, § 13.]

§ 572. **Arrangement of names.** The names of candidates for each office upon the sample and official ballot shall be arranged alphabetically according to surnames. [1905, ch. 109, § 14.]

§ 573. **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. [1905, ch. 109, § 15.]

§ 574. **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 article, specifying the several officers to be nominated in such county at the next primary election. [1905, ch. 109, § 16.]

§ 575. **Notice of nomination. Publication.** The auditor to whom such notice is delivered, shall cause notice of the same to be given as provided in section 637. [1905, ch. 109, § 16.]

§ 576. **Other provisions applicable.** Except as herein otherwise provided, the following sections of the political code are hereby made applicable to primary elections and primary election ballots under this article, to wit: Sections 606, 607, 608, 609, 610, 611, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 630, 635, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 654, 656, 658, 659, 660, 669, 671, 672, 674, 681, 682, 683, 684, 685, 686 and 687. [1905, ch. 109, § 17.]

§ 577. **Tally sheets and books.** Two tally books or two sets of tally sheets shall be provided for each political party or principle, having candi-

dates 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. [1905, ch. 109, § 18.]

§ 578. **Polls open and close, when. Canvass of vote.** 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. [1905, ch. 109, § 19.]

§ 579. **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. [1905, ch. 109, § 20.]

§ 580. **List of voters preserved.** 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. [1905, ch. 109, § 21.]

§ 581. **No registration required.** No registration of votes shall be required under this article 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. [1905, ch. 109, § 21.]

§ 582. **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 chairman 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. [1905, ch. 109, § 22.]

§ 583. **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:

1. 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.

2. A statement of the names of the persons or candidates of each political party who are nominated, to wit: 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.

3. 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.

4. 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. [1905, ch. 109, § 23.]

§ 584. **Duty of auditor.** It shall be the duty of the county auditor of each county under his official seal, except as provided in section 586, immediately upon the completion of the canvass as provided by section 583 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. [1905, ch. 109, § 24.]

§ 585. **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 584, 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. [1905, ch. 109, § 25.]

§ 586. **Vacancies.** 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. [1905, ch. 109, § 26.]

§ 587. **Cities exempt from provisions.** The provisions of this article shall apply to cities in this state containing a population of five thousand or more according to the last government census. [1905, ch. 109, § 27.]

§ 588. **Municipal nominations.** 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. [1905, ch. 109, § 28.]

§ 589. **Notice of election.** 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. [1905, ch. 109, § 29.]

§ 590. **Petition of nominee. Fee.** 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 553 and 554; 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 votes cast in each ward shall be required to place a name on the primary election ballot for nominations in such ward. [1905, ch. 109, § 30.]

§ 591. **Preparation of ballots.** It shall be the duty of the city auditor or recorder to prepare the primary election ballots as provided in this article and deliver the same as now provided by law. [1905, ch. 109, § 31.]

§ 592. **Canvassing board.** 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 1 and 2 of section 583 and make returns of same as herein provided. [1905, ch. 109, § 32.]

§ 593. **Publication of result of election.** 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. [1905, ch. 109, § 33.]

§ 594. **Penal provisions.** 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 article. [1905, ch. 109, § 34.]

§ 595. **Party committees.** Every state, county and city committee of each political party now eligible under the provisions of this article, shall remain the regularly constituted committee of the respective parties until succeeded as provided for in this article. [1905, ch. 109, § 35.]

§ 596. **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. [1905, ch. 109, § 36.]

§ 597. **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. [1905, ch. 109, § 37.]

ARTICLE 2.—REGULATING CAUCUSES AND NOMINATIONS FOR OFFICE WHERE PRIMARY ELECTION PROVISIONS DO NOT APPLY.

§ 598. **When caucus held. Certificates.** All caucuses shall be held between the hours of two o'clock p. m. and nine o'clock p. m., and the polls shall be kept open at least one hour. The electors present at such caucus shall at the opening of the polls elect by viva voce vote a chairman and clerk of such caucus, whose powers and duties shall be the same as the powers and duties of judge and clerk of election, respectively, in so far as the same shall be applicable. The chairman and clerk of such caucus shall at the close of the polls immediately canvass the ballots cast for delegate or delegates and shall issue certificates of election to each delegate who shall receive a plurality of all the votes cast at such caucus. Such certificate shall be signed by said chairman and clerk. [1899, ch. 38, §§ 4, 5, 6; R. C. 1899, § 497b; 1901, ch. 47.]

§ 599. **Duty of clerk.** It shall be the duty of the clerk of such caucus to carefully keep and preserve the record of the caucus, which shall include a list of the names of each person voting at the said caucus, for six months, and he shall at any time within said six months furnish a certified copy of the record of such caucus upon the request of the chairman of the county or state committee of the political party which said caucus represented. [1899, ch. 38, § 7; R. C. 1899, § 497c.]

§ 600. **Participation in more than one caucus prohibited.** Any person who shall participate directly or indirectly in the election at caucus of more than one delegate or set of delegates for the nomination of each office to be filled shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty or more than two hundred dollars. [1899, ch. 38, § 8; R. C. 1899, § 497d.]

Note:—The provisions of sections 598 to 600 inclusive apply to incorporated cities, towns and villages containing less than five thousand inhabitants according to the last federal census. In cities containing five thousand inhabitants and over the provisions of sections 551 to 597 inclusive apply.

§ 601. **Nominations, how made.** Any assembly or convention of delegates held for the purpose of making nominations to public office, [or electors to the number hereinafter specified] may nominate candidates for public office to be filled by election within the state. Public printed or posted notice of holding such assembly or convention must be given at least six days before the holding of the same. Such nomination shall be made by delivering to and leaving with the officer charged with directing the printing of the ballots upon which the name is to be placed, within the time prescribed herein, a certificate of nomination for each candidate. [An assembly or convention within the meaning of this article is an organized assemblage

of delegates representing a political party or principle which cast five per cent of the total number of votes cast for member of congress at the last general election]. [1891, ch. 66, § 2; 1893, ch. 60, § 2; R. C. 1895, § 498.]

Note:—That part of section 601 inclosed in brackets is modified, or impliedly repealed, by article 1, chapter 8, political code.

What constitutes a regular convention. Action of convention final. State ex rel Gronvold v. Porter, 11 N. D. 309, 91 N. W. 944.

Convention decides political questions. No appeal from action of convention to court. State ex rel Buttz v. Liudahl, 11 N. D. 320, 91 N. W. 950.

Determination of contest by state central committee and approved by convention, conclusive. State ex rel Mitchell v. Larson, 13 N. D. 420, 101 N. W. 3151.

### ARTICLE 3.—GENERAL PROVISIONS.

§ 602. **Governs all but special elections.** All elections for state, district, county, township, city and ward and other officers provided by law, shall hereafter be held and conducted in the manner prescribed in this chapter, except as otherwise specially provided by law. [R. C. 1895, § 476.]

§ 603. **General election, when held.** On the first Tuesday after the first Monday in November of each even numbered year an election shall be held in the several election districts of the state which shall be known as the general election, and the several state, district and county officers, judges of the supreme and district courts, members of the legislative assembly and members of the congress of the United States, shall be elected at the general election next preceding the expiration of the term of each of such officers, respectively, except such officers as are required by law to be elected at special elections, and on a year when a president and a vice president of the United States are to be chosen a number of electors of president and vice president of the United States equal to the number of senators and representatives to which this state is entitled in the congress of the United States shall be elected at such election. [R. C. 1899, § 477.]

§ 604. **Highest number of votes elects.** In all elections for the choice of any officer, unless it is otherwise expressly provided, the person receiving the highest number of votes for any office shall be deemed to have been elected to that office. R. C. 1899, § 478.]

§ 605. **Who entitled to vote.** Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state one year, and in the county six months, and in the precinct ninety days next preceding any election, shall be a qualified elector at such election:

First. Citizens of the United States.

Second. Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election, provided he has complied with the provisions of any law which is now or may in the future be in force relating to the registration of voters, and all persons possessing the qualifications mentioned in this section, and who have resided in this state one year, shall be eligible to any office in this state, except as otherwise provided in the constitution; provided, however, that persons shall vote in the precinct where they reside and not elsewhere, except in case of voters otherwise qualified moving from one voting precinct to another, within the same county, in which case they shall have a right to vote in the precinct from which they move until they have resided ninety days in the precinct to which they move. [1885, ch. 52, § 1; Const. § 121; R. C. 1895, § 479; 1903, ch. 89.]

Presumption of naturalization from fact of voting. Kadlec v. Pavik, 9 N. D. 278, 83 N. W. 5.



§ 606. **Qualifications of Indian voters.** No Indian or person of Indian descent who has not received a final patent conveying the title in fee of lands allotted to him within the boundaries of this state, pursuant to an act of the congress of the United States, approved February 8, 1887, and entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes," shall be deemed a qualified elector of the state of North Dakota, or be entitled to the rights and privileges of an elector therein unless he was born within the limits of the United States, and has voluntarily taken up his residence within this state separate and apart from any tribe of Indians therein, and adopted the habits of civilized life, and is in no manner subject to the authority of any Indian chief or council or Indian agent of the United States. [1895, ch. 58, § 1; R. C. 1899, § 480.]

Unconstitutional in so far as it restricts the right of suffrage. State ex rel Tompton v. Denoyer, et al, 6 N. D. 586, 75 N. W. 1014.

#### ARTICLE 4.—ELECTION PRECINCTS.

§ 607. **Precincts, how formed.** The board of county commissioners of each county in the state shall, at its first session after the taking effect of this section, divide its county into election precincts and establish the boundaries of the same, if it has not heretofore done so, and the said board of county commissioners, whenever deemed necessary, shall subdivide any precinct containing two or more congressional townships; providing, that every precinct so established shall comprise at least one congressional township. The entirety of civil townships, cities or villages as voting precincts shall be preserved when possible, except when such preservation would conflict with the provisions of this section. In such case the civil township, city or village, except as hereinafter provided, shall be divided into two or more precincts, but in no case shall a precinct be composed of parts of two civil townships, or part of a township and city or village, excepting as hereinafter provided. Such board of commissioners shall designate one voting place in each precinct. No precinct shall contain more than three hundred electors. If at any election hereafter held, more than three hundred votes shall be cast at any voting place, it shall be the duty of the inspector in such precinct to report such fact to the board of county commissioners, which board shall, at its next regular meeting divide such precinct as nearly as possible, so that the new precincts formed therefrom shall each contain two hundred and fifty electors, as nearly as practicable; provided, that nothing in this section shall be construed as prohibiting townships adjoining or having within their boundaries an incorporated city, town or village, of less than fifteen hundred inhabitants, from holding their election and having their voting place within the corporate limits of such city, town or village; provided, further, that when the combined vote of any township and incorporated city, town or village, or the combined vote of any township and any portion of any incorporated city, town or village, within its boundaries or within the town lines or section lines which form the boundaries thereof, does not exceed three hundred, such township and incorporated city, town or village, may have but one voting place. [1891, ch. 66, § 7; 1897, ch. 44; R. C. 1895, § 481; 1903, ch. 90.]

#### ARTICLE 5.—ELECTION OFFICERS AND THEIR DUTIES.

§ 608. **Inspectors and judges of elections. Qualifications of. Duties.** The chairman of the board of supervisors in organized townships shall by virtue of his office be inspector of elections. In case the township contains more than three hundred voters, such chairman shall be inspector of elections in the precinct in which he resides, and shall appoint the inspector in all

other precincts which are component parts of the township of which he is chairman. In case the township and any incorporated town or village within its limits contain less than three hundred voters and such township or incorporated town or village have but one voting place, the chairman of the township board of supervisors shall be inspector of elections. In all cities in which the aldermen are elected in different years, the senior alderman shall be inspector of elections for the precinct in which he resides; and in cities in which the aldermen are not so elected, the alderman who shall act as inspector of elections shall be determined by lot in such manner as the city council shall prescribe. In case a ward in any city contains more than three hundred votes, the senior alderman or the alderman chosen by lot shall be inspector of elections for the precinct in which he resides, and shall appoint the inspectors in all other precincts which are component parts of the ward of which he is alderman. In incorporated towns and villages the president of the town or village board of trustees shall act as inspector, and, if the town or village contains more than three hundred voters, he shall act as inspector of the precinct in which he resides, and appoint the inspectors in the other precincts. In case the alderman designated or selected to act as inspector in any ward is disqualified from acting, the other alderman of the ward shall act as inspector, and appoint other inspectors when necessary; and in case the president of the board of trustees of any town or village is disqualified, the remaining members of the board shall select one of their number to act as such inspector, and appoint other inspectors when necessary. The inspector shall, prior to the opening of the polls in his precinct, appoint as judges of election two qualified electors of such precinct who shall have been resident freeholders therein for at least ninety days next preceding such election, and who are members of different political parties and of the parties which cast the highest number of votes at the preceding general election; provided, that if at least one week prior to such election the chairman of the county central committee of either of the two parties that cast the largest number of votes in the state at the last general election, shall nominate a member of such party as judge, having the qualifications above prescribed, presenting a certificate of such nomination signed by such chairman, he shall be appointed by the inspector, and such judges together with the inspector shall constitute the board of elections. No person shall be a member of the board of elections who has anything of value bet or wagered on the result of such election, or who is a candidate or is the father, father-in-law, son, son-in-law, brother or brother-in-law of any candidate at such election. If at any time before or during an election it shall be made to appear to any inspector, by the affidavit of two or more qualified electors of the precinct, that either of the judges is disqualified under the provisions of this section, he shall at once remove such judge and fill the place with a qualified person of the same political party as the judge removed, and in case such person so disqualified shall have taken the oath of office as prescribed by law, the inspector shall place such oath and affidavit before the state's attorney of the county; provided, that in case such inspector is disqualified from acting, the other two members of the board of township supervisors and the clerk shall, at least ten days before the date of holding the election, hold a meeting for the purpose of filling such vacancy. Such vacancy shall be filled by appointing an inspector who shall belong to the same political party as the disqualified inspector, and the name of the inspector so appointed shall at once be reported to the county auditor by such clerk. [1893, ch. 60, § 5; 1897, ch. 78; R. C. 1895, § 483.]

**§ 609. Inspectors of election in unorganized townships, how appointed.** In precincts consisting of unorganized townships the board of county commissioners shall at the July session of such board next preceding an election appoint in each precinct, as inspector of such election, some qualified elector of such precinct. Such inspector shall before the time of opening the polls

in his precinct appoint two judges of election as provided in the preceding section and such judges and inspector shall constitute the board of election for that precinct. If any member of the board of election shall fail to appear at the hour appointed for the opening of the polls the remainder of the board shall select a member of his political party to serve in his stead; provided, that if the qualified electors of his party present at the polls shall nominate a qualified person for such vacancy, such nominee shall be appointed. If none of the members of the election board shall appear at the hour appointed for opening the polls the qualified electors present shall elect a board viva voce as nearly as possible in conformity with the provisions hereof. [1891, ch. 66, § 16b; R. C. 1895, § 484.]

§ 610. **Poll clerks.** Such board of election shall appoint as poll clerks two qualified electors of the precinct, one from each of the two parties that cast the largest vote at the last state general election. [1891, ch. 66, § 16c; R. C. 1899, § 485.]

§ 611. **Oath of election officers.** Previous to the votes being taken the inspectors, judges and clerks of election shall severally take and subscribe an oath in the following form: "I, A. B., do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge or clerk (as the case may be) according to law and the best of my ability; and that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same." Such oath may be taken before any officer authorized to administer oaths, and in case no such officer is present at the opening of the polls the inspector or judges of election are authorized to administer such oath to each other and to the clerks of election and the person administering such oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book. [R. C. 1899, § 486.]

§ 612. **Poll list, clerk to keep.** Each clerk of election shall keep a poll list which shall contain in numerical order the names of all the persons voting at such election. [R. C. 1899, § 487.]

§ 613. **Duty of inspector and judge to challenge.** If any inspector or judge of election shall know or have reason to believe that any person offering to vote is not a qualified elector it shall be his duty to challenge the right of such person to vote. [R. C. 1895, § 488.]

#### ARTICLE 6.—ELECTION SUPPLIES.

§ 614. **Ballots to be printed and distributed at public expense.** At all general or special elections for state, district, county, city, township, village or other public officers within this state, including elections in cities, towns and villages incorporated by special act, all ballots cast shall be printed and distributed at public expense, as hereinafter provided. The printing of ballots and cards of instruction for the electors in each county and the delivery of the same to the election officers as hereinafter provided shall be a county charge and for municipalities a municipal charge, the payment of which shall be provided for in the same manner as other county and municipal expenses; provided, that the provisions of this chapter shall not apply to elections for civil township or school district officers, nor to elections in incorporated cities and villages having less than three hundred legal voters as evidenced by the vote cast therein at the last preceding city or village election. [1891, ch. 66, § 1; 1893, ch. 60, § 1; R. C. 1895, § 489.]

§ 615. **Elector may write name of candidate on ticket, when.** Except as otherwise provided in this chapter it shall be the duty of the auditor of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within the county participate and he shall cause to be printed on the ballots the name of each candidate whose name has been certified to or filed with him in the manner provided for in this chapter. Ballots other than those printed by the respective county

auditors shall not be cast or counted in any election. Nothing in this chapter shall prevent any voter from writing or pasting on his ballot the name of any person for whom he desires to vote and such vote shall be counted the same as if printed on the ballot and marked by the voter. [1891, ch. 66, § 15; R. C. 1899, § 490.]

§ 616. **Ballots, how prepared.** All ballots prepared under the provisions of this chapter shall be white and of a uniform quality of paper, printed in black ink, and of sufficient width to contain all of the tickets to be voted for, under the appropriate party designation for each, and of sufficient length to contain all of the names of the candidates to be voted for at said election. On the left hand of said ticket shall be a column designating the office to be voted for, and on the same line in the column under the appropriate party designation of each, all of the names of the candidates duly nominated for that office shall be printed. There shall be a space between the party designation at the top of each column and the names at the head of the ticket of five-eighths of an inch, in the center of which there shall be a square formed of black lines in which the voter by his mark may declare that he votes for all names printed in that column, except such as are erased, or pasted, or written over as hereinafter specified. There shall also be left under the name of each candidate sufficient space to write, or paste a name therein, in lieu of the one printed on the ticket, and on the same line with the name of each candidate, and at the end of his name there shall be a space enclosed in a square of black lines, in which the voter may designate by a cross or other mark, his choice for each candidate opposite the name of such candidate. The fact that a name has been written or pasted opposite the office to be voted for shall be deemed sufficient evidence that the person depositing such ballot intended to vote for the person whose name he has written or pasted thereon, and not for the person whose name was originally printed on the ballot whether he shall make a mark or cross opposite such written or pasted name or not.

[Persons nominated by paper or by petition shall be placed in one or more columns under the designation of "Individual Nominations," on the same line with the offices for which they are nominated.]

Constitutional amendments duly certified to the auditor by the secretary of state, or any question to be voted for aside from the election of public officers, shall be printed on a separate ballot and shall be deposited in a box separate from that provided to receive the ballots for public officers. The ballots must embrace the constitutional amendments in full, and there shall be printed at the bottom of the amendments the word "yes," and underneath the same the word "no," and opposite each a square formed of black lines, and the elector shall designate by cross or other mark within the square how he desires his vote recorded. If the question be other than a constitutional amendment, it shall be stated fully and fairly on such ballot, and the words "yes" and "no" shall be printed on the ballot at the close of the statement of the question, in separate lines with a square formed of black lines after each in which the voter may indicate by cross or other mark how he desires to vote on the question. Where two or more amendments or questions are to be voted on they shall be printed on the same ballot. [1891, ch. 66, § 17; 1893, ch. 60, § 6; R. C. 1899, § 491; 1905, ch. 109.]

Note:—Provisions of paragraph inclosed in brackets in section 616, apply only to those cities not coming under the provisions of article 1 of chapter 8 of this code.

Duty of secretary of state to certify proposition for new constitutional convention to county auditors, when. *State ex rel Wineman v. Dahl*, 6 N. D. 81, 68 N. W. 418.

Name written or pasted equivalent to marking within the square. *Howser v. Pepper*, 8 N. D. 484, 79 N. W. 1018.

Marking within square mandatory. *Howser v. Pepper*, 8 N. D. 484, 79 N. W. 1018; *Perry v. Hackney*, 11 N. D. 148, 90 N. W. 483.

A reasonable regulation of the manner of exercising the right of suffrage is valid and constitutional. *State v. Porter*, 13 N. D. 406, 100 N. W. 1080.

Ballot must be marked substantially as required by law. (Details discussed in opinions.) *Vallier v. Brakke*, 7 S. D. 343, 64 N. W. 180; *McKittrick v. Pardee*, 8 S. D. 39, 65 N. W. 23; *Moody v. Davis*, 13 S. D. 86, 82 N. W. 410; *McMahon v. Polk*, 10 S. D. 296, 73 N. W. 77; *Church v. Walker*, 10 S. D. 90, 72 N. W. 101.

**§ 617. Candidate's name in one column only.** When the same candidate has been nominated for the same office by more than one assembly, convention or body of electors qualified to make nominations for public office, such candidate shall file with the proper officer designated in section 626, on or before the day fixed by law for the filing of certificates of nomination for such office, a statement in writing signed by himself designating one of the columns upon such ballot allotted to one of the parties, assemblies, conventions or bodies of electors by whom said candidate has been nominated, as to the column upon such ballot in which such candidate desires his name to appear upon such ballot, and such candidate's name shall be printed upon such ballot in such column, but in no other. But if such candidate shall refuse or neglect to give notice to the proper officer, as above provided, specifying in which column he wishes his name printed on the ballot, then in such case the said officer shall cause his name to be printed in the column of the party or political organization from which he received first notice of such person's nomination. [1891, ch. 66, § 17; 1893, ch. 60, § 6; 1897, ch. 76; R. C. 1899, § 491.]

**§ 618. Arrangement of names.** The candidates of the party casting the highest number of votes in the state for members of congress at the last preceding general election shall be arranged in the first or left hand column of such ballot; of the party casting the next highest number of votes in the second column; of the party casting the next highest number of votes in the third column, and of any other party as the secretary of state may direct for state officers, or the county auditor for county officers; the municipal or city auditor or in municipalities or cities not having a municipal or city auditor, the municipal or city clerk for municipal or city officers; or the president of the board of trustees of incorporated villages for village officers. The names of electors of president and vice president of the United States presented in one certificate of nomination shall be arranged in a group inclosed in brackets with a single square at the right of such group, and a mark within such square shall be counted a vote for all the electors, and such group shall be placed at the head of the column under the party designated or represented in such certificate. The auditor shall prepare the necessary ballots whenever any question is required by law to be submitted to a vote of the electors of any subdivision and not the state generally. The municipal or city auditor, or clerk, as the case may be, shall prepare and direct the printing and distributing of all ballots for municipal or city elections and for all questions that may be submitted to a vote of the electors of such municipality, except as provided in section 614. [1891, ch. 66, § 17; 1893, ch. 60, § 6; 1897, ch. 76; R. C. 1899, § 491.]

**§ 619. County auditor to prepare ballots. Number. Poll books.** The county auditor of each county shall provide for each election precinct in his county two ballots for each vote cast in such precinct at the last general election. Such ballots shall be distributed in packages or blocks containing no more than one hundred and fifty ballots each. The county auditor may provide for any such precincts such additional ballots as he may deem necessary. Each county auditor shall, at least five days before any election, have the ballots printed and the same may be inspected in the office of such auditor by any person. Such auditor shall also, at least five days before any election, send to the inspector in each precinct five copies of such ballot printed upon tinted paper, and such inspector shall post the same in five public places in his precinct, one of such copies to be posted at the polling place therein, for

which services such inspector shall receive two dollars. The auditor shall at the time of distributing such copies cause to be delivered to the several inspectors the necessary number of blank forms of poll books and also blanks for the election returns with the proper captions, forms of oath and forms of certificates and tally sheets necessary to carry out the provisions of this chapter. [1891, ch. 66, § 18; 1893, ch. 60, § 7; 1895, § 492.]

Tally sheet no part of official returns. State ex rel Sunderall v. McKenzie, 10 N. D. 132, 86 N. W. 231.

Mandamus will lie to compel auditor to print and distribute ballots. State ex rel Mitchell v. Larson, 13 N. D. 420, 101 N. W. 315.

**§ 620. Ballots, how delivered. Official stamps.** Each county auditor shall deliver or cause to be delivered by mail or other reliable method to the inspector of election in each precinct in his county the official ballot prepared by him at least twenty-four hours before the hour of opening the polls on election day. Such ballots shall be delivered in sealed packages marked on the outside plainly designating the number of ballots inclosed and the precinct for which they are intended. He shall also deliver or cause to be delivered to such inspector or, if that is impracticable, to one of the judges of election of such precinct a stamp with an ink pad for the purpose of stamping each ballot with the words "Official Ballot" and the name or number of the precinct, the name of the county and the date of the election. [1891, ch. 66, § 20; R. C. 1895, § 493.]

**§ 621. Instructions to be printed.** Each county auditor shall cause to be printed on cards in large type full instructions to electors as to the manner of obtaining and preparing ballots and also containing a copy of sections 683, 684, 8614 and 8615. He shall furnish ten such cards to the judges of election in each election precinct and the judges of election shall at the opening of the polls post at least one of such cards in each booth or compartment provided for the preparation of ballots and at least three of such cards in and about the polling place. There shall also be posted in each booth or compartment one of the official ballots without the official stamp hereinbefore provided for, and not less than three of such ballots shall be posted in other places in and about the polling place upon the morning of election. [1891, ch. 66, § 29; R. C. 1899, § 494.]

**§ 622. Poll books, contents of and how delivered.** It shall be the duty of the county auditor to provide uniform poll books for the use of his county, each poll book to contain a copy of the law prescribing the qualifications of electors and so much of this chapter as relates to the duties of inspectors, judges, and clerks of election, and the penalties imposed for offenses; such poll book shall also contain blanks for all entries required to be made therein; he shall also deliver to the sheriff two copies of said poll books for each election precinct in the county, and the sheriff shall deliver the same to each inspector of election, and such inspector of election shall deliver or cause the same to be delivered to the clerks of election in his precinct on the day of election. [R. C. 1895, § 495.]

**§ 623. Ballot boxes to be provided by board of county commissioners.** The board of county commissioners shall at the expense of the county provide suitable ballot boxes for each election precinct in its county, and a separate ballot box in which the ballots of women entitled to vote under this chapter shall be deposited. [R. C. 1895, § 496.]

**§ 624. Blanks to be transmitted by secretary of state.** The secretary of state shall at least thirty days before each general election transmit to each county auditor blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelope as he deems necessary for the guidance of such officers in making returns according to law; and the expenses of furnishing such blanks and envelopes shall be paid for by the state. [R. C. 1899, § 497.]

§ 625. **State nominations certified how.** All nominations made by state conventions shall be certified as follows: The certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his post office address and the office for which he is named and shall designate in not more than five words the party or principle which such convention represents, and it shall be signed and verified by the presiding officer and secretary of such convention who shall add to their signatures their post office address. Such certificate made out as herein required shall be delivered by the secretary or president of such convention by registered letter or in person, without charge, to the secretary of state. [1891, ch. 66, § 3; R. C. 1895, § 499; 1905, ch. 109.]

Certificate of nomination must designate the office. *Anderson v. Falley*, 9 N. D. 464, 83 N. W. 913.

§ 626. **Certificates of nomination, where filed.** Certificates of nomination for candidates for offices to be filled by the electors of the entire state or of any division or district greater than a county and for legislative offices shall be filed with the secretary of state. [1891, ch. 66, § 4; 1893, ch. 60, § 4; R. C. 1899, § 500; 1905, ch. 109.]

Supreme court may issue writ of mandamus when auditor refuses to receive and file county nominations. *State ex rel Fosser v. Lavik*, 9 N. D. 461, 83 N. W. 914.

Certificate must be made and filed according to law. No substitution of names when certificate not filed. *Lucas v. Ringsrud*, 3 S. D. 355, 53 N. W. 426.

§ 627. **Certificate to contain but one name.** No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall participate directly or indirectly in the nomination at caucus, in convention or by petition of more than one person for each office to be filled, and no person shall accept a nomination for more than one office. No political party shall be entitled to have placed upon the official ballot more than one set or list of nominees for any state, county, city or other municipal office to be voted for in said state, county, city or municipality; and in case two or more organizations claiming or purporting to represent the same political party, shall file certificates of nomination under the same party designation, or such certificates indicate that the nominations therein mentioned were made by any person or any organization representing the same political party, the secretary of state, in cases where such certificates are filed in his office, shall within the time prescribed by law for certifying state nominations to the county auditor, determine from the best available sources of information which organization filing such certificates has been longest in existence as a political organization representing such party; and only the nominees named by such organization, longest in existence, shall be certified to the county auditor, and such nominations only shall be printed on the official ballot. [And in case two or more organizations claiming or purporting to represent the same political party shall file certificates of nomination with the county auditor, city auditor, or clerk of any municipality, or such certificates indicate that the nominations therein mentioned were made by persons or organizations representing the same political party, the county auditor shall determine from the best available sources of information which organization, filing such certificates, has been longest in existence as a political organization representing such party; and only the nominations made by such organization longest in existence shall be printed on the official ballot; provided, however, that the decision of the officer determining which organization has been the longest in existence in representing such party, shall be subject to review by the court in a proper action instituted for such purpose; and provided, further, that this section shall not be construed to prohibit any new organization from nominating any person or persons for an office and having such nomination placed on the official ballot, but such organization shall not adopt the name or designation of the political party represented by the older

organization, if still in existence, and the certificate of nomination filed by it shall, by clear and distinct language, indicate and show that the organization filing it represents a separate and distinct political party.] [1891, ch. 66, § 6; R. C. 1895, § 502; 1901, ch. 48.]

Note:—That part of section 627 inclosed in brackets impliedly amended or repealed by chapter 190, laws 1905—sections 501-597 revised codes.

**§ 628. Certificates of nomination, when to be filed.** Certificates of nomination to be filed with the secretary of state shall be filed not less than thirty days before the day fixed by law for the election of the persons in nomination. Such certificates of nomination may be sent by registered letter deposited in the post office on or before the last day and the receipt therefor filed with the county auditor. [Certificates of nomination herein directed to be filed with the auditor shall be filed not less than twenty days before the election; but the provisions of this section shall not apply to nominations for special elections to fill vacancies caused by death, resignation or otherwise.] The secretary of state and the several county auditors shall cause to be preserved in their respective offices for six months all certificates of nomination filed therein under the provisions of this article. All such certificates shall be open to public inspection under proper regulations to be made by such officers. [1891, ch. 66, § 8; R. C. 1895, § 503.]

Note:—That part of section 628 inclosed in brackets is impliedly modified or repealed by sections 23 and 24, chapter 109, laws 1905—sections 583 and 584 revised codes.

Mandatory as to time. Effect when last day falls on Sunday. State ex rel Anderson v. Falley, 9 N. D. 464, 83 N. W. 913.

**§ 629. Secretary of state to certify nominations for state office.** Not less than twenty-five nor more than thirty days before an election to fill any state or district office the secretary of state shall certify to each county auditor within which any of the electors may by law vote for candidates for such office the name and post office address of each person nominated for such office as specified in the certificates of nomination filed with him. [1891, ch. 66, § 9; R. C. 1895, § 504.]

Certification of legislative nominees a ministerial duty. State ex rel Plain v. Falley, 8 N. D. 90, 76 N. W. 996.

Has no judicial power to determine regularity or legality of nomination. State ex rel Wolfe v. Falley, 9 N. D. 450, 83 N. W. 860.

**§ 630. Nominations to be published, when.** At least ten days before an election to fill any public office under the provisions of this chapter the county auditor of each county shall cause to be published in one or more newspapers within the county the nominations certified to him under the provisions of this chapter. The auditor shall make such publications daily until the election, in counties where daily newspapers are published; but if there is no daily newspaper published within the county two publications in each newspaper will be sufficient; and if there is no newspaper published in any county, written or printed notices shall be posted in at least three public places in each precinct. [1891, ch. 66, § 10; R. C. 1895, § 505.]

**§ 631. In case nominee declines, certificate void.** Whenever any person nominated for public office as in this chapter provided shall, at least twenty-five days before election, in writing notify the officer with whom the certificate nominating him is filed that he declines such nomination, such nomination shall be void. [1891, ch. 66, § 11; R. C. 1899, § 506.]

Note:—The provisions of sections 559, 560, 561, 562, 563 and 573 (ch. 109, laws 1905) modify to some extent section 631, and should be examined before filling vacancies in state, judicial, district or county nominations.

**§ 632. Vacancies on ticket, how filled.** Should any person so nominated die before the printing of the tickets or decline the nomination as in this chapter provided or should a vacancy occur upon the ticket for any other cause the



vacancy thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, the committee of the political party in whose ticket such vacancy occurs may fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the name of the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies and such further information as is required to be given in an original certificate of nomination. When such certificate shall be filed with the secretary of state he shall, in certifying the nomination to the various auditors, insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And if he has already forwarded his certificate he shall forthwith certify to the auditor of the proper county the name and post office address of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents and the name of the person for whom such nominee is substituted. A failure to publish the name of a person so substituted shall not invalidate the election. [1891, ch. 66, § 12; R. C. 1895, § 507.]

No substitution of names when certificate not filed. *Lucas v. Ringsrud*, 3 S. D. 355, 53 N. W. 426.

§ 633. **Vacancy occurring after tickets are printed.** When any vacancy occurs before election day and after the printing of the tickets and any person is nominated according to the provisions of this chapter to fill such vacancy the officer whose duty it is to have the tickets printed and distributed shall thereupon have printed on a requisite number of stickers the name of such substituted candidate and no other name, and shall mail them by registered letter or send by other reliable method to the judges of election in the various precincts affected by such vacancy, and the judges of election whose duty it is to distribute the tickets shall affix such stickers in the proper place on each ticket before it is given out to the electors. [1891, ch. 66, § 13; R. C. 1899, § 509.]

§ 634. **Constitutional amendments to be advertised.** Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote the secretary of state shall, not less than thirty days before election, certify the same to the auditor of each county in the state and the auditor of each county shall include the same in the publication provided for in section 630. Questions to be submitted to the people of the county shall be advertised as provided for nominees for office in such section. [1891, ch. 66, § 14; R. C. 1899, § 509.]

§ 635. **Publication of names. Error, how corrected.** Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names of the persons nominated or in the printing of the ballots the judge of the district court may upon application of an elector make an order requiring the auditor to show cause why such error should not be corrected and upon the hearing thereof he may make such order as the facts warrant. [1891, ch. 66, § 19; R. C. 1895, § 510.]

#### ARTICLE 7.—NOTICE OF ELECTION.

§ 636. **Notice of election, how given.** The secretary of state shall, between the first days of July and September in such year, direct and cause to be delivered to the county auditor of each county a notice specifying all the state officers whose term of office will expire between the first Monday in December and the first Monday in January next succeeding and specifying also the several officers to be chosen in such county at the next general election. The

auditor to whom such notice is delivered shall cause notice of the same to be given as provided in the next section. [1892, Sp.; R. C. 1899, § 511.]

**§ 637. Notice of election to be published. Form. Posted, when.** The county auditors of the several counties shall cause notice of any election to be published in each of the newspapers designated by the board of county commissioners for the publication of their official proceedings at least once in each week for four consecutive weeks next preceding such election. Such notice shall be as nearly as circumstances will admit, as follows:

Notice is hereby given that on Tuesday, the.....day of.....next, at.....in the township or precinct of....., in the county of....., an election will be held for state, district or county officers (naming the officers to be filed as the case may be), which election will be opened at eight o'clock in the morning and will continue open until five o'clock in the afternoon of that day. Dated this ..... day of ..... A. D. 19..

(Signed) A. B., County Auditor.

In case there shall be no newspaper published in the county in which such election is to be held, the county auditor shall deliver three copies of such notice for each precinct to the sheriff, coroner or other person designated by the board of county commissioners and such sheriff, coroner or other person shall post in three of the most public places in each precinct the notice pertaining to such precinct, at least twenty days previous to the time of holding any general election and at least eight days previous to the time of holding any special election, and in cases where townships are not set off by law as election districts, such notices shall be posted as follows: One at the house where the election is authorized to be held and two at two of the most public places in that vicinity. The officer or person shall thereafter file with the county auditor an affidavit of such posting which shall be prima facie evidence of the facts therein stated [1887, ch. 51, § 5; R. C. 1899, § 512.]

Notice of special election posted in one precinct of a county only is fatally defective. *Territory v. Steele*, 4 Dak. 78, 23 N. W. 91.

#### ARTICLE 8.—CONDUCT OF ELECTIONS.

**§ 638. When polls to be opened and closed.** At all elections held under the provisions of this chapter the polls shall be open at eight o'clock a. m. and closed at five o'clock p. m. Twenty minutes prior to five o'clock p. m. the inspector shall proclaim to the electors outside the number of minutes before the polls will be closed and that such closing will be precisely at five o'clock p. m. [1891, ch. 66, § 40; R. C. 1899, § 513.]

**§ 639. Examination of ballots and box at opening of polls.** On the opening of the polls the inspector in each precinct shall produce the sealed package of official ballots and publicly open the same and deliver one block of ballots to the ballot clerk, retaining the other blocks if any until they are needed for voting. Before declaring the polls open such inspector shall see that the ballot box is empty and allow the judges to satisfy themselves thereof after which such box shall be locked. [1891, ch. 66, § 21; R. C. 1899, § 514.]

**§ 640. Official ballot, how given to elector.** The inspector or one of the judges of election shall deliver ballots to the qualified electors. Before delivering any ballot to an elector the inspector or judge shall print on the back and near the top of the ballot with a stamp provided for that purpose, the designation "official ballot" and the other words provided for in section 620 and also write his initials thereon. Each qualified elector shall be entitled to receive from the judges one ballot. [1891, ch. 66, § 23; R. C. 1899, § 515.]

**§ 641. Only one person in booth.** Not more than one person shall be permitted to occupy any one booth or compartment at one time and no person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot and in no event longer than five minutes when the

other booths or compartments are occupied. [1891, ch. 66, § 25; R. C. 1899, § 517.]

§ 642. **In case elector spoils ballot.** No person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot. The ballots thus returned shall be immediately canceled and together with those not distributed to the voters shall be preserved and secured in sealed packages and returned to the county auditor from whom received. [1891, ch. 66, § 26; R. C. 1899, § 518.]

§ 643. **In case of disability of elector.** Any voter, who declares to the judges of election or when it appears to the judges of election that he cannot read or that by blindness or other physical disability he is unable to mark his ballot, shall, upon request, receive the assistance of two of the election officers in the marking thereof who shall be chosen from different political parties, and such officers shall give no information regarding the same. The judges may in their discretion require such declaration of disability to be made by the voter under oath and they are authorized to administer such oath. No elector, other than one who is unable to read or on account of physical disability is unable to mark his ballot, shall divulge to any one within the polling place the name of any candidate for whom he intends to vote or ask or receive the assistance of any person within the polling place in the preparation of his ballot. [1891, ch. 66, § 27; R. C. 1895, § 519.]

§ 644. **Judges to deposit ballot in box.** When a ballot shall be received one of the judges without opening the same or permitting it to be opened or examined except to ascertain whether it is a single ballot or not shall deposit it in the ballot box. [R. C. 1899, § 520.]

§ 645. **Election booths, how built.** The inspectors of election shall provide in their respective polling places a sufficient number of booths or compartments which shall be furnished with such supplies and conveniences as to enable the voter conveniently to prepare his ballot for voting, and in which electors may mark their ballots, screened from observation, and a guard rail with an opening so constructed that only persons within such rail can approach within ten feet of the ballot boxes or the booths or compartments herein provided for. The number of such booths or compartments shall not be less than one for each fifty electors or fraction thereof in the precinct. No election shall be held in a room in which spirituous or malt liquors are commonly sold. Not more than one elector for each booth shall be permitted within the railing at any one time. One challenger appointed and designated from each of the political party organizations shall be entitled to stand at the opening of the railing at the outside. If any person offering to vote shall be challenged by one of such challengers or by any member of the board of election, such person shall, unless such challenge is withdrawn, stand aside and shall not vote unless he makes an affidavit that he is a legally qualified elector of the precinct. The expense of providing such booths or compartments and guard rails shall be a public charge and shall be provided for in the same manner as other election expenses. [1891, ch. 66, § 22; R. C. 1895, § 521.]

Failure to erect booths, does not necessarily defeat an election. *Perry v. Hackney*, 11 N. D. 148, 90 N. W. 483.

§ 646. **Ballots of women to be deposited in separate box.** No ballot offered by any woman entitled to vote under this chapter shall contain the name of any person to be voted for at such election, except candidates for a school office, and no such ballot shall contain any proposition to be voted for except such as pertain solely to school matters; and all such ballots shall be deposited in a separate ballot box, but shall be canvassed with the ballots cast for candidates for school office by the male voters at such election. [R. C. 1895, § 522.]

## ARTICLE 9.—CANVASS OF RETURNS.

§ 647. **Canvass of votes.** As soon as the polls of the election shall be finally closed the inspectors shall proceed immediately to canvass publicly in the presence of all persons desiring to attend the same the votes received at such polls and continue without adjournment until the canvass is completed and the statements hereinafter required are made. They shall commence by a comparison of the poll lists and the correction of any mistakes therein until they shall be found or made to agree. The box shall then be opened and the ballots taken out and counted by the inspectors, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots are found so folded together as to present the appearance of a single ballot they shall be laid aside until the count of the ballot is completed; and if, upon a comparison of the count and the appearance of such ballot, a majority of the inspectors shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be destroyed. If the ballots in the box shall be found to exceed in number, after any such ballots folded together are destroyed, the whole number of votes on the poll lists, they shall be replaced in the box and one of the inspectors shall publicly draw therefrom by chance and without examination thereof and destroy as many ballots unopened as shall be equal to such excess. The number of ballots agreeing, or so as aforesaid being made to agree with the poll lists, the inspectors shall then proceed to open, count and ascertain the number of votes. [1891, ch. 66, § 35; R. C. 1899, § 523.]

When name of candidate appears more than once on ballot, cannot be counted. *Parmley v. Healy*, 7 S. D. 401, 64 N. W. 186; *Vallier v. Brakke*, 7 S. D. 343, 64 N. W. 180.

Construction given markings on official ballots is a question for court and not for jury. Identifying mark vitiates ballot. *Church v. Walker*, 10 S. D. 90, 72 N. W. 101.

§ 648. **Ballots, when void.** In the canvass of the votes, any ballot which is not indorsed as provided in this chapter by the official stamp and initials shall be void and shall not be counted, and any ballot or parts of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted; provided, that when a ballot is sufficiently plain to gather therefrom a part of the voter's intention it shall be the duty of the judges of election to count such part. [1891, ch. 66, § 30; R. C. 1899, § 524.]

Mandatory. Unstamped ballots illegal. *Miller v. Schallern*, 8 N. D. 395, 79 N. W. 865; *Lorin v. Seltz*, 8 N. D. 404, 79 N. W. 869; *Howser v. Pepper*, 8 N. D. 484, 79 N. W. 1018.

§ 649. **Result of canvass to be immediately announced.** The inspectors shall as soon as the count is completed publicly announce the result thereof, specifying the whole number of votes cast for each office and for each candidate respectively; also the number of votes cast for and against each proposition voted for at such election. They shall immediately prepare in duplicate a statement in writing setting forth at length, in words and figures, the whole number of votes cast for each office and the names of all the persons for whom such votes were cast, together with the number of votes cast for each person; also the number of votes cast for and against each proposition voted upon at such election which statement they shall certify to be correct. [1891, ch. 66, § 36; R. C. 1899, § 525.]

§ 650. **Returns, how and where made. Compensation of officers.** The inspector of election, or one of the judges appointed by him, shall forthwith deliver to the clerk of the town, city or village, one of such statements and one of such poll lists together with the stamp, to be filed and preserved in his office and shall with all convenient dispatch and within three days after the election deliver the other statement to the county auditor, it having been by the judges carefully sealed up together with the other poll list with the oaths of inspectors and clerks affixed, under cover, properly

directed to the county auditor, and the person delivering such returns to the county auditor shall receive as compensation therefor the sum of two dollars and mileage at the rate of five cents per mile for each mile necessarily traveled in going to and returning from such auditor's office, to be paid out of the county treasury on the warrant of the auditor. The inspector of election shall lock the ballot box after the ballots have been replaced therein in the presence of the judges and shall send the key properly labeled with the name and number of the polling precinct at the same time as he returns the poll books and statements to the county auditor, but shall retain in safe custody the ballot box used at the election, sealed with all the ballots cast at the same replaced therein, during sixty days next after election. And it shall be his duty to cause the said box to be safely delivered to the county auditor upon the written request of the board of canvassers at any time during said sixty days. In organized townships within thirty days after said date, or in cities or villages, the inspector of elections shall deliver, if he is not himself the officer in question, the boxes to the chairman of the board of supervisors of the civil township, or mayor of the city or president of the village, in which the election precinct is situated, as the case may be; and this officer shall keep in safe custody such boxes until the next election or hand them over to his successor in office to be by him safely kept until such time. At the following general election it shall be the duty of these officers to hand the ballot boxes over to the inspector of elections, and in case they have lost or destroyed them, then they shall replace them each at his own cost. In unorganized townships the inspectors of elections shall cause the ballot boxes to be safely delivered to the county auditor, between the sixtieth and ninetieth day following the election. And the same compensation shall be allowed for such delivery as is allowed in this section for returning the poll book and statement to the auditor. Any person violating any of the provisions of this section is guilty of a misdemeanor. [1891, ch. 66, § 37; R. C. 1899, § 526.]

Contestant not entitled to assall official canvass when certain ballot boxes have been opened by him. *McMahon v. Crocket*, 12 S. D. 11, 80 N. W. 136.

**§ 651. Abstract of votes. Certificate of election. Publication of returns.** On the fifteenth day after the close of any election, or as soon as the returns are received, the county auditor shall call to his assistance a majority of the county commissioners of the county, or the county treasurer, county judge and one county commissioner, and none of the persons so called shall be a candidate for office, unless there is not sufficient of such officers who are not candidates, and shall proceed to open such returns and make abstracts of votes in the manner following from the certified statements prepared by the different inspectors of election in the various precincts. The abstract of votes for member of congress, governor, state auditor, commissioner of insurance, commissioner of agriculture and labor, state treasurer, secretary of state, attorney general, commissioners of railroads, superintendent of public instruction and lieutenant governor shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for county and precinct officers shall be on one sheet; and it shall be the duty of the county auditor immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers respectively, and to deliver such certificate to the person entitled thereto on his making application to the county auditor therefor; provided, that when a tie shall exist between two or more persons for the senate or house of representatives, the county auditor shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten day's notice. It shall be the duty of the county auditor of each county, on receipt of the returns of any election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of county commissioners

at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury. And immediately after canvassing the returns and making the abstract of votes as provided in this section, the county auditor shall make a certified copy of each abstract and forward it to the secretary of state, and also cause to be published in the official newspapers of the county, in tabular form, the vote by precincts for each officer and proposition voted for at said election; such publication to be paid for at a rate not exceeding the rate paid for publishing county commissioners' proceedings. If the county auditor is a candidate for office he shall take no part in the canvass, but shall act as clerk of such board of canvassers, and the two officers called to the assistance of the county auditor to make such canvass, shall call to their assistance a justice of the peace, and it shall thereupon be their duty at once to attend and canvass such returns as provided by law. [1881, ch. 71, § 1; 1899, ch. 87; R. C. 1899, § 527; 1901, ch. 81; 1903, ch. 119.]

Notice in case of "tie vote" same as in election contest. *Bowler v. Eisenhood*, 1 S. D. 577, 48 N. W. 136.

Mandamus proper remedy to compel board to discharge duty. *Smith v. Lawrence*, 2 S. D. 185, 49 N. W. 7.

Certificate of election imports prima facie right to office. Board of canvassers cannot refuse to issue certificate of election on ground that person voted for was not properly nominated. *Chamberlain v. Hedger*, 12 S. D. 135, 80 N. W. 178.

**§ 652. Tie vote. Duty of county auditor.** If the requisite number of officers shall not be elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the county auditor whose duty it is to compare the polls shall give notice to the several persons so having the highest and equal number of votes to attend at his office at a time appointed by him, and they shall then proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected, and such auditor shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided. [R. C. 1899, § 528.]

**§ 653. State board of canvassers, how constituted.** The secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction shall constitute the state board of canvassers, three of whom shall be a quorum for the transaction of business, and if less than a quorum of said officers attend on the day appointed for a meeting of the board, then those so attending are hereby authorized to summon others of the state officers sufficient to constitute a quorum, who on being notified by the officer or officers so attending, shall attend without delay and act as a member of such board. [1892, Sp.; R. C. 1895, § 530.]

**§ 654. When member disqualified.** When a member of such board is a candidate for any office as to which the votes are to be canvassed by him, the governor shall designate some other state officer who shall act in his stead at the session of the board while the votes given for such member are being canvassed. [1892, Sp.; R. C. 1899, § 531.]

**§ 655. County auditor to forward abstract of votes.** It shall be the duty of the county auditor of each county, under his official seal, to return to the secretary of state on or before the first Tuesday of December following any general election, and within thirty days following any special election, a certified abstract of the number of votes cast in his county at such election for each candidate for state and congressional offices, electors for president and vice president, judges of the supreme and district courts, members of the legislative assembly and for amendments to the constitution or proposition submitted by the legislative assembly; provided, that the county auditor shall make a separate certified abstract of the votes cast for persons for electors of president and vice president of the United States. He shall seal up such separate abstract and indorse it: "Presidential Elector Returns" and with-

out delay transmit it to the secretary of state by registered mail. [1892, Sp.; R. C. 1895, § 532.]

§ 656. **Secretary of state to file abstract of votes.** The secretary of state upon receipt of the certified abstract of votes from the several counties shall record the result of such election by counties and shall file and carefully preserve the certified statements so received from the county auditors, and if no such statement shall be received by him from the county auditor of any county prior to the time specified for the meeting of the state board of canvassers he may and it is his duty to dispatch a special messenger to obtain such statement, at the expense of such county, and such auditor shall on demand of such messenger make and deliver to him the statement required which the messenger shall deliver to the secretary of state to be recorded and filed by him as aforesaid. Such messenger shall be allowed the sum of ten cents per mile for each mile necessarily traveled in going to and returning from the office of such county auditor, the same to be audited by the state auditor upon the certificate of the secretary of state and the state treasurer shall present a bill for the amount so audited against the county failing to send up such returns as above provided, which bill so presented shall be audited by the board of county commissioners of such county and paid by the county treasurer. [1892, Sp.; R. C. 1895, § 533.]

§ 657. **State canvassing board, meeting of.** For the purpose of canvassing and ascertaining the result of such election the state board of canvassers shall meet at the office of the secretary of state on the second Tuesday in December next after a general election and within forty days after a special election, and the secretary of state shall notify the other members of the board of the same. [1892, Sp.; R. C. 1899, § 534.]

§ 658. **Duty of board.** The board when thus formed shall examine such certified statements of the county canvassers, and if it shall appear that any material mistake has been made in the computation of votes given for any person, or that the county canvassers in any county have omitted to canvass the votes, or any part thereof, cast in any precinct in their county, the board may dispatch a messenger to the county auditor of such county at the expense of such county, with its requirement in writing to him to certify the facts concerning such mistake and the reason why such votes were not canvassed; and the county auditor to whom any such requirement is delivered shall forthwith make a true and full answer thereto under his hand and official seal, and deliver the same to such messenger who shall deliver the same with all convenient dispatch to the secretary of state. [1892, Sp.; R. C. 1895, § 535.]

May adjourn for a reasonable time to obtain properly authenticated returns.  
Woods v. Sheldon, 9 S. D. 392, 69 N. W. 602.

§ 659. **Adjournment of board.** Such board may adjourn from day to day, not exceeding three days in all, except to await the return of a messenger dispatched, as provided in the preceding section, and then only for such time as may be necessary. [1892, Sp.; 1897, ch. 34; R. C. 1899, § 536.]

§ 660. **Canvass of votes to be public.** Upon the certified statements and returns so received the board shall proceed publicly to examine and make a statement of the whole number of votes given at any such election for each and all state officers; and another statement of the votes given for members of congress, each of which statements shall show the names of the persons to whom such vote shall have been given for either of said offices, and the whole number of votes given to each, distinguishing the several districts and counties in which they are given. A majority of such canvassers shall decide all matters of disagreement, and they shall disregard all technicalities and misspelling, the use of initial letters and abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes were intended. In case there shall be no choice by reason of any two or more

persons having an equal and the highest number of votes the governor shall by proclamation order a new election. [1892, Sp.; R. C. 1895, § 537.]

§ 661. **Certificate of result.** They shall certify such statements to be correct and subscribe their names thereto and they shall thereupon determine what persons have been by the greatest number of votes duly elected to such offices, or either of them, and shall make out and subscribe on each statement a certificate of such determination and deliver the same to the secretary of state. [1892, Sp.; R. C. 1899, § 538.]

§ 662. **Certificates of election, secretary of state to issue.** The secretary of state shall record in his office each certified statement and determination so made by said board, and shall forthwith make out and transmit to each of the persons thereby declared to be elected a certificate of election as herein-after provided and he shall also forthwith cause a copy of such certified statement and determination to be published in a newspaper printed at the seat of government. [1892, Sp.; R. C. 1899, § 539.]

§ 663. **Certificate for members of congress.** Certificates of the election of members of congress shall be signed by the governor with the great seal affixed and be countersigned by the secretary of state and the governor shall cause same to be delivered to the persons elected. [1892, Sp.; R. C. 1899, § 540.]

§ 664. **Presidential electors.** The board in examining and making a statement of the votes and in determining and certifying the persons chosen as electors of president and vice president shall proceed in the manner prescribed by law to be pursued by them in the canvass for state officers, and the secretary of state shall likewise file and record such statement and determination. In canvassing the returns for presidential electors the persons having the greatest number of votes are to be declared elected; and if more than the requisite number of persons are found to have the greatest and an equal number of votes the election of one of them shall be determined by lot, to be drawn by the governor in the presence of the other canvassers. The secretary of state shall prepare three lists of the names of such electors elected at any election, procure thereto the signature of the governor, and affix the great seal of the state to the same, and deliver such certificate thus signed and sealed to said electors on or before the second Monday in January next after such election. [1892, Sp.; R. C. 1895, § 541.]

§ 665. **Form of certificate.** A certificate shall be prepared by the secretary of state for each person elected, in substance as follows:

At an election held on the.....day of.....A. B. was elected to the office of.....of said state for the term of...years from the.....day of.....in the year.....or, if to fill a vacancy, say for the residue of the term ending on the.....day of.....A. D. 19....

Given at Bismarck this.....day of.....A. D. 19....

Which certificate shall be signed by the governor and the secretary of state, and the seal of the state affixed, and be attested by at least one of the other canvassers. [1892, Sp.; R. C. 1899, § 542.]

§ 666. **Certificates of election.** The secretary of state shall issue certificates of election to all members of the legislative assembly at the time that certificates of election to state officers by him are issued. [1903, ch. 119.]

§ 667. **Constitutional amendments, etc. Certificate as to.** For the purpose of canvassing and ascertaining the result of the votes taken at any election upon any proposed amendment to the constitution, or proposition submitted to a vote of the people by the legislative assembly, the state board of canvassers shall proceed to examine such statements, and to ascertain and determine the result and shall certify under their hands a statement of the whole number of votes given for and the whole number of votes given against such amendment or proposition, and they shall thereupon determine whether such amendment or proposition has been approved and ratified by a majority



of the electors voting thereon, and shall make and subscribe on such statement a certificate of such determination. [1892, Sp.; R. C. 1899, § 543.]

§ 668. **Record of result.** The secretary of state shall record in his office such certified statements and determination; and if it shall appear that such amendment or proposition has been approved, ratified or adopted as aforesaid, he shall also make a record thereof, and cause such record to be bound in the volume containing the original enrolled laws passed at the next succeeding session of the legislative assembly, and cause such record to be published with such laws. [1892, Sp.; 1899, § 544.]

§ 669. **What returns shall be canvassed.** The board of state canvassers, in canvassing to ascertain the result of any election, shall canvass only the regular returns made by the county board of canvassers, as provided in this chapter. [1892, Sp.; R. C. 1899, § 545.]

§ 670. **Proclamation of result by governor.** The governor shall, within ten days after the completion of the canvass by the state board of canvassers of the votes cast for presidential electors, as certified by the auditors of the respective counties, declare by proclamation, to be printed in some newspaper printed and published at the seat of government, the names of the several persons who have received not less than one-fifth of all the votes cast, and the number of votes received, by each person, and the several persons, who have received the highest number of votes so returned, and whose election shall not have been contested and notice of such contest given to the governor within ten days after the date of such proclamation, shall be deemed and taken to be elected, and the governor shall thereupon transmit to each person so chosen a certificate of his election. [1892, Sp.; R. C. 1899, § 546.]

§ 671. **Informality in returns disregarded.** No election returns shall be refused by any county auditor for the reason that the same may be returned or delivered to him in any other than the manner directed in this chapter, nor shall he refuse to include any returns for any informality in holding an election or in making returns thereof; but all returns shall be received and the votes canvassed and a certificate given to the person who may by such returns have the greatest number of votes. [R. C. 1899, § 547.]

§ 672. **Canvassers, how to proceed.** The county auditor and other persons constituting the county board of canvassers shall, in canvassing the election returns, disregard technicalities and misspelling, the use of initial letters or abbreviations of the name of the candidates for office, if it can be ascertained from such vote for whom they were intended; but they shall not count votes polled in any place except at established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office and punished accordingly. A majority of the members of such board shall decide all matters of disagreement. [R. C. 1895, § 548.]

§ 673. **Defective returns. Duty of canvassing board. Penalty.** When the returns of the election precinct officers are made to the county canvassing board as now provided by law, in case any provision of the law relative to the duties of said election precinct officers has not been complied with by said election precinct officers, and which is capable of correction or compliance by said board, the county canvassing board is authorized and empowered to issue its subpoenas to the officers of the election precinct wherein the defect occurs, requiring said officers to appear forthwith before said county canvassing board and correct any omission or mistake according to the facts, and said amended or corrected returns shall then be acted on by said county canvassing board, and said county canvassing board shall issue its certificate of election to the party entitled thereto, as shown by the returns as amended or corrected. In case any officer of any election precinct so subpoenaed should neglect or refuse to obey said subpoena, the said person so refusing shall be arrested by bench warrant issued out of the office of the clerk of district court, in the county where said proceedings occur, and brought before said can-

vassing board and there make the necessary correction according to the facts, and a refusal of said officer to make the said correction shall be deemed a contempt of the district court, to be punished as provided for ordinary contempt of court, upon the proper showing, and the procedure shall be the same as in ordinary cases of contempt of court. [1903, ch. 91.]

§ 674. **Returns indorsed by secretary of state.** A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at such office on the envelope containing them. [R. C. 1899, § 549.]

#### ARTICLE 10.—RESIGNATIONS AND VACANCIES.

§ 675. **Resignations and vacancies. Special election.** Any person who shall receive a certificate of his election as a member of the legislative assembly, county auditor, county treasurer, register of deeds, sheriff, state's attorney, clerk of the district court, county judge or county commissioner, shall be at liberty to resign such office, although he may not have entered upon the execution of the duties thereof or taken the requisite oath of office, and when any vacancy shall happen in the legislative assembly by death, resignation or otherwise it shall be the duty of the county auditor of the county in which such vacancy occurs officially to notify the governor thereof; whereupon the governor shall issue a writ of election directed to the sheriff of such county commanding him to notify the several boards of election in his county or district to hold a special election to fill such vacancy at a time to be appointed by the governor; provided, that if there is no session of the legislative assembly between the time such vacancy occurs and the time of holding the next general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy occurs in the office of a member of congress from this state, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy. [R. C. 1899, § 550.]

§ 676. **Duty of governor in case of certain vacancies.** Should a vacancy occur in the office of a member of the legislative assembly, while in session, by death, resignation, removal or otherwise, it shall be the duty of the governor immediately upon receiving official notice thereof to proceed in the same manner as is prescribed for other cases in the preceding section. [R. C. 1899, § 551.]

§ 677. **Division of legislative district subsequent to election.** If a vacancy occurs in the legislative assembly for any cause, and the county or counties comprising the district in which such vacancy occurs shall have been divided after the election of the member whose seat is vacant, and before the election to fill such vacancy, such election shall be ordered in each county in which any part of the original county or district may be situated; but no person shall be permitted to vote at such election who does not at the time reside within the limits of the county or district in which such vacancy occurred. [R. C. 1895, § 552.]

§ 678. **Canvass and returns of elections to fill vacancies.** Votes cast at elections to fill vacancies shall be canvassed and returned as provided in other cases, and the county auditor shall without delay forward to the secretary of state the abstracts of the same. [R. C. 1895, § 553.]

#### ARTICLE 11.—PRESIDENTIAL ELECTORS.

§ 679. **When electors convene. Vacancies, how filled.** The electors of president and vice president shall convene at the seat of government of this state on the second Monday in January next after their election at the hour of twelve o'clock noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by the death or refusal to act, neglect to attend or other cause, the electors present shall immediately proceed to fill such vacancy by ballot, by a plurality of votes, and when all the electors

shall appear, or the vacancies shall have been filled as above provided they shall proceed to perform the duties required of such electors by the constitution and laws of the United States. [1890, ch. 109, § 1; R. C. 1895, § 554.]

§ 680. **Per diem and mileage.** The electors of president and vice president of the United States shall receive the same per diem and mileage as is allowed to members of the legislative assembly, and there is hereby appropriated as a standing and continuing appropriation such a sum of money as may be necessary to pay such per diem and mileage. [1892, Sp.; R. C. 1899, § 555.]

ARTICLE 12.—MISCELLANEOUS PROVISIONS.

§ 681. **Penalty for depositing unstamped ballot.** No inspector or judge of election shall deposit in any ballot box any ballot upon which the official stamp as hereinbefore provided for does not appear. Every person violating the provisions of this section is guilty of a misdemeanor. [1891, ch. 66, § 28; R. C. 1899, § 556.]

§ 682. **Penalty for rejecting legal vote.** Any board of election or any member of any board of election who willfully and knowingly rejects any legal vote shall be subject to a fine of fifty dollars to be collected in a civil action before any justice of the peace in the name and for the benefit of the person aggrieved. [R. C. 1899, § 557.]

§ 683. **Penalty for failure of officer to perform duty.** Any public officer upon whom any duty is imposed by this chapter who shall willfully do or perform any act or thing herein prohibited or who willfully neglects or omits to perform any duty imposed upon him by the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof is punishable by forfeiture of his office and by imprisonment in the county jail for not less than one month nor more than six months or by a fine of not less than fifty nor more than five hundred dollars, or both. [1891, ch. 66, § 33; R. C. 1899, § 558.]

§ 684. **Electioneering prohibited. Secret ballot.** No electioneering shall be done on election day by any officer of election nor by any person within the polling place or any building in which an election is being held or within fifty feet thereof, nor obstruct the doors or entrance thereto or prevent free ingress to or egress from said building. And the inspector and judges of election shall, if they deem it necessary, appoint an election officer; such election officer, or the sheriff, constable, or other peace officer is authorized and it is his duty to clear the passageway and prevent such obstruction and to arrest any person creating such obstruction. No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his ballot, after it is marked, to any person in such a way as to reveal the contents thereof or the name of any person for whom he has marked his vote nor shall any person solicit the elector to show the same; nor shall any person except a judge of election receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than the inspector or one of the judges of election having charge of the ballots nor shall any person other than such inspector or judges of election deliver a ballot to such elector. No elector shall vote or offer to vote any ballot except such as he has received from the inspector or a judge of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Any elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots shall, before leaving the polling place, return such ballot to such judges. Whoever violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding one hundred dollars and shall be adjudged to pay the costs of prosecution. [1891, ch. 66, § 34; R. C. 1899, § 559.]

§ 685. **Penalty for violation of election laws.** If any inspector, judge or clerk of election, county auditor or other person in any manner concerned in conducting an election shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars to be recovered in a civil action in the name of the proper county. [R. C. 1895, § 560.]

§ 686. **No civil process served on election day.** During the day on which any general or special election shall be held in this state or in any district, county, city, village or precinct therein, no civil process shall be served on any person entitled to vote at such election. [R. C. 1899, § 561.]

§ 687. **Compensation of election officers.** There shall be allowed to the several inspectors, judges and clerks of election of each county two dollars per day to be paid out of the county treasury on the warrant of the auditor. [R. C. 1895, § 562.]

#### ARTICLE 13.—CONTESTING ELECTIONS.

§ 688. **Notice of contest, how served.** Any person claiming the right to hold an office, or any elector of the proper county desiring to contest the validity of an election or the right of any person declared duly elected to any office in such county, shall give notice thereof in writing to the person whose election he intends to contest within twenty days after the canvass of the votes of such election, which notice shall be served in the same manner as a summons in a civil action. But if the person whose election is contested cannot be found and shall have ceased to have residence in such county or state, then the notice shall be served by leaving the same at the house where such person last resided, and if no service as above provided can be made, or if no such residence can be found in the state the district court or judge thereof may expressly direct the manner of such service, which notice of contest shall be in writing and shall set forth the facts and grounds upon which the contestant relies in his contest, and shall be verified as a pleading in a civil action. [1885, ch. 54, § 1; R. C. 1899, § 563.]

Title to county office may be tried by statutory mode or by proceedings in the nature of quo warranto. *State v. Callahan*, 4 N. D. 481, 61 N. W. 1025.

"Canvass" defined. Time within which notice must be served commences to run from date candidate is declared "duly elected." *Bowler v. Eisenhood*, 1 S. D. 577, 48 N. W. 136.

What notice must contain. *Batterton v. Fuller*, 6 S. D. 257, 60 N. W. 1071.

"Was duly elected" sufficiently states legal qualifications. *McMahon v. Polk*, 10 S. D. 296, 73 N. W. 77; *Church v. Walker*, 10 S. D. 90, 72 N. W. 101.

Not necessary to allege qualifications, issue being who received largest number of votes. *Church v. Walker*, 10 S. D. 450, 74 N. W. 198.

§ 689. **Answer to notice of contest.** Any person, upon whom the notice mentioned in the preceding section is served, shall within ten days after such service answer such notice, admitting or denying the facts alleged therein, and he shall state any other grounds upon which he rests the validity of his election, and shall serve a copy of such answer upon the contestant and all allegations set forth in the notice and not denied in the answer shall be taken as admitted. Such answer shall be served as a pleading in a civil action, and when the contestant appears by attorney the service thereof may be made upon the attorney. [1885, ch. 54, § 2; R. C. 1895, § 564.]

§ 690. **Contest may be brought by whom.** Such contest may be brought by a person claiming such office on his own motion, in his own name as plaintiff, but such contest cannot be brought by any other person unless the notice of contest is indorsed with the approval of the state's attorney of the county, or in case of his absence or refusal to approve it, with the approval of the judge of the district court. [1885, ch. 54, § 3; R. C. 1895, § 565.]

§ 691. **Trial of contest.** The judge of the district court, in case no term of such court occurs in such county within twenty days after the service of

the answer in such contest, may appoint a term of such court therein; but if a term of court occurs in such county before that time, then the contest shall be tried at such term, unless otherwise ordered by the court. The district court or the judge thereof may, upon ten days' notice by either party try such contest at chambers at any place fixed by the court; or he may on such application or on his own motion, if the pleadings involve a question of fact, order such issues to be tried before a jury, or refer the same as provided in this chapter, and postpone the trial thereof until it can be had in such county, regard being had to the speediest possible trial. If the issues are ordered to be tried by a jury the question to be tried must be distinctly stated in the order of trial, and the place of such trial must be designated in such order. [1885, ch. 54, § 4; R. C. 1899, § 566.]

Jurisdiction of court continues until contest tried or dismissed. *Howser v. Pepper*, 8 N. D. 484, 79 N. W. 1018.

§ 692. **Testimony and procedure in contests.** All testimony and depositions taken in contests brought under the provisions of this article shall be taken in the same manner as in civil actions, and depositions may be taken in more than one place at the same time on leave of the court, and all matters relating to such contests shall be heard and tried as nearly as may be as civil actions are tried, except as otherwise provided in this article; and the costs shall be taxed in the same manner as in civil actions, and the court shall have power to order amendments to the notice and answer and to all other proceedings as provided in the code of civil procedure, and he shall have power to make all orders and enter final judgment in such contests the same as in civil actions. [1885, ch. 54, § 5; R. C. 1895, § 567.]

§ 693. **Contests of elections for removal of county seat, etc.** In any county where there is a vote for the election or for the removing or changing of the county seat of such county, or changing the county lines thereof, any elector of such county on leave of the district court may contest the validity of such election as to the right of the place declared and selected as the county seat, or as to any county line declared to be established or changed by a vote. Such elector shall give notice in writing of such contest to the county commissioners or a majority of them, of the county in which such vote was taken, by serving a notice as provided in section 688, within thirty days after the result of such vote is canvassed. Such notice shall specify the grounds of such contest, and shall be filed with the clerk of the district court within ten days after the service thereof upon the county commissioners as aforesaid, and such contest shall be tried and determined by the district court or by a jury as provided for in this article for the contest of county officers. The county commissioners of such county shall appear and defend such contests, but in case they fail to appear and defend the same, any elector of such county may at any time before such trial, on leave of the court, appear and defend the same, and all testimony and depositions shall be taken in the same manner as in civil actions. [1885, ch. 54, § 6; R. C. 1895, § 568.]

Mandamus held proper remedy to determine county seat contest. *State v. Langlie*, 5 N. D. 594, 67 N. W. 958.

Can be tested only in direct proceedings. *Remington v. Higgins*, 6 S. D. 313, 60 N. W. 73.

§ 694. **Contests may be tried by referee.** All contests brought under the provisions of this article may be referred by the court or judge thereof to a referee as provided in the code of civil procedure, and when the parties to such contest do not consent to a reference the court or a judge thereof may in his discretion order such reference. [1885, ch. 54, § 7; R. C. 1899, § 569.]

§ 695. **Surety for costs must be furnished.** Any person bringing a contest under the provisions of this article must before bringing the same furnish good and sufficient surety for costs as provided in the code of civil procedure,

and the obligation of such surety shall be complete by simply indorsing the notice of contest as surety for costs. [1885, ch. 54, § 8; R. C. 1899, § 570.]

**§ 696. Appeals in contest cases.** Appeals from final judgment or decisions in such contests may be taken without making a motion for a new trial in the district court in the manner provided for in the code of civil procedure, except that the undertaking on appeal shall be in the sum to be fixed by the judge, not less than five hundred dollars, and shall be approved by the judge or by the clerk of the district court of the proper county or subdivision under the direction of the judge. [1885, ch. 54, § 9; R. C. 1895, § 571.]

Appeal does not lie from order vacating default judgment. *Jensen v. Petty*, 14 S. D. 434, 85 N. W. 923.

**§ 697. Appeals to the supreme court.** Appeals to the supreme court under the provisions of this article must be taken within sixty days after notice of the entry of final judgment, and the party appealing must immediately procure the transmission of the record on such appeal to the clerk of the supreme court, and such appeal may be brought on for hearing before the supreme court at any time such court shall be in session upon ten days' notice from either party; and the same shall be heard and determined in a summary manner. Such notice of hearing may be served during the term or in vacation. [1885, ch. 54, § 10; R. C. 1899, § 572.]

Appeal does not suspend right of successful party to perform the duties of his office. *Fylpaa v. Brown Co.*, 6 S. D. 634, 62 N. W. 962.

Appeal dismissed unless taken within sixty days from entry of final judgment. *Murray v. Whitmore*, 9 S. D. 288, 68 N. W. 745.

**§ 698. Construction of this article.** This article shall not be construed to affect any of the remedies or rights of action or proceedings provided for in the code of civil procedure. [1885, ch. 54, § 11; R. C. 1899, § 573.]

May be tried by either statutory or civil action. *State ex rel Butler v. Callahan*, 4 N. D. 481, 61 N. W. 1025.

Right may be tried by mandamus. *Smith v. Lawrence*, 2 S. D. 185, 49 N. W. 7; *State v. Langille*, 5 N. D. 594, 67 N. W. 958.

**§ 699. Provisions of code of civil procedure applicable, when.** Except as otherwise provided in this article, the provisions of the code of civil procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this article. [1885, ch. 54, § 12; R. C. 1899, § 574.]

**§ 700. Provisions of code of civil procedure applicable as to appeals.** The provisions of the code of civil procedure relative to appeals in civil actions, except in so far as they are inconsistent herewith, apply to the proceedings mentioned in this article. [1885, ch. 54, § 13; R. C. 1895, § 575.]

#### ARTICLE 14.—CONTEST OF ELECTION OF PRESIDENTIAL ELECTORS.

**§ 701. Court for trial. Contests of presidential electors.** The board for the trial of contests of elections for presidential electors shall consist of the chief justice of the supreme court, who shall be president of the board, and two judges of the district court, to be designated by the governor. If the chief justice shall for any cause be unable to attend at such trial, the next senior judge on the supreme bench shall preside in place of the chief justice. The secretary of state shall be the clerk of the board, or in his absence or inability to act the clerk of the supreme court shall be the clerk. Each member of the court before entering upon the discharge of his duties shall take an oath before the secretary of state or some officer qualified to administer oaths, that without fear, favor, affection or hope of reward he will, to the best of his knowledge and ability, administer justice according to law and the facts of the case. [1892, Sp.; R. C. 1895, § 576.]

**§ 702. Contestant may apply to court.** Any person who by the proclamation of the governor as hereinbefore provided, appears to have received not less than one-fifth of the votes cast at an election for electors of president

and vice president of the United States may apply to the board provided for in the preceding section for a declaration of his election as elector. [1892, Sp.; R. C. 1895, § 577.]

**§ 703. Application to state grounds of contest.** Such application shall be made by petition in writing to be filed in the office of the secretary of state within ten days from the date of the proclamation provided for in section 670, who shall forthwith convene the board. The petition shall set forth the names of the persons whose election is contested, and the ground for such contest. The petitioner shall before any proceedings are had upon the petition, except the convening of the board, file a bond to the state in such sum and with such surety as the court shall order, conditioned for the payment of all costs incurred in the prosecution of such contest in case he shall not prevail. [1892, Sp.; R. C. 1895, § 578.]

**§ 704. Notice to party contested, how given.** Upon the filing of such petition and the giving of such bond the board shall order notice of the petition to be given, in such manner as it may direct, to the governor and to the person whose election is contested, which notice shall be published in such newspaper as the board shall order. Such notice shall contain a concise statement of the facts alleged in the petition and shall designate the time and place fixed by the board for the hearing of the same, which time shall not be less than three nor more than fifteen days from the filing of the petition. [1892, Sp.; R. C. 1895, § 579.]

**§ 705. Appearance by parties to contest.** At the time fixed for the hearing the petitioner shall appear and produce his evidence and the person whose election is contested may appear and produce evidence in his behalf. Either party may appear in person or by attorney, and no other person shall be entitled to be made a party to such proceedings or to be heard personally or by counsel therein; provided, that if more than one petition is pending, or more than one election is contested the board may order the contests to be heard together in its discretion. [1892, Sp.; R. C. 1895, § 580.]

**§ 706. Hearing, how conducted.** The board shall thereupon hear the contest and decide all questions of law and fact involved. The burden of proof in each case shall be upon the petitioner and the hearing shall be confined to the grounds stated in the petition, but the board may in its discretion allow the petition to be amended. No ex parte affidavits shall be competent evidence at such hearing. No person shall be excused from testifying or from producing papers or documents at such hearing on the ground that such testimony will tend to criminate himself; but no person so testifying shall be liable to any suit or prosecution, civil or criminal, for any matters or causes in respect to which he shall be so examined or to which his testimony shall so relate. The board shall have the same power to compel the attendance of witnesses as the district courts of this state possess, and nothing in this article contained shall be held to limit the power of the board to make such regulations as to the conduct of the proceedings as it may deem proper, not inconsistent with the provisions of this article, and the board shall have all powers necessary to the complete carrying out and performance of the authority conferred upon it by this article. [1892, Sp.; R. C. 1895, § 581.]

**§ 707. Determination of board, how certified.** The board shall determine in each case which of the parties to the proceedings is entitled to the office of elector, and shall cause such determination to be entered of record in such manner and form as it shall direct, and shall forthwith certify the same to the governor and secretary of state, and such determination so certified shall be final and conclusive that the person therein stated to have been elected is duly elected, and the governor shall forthwith transmit to such person a certificate of his election, and every such certificate shall recite that it is issued pursuant to a determination under this article, referring to this article.

The court shall so arrange and conduct the trial of such contest that a final determination thereof shall be rendered at least six days prior to the second Monday in January next following. [1892, Sp.; R. C. 1895, § 582.]

§ 708. **Failure of petitioner to appear, effect of.** If any petitioner shall fail to appear and prosecute his petition against any person who has been made a respondent thereto, according to the requirements of this article and of such rules as the board shall make, the board shall determine that he has so failed, and shall cause such determination to be entered of record in such manner and form as it shall direct, and shall forthwith certify such determination to the governor and secretary of state; and the same shall be a final and conclusive bar to the claim of the petitioner against such respondent as fully and completely as if such claim had been heard and determined on its merits, and the governor shall issue such certificate as provided in the preceding section. [1892, Sp.; R. C. 1895, § 583.]

§ 709. **Costs, taxation of.** The costs of all proceedings under this article shall be taxed under the direction of the board, and if two or more cases are heard together the costs shall be apportioned as the board shall direct, and in each case in which the petitioner shall not finally prevail the costs shall be paid by him, and in each case in which the petitioner shall finally prevail the costs shall be borne by the state, in which case the board shall certify the costs to the state auditor, who shall issue his warrant upon the state treasurer in payment of the same. [1892, Sp.; R. C. 1895, § 584.]

§ 710. **Final hearing, how determined.** The final hearing and determination under this article shall be by a majority of the board, but any single member may exercise any other of the powers given to the board by this article. [1892, Sp.; R. C. 1899, § 585.]

§ 711. **Mileage and per diem of members of board.** The members shall be entitled to receive for their travel and attendance the sum of six dollars per day and ten cents per mile for each mile necessarily traveled, to be paid from the state treasury upon the warrant of the state auditor. [1892, Sp.; R. C. 1899, § 586.]

#### ARTICLE 15.—CONTEST OF LEGISLATIVE ELECTIONS.

§ 712. **Notice of contest in legislative elections.** When any person intends to contest the election of a member of the legislative assembly, he may, within ten days after the result of such election shall have been determined by the board of canvassers, give notice in writing to the member whose seat he desires to contest of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest. [R. C. 1895, § 587.]

§ 713. **Answer to notice.** Any member elect, upon whom the notice mentioned in the preceding section may be served, shall within ten days after the service thereof answer such notice admitting or denying the facts alleged therein and stating specifically any other grounds upon which he rests the validity of his election and shall serve a copy of his answer upon the contestant or his attorney. All allegations contained in the notice and not denied in the answer shall be taken as admitted. [R. C. 1895, § 588.]

§ 714. **Testimony taken, when.** In all such contests the contestant may begin taking testimony as soon as the notice of contest is served and the person whose election is contested may commence taking testimony as soon as his answer is served, and both parties may continue to take testimony for ten days after the time for serving the answer has expired, after which time the contestant may take testimony in rebuttal only for five days. [R. C. 1895, § 589.]

§ 715. **Notice to take depositions same as in code civil procedure.** Depositions taken under the provisions of this article may be taken in the



manner and upon the notice prescribed in the code of civil procedure for taking depositions in civil actions. [R. C. 1895, § 590.]

§ 716. **Testimony taken at only two places at a time.** Testimony taken under the provisions of this chapter shall not be taken at more than two places at the same time by either party, except by order of the court or the judge thereof. [R. C. 1895, § 591.]

§ 717. **Subpena to compel attendance of witnesses.** When either party to such contest desires to take testimony therein, he may apply to any notary public or justice of the peace in the county where the testimony is to be taken for a subpena to compel the attendance of witnesses, and the officer to whom such application is made shall thereupon issue his subpena directed to such witnesses as shall be named to him, requiring their attendance before him at such time and place as may be named in the subpena to give testimony relating to such contest. [R. C. 1899, § 592.]

§ 718. **Depositions taken without notice on stipulation.** It shall be competent for the parties to such contest by consent in writing to take depositions without notice. Such written consent shall be returned with the depositions. [R. C. 1895, § 593.]

§ 719. **Subpena served, how.** Witnesses may be subpoenaed in the manner provided in the code of civil procedure. [R. C. 1895, § 594.]

§ 720. **Attendance compelled only in county.** No witness shall be required to attend an examination out of the county in which he resides or is served with a subpena. [R. C. 1899, § 595.]

§ 721. **Failure to attend and testify. Penalty.** Any person who, having been summoned in the manner above prescribed, refuses or neglects to attend and testify in obedience to such subpena, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars to be recovered with costs of suit in a civil action in the name and for the use of the party at whose instance the subpena was issued, and such person is also guilty of a misdemeanor. [R. C. 1895, § 596.]

§ 722. **Depositions of nonresident witnesses may be taken.** Depositions of witnesses residing outside of the district and beyond the reach of a subpena may be taken before any officer authorized to take testimony in a civil action. [R. C. 1899, § 597.]

§ 723. **Examination of witnesses.** All witnesses, who attend in obedience to a subpena or who attend voluntarily at the time and place appointed, of whose examination notice has been given as provided in this article, shall then and there be examined on oath by the officer who issued the subpena, or in case of his absence, by any other officer authorized to issue such subpena, or by the officer before whom the depositions are to be taken by written consent, as the case may be, touching all such matters respecting the election being contested as shall be proposed by either of the parties or attorneys. [R. C. 1899, § 598.]

§ 724. **Testimony must be confined to issue.** The testimony to be taken by either party to such contest shall be confined to the issues raised by the notice of contest and answer thereto. [R. C. 1895, § 599.]

§ 725. **Testimony must be reduced to writing.** The officer shall cause the testimony of the witnesses to be reduced to writing in his presence and in the presence of the parties or their attorneys, if in attendance, and each witness shall sign his name at the end of his testimony. [R. C. 1895, § 600.]

§ 726. **Production of papers may be required.** The officer before whom any deposition is taken shall have power to require the production of papers, and, on the refusal or neglect of any person to produce and deliver up any papers in his possession pertaining to such election, or to produce certified or sworn copies of the same in case they are official papers, such person shall be liable to all the penalties prescribed in section 721. All papers thus produced and all certified or sworn copies of official papers shall be trans-

mitted by the officer, with the testimony of the witnesses, to the secretary of state for the use of the legislative assembly. [R. C. 1899, § 601.]

§ 727. **Adjournments.** The taking of the testimony may, if so stated in the notice, be adjourned from day to day. [R. C. 1899, § 602.]

§ 728. **Papers to be attached to deposition.** The notice to take depositions with the proof or admission of service thereof and a copy of the subpoena, where any has been served, shall be attached to the deposition when completed together with a copy of the notice of contest and answer, which shall be annexed to the deposition taken and transmitted with them to the secretary of state. [R. C. 1899, § 603.]

§ 729. **Testimony to be forwarded to the secretary of state.** All officers taking testimony to be used in a contested election case shall, when the taking of the same is completed, immediately certify to the same as required by law in other cases, and inclose the same in a sealed envelope and after indorsing on such envelope the title of the contest forward the same by mail to the secretary of state; and the secretary of state is authorized to open the same at the instance of either party or his attorney. [R. C. 1895, § 604.]

§ 730. **Fees of officers and witnesses.** Each witness attending in obedience to a subpoena as herein provided, and all officers employed in taking testimony in such contested election cases or serving any subpoena or notice herein authorized shall be entitled to receive, from the party at whose instance the service or attendance shall have been performed, such fees as are allowed for similar services in civil actions in courts of record in this state. [R. C. 1895, § 605.]

§ 731. **No legislative expense.** No payment shall be made by the legislative assembly out of its contingent fund or otherwise to either party to such contest for expenses incurred in prosecuting or defending the same. [R. C. 1899, § 606.]

#### ARTICLE 16.—REGISTRATION OF VOTERS.

§ 732. **Registration of voters. When board shall meet.** The persons authorized by law or appointed pursuant to any village or city ordinance to act as judges of election in any village, city, ward or other election precinct in this state shall, together with the inspector of election for such precinct, constitute a board of registry for their respective precincts, and they shall meet on Tuesday, two weeks preceding any general election, or annual city election, at nine o'clock a. m., and make a list, as hereinafter prescribed, of all persons qualified to vote at the ensuing election in such election precinct, which list when completed shall constitute and be known as the register of electors of such precinct. [1881, ch. 122, § 1; 1899, ch. 133; R. C. 1899, § 607.]

§ 733. **Registers, what to contain.** Such registers shall each contain a list of the qualified electors of such precinct, alphabetically arranged according to their respective surnames, so as to show in one column the name at full length, and in another column the residence by the number of the dwelling, if there is a number, and the name of the street or other location of the dwelling place of each elector. It shall be the duty of such board to enter in such lists the names of all persons residing in its election precinct whose names appear on the poll list made in such precinct at the last preceding election, the number of the dwelling and name of the street or other location, if the same is known to or can be ascertained by such board, and for this purpose the board is authorized to take from the office in which it is filed the poll list made and filed by the judges or inspector of such precincts at the election held next prior to the making of such register. In making such register the board shall enter therein, in addition to the names on the poll list, the names of all other persons who are known to them to be qualified electors in such precinct, or shall be proved to be qualified electors by the oath of the person applying to be registered, or by the oath of some

elector whose name has been already placed upon the poll list; and the names of all persons on the poll list who have died or removed from the precinct shall be omitted from the register. Such board shall complete as far as practicable such register on the day of their meeting aforesaid, and shall make two copies thereof and certify the register and each of the copies to be a true list of the voters in its precinct so far as the same are known, within ten days thereafter; such original list, together with the list taken from the office aforesaid, shall be filed with the board and shall be kept by one of the judges or by the inspector and carefully preserved for its use on the day hereinafter mentioned for the revision and correction of the same. One copy of such list shall immediately after its completion be posted in some public and conspicuous place at or near the place where the last preceding election in such precinct was held, and be accessible to any elector who may desire to examine the same or make copies thereof. Any person who shall tear down, deface or destroy any list so posted is guilty of a felony and shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the penitentiary not exceeding five years. [1881, ch. 122, § 2; R. C. 1895, § 608.]

§ 734. **Registry list in new precinct.** In case any election precinct shall be formed by the organization of a new precinct or by division of any village, ward or precinct, or the incorporation of a city or village, the judges or the inspector of elections in the new precinct thus formed, may make a registry of electors on the day prescribed by this article in such manner as a majority of them may direct, and for this purpose they may make a list or cause to be made a certified copy of the poll list or lists of the precinct or precincts in which such new precinct was situated, or they may dispense with such list and proceed to make a register of electors from the best means at their command. Such lists shall only embrace the names of such persons as are known to them to be electors in their precinct or proved to be such by the oath of an elector whose name has already been entered upon such register, or by the oath of the applicant; and such list shall be preserved and a copy posted up as prescribed in the preceding section and shall be revised and corrected in the same manner as other lists are corrected. [1881, ch. 122, § 3; R. C. 1895, § 609.]

§ 735. **Board of registration, second meeting.** Such boards shall again meet on Tuesday of the week preceding such election in their respective election precincts at the place designated for holding the polls for the purpose of revising, correcting and completing such lists, and for this purpose they shall meet at 8 o'clock a. m. and remain in session until eight o'clock p. m. [1881, ch. 122, § 4; R. C. 1899, § 610.]

§ 736. **Proceedings of board to be public.** The proceedings of such board shall be open, and all persons residing and entitled to vote in such precincts shall be entitled to be heard by such board in relation to corrections or additions to such register, and the judges or the inspector are empowered to administer oaths for this purpose. One of the lists so kept by the judges or inspector as aforesaid shall be used by them on the day of making corrections or additions for the purpose of completing the registry of such precinct. [1881, ch. 122, § 6; R. C. 1899, § 611.]

§ 737. **Registry list to be revised.** It shall be the duty of such board at its meeting for revising and correcting such lists to erase therefrom the name of any person inserted therein who shall be proved by the oath of two legal voters of such precinct to the satisfaction of such board to be non-residents of such precinct or otherwise not entitled to vote therein at the election then next to be held. Any elector residing in such precinct and entitled to vote therein may appear before such board and require his name to be recorded in such list. Any person requiring his name to be recorded shall make the same statement as to street and number thereof and where

he resides which is required by the provisions of this article of persons offering their votes at the polls, and shall be subject to the same penalties for refusing to give such information or for falsely giving the same, and shall also be subject to challenge either by the judges or the inspector or by any elector whose name appears on such list, and the same oath may be administered by the judges or inspector or other duly authorized person as is provided in case of persons offering to vote at an election; and in case no challenge is made to any person requiring his name to be registered or in case of challenge, if such person makes oath as aforesaid, then the name of any such person shall be added to such list. [1881, ch. 122, § 7; R. C. 1899, § 612.]

**§ 738. Receiving vote from person not on registry list.** After such lists shall have been fully completed such board shall within two days cause two copies of the same to be made, each of which shall be certified by it to be a correct list of the qualified electors of the precinct so far as known, which list the judges or inspector shall carefully keep and preserve for use on election day; and at the opening of the polls the judges or inspector shall designate two of their number to check the name of each voter voting in such precinct whose name is on the register. No vote shall be received at any election in this state if the name of the person offering such vote is not on the register, unless such person shall furnish to the judges of election his affidavit, stating therein that he is a resident of such precinct, giving his place of residence and length of time he has resided there, and also prove by the oath of a householder and registered voter of the precinct that he knows such person to be a resident therein, giving his place of residence. Such oath may be administered by the inspector or one of the judges of election, or any other person authorized to administer oaths, but no person shall receive any compensation for administering such oath. Such oath shall be preserved and filed by the judges of election. Any person may be challenged and the same oath required as is now or hereafter may be prescribed by law. [1881, ch. 122, § 8; R. C. 1899, § 613.]

**§ 739. Duty of clerks of election.** The clerks of election in each precinct shall enter on the poll list kept by them in columns prepared for that purpose, opposite the name of each person voting, the same statement or minute heretofore required of the board in making the registry; but such entry shall not be made by them if the register correctly contains the name and residence of such voter; and in all cases such clerk shall enter in a column opposite the name of each person not registered the words "not registered." And the clerks in case the name of such voter is not registered shall enter in the appropriate columns of the poll list the name and residence as in other cases. Any person making a false statement as to his residence or dwelling place shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or imprisonment in the penitentiary not exceeding two years, at the discretion of the court. [1881, ch. 122, § 9; R. C. 1895, § 614.]

**§ 740. Register must be filed.** Within three days after the canvass of the votes the register so kept and checked as aforesaid shall be filed with the county auditor of the county in which such precinct is situated, and shall be retained and carefully preserved therein as a public record. [1881, ch. 122, § 10; R. C. 1899, § 615.]

**§ 741. Registers to remain public record.** Such registers shall at all times be open to public inspection without charge. [1881, ch. 122, § 11; R. C. 1895, § 616.]

**§ 742. Compensation of members of board of registry.** The members of the board of registry shall receive the same compensation as is now or may hereafter be allowed by law, not to exceed two dollars per day. [1881, ch. 122, § 12; R. C. 1899, § 617.]

§ 743. **Board has power to preserve order.** The members of such board shall have and exercise the same powers in preserving order at their meetings under this article as are given to judges of election for preserving order on election day, and vacancies may be filled in such board in the same manner as vacancies of judges are now filled at elections. [1881, ch. 122, § 13; R. C. 1899, § 618.]

§ 744. **Penalty for registering in more than one precinct.** Any person who shall cause his name to be registered in more than one election precinct, or who shall cause his name to be registered knowing that he is not a qualified voter in the precinct where such registry is made, or who shall falsely personate any registered voter, and any person aiding or abetting any person in any manner in either of such acts, shall be punished for each and every offense by imprisonment in the penitentiary for not less than two nor more than five years. If any member or officer of such board shall willfully violate any of the provisions of this article, or be guilty of any fraud in the execution of the duties of his office, he shall be punished by imprisonment in the penitentiary for a period not exceeding two years. [1881, ch. 122, § 14; R. C. 1899, § 619.]

§ 745. **County auditor to provide blank registers and blanks.** The county auditors shall provide the board of registry of the several precincts within their respective counties with the necessary blank registers and blanks at the expense of their respective counties. [1887, ch. 48, § 1; R. C. 1899, § 620.]

§ 746. **What cities governed by this article.** All cities and villages containing eight hundred or more inhabitants shall be subject to the provisions of this article. To determine the number of inhabitants the number of votes cast at the last preceding general election shall be multiplied by five. [1899, ch. 133; R. C. 1899, § 621.]

## CHAPTER 9.

### EDUCATION.

#### ARTICLE 1.—SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 747. **Qualifications of. Term of office.** There shall be elected by the qualified electors of the state at the time of choosing members of the legislative assembly a superintendent of public instruction, who shall have attained the age of twenty-five years, and who shall have the qualifications of an elector for that office and the holder of a state certificate of the highest grade, issued in some state, or a graduate of some reputable university, college or normal school. He shall hold his office at the seat of government for the term of two years commencing on the first Monday in January following his election and until his successor is elected and qualified. [1890, ch. 62, § 1; R. C. 1899, § 622.]

§ 748. **To preserve miscellaneous documents.** He shall preserve in his office all books, maps, charts, works on education, school reports and school laws of other states, and cities, plans for school buildings and other articles of educational interest and value which may come into his possession as such officer, and at the expiration of his term he shall deliver them together with the reports, statements, records and archives of his office to his successor. [1890, ch. 62, § 2; R. C. 1899, § 623.]

§ 749. **Supervision of schools.** He shall have the general supervision of the public schools of the state and shall be ex officio member of the board of university and school lands, and of the normal school boards of the state. [1890, ch. 62, § 3; 1891, ch. 56, § 1; R. C. 1899, § 624.]

§ 750. **To furnish school supplies, blanks, etc., and to establish circulating libraries.** He shall prepare, cause to be printed and furnish to the proper officers or persons all district clerks' record books and warrant books, school treasurers' record books, school registers, reports, statements, notices and returns needed or required to be used in the schools or by the school officers of the state. He shall prepare and furnish to school officers, through the county superintendents, lists of publications approved by him as suitable for district libraries; such lists shall contain also the lowest price at which each publication can be purchased and such other information relative to the purchase of district libraries as he may deem requisite. He shall also select and purchase books suitable for district libraries, and cause the same to be circulated as traveling libraries, under such rules and regulations as he may prescribe. And for the purpose of selecting and purchasing such books there is hereby appropriated the sum of seven hundred and fifty dollars annually, to be paid by warrant of the state auditor on the state treasurer, upon the presentation of itemized bills in due form, duly approved by the superintendent of public instruction. [1890, ch. 62, § 4; 1891, ch. 56, § 2; 1889, ch. 81; R. C. 1899, § 625.]

§ 751. **Examinations and teachers' certificates.** He shall prepare or cause to be prepared all questions to be used in the examination of applicants for teachers' certificates, prescribe the rules and regulations for conducting such examinations and issue or revoke state certificates as provided in this chapter. [1890, ch. 62, § 5; R. C. 1899, § 626.]

§ 752. **Prescribe the course of study.** He shall prepare and prescribe a course of study for all the public and normal schools of the state and the course of study, training and practice of the professional department of schools, designated and supported wholly or in part by the state. [1890, ch. 62, § 6; R. C. 1899, § 627.]

§ 753. **Rules for teachers' institutes.** He shall prescribe rules and regulations for holding of teachers' institutes and teachers' training schools, and after counseling and advising with county superintendents, shall appoint conductors therefor. He shall prescribe the course of instruction for teachers' institutes and for teachers' training schools, and the course of reading for the teachers' reading circles within the state. [1890, ch. 62, § 7; 1891, ch. 56, § 3; 1897, ch. 75; R. C. 1899, § 628.]

§ 754. **Advise county superintendents.** He shall counsel with and advise county superintendents upon all matters involving the welfare of schools and he shall, when requested, give them written answers to all questions concerning the school law. He shall decide all appeals from the decision of the county superintendents, and may for such decisions require affidavits, verified statements or sworn testimony as to facts in issue. He shall prescribe and cause to be enforced rules of practice and regulations pertaining to the hearing and determination of appeals, and necessary for carrying into effect the school laws of the state. [1890, ch. 62, § 8; 1891, ch. 56, § 4; R. C. 1899, § 629.]

§ 755. **Record of official acts.** He shall keep a complete record of all his official acts and shall file in his office all appeals and the papers pertaining thereto. [1890, ch. 62, § 9; R. C. 1899, § 630.]

§ 756. **School laws to be printed.** He shall at least once in two years cause to be printed the school laws of the state, with such notes and decisions thereon as may seem to him advisable, and shall furnish them as they are needed to the school officers in the state. [1890, ch. 62, § 10; R. C. 1899, § 631.]

§ 757. **Conference with county superintendents.** He shall meet the county superintendents of each judicial district or of two or more districts combined at such time and place as he shall appoint, giving them due notice of such meeting. The objects of such meeting shall be to accumulate valuable facts relative to schools, to compare views, to discuss principles, to hear discussions, and suggestions relative to the examinations and qualifications of teachers,

methods of instruction, text books, institutes, visitation of schools and other matters relating to the public schools. [1890, ch. 62, § 11; R. C. 1895, § 632.]

§ 758. **Seal.** He shall provide and keep a seal by which all his official acts may be authenticated. [1890, ch. 62, § 12; R. C. 1895, § 633.]

§ 759. **To assist at teachers' institutes.** He shall when practicable, attend and assist at teachers' institutes and aid and encourage generally teachers in qualifying themselves for the successful discharge of their duties; he shall labor faithfully in all practicable ways for the welfare of the public schools of the state, and shall perform such other duties as shall be required of him by law. [1890, ch. 62, § 13; R. C. 1899, § 634.]

§ 760. **Biennial report, what to contain.** He shall, on or before the first day of November preceding the biennial session of the legislative assembly, make and transmit to the governor a report, showing:

1. The number of school districts, schools, teachers employed and pupils taught therein and the attendance of pupils and studies pursued by them.

2. The financial condition of the schools, their receipts and expenditures, value of school houses and property, cost of tuition and wages of teachers.

3. The condition, educational and financial, of the normal and higher institutions connected with the school system of the state and as far as it can be ascertained, of the private schools, academies and colleges in the state.

4. Such general matters, information and recommendations relating to the educational interests of the state, as he may deem important. [1890, ch. 62, § 14; R. C. 1895, § 635.]

§ 761. **Reports to be printed.** Two thousand copies of the report of the superintendent of public instruction shall be printed biennially in the month of December preceding the session of the legislative assembly. One copy shall be furnished to each of the members of the legislative assembly, one copy to each county superintendent of the state, one copy to the president of each school board, one copy to each state officer, one copy to each state and territorial superintendent, and twenty copies shall be filed in the office of the superintendent of public instruction and ten copies in the state library. The remaining copies shall be distributed among the various colleges, universities and other libraries of the United States. [1897, ch. 75; R. C. 1899, § 636.]

§ 762. **Proceedings educational association to be published.** The state superintendent of public instruction is hereby authorized and required to publish annually, as public matter, two thousand five hundred copies of the proceedings of the North Dakota educational association, the same to be distributed throughout the state by the department of public instruction; provided, that a copy of the proceedings of said association shall be filed by the secretary or other officer of said association with the superintendent of public instruction, on or before the first day of February of each year. [1903, ch. 87.]

§ 763. **Salary. Traveling expenses.** He shall receive an annual salary of two thousand dollars, and in addition thereto his actual and necessary traveling expenses incurred in the discharge of his official duties, not exceeding one thousand dollars in any one year, such expenses to be paid monthly on the warrant of the state auditor upon his filing with such auditor an itemized statement of such expenses, properly verified, and approved by the state auditing board. [1890, ch. 62, § 16; R. C. 1899, § 637; 1903, ch. 192.]

#### ARTICLE 2.—COUNTY SUPERINTENDENT OF SCHOOLS.

§ 764. **Election. Term of office.** There shall be elected in each organized county, at the same time other county officers are elected, a county superintendent of schools, whose term of office shall be two years, commencing on the first Monday in January following his election, and until his successor is elected and qualified. Any voter residing in an independent school district, organized under a special act, having a board of education and city super-

intendent of schools, shall not be qualified to vote for county superintendent of schools. [1897, ch. 77; R. C. 1899, § 638.]

§ 765. **General duties.** The county superintendent of schools shall have the general superintendence of the public schools in his county, except those in cities which are organized under special law and those in special or independent school districts. [1890, ch. 62, § 20; R. C. 1899, § 639.]

§ 766. **Visitation of schools.** He shall visit each public school under his supervision. He shall at such visit carefully observe the condition of the school, the mental and moral instruction given, the methods of teaching employed by the teacher, the teacher's ability and the progress of the pupils. He shall advise and direct the teacher in regard to the instruction, classification, government and discipline of the school and the course of study. He shall keep a record of such visits and by memoranda indicate his judgment of the teacher's ability to teach and govern and the condition and progress of the school, which shall be open to inspection by any school director. [1890, ch. 62, § 21; R. C. 1899, § 640.]

§ 767. **General duties.** He shall carry into effect all instructions of the superintendent of public instruction given within his authority. He shall distribute to the proper officers and to teachers all blanks furnished him by such superintendent, and needed by such officers and teachers. Acting under the instructions of the superintendent of public instruction, he shall, when expedient, convene the teachers of his county at least one Saturday in each month during which the public schools are in progress, or if the distance is too great he may convene the teachers of two or more districts in each of the several portions of his county in county or district institutes, or teachers' circles, for normal instruction and the study of methods of teaching, organizing, classifying and governing schools, and for such other instruction as may be set forth in the course of reading prescribed by the superintendent of public instruction for the state teachers' reading circle. Each teacher shall attend the full session of such institute or circle and participate in the duties and exercises thereof or forfeit one day's wages for each day's absence therefrom, unless such absence is occasioned by sickness of the teacher or others to whom his attention is due; but when, on account of distance or otherwise, it would impose a hardship upon any teacher to attend, or would cause such teacher to neglect his school, the county superintendent may excuse such teacher from attendance. [1897, ch. 75; R. C. 1899, § 641.]

§ 768. **Record of official acts.** He shall keep a record of all his official acts, and shall preserve all books, maps, charts and apparatus sent him as a school officer, or belonging to his office. He shall file all reports and statements from teachers and school boards and shall turn them over to his successor in office. He shall be provided with a seal by which his official acts may be authenticated. [1897, ch. 75; R. C. 1899, § 642.]

§ 769. **Meetings with school officers. District maps.** He may arrange for meetings with school officers at designated times and places, due notice of which has been given, for the purpose of inspecting the district records and instructing in the manner of keeping the same, and of preparing the reports of district officers. He shall visit the officers of the several school districts as often as may be necessary to secure the correct keeping of the records. He shall, on or before the first day of April of each year, prepare and furnish to the several assessors of the county a correct sectional map of their respective districts, showing the boundaries and names or numbers of all school districts therein; provided, also, that in counties having the district system, he may convene the presidents and clerks of school boards in his county, and in counties having the township system, he may convene the members and clerks of the school boards in his county, or such representatives of the school officers of each district as the president or members of the school boards may appoint, in case he or they cannot attend personally, for the



purpose of discussing plans and methods for the improvement and general care of the schools; provided, further, that such general meeting shall not occur more than once in each year. [1890, ch. 62, § 24; 1891, ch. 56, § 6; 1899, § 643; R. C. 1899, § 643; 1901, ch. 84; 1903, ch. 86, § 1.]

§ 770. **To decide questions in controversy.** He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decisions of school officers or boards. An appeal may be taken from his decision to the superintendent of public instruction, in which case a full written statement of the facts, together with the testimony and his decision in the case shall be certified to the superintendent of public instruction for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the courts. [1890, ch. 62, § 25; R. C. 1899, § 644.]

§ 771. **Power to administer oaths.** He shall have power to administer oaths of office to all subordinate school officers, and to witnesses, and to examine them under oath in all controversies pending before him arising in the administration of the school laws; but he shall not receive pay for administering such oaths. [1890, ch. 62, § 26; R. C. 1895, § 645.]

§ 772. **Institute fund, how raised and used.** All funds received by him for the examination of teachers shall be turned over to the county treasurer, who shall keep the same as a special fund to be known as the "Institute Fund," and which shall be used only for the expenses of holding county teachers' institutes, or supporting teachers' training schools, to be paid out upon proper warrants issued by the county auditor upon the sworn and itemized voucher of the county superintendent. [1897, ch. 75; R. C. 1899, § 646.]

§ 773. **Apportionment of state tuition fund.** He shall make apportionment of the state tuition fund among the school corporations of the county, as provided in this chapter. [1890, ch. 62, § 28; R. C. 1899, § 647.]

§ 774. **Physiology, hygiene and the nature and effect of alcoholic drinks to be taught in public schools.** 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. [1890, ch. 62, § 29; R. C. 1899, § 648; 1905, ch. 106, § 1.]

§ 775. **Report to state superintendent.** He shall, on or before the fifteenth day of September in each year, make and transmit a report to the superintendent of public instruction, containing such statistics, items and statements relative to the schools of the county, as may be required by such superintendent. Such report shall be made upon and conform to the blanks furnished by the superintendent of public instruction for that purpose. He shall not be paid his salary for the last quarter of his official year until he presents to the county commissioners, the receipt of the superintendent of public instruction for such annual report. [1897, ch. 75; R. C. 1899, § 649.]

§ 776. **Office, postage and stationery.** He may provide for himself a suitable office for the transaction of official business when not provided therewith by the county commissioners, and such commissioners shall audit and pay his reasonable accounts for the use and furniture of such office. They shall also furnish him with all necessary books, stationery and postage. [1897, ch. 75; R. C. 1899, § 651.]

§ 777. **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. [1897, ch. 75; R. C. 1899, § 652; 1903, ch. 88; 1905, ch. 100, § 2.]

Where the auditor has a discretion to exercise in his official duties mandamus will not lie to cause him to act. *State ex rel Wiles v. Albright*, 11 N. D. 22, 88 N. W. 734.

Superintendents not custodians of funds or authorized to audit accounts of clerks paid therefrom. *State ex rel Wiles v. Heinrich*, 11 N. D. 31, 87 N. W. 734.

**§ 778. 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. [1890, ch. 62, § 34; R. C. 1899, § 653; 1905, ch. 100, § 3.]

**§ 779. Shall not engage in teaching.** No county superintendent of schools, except as hereinafter provided, shall engage in teaching during the term for which he was elected, nor shall any person under contract to teach be qualified to hold the office of county superintendent of schools. [1895, ch. 46, § 1; R. C. 1899, § 654.]

**§ 780. Shall not absent himself from county.** No county superintendent of schools shall engage in any profession or occupation, nor shall he absent himself from the county or district for which he is elected to engage in any occupation, profession or pursuit during the term for which he is elected for such time and in such manner as to interfere with the proper discharge of his duties as county superintendent of schools. [1895, ch. 46, § 2; R. C. 1899, § 655.]

**§ 781. Subject to removal.** Any county superintendent of schools who neglects or violates any of the provisions of sections 779 and 780 shall be subject to removal from office. [1895, ch. 46, § 3; R. C. 1899, § 656.]

**§ 782. Not applicable in every county.** None of the provisions of sections 779 and 780 shall be applicable to counties in which the salary of county superintendent of schools is less than one thousand dollars per annum. [1895, ch. 46, § 4; 1899, § 657; 1905, ch. 100, § 4.]

#### ARTICLE 3.—FREE PUBLIC SCHOOL SYSTEM.

**§ 783. Defined.** The state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal schools at Valley City and Mayville, the school for the deaf and dumb at Devils Lake, the industrial school and school of manual training at Ellendale, a scientific school at Wahpeton, the school of forestry of Bottineau, and all other schools heretofore established by law and maintained by taxation constitute the system of free public schools of the state. [1901, ch. 98.]

#### ARTICLE 4.—SCHOOL DISTRICTS.

**§ 784. What constitutes a school corporation.** Each civil township in the state, not organized for school purposes under the district system at the taking effect of this code, shall be and is hereby constituted a distinct school corporation, and whenever in any county a civil township shall hereafter be organized it shall from and after such organization be and constitute a distinct school corporation, except as otherwise specially provided in this chapter. [1890, ch. 62, § 35; R. C. 1899, § 658.]

**§ 785. School township to conform to civil township when possible.** Each school township in every county in the state, which at the taking effect of this code consists of territory not organized into a civil township, shall be and remain a distinct school corporation; provided, that whenever such school township, or any part thereof, shall be organized into or annexed to a civil township, such civil township shall thenceforth constitute a distinct school corporation; but nothing in this section shall be construed to alter the boundary lines of any school township organized prior to the passage of this code, except upon petition as hereinafter provided. [1890, ch. 62, § 36; R. C. 1899, § 659.]

Sections 784-786 discussed and construed in *State ex rel Laird v. Gang*, 10 N. D. 331, 87 N. W. 5.

**§ 786. What territory may be organized into district school corporations.** The county commissioners of each county in which there is territory not organized for school purposes at the taking effect of this article, may organize into a district school corporation any territory not, at the taking effect of this article, already organized into a civil township or a school township, upon being petitioned to do so by one-third of the residents of such territory, having the care or custody of any child of school age; provided, such territory shall

consist of not less than one congressional township, and having not less than ten children of school age residing therein. The county commissioners of every such county, with the advice and consent of the county superintendent may rearrange the boundaries in any school corporation whose territory is not included within a civil township, when petitioned to do so by a majority of the voters residing within such school corporation, whose boundaries will be affected thereby, subject to the same restrictions and conditions as to extent of territory and number of resident children of school age as in the organization of a school corporation from territory not included in a civil township. In the formation of school corporations and the rearrangement of their boundaries as provided for in this section, the boundary lines of congressional townships shall be followed as far as possible as school corporation lines. [1899, ch. 143; R. C. 1899, § 660.]

"City" does not include incorporated towns or villages. *Plummer v. Borsheim*, 8 N. D. 565, 80 N. W. 690.

**§ 787. New school districts, how formed.** In any county hereafter organized the county commissioners shall so divide the county or the parts thereof, which include every congressional township in such county which has residing therein not less than ten children of school age, into school corporations as will best promote the permanent interests of public schools in the county, upon the same petition and subject to the same conditions and restrictions as are contained in section 786. [1890, ch. 62, § 39; R. C. 1899, § 661.]

**§ 788. School corporations divided and attached to other districts. Organized into distinct districts, when.** If a portion of any such school corporation having not more than ten children of school age residing therein, is separated from the other portion of such corporation by any natural obstacle which practically prevents such children from attending school in such other portion, the county commissioners of the county may annex such portion so separated to an adjoining school corporation, and the portion so annexed shall constitute a part of such adjacent corporation. If such adjacent corporation lies in another county, the county commissioners of the two counties may jointly make such annexation; provided, that whenever portions of a school corporation lie in different civil townships, there may be created therefrom two or more distinct school corporations, when, in the judgment of such commissioners and superintendent, such change can be made without detriment to the schools or to the pupils therein, and the division can be made by following the boundary line, or lines, of congressional townships, or the meander lines of the government survey. [1890, ch. 62, § 39; R. C. 1899, § 662; 1901, ch. 189.]

New school district not liable for debt of old district in absence of statute fixing liability. *Livingstone v. School District*, 9 S. D. 102, 68 N. W. 167; *Fordham School v. Darling School*, 6 S. D. 489, 61 N. W. 1128.

County commissioners and superintendent have authority to create new districts. *School District v. Board of Lincoln Co.*, 9 S. D. 291, 68 N. W. 746; *State ex rel Laird v. Gang*, 10 N. D. 331, 87 N. W. 5.

**§ 789. Annexation of school corporations.** In any county not organized for school purposes under the district system at the taking effect of this code, if a town or village not organized into a special district is divided by a civil township line, or if such town or village is divided by any county line the county commissioners of such county, or the county commissioners of such adjacent counties acting in joint session, as the case may be, may when petitioned so to do by a majority of the voters of each part of said town or village, annex one part of such town or village to the adjacent school corporation which includes the other part of such town or village and the part so annexed shall constitute a portion of such adjacent corporation. [1890, ch. 62, § 40; 1891, ch. 56, § 9; R. C. 1899, § 663.]

**§ 790. When civil townships may consolidate into school district.** In any county not organized for school purposes under the district system at the taking effect of this code, if a civil township having less than fifteen persons

of school age residing therein, by reason of the irregular course of natural boundary, contains less than twelve sections or square miles of territory, it shall constitute a portion of the adjacent school district with which it has the longest common boundary line. [1890, ch. 62, § 42; R. C. 1899, 664.]

§ 791. **School districts, how named.** Each school corporation constituted or formed under the provisions of this article, shall be designated a school district as distinguished from a civil township or congressional township and shall be named as follows: Each school district which consists of a civil township shall be named "... school district of ... county, state of North Dakota," with the name of the civil township which constitutes the districts inserted in the blank before the word "school," and the name of the county in which it is situated inserted before the word "county." Each school district which consists of territory not organized into a civil township, but which has been named by a distinctive name shall have such distinctive name inserted in the blank before the word "school." Each school district consisting of territory not organized into a civil township which has no distinctive name shall be named "school district No. ... of ... county, state of North Dakota," with its proper number inserted in the blank after the word "number," and the proper name of the county inserted in the blank before the word "county;" provided, that in each county organized for school purposes under the district system at the taking effect of this code, the several school districts shall retain and be known by the number which they have respectively at the time of the taking effect of this code and any school district hereafter formed in any such county shall be known by the number next higher than that of the highest pre-existing numbered district. [1890, ch. 62, § 43; R. C. 1899, § 665.]

§ 792. **When boundaries to be rearranged and established and how.** The county commissioners and county superintendent of schools in each county, which at the taking effect of this code is organized for school purposes under the district system, shall meet on the first Monday in May, A. D. 1896, at the place where the meetings of such commissioners are usually held and shall rearrange and establish the boundaries of the several school districts of the county unless the same has already been done, as follows:

1. Each civil township in a county, no part of which is included in a school district already organized, shall be formed into a single school district.

2. Each congressional township in the county, no part of which is included in a civil township nor in an organized school district, if it contains twelve or more persons of school age, shall be formed into a single school district.

3. All territory in a county situated in a civil township, part of which is organized into a school district or situated in a congressional township not included in a civil township, and a portion of which is organized into a school district shall be annexed to and form a part of the organized school district lying wholly or in part in such civil or congressional township.

4. Each school district now organized which has less than ten persons of school age residing therein shall be annexed to and form a part of such adjacent school district as shall be most convenient for such persons of school age, when in the judgment of such commissioners and superintendent such annexation can be made without detriment to the school or to the pupils residing in such district.

5. The boundary lines of each school district which lies partly within two or more civil townships shall be so changed that such school district shall lie wholly within one civil township, so far as in the judgment of such commissioners and superintendent such change can be made without detriment to the schools or to the pupils therein.

6. Such commissioners and superintendent shall make such changes generally in the boundary lines of the school districts of the county, not in their judgment detrimental to the interests of the schools of the county as will

reduce the number of school districts in the county, and form school districts not extending beyond the boundaries of the civil township. [1890, ch. 62, § 44; R. C. 1899, § 666.]

§ 793. **Boundaries, how changed.** After the boundary lines of the several school districts of any of the counties of this state are rearranged and established, as provided for in the last preceding section of this article, such boundary may be changed or rearranged by the county commissioners and the superintendent of schools, at any regular session, and if a town or village, not organized into a special district and containing twelve or more persons of school age is divided by the line of a civil or congressional township, or is partly in two or more districts, such town or village, with adjacent territory in both or all of the districts in which it is situated, not exceeding ten square miles in extent, and not at any point more than three miles distant from said town or village, may be formed into a new and separate district, if, in the judgment of the commissioners and superintendent, such a change or the formation of such new district is for the best interests of the schools. Any change or rearrangement of boundaries may be made or new district formed as hereinbefore provided for upon petition signed by one-third of the voters residing in each district whose boundaries will be affected by such change or rearrangement, and by three-fourths of the voters resident in the parts of districts to be included in any new district formed under the provisions of this section; provided, that each congressional township, not wholly or in part included in a civil township, and no part of which is organized for school purposes, shall be formed into a school district as soon as it shall have residing therein twelve or more children of school age. [1897, ch. 75; R. C. 1899, § 667; 1903, ch. 174.]

Remonstrance signed by school officers prima facie evidence of notice. Way notice given immaterial. School District No. 56 v. School District No. 27, 9 S. D. 336, 69 N. W. 17.

§ 794. **Rights and powers of school corporations.** Each school district constituted and formed as provided in this article shall be a distinct corporation, and under its proper name or number as such corporation, may sue and be sued, contract and be contracted with, and may acquire, purchase, hold and use personal or real property for school purposes or for the purposes mentioned in this chapter and sell and dispose of the same. [1890, ch. 62, § 46; R. C. 1899, § 668.]

§ 795. **Plats of school districts to be furnished by county auditor.** The county auditor shall, within thirty days after the first school election held as provided herein, transmit to the state auditor, to the superintendent of public instruction and to the county superintendent, a plat of the county showing the boundaries and name of each school corporation therein, and shall record a copy of the same, together with all proceedings of the county board had and done under this chapter in a proper book kept for that purpose. He shall promptly furnish such officers with a correct plat showing any changes at any time in the boundaries of school corporations. The superintendent of public instruction shall furnish instructions for the suitable preparation and construction of such plats in regard to scale and markings, in order to secure a uniform series of maps for binding for office use. [1890, ch. 62, § 47; R. C. 1899, § 669.]

§ 796. **Legalizing irregularities.** All school districts, whether duly and legally organized under the provisions of statutes or not, which for the eight years last past have had a de facto organization, are hereby declared to be legally organized and are authorized to exercise all the functions of school districts which have been duly and legally organized as provided by statute, with the boundaries which they may have at the time of the going into effect of this article, and all contracts or obligations of said districts, and the acts of the officials thereof, are hereby ratified and confirmed in so far as to give

them the same validity which they would have had if said districts had been legally organized. [1899, ch. 144; R. C. 1899, § 669a.]

ARTICLE 5.—ELECTION OF SCHOOL OFFICERS.

§ 797. **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 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 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 his successor is elected and qualified. [1890, ch. 62, § 48; R. C. 1895, § 670; 1905, ch. 104, § 1.]

§ 798. **Polling places, how established. Appointment of election officers.** The county superintendent in each county shall, at least twenty days prior to the first election in the new district, fix and designate some polling place in each school district so located as to be convenient for the voters of such district, and shall appoint two persons to act as judges and two to act as clerks of the election of such school officers; such judges and clerks shall be qualified voters in their respective districts. The county superintendent shall notify in writing such judges and clerks of their appointment, and of the place fixed and designated as the polling place in their respective districts, and shall furnish them with the necessary blanks and poll books for such election. He shall also furnish one of such clerks with three notices of such election specifying the time and place at which such election is to be held, the officers to be elected and term of each, which notices such clerk shall post in three of the most public places in the district at least ten days prior to such election. The county superintendent shall fix the date and perform such other duties as devolve upon him by the provisions of this section for the first election in any school district hereafter formed under the provisions of this chapter, and such election shall be called by the county superintendent within thirty days after the formation of such school district. [1897, ch. 75; R. C. 1899, § 671.]

Note:—The provisions of sections 551 to 597 inclusive do not apply to elections under this section.

§ 799. **Who qualified to vote or hold office.** At any election of school officers in any school corporation in this state, all persons who are qualified electors under the general laws of the state and all women twenty-one years of age having the necessary qualifications as to citizenship and residence required of male voters by law, shall be qualified voters and shall be eligible to the office of county superintendent of schools, school director or member of board of education or school treasurer, or may be judge or clerk of such election. [1890, ch. 62, § 50; R. C. 1899, § 672.]

§ 800. **Hours polls open.** At all elections for school district officers, the polls shall be opened at two o'clock p. m. and closed at five o'clock p. m. [1890, ch. 62, § 52; R. C. 1899, § 673.]

§ 801. **Notice of annual election.** At least fifteen days before the first Tuesday in 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 two o'clock p. m. and closed at five o'clock p. m. of that day.

By order of the school board.

Signed .....

Clerk.

[1890, ch. 62, § 53; R. C. 1895, § 674; 1905, ch. 104, § 2.]

**§ 802. Judges. Oath.** At such annual election any two of the directors of the school district may act as judges and the clerk of the district school board and one other person to be chosen by the voters present at the opening of the polls, shall act as clerks. The voters present at the opening of the polls shall choose a person to fill any vacancy caused by the absence of either of such officers to act as judge or clerk of such election. Before opening the polls each of the judges and clerks of election shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will perform my duties as judge or clerk (as the case may be) according to law and the best of my ability." Such oath or affirmation may be administered by any officer authorized to administer oaths or by either of the judges or clerks. Any school officer elected and qualified under the provisions of this chapter is authorized and empowered to administer any oath or affirmation pertaining in any manner to school offices. [1890, ch. 62, § 54; R. C. 1899, § 675.]

**§ 803. Election, how conducted. Canvass of votes.** Such election shall be conducted and the votes canvassed as provided by law for general elections except as otherwise provided in this chapter. Immediately after the polls are closed the judges shall proceed to count and canvass the votes for each person voted for at such election for any office, and the person receiving the highest number of votes for the office of director or treasurer shall be declared elected. If the election results in a tie for any such office, the district clerk shall immediately notify in writing the parties having received such tie votes, and a time shall be agreed upon by the parties, within three days after the election, at which the election shall be decided in the manner that may be agreed upon by the parties, in the presence of the judges and clerks of election, and a record of the proceedings shall be made in the records of the district clerk. [1897, ch. 75; R. C. 1899, § 676.]

**§ 804. Certificates of election.** The clerk of the school district shall within five days after such election furnish each person elected to any district office a written notice of his election, and that he shall take the oath of office as such officer on or before the second Tuesday in July following such election. He shall also forward to the county superintendent within ten days after such election a certified list of all the officers elected thereat. [1890, ch. 62, § 56; R. C. 1895, § 677.]

**§ 805. Oath of office.** Each person elected to the office of school director or treasurer shall before entering upon the duties of his office, take and subscribe the oath prescribed in section 211 of the constitution, which oath shall be filed with the clerk of the school district board. [1890, ch. 62, § 57; R. C. 1895, § 678.]

**ARTICLE 6.—ORGANIZATION, MEETINGS AND DUTIES OF DISTRICT OFFICERS.**

**§ 806. District school board. Quorum.** The three school directors in each school district shall constitute the district school board. A majority of the board shall constitute a quorum and the agreement of a majority shall be



necessary to the validity of any contract entered into by the board. [1890, ch. 62, § 59; R. C. 1899, § 679.]

**§ 807. Organization. Clerk.** The school board shall meet annually on the second Tuesday in July, and organize by choosing one of the members president, and a competent person, not a member of the board, clerk, who shall hold his office during the pleasure of the board. [1890, ch. 62, § 60; R. C. 1899, § 680.]

**§ 808. Meetings of the 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. [1890, ch. 62, § 61; R. C. 1899, § 681; 1901, ch. 84, § 2; 1903, ch. 86, § 2; 1905, ch. 102.]

Mandamus will not lie to control action of school officers in discretionary matters. *Heintz v. Moulton*, 7 S. D. 272, 64 N. W. 135.

**§ 809. Duties of the president.** The president shall preside at all meetings of the board, shall perform such duties as usually pertain to such office, and in accordance with the customary rules of order. In his absence a president pro tempore shall preside. The president shall perform such other duties as are prescribed in this chapter. It shall also be the duty of the president to attend such general meetings of school officers as may be convened by the county superintendent of schools. When the president cannot attend such meetings personally, he shall appoint some other school officer to represent the district at such general meeting. [1897, ch. 62, § 62; R. C. 1899, § 682; 1901, ch. 84, § 3; 1903, ch. 86, § 3.]

**§ 810. Duties of clerk. Compensation.** The clerk of the board shall keep an accurate record of all proceedings of the board, give or post all notices, make out all reports and statements and perform all other duties required by law or by the board. He shall receive such compensation as shall be fixed by the board, not less than ten dollars for one school and five dollars for each additional school in his district; provided, that such salary shall not exceed forty dollars in any one year. [1897, ch. 75; R. C. 1899, § 683.]

**§ 811. Treasurer's bond, how approved. Vacancy, how filled.** The school treasurer shall, on or before the second Tuesday in July following his election and before entering upon his duties give a bond to the school district conditioned for the honest and faithful discharge of his duties and that he will render a true account of all funds and property that shall come into his hands and pay and deliver the same according to law. Such bond shall be in such sum as may be fixed by the board, but not less than double the sum to come into his hands in any one year as nearly as may be ascertained, which bond

shall be signed by two or more sufficient sureties to be approved by the school board. In case the school board neglects or refuses to approve the bond of such treasurer and the sureties thereon, such treasurer may present the same to the county superintendent and serve notice thereof upon the board and due proof of such notice being made to the county superintendent, he shall, unless good cause for delay appears, proceed to hear and determine the sufficiency of the bond and the sureties thereon, and may approve or disapprove the same as the facts warrant. In case a vacancy occurs in the office of district treasurer, it shall be the duty of the county treasurer of the county wherein such school district is located, upon being notified by the county superintendent or clerk of such school district that such vacancy exists, to perform the duties of treasurer of such school district until the vacancy is duly filled. [1890, ch. 62, § 64; R. C. 1999, § 684.]

**§ 812. When additional bonds required.** Whenever the amount in the hands of the treasurer or subject to his order, exceeds two-thirds of the penal sum of his bond or when in the judgment of the board or of the county superintendent the security on such bond is impaired, the board or county superintendent shall require an additional bond. If the treasurer fails for twenty days to give such additional bond the office shall be declared vacant and the vacancy shall be filled as provided by this chapter. [1890, ch. 62, § 65; R. C. 1899, § 685.]

**§ 813. Fidelity bonds. Premiums, how paid.** Every person hereafter elected to the office of district school treasurer, within the state of North Dakota, is hereby required to give an official bond in a penal sum to be fixed by the board of directors, which bond shall not be in a less penal sum than double the amount of money likely to come into his hands in any one year, and such board may by resolution require that such bond shall be executed by some responsible fidelity or surety company authorized and qualified to do business in the state of North Dakota, and subject to approval as provided by law; provided, further, if a surety bond is given it shall be given for a sum fixed by the board of directors. The amount of premium for such surety or fidelity bond, shall be audited by the board of directors and paid out of the general fund of the district. [1901, ch. 187.]

**§ 814. School funds, how paid out.** The school treasurer shall keep such accounts and make such reports as are required of him by law, and shall publish his annual statement in a newspaper published in the nearest city or town to his district. He shall pay no money out of the school funds in his hands, except upon the warrant of the school board, signed by the president and countersigned by the clerk. He shall pay all warrants properly drawn and signed when presented, if there is any money in his hands or subject to his order for their payment. [1890, ch. 62, § 66; 1891, ch. 56, § 11; R. C. 1895, § 686.]

**§ 815. Warrants to be indorsed when no funds to pay.** When a warrant is presented to the treasurer for payment, and there is no money in his hands, or subject to his order, belonging to the proper fund for the payment of such warrant, he shall indorse on such warrant, "presented for payment this.....day of.....190..and not paid for want of funds," and shall sign such indorsement. If he has in his hands, or subject to his order, money for the part payment of such warrant, he shall make such part payment, and indorse the sum on the warrant, and add, "balance not paid for want of funds," signing the same. He shall keep a correct register of all warrants so presented and indorsed. Each warrant thus presented and indorsed shall draw interest on the amount unpaid at a rate not to exceed eight per cent per annum from the date of such presentation and indorsement until paid; provided, that when there shall come into the hands of the treasurer or subject to his order, money applicable to the payment of any warrant which has been so presented and registered, the treasurer shall notify in writing

by mail, the drawee of such warrant, at his last known place of residence, to present such warrant for payment, and interest shall cease upon every such warrant ten days after such notice shall have been sent, and such money shall be held for the payment of such warrant. [1890, ch. 62, § 67; 1891, ch. 56, § 12; R. C. 1899, § 687; 1903, ch. 83, § 1.]

§ 816. **Warrants, what to specify.** Each warrant drawn by the clerk of the board on the district treasurer must specify the purpose for which it is drawn, the fund on which it is drawn, and the person to whom payable; and no warrant shall be issued except for an indebtedness incurred prior to its issue. [1890, ch. 62, § 68; 1891, ch. 56, § 13; R. C. 1899, § 688.]

§ 817. **Oaths and bonds, where to be filed.** All official oaths and bonds of school district officers shall be filed with the district clerk, who shall immediately certify to the county superintendent the fact of such oaths and bonds being filed. Said clerk shall file school treasurer's bond with county auditor after such bond has been approved by the district school board, as provided in this chapter. In case of the breach of any of the conditions of the treasurer's bond, the board, through its president, and in case of his refusal so to do, the county superintendent shall cause an action to be commenced and prosecuted thereon in the corporate name of the district, and any money collected for the district shall be paid to the district treasurer and any money collected for fines shall be paid into the county treasury and be credited to the general school fund of the state. If the board and county superintendent both fail or refuse to bring such action any taxpayer in the district may commence and prosecute such action, and the necessary expense thereof shall be paid out of the district treasury unless otherwise ordered by the court. [1897, ch. 75; R. C. 1899, § 689.]

§ 818. **Salary of school treasurer.** The school treasurer shall be paid for his services such sum as shall be fixed by the board not less than five nor more than twenty-five dollars per annum. [1890, ch. 62, § 70; R. C. 1899, § 690.]

#### ARTICLE 7.—POWERS AND DUTIES OF DISTRICT SCHOOL BOARDS.

§ 819. **General powers.** The district school board shall have the general charge, direction and management of the schools of the district, and the care, custody and control of all the property belonging to it, subject to the provisions of this chapter. [1890, ch. 62, § 71; R. C. 1899, § 691.]

School house located by vote cannot be removed by board. *Graves v. Jasper*, 2 S. D. 414, 50 N. W. 904.

Must act as board. Contract made with members as individuals is enforceable against them. *Western Publishing House v. Bachman*, 2 S. D. 512, 51 N. W. 214; *Western Publishing House v. Murdick*, 4 S. D. 207, 56 N. W. 120.

In absence of showing to contrary board presumed to have authority to remove school house. *Burkhardt v. School Twp.*, 9 S. D. 315, 69 N. W. 16.

§ 820. **Power to establish schools.** It shall organize, maintain and conveniently locate schools for the education of children of school age within the district, and change or discontinue any of them in the cases provided by law. [1890, ch. 62, § 72; R. C. 1899, § 692.]

§ 821. **Repairs, fuel and supplies.** It shall make all necessary repairs to the school houses, outbuildings and appurtenances, and shall furnish fuel and all necessary supplies for the schools. [1890, ch. 62, § 73; R. C. 1899, § 693.]

§ 822. **Furniture, maps, register, school library.** It shall furnish to each school all necessary and suitable furniture, maps, charts, and apparatus, including Webster's International dictionary. The school register, and all school blanks used, shall be those furnished by the state department of public instruction. It may appropriate and expend each year not less than ten, nor more than twenty-five dollars for each school, or separate department thereof, of the district for the purpose of a school library, to be selected by the school board and the county superintendent of schools, from any list of books prepared by the superintendent of public instruction, and furnished

by him to the county superintendent for that purpose, and it shall not purchase any books not contained in such list, or which have not been approved by the superintendent of public instruction. It shall have the care and custody of the library and may appoint as librarian any suitable person, including one of their number, but whenever practicable, the library shall be kept in the school house, and always so when school is in session. It shall make rules to govern the circulation and care of the books while in the hands of pupils or other persons, subject to such general rules as may be prescribed by the state superintendent of public instruction, and may impose and collect penalties for injuries done to any book by the act, negligence or permission of the person who takes the same or while in his possession, but no book shall be loaned to any person not a resident of the district. It may at any time temporarily exchange any part or all of its library with any other district or person, so far as different books may be obtained, but each district shall recall its books before the close of the school term. It may at any time accept donations of books for the library, but it shall exclude therefrom all books unsuited to the cultivation of good character and good morals and manners, and no sectarian publications, devoted to the discussion of sectarian differences and creeds shall be admitted to the library. It shall be held accountable for the proper care and preservation of the library, and shall report annually to the county superintendent all library statistics which may be required by the blanks furnished for that purpose by the superintendent of public instruction. [1890, ch. 62, § 74; 1891, ch. 56, § 14; R. C. 1895, § 694; 1903, ch. 83, § 2.]

**§ 823. Teachers, how employed. Salaries, 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. And nothing in this section shall be construed to mean that teachers holding the same grade of certificate must necessarily receive the same wages. [1890, ch. 74, § 75; 1891, ch. 56, § 15; R. C. 1895, § 695; 1905, ch. 100, § 5.]

Contract with teacher having no certificate and warrant issued thereunder void. *Goose River Bank v. Willow Lake School Twp.*, 1. N. D. 26, 44 N. W. 1002; *Hardy v. Purlington*, 6 S. D. 382, 61 N. W. 158.

Contract with teacher having no certificate void. Subsequent procurement does not enable teacher to recover. *Hosmer v. School District*, 4 N. D. 197, 59 N. W. 1035.

**§ 824. Pupils from other districts.** It shall have the power to admit to the schools in the district pupils from other districts, when it can be done without injuring or overcrowding such schools, and shall make regulations for their admission, and the payment of their tuition. It shall have the power to arrange with the board of an adjacent district for sending to such district such pupils as can conveniently be taught therein, for paying their tuition, and for arranging and paying for their transportation to and from the school in such district; and when petitioned by a majority of the voters of a district it shall be the duty of the board of any district to arrange for sending to such district such pupils as can conveniently be taught therein, for paying their tuition, and for arranging and paying for their transportation to and

from the school in such district. It shall have the power to admit to the schools in the district pupils residing in unorganized territory adjacent to the district, and shall arrange with the parents or guardians of such pupils for paying their tuition; but in no instance shall a board refuse privileges to or collect tuition from pupils residing in such adjacent unorganized territory, if the parents of such pupils are property holders in the district and pay taxes. It shall also have the power to make proper and needful rules for the assignment and distribution of pupils to and among the schools in the district, and their transfer from one school to another. [1899, ch. 84; R. C. 1899, § 696; 1903, ch. 83, § 3.]

§ 825. **Rules. Suspension of pupils.** It shall assist and co-operate with teachers in the government and discipline of the schools, and may make proper rules and regulations therefor. It may suspend or expel from school any pupil who is insubordinate or habitually disobedient, but such suspension shall not be for a longer period than ten days nor such expulsion beyond the end of the current term of school. [1890, ch. 62, § 77; R. C. 1899, § 697.]

§ 826. **Branches of study.** Subject to the approval of the county superintendent, it shall have power to determine what branches, if any, in addition to those required by law shall be taught in any school of the district. [1890, ch. 62, § 78; R. C. 1899, § 698.]

§ 827. **Tax levy. Notice to county auditor.** It shall have power to levy upon the property in the district a tax for school purposes of not exceeding thirty mills on the dollar in any year, which levy shall be made by resolution of the board prior to the twentieth day of July. The clerk shall immediately thereafter notify in writing the county auditor of the amount of tax so levied. It shall not have power to abate or reduce the amount of tax so levied after the county auditor has been notified of the amount of such levy. [1890, ch. 62, § 79; 1891, ch. 56, § 16; R. C. 1899, § 699.]

§ 828. **When school houses can be used for other purposes.** It may permit a school house, when not occupied for school purposes, to be used under careful restrictions for any proper purpose, giving equal rights and privileges to all religious denominations or political parties, but for any such use or privilege it shall not be at any cost for fuel or otherwise to the district. Nor shall any furniture which is fastened to the floor be removed, and whoever removes any school furniture for any other purpose than repairing the same or for repairing the school room shall be guilty of a misdemeanor and shall be fined not less than five nor more than ten dollars for each offense. All fines imposed and collected under the provisions of this section shall be paid into the general school fund of the state. [1890, ch. 62, § 80; R. C. 1899, § 700.]

§ 829. **School houses and sites, how determined.** Whenever in the judgment of the board it is desirable or necessary to the welfare of the schools in the district or to provide for the children therein proper school privileges, or whenever petitioned so to do by one-third of the voters in the district, the board shall call a meeting of the voters in the district at some convenient time and place fixed by the board to vote upon the question of the selection, purchase, exchange or sale of a school house site, or the erection, removal or sale of a school house. Said election shall be conducted and votes canvassed in the same manner as at the annual election of school officers. Three notices of the time, place and purpose of such meeting shall be posted in three public places in the district by the clerk, at least ten days prior to such meeting. If a majority of the voters present at such meeting shall by vote select a school house site, or shall be in favor of the purchase, exchange or sale of the school house, as the case may be, the board shall locate, purchase, exchange or sell such site, or erect, remove or sell such school house, as the case may be, in accordance with such vote; provided, that it shall require a vote of two-thirds of the voters present and voting at such meeting to order the

removal of the school house and such school house so removed cannot again be removed within three years from the date of such meeting [1897, ch. 75; R. C. 1899, § 701.]

Must be located according to statutory requirement. *Farmers National Bank v. School District*, 6 N. D. 255, 42 N. W. 767.

Can only be removed by majority vote. *Graves v. School Twp.*, 2 S. D. 414, 50 N. W. 904.

**§ 830. School house sites, how obtained.** The school board of any school district may take in the corporate name thereof, any real property not exceeding two acres in area chosen as a site for school house, as provided in this chapter, and may hold and use such tract for school purposes only. Should the owner of such real property refuse or neglect to grant and convey such site, a site for such school house may be obtained by proceeding in eminent domain as provided in the code of civil procedure. If the site so selected is not used for the purposes for which it is taken for two successive years, it shall revert to the original owner or his assigns upon payment of the sum originally paid by the corporation together with a reasonable consideration for the improvement. If such owner or his assigns neglects or refuses to make such repayment for one year after demand therefor by the board such site shall be the property of the district. [1890, ch. 62, § 82; R. C. 1895, § 702.]

**§ 831. Schools to be organized on petition.** If a petition signed by the persons charged with the support and having the custody and care of nine or more children of school age, all of whom reside not less than two and one-half miles from the nearest school is presented to the board asking for the organization of a school for such children, the board shall organize such school and employ a teacher therefor, and if a suitable room for such school can be leased or rented at some proper location, not more than two and one-half miles distant from the residence of any one of such children, and if such petition is signed by the persons charged with the support and having the custody and care of twelve or more such children the board shall organize a school and employ a teacher therefor, and if no suitable room for such school can be leased or rented, the board shall call a meeting of the voters of the district for the selection and purchase of a school house site therefor and the purchase or erection of a school house as provided for in section 829. If at such meeting no such site is selected or if it is not voted to erect or purchase a school house for such school the board shall select and purchase a school house site, and erect, purchase or move thereon a school house at a cost of not more than seven hundred dollars for such house and furniture therefor; provided, that the provisions of this section shall not apply in instances where schools have been consolidated in accordance with the provisions of section 832. [1890, ch. 62, § 83; 1891, ch. 56, § 18; 1899, ch. 81; R. C. 1899, § 703.]

**§ 832. School terms, how arranged and when discontinued. Consolidation of common schools.** The district board shall determine and fix the length of time the schools in the district shall be taught each year, and when each term of school shall begin and end. It shall so arrange such terms as to accommodate and furnish school privileges equally and equitably to pupils of all ages; provided, that every common school shall be kept in session for not less than six months in each school year; provided, further, that any school may be discontinued when the average attendance of pupils therein for ten consecutive days shall be less than four, and all contracts between school boards and teachers shall contain a provision that no compensation shall be received by such teacher from the date of such discontinuance, or when, with the consent of a majority of the patrons of such school, proper and convenient school facilities can be provided for the pupils therein in some other school; provided, further, that a board may call and, if petitioned

by one-third of the voters in the district, shall call an election to determine the question of "conveying pupils at the expense of said district to and from schools already established," or, "of consolidating two or more common schools and of selecting a site and erecting a suitable building, or of making suitable additions to buildings already erected, to accommodate the pupils of schools to be vacated." Said elections shall be conducted, both as to notices and as to manner of canvassing the votes in the same manner as the annual school election. If a majority of the votes cast at such election are in favor of conveying pupils to and from schools already established, or of consolidating two or more schools, and of providing a suitable building for the accommodation of the pupils of vacated schools, then the board shall make all necessary arrangements to carry out the decision of the district. The board shall arrange for the transportation of pupils to and from such schools. It shall establish routes of travel, adopt rules and regulations for such transportation, and shall contract with responsible parties for such transportation. [1899, ch. 81; R. C. 1899, § 704; 1903, ch. 83, § 4.]

**§ 833. Additional school time.** If a majority of the patrons of any school averaging for its last term twelve or more pupils in daily attendance, shall petition the board to continue such school for an additional time, not exceeding nine months in any school year, the board shall continue such school for that length of time, if there are funds in the treasury sufficient for that purpose. [1890, ch. 62, § 85; R. C. 1899, § 705.]

**§ 834. District high and graded schools. Established and controlled, how.** In any district containing four or more common schools, and having an enumeration of sixty or more persons of school age residing therein, the board may call, and if petitioned so to do by ten or more voters in the district, shall call a meeting of the voters of such district in the manner prescribed in section 828 to determine the question of the establishment of a district high school. If a majority of the voters at such meeting vote in favor of establishing such high school, the meeting shall further proceed to select a site therefor, and to provide for the erection or purchase of a school building, or for the necessary addition to some school building therefor. Thereupon the board shall erect or purchase a building or make such addition for such high school, as shall be determined at such meeting, and shall establish therein a district high school containing one or more departments, and employ teachers therefor. Such school shall be kept in session for such time each year, not less than three months, as the board may determine. The board shall, subject to the approval of the county superintendent, grade such high school, and prescribe the studies to be pursued therein and shall have the same management and control thereof as of the common schools in the district. Two or more adjacent school districts may join in the establishment and maintenance of such high school, or of a graded school or of both, when empowered so to do by a majority of the voters in each district, at a meeting called and held as provided for in this section, in which case the building and furniture occupied and used for such high school or graded school shall belong to the districts so uniting, and all the cost of maintaining such school, or schools, including wages of teachers and all necessary supplies, shall be paid by such districts in proportion to the assessed valuation of the property in each, and the employment of teachers therefor, and the management, control and grading thereof shall be vested in the joint boards of such districts, subject to the approval of the county superintendent of the county in which such districts are located. [1890, ch. 62, § 86; 1891, ch. 56, § 19; R. C. 1899, § 706; 1903, ch. 85.]

**§ 835. 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 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 persons 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 persons shall be furnished the superintendent of the school for the deaf; a copy of the enumeration of such blind persons 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 first and ending June thirtieth, 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. [1899, ch. 81; R. C. 1899, § 707; 1903, ch. 78; 1905, ch. 103.]

§ 836. **Records open to inspection.** All reports, books, records, vouchers, contracts and papers relating to school business in a school district in the office of the clerk or treasurer, shall at all times be open to the inspection of any director, who shall advise and aid in securing correct records and accounts and legal reports, and they shall likewise be open to the superintendent of public instruction, and county superintendent and any particular paper or record shall be exhibited at reasonable hours to any voter or tax payer. [1890, ch. 62, § 88; R. C. 1899, § 708.]

§ 837. **Records and teaching in English.** All reports and records of school officers and proceedings of all school meetings shall be in the English language, and if any money belonging to any district shall be expended in supporting a school in which the English language shall not be taught exclusively, the county superintendent or any tax payer of the school corporation may in a civil action in the name of the corporation recover for such corporation all such money from the officer so expending it or ordering or voting for its expenditure. [1890, ch. 62, § 89; R. C. 1899, § 709.]

#### ARTICLE 8.—SCHOOL FUNDS.

§ 838. **Maintenance state educational institutions.** For the purpose of providing for the maintenance of the state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal school at Valley City, the state normal school at Mayville, the school for the deaf at Devils Lake, and the school of forestry at Bottineau, as a part of the public school system of this state, there is hereby levied upon all taxable property in the state, real and personal, an annual tax of one mill on each dollar of the assessed valuation of such property in each and every year hereafter. [1901, ch. 156, § 1.]



§ 839. **County auditor shall calculate amount of levy.** The county auditor of each county shall, at the time of making the annual tax list in his county, calculate the amount of the levy hereinbefore provided for upon each and every item of property assessed in his county, as it appears upon the last assessment roll, and extend the same upon such tax list in a column to be provided for that purpose, and such tax shall thereupon be collected and paid over to the state treasurer the same as other state taxes. [1901, ch. 156, § 2.]

§ 840. **Taxes, how apportioned.** Such taxes so levied shall be apportioned by the state treasurer to the several institutions herein mentioned as follows: Forty-hundredths of a mill to the state university and school of mines at Grand Forks; twenty-hundredths of a mill to the agricultural college at Fargo; twelve-hundredths of a mill to the state normal school at Valley City; twelve-hundredths of a mill to the state normal school at Mayville; thirteen-hundredths of a mill to the school for the deaf at Devils Lake; three-hundredths of a mill to the school of forestry at Bottineau. [1901, ch. 156, § 3.]

§ 841. **Moneys, how appropriated.** The moneys arising from the taxes hereinbefore levied are hereby appropriated for the maintenance of the state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal school at Valley City, the state normal school at Mayville, the school for the deaf at Devils Lake, and the school of forestry at Bottineau, the same to be paid monthly to the board of trustees of the several institutions herein mentioned, and in proportion as herein provided, upon vouchers of said board, signed by their respective presidents, and to be expended by the several boards, in their discretion, in the establishment and maintenance of said institutions hereinbefore mentioned. [1901, ch. 156, § 4.]

§ 842. **Funds, when paid over.** All moneys received as interest for rents, penalties, permits or from any other source than from the principal of sales of agricultural college lands, and lands belonging to the school for the deaf, state university and school of mines, shall be paid over to the respective institution treasurers of the agricultural college, school for the deaf, and state university and school of mines, upon the warrant of the state auditor on the first day of January, April, July and October in each year. The funds herein referred to shall be subject to the order of the respective boards of trustees of each institution herein mentioned and shall be used for the maintenance of such institutions. [1901, ch. 138.]

§ 843. **State tuition fund, how raised.** The net proceeds arising from all fines and penalties for violation of state laws, from leasing the school lands and the interest and income from the state permanent school fund shall be collected and paid into the state treasury in the same manner as is provided by law for the collection and payment of state taxes and shall constitute the state tuition fund, which shall be apportioned among the several counties of the state in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. [1899, ch. 83; R. C. 1899, § 710.]

§ 844. **County treasurer to report state tuition fund quarterly. Superintendent of public instruction apportions.** It shall be the duty of the county treasurer to receive from the proper officers the net proceeds of fines, penalties and forfeitures for violation of state laws, and all moneys arising from leasing school lands within the county, and to forward a detailed statement of moneys so collected, specifying the amount received from each of the above sources, to the state auditor at the same time that he is required to make reports of other moneys to such auditor. It shall be the duty of the state auditor on or before the third Monday in February, May, August and November in each year to certify to the superintendent of public instruction

the amount of the state tuition fund, and the superintendent of public instruction shall immediately apportion such fund among the several counties of the state in proportion to the number of children of school age residing in each as shown by the last enumeration provided for by law and certify to the state auditor, state treasurer and to the county treasurer and county superintendent of each county, the amount apportioned to the respective counties. Immediately upon receipt of such apportionment from the state superintendent as herein provided, the state auditor shall draw a warrant upon the state treasurer for the full amount of the state tuition fund apportioned to the several counties and shall deliver the same to the state treasurer, taking his receipt therefor, and shall notify the several county treasurers of the amounts due their respective counties and that such warrant has been issued therefor and the state treasurer shall pay on such warrant to the several county treasurers the amount due their respective counties; provided, however, that all moneys arising from interest on the permanent school fund and from leasing school lands shall be apportioned under a separate item and such money shall be taken account of as a separate item by all officers making or certifying such apportionment, or through whose hands any portion of such fund shall pass and it is further made the duty of the district treasurer to keep such fund separate from all other funds and if at the close of the school year any part of such fund which was apportioned prior to the third Monday of November of such year remains in the hands of the district treasurer, he shall return the same to the county treasurer, taking his receipt therefor, and the county treasurer shall return all such funds so returned or that were not drawn by the district treasurer from the county treasury to the state treasurer who shall receipt for the same, and the county treasurer shall certify to the state auditor the amount so returned to the state treasurer. [1899, ch. 83; R. C. 1899, § 711.]

**§ 845. Funds defined. How used.** All money received by the school district from the apportionment made by the superintendent of public instruction shall constitute and be designated the state tuition fund. All money received from district taxes, from subscription, from sale of property, or from any other source whatever except from apportionment made by the superintendent of public instruction, shall be designated the special fund. In addition to the state tuition fund and the special fund, a sinking fund may be established as provided by this article. The state tuition fund shall be used only in the payment of teachers' wages; provided, that if the state tuition fund apportioned to any district in any one year is insufficient for the payment of teachers' wages in such district any money on hand or available belonging to the special fund of such district may be applied to meet such deficiency; provided, further, that if the state tuition fund apportioned to any one district in any one year is more than sufficient for the payment of teachers' wages in such district the portion of such fund in excess of the amount so required may be applied to the payment of warrants drawn upon the special fund of such district, if such district has school the required number of months during such year as required by law. [1890, ch. 62, § 92; 1891, ch. 57, § 1; R. C. 1899, § 712.]

**§ 846. Funds controlled and paid out by district treasurer.** All funds shall be kept in the possession or under the control of and paid out by the district treasurer, except as otherwise provided in this chapter, and he shall keep one general account for each district of the entire receipts and expenditures, and separate itemized accounts as herein provided for each class of receipts and expenditures. His books shall at all times show by entries under proper heads all receipts of funds and payments made therefrom, so as to enable any person readily to ascertain any balance in account of any fund. [1899, ch. 83; R. C. 1899, § 713.]

§ 847. **Not entitled to tuition fund, when. Enumeration.** No school district shall be entitled to receive any portion of the state tuition fund that fails to make a report of the enumeration of the children of school age in the manner provided by law, nor until such enumeration has been taken and reported as required by law. The county superintendent of schools shall not authorize the payment of money apportioned to any district unless the bond and oath of such treasurer has been duly approved and filed, as provided for by section 817. New districts organized after the annual enumeration has been taken shall proceed immediately to take the enumeration as provided by law, and after the receipt of such enumeration by the superintendent of public instruction through the county superintendent the newly organized district shall receive its proportionate share of the funds to be apportioned; provided, further, that it shall be the duty of the county superintendent to withhold the apportionment of the county and state tuition fund from any school district other than the new district herein provided for, which has not maintained school therein for a period of not less than four school months in each school of said district in the school year preceding such apportionment, or has not otherwise provided school facilities for the pupils of that district. [1897, ch. 75; R. C. 1899, § 714; 1903, ch. 173.]

§ 848. **Apportionment of state tuition fund by county superintendent.** Within thirty days and not less than twenty days after receiving the certificate of apportionment from the superintendent of public instruction and the certificate from the county auditor, as provided for in section 855 of this chapter, the county superintendent shall apportion separately to the several school districts, special districts, independent districts, and districts organized under special laws which are entitled to any portion of the state tuition and special funds within the county, in proportion to the number of children residing in each district, over six and under twenty years of age, excluding all married persons, as appears from the last enumeration authorized by law, upon which the superintendent of public instruction made the apportionment to the several counties, and he shall immediately notify each district treasurer of the amount of tuition fund in the county treasury, due each district, and shall certify to the county treasurer and to the county auditor the amount due each school district. The county treasurer shall deliver to the several district treasurers upon the order of the county auditor the amounts apportioned to their respective districts, taking a receipt therefor. [1899, ch. 83; R. C. 1899, § 715; 1901, ch. 58; 1903, ch. 83.]

§ 849. **Special and independent districts and districts organized under special laws entitled to tuition funds.** Special and independent school districts and districts organized under special laws shall be entitled to receive their proportion of the state and special tuition funds; provided, that the clerk or secretary of the board of education thereof shall make a report to the county superintendent of the enumeration of children of school age therein at the time and in the manner prescribed in this chapter. [1899, ch. 83; R. C. 1899, § 716.]

§ 850. **Treasurer's accounts. Annual settlement.** The district treasurer shall open new accounts with each fund at the beginning of each school year, and the balance of each fund shall be brought down and become a part of the first entry in opening the account for the new year. On the second Tuesday in July the school board shall make settlement with the district treasurer, and shall carefully examine his books, accounts and vouchers, and shall ascertain if the amount of all warrants, bonds and coupons paid and redeemed, or paid in part, together with the cash in his hands or under his control, is equal to the amount of the cash on hand at the beginning of the school year, together with all money received by him from all sources for school purposes during the year. The district treasurer shall deliver to the board at such annual meeting all warrants, bonds and coupons

paid and redeemed by him during the school year, and held by him as vouchers, taking the receipt of the board therefor, and such vouchers shall forthwith be filed with the district clerk. He shall at that meeting make his annual report in triplicate, one copy to be preserved in the treasurer's office, one to be filed with the clerk of the school board, and one to be transmitted to the county superintendent of schools, and the board shall cause to be published an itemized statement of the receipts and expenditures of the preceding year, in a newspaper of the county nearest said school district; provided, that if said board or treasurer shall have failed to publish said statement by the first of September following the presentation of the treasurer's annual report, then it shall be the duty of the county superintendent of schools to cause the publication of the same in a newspaper of the county, said publication to be paid for by the school district. The treasurer's report shall show the following:

RECEIPTS.

The balance at the close of the year;  
 The amount received into the state tuition fund;  
 The amount received into the special fund;  
 The amount received into the sinking fund;

EXPENDITURES.

The amount paid for school houses, sites and furniture;  
 The amount paid for apparatus and fixtures;  
 The amount paid for teachers' wages;  
 The amount paid for services and expenses of school officers;  
 The amount paid for redemption of bonds;  
 The amount paid for interest on bonds;  
 The amount paid for incidental expenses;  
 The cash on hand at the close of the school year.

Such report shall include such other items as may be required by the district board, or the superintendent of public instruction, and shall be upon, and in conformity with, the blanks furnished him for that purpose. [1897, ch. 75; R. C. 1899, § 717; 1901, ch. 86.]

§ 851. **When county treasurer to pay funds to district treasurer.** The treasurer of each district shall apply to the county auditor for an order, and the county treasurer shall pay over to him on such order all of the school money collected for such district and all school money apportioned to such district by the county superintendent, and the county auditor shall issue such order; provided, such district treasurer has qualified and filed his oath and bond as provided by law. It shall be the duty of the county treasurer, when payment is made to any school treasurer of any funds herein provided for, immediately to notify the clerk of the school board of the payment of the same. [1897, ch. 75; R. C. 1899, § 718.]

§ 852. **County treasurer to keep accounts with school corporations.** Each county treasurer shall keep a regular account with each school corporation, in which he shall charge himself with all taxes collected by levy of the district school board and all sums apportioned to the district by the county superintendent or other authority, and all sums received for the district, and he shall credit himself with all payments made to the treasurer of the district, distinguishing between the items paid by apportionment, those from county taxes and those from other sources. He shall also credit himself with all payments for redemption or indorsement of warrants in the collection of taxes and shall deliver to the district treasurer a duplicate tax receipt for the amount of each warrant so indorsed or redeemed together with all warrants so redeemed at the time of making other regular payments to the district treasurer. To these credits, to balance the accounts, he shall add

all items for legal fees, for collection and other duties. [1899, ch. 83; R. C. 1899, § 719.]

§ 853. **School taxes, how and when collected.** It shall be the duty of the county treasurer to collect the taxes for school purposes at the same time and in the same manner that the county and state taxes are collected, and full power is hereby given him to sell property for school taxes the same as is provided by law for the collection of other taxes. Whenever an error occurs in any school corporation's tax list the district school board or board of education in special or independent districts or districts organized under special laws may correct such errors and refund such taxes improperly collected. All penalties and interest collected on delinquent school taxes shall be applied to the proper fund to which such delinquent taxes belong. [1899, ch. 83; R. C. 1899, § 720.]

ARTICLE 9.—TAXES.

§ 854. **School board to levy tax.** Each district school board shall have power and it shall be its duty to levy upon all the property subject to taxation in the district a tax for school purposes of all kinds authorized by law, not exceeding in the aggregate a rate of thirty mills on the dollar in any one year. Such tax shall be levied by resolution of the board prior to the twentieth day of July in each year, which resolution shall be entered in the records of the proceedings of the board. The clerk shall immediately thereafter notify the county auditor in writing of the amount of tax so levied and such notice shall be in substantially the following form:

State of North Dakota,	} ss.
County of .....	
.....School District .....	
To.....	
County auditor of.....County.	

Sir:

You are hereby notified that the school board of.....school district .....has levied a tax of.....dollars upon all real and personal property in said school district for school purposes. You will duly enter and extend such tax upon the county tax list for collection upon the taxable property of such school district for the current year.

Dated at.....this.....day of.....19....

District Clerk.

The notice of a tax to pay any judgment against the district shall be in addition to the regular tax and shall be certified to the county auditor under the same general form, as near as may be; provided, that if the boundaries of such district shall embrace a portion of two counties then the clerk of such district shall certify to the county auditor of the county in which is located the original district to which such portion of the district embraced in the other county is attached, in addition to the tax levy above mentioned, a list and valuation of all property subject to taxation in such portion of such district embraced in the other county, as shown by the assessor making the assessment in such county, township or assessor's district, and the auditor shall enter such property upon the tax duplicate of his county and levy all school taxes upon the same, and the county treasurer of the county shall collect the taxes levied thereon the same as other taxes are collected and pay the same over to the treasurer of the district entitled thereto. [1890, ch. 62, § 101; 1891, ch. 56, § 21; R. C. 1899, § 721.]

§ 855. **Tax, how levied, how apportioned. Apportionment of delinquent taxes.** 1. The county auditor of each county shall at the time of making the annual assessment and levy of taxes levy a tax of one dollar on each elector in the county for the support of common schools, and a further tax

of two mills on the dollar on all taxable property in the county, to be collected at the same time and in the same manner as other taxes are collected, which shall be apportioned by the county superintendent of schools among the school districts of the county.

2. It shall be the duty of the county auditor on or before the third Monday in February, May, August and November in each year, to certify to the county superintendent of schools the amount of such county tuition fund, which the county superintendent of schools shall apportion among the several school districts in the same form and manner as provided for the apportionment of the state tuition fund. The county superintendent shall file with the county auditor and the county treasurer a certified statement showing the amount apportioned to each district.

3. It shall also be the duty of the county auditor to certify at the time herein specified the amount of delinquent taxes collected for the special tuition fund prior to those levied for the year 1899, which amounts shall be apportioned by the county superintendent of schools as herein provided; and the county treasurer shall pay such amounts to the district treasurers the same as other special funds are paid. [1899, ch. 83; R. C. 1899, § 722.]

§ 856. **Maximum levy for final judgment. Taxes to be uniform.** When any final judgment shall be obtained against a school district the board thereof shall levy a tax upon the taxable property of such district not exceeding in amount twenty mills on the dollar in any one year, which shall be used in the payment thereof. The county auditor shall make out, charge and extend upon the tax list against each description of real property and against all personal property, and upon all taxable property of the district, all such taxes for schools and judgments he is so notified has been levied by the district in which the property is situated and taxable in the same manner in which the county and state tax list is prepared, and deliver it to the county treasurer at the same time. All taxes for school purposes shall be uniform upon the property within each school district. [1890, ch. 62, § 103; R. C. 1899, § 723.]

§ 857. **Statement of assessed valuation.** Each assessor shall on or before the first day of July in each year furnish to the clerk of the school district, to the county superintendent of schools and to the county auditor a statement of the assessed valuation of all the property in such corporation subject to taxation. [1890, ch. 62, § 104; R. C. 1899, § 724.]

§ 858. **Indebtedness of district, how adjusted when no legal school board exists.** If any school district in the state has for one or more years past, either through failure to elect a school board or through failure of the county superintendent to appoint a school board, been without a legal school board or if hereafter any school district through such failure to elect or to appoint such school board shall be without such legal school board and such district shall have an authorized indebtedness either in bonds, interest due on bonds or otherwise, it shall be the duty of the county superintendent, the county treasurer and county auditor, acting as a board of adjusters, to assess upon the taxable property of such school corporation a tax not to exceed twenty mills on the dollar in any one year upon the assessed valuation thereof for the payment of the same, which tax so levied shall be extended upon the tax lists by the county auditor and be collected by the county treasurer as other taxes are collected and shall be applied upon and used for the payment of such indebtedness, and shall be paid to the creditors of such district upon the warrant of the county auditor countersigned by the county superintendent, and all warrants, bonds, interest coupons, receipted bills or accounts shall be filed in the office of the county auditor and in case such school corporation has a bonded indebtedness, it shall be the duty of such board of adjusters to levy a tax upon the property of such district sufficient to create a sinking fund for the redemption of such bonds upon the maturity of the same, such sinking

fund to be levied and provided for in compliance with the requirements of such bonds. [1890, ch. 62, § 105; R. C. 1899, § 725.]

#### ARTICLE 10.—VACANCIES.

§ 859. **Vacancy in office superintendent public instruction filled by appointment.** Should a vacancy occur in the office of the superintendent of public instruction, the governor shall have power and it shall be his duty to fill such vacancy by appointment, which appointment shall be valid until the next general election and until his successor is elected and qualified. [1890, ch. 62, § 106; R. C. 1899, § 726.]

§ 860. **Vacancy in office of county superintendent, how filled.** Should a vacancy occur in the office of county superintendent of schools, the board of county commissioners of such county shall have power and it shall be their duty to fill such vacancy by appointment, as provided by law, which appointment shall be valid until the next general election. The county auditor shall immediately notify the superintendent of public instruction of such appointment. [1897, ch. 75; R. C. 1899, § 727.]

§ 861. **Vacancy in office of director or treasurer, how filled.** When any vacancy occurs in the office of director or treasurer of a school district by death, resignation, removal from the district, or otherwise, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the district, and such superintendent shall immediately appoint in writing some competent person, who shall qualify and serve until the next annual school election. The county superintendent shall at the same time notify the clerk of the school district and the county auditor of every such appointment. [1890, ch. 62, § 108; R. C. 1899, § 728.]

§ 862. **Vacancy in office of clerk, how filled.** Should the office of clerk of a school district become vacant, the school board shall immediately fill such vacancy by appointment and the president of the board shall immediately notify the county superintendent and the county auditor of such appointment. [1890, ch. 62, § 109; R. C. 1899, § 729.]

§ 863. **Office, when deemed vacant.** Any office of a school district shall become vacant by resignation of the incumbent thereof, but such resignation shall not take effect until a successor has qualified according to law. Any office of a school district shall be deemed vacant if the person duly elected thereto shall neglect or refuse for the period of two weeks after the beginning of the term for which he is elected, to accept and qualify for such office and serve therein. Any school officer may be removed from office by a court of competent jurisdiction, as provided by law. [1890, ch. 62, § 110; 1891, ch. 56, § 22; R. C. 1899, § 730.]

#### ARTICLE 11.—EQUALIZATION OF INDEBTEDNESS.

§ 864. **Equalization of indebtedness by arbitration.** After the boundaries of a school district have been established, as provided for in this chapter, all school districts or parts of school districts that existed as school corporations, or as parts thereof before the taking effect of this code and that are now included in one school district shall effect an equalization of property, funds on hand and debts, or whenever the boundaries of two or more districts are rearranged, all districts affected by such change shall effect an equalization of property, funds on hand and debts. To effect this each school board of such corporation, constituting a school district under the operation of this chapter, shall select one arbitrator, and the several arbitrators so selected, together with the county superintendent shall constitute a board of arbitration to effect such equalization. If in any case the number of arbitrators, including the county superintendent, shall be an even number, the county treasurer

shall be included and be a member of such board. The county superintendent shall fix the time and place of such meeting. [1897, ch. 75; R. C. 1899, § 731.]

Board of arbitration takes into consideration school buildings owned by original district. *State ex rel Reynolds District v. School District*, 6 N. D. 488, 71 N. W. 772.

§ 865. **Tax to equalize and pay previous debts.** Such board shall take an account of the assets, funds on hand, the debts properly and justly belonging to or chargeable to each corporation or part of a corporation affected by such change, and levy such a tax against each as will in its judgment justly and fairly equalize their several interests. [1897, ch. 75; R. C. 1899, § 732.]

School township liable for debts of former district embracing, in part, same territory. *Coler v. Coppin*, 10 N. D. 86, 85 N. W. 988.

§ 866. **Maximum annual tax levy for such purposes.** When the amounts to be levied upon the several corporations or parts of corporations mentioned in the preceding section shall be fixed, a list thereof shall be made wherein the amount shall be set down opposite each corporation. The whole shall be stated substantially in the form herein required for certifying school taxes and addressed to the county auditor, and shall be signed by a majority of such board of arbitration; such levy shall be deemed legal and valid upon the taxable property of each corporation; provided, however, that not more than fifteen mills thereof, shall be extended against such taxable property in any one year, and such a levy not exceeding fifteen mills on the dollar shall be extended as in this section provided, from year to year, until the whole amount shall be so levied. The county auditor shall preserve such levies and shall extend the several rates from year to year, as above required by law for district taxes and the taxes shall be collected at the same time and in the same manner as other taxes are collected. [1890, ch. 62, § 113; R. C. 1899, § 733.]

§ 867. **Proceeds to be turned over to the respective districts.** Opposite the several descriptions of property on the tax list shall be entered the school district within which it lies, and all the proceeds of these equalizing taxes shall be collected and paid over to the treasurer of the proper school district within which the property is situated. The proceeds of taxes upon parts of districts lying outside of the districts as at present constituted, with which they were equalized, shall be paid to the treasurer of the school district within which the property is situated, the same as hereinbefore provided for regular taxes. [1890, ch. 62, § 114; R. C. 1899, § 734.]

§ 868. **Maximum tax levy for all school purposes.** The taxes levied for purposes of equalization shall be in addition to all other taxes for school purposes; provided, that all taxes for school purposes, including such taxes for equalization, shall not exceed thirty mills on the dollar in any one year. The provisions of this article shall apply to and govern all school districts and parts of school districts hereafter divided or consolidated with each other, or with other districts in the division uniting for apportionment of their debts and liabilities or property and assets. [1890, ch. 62, § 115; R. C. 1899, § 735.]

#### ARTICLE 12.—EXAMINATIONS AND CERTIFICATES.

§ 869. **Examination for teachers' certificates.** The superintendent of public instruction shall prepare, or cause to be prepared, all questions for the examination of applicants for teachers' certificates, both county and state, and shall prescribe rules for the conduct of all examinations. He shall examine, mark and file, or cause to be examined, marked and filed, all answer papers submitted by candidates for first, second and third grade county certificates, which answer papers shall be forwarded by the county superintendent immediately after the close of each examination to the superintendent of public instruction. He may appoint such clerical assistants as he may deem necessary, but the expenditures therefor shall not exceed in the aggregate the sum annually collected from applicants for county certificates for this purpose. [1890, ch. 62, § 116; R. C. 1899, § 736; 1901, ch. 85, § 1.]



**§ 870. 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 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. [1897, ch. 75; R. C. 1899, § 737; 1905, ch. 107, § 1.]

**§ 871. 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 university 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 875.

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. [1897, ch. 75; R. C. 1899, § 738; 1905, ch. 107, § 2.]

**§ 872. 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 establishing 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. [1890, ch. 62, § 119; R. C. 1899, § 739; 1905, ch. 107, § 3.]

**§ 873. Examination of teachers by county superintendent.** The county superintendent shall hold a public examination of all persons over eighteen years of age, offering themselves as candidates for teachers of common schools, at the most suitable place in the county, on the second Friday in March, and on the last Friday in May, August and October of each year, and, when necessary, such examination may be continued on the following day, at which time he shall examine them by a series of written or printed questions, according to the rules prescribed by the superintendent of public instruction. The county superintendent shall forward all answer papers submitted by candidates for county certificates, designating each by number instead of name, immediately after the close of the examination to the superintendent of public instruction for examination, marking, filing and recording. The superintendent of public instruction shall transmit, within thirty days from the date of said examination, a record of the standings of each applicant to the county superintendent, who shall then grant to the applicant a certificate of qualification, if from the percentage of correct answers required by the rules, said applicant is found to possess the requisite knowledge and understanding to teach in the common schools of the state the various branches required by law; provided, the county superintendent has sufficient evidence that the candidate is a person of good moral character, has had successful experience, if any, and possesses an aptness to teach and govern. [1897, ch. 75; R. C. 1899, § 740; 1901, ch. 85.]

**§ 874. 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, psychology, 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. [1897, ch. 75; R. C. 1899, § 741; 1901, ch. 85; 1903, ch. 83, § 6; 1905, ch. 107, § 4.]

**§ 875. 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. [1897, ch. 75; R. C. 1899, § 742; 1901, ch. 85; 1905, ch. 107, § 5.]

**§ 876. Fee for certificate.** Each applicant for a county certificate shall pay two dollars to the county superintendent, one dollar of which shall be paid into the county teachers' institute fund, to be used in support of teachers' institutes, or the teachers' training schools in the county, as otherwise provided, and one dollar of said fee shall be used by the superintendent of public instruction for such clerical assistance as he may deem necessary and competent for the reading of teachers' answer papers and work connected therewith. It shall be the duty of the county superintendent, immediately after each examination, to forward one dollar for each applicant for teachers' certificate to the superintendent of public instruction, such sums to be used by him as hereinbefore provided. [1897, ch. 75; R. C. 1899, § 743; 1901, ch. 85.]

**§ 877. 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. [1890, ch. 62, § 124; R. C. 1899, § 744; 1905, ch. 107, § 6.]

§ 878. **Proceedings to revoke. Teachers allowed defense.** In proceedings to revoke a certificate the county superintendent may act upon his personal knowledge or upon competent evidence obtained from others. In the latter case, action shall be taken only after a fair hearing, and the teacher must be notified of the charge and given an opportunity to make a defense at such time and place as may be stated in such notice. Upon his own knowledge the superintendent may act immediately without notice, after an opportunity has been afforded such teacher for personal explanation. When any certificate is revoked the teacher shall return it to the superintendent, but if such teacher refuses or neglects so to do the superintendent may issue notice of such revocation by publication in some newspaper printed in the county. [1890, ch. 62, § 125; R. C. 1899, § 745.]

#### ARTICLE 13.—DUTIES OF TEACHERS.

§ 879. **Give notice of opening and closing of school.** Each teacher on commencing a term of school shall give written notice to the county superintendent of the time and place of beginning such school and the time when it will probably close. If such school is to be suspended for one week or more in such term, the teacher shall notify the county superintendent of such suspension. [1890, ch. 62, § 126; R. C. 1899, § 746.]

§ 880. **When teacher not entitled to compensation.** No teacher shall be entitled to or receive any compensation for the time he teaches in any public school without a certificate valid and in force for such time in the county where such school is taught, except that if a teacher's certificate shall expire by its own limitation within six weeks of the close of the term, such teacher may finish such term without re-examination or renewal of such certificate. [1890, ch. 62, § 127; R. C. 1899, § 747.]

§ 881. **Teacher's register, what to contain.** Each teacher shall keep a school register, and at the close of each term make a report, containing the number of visits of the county superintendent, and such items and in such form as shall be required. Such report shall be made in duplicate, both copies of which shall be sent to the county superintendent, who, if he finds such report to be correct, shall immediately return one copy to the district clerk, same to be filed with him. No teacher shall be paid the last month's wages in any term until such report shall have been approved by the county superintendent and one copy returned to the district clerk. [1897, ch. 75; R. C. 1899, § 748.]

§ 882. **School year and school week defined. Holidays.** The school year shall begin on the first day of July and close on the thirtieth day of June of each year. A school week shall consist of five days and a school month of twenty days. No school shall be taught on a legal holiday nor on any Saturday. A legal holiday in term time falling upon a day which otherwise would be a school day shall be counted and the teacher shall be paid therefor, but no teacher shall be paid for Saturday, nor be permitted to teach on Saturday, to make up for the loss of a day in the term. [1897, ch. 75; R. C. 1899, § 749.]

§ 883. **Branches to be taught in all schools.** 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. [1890, ch. 62, § 130; 1895, ch. 56, § 1; R. C. 1899, § 750; 1905, ch. 106, § 2.]

**§ 884. Humane treatment to be taught in public schools.** There shall be taught in the public schools of North Dakota, in addition to 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. [1905, ch. 108.]

**§ 885. Teachers' institutes and teachers' training schools, how noticed. Penalty for failure to attend.** When a teachers' institute or teachers' training school is appointed to be held in or for any county it shall be the duty of the county superintendent to give written or printed notice thereof to each teacher in the public schools of the county, and as far as possible to all others not then engaged in teaching, who are holders of teachers' certificates, at least ten days before the opening of such institutes or teachers' training school of the time and place of holding it. Each teacher receiving such notice, engaged in teaching a term of school which includes wholly or in part the time of holding such institute or teachers' training school, shall close school and attend the same and shall be paid by the school board of the district his regular wages as teacher for the time he attended such institute or teachers' training school, as certified by the county superintendent, but no teacher shall receive pay unless he has attended four consecutive days, nor shall any teacher receive pay for more than five days. The county superintendent may revoke the certificate of any teacher in his county for inexcusable neglect or refusal, after due notice, to attend a teachers' institute or teachers' training school held for such county. The provisions of this section shall not apply to high school teachers, nor to teachers in cities organized for school purposes under a special law, nor to teachers in cities organized as independent districts under the provisions of this chapter. [1899, ch. 81; R. C. 1899, § 751.]

**§ 886. Pupil may be suspended for cause.** A teacher may suspend from school for not more than five days any pupil for insubordination or habitual disobedience, or disorderly conduct. In such case the teacher shall give immediate notice to the parent or guardian of such pupil, also to some member of the district school board of such suspension and the reason thereof. [1890, ch. 62, § 132; R. C. 1899, § 752.]

**§ 887. Assignment of studies to pupils.** It shall be the duty of the teacher to assign to each pupil such studies as he is qualified to pursue, and to place him in the proper class in any studies subject to the provisions in section 883; provided, that in a graded school under the charge of a principal or local superintendent, such principal or superintendent shall perform this duty. In case any parent or guardian is dissatisfied with such assignment or classifi-

cation, the matter shall be referred to and decided by the county superintendent. [1890, ch. 62, § 133; R. C. 1899, § 753.]

§ 888. **Bible not sectarian book, reading optional with pupil.** The Bible shall not be deemed a sectarian book. It shall not be excluded from any public school. It may at the option of the teacher be read in school without sectarian comment, not to exceed ten minutes daily. No pupil shall be required to read it nor be present in the school room during the reading thereof contrary to the wishes of his parents or guardian or other person having him in charge. Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, and respect for honest labor, obedience to parents and due deference for old age, shall be given by each teacher in the public schools. [1890, ch. 62, § 134; R. C. 1890, § 754.]

§ 889. **Physical education.** Physical education, which shall aim to develop and discipline the body and promote health through systematic exercise, shall be included in the branches of study required by law to be taught in the common schools, and shall be introduced and taught as a regular branch, to all pupils in all departments of the public schools of the state, and in all educational institutions supported wholly or in part by money from the state. It shall be the duty of all boards of education and boards of educational institutions, receiving money from the state, to make provision for daily instruction in all the schools and institutions under their respective jurisdiction, and to adopt such method or methods as will adapt progressive physical exercise to the development, health and discipline of the pupils in the various grades and classes of schools and institutions receiving aid from the state. [1899, ch. 85; R. C. 1899, § 754a.]

#### ARTICLE 14.—INSTITUTES, ASSOCIATIONS AND READING CIRCLE.

§ 890. **Teachers' county institute fund.** All money received by the county superintendent from examination fees for the county institute fund, and all money paid into this fund from the county general revenue fund, shall be used by him to aid in the support of teachers' institutes or teachers' training schools, to be held within or for the county and to pay necessary expenses incurred therein. The county superintendent shall present an itemized statement, duly verified, to the county auditor for the amount of all such necessary expenses and the auditor shall issue a warrant therefor as provided by law. The county superintendent shall, at the end of each year, submit a full and accurate statement of the receipts and expenditures of these funds, under oath, to the superintendent of public instruction. [1899, ch. 81; R. C. 1899, § 755.]

§ 891. **Appropriation for institute fund. Designation of conductors.** There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of fifty dollars each year to each organized county in the state in which there are ten or more resident teachers, which shall be designated as the state institute fund and which shall be used exclusively in employing persons of learning, ability and experience as conductors of teachers' institutes, and the further sum of ten cents a mile for the distance actually and necessarily traveled by a lecturer for such institute. The superintendent of public instruction after consultation with the county superintendents as to the special needs and wants of their respective counties, shall appoint the time, place and duration of these institutes and shall designate the persons to act as conductors of and lecturers at such institutes, as in his judgment the needs of the various counties demand. [1890, ch. 62, § 136; 1891, ch. 56, § 26; R. C. 1899, § 756.]

§ 892. **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 sections 890 and 891, and the appropriation specified by section 893 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. [1899, ch. 81; R. C. 1899, § 757; 1905, ch. 100, § 6.]

§ 893. **County commissioners may aid institutes.** The money assigned for any particular institute may be added to any fund furnished for the purpose by any county, and the institute extended as long as the entire fund will allow. If a sufficient county fund is not otherwise provided, the board of county commissioners may appropriate not more than fifty dollars in any county each year in aid of institutes. The superintendent of public instruction may require a statement of the amount of funds the county has on hand for this purpose at any time. [1890, ch. 62, § 138; R. C. 1899, § 758.]

#### ARTICLE 15.—COMPULSORY ATTENDANCE.

§ 894. **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. [1890, ch. 62, § 140; 1891, ch. 56, § 28; R. C. 1899, § 759; 1903, ch. 84; 1905, ch. 100, § 7.]

§ 895. **Penalty.** Any such parent, guardian or other person failing to comply with the requirements of the foregoing section, shall upon conviction thereof be deemed guilty of a misdemeanor, and shall be fined in a sum not less than five nor more than twenty dollars for the first offense and not less than ten dollars nor more than fifty dollars for the second and every subsequent offense with costs in each case. [1890, ch. 62, § 141; R. C. 1899, § 760.]

§ 896. **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, 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. [1897, ch. 75,; R. C. 1899, § 761; 1903, ch. 84; 1905, ch. 100, § 8.]

§ 897. **Child labor prohibited during school hours.** No child between eight and fourteen years of age shall be employed in any mine, factory or workshop or mercantile establishment, or, except by his parents or guardian, in any other manner, during the hours when the public schools in the city, village or district are in session, unless the person employing him shall first procure a certificate from the superintendent of schools of the city or village, if one is employed, otherwise from the clerk of the school board or board of education, stating that such child has attended school for the period of twelve weeks during the year, as required by law, or has been excused from attendance as provided in section 894; and it shall be the duty of such superintendent or clerk to furnish such certificate upon application of the parent, guardian or other persons having control of such child, entitled to the same. [1890, ch. 62, § 143; 1891, ch. 56, § 29; R. C. 1899, § 762.]



§ 898. **Penalty for violation.** Each owner, superintendent or overseer of any mine, factory, workshop or mercantile establishment, and any other person who shall employ any child between eight and fourteen years of age contrary to the provisions of this article, is guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense in a sum not less than twenty nor more than fifty dollars and costs. Each person authorized to sign a certificate as prescribed in the preceding section, who certifies to any materially false statement therein, shall be fined not less than twenty nor more than fifty dollars and costs. [1890, ch. 62, § 144; 1891, ch. 56, § 30; R. C. 1899, § 763.]

§ 899. **Prosecution, how brought.** Prosecutions under this article shall be brought in the name of the state of North Dakota before any court of competent jurisdiction, and the fines collected shall be paid over to the county treasurer and by him credited to the general fund of the state. [1890, ch. 62, § 145; R. C. 1899, § 764.]

ARTICLE 16.—FINES, FORFEITURES AND PENALTIES.

§ 900. **Penalty for neglect of duty by school director, treasurer or clerk.** Each person duly elected to the office of director, treasurer or clerk of any district, who, having entered upon the duties of his office, shall neglect or refuse to perform any duties required of him by the provisions of this chapter shall upon conviction be fined in the sum of ten dollars, and his office shall be deemed vacant. [1890, ch. 62, § 146; R. C. 1899, § 765.]

§ 901. **Penalty for false election returns.** Any judge or clerk of election, school district clerk or county auditor who willfully violates the provisions of this chapter in relation to elections or who willfully makes a false return shall upon conviction be deemed guilty of felony. [1890, ch. 62, § 147; R. C. 1899, § 766.]

§ 902. **Speculation in office prohibited.** No school officer shall personally engage in the purchase of any school bonds or warrants, nor shall any such officer be personally interested in any contract requiring the expenditure of school funds, except for the purchase of fuel and such supplies as are in daily use, but not including furniture, or the expenditure of funds appropriated by the state, county, school corporation or otherwise for any school purpose connected with his office. Any violation of this section shall be a misdemeanor. [1890, ch. 62, § 148; 1891, ch. 56, § 31; R. C. 1899, § 767.]

§ 903. **Penalty for unlawful drawing of school money.** Any person who draws money from the county treasury, who is not at the time a duly qualified treasurer of the school corporation for which he draws the money and authorized to act as such, shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than twenty-five dollars. [1890, ch. 62, § 149; R. C. 1899, § 768.]

§ 904. **Use of school funds. When embezzlement.** Each treasurer who shall loan any portion of the money in his hands belonging to any school district, whether for consideration or not, or who shall expend any portion thereof for his own or any other person's private use, is guilty of embezzlement, and no such treasurer shall pay over or deliver the school money in his hands to any officer or person or to any committee to be expended by him or them, but all public funds shall be paid out only by the proper treasurer as hereinbefore provided. [1890, ch. 62, § 150; R. C. 1899, § 769.]

§ 905. **Action to recover money when treasurer fails to pay over.** If any person shall refuse or neglect to pay over any money in his hands as treasurer of a school district to his successor in office his successor must, without delay, bring action upon the official bond of such treasurer for the recovery of such money. [1890, ch. 62, § 151; R. C. 1899, § 770.]

§ 906. **Penalty, when indorsement of unpaid warrants is not made.** Any violation by a district treasurer of the provisions of this chapter requiring

indorsement of warrants not paid for want of funds, and the payment thereof in the order of presentation and indorsement, is a misdemeanor punishable by a fine not exceeding one hundred dollars. [1890, ch. 62, § 152; R. C. 1899, § 771.]

§ 907. **Penalty for false reports.** Each clerk or treasurer of a district who willfully signs or transmits a false report to the county superintendent or willfully signs, issues or publishes a false statement of facts purporting or appearing to be based upon the books, accounts or records, or of the affairs, resources and credit of the district shall upon conviction be punished by a fine not exceeding fifty dollars or by imprisonment in the county jail not exceeding fifteen days. [1890, ch. 62, § 153; R. C. 1899, § 772.]

§ 908. **Penalty for willful disturbance of public school.** Each person, whether pupil or not, who willfully molests or disturbs a public school when in session or who willfully interferes with or interrupts the proper order or management of a public school by act of violence, boisterous conduct or threatening language, so as to prevent the teacher or any pupil from performing his duty, or who shall in the presence of the school or school children upbraid, insult or threaten the teacher shall upon conviction thereof be punished by a fine not exceeding twenty-five dollars or by imprisonment in the county jail for a period not exceeding ten days, or by both. [1890, ch. 62, § 155; R. C. 1899, § 773.]

§ 909. **Proposals for contracts.** No contract, except for teachers' or janitor's wages, or school books, involving the expenditure of school funds or money appropriated for any purpose relating to the educational system of this state or any county, district or school corporation therein, when the amount exceeds one hundred dollars, shall be let until proposals are advertised for, and after such advertisement, only to the lowest responsible bidder. Any violation of this section shall be a misdemeanor. [1890, ch. 62, § 156; R. C. 1899, § 774; 1903, ch. 83, § 7.]

#### ARTICLE 17.—BONDS.

§ 910. **School bonds, how issued.** Whenever a duly constituted school district, including independent school districts, in any organized county in the state at any regular or special meeting held for that purpose, shall determine by a majority vote of all the qualified voters of such school district present at such meeting and voting, to issue school district bonds for the purpose of building and furnishing a school house and purchasing grounds on which to locate the same, or to fund any outstanding indebtedness, or for the purpose of taking up any outstanding bonds, the district school board may lawfully issue such bonds in accordance with the provisions of this article. [1897, ch. 75; R. C. 1899, § 775; 1901, ch. 40.]

Municipal corporations estopped by recitals in bonds issued and negotiated, when. *Coler v. School Twp.*, 3 N. D. 249, 55 N. W. 587; *Flagg v. School District*, 4 N. D. 30, 58 N. W. 499; *Wilson v. Board of Education*, 12 S. D. 535, 81 N. W. 952; *Coler v. Rhoda School Twp.*, 6 S. D. 640, 63 N. W. 158.

§ 911. **Notice of election to vote bonds.** Before the question of issuing bonds shall be submitted to a vote of the school district, notices shall be posted in at least three public and conspicuous places in such district, stating the time and place of such meeting, the amount of bonds proposed to be issued and the time in which they shall be made payable. Such notices shall be posted at least twenty days before the meeting, and the voting shall be done by means of written or printed ballots, and all ballots deposited in favor of issuing bonds shall have thereon the words "for issuing bonds," and those opposed thereto shall have thereon the words "against issuing bonds," and if a majority of all the votes cast shall be in favor of issuing bonds the school board, through its proper officers shall forthwith issue bonds in accordance with such vote; but if a majority of all votes cast are against

issuing bonds then no further action can be had and the question shall not be again submitted to a vote for one year thereafter, except for a different amount; provided, that the question of issuing bonds shall not be submitted to a vote of the district and no meeting shall be called for that purpose until the district school board shall have been petitioned in writing by at least one-third of the voters of the district. [1890, ch. 62, § 160; R. C. 1899, § 776.]

§ 912. Bonds, denomination of. Interest. Limit of issue. The denomination of the bonds which may be issued under the provisions of this article shall be fifty dollars or some multiple of fifty, not exceeding five hundred dollars, and shall bear interest at the rate of not exceeding seven per cent per annum, payable semi-annually on the first day of January and July in each year, in accordance with interest coupons which shall be attached to such bonds; and no greater amount than one thousand dollars can be issued for any one school house except in districts, towns and villages of more than two hundred inhabitants, and in such districts the amount including all other indebtedness, shall not exceed five per cent of its assessed valuation, and may be made payable in not less than ten, nor more than twenty years from their date. [1897, ch. 75; R. C. 1899, § 777; 1901, ch. 40.]

Bona fide purchaser charged with knowledge of requirements of statute. District liable though bond may be invalid, when. *Bank v. School District*, 3 N. D. 496, 57 N. W. 787.

Statutory requirement. *Livingstone v. School District*, 9 S. D. 345, 69 N. W. 15.

Holder of void bond may recover on quantum meruit value of school house erected, when retained for continuous use by school district. *Livingstone v. School District No. 7*, 11 S. D. 150, 76 N. W. 301.

§ 913. Bonds, record of to be kept. Whenever any bonds are issued under the provisions of this chapter they shall be lithographed or printed on bond paper and shall state upon their face the date of their issue, the amount of the bonds, to whom and for what purpose issued, also the time and place of payment and the rate of interest to be paid. They shall have printed upon the margin the words "Authorized by article 17 of chapter 9 of the political code of North Dakota of 1905." Immediately after the issuing of school bonds pursuant to this chapter the clerk of the school district so issuing its bonds shall file with the county auditor of the county in which such district is situated, certified copies of all the proceedings had in such district relative to the issuing of such bonds and also a statement of the amount of the indebtedness of such school district; and before any of the bonds are disposed of they shall be presented to the county auditor of the county in which the school district issuing the same is situated. He shall carefully examine the records of the proceedings of such school district upon the question of issuing such bonds as the same are filed with him as hereinbefore directed, and shall satisfy himself by the evidence thus furnished whether or not all the laws of the state relative to the issuing of such bonds have been complied with. If satisfied that they have been and that the bonds in question have been legally issued, he shall in a book kept for such purpose preserve a register of each bond showing in separate columns the name of the school district issuing the bonds, the number of such bonds, the denomination thereof, the date of their issue, the date when they will mature, the names of the school officers executing the same and such other facts as may be pertinent, and he shall then indorse on each of such bonds the following certificate:

State of North Dakota, }  
County of ..... } ss.

I,.....county auditor, do hereby certify that the within bond is issued pursuant to law and is within the debt limit prescribed by the constitution of the state of North Dakota, and in accordance with the vote of .....school district,.....at a.....(regular or special) meeting held on the.....day of.....A. D. 19...., to issue bonds to the amount of.....dollars, and is a legal and valid debt

of such school district; that such bonds are duly registered in this office and that such school district is legally organized and the signatures affixed to such bonds are the genuine signatures of the proper officers of such school district.

The blanks shall be filled according to the facts and the certificate officially signed by the county auditor and attested by his official seal. Such bonds shall be signed by the president and clerk of the school board and shall be registered in a book to be kept by the clerk for that purpose in which shall be entered the number, date and name of the person to whom issued and the date when the same will become due. [1890, ch. 62, § 162; R. C. 1895, § 778.]

**§ 914. Sinking fund and interest tax.** In addition to the amount that may already be assessed under existing laws, there shall be levied upon the taxable property of the school district so issuing bonds at or before their issuance, and collected as other taxes are collected, a sum sufficient, not exceeding five mills on the dollar of assessed valuation of such districts, to pay interest upon such bonded indebtedness, and after five years in like manner a further tax not exceeding two mills on the dollar for a sinking fund to be used in payment of such bonds when they become due and for no other purpose, except that whenever there are sufficient funds on hand, belonging to such sinking fund, the school board may, in its discretion, purchase any of the outstanding bonds at their market value and pay for the same out of such sinking fund; provided, that the school district board may designate one or more national or state banks in its county for a depository for such sinking fund, and in such case the school board shall advertise for at least two weeks in some newspaper printed in the county for sealed proposals for the deposit of the sinking fund of such school district, reserving the right to reject any and all bids, and satisfying itself of the responsibility of all banks proposing to act as depositories. Before any bank shall be designated as such depository, it shall present to the school board a sealed proposal stating in writing what rate of interest will be paid for the deposit of such sinking fund, and shall submit to the board for its approval, a bond payable to the school district conditioned for the safe keeping and repayment of any funds deposited in such bank, which bond shall be signed by not less than three freeholders of the county as sureties, such bond to be in the sum required by the school board, but in no case less than double the probable amount of funds to be deposited in such bank. The approval of such bond shall be indorsed thereon by the board and deposited with the county auditor, and any bank whose bond shall have been so approved shall thereupon be designated by the school board as a depository for the sinking fund, and shall continue as such, until such time as the board shall readvertise for bids as aforesaid, or until such funds are needed for the payment or purchase of bonds as provided in this section. When the sinking fund of any school district is deposited by the school treasurer in the name of the school district in such depository, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such 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. Such depository shall furnish to the school district clerk prior to the fifth day of July of each year, a verified statement of the school district's account with such depository for the year ending June thirtieth, which statement shall show a credit to such deposit account of all sums of interest accruing on the sinking fund deposited. [1899, ch. 145; R. C. 1899, § 779.]

**§ 915. Bonds, how negotiated.** When any bonds shall be issued under the provisions of this article, the school district treasurer shall have authority to negotiate and sell such bonds for not less than par, and the said school district treasurer shall apply the proceeds arising from the sale of such bonds only for the purpose of building and furnishing a school house and

purchasing grounds on which the said school house shall be located, or to fund any outstanding indebtedness, or for the purpose of taking up any outstanding bonds, as provided by section 910 of this article. [1897, ch. 75; R. C. 1899, § 780.]

Board and not treasurer has authority to issue, negotiate or sell bonds. *Prairie School Township v. Haseleu*, 3 N. D. 328, 55 N. W. 938.

Provision for payment of exchange at place other than point of payment destroys negotiability. *Flagg v. School District*, 4 N. D. 30, 58 N. W. 499.

**§ 916. County auditor may levy tax to pay bonds, when.** When any school board neglects or refuses to levy a tax in accordance with law to meet outstanding bonds or the interest thereon, the county auditor shall have power to levy such tax and when collected to apply the proceeds to the payment of such coupons and bonds. [1890, ch. 62, § 165; R. C. 1895, § 781.]

**§ 917. Canceled bonds, record of.** When the bonds of any school district shall have been paid by the school board they shall be canceled by writing or printing in red ink the words "canceled and paid" across each bond and coupon, and the date of payment and amount paid shall be entered in the clerk's register against the proper number of the bonds, and the bonds so canceled shall be filed in the office of the district treasurer until all the outstanding bonds are paid, when they shall be destroyed in the presence of the full board. [1890, ch. 62, § 166; R. C. 1895, § 782.]

**§ 918. Proposals for building school houses.** When any school house is built with funds provided for in the manner herein authorized, the school board shall advertise at least thirty days in some newspaper printed in the county, or by posting notices for the same length of time in at least three of the most public and conspicuous places, if no newspaper is published in the county, for sealed proposals for building and furnishing such school house in accordance with plans and specifications furnished by the school board, reserving the right to reject any and all bids, and if any of the proposals shall be reasonable and satisfactory such board shall award the contract to the lowest responsible bidder and shall require of such contractor a bond in double the amount of the contract, conditioned that he will properly account for all money and property of the school district that may come into his hands and that he will perform the conditions of his contract in a faithful manner and in accordance with its provisions; and in case all the proposals are rejected, such board shall advertise anew in the same manner as before until a reasonable bid shall be submitted. [1890, ch. 62, § 167; 1891, ch. 56, § 32; R. C. 1899, § 783.]

**§ 919. Provisions of this article, how applicable.** The provisions of this article shall be applicable to and authorize the issuance of bonds by such school districts as have already built school houses and issued orders or warrants therefor and any such school district may vote to bond the indebtedness incurred by reason of building and furnishing a school house and purchasing a site for the same and bonds may be issued in the same manner as hereinbefore provided for building and furnishing school houses. [1890, ch. 62, § 168; 1891, ch. 56, § 32; R. C. 1899, § 784.]

#### ARTICLE 18.—SCHOOL FUNDS.

**§ 920. 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 article, as hereinafter provided. [1905, ch. 105, § 1.]

**§ 921. Depositories 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 article 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 depositaries, in which all the funds of such city or school district shall be deposited. [1905, ch. 105, § 2.]

§ 922. **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 inclosed 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. [1905, ch. 105, § 3.]

§ 923. **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 depositary, 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 depositaries 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 depositary 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 school district clerk; and any bank whose bond shall have been so approved shall thereupon be designated by the city council or school board as a city or school district depositary 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 depositary 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 article. If at any time the amount of funds on deposit in such depositaries 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 depositaries 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. [1905, ch. 105, § 4.]

§ 924. **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 depositaries, 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 depositaries as offer ample security for such deposits. In estimating the value of the security, offered by any proposed depositary, the capital, surplus and general credit of the bank shall be taken into consideration, as well as the bonds proposed to be given. [1905, ch. 105, § 5.]

§ 925. **Two or more banks may be designated.** In case two or more banks be designated as depositaries, the city or school district treasurer shall, as far as practicable, keep in each of the several depositaries equal balances at all times; provided, that in cities or villages where two or more banks are designated as depositaries, 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. [1905, ch. 105, § 6.]

§ 926. **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 depositaries, created by law, or such state or national bank as the city council or school board may designate. [1905, ch. 105, § 7.]

§ 927. **How depositaries for time deposits selected.** The depositaries 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 depositaries of the general city or school district funds, and the bank or banks designated as the depositary or depositaries 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 depositaries. [1905, ch. 105, § 8.]

§ 928. **Maximum rate of interest on call deposits.** To further secure the safety of the city or school district funds deposited under the provisions of this article, the city council or school board shall satisfy itself of the responsibility of the several banks proposing to act as depositaries, and any bank offering more than two per cent per annum on deposits, subject to check, shall not be designated as a depositary under the provisions of this article. [1905, ch. 105, § 9.]

§ 929. **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 depositaries. [1905, ch. 105, § 10.]

§ 930. **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. [1905, ch. 105, § 11.]

§ 931. **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. [1905, ch. 105, § 12.]

§ 932. **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. [1905, ch. 105, § 13.]

§ 933. **When bids not required.** It is the duty of the officers mentioned in this article to comply with the provisions hereof; provided, 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 article, 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. [1905, ch. 105, § 14.]

§ 934. **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. [1905, ch. 105, § 15.]

§ 935. **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. [1905, ch. 105, § 16.]

§ 936. **Violation constitutes misdemeanor.** Any officer violating any of the provisions of this article shall be deemed guilty of a misdemeanor. [1905, ch. 105, § 17.]

#### ARTICLE 19.—SPECIAL DISTRICTS.

§ 937. **Special district, how constituted.** All cities and incorporated towns and villages, which have heretofore been organized under the general school laws, and which are provided with a board of education, shall be governed by the provisions of this article. Any city or incorporated town or village, having a population of over one hundred and fifty inhabitants, may be constituted a special school district in the manner hereinafter prescribed, and shall then be governed by the provisions of this article; provided, that any city heretofore organized for school purposes under a special act, may adopt the provisions of this article by a majority vote of the voters therein, in the same manner as is prescribed for the organization of a new corporation under the provisions of this article. [1897, ch. 75; R. C. 1899, § 785; 1903, ch. 175.]

Change of charter changes school laws. State v. Power, 5 S. D. 627, 59 N. W. 1090.



§ 938. **Special school districts, creation of.** Whenever any incorporated city, town or village having a population of over two hundred inhabitants, shall constitute a portion of a school district, it may be organized into a special school district and the property and indebtedness of such organized school district divided as hereinafter provided. [1901, ch. 186, § 1.]

§ 939. **Election called upon petition.** In such case a petition, signed by a majority of the voters of such school district as shown by the last school election therein, may be presented to the county superintendent of schools for the division of such school district and the organization of such city, town or village into a special school district, and setting forth in detail the manner and terms of the division of the property, real and personal, and of the indebtedness, bonded or otherwise, of such school district as desired by the petitioners, and thereupon such superintendent shall within five days call an election to be held in such incorporated city, town or village, and an election to be simultaneously held in that portion of such school district situated outside of the limits of such city, town or village. [1901, ch. 186, § 2.]

Corporate existence not put in issue by general denial on information and belief.  
Board of Education v. Prior, 11 S. D. 292, 77 N. W. 106.

§ 940. **Notice of election.** Such superintendent shall cause notice of each of such elections to be given by publishing notice thereof, stating the time and place of holding such elections, in a newspaper published in such school district, if any, and if there is no newspaper published in such school district, then by posting notices of the election to be held in such city, town or village, in five public places therein, and by posting notices of the election to be held outside such city, town or village in five public places in said district outside such city, town or village. Such notices shall be so published or posted not less than ten nor more than fifteen days before such elections. Such superintendent shall appoint judges and clerks of such election, and the same shall be held and conducted in the same manner, and the polls shall be opened and closed at the same time as in other school district elections, and the results of such elections shall be certified and delivered to such superintendent immediately upon the close of the polls. [1901, ch. 186, § 3.]

§ 941. **Ballots, what printed on.** There shall be printed on the ballots used at such elections the following statement: "For the division of (here state the name of the school district to be divided) and the division of its property and debts as follows (here state the manner and terms of such division as set forth in the petition filed)." The voter shall write after such statement the word "Yes" if in favor of such division, and the word "No" if against it. [1901, ch. 186, § 4.]

§ 942. **Superintendent shall notify president of school board.** Such superintendent shall thereupon forthwith notify the president of the school board of such school district, and the auditor or clerk of such city, town or village, of the result of such elections. [1901, ch. 186, § 5.]

§ 943. **Division of district.** If such elections shall each be in favor of the division of such school district, such incorporated city, town or village shall thereafter constitute a special school district, and such original school district situated outside such city, town or village shall constitute a school district. [1901, ch. 186, § 6.]

§ 944. **Election.** The county superintendents shall thereupon call an election for the election of officers of such special school district, and school district, of which notice shall be given for at least fifteen days, which election shall be held as in other cases, in school districts, and special school districts, and such special school district shall thereafter be subject to all provisions of law affecting other school districts. [1901, ch. 186, § 7.]

§ 945. **Division of property.** Such school district and such special school district shall thereupon proceed to divide the property of such original school

district according to such petition, and shall be bound respectively to pay the indebtedness of such district as provided in such petition, and may make any contracts or conveyances necessary to carry into effect all the provisions of such petition. [1901, ch. 186, § 8.]

§ 946. **Bonded indebtedness. Tax to be levied to pay.** In case such original school district shall have outstanding any bonded debt for the payment of which no sufficient levy of taxes has been made, the board of education of such special school district, and the school board of such school district, shall at the time of making the next annual tax levy, levy a tax sufficient to pay the interest and also the principal of so much of such bonded debt as shall be assumed by such special school district, and such school district respectively as the same mature, and shall designate the amount of such tax to be collected in each year thereafter, and shall certify such levy to the county auditor, who shall thereupon enter and extend upon the tax list in each year the amount of such tax to be collected in that year. [1901, ch. 186, § 9.]

§ 947. **Bonded debt. Special school district and school district to pay.** Such special school district and such school district shall provide for and pay according to the terms of the bonds, such portion of such bonded debt as is assumed by it. [1901, ch. 186, § 10.]

§ 948. **Special school districts. Formation of under present law not prohibited.** Nothing in this article shall be construed to prevent or affect the formation of special school districts in accordance with the provisions of law now in force, or to require the equalization or adjustment of the property assets or indebtedness of districts formed under the provisions of this article, otherwise than as herein provided. [1901, ch. 186, § 11.]

§ 949. **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 864. [1897, ch. 75; R. C. 1899, § 786; 1905, ch. 99.]

§ 950. **Name of body corporate.** Every such district shall be a body corporate for school purposes by the name of "The board of education of the city, town or village (as the case may be) of.....(here insert the corporate name of the city, town or village) of the state of North Dakota,"

and shall possess all the powers and duties usual to corporations for public purposes or conferred upon it by this article or which may hereafter be conferred upon it by law; and in such name it may sue and be sued, contract and be contracted with, and hold and convey such real and personal property as shall come into its possession by will or otherwise and it shall procure and keep a corporate seal by which its official acts may be attested. [1890, ch. 62, § 171; R. C. 1899, § 787.]

**§ 951. Conveyance of school property, how executed.** Any such city or incorporated town or village is authorized and required, upon the request of the board of education, to convey to such board of education all property within the limits of any such corporation heretofore purchased by it for school purposes and now held and used for such purposes, the title to which is vested in any such civil corporation. All conveyances for such property shall be signed by the mayor or president of the board of trustees and attested by the clerk of such corporation, and shall have the seal of the corporation affixed thereto and be acknowledged by the mayor or president in the same manner as other conveyances of real estate. [1890, ch. 62, § 172; R. C. 1899, § 788.]

**§ 952. Special school districts, how organized.** When a petition signed by one-third of the voters of a city, incorporated town or village or a school district, in which is located a city or incorporated town or village entitled to vote at such election, is presented to the council or trustees of such city, incorporated town or village or school district, asking that such city, incorporated town or village or school district be organized as a special school district, such council or board of trustees shall within ten days order an election for such purpose, notice of which shall be given, and the election conducted and the returns made in the manner provided by law for the annual school election; and the voters of such city, incorporated town or village or school district shall vote for or against organization as a special school district at such election. [1897, ch. 75; R. C. 1899, § 789.]

**§ 953. Election of board of education.** If a majority of the votes cast at such election is for organization as a special school district, another election shall be called in the same manner as is prescribed in the foregoing section, at which the voters of such city, incorporated town or village or school district shall elect five members of the board of education, two of whom shall serve until the first annual election, two until the second annual election, and one until the third annual election thereafter, and until their successors are elected and qualified, and their respective terms shall be determined by lot. [1897, ch. 75; R. C. 1899, § 790.]

**§ 954. Terms of office. Quorum.** The board of education of each special district shall consist of five members who shall be elected by the legal voters thereof and who shall hold their office for the term of three years and until their successors are elected and qualified, except as provided for first elections under this article, and three members shall constitute a quorum for the transaction of business at any legal meeting. [1890, ch. 62, § 175; R. C. 1899, § 791.]

**§ 955. Members not to be interested in school contracts.** The members of such board shall receive no compensation, and shall not be interested, directly or indirectly, in any contract for making any improvements or repairs or for erecting any building or for furnishing any material or supplies for their district. [1890, ch. 62, § 176; R. C. 1899, § 792.]

**§ 956. Annual and special meetings of board.** The annual meeting of such board of education shall be held on the second Tuesday in July following the annual election, at which time the newly elected members shall assume the duties of their office. Each board shall meet for the transaction of business as often as once in each calendar month thereafter and may adjourn for a shorter time. Special meetings may be called by the president or in

his absence by any two members of the board by giving a personal notice to each member of the board or by causing a written or printed notice to be left at his last place of residence at least forty-eight hours before the time of such meeting. [1890, ch. 62, § 177; R. C. 1899, § 793.]

§ 957. **Organization of board.** At the annual meeting on the second Tuesday in July of each year such board of education shall organize by electing a president from among its members who shall serve for one year; and they shall also elect a clerk, not one of their own number, who shall hold his office during the pleasure of the board and receive such compensation for his services as shall be fixed by the board. In the absence of the president at any meeting, a president pro tempore may be elected by the board. [1890, ch. 62, § 178; R. C. 1899, § 794.]

§ 958. **Duties of president.** The president shall preside at all meetings of the board, appoint all committees whose appointment is not otherwise provided for and sign all warrants ordered by the board to be drawn upon the treasurer for school moneys and perform other acts required by law. [1890, ch. 62, § 179; R. C. 1899, § 795.]

§ 959. **Duties of clerk. Records.** The clerk shall keep a true record of all the proceedings of the board, take charge of its books and documents, countersign all warrants for school moneys drawn upon the treasury by order of the board and affix the corporate seal thereto and perform such other duties as the board may require. The records, books, vouchers and papers of the board shall be open to examination by any taxpayer of the district. Such record or a transcript thereof certified by the clerk and attested by the seal of the board, shall be received in all courts as prima facie evidence of the facts therein set forth. [1890, ch. 62, § 180; R. C. 1899, § 796.]

§ 960. **Powers and duties of board.** Each board of education shall have power and it shall be its duty:

1. To establish a system of graded common schools, which shall be free to all children of legal school age, residing within such special district, and shall be kept open not less than six nor more than ten months in any year.
2. To establish and maintain such schools in its city, town or village as it shall deem requisite or expedient and to change or discontinue the same.
3. To establish and maintain a high school, whenever in its opinion the educational interests of the corporation demand the same, in which such courses of study shall be pursued as shall be prescribed or approved by the superintendent of public instruction, together with such additional courses as such board of education may thereafter deem advisable to establish.
4. To purchase, sell, exchange and hire school houses and rooms, lots or sites for school houses, and to fence and otherwise improve them as it deems proper.
5. Upon such lots and upon such sites as may be owned by such special district to build, alter, enlarge, improve and repair school houses, outhouses and appurtenances as it may deem advisable.
6. To purchase, sell, exchange, improve and repair school apparatus, text books for the use of the pupils, furniture and appendages and to provide fuel for the schools.
7. To have the custody of all school property of every kind and to see that the ordinances and by-laws of the city or village in relation thereto are observed.
8. To contract with, employ and pay all teachers in such schools and to dismiss and remove for cause any teacher whenever the interests of the school may require it; but any such teacher shall be required to hold a certificate to teach, issued by the county superintendent or the superintendent of public instruction, and if any such teacher holds only a county certificate the board may impose such further requirements as the best interests of the

several grades may require. No person who is a relative of any member of the board shall be employed as teacher without the concurrence of the entire board.

9. To employ, should it deem expedient, a competent and discreet person as superintendent of schools and to fix and pay a proper compensation therefor, and such superintendent may be required to act as principal or teacher in such school.

10. To defray the necessary and contingent expenses of the board, including the compensation of its clerk.

11. To adopt, alter and repeal, whenever it may deem expedient, rules and regulations for organizing, grading, government and instruction and the reception of pupils, their suspension and expulsion and their transfer from one school to another. But no pupil shall be suspended or expelled except for insubordination, habitual disobedience or disorderly conduct; such suspension shall not be for a longer period than ten days, nor such expulsion beyond the end of the current term of school.

12. Each member shall visit, at least twice in each year, all the public schools in the city or village.

13. To make a report on July first, or as soon thereafter as practicable, of the progress, prosperity and condition, financially as well as educational, of all the schools under its charge, a copy of which, together with such further information as shall be required by the superintendent of public instruction, shall be forwarded to the county superintendent, the same as reports are made by other school districts; and such report or such portion thereof as the board of education shall consider advantageous to the public, shall be published in a newspaper in the city or village, and in cities and villages of over eight hundred inhabitants it may be published in pamphlet form.

14. To admit children of persons not living in such special district into the schools of such district, and to fix and collect the tuition therefor, if in its judgment the best interests of the school will permit.

15. To cause an enumeration of the children of school age within such special district, including those residing in any territory thereto attached for school purposes, to be made annually, as provided for other school districts, and return the same to the county superintendent. [1897, ch. 75; R. C. 1899, § 797.]

§ 961. **Treasurer, custodian of school moneys.** All moneys from whatever source, which the board of education of any special district shall by law be authorized to receive, shall be paid over to the treasurer of such board and he shall charge the same to the proper fund. [1890, ch. 62, § 182; R. C. 1899, § 798.]

§ 962. **Schools under supervision of whom.** The schools of each special district shall be under the immediate supervision of the board of education or the school superintendent appointed by such board, subject to such general directions and supervision by the county superintendent as are provided for in this chapter. [1890, ch. 62, § 183; R. C. 1899, § 799.]

§ 963. **Taxable property.** The taxable property of the whole school corporation including the territory attached for school purposes, shall be subject to taxation. All taxes collected for the benefit of the school shall be paid in money, and shall be placed in the hands of the treasurer, subject to the order of the board of education. [1890, ch. 62, § 184; R. C. 1899, § 800.]

§ 964. **Annual school tax.** The board of education shall on or before the twentieth day of July of each year levy a tax for the support of the schools of the corporation, including any expenditures allowed by law, for the fiscal year next ensuing, not exceeding in any one year thirty mills on the dollar on all the real and personal property within the district which is taxable according to the laws of this state, the amount of which levy the clerk of

the board shall certify to the county auditor, who is authorized and required to place the same on the tax roll of such county to be collected by the county treasurer as other taxes and paid over by him to the treasurer of the board of education, of whom he shall take a receipt in duplicate, one of which he shall file in his office and the other he shall forthwith transmit to the clerk of the board of education. [1890, ch. 62, § 185; R. C. 1899, § 801.]

§ 965. **Expenditures. Contracts.** No expenditures involving an amount greater than one hundred dollars shall be made except in accordance with the provisions of a written contract, and no contract involving an expenditure of more than five hundred dollars for the purpose of erecting any public buildings or making any improvements shall be made except upon sealed proposals and to the lowest responsible bidder, after public notice for ten days previous to receiving such bids. [1890, ch. 62, § 186; R. C. 1899, § 802.]

§ 966. **Treasurer.** The treasurer of any city, town or village comprising a special district shall be treasurer of the board of education thereof. [1890, ch. 62, § 187; R. C. 1899, § 803.]

§ 967. **Treasurer, duties of.** The treasurer of each board of education shall keep a true account of the receipts and expenditures of the various funds separately, and shall prepare and submit in writing a quarterly report of the state of the finances of the district and shall, when required, produce at any meeting of such board or any committee appointed for the purpose of examining his accounts, all books and papers pertaining to his office. He shall safely keep in his possession or under his control all school moneys coming into his hands, and shall pay out such moneys only upon a warrant signed by the president, countersigned by the clerk and attested by the corporate seal of the board. [1890, ch. 62, § 188; R. C. 1899, § 804.]

§ 968. **Treasurer's bond.** The treasurer of the board shall execute a bond to such board, with sufficient sureties to be approved by the board, in such sum as such board may from time to time require, as near as can be ascertained in double the amount of the moneys likely to come into his hands, conditioned for the faithful discharge of his duties as treasurer; which bond shall be in addition to his bond to the city, town or village. In case of the failure of the city, town or village treasurer to give such bond within ten days after being required so to do by such board of education, such treasurer's office shall become vacant, and the council or board of trustees of such city, town or village shall appoint another person in his place, who shall give such additional bond. [1890, ch. 62, § 189; R. C. 1899, § 805.]

§ 969. **Board assumes control after equalization of debts and property.** When any board of education shall be organized under the provisions of this article, it shall, after the equalization hereinafter provided for, assume control of the schools of the city, town or village and shall be entitled to the possession of all property of the former district or districts or parts thereof lying within such city, town or village, for the use of schools. Such board shall also be entitled to its due proportion of all moneys on hand and taxes already levied but not collected, and shall be liable for a proper amount of the debts and liabilities of such former district, to be determined in the manner provided in this chapter for the equalization, determination and division of debts, property and assets of school districts consolidated or divided. [1890, ch. 62, § 190; R. C. 1899, § 806.]

§ 970. **Special district may become part of general district, when.** Any special district organized under the general school laws and provided with a board of education may become a part of the school district in which it is located, whenever it is so decided by a majority vote of the school electors of the city, town or village and of such school district voting at an election called for that purpose. An election for such purpose shall be ordered and proper notice thereof given by the board of education and the school board of such district in the same manner as is required for the election

of school officers in such district, when petitioned by one-third of the voters resident in such district, and when so united the determination and division of the debts, property and assets shall be made by arbitration as provided in this chapter for school districts consolidated or divided. Villages not incorporated but heretofore organized under the general school laws and provided with a board of education shall become a part of the school district in which they are located and the determination and division of the property, debts and assets shall be made by arbitration as aforesaid. [1890, ch. 62, § 191; R. C. 1899, § 807.]

§ 971. **Election of boards of education in special districts.** On the third Tuesday in June each year an election shall be held in each special district at which such members of the board of education shall be elected at large as shall be necessary to fill all vacancies therein caused by expiration of terms of office or otherwise, and each member elected shall serve for a term of three years commencing on the second Tuesday in July following his election and until his successor is elected and qualified, except when elected to serve an unexpired term. The polls shall be open at nine o'clock a. m. and kept open until four o'clock p. m. on the day of such election. [1890, ch. 62, § 192; 1891, ch. 56, § 34; R. C. 1899, § 808.]

§ 972. **Notice of election, contents of.** Such election shall be called by the board of education of such special district, which shall cause notice thereof to be posted or published as required by law for the annual election of civil officers in the city, town or village comprising such special district; such notice shall be signed by the clerk, or, in his absence, by the president of the board of education of such district, and shall state the time and place of holding such election and what officers are to be elected and their terms. [1890, ch. 62, § 194; R. C. 1899, § 809.]

§ 973. **Notice of election, form of.** Such notice shall be in substantially the following form:

Notice is hereby given, that on Tuesday the ..... day of June A. D....., an annual election will be held at ..... (here insert polling place) for the purpose of electing the following members of the board of education ..... (here insert terms for which they are to be elected), for the city, town or village of ..... (here insert name) and the polls will be open at nine o'clock a. m. and closed at four o'clock p. m. of that day.

By order of the board of education.

Signed .....,  
Clerk.

[1890, ch. 62, § 194; R. C. 1895, § 810.]

§ 974. **Election precincts and officers of election.** At least fifteen days prior to such election the board of education of each special district shall designate one polling place and appoint two persons to act as judges and two persons to act as clerks. Before opening the polls each of such judges and clerks shall take an oath that he will perform his duties as judge or clerk (as the case may be) according to law and to the best of his ability, which oath may be administered by any officer authorized to administer oaths or by either of said judges or clerks to the others. [1890, ch. 62, § 195; R. C. 1899, § 811.]

§ 975. **Canvass of returns.** Such election shall be conducted and the votes canvassed in the manner provided by law for elections of county officers, and returns shall be made showing the number of votes cast for each person for any office, which shall be signed by the judges and clerks of election, and the person receiving the highest number of votes for each office in the district shall be declared elected, and the returns shall be filed with the clerk of the board of education within two days thereafter. [1890, ch. 62, § 196; R. C. 1895, § 812.]

§ 976. **Certificates of election.** The clerk of the board shall give to each person elected at such election a certificate stating that he was duly elected as a member of the board of education and the time he is to take the oath and enter upon the duties of his office. Such clerk shall also certify as soon as possible to the county superintendent of schools, the persons so elected and their terms. [1890, ch. 62, § 197; R. C. 1899, § 813.]

§ 977. **Vacancies, how filled.** The board of education of each city, town and village shall have power to appoint a person to fill any vacancy which may occur in the board; and such appointee shall hold his office until the next annual school election, at which time a person shall be elected to serve for the unexpired term; but if such vacancy shall occur within ten days before an annual election, such appointee shall hold office until the annual election in the following year. When any such appointment shall be made the clerk shall certify the same to the county superintendent. [1890, ch. 62, § 198; R. C. 1899, § 814.]

§ 978. **Oath of office.** Before entering upon the duties of his office each person elected or appointed as a member of the board of education, shall take the oath or affirmation prescribed in section 211 of the constitution which oath shall be filed with the clerk of the board. [1890, ch. 62, § 199; R. C. 1895, § 815.]

§ 979. **Bonds, how and when issued.** Whenever the taxes authorized by law shall not be sufficient or shall be deemed by the board of education to be burdensome, bonds may be issued and negotiated for the purpose of raising money to purchase a site or to erect suitable buildings thereon, or to fund any outstanding indebtedness, or for the purpose of taking up any outstanding bonds, of the school corporation; provided, that the issuance of such bonds shall first be authorized by the voters of such special district as hereinafter prescribed. Such bonds shall be signed by the president and clerk and attested by the corporate seal of the board, shall bear the date of their issue, and be payable in not less than five nor more than twenty years from their date, at such place as shall be designated upon their face. The denominations of the bonds which may be issued under the provisions of this article shall be fifty dollars or some multiple of fifty, and shall bear interest at not more than seven per cent per annum, payable semi-annually on the first day of January and July in each year, shall show upon their face that they are issued for school purposes, and shall be sold at not less than par. Each bond shall have indorsed thereon the certificate of the clerk of the board stating that such bond is issued pursuant to law and is within the debt limit prescribed by the constitution. [1897, ch. 75; R. C. 1899, § 816.]

§ 980. **Election for issuing bonds.** Before issuing any such bonds the board of education shall call an election for the purpose of submitting to the voters of the district the question of issuing such bonds, notice of which shall be given in the manner prescribed by law for giving notice of the annual election for the several officers of the city, town or village comprising such special district, except that such notice shall be given twenty days before such election. Such election shall be conducted and the returns made in the manner provided for the annual election of members of the board of education and may be held at the time of the annual school election or at any other time named in such notice. The notice of such election shall clearly state the amount of the bonds proposed to be issued, the time in which they shall be made payable, the purpose for which they are to be issued, and the time and place such elections will be held. At such election the voters shall have written or printed on their ballots "for issuing bonds" or "against issuing bonds," and if a majority of the votes cast is for issuing bonds such bonds shall be issued and negotiated by such board of education, but if a majority thereof is against issuing bonds such bonds shall not be issued, nor shall the question be again submitted for one year thereafter except for a different amount and



then only upon a written petition of a majority of the voters of the district. [1890, ch. 62, § 201; R. C. 1899, § 817.]

**§ 981. Bonds to specify what. Debt limit.** The bonds, the issuance of which is provided for in the foregoing section, shall specify the rate of interest and the time when the principal and interest shall be paid; and no district shall issue bonds in pursuance of this article in a sum greater than five per cent of its assessed valuation, including other debts. [1890, ch. 62, § 202; R. C. 1899, § 818.]

**§ 982. Levy for interest and sinking fund.** The board of education at the time of its annual tax levy for the support of schools shall also levy a sufficient amount to pay the interest as the same accrues on all bonds issued under provisions of this article, and also to create a sinking fund for the redemption of such bonds, which it shall levy and collect in addition to the rate per cent authorized by the provisions aforesaid for school purposes, and such amount of funds when paid into the treasury shall be and remain a special fund for such purpose only, and shall not be appropriated in any other way except as hereinafter provided. At or before the issuance of any bonds as herein provided the board shall by resolution provide for such annual levy to pay the interest and to create such sinking fund, and such resolution shall remain in force until all such bonds and the interest thereon shall have been paid. [1890, ch. 62, § 203; R. C. 1899, § 819.]

Board estopped from pleading failure to provide sinking fund where bond recites law complied with. *Wilson v. Board of Education*, 12 S. D. 535, 81 N. W. 952.

**§ 983. Investment of sinking fund. School districts.** All moneys raised for the purpose of creating a sinking fund for the final redemption of all bonds issued under this article shall be invested annually by the board of education of any special school district in this state as follows, viz:

1. In the bonds of this state or of the United States.

2. Special school district board may designate one or more national or state banks in the county where such special school district is situated, as a depository for such sinking fund, and in such case the school board shall advertise for at least two weeks in some newspaper printed within the limits of said special school district, if there be one, if not, in the county where said school district is situated, for sealed proposals for the deposit of the sinking fund of such school district, reserving the right to reject any and all bids, satisfying itself of the responsibility of all banks proposing to act as depositories. Before any bank shall be designated as such depository it shall present to the school board a sealed proposal stating in writing what rate of interest will be paid for the deposit of such sinking funds, and shall submit to the board for its approval, a bond payable to the special school district conditioned for the safe keeping and repayment of any funds deposited in such bank, which bond shall be signed by not less than three freeholders of this state as sureties, or some surety bond company qualified to do business in this state, and such bond to be in the sum required by the school board and in no case to be less than double the probable amount of the funds to be deposited in such bank. The approval of such bond shall be indorsed thereon by the board and deposited with the county auditor, and any bank whose bond shall have been so approved shall thereupon be designated by the school board as a depository for the sinking fund, and shall continue as such, until such time as the board shall direct the withdrawal of such funds, or until such funds are needed for the payment or the purchase of bonds, as provided for in this article. When the sinking fund of any special school district is deposited by the treasurer of the board of education of said school district in the name of the school district as such depository, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such funds from the failure, bankruptcy or any other act of any 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.

Such depository shall furnish to the clerk of the board of education of such special school district prior to the fifth day of July of each year, a verified statement of the school district account with such depository for the year ending June thirtieth, which statement shall show a credit to such deposit account of all sums of interest accruing on the sinking fund deposited.

3. The board of education of any special school district may buy and cancel the bonds of such district and pay for the same with the moneys in the sinking fund created to pay such bonds.

4. In first mortgages on farm lands in this state only in the following manner, to wit:

(a) That said first mortgages and all of them, shall run for a period of time and not to exceed ten years, and that the funds so invested shall bear interest at a rate not less than six per cent per annum and such interest when paid shall be covered into, and become a part of, the said sinking fund.

(b) First mortgage loans shall only be made upon cultivated lands within the state, and to persons who are actual residents thereof. And in no case on lands of which the appraised value is less than seven dollars and fifty cents per acre, and in sums not more than one thousand dollars to any one person, firm or corporation. Such appraisalment to be made by the school board of such special school district or by some competent person designated by them for the purpose. [1890, ch. 62, § 204; R. C. 1899, § 820; 1901, ch. 190.]

§ 984. **Satisfaction and foreclosure of mortgages.** All or any of said mortgages may be satisfied at any time after five years from the date when made, on payment of the full amount due thereon, by an instrument in writing executed in the corporate name of the special school district which shall be the payee in all notes taken for loans as herein provided, and the mortgagee in all mortgages taken; such instrument to be executed and acknowledged in the same manner as is or may be provided for by law for the execution and acknowledgment of transfers of real estate by corporations. Such mortgages may be foreclosed by advertisements or an action in the name of the special school district in any court of competent jurisdiction as is now or may be provided by law. [1890, ch. 62, § 204; R. C. 1899, § 820; 1901, ch. 190.]

§ 985. **Interest coupons.** When the interest coupons of the bonds hereinbefore authorized shall become due they shall be promptly paid, upon presentation, by the treasurer out of any moneys in his hands collected for that purpose, and he shall indorse in red ink upon the face of such coupons the word "paid" and the date of payment and sign the initials of his name. [1890, ch. 62, § 205; R. C. 1899, § 821.]

§ 986. **Security for payment of bonds.** The school fund and property of such school corporation and territory attached for such purposes is hereby pledged to the payment of the interest and principal of the bonds mentioned in this article as the same may become due. [1890, ch. 62, § 206; R. C. 1899, § 822.]

§ 987. **Bond register.** The clerk of the board of education shall register in a book provided for that purpose the bonds issued under this article and all warrants issued by the board, which register shall show the number, date and amount of such bonds and to whom payable. [1890, ch. 62 § 207; R. C. 1899, § 823.]

§ 988. **Refunding bonds, issuance of.** The board of education of any special or independent school district shall have power, whenever two-thirds of the members of such board shall deem it necessary and for the best interests of such school district, to issue bonds for the purpose of refunding any outstanding bonds when the same become due. Such bonds shall be issued in denominations of fifty dollars or some multiple of fifty, and shall not exceed in amount the face value of the bonds they are issued to replace, and shall not bear a higher

rate of interest than seven per cent per annum, payable semi-annually on the first day of January and July of each year, nor run for a longer period than twenty years. [1897, ch. 75; R. C. 1899, § 824.]

§ 989. **Bonds may be exchanged.** Such refunding bonds may be exchanged at par for an equal amount of outstanding bonds or may be sold at not less than par value and the proceeds applied solely to the payment of the bonds to be refunded, except that any premium that may be received on the sale of such bonds shall be kept as a separate fund and used for the payment of the interest on such bonds. [1891, ch. 59, § 2; R. C. 1899, § 825.]

§ 990. **Issue of bonds, how governed.** In the issuance of such refunding bonds the board of education shall be governed by the provisions of section 981 to 987. [1891, ch. 59, § 3; R. C. 1899, § 826.]

§ 991. **Surplus funds, how transferred.** Any moneys remaining in the treasury of such school district, appropriated or held for the purpose of paying such bonds so refunded, may, at the discretion of the board of education at any time within six months after such refunded bonds have been taken up and canceled, be transferred to the building or contingent fund of such district. [1891, ch. 59, § 4; R. C. 1899, § 827.]

#### ARTICLE 20.—INDEPENDENT SCHOOL DISTRICTS.

§ 992. **Independent districts, how organized.** Any city heretofore organized for school purposes under a special law and provided with a board of education may become incorporated as an independent school district under the provisions of this article in the manner following. Whenever one-eighth of the legal voters of such city voting at the preceding municipal election shall petition the mayor and council thereof to submit the question as to whether such city shall establish an independent school district under this article to a vote of the electors in such city it shall be the duty of such mayor and council 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 at such election, but such question shall not be submitted oftener than once in two years. [1890, ch. 64, § 1; R. C. 1899, § 828.]

§ 993. **Notice of election.** The mayor of such city shall cause at least twenty days' notice of such election to be given by publishing a notice thereof in one or more newspapers within such city, but if no newspaper is published therein, then by posting at least five copies of such notice in each ward or voting precinct. [1890, ch. 64, § 2; R. C. 1899, § 829.]

§ 994. **Form of ballots. Returns.** The ballots to be used at such election shall be in the following form: "For establishing an independent school district" or "against establishing an independent school district." The judges of such election shall make returns thereof to the city council 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. If a majority of the votes cast at such election shall be for establishing an independent school district, such independent school district shall thenceforth be deemed to be organized under this article and the board of education then in office shall thereupon exercise the powers conferred upon like officers in this article until their successors are elected and qualified. [1890, ch. 64, § 3; R. C. 1899, § 830.]

§ 995. **Boundaries of independent districts.** All that portion included within the corporate limits of any city together with the additions that are now or may be hereafter attached to such city limits shall be constituted and established an independent school district to be designated as the "Independent School District of the City of . . . . ." and a board of education is hereby established for the same. [1890, ch. 64, § 4; R. C. 1899, § 831.]

§ 996. **Members of board, how elected. Quorum.** Such board shall consist of one member from each ward in the city, and when the city is divided into an even number of wards, then such city shall elect one member of such

board at large. Such members shall hold their office for the term of two years and until their successors are elected and qualified. A majority of the members of such board shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn. The electors in each ward in such city shall elect one member of such board, and the electors of such city shall elect one member of the board at large. The wards having even numbers shall hold their election in each even numbered year, and the wards having odd numbers shall hold their election in each odd numbered year. The member at large shall be elected biennially in the even numbered years; provided, when such city is divided into three wards, such board shall consist of five members, one member from each ward and two members to be chosen at large; provided, also, that at the first election members from even numbered wards shall be elected for a term of one year, and members from odd numbered wards for a term of two years; when two members are to be chosen at large at such first election, one shall be elected for a term of one year and one for a term of two years. [1897, ch. 75; R. C. 1899, § 832.]

§ 997. **Date of election. Canvass of votes.** The election referred to in the foregoing sections shall be held on the third Monday in April of each year, at the usual polling place for municipal elections in each ward. The mayor shall have authority and is hereby empowered to appoint two judges and one clerk for such election, who shall open the polls at the hour of eleven o'clock in the forenoon and hold the same open until five o'clock in the afternoon of the same day. Such election shall be conducted in all respects and the polls closed and votes canvassed in the same manner as municipal elections, and the judges shall have the same power and authority in all respects as the judges of election for municipal officers, and after the votes are canvassed the judges shall make their returns to the city clerk or auditor, as the case may be, within twenty-four hours after the polls are closed, and the city council shall canvass such returns and declare the result within three days thereafter, which result shall be entered upon the records of the city, and it shall be the duty of the city clerk or auditor to issue certificates of election to the persons declared elected. The judges and clerks of election shall receive the same compensation for their services as at municipal elections for mayor and aldermen. [1890, ch. 64, § 6; R. C. 1899, § 833.]

§ 998. **Vacancies, how filled.** If any vacancy occurs in the board for any cause, the remaining members thereof shall fill such vacancy by appointment until the next annual election, and at such election a new member shall be elected to fill the unexpired term. [1890, ch. 64, § 7; R. C. 1899, § 834.]

§ 999. **Style and powers of board.** The board so elected shall be a body corporate in relation to all the powers and duties conferred upon it by this article, and shall be styled "The Board of Education of the Independent School District of the City of . . . . . (here insert the name of the city)" and as such shall have power to sue and be sued, contract and be contracted with, and shall possess all the powers usual and incident to such bodies corporate, and as shall be herein given, and shall procure and keep a common seal. At each annual meeting of the board the members thereof shall elect one of their number president of the board, and when he is absent a president pro tempore shall be appointed who shall preside during such absence. The members so elected shall each qualify by taking the prescribed oath of office within ten days after receiving their certificate of election, and shall assume the duties of the office at the annual meeting of the board held on the first Monday in May of each year. [1890, ch. 64, § 8; R. C. 1899, § 835.]

§ 1000. **Responsibility of board.** The members of the board shall receive no compensation, nor be interested directly or indirectly in any contract for building or making any improvements or repairs provided by this chapter. They shall have the care and custody of all public property in such district

pertaining to school purposes and the general management and control of all school matters. [1890, ch. 64, § 9; R. C. 1899, § 836.]

§ 1001. **Meetings of board.** The regular meetings of the board shall be held on the first Tuesday of each month, and the board may hold special meetings upon notice. The regular meetings may be adjourned for any time shorter than one month. Special meetings may be called by the president, or in case of his absence or inability to act, by any three members of the board as often as necessary by giving a personal notice in writing to each member of the board or by causing such notice to be left at his place of residence at least forty-eight hours before the hour of such special meeting. [1890, ch. 64, § 10; R. C. 1899, § 837.]

§ 1002. **Secretary, duties of.** Such board shall appoint a secretary who shall hold his office during the pleasure of the board and whose compensation shall be fixed by the board. The secretary shall keep a record of the proceedings of the board and perform such other duties as the board may prescribe. Such record or a transcript thereof, certified by the secretary and attested by the seal of the board, shall be received in all courts as prima facie evidence of the facts therein set forth; and such records, and all books, accounts, vouchers, and papers of the board shall at all times be subject to inspection by the members of such board or any committee thereof, or by any taxpayer of the district. For the purpose of economy the board may, if deemed advisable, appoint one of its own members secretary. The annual report of the secretary shall contain such items as may be required by the superintendent of public instruction. [1890, ch. 64, § 11; R. C. 1899, § 838.]

§ 1003. **Powers of board.** The board shall have power and it shall be its duty to levy and raise from time to time by tax such sums as may be determined by the board to be necessary and proper for any of the following purposes:

1. To purchase, exchange, lease or improve sites for school houses.
2. To build, purchase, lease, enlarge, alter, improve and repair school houses and their outhouses and appurtenances.
3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages.
4. To procure fuel and defray the contingent expenses of the board, including the expenses of the secretary.
5. To pay teachers' wages after the apportionment of public moneys which may be by law appropriated and provided for that purpose. [1890, ch. 64, § 12; R. C. 1899, § 839.]

§ 1004. **Collection of tax.** The tax to be levied and collected as aforesaid by virtue of this article shall be collected in the same manner as other county taxes, and for that purpose the board of education shall have power to levy and cause to be collected such taxes as are herein authorized, and shall cause the amount for each purpose to be certified by the secretary to the county auditor in time to be added to and put upon the annual tax list of the county. And it shall be the duty of the county auditor to calculate and extend upon the annual assessment roll and tax list the tax so levied by such board, and such tax shall be collected as other county taxes are collected. [1890, ch. 64, § 13; R. C. 1899, § 840.]

§ 1005. **Amount of tax limited.** The amount raised for teachers' wages and contingent expenses shall be only such as together with the public moneys coming to such district from the state and county fund and other sources shall be sufficient to maintain efficient and proper schools in such district. The taxes for the purchasing, leasing or improving of sites, and the building, purchasing, leasing, enlarging, altering or repairing of school houses shall not exceed in any year twenty mills on the dollar of the assessed valuation of the taxable property of the district, and the board of education is authorized and directed,

when necessary, to borrow in anticipation, the amount of the taxes to be raised, levied and collected as aforesaid. [1890, ch. 64, § 14; R. C. 1899, § 841.]

§ 1006. **Authority to issue bonds.** The board of education of such district is authorized and empowered, and it is its duty whenever the board deems it necessary for the efficient organization and establishment of schools in such district, and when the taxes authorized by this article shall not be sufficient or shall be deemed by the board to be burdensome upon the taxpayers of the district, from time to time to issue bonds of the district in the denomination of fifty dollars or some multiple of fifty, payable at a time not to exceed twenty-five years after date and bearing interest at a rate not to exceed seven per cent per annum, payable semi-annually on the first day of January and July of each year; and to show upon their face that they are issued for the purpose of building and furnishing a school house or school houses, purchasing grounds on which to locate the same, or to fund any outstanding indebtedness, or for the purpose of taking up any outstanding bonds; and the said board of education is authorized to cause the same to be sold at not less than par value, and the money realized therefrom deposited with the city treasurer to the credit of such board of education; and when any bonds shall be so negotiated it shall be the duty of the board to provide by tax for the payment of the principal and interest of such bonds; provided, that at no time shall the aggregate amount of such bonds, including all other indebtedness, exceed fifty mills on the dollar of valuation of the taxable property of such district, to be determined by the last city assessment. [1897, ch. 75; R. C. 1899, § 842.]

§ 1007. **Moneys paid to city treasurer.** All moneys raised pursuant to the provisions of this article and all moneys which shall by law be appropriated to or provided for such district, shall be paid over to the city treasurer of the city, and the county treasurer shall from time to time, as he shall receive the county school funds, and at least once in each month, on the first Monday thereof, pay over to such city treasurer the proportion thereof belonging to such district; and for that purpose the board shall have power to cause all needful steps to be taken, including census reports or other acts or things, to enable such board to receive the school money belonging to such district, as fully and completely as though such district formed one of the school districts of the county where the same may be situated. [1890, ch. 64, § 16; R. C. 1899, § 843.]

§ 1008. **Bond of treasurer.** The city treasurer of such city shall give a bond to such board of education in such sum as the board shall from time to time require, with two or more sureties to be approved by the board, conditioned for the safe-keeping of the school funds, which shall be in addition to his other bond and such treasurer and the sureties upon such bond shall be accountable to the board for the moneys that come into his hands, and in case of failure of such treasurer to give such bond when required by the board, or within ten days thereafter, his office shall become vacant and the city council shall appoint another person in his place. [1890, ch. 64, § 17; R. C. 1899, § 844.]

§ 1009. **School funds, how kept and paid out.** All moneys required to be raised by virtue of this article shall be paid in cash or in the warrants hereinafter provided, drawn on the school fund only, and such moneys and all moneys received by such district for the use of the common schools therein shall be deposited for safe-keeping with such city treasurer to the credit of the board of education and shall by him be safely kept separate and apart from any other funds until drawn from the treasury as herein provided. Such treasurer shall pay out the moneys authorized by this article only upon warrants drawn by the president, countersigned by the secretary and attested by the seal of such board of education. [1890, ch. 64, § 18; R. C. 1899, § 845.]

§ 1010. **General powers of board.** The board shall have power and it shall be its duty:

1. To organize and establish such schools in the district as it shall deem requisite and expedient, and to change and discontinue the same.

2. To purchase, sell, exchange and hire school houses and rooms, lots or sites for school houses and to fence and improve the same.

3. To build, enlarge, alter, improve and repair school houses, outhouses and appurtenances as it may deem advisable upon lots and sites owned by the district.

4. To purchase, sell, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages and provide fuel for schools.

5. To have the custody and safe keeping of the school houses, outhouses, books, furniture and appurtenances, and to see that the ordinances of the city council in relation thereto are observed.

6. To contract with and employ all teachers in such schools and to remove them at pleasure.

7. To pay the wages of such teachers out of the money appropriated and provided by law for the support of common schools in such district, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised by this article.

8. To defray the necessary and contingent expenses of the board, including the compensation of the secretary.

9. To have in all respects the superintendence, supervision and management of the common schools of such district, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, grading, government and instruction, for the reception of pupils and their transfer from one school to another, for the suspension and expulsion of pupils subject to the same restrictions as are contained in subdivision 11 of section 960, and generally for their good order, prosperity and utility.

10. To prepare and report to the city council of the city such ordinances and regulations as may be necessary and proper for the protection, safe-keeping, care and preservation of school houses, lots, and sites and appurtenances and all the property belonging to the district connected with or appertaining to the schools within the city limits, and to suggest proper penalties for the violation of such ordinances and regulations, and annually, on or before the first Monday in July, to determine and certify to the county auditor the rate of taxation in its opinion necessary and proper to be levied under the provisions of this article for the year commencing on the first day of July thereafter, and also at any time to determine how many and what denomination of bonds shall be issued and sold to pay the extraordinary outlays required. [1890, ch. 64, § 19; R. C. 1899, § 846.]

§ 1011. **Visiting schools.** Each member of the board shall visit all the public schools in the district at least twice in each year of his official term, and the board shall provide that each of such schools shall be visited by a committee of three or more of their number at least once during such term. [1890, ch. 64, § 20; R. C. 1899, § 847.]

§ 1012. **Nonresident pupils.** Such board of education shall have power to allow the children not resident in such district, to attend the schools of such district under the control and care of such board, upon such terms as the board shall prescribe, fixing the tuition which shall be paid therefor. [1890, ch. 64, § 21; R. C. 1899, § 848.]

§ 1013. **Expenditures not to exceed revenues.** It shall be the duty of the board in all its expenditures and contracts to have reference to the amount of money which shall be subject to its order during the current year for the particular expenditures in question and not to exceed that amount. [1890, ch. 64, § 22; R. C. 1899, § 849.]

§ 1014. **Title to property of district.** The title to all property belonging to any such independent school district shall be vested in such district for the use of the schools, and the same while used and appropriated for school purposes shall not be levied upon or sold by virtue of any warrant or execution or other process, nor be subject to any judgment or mechanic's lien or taxation for any purpose whatever; and the district in its corporate capacity may take, hold and dispose of any real and personal property transferred to it by gift, grant, bequest or devise for the use of common schools for the district, whether the same is transferred in terms to such district by its proper name or to any person or body for the use of such schools. [1890, ch. 64, § 23; R. C. 1899, § 850.]

§ 1015. **Real property. Title, how conveyed.** Whenever any property is purchased by the board a conveyance thereof shall be taken in the name of such district; and whenever any sale of such property is made by the board a resolution in favor of such sale shall first be adopted and spread upon the records of the board, and the conveyance of such property shall be executed in the name of such district by the president of the board attested by the secretary under the seal thereof, and acknowledged by such officers. Such president and secretary shall have authority to execute conveyances as aforesaid, with or without covenants of warranty on behalf of the district. [1890, ch. 64, § 24; R. C. 1899, § 851.]

§ 1016. **Report of city treasurer.** It shall be the duty of the city treasurer at least fifteen days before the annual election for members of such board and as often as called upon by the board, to prepare and report to such board a true and correct statement of the receipts and disbursements of moneys under and pursuant to the provisions of this article, during the preceding year, which statement shall set forth under appropriate heads:

1. The money raised by the board under section 1003.
2. The school moneys received from the county treasurer.
3. The money received under section 1006.
4. All money received by the city treasurer, subject to the order of the board, specifying the sources from which it accrued.
5. The manner in which all money has been expended, specifying the amount under each head of expenditures; and the board shall at least one week before such election, cause such statement to be published in all the newspapers of the city which will publish the same gratuitously. [1890, ch. 64, § 25; R. C. 1899, § 852.]

§ 1017. **City council to pass certain ordinances.** The city council shall have the power and it shall be its duty to pass such ordinances and regulations as the board of education may recommend as necessary for the protection, preservation, safe-keeping and care of the school houses, lots, sites, appurtenances, libraries and all necessary property belonging to or connected with the schools of the city, and to provide proper penalties for the violation thereof; and all penalties shall be collected in the same manner that the penalties for the violation of city ordinances are collected, and when collected shall be paid to the city treasurer, and placed to the credit of the board of education, and shall be subject to its order as herein provided. [1890, ch. 64, § 26; R. C. 1899, § 853.]

§ 1018. **Forfeit for refusal to serve as member of board.** It shall be the duty of the clerk of such board immediately after the election of any person as a member thereof, personally or in writing, to notify him of his election, and if any person shall not within ten days after receiving such notice of election, take and subscribe the oath as herein provided and file the same with the city auditor, the board may consider it as a refusal to serve, and fill the vacancy thus occasioned, and the person so refusing shall forfeit and pay to the city treasurer for the benefit of the schools of such district a penalty of fifty dollars, which may be recovered in the name of such city by a civil action. [1890, ch. 64, § 27; R. C. 1899, § 854.]



§ 1019. **New district to assume debts of old.** School districts created under the provisions of this article shall assume all obligations and liabilities incurred by the districts out of which they are formed, if old districts are not divided, and a proportionate part, if divided. [1890, ch. 64, § 28; R. C. 1895, § 855.]

ARTICLE 21.—BOARDS OF EDUCATION IN CERTAIN CITIES.

§ 1020. **Boards to be elected at large.** In each city not organized under the general law there shall be a board of education consisting of seven members having the qualifications of electors who shall be elected at large by the electors of such city qualified to vote at school elections; and, except as may be otherwise provided herein for the first election, two members of such board shall be elected annually and three triennially at a special election to be held on the first Tuesday after the first Monday in June; provided, that the provisions of this article shall not apply to cities existing under a special act and which are now conducting their schools under the general school laws. [1890, ch. 65, § 1; R. C. 1899, § 856.]

§ 1021. **Term of office.** The term of office of a member of the board of education, except as in this article otherwise provided, shall be three years and until his successor is elected and qualified. [1890, ch. 65, § 2; R. C. 1899, § 857.]

§ 1022. **Elections, how conducted.** All elections under the provisions of this article shall be called, conducted and the votes canvassed and returned in the manner provided by law for general city elections. [1890, ch. 65, § 4; R. C. 1899, § 858.]

§ 1023. **Relatives not eligible as teachers.** No son, wife or daughter of any member of the school board shall be eligible to a position as teacher in schools of the district which such member represents except upon the consent of all the members of such board. [1890, ch. 65, § 5; R. C. 1899, § 859.]

§ 1024. **Independent school organizations under special laws abolished.** Any independent district organized for school purposes under a special law, which does not include or is not included in any city or incorporated town or village organized for municipal purposes, shall become a part of the school district in which it is located by the repeal of the special law organizing or governing such independent district. Any independent district organized for school purposes under a special law or under any other law than is contained in this chapter, which includes or is included in any city or incorporated town or village organized for municipal purposes, shall become a special district by the repeal of the special law organizing or governing such independent school district. Any school district or special district so constituted or constituted in part shall be governed by the provisions of this chapter; provided, that nothing herein shall prevent any such independent district from coming under the operation of this chapter in the manner herein provided. [1891, ch. 63, § 1; R. C. 1899, § 860.]

§ 1025. **Old school officers hold over.** The board of education or other governing board of such independent district shall continue to exercise the powers and duties devolving upon it under the provisions of such special or other law governing such independent district, the same as though such law had not been repealed, until the second Tuesday in July following the repeal of such special or other law; provided, that all that portion of the general school laws which provides for an annual school election shall apply to such independent district and shall be in full force and effect for the purpose of electing school officers at such annual school election; and such officers shall be elected in and for the whole district, including the independent district or portion of such independent district located therein, or in and for the special district, the same as though no law had ever existed providing for the organization of such independent district; provided, further, that in a special district

formed and created as herein provided, a full board of education shall be elected as provided by law for first elections, but in school districts formed and created as herein provided by the addition of such independent district or portion thereof, there shall be elected only such officers as are required to fill the regular vacancies in the school offices of such school district heretofore organized. [1891, ch. 63, § 2; R. C. 1899, § 861.]

§ 1026. **Debts and assets determined by arbitration.** When the boundaries of such school district shall have been arranged as contemplated in this article, the determination and division or consolidation of all debts, property and assets of the several portions of such district or districts so consolidated shall be made by arbitration as provided by law. [1891, ch. 63, § 3; R. C. 1899, § 862.]

#### ARTICLE 22.—FREE TEXT BOOKS.

§ 1027. **Power of board of education.** The board of trustees or board of education of each and every school district in the state of North Dakota is hereby authorized and empowered to select, adopt and contract for all books and supplies needful for the school or schools under its charge; and the said board of trustees or board of education shall have power to purchase the text books and supplies selected or contracted for, and provide for the loan free of charge or sale at cost of such text books and supplies to the pupils in attendance at such school or schools; provided, that no adoption or contract shall be for a period of less than three years nor more than five years, during which time the text books so selected, adopted and contracted for shall not be changed; provided, further, that before any publisher or publishers shall enter or attempt to enter into any contract for the sale of text books, as hereinbefore provided, they shall file with the superintendent of public instruction of the state of North Dakota a list of their books and the lowest prices at or for which they will sell any or all of such books to any board of trustees or board of education in the state of North Dakota, and they, the said publishers, shall deposit with the superintendent of public instruction a sample copy of each book so listed, which shall represent in style of binding, mechanical execution, general make-up and matter the book or books they offer to sell to the board of trustees at or for the prices so listed and in no case shall prices be raised above said listed prices as filed. It shall be the duty of the superintendent of public instruction to furnish a certified copy of the list of books and prices filed in accordance with the provisions of this section to the district clerk of each common school district in the state of North Dakota. [1899, ch. 82; R. C. 1899, § 863.]

§ 1028. **Free text books provided, when.** Whenever in the judgment of the board it is desirable or necessary to the welfare of the schools in the district or to provide for the children therein better school privileges, or whenever petitioned so to do by two-thirds of the voters in the district, the board shall provide free text books and supplies for all schools under its charge, in such manner as hereinbefore provided. All books purchased in accordance with the provisions of this article shall be paid for out of the school fund of the respective districts, and it shall be the duty of the school districts and school boards to see that sufficient funds are raised and set aside for the purpose of this article. The clerk of each district shall also keep a record of all books furnished to the schools in the district. [1899, ch. 82; R. C. 1899, § 864.]

#### ARTICLE 23.—PURCHASE OF FLAGS FOR SCHOOL DISTRICTS.

§ 1029. **United States flag to be displayed.** The school board of any city, town or district, is authorized and required to purchase at the expense of the city, town or district, one or more flags of the United States, which shall be displayed in reasonable weather, upon the school houses or flagstaves upon the school grounds during the school hours of each day's session of school, and a

failure to comply with the provisions of this article on the part of any board of education or district school board, shall be sufficient grounds for removal of members of such board from office. [1897, ch. 75; R. C. 1899, § 865.]

ARTICLE 24.—STATE EDUCATIONAL LIBRARY.

§ 1030. **Appropriation for.** There is hereby appropriated out of any funds in the state treasury the sum of three hundred dollars annually, to be paid by warrant of the state auditor on the state treasurer upon the presentation of an itemized bill in due form by the superintendent of public instruction, for the purchase of reference or pedagogical books for the state educational library in the office of such superintendent. [1891, ch. 32 § 1; R. C. 1899, § 866.]

ARTICLE 25.—HIGH SCHOOL BOARD.

§ 1031. **How constituted.** The governor, superintendent of public instruction and president of the state university, are hereby constituted a board of commissioners on preparatory schools for the encouragement of higher education in the state. Said board shall be called the "High School Board," and shall perform the duties and have and exercise the powers hereinafter mentioned. [1895, ch. 53, § 1; R. C. 1899, § 867.]

§ 1032. **Students classified.** Any public graded school in any city or incorporated village or township, organized into a district, under the township or district system, which shall give instruction according to the terms and provisions of this article and shall admit students of either sex from any part of the state without charge for tuition, shall be entitled to be classified as a state high school and to receive pecuniary aid as hereinafter specified; provided, however, that no such school shall be required to admit nonresident pupils unless they pass an examination in orthography, reading in English, penmanship, arithmetic, grammar, modern geography and the history of the United States. [1899, ch. 81; R. C. 1899, § 868.]

§ 1033. **Requirements for classification.** The said board shall require of the schools applying for such pecuniary aid, as prerequisite to receiving such aid, compliance with the following conditions, to wit:

1. That there be regular and orderly courses of study, embracing all the branches prescribed by the said board for the first two years of the high school course.

2. That said schools receiving pecuniary aid under this article shall at all times permit the said board of commissioners or any of them, to visit and examine the classes pursuing the said preparatory courses. [1899, ch. 81; R. C. 1899, § 869.]

§ 1034. **Schools visited once each year. What schools to receive state aid.** **Appropriation.** The high school board shall cause each school receiving aid under this article 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 article, 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 article 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 article, 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 case the amount appropriated and available under this article 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. [1899, ch. 81; R. C. 1899, § 870; 1903, ch. 8; 1905, ch. 24, § 1.]

§ 1035. **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 apportionment to the schools aforesaid, shall not exceed twenty-five thousand dollars in any one year. [1899, ch. 81; R. C. 1899, § 871; 1903, ch. 8; 1905, ch. 24, § 2.]

§ 1036. **Discretionary powers. Assistant examiner.** The high school board shall have full discretionary power to consider and act upon applications of schools for state aid, and to prescribe conditions upon which said aid shall be granted, and it shall be its duty to accept and aid such schools only as will, in its opinion, if aided, efficiently perform the service contemplated by law; but in each county three schools complying with the prescribed conditions shall have a right to aid from this appropriation before aid may be granted to a fourth school in any county. Any school once accepted and continuing to comply with the law and regulations of the board made in pursuance thereof, shall be aided not less than three years. The board shall have power to establish any necessary and suitable rules and regulations relating to examinations, reports, acceptance and classification of schools, courses of study and other proceedings under this article. Any assistant examiner appointed by the high school board, as authorized by law, shall be entitled to receive such compensation as the board may allow, not exceeding three dollars per day; provided, that no such compensation shall be paid to any person receiving a salary from the state or from any state institution. [1899, ch. 81; R. C. 1899, § 872; 1903, ch. 8.]

§ 1037. **Shall keep record.** The said board shall keep a record of all the proceedings and shall make on or before the first day of December in each year a report, covering the previous school year, to the superintendent of public instruction, showing in detail all receipts and disbursements, the names and number of schools receiving aid, the number of pupils attending the classes in each, to which report they may add such recommendations as they may deem useful and proper. [1899, ch. 81; R. C. 1899, § 873.]

#### ARTICLE 26.—HEALTH AND DECENCY IN PUBLIC SCHOOLS.

§ 1038. **Duty of boards of education.** It shall be the duty of all boards of education and district school boards in this state to provide suitable and convenient water closets or privies for each of the schools under their charge, at least two in number, which shall be entirely separate each from the other, and having separate means of access; and it shall be the duty of the school officers aforesaid to keep the same in a clean, chaste and wholesome condition; and a failure to comply with the provisions of this article on the part of any board of education or district school board, shall be sufficient grounds

for removal from office and for withholding from any district any part of the public moneys of the state. The expense incurred by the officers aforesaid in carrying out the requirements of this article shall be a charge upon the district, when such expense shall have been approved by the county superintendent of schools of the county within which the school district is located, and a tax may be levied therefor without a vote of the district. [1895, ch. 55, § 1; R. C. 1899, § 874.]

§ 1039. **Stables for public schools. Hitching posts.** If in any rural school district, a petition signed by the persons charged with the support and having the custody and care of eight or more children of school age, is presented to the school board asking for the building of a suitable stable upon the school site, the board shall provide such stable without unnecessary delay. It shall be the duty of the school board in rural districts to provide four substantial hitching posts for each school site in the district. [1901, ch. 188.]

## CHAPTER 10.

### EDUCATIONAL AND CHARITABLE INSTITUTIONS.

#### ARTICLE 1.—UNIVERSITY OF NORTH DAKOTA.

§ 1040. **University, where located.** The university of North Dakota as now established and located at the city of Grand Forks shall continue to be the university of the state. [1883, Sp., ch. 40, § 1; R. C. 1895, § 875.]

§ 1041. **Board of trustees to govern.** The government of such university shall be vested in a board of trustees, consisting of five members, of which the Hon. William Budge, for and during his good pleasure, as an honorary member, with all rights and powers of a member of said board, shall be one of said board; the remaining members thereof to be appointed by the governor, by and with the advice and consent of the senate, and shall hold their offices for the term of four years commencing on the first Tuesday in April next succeeding their appointment. [1883, Sp., ch. 40, § 2; 1887, ch. 168, § 1; R. C. 1899, § 876; 1903, ch. 189.]

§ 1042. **Governor to nominate. Vacancies, how filled.** The governor shall nominate and, by and with the advice and consent of the senate, appoint during each regular session of the legislative assembly trustees of such university in the place of those whose terms shall thereafter first expire, and such trustees shall hold their office until their successors are appointed and qualified; provided, that the governor shall fill any vacancy in such board by appointment to extend only until the first Tuesday in April succeeding the next regular session of the legislative assembly; and provided, further, that the governor shall during such next regular session nominate and, by and with the advice and consent of the senate, appoint some person to fill such vacancy for the remainder of the term unexpired. Not more than two members of the board shall be appointed from the same county. [R. C. 1895, § 877.]

*Governor can appoint to fill vacancies only where other mode is not provided. State ex rel Standish v. Boucher, 3 N. D. 389, 56 N. W. 142.*

*The power to appoint carries power of removal by trustees. State ex rel Moore v. Archibald, 5 N. D. 359, 66 N. W. 234.*

*Governor has power to fill vacancy for unexpired term. State v. Bacon, 14 S. D. 234, 85 N. W. 225.*

*Legislature has power to regulate terms of office of members of public boards. State v. Bacon, 14 S. D. 394, 85 N. W. 605.*

§ 1043. **Powers and duties of board.** The board of trustees shall possess all the powers necessary to accomplish the objects and perform the duties

prescribed by law, and shall have the custody of the books, records, buildings and all other property of such university. The board shall elect a president and a secretary who shall perform such duties as may be prescribed by the by-laws of the board. The secretary shall keep a correct record of all transactions of the board, and of the committees thereof, and in addition to performing the duties of secretary, he shall be the superintendent of the buildings and grounds of the university and discharge such other duties as may from time to time be prescribed by the board of trustees. [1883, Sp., ch. 40, § 3; 1887, ch. 168, § 1; R. C. 1895, § 878.]

§ 1044. **Meetings of the board.** The time for the election of the president and secretary of such board and the duration of their respective terms of office, the time for holding the regular annual meeting, and such other meetings as may be required, and the manner of giving notice of the same shall be determined by the board. Four members shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. [1883, Sp., ch. 40: § 4; 1887, ch. 168, § 2; R. C. 1899, § 879.]

§ 1045. **Number of meetings limited.** Such board shall not hold more than twelve sessions in any year and such sessions shall not exceed twenty-four days in the aggregate; but the governor may in his discretion authorize additional sessions. [1889, ch. 93, § 3; R. C. 1895, § 880.]

§ 1046. **Government of university. Powers of trustees.** The board of trustees shall adopt rules for the government of the university in all its branches; elect a president and the requisite number of professors, instructors, officers and employes, fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction, either sectarian in religion or partisan in politics shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of trustees, or in the election of professors, teachers or other officers of the university, or in the admission of students thereto or for any purpose whatever. Such board shall have power to remove the president or any professor, instructor or officer of the university, when in its judgment the interests of the university require it. The board may prescribe rules and regulations for the management of the library, cabinets, museum, laboratories and all other property of the university and of its several departments and for the care and preservation thereof, with suitable penalties and forfeitures by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction. [1883, Sp., ch. 40, § 5; R. C. 1899, § 881.]

§ 1047. **Board may expend income.** The board is authorized to expend such portion of the income of the university fund as it may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto; and, if deemed expedient, it may unite with the university as a branch thereof any college in the state, upon application of its board of trustees; and such college so received shall become a branch of the university and be subject to visitation by the trustees. [1883, Sp., ch. 40, § 6; R. C. 1899, § 882.]

§ 1048. **Board to make report, when.** At the close of each fiscal year the trustees through their president shall make a report in detail to the governor, exhibiting the progress, condition and wants of each of the colleges embraced in the university, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost and results of all important investigations and experiments and such other information as they may deem important, one copy of which shall be transmitted free by the governor to each college endowed under the provisions of the act of congress entitled "An act donating land to the several states and territories which provide colleges for the benefit

of agriculture and mechanic arts," approved July 2, 1862, and also one copy to the secretary of the interior. [1883, Sp., ch. 40, § 7; R. C. 1899, § 883.]

§ 1049. **Powers of the president and faculty.** The president of the university shall be president of the several faculties and the executive head of the instructional force in all its departments; as such, he shall have authority, subject to the power of the board of trustees to give general directions respecting the instruction and scientific investigation of the several colleges, and so long as the interests of the institution require it he shall be charged with the duties of one of the professorships. The immediate government of the several colleges shall be intrusted to their respective faculties, but the trustees shall have the power to regulate the course of instruction and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other causes prescribed in such by-laws. [1883, Sp., ch. 40, § 8; R. C. 1899, § 884.]

§ 1050. **Object and departments of the university.** The objects of the university shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, in the instruction and training of persons in the theory and art of teaching, and also instruction in the fundamental laws of this state and of the United States in regard to the rights and duties of citizens, and to this end it shall consist of the following branches or departments:

1. The college or department of arts.
2. The college or department of letters.
3. The normal college or department.
4. The school of mines, the object of which shall be to furnish facilities for the education of such persons as may desire to receive instruction in chemistry, metallurgy, mineralogy, geology, mining, milling and engineering.
5. The military department or school, the object of which shall be to instruct and train students in the manual of arms and such military maneuvers and tactics as are taught in military colleges.

6. Such professional or other colleges or departments as now are or may from time to time be added thereto or connected therewith, and the board of trustees is hereby authorized to establish such professional and other colleges or departments as in its judgment may be deemed necessary and proper; but no money shall be expended by the board in establishing and organizing any of the additional colleges or departments provided for in this section, until an appropriation therefor shall have first been made. [1883, Sp., ch. 40, § 9; 1887, ch. 168, § 3; 1890, ch. 180, § 1; R. C. 1899, § 885.]

§ 1051. **Courses of instruction.** The college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to industrial arts such as agriculture, mechanics, engineering, mining, and metallurgy, manufactures, architecture and commerce and such branches included in the college of letters as shall be necessary properly to fit the pupils in the scientific and practical courses for their chosen pursuits, and in military tactics. In the normal department the proper instruction and learning in the theory and art of teaching and in all the various branches and subjects needful to qualify for teaching in the common schools; and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the courses of sciences and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be co-existent with the college of arts, and shall embrace a liberal course of instruction in languages, literature and philosophy, together with such courses or parts of courses in the college of arts as the trustees shall prescribe. [1883, Sp., ch. 40, § 10; R. C. 1899, § 886.]

§ 1052. **Scandinavian language taught.** It shall be the duty of the trustees to cause to be taught at said institution the Scandinavian language, and for that purpose shall employ as one of the teachers of such institution a professor learned in that language. [1891, ch. 60, § 1; R. C. 1899, § 887.]

§ 1053. **Pupils, who may become.** The university shall be open to students of both sexes under such regulations and restrictions as the board of trustees may deem proper, and all able bodied male students of the university may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state. [1883, Sp., ch. 40, § 11; R. C. 1899, § 888.]

§ 1054. **Graduates entitled to certificates to teach.** After any person has graduated at the university, and after such graduation has successfully taught a public school in this state for sixteen months, the superintendent of public instruction shall have authority and it shall be his duty to countersign the diploma of such teacher if upon examination he is satisfied that such person has a good moral character and is possessed of sufficient learning and ability to teach. Any person holding a diploma granted by the board of trustees of such university, certifying that the person holding the same has graduated from such university, shall, after his diploma has been countersigned by the superintendent of public instruction as aforesaid, be deemed qualified to teach any of the public schools in the state, and such diploma shall be a certificate of such qualification until annulled by the superintendent of public instruction. [1883, Sp., ch. 40, § 11; R. C. 1895, § 889.]

§ 1055. **Tuition fees.** No student who shall have been a resident of the state for one year next preceding his admission shall be required to pay any fees for tuition in the university, except in the law department and for extra studies. The trustees may prescribe rates of tuition for any pupil in the law department, or who is not a resident as aforesaid, and for teaching extra studies. [1883, Sp. ch. 40, § 12; R. C. 1899, § 890.]

§ 1056. **Compensation of trustees.** The trustees shall be entitled to receive the sum of three dollars per day for each day employed in attendance upon sessions of the board and all traveling expenses necessarily incurred thereby. Upon the presentation of the proper vouchers containing an itemized statement of the number of days attendance and money actually expended as above specified, duly verified by the oath of the trustee and certified by the president and secretary of the board, the state auditor shall audit such claim and draw his warrant upon the state treasurer for the amount allowed. [1889, ch. 93, § 4; R. C. 1895, § 891.]

§ 1057. **Trustees to make rules and by-laws.** The board of trustees shall make rules, regulations and by-laws for the government and management of the university and of each department thereof. It shall also prescribe rules, regulations and by-laws for the admission of students; but each applicant for admission must undergo an examination to be prescribed by the board, and shall be rejected if it shall appear that he is not of good moral character. The board shall also require each applicant for admission in the normal department, other than such as shall, prior to admission, sign and file with such board a declaration of intention to follow the business of teaching in the common schools of this state for at least one year, to pay such fees for tuition as the board may deem proper and reasonable. [1883, Sp., ch. 40, § 17; R. C. 1899, § 892.]

§ 1058. **Salaries.** The board of trustees shall from time to time fix the salary of the president, professors and teachers of such university, and shall certify the same to the state auditor. Such board shall also from time to time certify to the state auditor the amount due such persons for salary, and the state auditor shall draw his warrants upon the state treasurer for the amounts so certified. [1883, Sp., ch. 42, § 2; R. C. 1899, § 893.]



§ 1059. **Secretary of state to furnish laws.** The secretary of state shall deliver to the university fifty copies of each volume of the general and special laws of the state, and the reports of the decisions of the supreme court, hereafter published, for use in the way of exchanges and otherwise in the establishment and maintenance of a law library for the law department of such university. [1890, ch. 179, § 1; R. C. 1899, § 894.]

§ 1060. **Supreme court reports, how obtained.** He shall procure for the purpose aforesaid from the publishers of the supreme court reports fifty copies of each volume thereof hereafter published, in addition to the number authorized for other purposes, to be paid for at the same price and in the same manner as such reports are delivered to the secretary for other purposes. [1890, ch. 179, § 2; R. C. 1899, § 895.]

§ 1061. **Loan of muskets authorized.** The adjutant general or whoever may be in charge of state arms shall, under the direction of the governor, loan to the board of trustees of such university one hundred muskets and accoutrements or as many as can be spared, not exceeding that number, the same to be used for drill purposes, by the students of such university. [1890, ch. 181, § 1; R. C. 1899, § 896.]

§ 1062. **Muskets, when returned.** In case such arms and accoutrements are needed by the state at any time, the governor or adjutant general under his instructions may call in the same and the trustees of such university shall immediately turn the same over to such officer in good condition. [1890, ch. 181, § 2; R. C. 1899, § 897.]

§ 1063. **Geological survey. Duty of trustees.** It shall be the duty of the board of trustees of the university to cause to be begun as soon as may be practicable, and to carry on a thorough geological and natural history survey of the state. [1895, ch. 66, § 1; R. C. 1899, § 898.]

§ 1064. **Extent of the survey.** The geological survey shall be carried on with a view to a complete account of the mineral kingdom, as represented in the state, including the number, order, dip and magnitude of the several geological strata, their richness in ores, coals, clays, peats, salines and mineral waters, marls, cements, building stones and other useful materials, the value of said substances for economical purposes, and their accessibility; also an accurate chemical analysis of the various rocks, soils, ores, clays, peats, marls and other mineral substances of which a complete and exact record shall be made. [1895, ch. 66, § 2; R. C. 1899, § 899.]

§ 1065. **Meteorological statistics tabulated.** The board of trustees shall also cause to be collected and tabulated such meteorological statistics as may be needed to account for the varieties of climate in the various parts of the state; also to cause to be ascertained by barometrical observations or other appropriate means, the relative elevations and depressions of the different parts of the state; and also on or before the completion of such surveys to cause to be compiled from such actual surveys and measurements as may be necessary an accurate map of the state; which map when approved by the governor shall be the official map of the state. [1895, ch. 66, § 3; R. C. 1899, § 900.]

§ 1066. **Specimens collected.** It shall be the duty of said board to cause proper specimens, skillfully prepared, secured and labeled, of all rocks, soils, ores, coals, fossils, cements, building stones, plants, woods, skins and skeletons of animals, birds, insects and fishes, and other mineral, vegetable and animal substances and organisms discovered or examined in the course of said surveys, to be preserved for public inspection free of cost, in the university of North Dakota, in rooms convenient of access and properly warmed, lighted, ventilated and furnished, and in charge of a proper scientific curator; and they shall also, whenever the same may be practicable, cause duplicates in reasonable numbers and quantities of the above named specimens, to be collected and preserved for the purpose of exchange with other state univer-

sities and scientific institutions, of which latter the Smithsonian institution at Washington shall have the preference. [1895, ch. 66, § 4; R. C. 1899, § 901.]

§ 1067. **Map of the state.** The board shall cause a geological map of the state to be made as soon as may be practicable, upon which by colors and other appropriate means and devices the various geological formations shall be represented. [1895, ch. 66, § 5; R. C. 1899, § 902.]

§ 1068. **Annual report of trustees.** It shall be the duty of the board, through its president, to make on or before the second Tuesday in December of each year, a report showing the progress of said surveys, accompanied by such maps, drawings and specifications as may be necessary and proper to exemplify the same to the governor, who shall lay the same before the legislative assembly, and the board upon the completion of any separate portion of any of the said surveys shall cause to be prepared a memoir or final report which shall embody in a convenient manner all useful and important information accumulated in the course of the investigation of the particular department or portion; which report or memoir shall likewise be communicated through the governor to the legislative assembly. [1895, ch. 66, § 6; R. C. 1899, § 903.]

§ 1069. **State geologist.** The professor of geology in the university shall be ex officio state geologist. [1895, ch. 66, § 7; R. C. 1899, § 904.]

§ 1070. **Appropriation.** There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of one thousand dollars annually, to meet the necessary expenses connected with the geological survey of the state, as provided for in sections 1063 and 1064. [1899, ch. 94; R. C. 1899, § 904a; 1903, ch. 14.]

§ 1071. **Annual appropriation for maintenance.** For the year one thousand eight hundred and ninety-nine and for each year thereafter, there is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of two-fifths of a mill upon the dollar of the assessed valuation of the property assessment of the state of North Dakota, as fixed by the state board of equalization for the preceding year, the same to be paid monthly to the board of trustees of the university of North Dakota upon the voucher of said board, signed by its president. [1899, ch. 94; R. C. 1899, § 904b.]

§ 1072. **Appropriation for Cochrane library.** 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. [1905, ch. 19, § 1.]

§ 1073. **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 section 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. [1905, ch. 19, § 2.]

#### ARTICLE 2.—NORMAL SCHOOLS.

§ 1074. **Normal schools located.** The normal school as established and located at the city of Mayville in the county of Traill, and the normal school as established and located at the city of Valley City in the county of Barnes, shall continue to be the normal schools of the state. [1891, ch. 89, § 1; R. C. 1895, § 905.]

§ 1075. **Endowment and maintenance.** All proceeds accumulating in the interest and income fund arising from the sale or rental of the lands granted or hereafter to be granted by the state of North Dakota, for such normal schools, are hereby pledged for the establishment and maintenance of such schools. [1891, ch. 89, § 2; R. C. 1899, § 906.]

§ 1076. **Management of.** The government and management of such schools are vested in a board of trustees to be known as the board of trustees of the state normal schools, and in a board of management for each school to be known as the board of management of the normal school at Mayville, and the board of management of the normal school at Valley City respectively. [1891, ch. 89, § 3; R. C. 1899, § 907.]

§ 1077. **Boards, how constituted.** The board of management of each normal school shall consist of five members. The board of trustees of such normal schools shall consist of twelve members, ten of whom shall be the members of the respective boards of management as herein provided. The governor and superintendent of public instruction shall be ex officio members of such board of trustees, and the superintendent of public instruction shall act as president of such board. [1891, ch. 89, § 4; R. C. 1899, § 908.]

§ 1078. **Terms of trustees.** The governor shall by and with the advice and consent of the senate appoint during each biennial session of the legislative assembly, five members of such board of trustees who shall hold their office for four years commencing on the second Tuesday in April following such appointment. The governor shall fill all vacancies therein by appointment for unexpired terms. At the first meeting of the board of management of each normal school the members thereof shall take and subscribe the oath of office required of all civil officers and shall proceed to elect a president who shall reside in the vicinity of such normal school, and the principal of the school shall be the secretary of the board but shall have no vote. In the absence of the principal the board may select one of its members to act as secretary. A majority of the members of the board of management shall constitute a quorum for the transaction of business. [1891, ch. 89, § 6; R. C. 1899, § 909.]

§ 1079. **Commissions. Secretary.** The governor shall cause to be issued to each of the members of the board of trustees a commission under the great seal of the state, and such commission shall designate the board of management upon which such members shall serve. At the first meeting of the board

the members thereof shall proceed to select and appoint a secretary of the board. A majority of the members of the board of trustees shall constitute a quorum for the transaction of business. [1891, ch. 89, § 7; R. C. 1899, § 910.]

**§ 1080. Meetings. Compensation.** The board of trustees shall meet at Valley City and Mayville, or at the seat of government, at such time each year as may be decided upon by the board. The members of the board shall receive the sum of three dollars per day for each day employed in attendance upon sessions of the board of trustees, or the board of management, and their actual and necessary expenses in attending meetings of the respective boards, or in other duties connected therewith, which expenses shall be paid out of the state treasury upon the vouchers of the respective boards in the manner provided by law. The board of trustees shall not be in session for exceeding eight days in any one year, nor either board of management to exceed twelve days during each year. The secretary of the board of trustees shall receive such salary as shall be determined by the board, not exceeding one hundred dollars a year and his actual expenses incurred in attending meetings of the board, which shall be paid as herein provided for members of the board of trustees. [1891, ch. 89, § 9; R. C. 1899, § 911; 1901, ch. 35.]

**§ 1081. Treasurer to keep funds.** All moneys arising from the interest and income derived from the rental and sale of the lands appropriated to such schools and all moneys that may hereafter be appropriated by the state, including all moneys raised in any other manner for either of such schools shall be deposited with the state treasurer, to be by him kept in two separate funds, to be known as the fund of the state normal school at Mayville, and the fund of the state normal school at Valley City, respectively, and such funds shall be used exclusively for the benefit of such schools. [1891, ch. 89, § 11; R. C. 1899, § 912.]

**§ 1082. Objects of normal schools.** The objects of such normal schools shall be to prepare teachers in the science of education and the art of teaching in public schools. The board of trustees, with the assistance of the respective faculties, shall adopt the full course of study prescribed for that purpose, which shall embrace the academic and professional studies usually taught in normal schools. Such schools shall in all things be free from sectarian control. [1891, ch. 89, § 13; R. C. 1899, § 913.]

**§ 1083. Duties of board as to appropriations.** The board of management of each normal school shall direct the disposition of all moneys appropriated by the legislative assembly for current expenses for such school, and shall have supervision and charge of the construction of all buildings authorized by law for such school, and shall direct the disposition of all moneys appropriated therefor or accumulating therefor as provided in this article. They shall have power to appoint one of their members superintendent of construction of all buildings, who shall receive three dollars per day for each day actually and necessarily engaged in the discharge of his duties, not to exceed fifty days in any one year, which sum shall be paid out of the state treasury as herein provided; but all expenditures incurred under the direction of either of the boards aforesaid shall be audited and allowed by such board of management and the expenditures incurred under the direction of the board of trustees aforesaid shall be audited and allowed by such board. [1891, ch. 89, § 14; R. C. 1899, § 914.]

**§ 1084. Salaries of employes. Reports.** The board of management of each normal school shall have the care of the buildings belonging to such school. It shall have the power to fix the salaries of employes, except members of the faculty, and to prescribe their respective duties, and to remove any of such employes at any time. It shall at such times as may be determined upon propose to the board of trustees the names of persons as principal, teachers and instructors, with the recommendation that such persons be employed by such board of trustees as the faculty of such school.

It shall on or before the third Monday in November of each year, make an annual report to the board of trustees, showing a statement of all expenditures of funds under its direction, the erection and care of buildings, the condition of the schools, and containing such recommendations as they may think proper. [1891, ch. 89, § 15; R. C. 1899, § 915.]

§ 1085. **Salaries of principal and teachers.** The board of trustees shall fix the salaries of the principal, teachers and instructors, and shall employ the persons therefor that have been recommended by the respective boards of management, unless in the opinion of the board of trustees a reasonable ground exists for refusing to employ such person. The board of trustees shall prescribe the time and the length of the various terms of such schools. [1891, ch. 89, § 16; R. C. 1899, § 916.]

§ 1086. **The faculty, duties of.** The faculty shall consist of the principal, teachers and instructors employed for each school as herein provided. They shall pass all needful rules and regulations for the government and discipline of the schools, regulating the routine of labor, study, meals and the duties and exercises and such other rules and regulations as are necessary for the preservation of morals, decorum and health. They shall carry out the course of study adopted by the board of trustees and shall arrange for the classification of all pupils in conformity therewith. [1891, ch. 89, § 17; R. C. 1899, § 917.]

§ 1087. **Duty of principal.** The principal shall be the chief executive officer of the school and it shall be his duty to see that all the rules and regulations are executed. The subordinate officers and employes shall be under his direction and supervision. [1891, ch. 89, § 18; R. C. 1895, § 918.]

§ 1088. **Annual report of faculty.** The faculty shall, on or before the third Monday in October in each year make an annual report to the board of trustees showing the general condition of the school and containing such recommendations as the welfare of the institution demands. [1891, ch. 89, § 19; R. C. 1895, § 919.]

§ 1089. **Biennial reports to governor.** The board of trustees shall make a report to the governor on or before the fifteenth day of November next preceding each biennial session of the legislative assembly, containing the several reports of the boards of management and faculties herein provided for, showing the condition of the funds appropriated for the school, the money expended and the purpose for which the same was expended, in detail, and showing the condition of the normal schools generally. [1891, ch. 89, § 20; R. C. 1895, § 920.]

§ 1090. **Diplomas.** The board of trustees and the respective faculties of each school shall have power to issue diplomas to all persons who shall have completed the course of study prescribed for the normal schools as herein provided, and who shall have passed a satisfactory examination under the direction of the board of trustees, upon the branches contained in such course, and who shall be known to possess a good moral character, which diploma shall set forth the above mentioned facts and shall be designated the state normal school diploma. [1891, ch. 89, § 21; R. C. 1899, § 921.]

§ 1091. **State professional certificate.** Any person who is the holder of such a diploma and who can furnish satisfactory evidence to the superintendent of public instruction that he has had three years' successful experience as a teacher, shall be granted by the superintendent of public instruction a state professional certificate, valid for life, as provided by law, and any such person who can furnish satisfactory evidence of one year's successful experience as a teacher shall be granted such certificate, valid for five years, as provided by law. The fees for such certificate shall be as provided by law. [1891, ch. 89, § 22; R. C. 1899, § 922.]

## ARTICLE 3.—NORTH DAKOTA ACADEMY OF SCIENCE.

§ 1092. **Continuation. Object.** The North Dakota academy of science heretofore established at Wahpeton is hereby continued as such. The object of such academy shall be to furnish instruction in the physical sciences, higher mathematics, political science and pedagogy, covering such courses in these subjects as are commonly prescribed in standard colleges. [1890, ch. 158, § 1; R. C. 1895, § 923; 1903, ch. 50.]

§ 1093. **How governed.** Such school shall be under the direction and management of a board of trustees and shall be erected, governed and maintained as hereinafter provided. [1890, ch. 158, § 2; R. C. 1899, § 924; 1903, ch. 50.]

§ 1094. **Board, how constituted.** Such board of trustees shall consist of five members, who shall be appointed by the governor, by and with the consent of the senate, and shall hold their office for a term of four years; provided, that immediately upon the taking effect of this article the governor shall appoint three members of this board who shall hold office for four years and two members who shall hold office for two years, each member of said board to hold office until his successor is appointed and qualified; and the governor may fill vacancies by appointment as in other cases. The members of such board shall meet at Wahpeton annually on the first Tuesday in April and shall from among their number elect a president and secretary, and said board may provide for such other meetings at such times and places as may be deemed expedient; provided, that the governor may designate the time for holding the first meeting of said board. [1890, ch. 158, § 3; R. C. 1895, § 925; 1903, ch. 50.]

§ 1095. **Powers of board.** Such board shall have power to buy or procure the necessary ground and to erect and equip the necessary buildings for said school, to appoint a principal and assistants to take charge of such school and such other teachers and officers as may be required, and fix the salaries of each and prescribe their several duties. It shall also have power to remove, either principal, assistant or teacher and appoint others in their stead. The board shall prescribe the various books to be used in such school and shall make all the regulations and by-laws necessary for good government and maintenance of the same and shall have power to procure all necessary apparatus, instruments and appurtenances for instruction in said school. [1890, ch. 158, § 4; R. C. 1899, § 926; 1903, ch. 50.]

§ 1096. **Rules and regulations.** The board shall prescribe such rules and regulations for the admission of pupils to said school as it shall deem necessary and proper and may in its discretion require applicants for admission into such school to pay such fees or tuition as the board may deem reasonable. [1890, ch. 158, § 5; R. C. 1899, § 927; 1903, ch. 50.]

§ 1097. **Compensation.** All necessary expenses incurred by members of the board of trustees and the sum of three dollars per diem for the time actually and necessarily employed in the discharge of the duties of their office shall be paid on the proper voucher out of the general funds of the state. The principal, assistants, teachers and other officers and employes in such school shall be paid out of the fund of the North Dakota academy of science. [1890, ch. 158, § 12; R. C. 1899, § 929; 1903, ch. 50.]

§ 1098. **Duties of state treasurer.** The state treasurer shall be the custodian of all funds belonging to such school, from whatever source received, and the same shall be deposited with him and by him kept in a separate fund which shall be known as the North Dakota academy of science fund, and shall be used exclusively for the benefit of such academy; provided, however, that any sum or sums received by such board of trustees for tuition or fees for scholarships in such school, may be kept and disbursed by the secretary of such board upon the order of the president thereof, for current expenses of such school. [1890, ch. 158, § 15; R. C. 1899, § 932; 1903, ch. 50.]

§ 1099. **Majority shall constitute quorum.** A majority of the members of the board of trustees shall constitute a quorum, but a less number may adjourn from time to time. All proceedings of the board shall be recorded in a book to be kept for that purpose, which shall be open to inspection to any person on request; and the secretary shall keep a strict account of all moneys received by him in such manner as may be prescribed by the board, and such accounts shall at all times be open to inspection by said board or any member thereof. [1890, ch. 158, § 16; R. C. 1899, § 933; 1903, ch. 50.]

ARTICLE 4.—AGRICULTURAL COLLEGE.

§ 1100. **Location of.** The agricultural college shall continue as now established and located at Fargo in the county of Cass. [1890, ch. 160, § 1; R. C. 1899, § 934.]

§ 1101. **Management of.** The government and management of such college is vested in a board of trustees to be known as the board of trustees of the agricultural college. [1890, ch. 160, § 2; R. C. 1895, § 935.]

§ 1102. **Board of trustees, how appointed. Vacancies.** The board of trustees shall consist of seven members, to be appointed as follows: During each biennial session of the legislative assembly there shall be nominated by the governor and, by and with the advice and consent of the senate, appointed for the term of four years, trustees to fill vacancies occurring by the expiration of the term of office of those previously appointed. The governor shall have power to fill all vacancies in such board which occur when the legislative assembly is not in session, and the members of such board shall hold their office until their successors are appointed and qualified as provided in this article. Persons appointed to fill vacancies shall hold office only until the first Tuesday in April succeeding the next session of the legislative assembly. [1890, ch. 160, § 3; 1891, ch. 5, § 1; R. C. 1895, § 936.]

§ 1103. **Commission. Oath. Organization.** The governor shall cause to be issued to each trustee so appointed a commission under the great seal of the state. At the first meeting of such board the members thereof shall take and subscribe the oath of office required of other civil officers and shall then proceed to elect a president, secretary and treasurer, but the treasurer shall not be a member of the board. A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall require a bond of its treasurer in such an amount and with such sureties as it may deem proper. [1890, ch. 160, § 4; R. C. 1899, § 937.]

§ 1104. **Meetings, where held. Compensation of trustees.** The board shall hold its meetings at the city of Fargo at such time as it may designate, but there shall not be to exceed six regular meetings each year; provided, that the president of the board shall have power to call special meetings whenever in his judgment it becomes necessary. The members of the board shall receive as compensation for their services the sum of three dollars per day for each day employed and five cents per mile for each mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury upon vouchers of the board duly certified by the president and secretary thereof. [1890, ch. 160, § 5; 1891, ch. 5, § 2; R. C. 1899, § 938.]

§ 1105. **Duties of board.** Such board shall direct the disposition of all moneys appropriated by the legislative assembly or by the congress of the United States, or that may be derived from the sale of lands donated by congress to the state for such college, or that may be donated to or come from any source to the state for said college, or experiment station for North Dakota, subject to all restrictions imposed upon such funds either by the constitution or laws of the state or by the terms of such grants from congress, and shall have supervision and charge of the construction of all buildings

authorized by law for such college and station. The board shall have power to employ a president and necessary teachers, instructors and assistants to conduct such school and carry on the experiment station connected therewith and to appoint one of its members superintendent of construction of all buildings, who shall receive three dollars per day for each day actually and necessarily engaged in the discharge of his duties, not to exceed fifty days in any one year, which sum shall be paid out of the state treasury upon the vouchers of said board. [1890, ch. 160, § 6; R. C. 1899, § 939.]

§ 1106. **Course of instruction.** The object of such college shall be to afford practical instruction in agriculture and the natural sciences connected therewith, and in the sciences which bear directly upon all industrial arts and pursuits. The course of instruction shall embrace the English language and literature, military tactics, civil engineering, agricultural chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology and such other natural sciences as may be prescribed, political, rural and household economy, horticulture, moral philosophy, history, bookkeeping and especially the application of science and the mechanic arts to practical agriculture. A full course of study in the institution shall embrace not less than four years, and the college year shall consist of not less than nine calendar months, which may be divided into terms by the board of trustees as in its judgment will best secure the objects for which the college was founded. [1890, ch. 160, § 8; R. C. 1899, § 940.]

§ 1107. **Board of trustees to fix salaries.** The board of trustees shall fix the salaries of the president, teachers, instructors and other employes and prescribe their respective duties. The board shall also fix the rate of wages to be allowed the students for labor on the farm and experiment station or in the shops or kitchen of the college. The board may remove the president or subordinate officers and supply all vacancies. [1890, ch. 160, § 9; R. C. 1899, § 941.]

§ 1108. **Faculty to adopt rules and regulations.** The faculty shall consist of the president, teachers and instructors and shall pass all needful rules and regulations for the government and discipline of the college, regulating the routine of labor, study, meals and the duties and exercises, and all such rules and regulations as are necessary for the preservation of morals, decorum and health. [1890, ch. 160, § 10; R. C. 1899, § 942.]

§ 1109. **Duties of president.** The president shall be the chief executive officer of the college and it shall be his duty to see that all rules and regulations are executed, and the subordinate officers and employes not members of the faculty shall be under his direction and supervision. [1890, ch. 160, § 11; R. C. 1899, § 943.]

§ 1110. **Faculty to make annual report to board.** The faculty shall make an annual report to the board of trustees on or before the first Monday in November of each year, showing the condition of the school, experiment station and farm and the results of farm experiments and containing such recommendations as the welfare of the institution demands. [1890, ch. 160, § 12; R. C. 1899, § 944.]

§ 1111. **Annual report to governor.** The board of trustees shall on or before the fifteenth day of November in each year make a report to the governor setting forth in detail the operations of the experiment station, including a statement of the receipts and expenditures, a copy of which report shall be sent by the governor to the commissioner of agriculture and to the secretary of the treasury of the United States, and the board shall also make a report to the governor on or before the fifteenth day of November next preceding each biennial session of the legislative assembly, containing a financial statement showing the condition of all funds appropriated for the use of such college and experiment station, also the moneys expended and the purposes for which the same were expended, in detail, also the condition



of the institution and the results of the experiments carried on there. [1890, ch. 160, § 13; R. C. 1899, § 945.]

§ 1112. **Degrees may be conferred.** The board and the faculty shall have power to confer degrees upon all persons who shall have completed the course of study prescribed by them, and who shall have passed a satisfactory examination in the branches contained in such course, and who possess a good moral character. [1891, ch. 160, § 14; R. C. 1899, § 946.]

§ 1113. **Acceptance of land grant.** The grants of land accruing to this state by virtue of an act of congress donating public lands for the use and support of agricultural colleges approved February 22, 1889, is hereby accepted with all the conditions and provisions in said act contained, and said lands are hereby set apart for the use and support of the colleges herein provided for. [1890, ch. 160, § 18; R. C. 1899, § 949.]

§ 1114. **Bond of treasurer.** The treasurer of such college shall give a bond in the sum of fifty thousand dollars with at least four sureties to be approved by the board of trustees of such college, conditioned for the faithful accounting of all moneys received by him as such treasurer. [1891, ch. 7, § 5; R. C. 1895, § 950.]

#### ARTICLE 5.—EXPERIMENT STATIONS.

§ 1115. **Experiment station.** The agricultural experiment station heretofore established in connection with the agricultural college is continued and the same shall be under the direction of the board of trustees of such college, for the purpose of conducting experiments in agriculture according to the provisions of section 1 of the act of congress approved March 2, 1887, entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto." [1890, ch. 160, § 16; R. C. 1895, § 947.]

§ 1116. **Legislative assent to grant by congress.** The assent of the legislative assembly is hereby given in pursuance of the requirements of section 9 of said act of congress, approved March 2, 1887, to the grant of money therein made and to the establishing of an experiment station in accordance with section 1 of said last mentioned act, and assent is hereby given to carry out the provisions of said act. [1890, ch. 160, § 17; R. C. 1899, § 948.]

§ 1117. **Appropriation.** There is hereby appropriated annually out of any money in the state treasury, not otherwise appropriated, the sum of five thousand dollars for state support and maintenance of the agricultural experiment station at Fargo, and it shall be the duty of the board of trustees of the North Dakota agricultural college to set apart annually this sum for the expenses of maintaining the sub-experiment station at Edgeley, for erecting suitable buildings thereon, and for making such investigations and experiments as may be deemed necessary for the solution of agricultural, horticultural and other problems peculiar to districts of the state where the soil and climatic conditions differ from those of that portion of the state known as the Red River Valley. [1903, ch. 10.]

§ 1118. **Experiments to determine milling values 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. [1905, ch. 113.]

§ 1119. **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 article. [1905, ch. 21, § 1.]

§ 1120. **Experiments with grasses, forage and agricultural products. Experiments undertaken, when.** 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. 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 herein and for no other purpose. [1905, ch. 21, §§ 2, 3.]

#### ARTICLE 6.—AGRICULTURAL AND GEOLOGICAL SURVEY.

§ 1121. **Agricultural college board co-operate.** The board of trustees of the agricultural college of the state of North Dakota is hereby authorized to co-operate with the directors of the United States federal surveys and to accept the co-operation of the United States with this state in executing a topographic, economic and agricultural survey and map of North Dakota, which is hereby authorized to be made; and the said board of trustees shall have the power to arrange with said directors, or other authorized representatives of the United States government surveys, concerning the details of said work, the methods of its execution, and the order in part of time in which these surveys and maps of the different parts of the state shall be completed; provided, that the said directors of the United States government survey, thus co-operating with the state of North Dakota, shall agree to expend on the part of the United States upon said work a sum equal to that appropriated by the state of North Dakota for that purpose. [1901, ch. 8, § 1.]

§ 1122. **Maps uniform with U. S. maps.** In arranging the details heretofore referred to, it is expected that the topographic maps resulting from this survey shall be similar in general design to the Fargo and Casselton sheets already made by the United States geological survey, that they shall show the location of all roads, railroads, streams, lakes and rivers, and shall contain certain lines showing the elevation and depression for every twenty feet of vertical interval of the surface of the county; and that the resulting maps shall recognize the co-operation of the state of North Dakota. [1901, ch. 8, § 2.]

§ 1123. **Make an economic survey.** Following the completion of the topographic maps, or as rapidly as deemed expedient, an economic survey shall be made, including a complete account of all economic resources of agricultural importance, including the character and value of soil for agricultural purposes, the nature and extent of water supplies, both surface and artesian, together with the analysis of soils, waters, etc., including also the collecting and tabulating of meteorological data necessary in explaining climatic variations, and such other investigations as naturally belong to an economic survey. [1901, ch. 8, § 3.]

§ 1124. **State director to collect samples.** It shall be the duty of the state director of this survey to collect or cause to be collected samples of all rocks, soils, coals, clays, minerals, fossils, plants, woods, skins and skeletons of native animals, and such other products of economic or scientific interest discovered during this survey, which properly secured and labeled, shall be placed on exhibition in the museum of the North Dakota agricultural college. [1901, ch. 8, § 4.]

§ 1125. **Arrange to publish maps.** The state director of this survey shall arrange with the directors of the government surveys for the publication of economic maps resulting from this survey, which shall be similar in design to, and uniform with the publication now made by these surveys, accompanied by written description of the formations and economic resources, which shall constitute a report, embodying and setting forth all useful information developed during these investigations. [1901, ch. 8, § 5.]

§ 1126. **Publish reports.** There shall be published from time to time, as bulletins of the North Dakota experiment station, preliminary reports of this survey, as the work progresses, showing the results of the survey and investigations conducted, together with preliminary maps, showing the areas covered, and these preliminary reports shall be sent gratis to all citizens of North Dakota making application. [1901, ch. 8, § 6.]

§ 1127. **Biennial report to governor.** It shall be the duty of the said board of trustees, through the state director of this survey, to make on or before the second Tuesday of December of each year, immediately preceding the regular sessions of the legislative assembly of North Dakota, a biennial report to the governor, showing the progress of the survey, accompanied by copies of the maps completed and results accomplished, together with a report of all moneys received and expended and the governor shall lay this report before the legislative assembly. [1901, ch. 8, § 7.]

§ 1128. **State director.** The professor of geology of the North Dakota agricultural college shall act, under the direction of the board of trustees of said institution, as state director of this survey. [1901, ch. 8, § 8.]

§ 1129. **Appropriation.** There is hereby appropriated out of the money of the state treasury, not otherwise appropriated, the sum of one thousand dollars annually, which shall be paid by the state treasurer upon a draft from the secretary of the board of trustees, having in control this survey. [1901, ch. 8, § 9; 1903, ch. 13.]

§ 1130. **Name.** This survey shall be known as the Agricultural College survey of North Dakota. [1901, ch. 8, § 10.]

§ 1131. **Not conflicting.** This act is not to be construed as conflicting in any manner with or repealing the geological survey of North Dakota already established at the state university. [1901, ch. 8, § 11.]

§ 1132. **Belong to the state.** Any lands belonging to the state, or lands known as school lands and public institution lands, in which is discovered any valuable deposit of coal or minerals of any kind, clay, gravel or stone shall be and remain the property of the state until provision for the sale or leasing thereof is especially provided for by law. [1901, ch. 8, § 12.]

#### ARTICLE 7.—SCHOOL FOR THE DEAF AND DUMB.

§ 1133. **Location.** The school for the deaf and dumb as located by the constitution at Devils Lake shall continue to be the institution for the support and education of the deaf and dumb children of the state. [1890, ch. 161, § 1; 1893, ch. 123, § 1; R. C. 1895, § 951.]

§ 1134. **Board of trustees, how appointed.** Such institution shall be under the supervision of a board of trustees consisting of five members, who shall be appointed by the governor by and with the advice and consent of the senate. At each biennial session of the legislative assembly the governor shall nominate and, by and with the advice and consent of the senate, appoint for the term of four years, trustees to fill vacancies occurring by the expiration of the term of office of those previously appointed, and the governor shall have power to fill all vacancies in the board which occur when the legislative assembly is not in session, and the members of such board shall hold their office for the term of four years commencing on the first Tuesday in April succeeding their appointment, and until their successors are appointed and qualified, except members appointed to fill vacancies during the recess of the legislative assembly, which members shall hold only until the first Tuesday in April succeeding the next regular session of the legislative assembly. [1890, ch. 161, § 2; 1891, ch. 133, § 2; 1893, ch. 122, § 1; R. C. 1895, § 952.]

§ 1135. **Organization. Meetings.** Such trustees shall meet in the city of Devils Lake. They shall choose from among their number a president and secretary, who shall hold office for two years, and until their successors are appointed and qualified. Three members of the board shall constitute a quorum for the transaction of business. Such board shall meet annually in the month of April and as often thereafter as may be deemed necessary for the proper transaction of business, upon the call of the president or secretary. [1890, ch. 161, § 3; R. C. 1895, § 953.]

§ 1136. **Oath. Duties of officers of board.** Each member of the board shall before entering upon his duties take and subscribe the oath required of other civil officers, which oath shall be filed in the office of the secretary of state. The president shall preside at all meetings of the board when present and in his absence a president pro tempore may be named to perform the duties of president. The secretary shall keep a correct record of the proceedings of the board and have charge, in trust for the institution, of all papers and records of the same. [1890, ch. 161, § 4; R. C. 1895, § 954.]

§ 1137. **Board to direct disposition of moneys.** The board shall direct the disposition of all moneys appropriated by the legislative assembly or received from any other source for the benefit of such institution. [1890, ch. 161, § 5; R. C. 1899, § 955.]

§ 1138. **Duties of board.** Such board shall have general supervision of the institution, adopt rules for the government thereof, employ and fix the salaries of all employes, provide necessaries for the institution and perform other duties, not devolving upon the principal, necessary to render it efficient and to carry out the provisions of this article. [1890, ch. 161, § 6; 1893, ch. 123, § 2; R. C. 1895, § 956.]

§ 1139. **Indebtedness limited.** The board shall not create any indebtedness against such institution exceeding the amount appropriated by the legislative assembly for the use thereof. [1890, ch. 161, § 7; R. C. 1899, § 957.]

§ 1140. **Compensation of members of board.** The members of the board shall receive as compensation for their services three dollars per day for each day employed, and five cents per mile for each mile actually and necessarily traveled in attending meetings of the board, to be paid out of the state treasury upon vouchers of the board duly certified by the president and secretary thereof. [1890, ch. 161, § 8; 1893, ch. 123, § 3; R. C. 1899, § 958.]

§ 1141. **Fee for nonresident children.** Deaf and dumb children, not residents of this state, of suitable age and capacity, shall be entitled to an education in such school on payment to the state treasurer of the sum of one hundred and eighty dollars per annum, in advance, but such children shall not be received to the exclusion of children of this state. [1890, ch. 161, § 9; R. C. 1899, § 959.]

§ 1142. **Residents entitled to education free.** Each deaf and dumb person, who is a resident of this state, of suitable age and capacity, shall be entitled to receive an education in such institution at the expense of the state. [1890, ch. 161, § 10; R. C. 1899, § 960.]

§ 1143. **Accounts for clothing, how collected.** When the pupils of such institution are not otherwise provided or supplied with suitable clothing, they shall be furnished therewith by the principal who shall make out an account thereof in each case against the parent or the guardian, if the pupil is a minor, and against the pupil if he has no parent or guardian or if he has attained the age of majority; which account shall be certified to be correct by the principal, and when so certified such account shall be presumed correct in all courts. The principal shall thereupon transmit such account by mail to the county treasurer of the county from which the pupil so supplied shall have come; and such treasurer shall proceed at once to collect the amount by suit in the name of his county, if necessary, and pay the same into the state treasury. The principal shall at the same time remit a duplicate of such account to the state auditor, who shall credit the same to the account of the school and charge it to the proper county; provided, that if it shall appear by the affidavit of three disinterested citizens of the county, not of kin to the pupil, that such pupil or his parents would be unreasonably oppressed by such suit, then such treasurer shall not commence such action, but shall credit the same to the state on his books and report the amount of such account to the board of county commissioners of his county, which board shall levy a sufficient tax to pay the same to the state and cause the same to be paid into the state treasury. [1890, ch. 161, § 12; R. C. 1899, § 962.]

§ 1144. **Transportation of indigent persons, how paid.** The board of county commissioners shall order to be paid the expenses of transportation to and from such institution of any indigent deaf and dumb children entitled to admission thereto, and they shall at the time of levying other taxes, levy a tax sufficient to reimburse the county therefor. In order to avoid long delay in transporting indigent children to and from the institution, the principal may, upon correspondence with the auditor of such county, pay such transportation and forward to such county auditor an itemized statement of the expenses. The board of county commissioners shall order the county treasurer to draw his warrants for such amount in favor of the principal of the institution, who shall account for such money as provided by law. [1890, ch. 161, § 13; 1893, ch. 123, § 4; R. C. 1895, § 963.]

§ 1145. **Faculty. Duties of principal.** The officers of the institution shall be a principal and a matron. The principal shall be a capable person, skilled in the sign language and all the methods in use in educating the deaf, and shall have knowledge of the wants and requirements of the deaf in their

proper training and instruction. The principal and matron must reside at the institution. The principal shall receive a salary of not less than fifteen hundred dollars per annum. The principal shall annually make to the board of trustees a written report stating in full the true condition of the educational, the domestic and the industrial departments of the institution and his action and proceedings therein, which report shall be embraced in the report of the trustees to the governor. He shall keep and have charge of all necessary records and registers of each department and have the supervision of teachers, pupils and servants and perform such other duties as the board may require. He may recommend and with the approval of the board employ all assistants needed therein. He shall have special charge of the male pupils, out of school hours, and shall furnish them with employment about the premises or in some trade to which they are adapted when such trades have been organized and established at the institution by the trustees and provision for their maintenance made by the legislative assembly. The proceeds and products arising from the labor and employment of the pupils shall inure to the use and benefit of the institution. [1890, ch. 161, § 14; 1893, ch. 123, § 5; R. C. 1895, § 964.]

§ 1146. **Duty of matron.** The matron of the school shall have control of the internal arrangement and management of the institution and of the female pupils, out of school hours. She shall instruct the female pupils in the domestic arts or in some trade to which they are adapted, under the direction of the principal. [1890, ch. 161, § 15; R. C. 1895, § 965.]

§ 1147. **Board to make biennial reports.** The board of trustees shall on or before the fifteenth day of November preceding each regular session of the legislative assembly make a full and complete report to the governor, showing:

1. A statement of the financial condition of the institution from the date of the last report, giving in detail the amount of moneys received from all sources and the amount expended.

2. The value of real estate and buildings at the date of the last report and the cost of improvements made, if any, since such report.

3. The number of pupils in attendance, their names, ages, residences, and cause of deafness; also the number that have entered the institution, and the number of those who have left since the last report.

4. The number and cause of deaths, if any, which have occurred in the institution since the last report.

5. The improvement, health and discipline of the pupils.

6. The names of the officers, teachers and servants employed.

7. All other needful information touching such matters as may be deemed of interest.

8. Such recommendations as may be deemed needful. [1890, ch. 161, § 16; R. C. 1899, § 966.]

§ 1148. **Disposition of money received.** All money that shall arise from the interest received on all moneys derived from the sale of lands hereinbefore or that may hereafter be appropriated for said school for the deaf and dumb, including all money that may be received from the renting of said land and all moneys that may be hereafter appropriated for said school for the deaf and dumb, by the state of North Dakota, including all money raised in any other manner or donated to said school, shall be deposited with the state treasurer, to be kept by him in a separate fund, which shall be known as the school for the deaf and dumb fund, and be used exclusively for the benefit of said school for the deaf and dumb as may be herein or hereafter provided. [1897, ch. 72, § 2; R. C. 1899, § 966b.]

§ 1149. **Books open to inspection.** Every duty and contract to be performed by said trustees must receive the approval of the majority of the board in regular session duly called, in order to make binding and valid.

All proceedings of said board shall be recorded in a book kept for that purpose, and open to the inspection of anybody on request. [1897, ch. 72, § 3; R. C. 1899, § 966c.]

§ 1150. **Itemized vouchers.** All money that may come into the treasury of the state of North Dakota, and credited to the school for the deaf and dumb, shall be paid out to the persons entitled thereto, and the state auditor is hereby directed to draw his warrant on the funds in the hands of the state treasurer belonging to said school for the deaf and dumb upon the written order of the said board of trustees, which order shall be accompanied by itemized vouchers for the full amount of such order; provided, no such order shall be issued until there is cash in the treasury with which to pay the same. [1897, ch. 72, § 4; R. C. 1899, § 966d.]

§ 1151. **No compensation.** The trustees shall receive no compensation for performing the duties herein prescribed. [1897, ch. 72, § 5; R. C. 1899, § 966e.]

#### ARTICLE 8.—BLIND ASYLUM.

§ 1152. **Location and government.** There is hereby established and located at Bathgate in Pembina county, a blind asylum, which shall be known by the name of the North Dakota Blind Asylum. The government and management of said asylum is hereby vested in a board of trustees consisting of five members, which shall be styled the Board of Trustees of the North Dakota Blind Asylum. [1895, ch. 24, § 1; R. C. 1899, § 967.]

§ 1153. **Trustees, how appointed. Length of term.** The members of the board shall be nominated by the governor, and, by and with the advice and consent of the senate, shall be appointed on or before the third Monday of February of each biennial session of the legislative assembly, for a period of four years from said date; provided, however, that the first board of trustees shall be appointed by the governor at once upon the taking effect of this article; provided, further, that the terms of the first board shall be, three members for the period of four years, and two members for the period of two years, the length of the term of the respective trustees to be designated by the governor in making the appointments. Such appointments shall be made by and with the advice and consent of the senate, when the legislative assembly is in session; otherwise, the trustees appointed shall qualify and hold office until their successors are appointed and qualified. The governor shall have power to fill all vacancies which may occur in said board when the legislative assembly is not in session, and the members of said board shall hold their office until their successors are appointed and qualified as provided herein. [1895, ch. 24, § 2; R. C. 1899, § 968.]

§ 1154. **Organization of board. Quorum.** The governor shall cause to be issued to each of said trustees a commission, which shall be under the great seal of the state. At the first meeting of said board the members thereof shall take and subscribe the oath of office required of all civil officers and shall then proceed to elect a president, secretary and treasurer, but the treasurer need not be a member of the board. A majority of the trustees shall constitute a quorum for the transaction of business. The board shall require a bond of its treasurer and fix the amount thereof. [1895, ch. 24, § 3; R. C. 1899, § 969.]

§ 1155. **Meetings of board. Compensation.** The board shall hold its meetings at Bathgate and fix the time of holding the same; provided, there shall not be to exceed twelve regular meetings in each year. The members of the board shall receive as compensation for their services three dollars per day for each day employed, not to exceed twenty-four days in any one year, and five cents per mile for each mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury on the vouchers of said board; provided, that until such time

as the legislative assembly shall make an appropriation for the construction and maintenance of such asylum, or until there shall be derived from the interest on the proceeds of sales or of rents derived from the thirty thousand acres appropriated for this asylum, sufficient funds to construct and maintain such asylum, the sum of five thousand dollars, the trustees appointed under this article shall receive no compensation whatever, nor shall they issue their warrant upon the state treasury for any purpose whatever. [1895, ch. 24, §§ 4, 5; R. C. 1899, § 970.]

§ 1156. **Proceeds from land grant.** The thirty thousand acres of land donated by congress for the purpose of such blind asylum and appropriated by the constitution of this state therefor, and all moneys received from the interest and income derived from the sales of such lands or rents derived from the leasing of such lands, are hereby appropriated for the construction and maintenance of said asylum. [1895, ch. 24, § 6; R. C. 1899, § 971.]

§ 1157. **By-laws and rules of regulation.** The board shall direct the disposition of all moneys appropriated by the legislative assembly or the interest on all moneys that may be derived from the sale, or the rent derived from the leasing of land donated by congress to this state and by the constitution of the state appropriated for such asylum, and shall have supervision and charge of the construction of all buildings provided for or authorized by law for said asylum. Said board shall have power to enact by-laws and rules for the regulation of all its concerns not inconsistent with the laws of this state, to see that its affairs are conducted in accordance with the requirements of law; to provide employment and instruction for the inmates; to appoint a superintendent, a steward, a matron, a teacher or teachers, and such other officers as in its judgment the wants of the institution may require, and prescribe their duties; to exercise a general supervision over the institution, its officers and inmates, fix the salaries to be paid to the officers and to order their removal, upon good cause. [1895, ch. 24, § 7; R. C. 1899, § 972.]

§ 1158. **Reports, when made.** The board shall make a report to the governor on or before the last Monday in December next preceding each biennial session of the legislative assembly, containing a financial statement showing the condition of all funds appropriated for the asylum; also the money expended and the purpose for which the same was expended in detail; also showing the condition of the institution generally. [1895, ch. 24, § 8; R. C. 1899, § 973.]

§ 1159. **Instruction of blind children.** Until otherwise provided the governor is hereby authorized to contract with the state of South Dakota, or with the state of Minnesota, for the care and instruction of blind children of school age, and shall authorize the state auditor to issue warrants upon the state treasury for that purpose. [1899, ch. 86; R. C. 1899, § 973a.]

#### ARTICLE 9.—INSTITUTION FOR FEEBLE MINDED.

§ 1160. **Location.** There shall be located and permanently maintained at or near the city of Grafton, in the county of Walsh, an institution for the feeble minded, upon the grounds conveyed by the United States of America to the state of North Dakota for that purpose, to be known and designated as "The Institution for Feeble Minded." [1903, ch. 108, § 1.]

§ 1161. **Board of trustees.** Said institution shall be controlled by a board of five trustees who shall be appointed by the governor, by and with the advice and consent of the senate, for the term of four years each, and until their successors are appointed and qualified; provided, however, that of the first board of trustees appointed under this article, three shall be appointed for the term of four years, and the other two for the term of two years. All vacancies occurring in said board shall be filled by appointment in like manner as aforesaid, to fill the unexpired term. [1903, ch. 108, § 2.]



§ 1162. **Term of office.** Such board of trustees shall annually elect from among their number a president and secretary, who shall hold office for two years and until their successors are chosen and qualified. Three of said trustees shall constitute a quorum, and shall meet annually in the month of April and as often thereafter as may be deemed necessary for the proper transaction of business, upon the call of the president or secretary. [1903, ch. 108, § 3.]

§ 1163. **Duties.** Said trustees shall have the general management and superintendency of said institution; shall prescribe all rules and regulations for the government thereof, and the admission of pupils thereto, and generally perform all acts necessary to render the said institution efficient for the purposes for which the same is established, to wit: For the relief and instruction of the feeble minded and for the care and custody of the epileptic and idiotic of the state, and they may introduce and establish such trades and manual industries as in their judgment will best train their pupils for future self-support. [1903, ch. 108, § 4.]

§ 1164. **Appointment of superintendent.** Such board shall appoint a superintendent of said institution who shall be a physician skilled in caring for, and in instructing the class of unfortunates to be provided for by this article. Such superintendent shall name all the subordinate officers, and such nominations shall be confirmed or rejected by the board. [1903, ch. 108, § 5.]

§ 1165. **Who admitted.** All feeble minded persons residents of this state who, in the opinion of the superintendent, are of suitable age and capacity to receive instruction in this institution, and whose defects prevent them from receiving proper training in the public schools of the state, and all idiotic and epileptic persons residents of this state may be admitted to and receive the benefits of this institution free of charge, subject to such rules and regulations as may be made by the board of trustees; and they shall be provided by their friends, relatives, or the county from which they come, sufficient funds to furnish them with proper clothing and transportation. [1903, ch. 108, § 6.]

§ 1166. **Duties of officers.** The president shall preside at all meetings of the board, when present, and in his absence a president pro tempore may be chosen to perform the duties of president. He shall sign all contracts on behalf of the board and all orders upon the treasurer. The secretary shall countersign all contracts and orders upon the treasurer and shall keep a correct report of the proceedings of the board, and shall have charge in trust for the institution of all papers and records of the same. Such board shall appoint a treasurer who may or may not be one of their number, as they deem best, as provided in section 1270. [1903, ch. 108, § 7.]

§ 1167. **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. [1903, ch. 108, § 8; 1905, ch. 120.]

§ 1168. **Duties of county commissioners.** The board of county commissioners shall order to be paid the expenses of transportation to and from such institution of any indigent, feeble minded children entitled to admission thereto, and they shall, at the time of levying other taxes, levy a sufficient tax to reimburse the county therefor. In order to avoid long delay in transporting indigent children to and from the institution, the superintendent may, upon correspondence with the auditor of such county, pay such transportation and forward to such county auditor an itemized statement of the expenses. The board of county commissioners shall order the county treasurer to draw his warrant for such amount in favor of the superintendent of such institution, who shall account for such money as provided by law. [1903, ch. 108, § 9.]

§ 1169. **Duties of trustees.** The board of trustees shall take and hold in trust for said institution all lands or property hereafter granted, given, devised or conveyed to the institution for feeble minded, to be applied and used at Grafton aforesaid, and any moneys, now or hereafter, appropriated or intrusted to said institution may be drawn at any time from the state treasury upon the order of the board of trustees, on the presentation of proper vouchers to the state auditor. [1903, ch. 108, § 10.]

§ 1170. **Officers to report, when.** On or before the first day of November, in each even numbered year, or oftener if required, the superintendent, secretary and treasurer shall render to the board of trustees full and complete reports, accompanied by such recommendations as may seem to them wise and proper, and biennially, and on or before the first day of December, preceding the regular sessions of the legislature, said board of trustees shall furnish the governor a printed report of said institution for the two years ending on the preceding June thirtieth. Said report shall contain such matters as are of interest to the institution, with reports of the superintendent, such as is common from like institutions; with a detailed statement of the disbursements. The state authorities shall print and deliver to the proper officers for the use of the legislature and state officers, five copies for each, and shall deliver to the officers of such institution the number estimated by them to be necessary for the use thereof, not to exceed five for each member enrolled therein. [1903, ch. 108, § 11.]

§ 1171. **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. [1903, ch. 108, § 12; 1905, ch. 120.]

#### ARTICLE 10.—INDUSTRIAL SCHOOL.

§ 1172. **Location of school.** The industrial school as established and located at the city of Ellendale, Dickey county, North Dakota, shall continue to be an industrial school and a school for manual training, the object of such industrial school to be instruction in a comprehensive way in wood and iron work and the various other branches of manual training, cooking, sewing, modeling, art work and the various other branches of domestic economy as a co-ordinate branch of education together with mathematics, drawing and other necessary common school studies. [1897, ch. 89, §§ 1, 2; R. C. 1899, § 974.]

§ 1173. **Endowment.** All proceeds accumulating in the interest and income fund arising from the sale or leasing of all lands granted or hereafter to be granted by the state of North Dakota or by the constitution of the state of North Dakota for the said industrial school, are hereby pledged for the

establishment and maintenance of said industrial school. [1897, ch. 89, § 3; R. C. 1899, § 975.]

§ 1174. **Management.** The management and government of such school shall be vested in a board of trustees, consisting of five members, two of whom shall be residents of Dickey county, to be known as the board of trustees of the industrial school, and to be appointed as provided in this section. The members of the board shall be nominated by the governor and by and with the consent of the senate, shall be appointed on or before the third Monday in February of each biennial session of the legislative assembly, for a period of four years from said date; provided, however, that the first board of trustees shall be appointed by the governor at once upon the taking effect of this article; and provided, further, that the term of the first board shall be, three, members for a period of four years and two members for a period of two years, the length of the term of the respective trustees to be designated by the governor in making the appointments. Such appointments shall be made by and with the consent of the senate, when the legislative assembly is in session, otherwise the trustees appointed shall qualify and hold office until their successors are appointed and qualified. The governor shall have power to fill all vacancies which may occur in said board when the legislative assembly is not in session, and the members of said board shall hold their office until their successors are appointed and qualified as provided herein. [1897, ch. 89, §§ 4, 5; R. C. 1899, § 976.]

§ 1175. **Meetings of board. Compensation.** The board shall hold its meetings at the city of Ellendale, in Dickey county, and fix the time for holding the same. They shall not hold to exceed six regular meetings each year; provided, that the president of the board shall have power to call special meetings, whenever in his judgment it becomes necessary. At their first meeting they shall proceed to elect a president and a secretary, but the secretary need not be a member of the board of trustees, and at said meeting they shall adopt a seal for said state industrial school. A majority of the board shall be a quorum. Each trustee and the secretary shall receive three dollars per day for each day necessarily employed in attendance upon sessions of the board, and five cents per mile for each mile necessarily traveled, to be paid on presentation of proper vouchers containing an itemized statement of the number of days in attendance and miles actually traveled as above provided, duly verified by his oath and approved by the president and secretary of the board, and the state auditor shall audit such claims and draw his warrants upon the state treasurer for the amounts so allowed. [1897, ch. 89, §§ 6, 7; R. C. 1899, § 977.]

§ 1176. **Oath. Bond. Plans and specifications.** Before entering upon the duties of his office each member of said board of trustees shall take and subscribe an oath as follows: "I do solemnly swear that I will support the constitution of the United States and the constitution of the state of North Dakota, and will faithfully discharge the duties of board of trustees of the state industrial school according to the best of my ability; that I have not received and will not knowingly and intentionally, directly or indirectly, receive any money or other consideration from any source whatever for any vote or influence I may give or withhold or for any other official act I may perform as such trustee, except as herein provided." He shall also execute a bond in the penal sum of three thousand dollars, for the use and benefit of the state of North Dakota, with two or more good and sufficient sureties to be approved by the governor, and be filed with the secretary of state, conditioned upon the faithful performance of his duties and the honest and faithful disbursements of and accounting for all moneys which may come into his hands under the provisions of this article. The members of said board having taken the foregoing oath and executed the bond as aforesaid are hereby empowered and required to cause to be prepared suitable plans and speci-

fications by a competent architect. Such plans shall contemplate the erection of a building or buildings which will accommodate not less than one hundred nor more than five hundred students, and shall be accompanied by specifications and by a detailed estimate of the amount required and description of all material and labor required for the erection and full completion of the building or buildings; and no plan shall be adopted that contemplates the expenditure of more money for its completion than the amount reasonably necessary to carry out the object of said institution. [1897, ch. 89, § 8; R. C. 1899, § 978.]

**§ 1177. Superintendent of construction. Proposals for building.** The said board of trustees shall employ the architect whose plans and specifications are accepted to act as superintendent of construction, who shall receive for such plans and specifications and for superintending construction such pay as the board by agreement may determine, which pay shall not exceed an amount equal to five per cent of the estimated cost of said building. Whenever the said plans and specifications shall have been approved and adopted by a majority of the board of trustees they shall cause to be inserted in at least two of the daily newspapers published in the state of North Dakota, and having a general circulation therein an advertisement for sealed bids for the construction of the buildings herein authorized, and they shall furnish a printed copy of this article, and a copy of the plans and specifications to any person or persons applying therefor; provided, said trustees may advertise as aforesaid whenever there shall be a sufficient amount of money to the credit of said industrial school with which to construct all or any part thereof deemed expedient by said trustees to erect or construct; provided, further, that said building or buildings shall be erected on the piece or parcel of land at or near the city of Ellendale, in Dickey county, donated by the citizens of said city, and now held in fee simple by the state of North Dakota. No trustees or officers of said industrial school shall be in any way interested in any contract for the erection of said building or buildings or furnishing any material for said buildings, and if any such officer be so interested he shall be deemed guilty of a misdemeanor and on conviction be fined in any sum not exceeding five thousand dollars. [1897, ch. 89, §§ 9, 10, 11; R. C. 1899, § 979.]

**§ 1178. Treasurer to keep funds. Accounts, how audited.** All moneys that may accrue from the interest and income derived from the renting and sale of lands hereinbefore appropriated and all moneys that may hereafter be appropriated by the legislative assembly of North Dakota, including all moneys raised in any other manner for said school, shall be deposited with the state treasurer, to be by him kept in a separate fund, which shall be known as the state industrial school fund; and such funds shall be used exclusively for the benefit of said school, as may be herein or hereafter provided. The board of trustees of the state industrial school shall audit all accounts against the funds appropriated by the legislative assembly of the state of North Dakota, or held by the state for the use of the state industrial school, and the state auditor shall issue his warrant upon the state treasurer for the amount of all accounts which have been so audited and allowed by the board of trustees and attested by the president and secretary of said board. The board of trustees of the state industrial school shall direct the disposition of all moneys appropriated, or that may hereafter be appropriated by the legislative assembly of the state of North Dakota, or may hereafter accumulate in any manner in the state industrial school fund. The board shall have the power to receive all donations, gifts and bequests that may be offered or tendered to or for the benefit of such school, and dispose of the same. All moneys coming into the hands of such board shall be immediately covered into the state treasury to the credit of the state industrial school fund. [1897, ch. 89, §§ 13, 14, 15, 16; R. C. 1899, § 981.]

§ 1179. **Faculty.** The board of trustees shall have power to employ a president and necessary teachers, instructors and assistants to conduct such school, and to prescribe their respective duties and to fix the salaries of such employes. They shall have power to remove the president, instructors and assistants and to fill all vacancies. The faculty shall consist of the president, teachers and instructors, and it shall pass all needful rules and regulations for the government and discipline of the school and all such rules and regulations as are necessary for the preservation of morals, decorum and health. [1897, ch. 89, §§ 17, 18; R. C. 1899, § 982.]

§ 1180. **Reports.** The faculty shall make an annual report to the board of trustees on or before the first Monday of November of each year, showing the condition of the school and containing such recommendations as the welfare of the institution shall demand. The board of trustees shall make a report to the governor on or before the fifteenth day of November next preceding each biennial session of the legislative assembly, containing the several reports of the faculty herein provided for, and showing the condition of the funds appropriated for the school, the money expended and the purpose for which the same was expended in detail, and showing the number of students in attendance, the work accomplished by them, and the condition of the school in general. [1897, ch. 89, §§ 19, 20; R. C. 1899, § 983.]

#### ARTICLE 11.—STATE HOSPITAL FOR THE INSANE.

§ 1181. **Location of.** The state hospital for the insane as now established and located at Jamestown, in the county of Stutsman, shall continue to be the hospital for the insane of this state, and shall be known by the name of "State Hospital for the Insane." [1885, ch. 68, § 1; R. C. 1895, § 984.]

§ 1182. **Board of trustees, appointment of. Vacancies.** Such hospital shall be governed by a board of trustees consisting of five members to be appointed by the governor as hereinafter provided, and the term of office of such trustees shall be four years, except as hereinafter provided, and shall commence on the first Tuesday of April next succeeding their appointment. The governor at each regular session of the legislative assembly shall nominate and, by and with the advice and consent of the senate, appoint the trustees of such hospital in the place of those whose term shall thereafter first expire, and such trustees shall hold their offices until their successors are appointed and qualified. The governor shall fill all vacancies in the board by appointment to extend to the first Tuesday of April succeeding the next regular session of the legislative assembly and at such session the governor shall nominate and, by and with the advice and consent of the senate, appoint some person to fill the vacancy for the remainder of the term. Not more than two members of the board shall be appointed from the same county. [1885, ch. 68, § 2; 1889, ch. 93, § 1; R. C. 1899, § 985.]

§ 1183. **Sessions of board. Compensation of trustees.** The sessions of the board shall be held at the hospital and shall not in any one year exceed twenty-four days in the aggregate, but the governor may, when deemed necessary, authorize additional sessions. Each trustee shall receive three dollars per day for each day necessarily employed in attendance upon sessions of the board and all necessary traveling expenses incurred therein, to be paid on the presentation of proper vouchers containing an itemized statement of the number of days' attendance and the money actually expended as above provided, duly verified by his oath and approved by the president or secretary of the board; and the state auditor shall audit such claims and draw his warrant upon the state treasurer for the amounts so allowed. [1889, ch. 93, §§ 3, 4; R. C. 1895, § 986.]

§ 1184. **Bond and oath of trustees.** Each trustee shall, before entering upon the duties of his office, execute a bond to the state in the sum of five thousand dollars with two or more sureties to be approved as provided in

section 403, conditioned for the faithful and impartial performance of his duties as such trustee; and he shall take and subscribe an oath to be indorsed upon his bond, which oath shall be the same as that required of other civil officers. [1889, ch. 93, § 1; R. C. 1899, § 987.]

§ 1185. **Object of hospital.** The object of such hospital shall be to receive and care for all insane persons residing within the state who may be committed to its care in accordance with the provisions of this article, and to furnish all needed medical treatment, seclusion, rest, restraint, attendance, amusement, occupation and support which may tend to restore their health and recover them from insanity or to alleviate their sufferings. The board of trustees shall have power to discharge patients and to refuse additional applications for admission to such hospital when in its judgment the interests of the patients demand such discharge or refusal; and in the admission and retention of patients, curables and recent cases shall have preference over cases of long standing and violent, dangerous or otherwise troublesome cases shall have preference over those of an opposite description. [1885, ch. 68, § 3; R. C. 1895, § 988.]

§ 1186. **Trustees may take land.** The board of trustees may take in the name of the state and hold in trust for the hospital any lands conveyed or devised, and any money or personal property given or bequeathed to be applied for any purpose connected with such institution; but it shall not have power to bind the state by any contract beyond the amount of the appropriation which may at the time have been made for the purpose expressed in the contract, nor to sell or convey any part of the real estate belonging to such hospital without the consent of the legislative assembly, except that it may release any mortgage or convey any real estate which may be held by it as security for any money or upon any trust, the terms of which authorize such conveyance. No trustee or officer of the hospital shall be either directly or indirectly interested in any contract for the purchase of building material, supplies or other articles for the use of the institution. The board shall provide and keep a seal upon which shall be inscribed the name of the hospital with such other words and devices as they may deem appropriate. [1885, ch. 68, § 4; R. C. 1899, § 989.]

§ 1187. **Officers of board.** The board of trustees shall elect a president and secretary from its own number, whose term of office shall be one year, and until their successors are elected and qualified. The board shall keep a record of its proceedings at all meetings in a book to be kept for that purpose; and at its annual meeting next preceding the biennial session of the legislative assembly it shall make a report to the governor of the condition and wants of the hospital, which shall be accompanied with a full and accurate report of the superintendent, showing the annual cost per capita of the inmates, and the per cent of discharges and recoveries, together with a detailed account of all moneys received and paid out; five hundred copies of which report shall be printed. [1885, ch. 68, § 6; R. C. 1895, § 990.]

§ 1188. **Meetings of the board.** The annual meeting of the board shall be held on the first Wednesday of September. Special meetings for the appointment or removal of officers, or for the transaction of general business may be held upon the written request of the president or of any three members of the board. Three members of the board shall constitute a quorum for the transaction of business. [1885, ch. 68, § 7; R. C. 1895, § 991.]

§ 1189. **Powers and duties of board. Salaries.** 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; matron, 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. [1885, ch. 68, § 8; 1891, ch. 132, § 1; R. C. 1895, § 992; 1905, ch. 119.]

§ 1190. **Monthly visits by one trustee.** One or more of the trustees shall visit the hospital monthly, and the president of the board, with the superintendent, shall make monthly examinations of the accounts of the steward and certify their approval on the same page with his monthly balance. [1885, ch. 68, § 9; R. C. 1899, § 993.]

§ 1191. **Superintendent. Bond and oath of.** The superintendent of the hospital shall, before entering upon the duties of his office, give a bond to the state in the penal sum of twenty-five hundred dollars, conditioned for the faithful and impartial discharge of the duties of his office according to law, and the by-laws of such hospital, to be approved by the board, and take and subscribe an oath faithfully and diligently to discharge the duties required of him by law and the by-laws of the board of trustees. He shall be the chief executive officer of the hospital and shall have the entire control of the medical, moral and dietetic treatment of the patients; he shall employ all employes and assistants necessarily connected with the institution below the grade designated as officers in section 1189, and he may discharge any such employe at will and suspend any resident officer of the hospital, except the steward, being responsible to the board for the proper exercise of that power. [1885, ch. 68, § 10; R. C. 1895, § 994.]

§ 1192. **Duties of steward.** The steward shall keep the accounts, pay those employed in and about the hospital, and have personal superintendence of the farm, garden and grounds, and perform such other duties as may be assigned him by the by-laws, under the direction of the board of trustees; he shall purchase all supplies for the hospital wherever the best grade of articles in suitable quantities can be purchased at the lowest price, and, so far as practicable, in large rather than in small quantities; and shall, if in his judgment it can be done to advantage, advertise for proposals for staple articles and make contracts for the furnishing of the same in bulk or in quantity as may be needed for use. [1885, ch. 68, § 11; R. C. 1899, § 995.]

§ 1193. **New buildings.** Whenever any additional building is erected or extensions, alterations or repairs are to be made in connection with such hospital, the board of trustees shall have authority to procure all necessary plans, drawings and specifications for such buildings, alterations or repairs; to advertise for proposals for the erection and completion thereof and to accept such bid as may seem to it most advantageous, the contractor in each case to give adequate security for the faithful performance of his contract; to appoint and fix the compensation of a building superintendent who shall superintend the work and perform such other duties in that respect as the board may require, and to discharge him; also to examine and certify to the correctness of his estimates and accounts for work under the contract, and of the superintendent and the employes. [1885, ch. 68, § 13; R. C. 1899, § 996.]

§ 1194. **Appropriations not to be diverted.** No portion of any special appropriation for the erection of any building or for the doing of any work or for any purpose other than ordinary expenses shall be drawn from the state treasury in advance of the work done or the materials furnished, and only upon proper estimates thereof approved by the trustees, and no portion of

any appropriation for any purpose shall be drawn from the treasury before it shall be required for the purpose for which it is made, and no appropriation which is or may be made for one purpose, shall be drawn or used for any other purpose, and if at any time hereafter the sum appropriated by the legislative assembly for any specific purpose shall be found insufficient to complete and accomplish the purpose for which such appropriation is made, then no part of the sums so appropriated shall be expended or drawn from the treasury, nor shall any liability on the part of the state be created on account of such appropriation. [1885, ch. 68, § 14; R. C. 1899, § 997.]

**§ 1195. Patients.** All patients of the hospital who are residents of this state, shall receive their board and treatment free of charge, unless in the judgment of the said board of trustees of said hospital the patient's estate is amply sufficient, without hardship to his or her family, to meet the first cost of his board and treatment, or such proportion thereof as said board of trustees of said hospital may by resolution recommend. And it shall be the duty of said board of trustees at each of its regular meetings, by resolution to determine the sufficiency of the estate of each patient admitted to said hospital not theretofore determined upon by said board of trustees, to pay the cost of board and treatment. To enable said board of trustees to determine the sufficiency of such estates, the county commissioners of insanity must inquire into the matter of the estate of such patient, his or her husband or wife, guardian or parents or other person or persons responsible for his or her support. To enable the county board of insanity commissioners to inquire into and report upon this matter their chairman shall subpoena witnesses and shall fully comply with the provisions of section 1902. The provisions of this section shall be liberally construed in favor of the applicant for admission to said hospital. The residents of other states or territories may be admitted to the hospital upon payment of the first cost of such board and treatment, as provided by the by-laws adopted by the board of trustees; provided, that no resident of another state or territory shall be received or retained to the exclusion of any resident of this state; provided, further, that should any patient be unwilling to accept gratuitous board and treatment, the superintendent is authorized to receive pay therefor, and is required to account for the same in an itemized monthly statement to the board of trustees, as donations, to be duly credited to the persons from whom they were received, and if the superintendent shall receive any money for the purpose of furnishing extra attention and comforts to any patient, he shall account for the same and for expenditure in like manner. [1897, ch. 91; R. C. 1899, § 998; 1903, ch. 105, § 1.]

**§ 1196. Powers of commissioners of insanity and board of trustees.** In any case in which, in the judgment of the board of trustees of said hospital, the patient, his or her estate, relatives, parents, guardian or other person responsible for the patient's support, should be required to meet all or any part or portion of the patient's cost for board and treatment aforesaid, such board of trustees are hereby authorized to empower the steward or some other suitable person to collect by suit or otherwise from the estate of such patient or from the husband, parent or guardian of a married woman or minor child, as the case may be, such amount as such board of trustees of said hospital shall deem sufficient, which sum, when collected, shall be paid into the treasury of the state and placed to the credit of the proper hospital fund; provided, it is hereby made the duty of the county commissioners of insanity to faithfully inquire into and report upon the value, kind, quality and quantity of the estate of all inmates sent from their respective counties to said hospital, this provision to apply to any patients from their respective counties during the past six years, whether they now remain in said hospital or not, and it shall be the duty of said board of trustees to apply the provisions of this article to them; and the said patients, their estates, husband, parent or guardian of



a married woman or minor child shall be liable for such cost and treatment of such patient, or so much thereof as shall be determined by said board of trustees. [1897, ch. 91; R. C. 1899, § 998a; 1903, ch. 105, § 1.]

§ 1197. **Care of patients to be impartial. Exceptions.** All patients in the hospital shall be regarded as standing on an equal footing; and the several patients, according to their different conditions of mind and body and their respective needs shall be provided for and treated with equal care; provided, that if the relatives or immediate friends of any patient shall desire it and pay the expenses thereof, such patient may have special care and may be provided with a special attendant, as may be agreed upon with the superintendent. In such cases the charges for such special care and attendance shall be paid quarterly in advance. The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of any such patient therein, and the superintendent shall cause the account of such patient to be credited with any sums so paid. [1879, ch. 23, § 23; R. C. 1899, § 999.]

§ 1198. **Preference given in receiving patients.** If at any time it becomes necessary for want of room or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

1. Cases of less than one year's duration.
2. Chronic cases of more than one year's duration, presenting the most favorable prospects for recovery, shall be next preferred.
3. Those for whom application has been longest on file, other things being equal, shall be next preferred.
4. When cases are equally meritorious in all other respects, the indigent are to be preferred. [1879, ch. 23, § 32; R. C. 1899, § 1000.]

§ 1199. **Proceedings when patient escapes from hospital.** If any patient shall escape from the hospital the superintendent shall cause immediate search to be made for such patient and if such patient cannot be found he shall cause notice of such escape to be forthwith given to the commissioners of insanity of the county where the patient belongs and if such patient is found in such county the commissioners shall cause him to be returned and shall issue their warrant therefor as in other cases, unless the patient shall be discharged. [1879, ch. 23, § 36; R. C. 1895, § 1001.]

§ 1200. **Discharge of patients when cured.** Any patient who is cured shall be immediately discharged by the superintendent. Upon such discharge the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses of such patient in the hospital. The relatives of any patient not susceptible of cure and not dangerous to be at large, shall have the right to take charge of and remove such patient on consent of the board of trustees, and during the interim between the meetings of the board the consent of two of the trustees shall be sufficient. [1879, ch. 23, § 37; R. C. 1899, § 1002.]

§ 1201. **Discharge of patients before cure.** On application of the relatives or immediate friends of any patient in the hospital who is not cured and who cannot be safely allowed to go at liberty, the commissioners of insanity of the county where such patient belongs, on making provision for the care of such patient within the county as in other cases, may authorize his discharge therefrom; provided, that no patient who is under charge or conviction of homicide shall be discharged without order of the board of trustees. [1879, ch. 23, § 38; R. C. 1899, § 1003.]

§ 1202. **Discharge of patient without application.** When any patient is discharged from the hospital by the authorities thereof, without application therefor, notice of the order of discharge shall at once be sent to the commissioners of insanity of the county where he belongs and the commissioners shall forthwith cause him to be removed and shall at once provide for his care

in the county, as in other cases, unless such patient is discharged as cured. And if the commissioners of insanity of such county fail or neglect to take and remove such patient so discharged within thirty days from the date of the order discharging him, and of the notice of the order so sent, such county shall be liable for and pay to the state the sum of two dollars per day for the care and keeping of such patient at the hospital during the time commencing at the expiration of thirty days after the date of such order and notice. It shall be the duty of the superintendent of the hospital to report all such delinquencies and the time of any patient so kept beyond such period of thirty days, giving the name thereof, the county where such patient belongs, the amount due from such county for such charge, to the governor, for the year ending on the thirtieth day of June each year. It shall be the duty of the state board of equalization to include and charge such amount so reported to each county so named, and the same shall be included and made a part of the tax levied against such county, in addition to the amount so levied by such board for state purposes. [1879, ch. 23, § 39; 1887, ch. 66, § 1; R. C. 1895, § 1004.]

§ 1203. **Attorney general to bring suit, when.** Upon the report of the superintendent provided for in the preceding section, it shall be the duty of the attorney general to bring an action against the county so indebted, for the amount due the state, and any judgment obtained in such action may be enforced as other judgments against counties are enforced. [1887, ch. 66, § 2; R. C. 1899, § 1005.]

§ 1204. **Superintendent not responsible for reception of patient, when.** The warrant of the commissioners of insanity authorizing the admission of any person to the hospital as a patient, accompanied by a physician's certificate as provided by law shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind on account of the reception and detention of such persons in the hospital; provided, such detention shall be otherwise in accordance with the laws and by-laws regulating its management. [1879, ch. 23, § 43; R. C. 1899, § 1006.]

§ 1205. **Hospital seal to be affixed.** The superintendent shall affix the seal of the hospital to each notice, order of discharge, report or other paper required to be given or issued by him. [1879, ch. 23, § 44; R. C. 1899, § 1007.]

§ 1206. **Board to furnish blanks to commissioners of insanity.** The board of trustees of the hospital shall provide the commissioners of insanity of each organized county with such blanks as may be necessary to enable them to comply with the provisions of this article, and also with a copy of the by-laws of the hospital, when printed. [1879, ch. 23, § 46; R. C. 1899, § 1008.]

§ 1207. **Additional buildings.** To provide for the erection of necessary additional buildings for the hospital for the insane at Jamestown and other needed and necessary improvements and the proper equipment of such buildings, the board of trustees of the state hospital for the insane may issue bonds for such sum or sums of money as can actually be used in the construction of such necessary additional buildings, not exceeding the sum of fifty thousand dollars; said bonds shall be in denominations of one thousand dollars each, shall bear interest at a rate not exceeding six per centum per annum, and shall be payable in twenty years from the date of issue, from the interest and income fund accumulating from the sale, rental or lease of lands donated to the said hospital for the insane by article 19, section 215, division 8, of the constitution of the state of North Dakota, or from the rental or lease of such lands. The interest on such bonds shall be paid annually on the first day of January of each year and shall be payable from the interest and income accumulating from the sale, rental or lease of lands apportioned to the institution; provided, if at any time there shall not be sufficient money to pay such interest there is hereby appropriated out of the state treasury, out of funds not otherwise appropriated, a sum sufficient to meet such interest; provided, further, that a sufficient amount of funds accumulating in the interest

and income fund for sale or rental of land or lands appropriated to the hospital for the insane shall be used and applied solely for the payment of interest on such bonds and for the creation of a sinking fund with which to pay such bonds on maturity. The state board of equalization, at the time the other taxes are levied, shall levy a sufficient tax annually to pay the interest on such bonds as the same shall become due, which tax shall be collected in the same manner that other state taxes are collected. [1899, ch. 99, § 1; R. C. 1899, § 1008a.]

§ 1208. **Moneys, where deposited.** All moneys that may arise or be derived from the sale, rental or lease of lands appropriated to the hospital for the insane shall be deposited with the state treasurer, to be used exclusively for the benefit of the hospital for the insane. [1899, ch. 99, § 2; R. C. 1899, § 1008b.]

#### ARTICLE 12.—SOLDIERS' HOME.

§ 1209. **Location of.** The soldiers' home as located and established at the city of Lisbon, in the county of Ransom, shall continue as such at said place. [1890, ch. 165, § 1; R. C. 1895, § 1009.]

§ 1210. **Object of.** The object of the soldiers' home shall be to provide a home and subsistence for all honorably discharged soldiers, sailors and marines who have served in the army or navy of the United States, and who are disabled by disease, wounds, old age or otherwise, and their wives and widows. [1890, ch. 165, § 2; 1893, ch. 121, § 1; R. C. 1899, § 1010.]

§ 1211. **Who may be admitted.** No applicant shall be admitted to such home who has not been a resident of this state at least one year next preceding his application for admission therein, unless he served in a Dakota regiment or was accredited to the territory of Dakota. [1890, ch. 165, § 2; 1893, ch. 121, § 1; R. C. 1899, § 1011.]

§ 1212. **Granted lands and funds pledged.** All lands which have been or may be hereafter granted by the United States or by this state for a soldiers' home are hereby set apart for the support of such home, and all proceeds from the sales of such lands are hereby pledged as a perpetual fund for the use and benefit of such home. [1890, ch. 165, § 3; R. C. 1899, § 1012.]

§ 1213. **Board of trustees.** The general supervision and government of the home shall be vested in a board of five trustees, to be styled "The Board of Trustees of the Soldiers' Home," each member of which shall have served in the army or navy of the United States, and four of whom shall be appointed by the governor, by and with the advice and consent of the senate, two of whom shall be from the same county wherein the institution is located. The members of the board shall hold their office for the term of three, four and five years respectively. The time for which each member shall hold his office shall be designated in his certificate of appointment. The commander or chief officer of the organization known as the Grand Army of the Republic shall be ex officio a member of said board, with the same powers, duties and privileges as the other members thereof. The compensation of the trustees shall be three dollars per day each for not exceeding twenty-four days in any one year and their necessary expenses while performing the duties of their office. [1897, ch. 132; R. C. 1899, § 1013.]

§ 1214. **Oath and bond of trustees.** Before entering upon the duties of his office each member of the board shall take and subscribe the oath required of other civil officers and execute a bond to the state in the sum of three thousand dollars with two or more sureties, to be approved by the governor, conditioned for the faithful performance of his duties and the honest and faithful disbursement of and accounting for all moneys which may come into his hands under the provisions of this article, which bond and oath shall be filed in the office of the secretary of state. [1890, ch. 165, § 6; R. C. 1899, § 1014.]

§ 1215. **Annual meeting.** It shall be the duty of the board to meet annually on the first Tuesday in June, and at such meeting to elect a chairman of the board. The commandant shall act as secretary of said board. The board shall have four regular meetings in each year and may adopt a seal and make rules and regulations not inconsistent with the constitution of the United States, or of this state, for the management and government of such homes, including such rules as it shall deem necessary for the preservation of order, enforcing discipline and preserving the health of its inmates. The board shall annually make full and detailed report of the disbursements of the home and its condition financially and otherwise to the governor, and to each regular session of the legislative assembly. [1897, ch. 132; R. C. 1899, § 1015; 1901, ch. 37.]

§ 1216. **Commandant and subordinate officers. Qualifications.** Such board shall have the power and it shall be its duty to appoint a commandant for said home who shall serve during the pleasure of the board and who shall be one who was honorably discharged from the military or naval service of the United States, who served in the war of the Rebellion, whose salary shall not exceed twelve hundred dollars per annum, and who shall nominate, subject to the approval of the board, all necessary subordinate officers who shall all be persons either honorably discharged from the service of the United States or widows of honorably discharged soldiers. Such subordinate officers may be removed by the commandant for inefficiency or misconduct, but in case of removal he must make a detailed statement of the cause thereof to the trustees and the board shall have the power to reinstate such persons. The compensation of the subordinate officers shall be fixed by the board. [1890, ch. 165, § 11; R. C. 1895, § 1016.]

§ 1217. **Funds, how kept.** All moneys that may arise from the interest received on all money derived from the sale of lands appropriated for such home, including all moneys received from the rental of such lands, and all moneys hereafter appropriated for such home by this state and all money received from other sources shall be deposited with the state treasurer, to be by him transmitted at least once in every sixty days to the institution treasurer, if he shall have qualified as provided by law, and such money when received by such institution treasurer shall be used exclusively for the benefit of such home as provided by law. [1890, ch. 165, § 13; 1893, ch. 121. § 3; R. C. 1899, § 1017.]

§ 1218. **Majority of board to approve contracts, etc.** Every contract to be performed by the board must receive the approval of a majority of the trustees in regular session, in order to be valid. All proceedings of the board shall be recorded in a book to be kept for that purpose and open to the inspection of any person on request. [1890, ch. 165, § 14; R. C. 1899, § 1018.]

§ 1219. **Governor to accept grant.** The governor is empowered and directed to accept for the state the conditions imposed by an act of congress, entitled "An act to provide aid to state or territorial homes for the support of disabled soldiers and sailors in the United States, approved Aug. 27, 1888." He is further directed to send to the president of the board of managers of the national home for disabled volunteer soldiers a copy of all laws bearing upon the establishment, regulation and maintenance of the soldiers' home at Lisbon, with all printed regulations, relating to the management of the home now in force, together with a copy of this and the next section. [1895, ch. 104, § 1; R. C. 1899, § 1019.]

§ 1220. **Auditor to receipt for money.** The state auditor is empowered to receive and receipt for any and all money which may become due to the state by reason of said act and to turn the same into the state treasury for the use and benefit of the state soldiers' home, to be disbursed and accounted for in the same manner as other moneys appropriated out of the treasury for such home. [1895, ch. 104, § 2; R. C. 1899, § 1020.]

§ 1221. **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. 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. [1905, ch. 164.]

§ 1222. **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. [1905, ch. 163, § 1.]

§ 1223. **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. [1905, ch. 163, § 2.]

§ 1224. **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. [1905, ch. 163, § 3.]

§ 1225. **Issuance of bonds. Rate of interest. Denomination.** The governor, state auditor and state treasurer are hereby authorized and empowered to prepare for issuance negotiable bonds of the state of North Dakota to the amount of twenty thousand dollars, for the purposes hereinafter stated. Such bonds shall be in denominations of five hundred dollars each, payable to purchaser or bearer, and payable in thirty years from date of issuance, from the interest and income fund accumulating from the sale, rental or lease of lands or from the rental or lease of said lands donated to the said soldiers' home by section 216 of the constitution of the state of North Dakota, which bonds shall bear interest at a rate not to exceed six per cent per annum, interest payable semi-annually on the first day of January and July in each year, with coupons attached for each interest payment, said coupons to be payable anywhere in the United States. Said bonds shall be issued 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. [1899, ch. 148; R. C. 1899, § 1020a.]

§ 1226. **Publication of notice of sale of bonds.** The state treasurer shall receive sealed proposals for the purchase of said bonds and shall give public notice for four successive weeks in two or more newspapers of general circulation, one of which shall be published in the city of New York, giving

date of such sale, and said bonds shall be sold to the highest bidder, for cash, at not less than their par value. [1897, ch. 131, § 2; R. C. 1899, § 1020b.]

§ 1227. **Tax to pay interest.** The state board of equalization at the time other taxes are levied, shall levy a sufficient tax annually to pay interest on said bonds, as the same shall become due, until such time as there shall be funds in the treasury to pay said coupons from the sale or lease of lands granted by the constitution for a soldiers' home, and it shall be the duty of the state treasurer from time to time to reimburse the state for all moneys so advanced, as soon as there shall be funds in the treasury derived from the sale or lease of said lands. [1897, ch. 131, § 3; R. C. 1899, § 1020c.]

§ 1228. **Treasurer to pay coupons and bonds when due.** When the interest coupons become due, and whenever the 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. [1897, ch. 131, § 4; R. C. 1899, § 1020d.]

§ 1229. **Proceeds of bonds.** Said bonds shall bear date of July 1, 1897, and proceeds of sale thereof shall be deposited with the state treasurer, and by him transmitted to the treasurer of the board of commissioners of the soldiers' home, as provided by law, to be paid out only as hereinafter provided. Whenever from any cause there shall not be sufficient funds to pay the interest as accumulated on said bonds, it shall be the duty of the treasurer to pay the interest out of any other unappropriated funds belonging to the state, and there is hereby appropriated out of the state general fund a sum sufficient to pay said interest on said bonds as it may become due before the funds and tax herein provided for can be made available, and it shall be the duty of the state treasurer to pay such interest promised at the time it falls due. [1897, ch. 131, § 5; R. C. 1899, § 1020e.]

§ 1230. **Appropriation.** The sum of twenty thousand dollars so realized and received into the state treasury by the sale of bonds as hereinbefore provided, or so much thereof as may be necessary, is hereby appropriated for the purpose of paying outstanding indebtedness of said soldiers' home, which is evidenced by eleven certificates, aggregating nine thousand five hundred forty-seven dollars, and interest thereon at six per cent, such certificates bearing date as heretofore specified; provided, that if there shall remain in the hands of the institution treasurer any sum or sums after paying the above specified indebtedness, and the expense incidental to the issuance of the above bonds the same shall be used for permanent improvement or repairs of said soldiers' home as the board of commissioners may direct. [1897, ch. 131, § 6; R. C. 1899, § 1020f.]

#### ARTICLE 13.—SCHOOL OF FORESTRY.

§ 1231. **School of forestry located.** A state school of forestry, to be known as the North Dakota school of forestry, the special object of which shall be instruction in such arts and sciences as shall hereafter be determined by the board of directors, and especially in the art and science of forest culture and which shall embrace a preparatory department, where all the various branches shall be taught pertaining to a good common school education, is located at Bottineau, in the county of Bottineau, state of North Dakota, by virtue of the vote taken thereon according to law. [1897, ch. 129; R. C. 1899, § 1020g.]

§ 1232. **Management.** The said school shall be under the direction of a board of directors, and shall be governed and supported as hereinafter provided. The board of directors shall consist of three members, to be appointed by the governor with the consent and advice of the senate, two of whom shall be appointed for the term of two years and one for a term of four years. Thereafter and at each biennial session of the legislative assembly, and on or before the third Monday in February during each session,

there shall be nominated by the governor, and by and with the advice and consent of the senate, appointed for the term of four years, commencing on the first Tuesday in April following such appointment, directors to fill vacancies occurring by the expiration of the term of office of those previously appointed. The governor shall have power to fill all vacancies in said board which may occur when the legislative assembly is not in session, and the members of said board shall hold office until their successors are appointed and qualified as provided by this article; provided, further, that in all cases where the governor has made an appointment to fill a vacancy when the legislative assembly is not in session the term of office of the director or directors so appointed shall expire on the first Tuesday in April following the next session of the legislative assembly. [1897, ch. 129; R. C. 1899, § 1020h.]

§ 1233. **Commission. Oath. Organization.** The governor shall cause to be issued to each of said directors, a commission, which shall be under the seal of the state. At the first meeting of said board the members thereof shall take and subscribe the oath of office required of all civil officers of the state, and shall then proceed to elect a president, secretary and treasurer, but the treasurer shall not be a member of said board of directors. A majority of said board shall be a quorum for the transaction of business. The board shall require a bond of its treasurer, and fix the amount thereof. [1897, ch. 129; R. C. 1899, § 1020i.]

§ 1234. **Meetings. Compensation.** The board of directors shall hold its meetings at Bottineau and fix the time of holding the same; provided, there shall not exceed three regular meetings in each year. The members shall receive as compensation for their services three dollars per day for each day employed, and all traveling expenses necessarily incurred therein, which sum shall be paid out of the state treasury upon vouchers of said board duly certified by the president and secretary thereof, which sum is hereby appropriated therefor. The president of said board shall have power to call special meetings whenever in his judgment it becomes necessary. [1897, ch. 129; R. C. 1899, § 1020j.]

§ 1235. **Accounts, how audited.** The board shall audit all accounts against the funds appropriated by the legislative assembly of the state of North Dakota, or held by the state for the use of the school of forestry, and the state auditor shall issue his warrants upon the state treasurer for the amount of all accounts which shall have been so audited and allowed by the board of directors and attested by the president and secretary of the same. [1897, ch. 129; R. C. 1899, § 1020k.]

§ 1236. **Report.** The board of directors shall make a report to the governor on or before the first Monday in December next preceding each biennial session of the legislative assembly, to be published in the biennial report of the superintendent of public instruction, in addition to the other publication as provided by law. [1897, ch. 129; R. C. 1899, § 1020l.]

Note:—Sections 1237 to 1258 inclusive, chs. 166 and 167, Laws of 1905 (providing for erection of capitol and executive mansion), declared unconstitutional—omitted in printing after compilation. 14 N. D. —

#### ARTICLE 14.—NORTH WING OF CAPITOL.

§ 1259. **Bonds authorized.** The governor, state auditor and state treasurer are hereby authorized and empowered to prepare for issue negotiable bonds for the state of North Dakota, to the amount of one hundred thousand dollars, for the purpose hereinafter stated. Such bonds shall be in denomination of one thousand dollars each, payable to purchaser or bearer, and payable in twenty years from date of issue, or the said bonds, or any of them, may be paid off at periods of five years from the 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 coupons to be payable anywhere in the United States; 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. [1903, ch. 27, § 1.]

§ 1260. **Treasurer to receive proposals.** The state treasurer shall receive sealed proposals for the purchase of said bonds, and he shall give public notice for four successive weeks in two or more newspapers in general circulation, one of which shall be published in the city of New York, giving date of such sale, and said bonds shall be sold to the highest bidder for cash at not less than their par value. [1903, ch. 27, § 2.]

§ 1261. **Treasurer to pay interest coupons.** When the interest coupons become due, and whenever the 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. [1903, ch. 27, § 3.]

§ 1262. **Date. Interest.** Said bonds shall bear date July 1, 1903, and the proceeds of the sale thereof shall be placed to the credit of the "Capitol Building Fund," to be paid out only as hereinafter provided. Whenever, from any cause, there shall not be sufficient funds available to pay the interest accrued on said bonds, it shall be the duty of the treasurer to pay the interest out of any other unappropriated funds belonging to the state, and it shall be the duty of the state treasurer to pay such interest promptly at the time it falls due. [1903, ch. 27, § 4.]

§ 1263. **Appropriation.** The sum of one hundred thousand dollars so realized and received into the state treasury from the sale of the bonds, as hereinbefore provided, or so much thereof as may be necessary, is hereby appropriated for the purpose of erecting, constructing and completing the north wing of the capitol building at Bismarck, and for the extension of the grounds and improvement of the buildings of the executive mansion, and such funds shall be paid out by the state treasurer only upon warrants drawn by the state auditor upon such fund, and no such warrants shall be issued by the state auditor except upon itemized and verified vouchers, duly approved by the board of capitol commissioners. [1903, ch. 27, § 5.]

§ 1264. **Duty of board of capitol commissioners.** As soon as the money arising from the sale of said bonds shall be paid into the treasury, the board of capitol commissioners shall proceed to erect, construct and complete the said north wing to said capitol building according to the original plans and specifications, as near as may be, and they are hereby authorized to employ an architect, if deemed necessary. The said board shall contract for and purchase necessary material, and shall employ a sufficient number of skilled workmen, and shall, so far as the same can reasonably and profitably be done, utilize the labor of the convicts in the state penitentiary, not otherwise employed according to law, and it is hereby made the duty of the warden of said penitentiary, whenever requested by the said board, 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, to be used in performing the labor required in erecting said structure, or in the manufacture of material to be used therein. [1903, ch. 27, § 6.]

§ 1265. **What laws continued.** Sections 7, 9, 10, 11, 12, 13, 14 and 15 of chapter 29 of the laws of 1893, are hereby continued in force, and made applicable to the provisions of this article. [1903, ch. 27, § 7.]

#### ARTICLE 15.—STATE TROLLEY LINE.

§ 1266. **Board authorized to construct.** The board of trustees of public property is hereby authorized to construct, keep in repair and operate a single track electric trolley line of railway from the capitol building to the Northern



Pacific depot or a point conveniently near said depot in the city of Bismarck; and said board is authorized and empowered to secure the necessary right of way for such railway over the most convenient and feasible route; provided, that said board shall, so far as the same can reasonably and profitably be done, utilize the labor of the convicts of the state penitentiary, and it is hereby made the duty of the warden of the said penitentiary, whenever requested by the said board, to place any available convicts of the proper character and condition, that he may have in his charge, with proper guards and attendants therefor, at the disposal of the said board, to be used in performing the labor required in installing an electric light and power plant and constructing said electric railway. [1903, ch. 29, § 1.]

§ 1267. **Light and power plant.** Said board is further authorized to install at the capitol building an electric light and power plant with sufficient capacity to run said railway and to furnish power and light for use at the capitol building. [1903, ch. 29, § 2.]

§ 1268. **Appropriation.** For the purpose of carrying out the provisions of this article, the sum of twenty thousand dollars, or as much thereof as may be necessary, is hereby appropriated out of the capitol building fund, not otherwise appropriated. [1903, ch. 29, § 3.]

#### ARTICLE 16.—UNIFORM SYSTEM OF ACCOUNTING.

§ 1269. **State institutions to designate accounting officer. Duties.** The managing board of each of the state institutions shall designate an accounting officer, whose duty it shall be to keep or supervise the financial accounts of the institution and to perform such other duties as shall be prescribed by law or by such managing board. They shall also designate either the accounting officer or some other officer of the institution to act as a purchasing agent, whose duty it shall be to purchase all goods and supplies needed for the institution under such rules and regulations as the managing board shall prescribe. [1890, ch. 182, § 2; R. C. 1895, § 309.]

§ 1270. **Institution treasurer. Duties of.** The managing board of each state institution shall also appoint an institution treasurer, which treasurer shall be either some trustworthy person residing in the city or village at which the institution is located or some solvent national or state bank in such city or village. Such treasurer shall give a bond in such sum as the managing board may require, to be approved by the board and to be subject to the approval of the governor. It shall be the duty of such treasurer to hold and safely keep all public funds belonging to the institution which may come into his hands from any source and to pay out the same only on written orders signed by the accounting officer of the institution and countersigned by a member of the managing board, who shall have been authorized by a vote of the board to sign such orders. [1890, ch. 182, § 3; R. C. 1895, § 310.]

§ 1271. **Care and custody of funds belonging to inmates.** It shall be the duty of each superintendent of any state institution, when the care and custody of any funds belonging to inmates thereof is by law devolved upon him, to keep accurate accounts of such funds in books provided for that purpose, and to pay out such funds under such rules and regulations as may be prescribed by law or by the board of management, taking proper vouchers therefor in all cases; and every such superintendent shall give a bond in such sum as may be required by law, or may be prescribed by the board of managers of such institution, to be subject to the approval of the state examiner, conditioned for the faithful performance of his duties and a due accounting for the funds intrusted to his care. [1890, ch. 182, § 4; R. C. 1895, § 311.]

§ 1272. **Funds belonging to institutions to be paid to superintendent.** Each officer and employe of the several institutions shall pay over to the superintendent of the institution without delay any funds which may come into his hands belonging to any inmates of the institution and of which the superin-

tendent is the legal custodian, and pay over to the accounting officer of the institution without delay any funds which may come into his hands belonging to the institution. [1890, ch. 182, § 5a; R. C. 1899, § 312.]

§ 1273. **Duty of accounting officer.** The accounting officer of each institution at the close of each month or oftener shall pay over to the institution treasurer all institution funds which may have come into his hands from sales of public property, board of inmates, labor of inmates or from other sources and at the close of the fiscal quarter to draw an order on the institution treasurer in favor of the state treasurer for the amount of all such miscellaneous receipts, and at the same time to forward to the state auditor a statement of the amount of the same and the sources from which they have arisen. [1890, ch. 182, § 5b; R. C. 1899, § 313.]

§ 1274. **Duty of state auditor and treasurer.** It shall be the duty of the state auditor upon receiving such statement to place in the hands of the state treasurer a draft for the amount upon the institution treasurer, specifying the fund to which the same is to be credited, and upon payment of such draft to place the amount so received to the credit of such institution, adding to it any appropriation that may have been previously made by the legislative assembly for the institution, distributing it to the several appropriations from which it may have arisen, or to the current expense appropriation according to his discretion; provided, that the miscellaneous receipts of the penitentiary and the state reform school shall be paid over to the state treasurer monthly instead of quarterly in like manner as herein provided. [1890, ch. 182, § 5c; R. C. 1899, § 314.]

§ 1275. **Duplicate monthly pay rolls. Bills for supplies, etc.** The accounting officer of each institution shall prepare a duplicate monthly pay roll or pay rolls, showing the services rendered by each officer and employe of the institution, which pay roll shall contain the receipt of such officers and employes for the orders issued to them in payment for their services. Services rendered or labor performed by persons other than officers or employes shall be accounted for and proper vouchers made. The accounting officer shall require all persons selling goods or supplies to the institution to furnish with such goods, when delivered, bills or invoices in duplicate, and he may require persons, who furnish goods at intervals during the month, to furnish also a detailed statement in duplicate at the close of the month. Such bills and invoices shall, whenever practicable, be made upon the bill heads or blanks used by such persons in their business. [1890, ch. 182, § 6; R. C. 1895, § 315.]

§ 1276. **Manner of filing bills, etc. Duplicates sent to state auditor.** Each of the original and duplicate bills mentioned in the last section shall be inclosed in an envelope or jacket on one side of which shall be a classification of the items contained in the bill, and on the other side a receipt in the following form: "Received on the.....day of.....from the.....(here insert the name of the accounting officer) of the..... (here insert the name of the institution) an order on the treasurer of the..... for the sum of.....dollars, in payment of the within account." Any pay rolls and vouchers for services rendered or labor performed shall be inclosed in similar envelopes or jackets. One of the duplicate pay rolls or bills with the accompanying receipts shall be retained by the accounting officer in the files of the institution and the other shall be sent to the state auditor within thirty days after the issuance of an order on the institution treasurer for the payment of the same. [1890, ch. 182, § 7; R. C. 1899, § 316.]

§ 1277. **Duty of storekeeper.** It shall be the duty of the storekeeper of each institution, or some person to be designated by the superintendent, to check off all goods and supplies, when received, by the invoices; to certify thereon the quantity and condition of the same, and to notify the superintendent or the accounting officer forthwith, in case such goods or supplies do not appear to be of the kind or the quantity purchased or bargained for. In

case goods are received without an invoice it shall be the duty of such store-keeper or designated person to make a memorandum bill of such goods and certify thereon as herein required. [1890, ch. 182, § 8; R. C. 1899, § 317.]

§ 1278. **Expense lists to be prepared monthly by accounting officer.** The accounting officer at the close of each month shall make, or cause to be made, an expense list for expenses incurred during the month under appropriations for current expenses, and a separate expense list for expenses incurred under appropriations for other purposes, showing the name of each person rendering service or furnishing supplies, the nature of the service rendered and at what rate, the quantity, kind, price and cost of supplies furnished, and the amount to which each person is entitled by law; provided, that the state auditor may in his discretion allow items of the same class amounting to less than one dollar each, except food items, to be consolidated on the expense list as "sundries." Such expense list shall be audited by the managing board or a committee of the same, and shall be certified by the accounting officer of each institution and a member of the managing board to be designated by the board, and shall be forwarded to the state auditor by the accounting officer, not later than the eleventh day of the succeeding month. [1890, ch. 182, § 9; R. C. 1899, § 318.]

§ 1279. **State auditor to draw warrants on receipt of expense lists.** On receipt of such certified expense list the state auditor shall examine, adjust and approve, suspend or reject the same, and on or before the sixteenth day of each month draw his warrants on the state treasurer for the amounts due thereon to each institution, and no money shall be paid out of the state treasury for the use of such institution except on expense lists duly certified; provided, that the state auditor may in his discretion draw his warrants for an amount not exceeding twenty per cent in addition to the amount of the expense list, to be used for the immediate payment of such accounts as he may authorize to be so paid; such payment to be properly accounted for on the next monthly expense list. [1890, ch. 182, § 10; R. C. 1899, § 319.]

§ 1280. **When auditor to cancel unexpended appropriations.** The state auditor shall at the close of each biennial period cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn for the period of two years after the expiration of the biennial period during which they became available under the law; provided, that the governor, secretary of state and attorney general may continue such appropriation or balances in force temporarily upon recommendation of the state auditor. [1890, ch. 182, § 11; R. C. 1899, § 320.]

§ 1281. **Appropriation of miscellaneous receipts.** There is hereby appropriated for the use of the several institutions all the funds in the state treasury derived from miscellaneous receipts under sections 1272 and 1273. [1890, ch. 182, § 12; R. C. 1899, § 321.]

## CHAPTER 11.

### GENERAL PROVISIONS RELATING TO PUBLIC INSTITUTIONS.

#### ARTICLE 1.—FLAGS TO BE DISPLAYED.

§ 1282. **Flags displayed on public institutions.** The flag of the United States shall be displayed upon all state institutions between the hours of nine o'clock a. m. and four o'clock p. m. of each day. It is the duty of the officials in charge of the various state institutions to make the necessary arrangements for carrying out the provisions of this article and the expenses necessarily incurred in so doing shall be audited and paid by the state auditor in the same manner as bills for incidental expenses are audited and paid. [1890, ch. 69, §§ 1, 2; R. C. 1899, §§ 1021, 1022.]

## ARTICLE 2.—EXPENDITURES AND TRANSFER OF FUNDS.

§ 1283. **Excessive expenditures prohibited. Emergency.** It shall be unlawful for any board of trustees, commissioners, directors, person or persons having the control or management of public institutions of the state, or having in any manner whatsoever the responsibility of disbursing or expending any money appropriated by the state, either directly or indirectly, or in any manner whatsoever to expend or to agree or contract to expend for the use or benefit of any institution or purpose any amount in excess of the sum appropriated for such institution or purpose, nor shall any amount appropriated for any specific purpose or fund be used for or transferred to any other purpose or fund; provided, that when in the belief of any such board, person or persons, an emergency exists, and the interests of the state are jeopardized by reason of the exhaustion of the amount appropriated, or by cause for which there is no provision of law, the matter with all relative facts, shall be referred to a commission consisting of the governor, secretary of state and state auditor, who may authorize the transfer of money from one fund to another fund of the same institution or purpose, or who may in extreme cases authorize money to be drawn from the state treasury to meet the emergency. [1895, ch. 23, § 1; R. C. 1899, § 1023.]

§ 1284. **Penalty.** Any board of trustees, commissioners, directors, person or persons violating the provisions of the last section shall be conjointly and individually liable for all amounts so used or transferred and shall forfeit his or their offices. [1895, ch. 23, § 2; R. C. 1899, § 1024.]

§ 1285. **Trustees not to be interested in contracts.** No member of any board of trustees or managers, or any officer or employe of any state, educational, charitable or correctional institution now existing in this state or which may hereafter be established by law shall be interested, directly or indirectly, in any contract, purchase or sale for or on account of the institution with which he may be connected. [1895, ch. 33, § 1; R. C. 1899, § 1025.]

§ 1286. **Penalty.** Any violation of the preceding section shall be sufficient cause for removal from office. [1895, ch. 33, § 2; R. C. 1899, § 1026.]

## ARTICLE 3.—INSURANCE OF PUBLIC BUILDINGS.

§ 1287. **Property to be insured. Governor to approve company.** It shall be the duty of the boards of trustees of the respective institutions to cause to be insured in such insurance companies as may be approved by the governor, for the benefit of the state, the public buildings and contents under their control respectively, for an amount not to exceed two-thirds of their value, and for that purpose they are authorized to expend such a sum as may be necessary, and upon presenting vouchers therefor to the state auditor it shall be his duty to draw a warrant upon the state treasurer in payment of the sum so expended. [1887, ch. 68, § 1; R. C. 1899, § 1027.]

§ 1288. **Duty of governor.** It shall be the duty of the governor to cause to be insured all other public buildings and their contents belonging to the state, for the benefit of the state, and not to exceed two-thirds of their value and for that purpose the state auditor shall draw his warrant upon the state treasurer in payment of the premiums for such insurance. [1887, ch. 68, § 2; R. C. 1899, § 1028.]

§ 1289. **In event of loss.** In the event of a loss occurring under any policy upon any public building or the contents insured under the provisions of the last two sections, the money received from the insurance shall be used and expended by the governor or board of trustees, as the case may be, in the erection or repair of the building upon the site of the one injured or destroyed and replacing the contents, and such building shall be occupied and used for the same purposes as the one damaged or destroyed. Policies issued under the provisions of the two preceding sections shall run in the

name of the state and shall be for a term of three years. [1887, ch. 68, § 3; R. C. 1899, § 1029.]

ARTICLE 4.—LIGNITE COAL TO BE USED.

§ 1290. **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 such institutions, county buildings and public schools any coal other than that taken from the mines within the boundaries of this state. 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. [1893, ch. 38, § 1; R. C. 1899, § 1030; 1905, ch. 132.]

CHAPTER 12.

FIREMEN'S ASSOCIATION.

§ 1291. **Appropriation for firemen's association.** There is annually appropriated out of any money in the state treasury not otherwise appropriated the sum of fifteen hundred dollars for the use and benefit of the North Dakota firemen's association for the purpose of promoting the efficiency and growth of its different departments and the holding of an annual tournament according to the rules and regulations of such association. Such money shall be paid to the treasurer of such association and by him paid out only on the order of the president and secretary of such association for the purpose herein mentioned. [1893, ch. 65, § 1; R. C. 1899, § 1031; 1903, ch. 12.]

§ 1292. **Report of officers.** The president, secretary and treasurer of such association shall, within thirty days after the termination of each tournament, make to the state auditor a full and complete report, duly verified by the secretary, of the disposition of all moneys received by such association from the state. [1893, ch. 65, § 2; R. C. 1899, § 1032.]

§ 1293. **Tournament. Payment of appropriations.** The time and place at which such tournament is to be held shall be determined at the annual state convention of such firemen's association; the name of which place with the date of tournament, shall be forwarded at least thirty days prior to the holding of such tournament, to the state auditor by the secretary of such association. Such secretary shall also furnish the state auditor with the name and address of the treasurer of such association, and it is the duty of the state auditor to pay to such treasurer, not later than the first day of June of each year, the sum so appropriated, but not, however, until such association shall file with the state auditor a good and sufficient bond in the sum of two thousand dollars, conditioned for the faithful disposition of the funds so appropriated. [1893, ch. 65, § 3; R. C. 1899, § 1033.]

§ 1294. **Firemen exempt from poll tax.** Every volunteer fireman in any city, town or village having an organized fire department, the same being a member in good standing in the North Dakota Firemen's Association, shall be exempt from the payment of poll tax. It shall be the duty of the secretary of each fire company or department on or before the first Monday in April to file with the city auditor a report of all members in good standing and doing active fire service, during the past year, and who has attended not less than seventy-five per cent of all fire alarms, to entitle them to such exemption. [1903, ch. 138.]

## CHAPTER 13.

## STATE LIBRARY.

§ 1295. **Secretary of state to have custody.** The secretary of state shall have the care and custody of the state library. [R. C. 1895, § 1034.]

§ 1296. **Secretary to purchase books. Appropriation.** There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of one thousand dollars annually, to be expended by the secretary of state under the direction of the judges of the supreme court in purchasing for the state library such volumes of the supreme court reports, digests and statutes of any state or territory, where such volumes cannot be procured by exchange, and for the purchase of such other books and documents as may be deemed desirable for such library. Before purchasing such books the secretary of state shall advise with and consult the judges of the supreme court as to what books shall be purchased. [1890, ch. 166, § 1; R. C. 1895, § 1035.]

§ 1297. **Appropriation for care and custody.** There is hereby appropriated out of the state treasury the sum of one thousand dollars annually to be expended under the direction of the secretary of state in procuring the services of a competent person as state librarian, whose duties shall be to have the care and custody of such library. [1890, ch. 166, § 2; R. C. 1899, § 1036; 1903, ch. 186; 1905, ch. 18.]

§ 1298. **Accounts, how paid.** Upon the presentation of verified accounts of the secretary of state for the purchase and cost of transportation of any such volumes and for the care and custody of such library, the state auditor shall draw his warrant on the state treasurer for such amount. [1890, ch. 166, § 3; R. C. 1899, § 1037.]

## CHAPTER 14.

## AGRICULTURAL EXPOSITIONS.

## ARTICLE 1.—STATE FAIRS.

§ 1299. **Location permanently fixed 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. [1905, ch. 46, § 1.]

§ 1300. **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 paidup 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 article. 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 no 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. [1905, ch. 46, § 2.]

**§ 1301. 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 article. 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 no 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. [1905, ch. 46, § 3.]

**§ 1302. Custody and control of Grand Forks grounds.** 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. [1905, ch. 46, § 4.]

**§ 1303. Custody and control of Fargo grounds.** 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. [1905, ch. 46, § 5.]

§ 1304. **Governor and attorney general to accept title. Failure of state appropriations land reverts to original owners. Board of directors.** 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 legislative assembly. The provisions of this article 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. [1905, ch. 46, § 6.]

§ 1305. **Appointment and duties of executive committee.** 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. [1905, ch. 46, § 7.]

§ 1306. **Special appropriation, limit of.** For the purpose of enabling said associations to suitably inclose 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; 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 first, one thousand nine hundred and six. [1905, ch. 46, § 8.]

§ 1307. **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 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. [1905, ch. 46, § 9.]

§ 1308. **Conditions binding on state.** The provisions of this article 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. [1905, ch. 46, § 10.]

§ 1309. **Conditions governing holding of state fairs.** In the event of the failure of either of such associations to comply with the provisions of this article 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 article, and such failure on the part of either association shall operate to permanently establish the state fair upon the grounds of the other association; provided, that nothing in this article 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. [1905, ch. 46, §§ 11, 12.]

#### ARTICLE 2.—COUNTY FAIRS.

§ 1310. **Certain counties may aid. Conditions. Application. Levy of tax.** 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 1523, 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 thirty-first thereafter pay to the secretary of such association the amount of the tax so levied and take the receipt of such association therefor. [1897, ch. 66; R. C. 1899, § 163; 1905, ch. 70, § 1.]

§ 1311. **Annual reports. Duties of 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 fairs 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 1310. [1905, ch. 70, § 2.]

§ 1312. **Levy of 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. [1905, ch. 70, § 3.]

§ 1313. **One association entitled to benefits. Exception.** The aid provided for in this article 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 taking effect of this article, then and in that case the amount of taxes so collected shall be divided equally between each of such agricultural fair associations. [1905, ch. 70, § 4.]

§ 1314. **If association fails to hold fair commissioners shall refuse to make further levy. Officers liable for misappropriation of funds.** 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. [1905, ch. 70, § 5.]

§ 1315. **Tax 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 article; provided, however, the provisions of this article 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. [1905, ch. 70, § 6.]

## ARTICLE 3.—FARMERS' INSTITUTES.

§ 1316. **Board of directors, who constitute.** There is hereby established a state farmers' institute board of directors, composed of the president of the board of trustees of the North Dakota agricultural college, the commissioner of agriculture and labor, the director of the experiment station, the professor of agriculture and the professor of dairying of the North Dakota agricultural college. [1899, ch. 72, § 17; R. C. 1899, § 1703; 1901, ch. 172, § 1.]

§ 1317. **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. [1899, ch. 72, § 17; R. C. 1899, § 1703; 1901, ch. 172, § 2; 1903, ch. 11, § 1; 1905, ch. 23, § 2.]

§ 1318. **Compensation of board.** No member of this board shall receive any compensation for his services, but shall be allowed his actual and necessary traveling expenses when engaged upon business connected with the proper discharge of his duties under this article. [1901, ch. 172, § 3.]

§ 1319. **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 article. All charges, accounts and expenses authorized by this article shall be paid by the treasurer of the state, upon the approval of the president and secretary of the board of directors. [1901, ch. 172, § 4; 1903, ch. 11, § 1; 1905, ch. 23, § 4.]

## CHAPTER 15.

## CENSUS.

§ 1320. **When enumeration of inhabitants to be taken.** An enumeration of the inhabitants of this state, and of each county, city, village and township thereof, shall be taken during the year 1905, and during every tenth year thereafter, under the direction of the secretary of state. [1905, ch. 168, § 1.]

§ 1321. **Blanks, etc., to be obtained by the secretary of state.** The secretary of state shall, as soon as may be after the taking effect of this article, and also every tenth year thereafter, cause uniform blank returns and abstracts, together with copies of this article and such instructions as he may deem necessary, to be printed for the purpose of taking such enumeration. [1905, ch. 168, § 2.]

§ 1322. **Blanks to be transmitted to county auditor.** The secretary of state shall, on or before the first day of April, 1905, and in every tenth year thereafter, 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 article and of said instructions as there are assessor districts in their respective counties. [1905, ch. 168, § 3.]

§ 1323. **County auditors to deliver blanks to assessors.** 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 1905, and in every tenth year thereafter, to deliver a sufficient number of blank returns and copies of this article 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 article and one copy of said instructions. [1905, ch. 168, § 4.]

§ 1324. **When and how enumeration to be made.** During time of making the assessments for the year 1905, and in every tenth year thereafter, 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 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. [1905, ch. 168, § 5.]

§ 1325. **What assessor to enter in blank returns.** 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. [1905, ch. 168, § 6.]

§ 1326. **What persons to be returned as residents.** Every person whose abode shall be in any place or in any family on the first day of April, 1905, and on the first day of April in every such tenth year thereafter, 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. [1905, ch. 168, § 7.]

§ 1327. **Returns certified by assessor.** 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. [1905, ch. 168, § 8.]

§ 1328. **When assessor to transmit returns to secretary of state.** Each assessor shall, on or before the tenth day of July, 1905, and on or before the tenth day of July in every such tenth year thereafter, 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 returns 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. [1905, ch. 168, § 9.]

§ 1329. **Secretary of state to report general account of enumeration to legislature.** The secretary of state, after receiving such returns, shall prepare and report to the two houses of the legislative assembly, 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. [1905, ch. 168, § 10.]

§ 1330. **Appointment of enumerator where assessor has died, etc.** 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 article 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 article on such assessor. [1905, ch. 168, § 11.]

§ 1331. **Accounts of assessors and enumerators, how paid.** The accounts for the services of the assessors done under this article and the enumerators appointed under the provisions of this article 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. [1905, ch. 168, § 12.]

§ 1332. **Fees for services.** 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. [1905, ch. 168, § 13.]

§ 1333. **Costs of printing, etc.** 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. [1905, ch. 168, § 14.]

## CHAPTER 16.

### STATISTICS.

§ 1334. **Assessors to furnish statistics.** It shall be the duty of the several county, township, city and village assessors of this state at the time of listing property for taxation each year to require each person, firm, company and corporation in his assessor district to make a statistical statement of facts relating to agriculture, horticulture, stock raising and such other subjects as may be required by the state statistician, in the manner provided for herein and specified in the instruction, given by the state statistician; and each assessor shall make such other statistical returns, not herein mentioned, as may be required by the state statistician, of and through the county auditor; and each assessor shall make a return of such statements in tabulated form to the county auditor at the time of returning the lists of property for taxation. Such statements shall be made under oath by the persons or by the managers or agents of the firms, companies or corporations, and if any such person refuses or neglects to make such statement under oath, it shall be the duty of the assessor to obtain such information to the best of his ability from neighbors or others that may be supposed to be best prepared to furnish it, which information, so obtained, the assessor shall indicate how procured and whether he has reason to believe the same to be reliable. Each assessor shall make an alphabetical list of the names of the persons refusing to make such statements, with their post office addresses, which list he shall return to the county auditor. [1891, ch. 114, § 1; R. C. 1895, § 1038.]

§ 1335. **What statistical statement to contain.** The statistical statement mentioned in the foregoing section shall contain, among other things, answers properly classified to the following questions: What is the number of farms, the number of acres cultivated or to be cultivated to crop for the current

year, together with the acreage and product, for the year immediately preceding, of wheat, oats, barley, flax, corn, rye, potatoes, cultivated and wild hay and other farm produce. The number of mules, horses, milch cows and other cattle, sheep and hogs subdivided into the breed or classes to which they belong. The number of pounds of wool clipped, and the dairy products for the past year. The number and kinds of trees grown in cultivated or planted forests; the number of nurseries and the acreage of each; the number and kind of fruit trees, berries and vines, and the orchard products for the preceding year. The male and female population of each county, township, city and village, and the number of blind, deaf and dumb, insane and idiotic in each assessor's district. [1891, ch. 114, § 2; R. C. 1895, § 1039.]

**§ 1336. Statistics, how obtained.** Each assessor shall perform the service required of him by a personal visit to each dwelling house and to each family in his township, district, city or village, and shall ascertain by inquiries made of some member of each family, if any one can be found capable of giving the information, but if not, then he shall obtain such information from the most reliable source; and he shall personally visit the farm, shops and other places in the district, respecting which information is required, as specified on the blanks furnished him by the state statistician, and he shall obtain all information from the best and most reliable sources. The county auditor shall furnish to each assessor in his county such blanks as may be necessary for taking such statements, which blanks shall be furnished by the state statistician to the county auditors, together with printed instructions explaining the duties of the assessor in collecting the statistics aforesaid; and the county auditor shall, within thirty days after such statements are returned to him, make out in duplicate a tabular statement thereof, by assessors' districts, properly verified, one copy of which shall be preserved in the office of the county auditor and the other forwarded to the state statistician. In case such statement is not received by the state statistician on or before the fifteenth day of August of any year he shall notify such county auditor in writing of such delinquency and shall cite him to the provisions of this section, and if such auditor refuses or neglects to prepare and forward such statement on or before the fifteenth day of September the state statistician shall report such fact to the attorney general, who shall at once proceed to enforce the penalties provided in section 1338. [1891, ch. 114, § 4; R. C. 1895, § 1040.]

**§ 1337. Compensation.** The services herein required of the several assessors shall be performed at the same time that they list property for taxation. They shall not be paid for such services separately but for the time employed in collecting such statistics and for listing property for taxation they shall be allowed and paid as for one and the same service; and they shall be allowed and paid the same per diem for the discharge of the services required herein as is now or shall hereafter be provided for listing property for taxation; provided, that an assessor shall receive no pay for services as assessor, except on presenting a certificate from the county auditor that he has fully complied with the requirements of the foregoing section; and it is the duty of the county auditor when any assessor fails to make proper and complete returns of the statistics required herein, to withhold such certificate until the work is fully and properly completed, and to return forthwith the blanks to such assessor, indicating to him the deficiencies in such statistics and what is needed by way of correction, and shall specify a reasonable time within which such assessor shall fully complete the work and return the same to the county auditor; and it shall be the duty of such assessor immediately to carry out the instructions of such auditor and return the statistics completed, within the time prescribed. In case of his failure to comply with such requirement, such assessor shall forfeit all compensation

and be subject to the penalties prescribed in section 1338; and it is the duty of the county auditor to enter complaint against such assessor and the state's attorney of the county shall prosecute the same; and any judgment or penalty so recovered against any such assessor shall be a lien against all real and personal property owned by such assessor. In case any assessor fails to complete such statistics and return the same to the county auditor within the time prescribed, after they have been returned to him by the county auditor with the proper instructions for completion, such county auditor shall appoint some suitable person to collect or complete the statistics for the district, and such appointee shall perform such work as provided in the case of a regularly chosen assessor and shall be entitled to compensation at the same rate, to be paid as provided for assessors. The failure of any county auditor to require the complete performance of duty by assessors as herein provided or to enter complaint against any assessor who shall fail to perform his duty as herein provided shall be deemed a misdemeanor and such auditor shall be liable to the penalties prescribed in the next section. [1891, ch. 114, § 5; R. C. 1895, § 1041.]

§ 1338. **Penalty for neglect or refusal.** Any assessor or county auditor who shall willfully neglect or refuse in whole or in part to perform the duties required in the foregoing sections, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than twenty nor more than one hundred dollars. [1891, ch. 114, § 6; R. C. 1895, § 1042.]

§ 1339. **County auditor to furnish statistics to state statistician.** Each county auditor shall, upon request, furnish to the state statistician such information from the county records regarding the county, its financial condition, products and other statistical information as may be requested, on blanks furnished by the state statistician, and the refusal or neglect of any county auditor to furnish such information within thirty days from the receipt of such request shall be deemed a misdemeanor and shall subject such auditor to the penalties prescribed in the preceding section. [1891, ch. 114, § 7; R. C. 1895, § 1043.]

§ 1340. **Duty of state statistician.** The state statistician is hereby required to carry into effect the provisions of the foregoing sections relating to the collection and compilation annually of the statistical data therein mentioned, and he shall cause the returns when received to be arranged, classified and published in the best and most convenient manner in order to exhibit the annual growth and development of each county in the state. [1891, ch. 114, § 8; R. C. 1899, § 1044.]

§ 1341. **Expenses to be paid by state.** The expenses incurred in procuring and furnishing the necessary blanks, stationery and postage and compiling and publishing the statistical information herein required, shall be paid by the state treasurer on the warrant of the state auditor, which shall be issued on the presentation of the account of the state statistician duly verified, when approved by the governor. [1891, ch. 114, § 9; R. C. 1899, § 1045.]

## CHAPTER 17.

### GREAT SEAL OF THE STATE.

§ 1342. **Great seal.** The seal prescribed in section 207 of the constitution shall be the great seal of the state, and a description in writing of the same shall be deposited and recorded in the office of the secretary of state and remain a public record. [1890, ch. 149, § 1; R. C. 1899, § 1046.]

§ 1343. **Dimensions of seal.** Upon every seal of a court or officer of this state required or authorized to have a seal, there shall be engraved

the words "State of North Dakota," and the name of the court or office in which the seal is to be used, and all such seals, except the great seal, shall be one and five-eighths of an inch in diameter. [1890, ch. 149, § 2; R. C. 1899, § 1047.]

§ 1344. **Temporary seal may be authorized, when.** When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal or of any device by way of seal until the same is provided as aforesaid. [1890, ch. 149, § 3; R. C. 1899, § 1048.]

## CHAPTER 18.

### DEPOSITARY FOR STATE TITLES.

§ 1345. **Deeds and title papers of state deposited, where.** All abstracts and conveyances of title to this state of any lands now owned or hereafter acquired by the state, whether such lands are held for penal, educational, charitable or other institutions or purposes, shall be by those in whose charge such conveyances now are or may come, deposited with and remain in the control of the secretary of state. [1890, ch. 199, § 1; R. C. 1899, § 1049.]

## CHAPTER 19.

### HIGHWAYS BRIDGES AND FERRIES.

#### ARTICLE 1.—OPENING AND VACATING HIGHWAYS.

§ 1346. **What are public roads.** All public roads and highways within this state which have been open and in use as such, and included in a road district in the town in which the same are respectively situated during twenty years next preceding the time when this article shall take effect, are hereby declared to be public roads or highways and confirmed and established as such whether the same have been lawfully laid out, established and opened or not. [1897, ch. 112, § 1; R. C. 1899, § 1050.]

§ 1347. **What roads are public highways.** Every road laid out by the proper authorities, as provided for in this chapter, from which no appeal has been taken within the time limited for taking such appeal is hereby declared a public highway to all intents and purposes, and all persons having refused or neglected to take an appeal, as provided for in this chapter, shall forever be debarred from any further redress. [1897, ch. 112, § 2; R. C. 1899, § 1051.]

§ 1348. **Section lines considered public roads, when.** In all townships in this state outside the limits of incorporated cities, villages or towns, the congressional section lines shall be considered public roads, to be opened to the width of two rods on each side of such section lines, where the same have not already been opened upon the order of the board having jurisdiction as provided by section 1349 without any survey being had, except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this chapter in relation to assessments of damages. [1899, ch. 97, § 3; R. C. 1899, § 1052.]

Congressional grant of 1866 effective. Prescription. Right runs against Railroad Co. *Walcott Township v. Skauge*, 6 N. D. 382, 71 N. W. 544; *Wells v. Pennington Co.*, 2 S. D. 1, 48 N. W. 305; *Keen v. Fairview Township*, 8 S. D. 558, 67 N. W. 623.

What necessary for vacation under act 1871. *Keen v. Fairview Township*, 8 S. D. 558, 67 N. W. 623.

Lands reserved for school purpose subject to highway grant. *Riverside Township v. Newton*, 11 S. D. 120, 75 N. W. 899.

§ 1349. **Before whom proceedings brought.** In the opening, vacating or changing of a highway outside of the limits of incorporated cities, villages, or towns, all proceedings relating thereto to acquire right of way and to



all other matters connected therewith shall be under the charge and in the name:

1. Of the board of county commissioners, if the county is without a civil township organization, or if the road is in territory not organized into a civil township.

2. Of the board of township supervisors of organized townships.

3. Of the board of county commissioners of each county in case the road is between or in two or more counties.

4. Of the board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township.

5. Of the board of township supervisors of each organized township and of the board of county commissioners in case the road is situated partly in an organized township and partly in an unorganized township. [1897, ch. 112, § 4; R. C. 1899, § 1053.]

§ 1350. **Petition for laying out, altering or discontinuing roads.** The board having jurisdiction as provided by the provisions of the preceding section may alter or discontinue any road or lay out any new road upon the petition of not less than six legal voters, who own real estate, or who occupy real estate under the homestead laws of the United States, or under contract from the state of North Dakota, in the vicinity of the road to be altered, discontinued or laid out; said petition shall set forth in writing a description of the road and what part thereof is to be altered or discontinued; and, if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate; provided, that all roads, or parts thereof heretofore or hereafter laid out by authority of the board of county commissioners, or township supervisors, and not open to public use within ten years from the time when so laid out are hereby declared vacant; provided, further, that whenever any tract of land is surveyed or sold in tracts less than the original subdivision as established by the government survey thereof, so that any part thereof does not touch upon some of the lines now considered as public roads and so allow the owner of such tract access to a public highway, the board of county commissioners or board of township supervisors may, upon a petition as herein provided, open a cartway or highway along the lines of any such tract or tracts when in the judgment of such board such cartway or highway is necessary; provided, however, that no such cartway or highway shall exceed two rods in width unless in the judgment of such board a roadway two rods in width shall not be sufficient to accommodate the travel thereon. The provisions of this chapter shall apply to all lands owned by the state or any institution thereof, or held by virtue of any contract with the state, and notice of the altering, laying out or discontinuing of any such cartway or highway shall be served by registered mail upon the board of university and school lands not less than thirty days prior to any such board taking action in regard to altering, laying out or discontinuing such cartway or highway. [1899, ch. 97, § 5; R. C. 1899, § 1054.]

Description by which surveyor with records may locate road, sufficient. *Dunstan v. City of Jamestown*, 7 N. D. 1, 72 N. W. 899; *County v. Klemisch*, 11 S. D. 170, 76 N. W. 312.

Recently established highways ought not to be vacated unless new conditions make it desirable. *Miller v. Oakwood Township*, 9 N. D. 623, 84 N. W. 556.

Revised Statutes, U. S., section 2477 adopted. *Keen v. Fairview Township*, 8 S. D. 558, 67 N. W. 623.

Omission to describe each particular tract not fatal—general sufficient. *Woodworth v. Spirit Mound Township*, 10 S. D. 504, 74 N. W. 443.

"Thence northerly on or near township line to the neighborhood of the quarter section corner" sufficient description as against collateral attack. *Yankton Co. v. Klemisch*, 11 S. D. 170, 76 N. W. 312.

Highways created only by legal proceedings. *Meek v. Mead Co.*, 12 S. D. 162, 80 N. W. 182.

Petition signed by persons not qualified, immaterial if required number of qualified persons sign. *Bockoren v. Supervisors*, 13 S. D. 317, 83 N. W. 335.

Survey unnecessary when on section lines. *Williams v. Turner Township*, 15 S. D. 182, 87 N. W. 968.

**§ 1351. Copy of petition to be posted.** Whenever such number of legal voters, determine to petition, as aforesaid, for the alteration or discontinuance of any road, or for the laying out of any new road, they shall cause a copy of their petition to be posted up in three of the most public places in the county, or township, having jurisdiction thereof twenty days before any action is had in relation thereto. [1899, ch. 97, § 6; R. C. 1899, § 1055.]

**§ 1352. Notice to all parties to be given.** When the board having jurisdiction receives a petition in compliance with the preceding sections for laying out, altering or discontinuing any highway, they shall, within thirty days, make out a notice and fix therein a time and place at which they will meet and decide upon such application, and the applicant shall ten days previous to such time so fixed, cause such notice to be given to all occupants of the land through which such highway may pass, which notice shall be served personally or by copy left at the abode of such occupant. The said board shall also cause copies of such notice to be posted in three public places in said county, or township, at least ten days previous to such meeting; every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered or discontinued, and the tract of land through which the same may pass. [1899, ch. 97, § 7; R. C. 1899 § 1056.]

Irregularities waived by appearance of party. *Issenhuth v. Baum*, 11 S. D. 223, 76 N. W. 928.

**§ 1353. Examination of proposed highway.** The said board upon being satisfied that the notices required in the preceding section have been duly served, proof of which shall be shown by affidavit, shall proceed to examine such proposed highway and shall hear any reasons for or against the laying out, altering or discontinuing the same, and decide upon the application as they deem proper. [1899, ch. 97, § 8; R. C. 1899, § 1057.]

**§ 1354. Proceedings when road is laid out, altered or discontinued.** Whenever such board of county commissioners or supervisors shall lay out, alter or discontinue any highway, they shall cause a survey thereof to be made when necessary, and they shall make out an accurate description of the highway so altered, discontinued or laid out, and incorporate the same, in an order to be signed by them, and shall cause such order, together with all the petitions and affidavits of service of notice, to be filed in the office of the county auditor, if by county commissioners, and in the office of the town clerk if by township supervisors, who shall note the time of filing the same; but on the refusal of said board to lay out, alter or discontinue such road they shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions, and affidavits, together with the award of damages, shall be made out and filed within five days after the date of the order for laying out, altering or discontinuing such highway. But the county auditor or town clerk shall not record such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed, and when such order, together with the award, has been recorded by said county auditor or town clerk as the case may require, the same shall be filed in the office of the county auditor. And in case the board having jurisdiction shall fail to file such order within twenty days they shall be deemed to have decided against such application. [1899, ch. 97, § 9; R. C. 1899, § 1058.]

Filing order in five days necessary. *Town of Wayne v. Caldwell*, 1 S. D. 483, 47 N. W. 547.

May adjourn proceedings. *Issenhuth v. Baum*, 11 S. D. 223, 76 N. W. 928; *Yankton Co. v. Klemisch*, 11 S. D. 170, 76 N. W. 312.

§ 1355. **Order or certified copy, competent evidence.** The order laying out, altering or discontinuing any highway, or a copy of the record duly certified by the county auditor or town clerk, as each case may require, shall be received in all courts as competent evidence of the facts therein contained and shall be prima facie evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal, when such appeal has been taken within the time limited in this chapter. [1899, ch. 97, § 10; R. C. 1899, § 1059.]

§ 1356. **Damages, how ascertained.** The damages sustained by reason of laying out, altering or discontinuing any road may be ascertained by the agreement of the owners and county commissioners or township supervisors, as the case may be, and unless such agreement is made, or the owners shall, in writing release all claim to damages, the same shall be assessed in the manner hereinafter prescribed before the same is opened, worked or used. Every agreement and release shall be filed in the town clerk's office when with a township and in the county auditor's office when with a county and shall forever preclude such owners of land from all further claims for damages. In case the board and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered or discontinued, is unknown, the board shall in their award of damages specify the amount of damages awarded to all such owners, giving a brief description of such parcel of land in their award; the board having jurisdiction shall assess the damages at what they deem just and right to each individual claimant, with whom they cannot agree. Supervisors shall deposit a statement of the amount of damages assessed with the town clerk, county commissioners with the county auditor, who shall note the time of filing the same. The board in assessing damages shall estimate the advantages and benefits the new road or alteration of an old one will confer on the claimant for the same as well as the disadvantages. Any person living on United States land who has made his declaratory statement for the same in the proper land office, shall for all the purposes of this article be considered the owner of such lands. [1899, ch. 97, § 11; R. C. 1899, § 1060.]

Appeal from award for damages, party appealing entitled to jury trial. *Dell Rapids v. Irving*, 7 S. D. 310, 64 N. W. 149.

Diversion of travel from former highway, fences, and increased taxation proper elements of damage for jury. *Schuler v. Supervisors*, 12 S. D. 460, 81 N. W. 890.

§ 1357. **When damages not allowed.** No damages shall be assessed or allowed under the provisions of this chapter to any person, persons or corporation, by reason of the laying out of any new road, or altering any old one, when the title of the land over which such road passes was vested in the state or the United States at the time of the location of such road, excepting as otherwise provided in this chapter. [1897, ch. 112, § 12; R. C. 1899, § 1061.]

§ 1358. **Determination final for one year.** The determination of boards of county commissioners, or supervisors of any town in refusing to lay out, alter or discontinue any highway, shall be final (unless such determination shall be appealed from as is hereinafter provided in this chapter), for the term of one year after the filing of such order or determination in the county auditor's or town clerk's office, as the case may be; and no application for laying out, altering or discontinuing any such highway shall again be acted upon by such board within said time of one year; and in case the determination of any such board in laying out, altering or discontinuing any highway shall be appealed from, as provided in this chapter, and such determination shall be reversed on appeal, the said board shall not, within one year after the making of the determination so reversed on appeal, act again upon an application to lay out, alter or discontinue any such highway. [1899, ch. 97, § 13; R. C. 1899, § 1062.]

§ 1359. **Notice to party to remove fences.** Whenever any public road has been laid out through any inclosed, cultivated or improved lands, in con-

formity with the provisions of this chapter and the decision of the board laying out such road has not been appealed from, such board shall give the owner or occupant of the land through which such road is laid out twenty days' notice, in writing, to remove his fences; if such owner does not remove his fences within twenty days after such notice such board shall cause such fences to be removed and direct the road to be opened and worked; provided, no inclosure shall be ordered opened between the first day of April and the first day of October. [1899, ch. 97, § 14; R. C. 1899, § 1063.]

§ 1360. **Notice to road supervisors.** When any highway is to be changed or laid out, the county auditor or the clerk of the board, as the case may be, must notify the road supervisors or overseer of highways, as the case may be, of the proper district and furnish him with a certified copy of the proceedings of the board. [1897, ch. 112, § 15; R. C. 1899, § 1064.]

§ 1361. **Repair of highways across railroads, etc.** Whenever highways are laid out across railroads, canals or ditches on public lands, the owners must at their own expense so repair their roads, canals or ditches that the public highway may cross the same without damage or delay, and when the right of way for a public highway is obtained through the judgment of any court, over any railroad, canal or ditch, no damages must be awarded for the simple right to cross the same. [1897, ch. 112, § 16; R. C. 1899, § 1065.]

§ 1362. **Appeals.** Any person who shall feel himself aggrieved by any determination or award of damages made by the supervisors of any town or towns, or by the commissioners of any county, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any highway or cartway, may, within thirty days after the filing of such determination or award of damages, as provided in this chapter, appeal therefrom to a justice of the peace of the county for a jury to hear and determine such appeal; provided, the amount of damages allowed in such appeal does not exceed one hundred dollars. [1897, ch. 112, § 17; R. C. 1899, § 1066.]

Jurisdiction of appeal, determined by amount claimed in notice of appeal does not conflict with constitution. *Dell Rapids v. Irving*, 9 S. D. 222, 68 N. W. 313.

New trial on appeal. Each person aggrieved must appeal separately. *Williams v. Turner Township*, 15 S. D. 182, 87 N. W. 968.

§ 1363. **Bond, application, etc.** Every application to a justice of the peace for an appeal shall be in writing, and shall briefly state the grounds on which it is made, and whether it is brought in relation to damages assessed, or in relation to laying out, altering or discontinuing, or refusal to lay out, alter or discontinue any highway, or whether it is brought to reverse entirely the decisions of the supervisors or commissioners, or any part thereof—if the latter, what part. Upon filing such application and a bond executed to the supervisors of the town, or the commissioners of the county, with sufficient sureties to be approved by the justice, conditioned to pay all costs arising from such appeal (provided the determination of the supervisors or the county commissioners, as the case may be, shall be sustained) such justice shall issue a summons specifying therein a time and place for the hearing of such appeal, which summons shall be served on one or more of the supervisors (or commissioners, if a county road), at least six days before such time, and at the time and place so appointed the justice shall proceed as in other cases of trial by jury. If upon the trial it is deemed necessary by the jury, or either party in the action, that a personal examination by the jury of the road in controversy is necessary, the justice may, on motion of the jury or either party to the action, direct the jury to view and examine the highway described in the application, and consider the determination of the supervisors or commissioners in laying out, altering or discontinuing, or refusing to lay out, alter or discontinue the same, and to make return to him in writing within ten days. [1897, ch. 112, § 18; R. C. 1899, § 1067.]

§ 1364. **Filing return. Costs, etc.** The justice shall file the return of the jury in the office of the town clerk if the appeal was taken from the decision of the board of supervisors of the town, and in the office of the county auditor if the appeal was taken from the decision of the county commissioners; and if the determination of the supervisors or commissioners shall be affirmed by the jury, the party appealing shall pay all costs, but if such determination shall be reversed or altered, or a greater amount of damages awarded, then the costs in the case shall be a charge against the town or county, as the case may be. [1897, ch. 112, § 19; R. C. 1899, § 1068.]

§ 1365. **When appeal taken to district court.** In case the amount of damages claimed exceeds one hundred dollars, appeal may be taken within thirty days to the district court of the county in which said damages are sustained, by filing in the office of the clerk of such court a bond to be approved by the judge of such district court, or the court commissioner, or the county auditor of the county, of the same nature as provided in the two preceding sections and by the service of a written or printed notice of such appeal upon the chairman of the board of supervisors or county commissioners, as the case may be, signed by the party making the appeal, or his attorney. Such appeal shall bring before the appellate court the propriety of the amount of damages and all matters referred to in such notice of appeal; unless the parties otherwise agree, the matter shall be submitted to a jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall reassess the damages aforesaid, and make the verdict conform to the justice and facts in the case; but the rule for ascertaining and fixing such judgment shall be based upon the same principles as the supervisors or commissioners were required to adopt in originally determining the same; and, upon judgment being rendered the clerk of said court shall serve a certified transcript of such judgment upon the chairman on whom the notice of appeal was served as aforesaid. If the determination of the board of supervisors or commissioners appealed from be affirmed, or if the amount of damages allowed be reduced in said district court, the party appealing shall pay all costs and disbursements incurred in said court; but if the amount of damages allowed be increased, or if such determination shall be altered, modified or reversed in said district court, otherwise than as to the amount of damages, such costs and disbursements shall be paid by the town or county, as the case may be; said costs and disbursements to be taxed and adjusted as in other cases in said district court, and judgment entered therefor in like manner. [1897, ch. 112, § 20; R. C. 1899, § 1069.]

§ 1366. **When appeal sustained. Duty of board.** When an appeal shall have been taken from the determination of any board of supervisors or county commissioners, and such determination shall have been reversed or altered, the supervisors or commissioners from whose determination such appeal was taken, shall proceed to lay out, alter or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon shall be the same as if they had originally so determined to lay out, alter or discontinue such highway. The amount of damages finally determined and awarded by the supervisors, commissioners or by the court or jury, together with all the charges of officers and other persons necessarily employed in laying out, altering or discontinuing any town or county road, shall be audited by the county commissioners or township supervisors, as the case may be, specifying the amount of charges and damages due each individual, and the respective amounts shall be certified to by said commissioners or supervisors and by them deposited with the county auditor or township clerk and paid by the county or town, as the case may be. Before any road shall be opened or used, an amount of town orders or county warrants, as the case may be, equal to the damages assessed to individuals, shall be duly issued and deposited with said county auditor or township clerk, as the case may be, for the use and benefit of said

individuals, and shall be delivered to him or them on demand. The issuing and depositing of said orders or warrants shall be deemed to be sufficient security for the payment of said damages. In no case shall a town be compelled to pay any damages that may be awarded in laying out, altering or discontinuing any county road. [1899, ch. 97, § 21; R. C. 1899, § 1070.]

ARTICLE 2.—GENERAL PROVISIONS.

§ 1367. **Highways on county and township lines.** Public highways established on county or township lines shall be opened and repaired by the supervisors of the proper road district on each side thereof, and by the joint labor of the persons in each of such districts in each county or township. [R. C. 1899, § 1076.]

§ 1368. **Settlers have same rights as freeholders.** In all applications for the location, change or vacation of any public highway, actual settlers upon any public lands shall have and possess all the rights in this chapter granted to owners. [R. C. 1899, § 1077.]

Occupant of government land in same relation as fee owner. *Olson v. Huntamer*, 6 S. D. 364, 61 N. W. 479.

§ 1369. **Public lands. Damages.** When any person shall acquire the title to government land over which any road has been or may hereafter be duly laid out, subsequent to the laying out of such road, the person so acquiring such title shall within three months after the receipt of his patent therefor assert his claim for damages in the manner hereinbefore provided in case of locating highways, and such roads shall remain and be public highways, but his damages, if any, shall be paid, and in case of a failure to assert his claim for damages within the time aforesaid, he shall thereafter be barred from asserting such claim. [R. C. 1899, § 1078.]

§ 1370. **Occupying claimants.** All public lands in this state settled upon and occupied, shall be subject to all the provisions of this chapter so far as the rights and liabilities of such settlers are concerned. [R. C. 1899, § 1079.]

§ 1371. **Hedge protection.** Any person cultivating a hedge or trees upon his lands adjoining a public highway and desiring to fence the same, may place such fence seven feet over and upon such highway, provided it does not obstruct the public travel. [1889, ch. 132, § 1; R. C. 1899, § 1080.]

§ 1372. **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 incorporated 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 article. 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 article, shall be expended under the direction of the board of county commissioners under the provisions of section 1373. 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 1539. [1893, ch. 69, § 1; R. C. 1899, § 1081; 1903, ch. 162, § 1; 1905, ch. 160.]

§ 1373. **Fund, how expended.** Such fund shall be expended only in grading, ditching and surfacing, in proper form and condition for public travel, such highways or parts of highways, howsoever established, as constitute the principal thoroughfares of the county, communicating with shipping

points and market places resorted to by inhabitants of the county, for which the means otherwise provided are not, in the opinion of the county commissioners, sufficient. [1893, ch. 69, § 2; R. C. 1899, § 1082; 1903, ch. 162, § 2.]

§ 1374. **Petitions for improvements. Survey.** Such petition shall be presented at the regular meeting of the board of county commissioners, and thereupon the board shall direct such investigation as may be necessary to inform it as to the utility and probable cost of the proposed improvement, and may for that purpose order a preliminary survey, and at its next succeeding July meeting, it shall determine what highways or parts of highways designated in such petition shall be so improved, and estimate the probable amount of money that will be required to complete such improvement, and how much can be reasonably provided for, and for the completion of similar improvements previously in part made by the tax levy for the current year, and shall levy such tax accordingly. [1893, ch. 69, § 3; R. C. 1899, § 1083.]

§ 1375. **Payments, how made.** The board of county commissioners shall in case of each improvement ordered by it, designate the place of beginning and the direction in which the work shall proceed and require the same to be completed mile by mile or in parts of miles continuously, as so ordered, and no payment shall be made except for work so completed. It may also require the supervision of the work by the county surveyor, so far as deemed necessary, and shall require him to compute and estimate the amount of completed work and certify the same to the county auditor at the end of each month, and all work so contracted for shall be completed prior to the first day of November next following. The provisions of this section and the orders and directions of the board made in pursuance thereof shall constitute a part of the provisions and conditions of every such contract, whether expressed therein or not. [1893, ch. 69, § 5; R. C. 1899, § 1085.]

§ 1376. **County auditor to issue warrants.** Upon the filing of the surveyor's certificate as hereinbefore provided, the county auditor shall issue warrants accordingly on the county treasurer in favor of the contractor, payable out of the county road fund appropriated thereto, and the same shall be paid by the treasurer. [1893, ch. 69, § 6; R. C. 1899, § 1086.]

§ 1377. **Compensation of surveyor.** The county surveyor shall receive for his services rendered as aforesaid the same compensation as in other cases, to be paid by the county out of such road fund, upon accounts duly verified and allowed by the board of county commissioners. [1893, ch. 69, § 7; R. C. 1899, § 1087.]

#### ARTICLE 3.—BRIDGES.

§ 1378. **Petition. Bids.** Whenever a majority of the freeholders of a civil township or a majority of freeholders living within a radius of three miles of the proposed location shall petition the board of county commissioners for a bridge at a specified location within such township, when the cost of such bridge shall exceed the sum of one hundred dollars, it shall be the duty of the board of county commissioners to view and investigate the necessity of such proposed bridge; and if such county board approves its location and building, it shall proceed to advertise in the official paper of the county for a period of thirty days the plans and specifications of the proposed bridge, asking for sealed bids for the building of such bridge, to be submitted to them at their next regular or special meeting, at which meeting of the board it shall proceed to examine all proposals or bids for the building of such bridge, and shall award the contract to the lowest responsible bidder, requiring such bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of such bid or contract; which bond shall be approved by the board of county commissioners and filed in the office of the county auditor. [1890, ch. 38, § 1; R. C. 1895, § 1088.]

§ 1379. **Expense, how paid.** The expense of constructing such bridge shall be paid out of the county bridge fund, if such bridge is accepted and approved by the board. [1890, ch. 38, § 2; R. C. 1895, § 1089.]

§ 1380. **Supervision and repairs of bridge.** Any bridge built under the provisions of section 1378 shall be under the supervision of the township board and all repairs not exceeding fifty dollars shall be borne by the township where such bridge is located, and in excess of that sum by the county; provided, that when the cost of repairing such bridge exceeds fifty dollars, it shall be under the supervision of the county commissioners; and that the cost of all such repairs shall be estimated by the county commissioners. [1890, ch. 38, § 3; 1895, ch. 42, § 1; R. C. 1899, § 1090.]

§ 1381. **Bridges part of highway.** Bridges erected or maintained by the public constitute a part of the public highway. [R. C. 1899, § 1091.]

§ 1382. **Bridges across navigable rivers, petition for.** Whenever one-third of the resident taxpayers of any county as appears by the last preceding assessment roll of such county, shall petition the board of county commissioners of such county, praying for an appropriation to build a bridge across any navigable river on the line of any such county, setting forth therein the location of such bridge as near as may be, its estimated cost, and the necessity therefor to accommodate the general traveling public, the manner in which it is proposed to pay for such structure, and the time when it will be completed, such petition to be duly verified by the affidavits of at least fifteen of the petitioners therein named, it shall be the duty of the board of county commissioners to publish a notice in the official paper of the county, once each week for three consecutive weeks, briefly stating the object of such petition and that the same will be heard and considered at the next regular meeting of such board. At the time appointed for the hearing of such petition the board of county commissioners shall investigate the need for such bridge, and if they find the same to be necessary shall, by resolution duly entered upon the minutes of the board, appropriate toward the building of such bridge, from the county treasury, a sum not exceeding one-half of the estimated cost of such bridge, to be paid as hereinafter provided; provided, however, that the appropriation hereinbefore mentioned shall be upon condition that a sufficient bond be given, conditioned that the remaining one-half or more, as the case may be, of the cost of such bridge will be paid; provided, further, that the consent of the general government to span such river shall first have been obtained. [1887, ch. 18, § 1; R. C. 1899, § 1092.]

§ 1383. **County aid conditional.** If the remaining one-half of the cost of such bridge shall be made up by an appropriation from any neighboring state or by any municipality in this state, to be expended under a commission or through any other agency, the board of county commissioners shall appoint a committee from its own number, of three or more, to meet such other municipal agency, confer with its members and advise and assist in the accomplishment of such improvement in the best possible manner, and when the work is completed and approved jointly by such agency and committee, which approval shall be in writing and duly reported to such board and recorded in the minutes thereof, the board shall thereupon direct the county auditor to draw his warrant upon the treasurer in favor of the contractor for the amount due him from such county. [1887, ch. 18, § 2; R. C. 1899, § 1093.]

§ 1384. **May vote bonds.** When one-half or such other proportion as may be, of the cost of such improvement shall be provided for by any municipality within this state, it shall be lawful for such municipal corporation, by a majority vote of the legal voters thereof after ten days' notice, to meet the necessary expense by the issuance of bonds bearing interest not to exceed seven per cent per annum and not to run longer than twenty years after the date of issue, nor to be sold for less than par value, interest payable semi-annually; provided, that the limit of indebtedness of such corporation pre-



scribed in the constitution is not thereby exceeded. In case the limit of indebtedness of such municipality would be thereby exceeded, then it shall be lawful for such municipality to make a sufficient tax levy for general purposes to meet the necessary expenditure in the construction of such bridge, and when the same shall be completed and accepted the share of the cost thereof to be borne by such municipality shall be paid out of the general fund by orders drawn in the usual form and manner. [1887, ch. 18, § 3; R. C. 1895, § 1094.]

§ 1385. **Cost of bridge limited.** Not more than one wagon bridge across a navigable river in each county shall be built under this article and the total cost of such bridge shall in no case exceed the sum of fifty thousand dollars. [1887, ch. 18, § 4; R. C. 1899, § 1095.]

#### ARTICLE 4.—ROAD SUPERVISORS.

§ 1386. **Road districts. Appointment of supervisors.** At the annual meeting of the board of county commissioners in January of each year, or as soon thereafter as practicable, it shall be the duty of such board in each organized county to apportion the county into one or more road districts when such county is not formed into townships, and shall appoint for each district a road supervisor, who shall hold his office until the first day of January succeeding his appointment, and shall take an oath faithfully to discharge his duties as such road supervisor. [R. C. 1899, § 1096.]

§ 1387. **Duties of road supervisors.** The road supervisor of each road district or township shall obtain the names and make out a list of all male persons between the ages of twenty-one and fifty years residing within his district, which list shall be completed on or before the first day of March in each year, and in case any person as aforesaid shall locate in any road district after the first day of March, the supervisor shall enroll his name and he shall be liable to perform labor on the road at the same time and in the manner that those originally enrolled are liable, but any person who has performed labor that year in any road district and has a certificate thereof, shall be credited with the labor so performed, in the same manner as though it had been performed in the district in which he resides. [R. C. 1899, § 1097.]

§ 1388. **Road poll tax.** Each male person between the ages of twenty-one and fifty years shall be subject to a poll tax of one dollar and fifty cents, which must be paid in money or by one day's labor in each year on the public highway within his road district at the time and place directed by the road supervisor. [R. C. 1899, § 1098.]

§ 1389. **Notice to be given to persons.** The road supervisor must, between the first days of April and December of each year, give at least twenty-four hours' notice to all persons subject to road labor as aforesaid, to perform the work necessary on the public highways within their respective districts, and such notice shall specify the time when and place where they are to appear for that purpose. [R. C. 1899, § 1099.]

§ 1390. **Penalty for neglect to pay tax.** Each person subject to labor on the public highways, who has been duly notified to work thereon as hereinbefore provided, who shall not commute or pay the sum of one dollar and fifty cents as provided in section 1388, and who shall refuse or neglect without good cause to appear as above provided, shall, for each day's refusal pay the sum of one dollar. [1881, ch. 124, § 1; R. C. 1899, § 1100.]

§ 1391. **Supervisor to make complaint.** Each road supervisor may, within six days after any person shall become liable for the payment of any sum under the provisions of the foregoing section, unless a satisfactory excuse is rendered to him by the person so liable, make complaint in writing on oath to some justice of the peace in the county, stating the default, neglect, refusal or other cause by reason of which such person became so liable, which complaint shall be in the name of the state as plaintiff, and the person liable for such tax as defendant, and no fees of officers nor court expenses or costs shall

be paid or charged in enforcing the provisions of this chapter except that the same may be charged and collected from the defendant. [1881, ch. 124, § 1; R. C. 1899, § 1101.]

§ 1392. **Duty of justice on complaint.** The justice of the peace to whom such complaint is made shall forthwith issue a summons directed to the defendant in the form prescribed in the justice's code which summons shall be for relief and shall be made returnable in not less than two nor more than six days and it shall be the duty of any sheriff or constable to whom it is delivered forthwith to serve the same. [1881, ch. 124, § 1; R. C. 1899, § 1102.]

§ 1393. **Proceedings to collect tax.** On the return day of such summons, or within such reasonable time thereafter as the justice shall allow, if no sufficient cause is shown to the contrary, the justice shall render a judgment in favor of the state against such person for the sum for which such person shall have become liable to pay on account of such default, neglect or delinquency, and for the delinquent tax, with the cost of prosecution, and shall forthwith issue an execution in the usual form, directed to the sheriff or any constable of the county, returnable at the time prescribed therein, commanding him to levy the amount of such judgment, including the costs, out of the goods and chattels of such defendant, and nothing shall be exempt from such execution except the absolute exemptions. [1881, ch. 124, § 1; R. C. 1899, § 1103.]

§ 1394. **Execution.** The officer to whom such execution is delivered shall forthwith proceed to execute the same, and he shall pay the moneys collected thereon to the justice of the peace who issued the execution, who shall pay the same less the costs thereof to the supervisor who entered the complaint, to be by him expended in improving the roads and bridges in his district, and the costs thereof shall be paid to the persons entitled thereto. [1881, ch. 124, § 1; R. C. 1899, § 1104.]

§ 1395. **Supervisors shall not excuse payment.** The acceptance by a supervisor of an excuse for such a refusal or neglect shall in no case exempt the person excused from paying for or working the tax for which he shall have become liable during the year. [1881, ch. 124, § 1; R. C. 1899, § 1105.]

§ 1396. **Road tax worked, when.** Any road tax levied by the board of commissioners in addition to the poll tax may be worked out in the road district in which such person resides when it is a personal tax or a tax on personal property, or in the road district where the real property is situate on which the tax is levied, at the rate in all cases of one dollar and fifty cents per day. [R. C. 1899, § 1106.]

§ 1397. **Work certified for tax.** The road supervisor must obtain a list of the road tax assessed against each individual; and a certificate by the supervisor for the amount worked out must be taken by the county treasurer in payment to that amount of such tax. [R. C. 1899, § 1107.]

§ 1398. **Board to expend tax, how.** The board of county commissioners must order the expenditure of all road taxes paid into the county treasury, in the improvement of the highways, paying the road supervisors, purchasing implements and repairing bridges in each road district, under such regulations as it may deem most expedient for the public interests, and for this purpose shall order the payment of such sum by the treasurer to the persons performing such labor upon the certificate of the road supervisor; provided, that such funds shall be expended in the road district in which the person resides, when it is a personal tax or a tax on personal property, and where the real estate is situate when it is a tax on real estate. [R. C. 1899, § 1108.]

§ 1399. **Tax levy to pay road supervisor.** When the road tax in any road district has been worked out as provided in section 1396, and there are no funds available for paying the road supervisors, the county commissioners may levy a tax, not exceeding one mill on the dollar, upon the taxable property of the road district in which such deficiency occurs, for such purpose,

to be paid in cash to the county treasurer as other taxes are collected and paid. [1899, ch. 125, § 1; R. C. 1899, § 1109.]

§ 1400. **Obstructions in highway.** It shall be the duty of each road supervisor having personal knowledge of or on being notified in writing of any obstruction in the highway, or public street in his district, immediately to remove or cause to be removed any such obstruction. [R. C. 1899, § 1110.]

§ 1401. **Penalty for obstructing highway.** If any person shall willfully, carelessly or negligently obstruct or injure any public highway, public street or bridge, it shall be the duty of the road supervisor of the district in which such obstruction is placed or injury done to enter complaint against the person so offending, before a justice of the peace of the county, and on conviction thereof the fine so collected shall be immediately paid over to the county treasurer. [R. C. 1899, § 1111.]

§ 1402. **Report of road supervisor.** On or before the first Monday in January in each year, the road supervisors appointed by the board of county commissioners, shall each make a report to the board of his doings as such during the preceding year, the amount of labor performed, the number of days' labor necessarily performed by him in the discharge of his duties, and the county commissioners shall thereupon cause a warrant to be drawn on the county treasurer in favor of such supervisor for such services at two dollars per day, payable from the road fund belonging to such district. [R. C. 1899, § 1112; 1903, ch. 155.]

§ 1403. **Penalty for refusal to serve as road supervisor.** Each person elected or appointed road supervisor who shall fail, refuse or neglect to qualify as such for thirty days after having been duly notified of his election or appointment, shall forfeit the sum of ten dollars, to be collected upon a complaint made by any citizen before a justice of the peace of the county, together with all the costs of the prosecution, which forfeiture when collected shall be paid into the road fund of the district in which he resides. [R. C. 1899, § 1113.]

#### ARTICLE 5.—ROAD DUTIES OF TOWNSHIP SUPERVISORS.

§ 1404. **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. They may divide the respective townships into as many road districts as they may 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 instruction. 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 article provided, the supervisors of townships shall be governed and guided by the amount of road tax available. [1883, sub-ch. 2, ch. 112, § 4; R. C. 1899, § 1114; 1905, ch. 176.]

**§ 1405. Report of labor performed on roads.** The supervisors in each township shall render to the annual township meeting an account in writing, stating the labor assessed and performed in such township, the sums received by them for fines and commutations, and all other moneys received under this article, a statement of the improvements necessary to be made on the roads and bridges, and an estimate of the probable excess of the expense of making such improvements over the road and poll tax for that year; also a statement in writing of all expenses and damages in consequence of laying out, altering or discontinuing roads. [1883, sub-ch. 2, ch. 112, § 5; R. C. 1895, § 1115.]

**§ 1406. Board authorized to purchase tools.** The township board of any township is authorized to purchase for the use of the township, upon credit or otherwise, any tools, road machine or grader, or either of them or one or more of either of them for the use of the township, or the use of the overseer of the districts therein, as in this article provided. Such implements when purchased, shall be paid for in not to exceed five annual payments out of the highway tax of the township, according to the contract therefor, and the chairman of the township board shall issue orders for the payment of the same, and such orders shall be attested by and registered with the township clerk, and the township clerk shall certify to the supervisors of such township, at the time of assessing the highway tax for such township, the sum necessary to pay such orders, and this sum shall be added to the other taxes to be raised for highway purposes, and when collected shall be applied to the payment of such orders and to no other purpose until all such orders are paid. The township board shall have the custody and control of all implements so purchased. [1899, ch. 140, § 1; R. C. 1899, § 1115a.]

**§ 1407. Purchase road machine.** In any township in which the whole or any part of the highway tax is paid in labor, the township board thereof may upon being petitioned in writing by a majority of the resident freeholders of the town, contract for and purchase, upon credit, or otherwise, a road machine, road grader or wheeled scrapers, or one or more of either of them for the use of the township, which implements shall be used and owned and cared for by the townships. Such implements shall be paid for out of the highway tax of the township and may be paid for in not to exceed five annual installments. A copy of the note or contract issued upon such purchase shall be filed in the office of the township clerk, and it shall be the duty of such township clerk to present a statement of the sum due thereon, to the township board, at each regular meeting held thereafter for the audit of the township claims and charges, and the township board shall audit the same. Not more than one-half of the highway tax of the township shall be applied to the payment thereof in any one year. The portion of such tax so applied shall be required to be paid in money, and shall be assessed and levied upon property of the township and collected in the same manner as other township charges are assessed, levied and collected, except that the amount thereof shall be put into a separate column of the tax roll, and the township board shall cause the same so certified to by

the township clerk, to be levied upon the taxable property of the township. [1899, ch. 140, § 2; R. C. 1899, § 1115b; 1901, ch. 147.]

**§ 1408. Overseer responsible.** Each road overseer of highways shall be personally responsible for the proper use and care of such implements while in his charge, or in use in his district, and any overseer of highways, or other person who shall through negligence or otherwise willfully injure or damage such implements or permit them to be injured, shall be liable for such damage to such township, in an action to be brought by the chairman of the township board before any justice of the peace in said town or any adjoining township. [1899, ch. 140, § 3; R. C. 1899, § 1115c.]

**§ 1409. Storage of implements.** It shall be the duty of the township board of each township to provide suitable places for the storage and proper housing of all tools, implements and machinery owned by the township, and to cause such tools, implements and machinery to be stored and housed therein when not in use. [1899, ch. 140, § 4; R. C. 1899, § 1115d.]

#### ARTICLE 6.—DUTIES OF OVERSEERS OF HIGHWAYS.

**§ 1410. Duties of overseers of highways.** The overseers of highways in each township shall repair and keep in order the roads within their respective districts, warn all persons from whom labor is due to work on highways at such times and places within their several districts as they may deem proper, collect all fines and commutation money, execute all lawful orders of the supervisors, and deliver to the township clerk within sixteen days after his election or appointment, a list subscribed by such overseer, of the names of all inhabitants of his road district who are liable to work on the highways. [1883, ch. 112, sub-ch. 2, § 6; R. C. 1899, § 1116.]

**§ 1411. Weeds. Road overseer to destroy.** 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. Such weeds shall be cut for a distance extending at least sixteen feet from the center on each side of the road. [1905, ch. 117, §§ 1, 2.]

**§ 1412. 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 fifteenth and not later than August fifth 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. [1905, ch. 117, § 3.]

**§ 1413. Bills, how audited.** 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. [1905, ch. 117, § 4.]

**§ 1414. When overseer shall be appointed.** If any person chosen or appointed to the office of overseer of highways refuses to serve or if his office becomes vacant, the supervisors of the township shall in writing under their hands appoint some person in his stead, and the overseer so appointed shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at township meetings. [1883, sub-ch. 2, ch. 112, § 7; R. C. 1899, § 1117.]

**§ 1415. Notice of appointment.** The supervisors making the appointment shall cause the same to be forthwith filed in the office of the township clerk, who shall give notice to the person so appointed as in other cases. [1883, sub-ch. 2, ch. 112, § 8; R. C. 1899, § 1118.]

## ARTICLE 7.—ABANDONED COAL MINES AND WELLS.

§ 1416. **Mines and wells not in common use.** Any individual, firm or corporation owning or occupying lands within this state, shall fill with earth or stone, or cover securely with plank of the thickness of two inches, any and all coal mines and wells, situated on such lands, which have become dry, or are not in common use, or which are not otherwise securely protected. [1899, ch. 43; R. C. 1899, § 1118a.]

§ 1417. **Duties of overseers.** It shall be the duty of the overseer of highways to cause to be filled or covered, as provided in the previous section, any and all wells situated on any United States lands, state lands or common school lands within his district and for so doing such overseer shall receive such compensation, payable out of the road and bridge fund of the township, as the township board of supervisors, on presentation of his account therefor, verified by oath, shall deem reasonable. It shall be the duty of the overseer of highways, in case any individual, firm or corporation owning or occupying lands within his district, shall neglect or refuse to comply with the provisions of this article, to serve a written notice on such owner or occupant, and if such owner or occupant shall neglect or refuse to comply with the provisions hereof the overseer of highways shall, within thirty days after having given such notice, cause such wells to be filled or covered as herein provided, and the owner of such land shall be liable to the township for the cost of such work and material furnished, and the necessary expense incurred in collecting the same to the township, and the township board of supervisors shall take proper proceedings to obtain judgment against the owner or occupant of the subdivision on which such wells are located for the amount expended in filling or covering such wells and all costs which may have accrued in obtaining judgment therefor. [1899, ch. 43; R. C. 1899, § 1118b.]

## ARTICLE 8.—NOXIOUS WEEDS.

§ 1418. **Cutting and removing weeds.** It shall be the duty of the road overseer in all organized townships, and the street commissioner of all villages or cities within the state of North Dakota to cause all weeds growing along or upon all public highways, streets and alleys in their respective road districts, villages or cities, to be cut or removed before the first day of August of each year, such work to be performed same as all other road work, and paid for in the same manner. [1899, ch. 115; R. C. 1899, § 1118c.]

§ 1419. **Penalty for neglect to perform duties.** Every overseer of highways who refuses or neglects to perform any of the duties prescribed in this article, or which may be lawfully required of him by the supervisors of his township, shall for every such refusal or neglect forfeit the sum of ten dollars to be sued for by the chairman of the board of supervisors of the township, and when recovered to be applied by him in making and improving the roads and highways therein. [1883, sub-ch. 2, ch. 112, § 9; R. C. 1899, § 1119.]

Action for penalty must be in name of person beneficially interested. *State v. Messner*, 9 N. D. 186. 82 N. W. 737.

## ARTICLE 9.—HIGHWAY LABOR AND ROAD TAX.

§ 1420. **Meetings of supervisors.** The supervisors of each township shall meet at the township clerk's office on the last Tuesday of March each year and afterwards at such other times and places as they may deem proper. [1883, sub-ch. 2, ch. 112, § 10; 1887, ch. 155, § 4; R. C. 1899, § 1120.]

§ 1421. **Make estimate of labor.** The township clerk shall deliver the list filed by the overseers to the supervisors, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their township the next ensuing year. [1883, sub-ch. 2, ch. 112, § 11; R. C. 1899, § 1121.]

**§ 1422. Who liable to labor.** Each male inhabitant above twenty-one years and under fifty years of age, excepting paupers, idiots, lunatics and such others as are exempt by law, shall be assessed one day in each year. Supervisors shall levy a road tax on all real estate and personal property liable to taxation in the township to any amount they may deem necessary not exceeding one dollar on each one hundred dollars of valuation as shown on the assessment roll of the preceding year. They shall prepare a list in which they shall write in separate columns:

1. The name of each person named in the list furnished by the overseers.
2. The number of days assessed to each person for highway labor.
3. A description of each tract of real property, in the name of the owner if known.
4. The valuation thereof as shown by the assessment roll of the previous year.
5. The amount of road tax assessed thereon.

The list so prepared shall be signed by the supervisors and deposited with the township clerk to be filed in his office. [1883, sub-ch. 2, ch. 112, § 12; 1885, ch. 128, § 1; R. C. 1899, § 1122.]

Road tax expended by road overseer. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

**§ 1423. Highway tax list.** The supervisors shall also place on the land road list the names of all persons against whom a road tax on personal property only has been assessed, and place in a separate column opposite the name of each person on the list the amount of road tax assessed on personal property, which amount shall be subject to collection or commutation by labor the same as a land road tax assessed on real estate. [1883, sub-ch. 2, ch. 112, § 13; R. C. 1899, § 1123.]

**§ 1424. Copy of list to overseers of highways.** The supervisors shall direct the township clerk to make a certified copy of each list, after which the township clerk shall deliver the several copies to the respective overseers of highways of the several districts in which highway labor is assessed, for which he shall receive a fee of twenty-five cents for each copy so delivered. One copy for each overseer shall contain the name of each person against whom a poll tax has been assessed, the other the land and personal property road tax. [1883, sub-ch. 2, ch. 112, § 14; R. C. 1895, § 1124.]

**§ 1425. Overseer to add certain names to list.** The overseers of highways shall add the names of persons omitted from such lists and of new inhabitants, and they shall be rated in the same proportion to work on the highways as others are rated by the supervisors on such list. [1883, sub-ch. 2, ch. 112, § 15; R. C. 1899, § 1125.]

**§ 1426. Notice to all persons assessed.** Overseers of highways shall give at least three days' notice to all persons assessed to work on highways and living within the limits of their respective districts, of the time and place when and where they are to appear for that purpose, and with what implements; but no person who is a resident of the township shall be required to work on any highway other than in his own district in which he resides, but may elect to pay any land road tax in labor in the district in which said land is situated, and shall be allowed one dollar and fifty cents for himself, and a like amount for the use of his team and wagon or plow. Such labor shall be at the disposition of the overseers of their respective districts. If any person shall have done any road work under the direction of the road overseer, such person shall be entitled on demand to a receipt from such overseer, which receipt shall state the value of such labor and the name of the person, when the assessment is against personal property, and the description of the land, when the assessment is against real property. Such receipt shall be received by the county treasurer or road overseer in payment of any road or bridge tax levied and assessed in that or any succeeding year in

such township against such person or land. If from any cause the amount stated in such receipt shall exceed the amount of the tax then due, the county treasurer or the road overseer shall accept and retain such receipt, and shall give to the owner of such receipt another receipt for the amount of the excess of the original receipt over and above said tax. Such receipt shall be received in payment of taxes to the amount stated therein, in the same manner as the original receipt. [1883, sub-ch. 2, ch. 112, § 16; 1890, ch. 42, § 1; R. C. 1899, § 1126.]

§ 1427. **Obstructions to be removed by overseers.** Road overseers have power and it is their duty whenever any public highway becomes obstructed or unsafe from any cause whatever, to call upon any or all persons liable to poll tax in his district to come forth with such tools or teams as the overseer may direct, and work upon such highway in removing obstructions or repairing dangerous places, and for all such labor performed under the direction of the overseers, by any person in excess of the road tax assessed against him for that year, the road overseer shall give a receipt stating the value of such labor, and such receipt shall be received in payment of any road tax due from any person to such district in that or any succeeding year; and any road overseer who fails to perform his duty as required by law shall be subject to prosecution therefor by the supervisors of the township, and upon conviction shall be liable to a fine of not less than five nor more than fifty dollars. [1883, sub-ch. 2, ch. 112, § 17; R. C. 1895, § 1127.]

Persons obstructing road overseers in performance of duty liable to arrest without warrant, when. *Richardson v. Dybedahl*, 14 S. D. 131, 84 N. W. 480.

§ 1428. **Commutation of road labor.** Each person liable to work upon the highways shall work the whole number of days for which he is assessed, but every such person other than the overseer of highways, may elect to commute for the same or some part thereof, at the rate of one dollar and fifty cents per day, in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside; such overseer shall pay over such commutation money to the county or township treasurer taking his receipt therefor, stating the district wherefrom received, which receipt shall be filed with the township clerk within thirty days from the date such commutation money is collected. Such commutation money shall be expended by the township board of supervisors in improvements upon the roads and bridges in the same district wherein collected. Overseers of highways when such road tax is paid either in money or labor, shall write in their list the word "Paid" opposite the name, tract of land or personal property on which the same is paid. [1897, ch. 113; R. C. 1899, § 1128.]

§ 1429. **Payment of commutation money.** Each person intending to commute for his assessment or any part thereof shall within two days after he is notified to appear and work on the highways, pay the commutation money for the work required of him by such notice, and the commutation shall not be considered as made until such money is paid. [1883, sub-ch. 2, ch. 112, § 19; R. C. 1899, § 1129.]

§ 1430. **Power of overseer to require team or cart.** Each overseer of highways has power to require a team or cart, wagon or plow, with a pair of horses or oxen and a man to manage them, from any person having the same within his district. [1883, sub-ch. 2, ch. 112, § 20; R. C. 1899, § 1130.]

§ 1431. **Person assessed may procure substitute.** Each person assessed to work on the highways and warned to work may appear in person or by an able bodied man as a substitute and the person or substitute so appearing shall work eight hours in each day, under a penalty of fifteen cents for each hour such person or substitute is in default, to be imposed as a fine on the person assessed. [1883, sub-ch. 2, ch. 112, § 21; 1885, ch. 128, § 2; R. C. 1899, § 1131.]



§ 1432. **Fine for neglect to appear.** Each person so assessed and duly notified, who does not commute or who refuses and neglects to appear as above provided, shall be fined for each day's refusal or neglect the sum of two dollars. If he was required to furnish a team, carriage or implements, and refused or neglected so to comply, he shall be fined as follows:

1. For wholly omitting to comply with such requisition, four dollars for each day.

2. For omitting to furnish a cart, wagon, or plow, one dollar for each day.

3. For omitting to furnish a pair of horses or oxen, one dollar and fifty cents each day.

4. For omitting to furnish a man to manage the team, one dollar and fifty cents for each day. [1883, sub-ch. 2, ch. 112, § 22; R. C. 1899, § 1132.]

§ 1433. **When overseer shall make complaint.** Each overseer of highways within nine days after any person so assessed and notified is guilty of any refusal or neglect for which a penalty or fine is prescribed in this article, unless satisfactory excuse is rendered to him for such refusal or neglect, shall make complaint to one of the justices of the peace of the township or of an adjoining township. [1883, sub-ch. 2, ch. 112, § 23; R. C. 1899, § 1133.]

§ 1434. **Duty of justice on complaint.** The justice to whom such complaint is made shall forthwith issue a summons directed to the sheriff or any constable of the county, requiring him to summon such delinquent to appear at the time and place specified in the summons, to show cause why he should not be fined according to law for such refusal or neglect, which summons shall be served personally. [1883, sub-ch. 2, ch. 112, § 24; R. C. 1899, § 1134.]

§ 1435. **Fine and collection thereof.** If upon the return of such summons no sufficient cause is shown to the contrary, the justice of the peace shall impose a fine as provided in this article for the offense complained of, and shall forthwith issue an execution under his hand directed to such sheriff or constable, commanding him to levy such fine and the costs out of the goods and chattels of the delinquent, and no property shall be exempt therefrom. [1883, sub-ch. 2, ch. 112, § 25; R. C. 1899, § 1135.]

§ 1436. **Fine disposed of, how.** The officer to whom such execution is directed shall forthwith collect the moneys therein mentioned. He shall pay the fine when collected to the justice of the peace who issued the warrant, who is required to pay the same to the overseer who entered complaint to be by him expended in improving the roads and bridges in his district. The costs when collected shall be paid to the persons entitled thereto. [1883, sub-ch. 2, ch. 112, § 26; R. C. 1899, § 1136.]

§ 1437. **Overseer cannot excuse person.** The acceptance by an overseer of any excuse for refusal or neglect shall in no case exempt the person excused from commuting for or working the whole number of days for which he is assessed during the year. [1883, sub-ch. 2, ch. 112, § 27; R. C. 1899, § 1137.]

§ 1438. **Compensation of overseers.** Each overseer of highways is entitled to two dollars per day, to be paid out of the fines and commutation money for each day he is necessarily employed in the execution of his duties as overseer. When there are no funds from fines or commutations the supervisors may pay the overseers out of any funds in their hands raised for the purpose of repairing and making roads and bridges. [1883, sub-ch. 2, ch. 112, § 28; R. C. 1899, § 1138.]

§ 1439. **Overseer to return tax list.** Each overseer of highways shall deliver to the township clerk of his township on or before the fifteenth day of September in each year the list furnished by the supervisors containing the land and personal property road tax, with his certificate thereon that all taxes in such list opposite which the word "paid" is not written, are due and unpaid according to the best of his knowledge and belief. [1883, sub-ch. 2, ch. 112, § 29; 1887, ch. 158, § 1; R. C. 1899, § 1139.]

§ 1440. **Refusal or neglect to deliver tax list.** If any overseer refuses or neglects to deliver such list with his certificate as provided in the last section, he shall, for each offense, forfeit the sum of five dollars, and also the amount of tax remaining unpaid, to be recovered by the supervisors of such township and applied by them in improving roads and bridges in such township. [1883, sub-ch. 2, ch. 112, § 30; R. C. 1899, § 1140.]

§ 1441. **Township clerk to make out delinquent list.** The township clerk of each township shall receive the lists returned by the overseer of highways pursuant to section 1439 and keep the same on file in his office, and shall make out and deliver to the county auditor of the county, on or before the first day in October in each year, a list containing a description of each tract or parcel of land on which the tax is delinquent, together with the name of the owner, if known, and if unknown, so state, and the amount of tax due and remaining unpaid on each, and containing all of the unpaid road taxes levied upon personal property according to the lists on file in his office, and shall make his certificate thereon to the effect that the same is a correct list of delinquent road taxes for the year therein stated, as appears from the several lists returned by the overseers of highways and on file in his office; and it is the duty of the county auditor to extend such unpaid taxes upon the tax lists for the current year, to be collected in the same manner, as other taxes. Such road tax, when collected, shall be paid to the township treasurer of the proper township upon the certificate of the county auditor, and shall be expended by the supervisors in the construction or repair of roads and bridges, to be paid by the township treasurer upon the order of the supervisors. [1883, sub-ch. 2, ch. 112, § 31; 1887, ch. 158, § 2; R. C. 1899, § 1141.]

§ 1442. **Work done prior to August first.** It shall be the duty of each overseer of highways to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways previous to the first day of August in each year. [1883, sub-ch. 2, ch. 112, § 32; R. C. 1899, § 1142.]

§ 1443. **Report of road overseers.** Each overseer of highways shall, on the last Tuesday in October of each year for which he is elected, or appointed, render to the clerk of the township an account in writing containing:

1. The names of all persons assessed to work on the highways in his district.
2. The names of all those who have actually worked on the highways, with the number of days they have worked.
3. The names of all those who have been fined and the sums in which they have been fined.
4. The names of all those who have commuted and the manner in which the moneys arising from fines and commutations has been expended by him.
5. The amount of all material purchased by him, together with the bills of all those from whom the material has been purchased.
6. The present condition of all road machinery entrusted to him. [1883, sub-ch. 2, ch. 112, § 33; R. C. 1899, § 1143; 1901, ch. 148.]

§ 1444. **Overseer to pay over money.** Every such overseer shall then and there pay to the supervisors all unexpended moneys remaining in his hands, to be applied by the supervisors on the roads and bridges in the township. [1883, sub-ch. 2, ch. 112, § 34; R. C. 1899, § 1144.]

§ 1445. **Penalty for refusal to render account.** If any overseer refuses or neglects to render such account or if, after rendering the same, he shall refuse or neglect to pay any balance which may be due from him, he shall for every such offense, forfeit the sum of five dollars, to be recovered with the balance of the moneys remaining in his hands, by the supervisors of the township and applied to the improvement of the roads and bridges in such township [1883, sub-ch. 2, ch. 112, § 35; R. C. 1899, § 1145.]

## ARTICLE 10.—ROADS IN CITIES.

§ 1446. **Powers of city authorities.** The same powers and duties in and by this chapter conferred and imposed upon township supervisors, are also conferred and imposed upon the city councils of the several cities throughout this state, and in addition thereto it shall be the duty of the city council to appoint some qualified elector of each road district in the city to be overseer of roads in such district, and the overseers of roads, city clerks or auditors, justices of the peace and constables of the several cities of the state shall exercise the same powers and perform the same duties and be subject to the same liabilities as are in and by this article conferred and imposed upon the township overseers, clerks, justices of the peace and constables, and all the provisions of this article shall be applicable to the several cities in this state unless otherwise provided for in their several charters, subject, however, to the reservations made by law in regard to incorporated cities. [1883, sub-ch. 2, ch. 112, § 53; R. C. 1899, § 1146.]

## ARTICLE 11.—GRADES OF HIGHWAYS ADJOINING CITIES.

§ 1447. **Grades, how established.** 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 village 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. [1905, ch. 118.]

## ARTICLE 12.—OBSTRUCTING HIGHWAYS.

§ 1448. **Penalty for obstructing highway.** Whoever at any time obstructs any of the public highways in this state in any manner, with intent to prevent the free use thereof by the public, or whoever shall do or cause to be done any planting or plowing thereon within one rod on either side of the center line of such highway, shall be subject to a fine of not less than five nor more than twenty-five dollars, together with the costs of prosecution, and on failure to pay such fine and costs, he may be committed to the county jail, there to remain until such fine and costs are paid or until discharged according to law; and it is the duty of the board of supervisors of the several townships in this state to make complaint and to prosecute or cause to be prosecuted all persons violating the provisions of this section. [1883, sub-ch. 2, ch. 112, § 74; R. C. 1899, § 1147.]

## ARTICLE 13.—WATERING PLACES ON HIGHWAYS.

§ 1449. **Watering troughs. Bounty for.** Any person in any city, village or township in this state who shall construct and maintain a watering trough beside the highway, which shall be above the ground and made easily accessible for horses, shall be allowed by the city, village or township, five dollars out of his highway tax for each year during which he shall maintain the same. [1883, sub-ch. 2, ch. 112, § 84; R. C. 1899, § 1148.]

§ 1450. **Well or spring. Bounty for.** Any person in any city, village or township who shall construct and maintain a good well or spring beside the highway, easily accessible, and provided with a suitable pail or bucket, and keep the same so supplied and in good repair, shall be allowed by the city, village or township, three dollars out of his highway tax for each year during which he shall furnish the same. [1883, sub-ch. 2, ch. 112, § 85; R. C. 1899, § 1149.]

§ 1451. **Proceedings to furnish watering places.** Any person upon any highway or road in any district or ward desiring to furnish such watering trough, well or spring, shall make application to the aldermen of the city or supervisors of the township, who shall decide where such trough, well or spring shall be located, and the number of persons who may receive the benefits of the last two sections. [1883, sub-ch. 2, ch. 112, § 86; R. C. 1899, § 1150.]

#### ARTICLE 14.—DITCHES FOR DRAINING HIGHWAYS.

§ 1452. **Proceedings for.** Whenever any overseer of highways or road supervisor shall file with the board of supervisors of the township in which his road district is located, or with the board of county commissioners, as the case may be, his affidavit stating that a certain road in his district runs into or through swamp, bog, meadow or other low land, and that it is necessary or expedient that a ditch should be constructed and maintained through land belonging to any person, also stating the probable length of such ditch and the width and depth of the same as near as may be, the point at which it is to commence, its general course and the point at or near which it is to terminate, the names of the persons owning the land, if known, and a description of the land over which such ditch must pass, the board of township supervisors or county commissioners as the case may be, if the right to construct and maintain such ditch is not voluntarily given by the person owning the land over which it is to pass, shall cause proceedings to be instituted in its name under the provisions of the chapter on eminent domain in the code of civil procedure, to acquire the right to construct and maintain the same. [1883, sub-ch. 2, ch. 112, § 87; R. C. 1895, § 1151.]

§ 1453. **Penalty for injuring ditch.** Any person who shall dam up, obstruct or in any way injure any ditch so opened, shall be liable to pay to the overseer of highways of such road district double the damages caused by such injury, which shall be assessed by the jury or court and shall also be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for a period not exceeding three months, or by a fine not exceeding one hundred dollars, and such damages and fine when collected shall be, by such overseer, expended on the roads in his district. [1883, sub-ch. 2, ch. 112, § 92; R. C. 1899, § 1152.]

#### ARTICLE 15.—ROADS ON LINE OF CITY OR VILLAGE.

§ 1454. **Roads on lines between township and city.** Whenever the supervisors of any township and the trustees or common council of any incorporated village or city shall receive a petition praying for the location of a road or for the altering or discontinuing of any road on the line between such village or city, such road shall be laid out, altered or discontinued by two or more of the supervisors of such township, and a majority of the common council or trustees of such incorporated city or village. [1883, sub-ch. 2, ch. 112, § 95; R. C. 1899, § 1153.]

§ 1455. **Laws applicable.** The provisions of this chapter applicable to roads on the line between two townships shall be applicable to roads on the line between any township and an incorporated city or village. [1883, sub-ch. 2, ch. 112, § 97; R. C. 1899, § 1154.]

## ARTICLE 16.—RIGHT OF WAY FOR HIGHWAYS.

§ 1456. **Right-of-way over Devils Lake.** There is hereby granted to the public, and to each and every county, township, municipal corporation and political subdivision interested in, or 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, embankments or bridges, or any combination thereof, or otherwise, across, within, under or through the waters of Devils Lake, extending from the point known as Pelican Point on the northerly bank of said lake, in a southerly direction by the most feasible and practical route to the southerly bank of said lake. All acts heretofore performed in the construction or partial construction or maintenance of a highway between the points designated in this section by grades, fills, embankments or otherwise, are hereby ratified, approved and confirmed. [1903, ch. 141.]

§ 1457. **Right of way across military grounds.** A right of way is hereby granted for the laying out of a public highway across the military encampment grounds at Rock Island, Ramsey county, from north to south, upon a route to be determined by the proper authorities of Ramsey county, subject to the approval of the governor. [1901, ch. 134.]

§ 1458. **Right-of-way over Des Lacs Lake.** 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, embankments 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 one hundred sixty-one and township one hundred sixty-two in Ward county, North Dakota; provided, that said construction does not block or 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. [1905, ch. 57.]

## ARTICLE 17.—LAW OF THE ROAD.

§ 1459. **Vehicles turn to the right.** Whenever persons shall meet on any bridge or road, traveling with carriages, wagons, sleds, bicycles, or other vehicles, each shall pass to the right of the middle of the traveled part of such bridge or road so that the respective carriages, or other vehicles aforesaid, may pass each other without interference. [R. C. 1895, § 1155.]

§ 1460. **Penalty for violation of last section.** Every person violating the provisions of the preceding section shall for each offense forfeit a sum not exceeding twenty-five dollars, and shall also be liable to the party injured for all damages sustained thereby. [R. C. 1899, § 1156.]

§ 1461. **Drunken drivers.** No person owning or having the direction or control of any coach or other vehicle running or traveling upon any road in this state for the conveyance of passengers shall employ or continue in his employment any person to drive such coach or other vehicle who is addicted to drunkenness or to the excessive use of intoxicating liquors; and if any person shall violate the provisions of this section, he shall forfeit and pay a sum of not less than ten nor more than fifty dollars, and shall be liable for all damages sustained thereby. [R. C. 1899, § 1157.]

§ 1462. **Unlawful not to hitch passenger teams.** It shall be unlawful for the driver of any carriage or other vehicle used for the conveyance of passengers to leave the horses attached thereto while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope or chain, or without some suitable person to take charge or guidance of them so as to prevent their running; and if any person shall violate the

provisions of this section, he and his employer shall each forfeit and pay a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offense. [R. C. 1899, § 1158.]

§ 1463. **Passenger conveyance. Liability of owner.** The owner of each carriage or other vehicle running or traveling upon any road or public highway for the conveyance of passengers for hire shall be liable jointly and severally with the driver of such vehicle to the party injured, in all cases, for all damages done by such driver while in the employment of such owner in driving such carriage, or other vehicle, to any person, whether the act occasioning such injury or damage was willful, negligent or otherwise. [R. C. 1899, § 1159.]

#### ARTICLE 18.—BRIDGE PENALTIES.

§ 1464. **Notices on bridges.** It shall be the duty of the county commissioners of each county of the state to cause notices to be posted at each end of all bridges in their respective counties, where the span of such bridge is fifty feet or more, stating the number of cattle, horses or other animals that may be driven onto or across such bridge at any one time. [1883, sub-ch. 2, ch. 112, § 77; R. C. 1899, § 1160.]

§ 1465. **Driving cattle on bridges.** Any person driving or having charge of any drove of cattle, horses or other animals who shall drive or permit more of such animals to enter upon or cross such bridge at any one time than is specified in such notice, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding one hundred dollars nor less than ten dollars. [1883, sub-ch. 2, ch. 112, § 78; R. C. 1899, § 1161.]

§ 1466. **Penalty for driving across bridge faster than a walk.** Whoever drives or rides upon any bridge, belonging to any incorporated bridge company or any bridge which has been or may be erected by any county or township, or upon any bridge which has been or may be erected by any individual, and upon which the notice hereinafter prescribed is conspicuously displayed, faster than a walk shall forfeit and pay for the use and benefit of the county wherein such bridge is located in whole or in part, as a penalty therefor, a sum not less than five nor more than ten dollars for each offense. [1883, sub-ch. 2, ch. 112, § 79; R. C. 1899, § 1162.]

§ 1467. **Proceedings on complaint.** Upon complaint made to any justice of the peace in any county where such bridge is located in whole or in part, that any such offense has been committed, such justice shall issue his warrant in the usual manner, requiring the officer to whom it is directed forthwith to arrest the accused and bring him before such justice or some other justice of the county, to be dealt with according to law. [1883, sub-ch. 2, ch. 112, § 80; R. C. 1899, § 1163.]

§ 1468. **Judgment on conviction.** In all cases of conviction under the provisions of the foregoing sections the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution upon the judgment to the use of the county. [1883, sub-ch. 2, ch. 112, § 81; R. C. 1899, § 1164.]

§ 1469. **Fine imposed only when notice is posted.** No fine shall be imposed under the provisions of this article unless there was at each end of such bridge at the time when such offense was committed, a conspicuous sign board upon which was printed the following: "Ten dollars fine for riding or driving on this bridge faster than a walk," or words importing substantially the same meaning. [1883, sub-ch. 2, ch. 112, § 82; R. C. 1899, § 1165.]

§ 1470. **Penalty for running tollgate.** When any bridge or ferry company or individual is authorized by law to collect toll for the crossing of any bridge or ferry belonging to such company or individual, any person who

willfully runs the toll gate of such company or individual and passes over such bridge or ferry with the intention of avoiding the payment of the toll prescribed by law, or who refuses to pay such toll when lawfully requested so to do, shall forfeit and pay for the use and benefit of the county wherein such bridge or ferry is located a fine of five dollars for each offense, which fine shall be prosecuted for and collected, together with the costs of prosecution in the manner prescribed in the preceding section. [1883, sub-ch. 2, ch. 112, § 83; R. C. 1899, § 1166.]

ARTICLE 19.—FERRIES.

§ 1471. **Ferries unlawful without lease. Must be two miles apart.** It shall be unlawful for any person to establish, maintain or run upon any waters within the state any ferry upon which to convey, carry or transport any person or property for hire or reward, without first having obtained a license therefor as hereinafter provided, and where but one bank or shore is in this state, the board of county commissioners of the proper county have the same authority, and this law applies with like effect, as if the entire stream was within this state, so far as the banks and waters actually within it are concerned, and when any ferry lease has been granted no other lease shall be granted within a distance of two miles thereof across the same stream. Any person violating any of the provisions of this section shall for each offense forfeit and pay to the proper county not less than five nor more than one hundred dollars with costs to be recovered in an action in the name of the state. [R. C. 1899, § 1167.]

Constitutional. Franchise exclusive, legislative control absolute, power of commissioners. *Patterson v. Wollman*, 5 N. D. 608, 67 N. W. 1040; *Evans v. Hughes Co.*, 6 Dak. 102, 50 N. W. 720; *Evans v. Hughes Co.*, 3 S. D. 580, 54 N. W. 606.

Franchise may extend two miles on either side of landing. *Nixon v. Reid*, 8 S. D. 507, 67 N. W. 57.

§ 1472. **Duties of commissioners to grant ferry licenses.** The board of county commissioners of the county to whom application shall be made for a ferry in the manner hereinafter provided, is hereby authorized, and it shall be its duty, to grant a lease of such ferry for a term not exceeding fifteen years, to such person or persons as shall bid and secure the payment of the highest amount of rent for the same, such lease to be executed by the board of county commissioners as lessors, and such bidder as lessee; and such board shall be empowered to extend to such person the lease so granted to any person putting in a steam ferry, at the same rate as previously paid; provided, that such extended time shall not exceed fifteen years from the time of the granting of the first lease; and when in the opinion of the board of county commissioners, of the county wherein such lease is granted, the rates fixed by law for crossing such ferry are too high, it shall have the right to fix such rates as in its judgment may seem just; provided, that upon the petition of fifty or more persons owning taxable property and residing in said county, the county commissioners shall survey, lay out and keep in repair a public highway to and from said ferry; provided, further, that the mayor and city council of any incorporated city, and the board of trustees of any incorporated town or village in the state of North Dakota, within whose corporate limits the landing of any ferry shall be situated, shall have the sole authority to grant a lease of such ferry and the right to fix the rates for crossing such ferry, and upon the granting thereof such city, town or village shall lay out and keep in repair a public highway and approach to and from such ferry. [1899, ch. 90; R. C. 1899, § 1168; 1901, ch. 96, § 1.]

Where bid is properly tendered it is equivalent to "highest bidder." *Willson v. Gabler*, 11 S. D. 206, 76 N. W. 924.

§ 1473. **Rates of ferriage.** The rates for crossing the Missouri River on ferries shall not exceed the following:

For two horses, mules or oxen and wagon, with or without load, one dollar.

For each additional pair of horses, mules or oxen, thirty cents.

For each two horses or mules and buggy, seventy-five cents.

For each one horse or mule with buggy and driver, fifty cents.

For each horse or mule led, twenty-five cents.

For loose cattle per head, fifteen cents.

For sheep and swine per head, ten cents.

For each one hundred pounds of freight or merchandise unloaded, ten cents.

For each thousand feet of lumber unloaded, one dollar.

Each ferryman is required to keep a schedule of his legal rates posted up in a convenient place at or near his ferry in easy view of the passing public. [R. C. 1899, § 1169.]

§ 1474. **Ferries in unorganized counties.** The secretary of state is authorized upon application to grant a lease of any ferry in any unorganized county for the like period and under the provisions of this chapter in every respect which are applicable thereto. The money received therefor shall be by him paid into the state treasury. All licenses granted by the secretary of state under this section shall terminate upon the organization of the county in which the same or any part thereof lies, and it shall thereafter be subject to the provisions of law relating to organized counties. [R. C. 1899, § 1170.]

§ 1475. **Safety of ferry boats.** Each person obtaining a lease to run a ferry as aforesaid shall provide and keep in good repair a good and sufficient boat for the safe conveyance of persons or property, and when the river or creek over which the ferry is run is passable, shall, with a sufficient number of hands to work and manage the boat from sunrise to sunset and with reasonable care and promptness, convey across such ferry all persons and property presented for transportation across the same. If any lessee as aforesaid shall fail or neglect to perform all or any of the duties enjoined upon him by this and the preceding section or shall demand or receive a higher rate than is allowed in section 1473, the lessee so offending shall for each offense forfeit and pay the sum of ten dollars. [R. C. 1899, § 1171.]

§ 1476. **Penalty for unlawful ferry.** If any person shall keep a ferry in any of the organized counties of this state without a lease from the board of county commissioners as aforesaid, the owner or person so offending shall forfeit and pay a sum of not less than fifty nor more than five hundred dollars for each year or fractional part of a year such person shall keep such ferry, to be recovered in a civil action in the name of the state. [R. C. 1899, § 1172.]

§ 1477. **Money from ferry leases to go to school fund.** All moneys received by the board of county commissioners upon leases granted for ferries as aforesaid, shall within thirty days after the receipt thereof, be paid to the county treasurer for the use of the public schools of the county, and the same shall be apportioned among the several districts of the county in like manner as other school funds are now by law apportioned; provided, that all moneys received by the mayor and city council of any incorporated city, or by the board of trustees of any incorporated town or village, in this state, for the leasing of any ferry whose landing shall be within the corporate limits of such city, town or village, shall immediately upon the receipt of the same, be turned over to the treasurer of such city, town or village, to be by him deposited in the general fund and paid out in like manner as other moneys are paid out of said general fund for the use of said city, town or village. [R. C. 1899, § 1173; 1901, ch. 96, § 2.]

§ 1478. **Temporary ferries.** Nothing in this article shall prevent any person from ferrying persons and property across any small stream in time of high water, when in the opinion of the board such stream is too small to justify a regular ferry. [R. C. 1899, § 1174.]

§ 1479. **Forfeiture for not maintaining ferry.** All persons, who have heretofore received either a permit, lease, grant or charter in any form, either



from the legislative assembly or any tribunal or board, for the keeping of a ferry of any kind, who shall neglect or fail during the period of one month at any one time, to keep their ferry in operation for the safe transportation of persons and property over the same according to law, shall forfeit all the ferry rights, franchises and privileges, and all right, title or claim to the same, granted by or under this law, or any former act as aforesaid; and upon due proof being made to the board of county commissioners of the proper county, of such failure or neglect, the board is authorized and empowered to declare such forfeiture absolute, and thereupon and thereafter all the rights, franchises and privileges, granted by or under this article, or any other law, shall cease and be of no more force or effect. [R. C. 1899, § 1175.]

## CHAPTER 20.

### REVENUE AND TAXATION.

#### ARTICLE 1.—DEFINITIONS OF TERMS.

§ 1480. **Definitions of terms used.** The terms used in this chapter are defined as follows: The word "money" or "moneys" means gold and silver coin, treasury notes, bank notes, and every deposit which any person owning the same or holding in trust and residing in this state is entitled to withdraw as money or on demand; the term "credits" means and includes every claim and demand for money or other valuable things, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deeds, or mortgages due or to become due; the terms "tract" or "lot" and "piece or parcel of real property," and "piece or parcel of land," means any contiguous quantity of land in the possession, owned by, or recorded as the property of the same claimant, person or company; every word importing the singular number only may be extended to and embrace the plural number; and every word importing the plural may be applied and limited to the singular number; and every word importing the masculine gender only may be extended and applied to females as well as males; the word "oath" means oath or affirmation; and the word "swear" means to swear or affirm; the words "town" or "district" mean township, village, city or ward, as the case may be; the term "true and full value" means the usual selling price at the place where the property to which the term is applied shall be at the time of the assessment, being the price which could be obtained therefor at private sale, and not at a forced public auction sale. The term "person" includes a firm, company or corporation. [1897, ch. 126, § 1; R. C. 1899, § 1176.]

#### ARTICLE 2.—TAXABLE PROPERTY.

§ 1481. **Property subject to taxation.** All real and personal property in this state, and all personal property of persons or of corporations residing or doing business therein, and the property of corporations residing or doing business therein, and the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, except such as is hereinafter expressly excepted, is subject to taxation, and such property, or the value thereof, shall be entered in the list of taxable property for that purpose, in the manner prescribed by this chapter. [1897, ch. 126, § 2; R. C. 1899, § 1177.]

§ 1482. **Real property defined.** Real property, for the purpose of taxation, includes the land itself, whether laid out in town lots or otherwise, and, except

as otherwise provided, all buildings, structures and improvements (except plowing and trees thereon) and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries in and under the same. [1897, ch. 126, § 3; R. C. 1899, § 1178.]

**§ 1483. Personal property defined.** Personal property includes all goods, chattels, moneys, credits and effects wheresoever they may be; all ships, boats and vessels, whether at home or abroad, and all capital invested therein; all moneys at interest, whether within or without the state, due the person to be taxed, and all other debts due such persons; all public stocks and securities; all stock in turnpikes, railroads, canals and other corporations, except national banks out of the state, owned by the inhabitants of this state; all personal estate of moneyed corporations, whether the owner thereof resides in or out of the state, and the income of any annuity, unless the capital of such annuity be taxed within the state; all shares of stock in any bank organized, or that may be organized, under any law of the United States or of this state; and all improvements made by persons upon lands, held by them under the laws of the United States, and all such improvements upon land, the title to which is still vested in any railway company, and which is not used exclusively for railroad purposes, and the improvements of any other corporation whose property is not subject to the same mode and rule of taxation as other property. [1897, ch. 126, § 4; R. C. 1899, § 1179.]

Personal property issued by United States, or held by Indians who have received allotments and improvements on lands allotted to Indians and held in trust by United States is subject to taxation. *United States v. Rickert*, 106 Fed. 1.

#### ARTICLE 3.—EXEMPTIONS.

**§ 1484. Property exempt from taxation.** All property described in this section to the extent herein limited, shall be exempt from taxation, that is to say:

1. All public school houses, academies, colleges, institutions and seminaries of learning, with the books and furniture therein, and the grounds attached to such buildings necessary for their proper occupancy, use and enjoyment, not to exceed forty acres in area, and not leased or otherwise used with a view to profit.

2. All lands used exclusively for burying grounds or cemeteries.

3. All property, whether real or personal, belonging exclusively to the state or to the United States.

4. All buildings belonging to the counties used in holding courts, for jails, for county offices, with the ground, not exceeding in any county ten acres on which buildings are erected.

5. All lands, houses and other buildings belonging to any county, township or town used exclusively for the accommodation or support of the poor.

6. All buildings belonging to institutions of purely public charity, including public hospitals, together with the land actually occupied by such institution, not leased or otherwise used with a view to profit; and all moneys and credits appropriated solely to sustaining, and belonging exclusively to such institutions.

7. All properties belonging to counties and to municipal corporations that are used for public purposes.

8. Personal property of each individual subject to taxation to the amount of ten dollars.

9. The personal and real property owned by charitable associations known as posts, lodges, chapters, councils, commanderies, consistories and like organizations and associations not organized for profit, grand or subordinate, and used by them for places of meeting and to conduct their business and cere-

monies; provided, however, that such property is used exclusively for such charitable purposes. [1897, ch. 126, § 6; R. C. 1899, § 1180; 1901, ch. 152.]

Tax levied upon exempt property is void. *McHenry v. Britt*, 9 N. D. 68, 81 N. W. 65.

Lands not belonging to charitable institutions though used for charitable purpose not exempt. Section 176, Constitution, not self executing. Public charitable use necessary. *Engstad v. Grand Forks County*, 10 N. D. 54, 84 N. W. 577.

**§ 1485. Religious property exempt from taxation. Former taxes void.** Property used exclusively for religious purposes is exempt from taxation as hereinafter provided. All real property, not exceeding one acre in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling and usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consist of one tract or more. All taxes heretofore assessed or levied on any such real property, while the same was so used for religious purposes, are void and of no effect, and must be cancelled. All personal property of any religious corporation or organization used for religious purposes is exempt from taxation. [1901, ch. 160.]

#### ARTICLE 4.—MANNER OF LISTING PROPERTY.

**§ 1486. Listing of property.** All property subject to taxation shall be listed and assessed every year, at its value, on the first day of April preceding the assessment. [1897, ch. 126, § 6; R. C. 1899, § 1181.]

Assessment not void because assessed at less than actual value by assessor. *Shattuck v. Smith*, 6 N. D. 56, 69 N. W. 5.

Personal property not in existence April 1st not taxable, nor when brought into state subsequent to April 1st. *Gaar Scott & Co. v. Sorum*, 11 N. D. 164, 97 N. W. 99.

**§ 1487. Manner of listing personal property.** Personal property shall be listed in the manner following:

1. Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds or stock shares, or stock of joint or other companies (when the property of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties and other personal property.

2. He shall also list separately and in the name of his principal all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other persons, company or corporation whatsoever; and all money deposited subject to his order, draft or check, and credits due from or owing to any person or persons, body corporate or politic.

3. The property of a minor child shall be listed by his guardian or by the person having such property in charge.

4. The property of an idiot or lunatic, by the person having charge of such property.

5. The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.

6. The property of persons or corporations whose assets are in the hands of receivers, by such receivers.

7. The property of a body politic or corporate, by the president, agent or officer thereof.

8. The property of a firm or company, by a partner or agent thereof.

9. The property of manufacturers and others in the care of an agent, by such agent in the name of his principal, as merchandise.

10. Personal property shall be listed and assessed annually with reference to its value on the first day of April. [1897, ch. 126, § 7; R. C. 1899, § 1182.]

§ 1488. **Place of listing personal property.** Except as otherwise provided in this chapter, personal property shall be listed and assessed in the county, town or district where the owner or agent resides; the capital stock and franchises of corporations and persons, shall be listed in the county, town or district where the principal office or place of business of such corporation or person is located in this state; and if there be no principal office or place of business in this state, where any such corporation or persons transact business then personal property pertaining to the business of a merchant or manufacturer or corporation shall be listed in the town or district where his business is carried on. [1897, ch. 126, § 8; R. C. 1899, § 1183.]

§ 1489. **Property of stage companies, etc., where to be listed.** The personal property of stage companies shall be listed and assessed in the county, town or district where the same is usually kept. All persons, companies and corporations in this state owning steamboats, sailing vessels, wharve boats, barges and other water crafts shall be required to list the same for assessment and taxation in the county, town or district in which the same may belong, or be enrolled, registered or licensed, or kept not enrolled, registered or licensed. [1897, ch. 126, § 9; R. C. 1899, § 1184; 1901, ch. 26.]

§ 1490. **Gas and water, telegraph and telephone companies, where listed.** The personal property of gas and water companies shall be listed and assessed in the town where the works are located; gas and water mains and pipes laid in roads, streets or alleys shall be held to be personal property. All personal property of telegraph and telephone companies, including poles, wires, instruments, office fixtures and all other apparatus used in conducting their business, shall be listed and assessed by the state board of equalization as provided in sections 1534 to 1537 inclusive. [1897, ch. 126, § 10; R. C. 1899, § 1185; 1901, ch. 26, §§ 1-4.]

§ 1491. **Street railway companies, where listed.** The personal property of street railroad, plank road, gravel road, turnpike or bridge companies shall be listed and assessed in the county, town or district where the property is located; and the track, road or bridge shall be held to be personal property. [1897, ch. 126, § 11; R. C. 1899, § 1186.]

§ 1492. **Non-resident's farm property, where listed.** Where the owner of live stock or other personal property connected with a farm does not reside thereon, all such live stock and other personal property shall be listed and assessed in the town or district where the farm is situated, whenever the live stock or personal property assessed is in the same county as the owner thereof; otherwise such live stock or other personal property shall be assessed wherever found. [1897, ch. 126, § 12; R. C. 1899, § 1187.]

§ 1493. **Personal property moved between April 1 and June 1, where listed.** The owner of personal property moving into this state or from one county, town or district to another, between the first day of April and the first day of June, shall list his property for assessment whenever called upon by the assessor of the county, town or district in which he resides; provided, if such person has been assessed and can make it appear to the assessor that he has paid or is held for tax of the current year on the property in another territory or state, county, town or district, he shall not be again assessed for such year, and the assessor shall make a record of all the facts in every such case and report them to the county auditor. [1897, ch. 126, § 13; R. C. 1899, § 1188.]

§ 1494. **Place of listing, how decided in case of doubt.** All personal property wherever and whenever found between the first day of April and the first day of June shall be listed by the assessor, and in all questions that may arise under this chapter as to the proper place to list personal property,

or where the same cannot be listed as stated in this chapter, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties, or places in different counties, by the auditor of the state; and when so fixed shall have the same effect and be as binding as if listed by the assessor as required by this chapter. [1897, ch. 126, § 14; R. C. 1899, § 1189.]

§ 1495. **List of personal property to be made under oath.** Every person required by this chapter to list property shall, when called upon by the assessor, make out and deliver to the assessor a statement verified by oath, of all the personal property in his possession or under his control, and which by the provisions of this chapter he is required to list for taxation, either as an owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor; but no person shall be required to include in his statement any share or portion of the capital stock or property of any company or corporation which such company or corporation is required to list or return as its capital or property for taxation in this state. [1897, ch. 126, § 15; R. C. 1899, § 1190.]

§ 1496. **Value to be fixed by assessor. Items of list.** It shall be the duty of the assessor to determine and fix the true and full value of all items of personal property included in such statement, and enter the same opposite such items respectively, so that when completed, such statement shall truly and distinctly set forth:

1. The number of horses one year old, two years old, three years old and over, and, separately the number of stallions kept for service, with the value thereof, in the separate classes.

2. The number of cattle one year old, two years old; the number of cows three years old and over; the number of work oxen, and the number of all other cattle three years old and over, and the value thereof, in the separate classes.

3. The number of mules and asses one year old, two years old, three years old and over, and the value thereof, in the separate classes.

4. The number of sheep and the value thereof.

5. The number of hogs and the value thereof.

6. The number of sleighs, sleds, wagons, carriages and all wheeled vehicles of whatsoever kind, including bicycles and the value thereof.

7. The number of melodeons and organs and the value thereof.

8. The number of pianofortes and the value thereof.

9. The value of household furniture.

10. The value of agricultural tools, implements and machinery.

11. All threshing machines, engines and boilers, and the value thereof.

12. The value of gold and silver plate and plated ware.

13. The value of diamonds and jewelry.

14. The value and description of every franchise, annuity, royalty and patent right.

15. The value of every steamboat, sailing vessel, wharve boat, barge, or other water craft.

16. The value of goods and merchandise which such person is required to list as a merchant.

17. The value of materials and manufactured articles which such person is required to list as a manufacturer.

18. The value of manufacturer's tools and implements and machinery, including engines and boilers.

19. The amount of moneys other than of banks, bankers, brokers or stock jobbers.

20. The amount of credits other than of banks, bankers, brokers and stock jobbers.

21. The amount and value of bonds and stocks, other than bank stock.

22. The number of shares of bank stock and the value thereof.

23. The amount and value of shares of capital stock of companies and associations not incorporated by the laws of the state.

24. The value of stock and furniture of sample rooms and eating houses, including billiard tables or other similar tables.

25. The value of all other articles of personal property, not included in the preceding twenty-four items.

26. The value of all elevators, warehouses and granaries and of all grain contained in either thereof, wheresoever the same may be situated.

27. The value of all improvements, except plowing on lands held under the law of the United States, to which final certificates of entry have not issued, and on lands the title to which is vested in any railroad company. [1897, ch. 126, § 16; R. C. 1899, § 1191.]

County of owner's residence proper county for listing personal property, though kept temporarily in another county. *Knapp v. Charles Mix Co.*, 7 S. D. 399, 64 N. W. 187.

**§ 1497. Range stock, where listed.** The owner of range stock, including cattle, horses or sheep, or his agent, foreman or superintendent, shall list the same for purposes of assessment and taxation in the assessor's district in which he claims his home ranch for rounding and branding purposes, and where his herdsmen or employes are boarded and subsisted, regardless of where the cattle may range. If such owner of range stock, including horses, cattle or sheep, has at the time the assessment is made, no such home ranch, then such range stock shall be listed and assessed in the assessor's district in which the home ranch was situated at the last round-up and branding; provided, that any such stock, owned outside of this state, and ranging within this state, shall be assessed wherever and whenever found ranging within this state. When the home ranch of any owner of range stock is situated in an unorganized county of this state, such range stock shall be subject to taxation and assessed as provided in section 1610. [1897, ch. 126, §§ 17, 18, 19; R. C. 1899, § 1192.]

Listed in name of owner if known, if not to "unknown owner." *Sweigle v. Gates*, 9 N. D. 538, 84 N. W. 481.

Home ranch proper location for assessment of all cattle ranging from same in organized county. *Halcom v. Kellher*, 5 S. D. 438, 59 N. W. 227.

**§ 1498. Combination for undervaluation. Penalty.** If any assessor or county commissioner shall enter into any contract, agreement or understanding with the owner of any range stock whereby and pursuant to which such stock are to be assessed at less than their cash value, in consideration that the owner of such range stock shall remove his home ranch into the county of such assessor or commissioner, the owner of such range stock and all persons aiding or abetting such corrupt transaction and agreement shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars and by imprisonment in the county jail for not less than three months nor more than six months. [1897, ch. 126, § 20; R. C. 1899, § 1193.]

**§ 1499. Duty of assessor when personal property liable to be removed from state or county.** If at the time of making the assessment upon any personal property, or at any time thereafter, before taxes upon personal property become due, the assessor believes that there is danger of such personal property being removed from the state or from the county in which the same is situated at the date of assessment, before the taxes to be levied upon such assessment shall be paid, such assessor may immediately demand of the owner, agent or person having such property in charge, an undertaking to be made in favor of the treasurer of said county, signed by two resident freeholders of such county, conditioned that all the taxes to be levied upon such property

shall be paid when due, which undertaking shall be approved as to its sufficiency by the clerk of the district court of said county, and until such undertaking be given such assessor may seize and hold a sufficient quantity of such personal property or any part thereof as in the judgment of such assessor shall secure the payment of all such taxes and the costs of such seizure and the holding of such property. But when such assessor seizes any such personal property before the tax upon such assessment thereof shall be levied, he shall seize and hold only so much of said property as shall amount to, in his best judgment, ten per cent upon its assessed value, which shall be deemed to cover the amount of said taxes and costs aforesaid. As soon as said taxes become due, the county treasurer of such county shall proceed to collect said taxes by levy upon and sale of said property so seized and held in the manner provided by law for the collection of taxes by the sale of personal property, or such treasurer shall bring an action upon and recover the amount of such taxes from such undertaking when the same shall have been given. Any sum of money, the proceeds of the sale of such property or any part of such property remaining in the hands of such treasurer after the payment of said taxes and costs, shall be returned to the proper party upon his order in writing to such treasurer. At the time the treasurer shall levy upon such personal property in the hands of the assessor, the assessor shall give notice to such treasurer, in writing, of the amount of costs for the seizure and holding of such property. [1897, ch. 126, § 21; R. C. 1899, § 1194.]

§ 1500. **Examination under oath by assessor. Refusal to answer.** Whenever the assessor shall be of the opinion that the person listing property for himself or for another person, company or corporation, has not made a full, fair and complete list of such property, he may examine such person under oath in regard to the amount of property he is required to list; and if such person shall refuse to answer under oath and a full discovery make, the assessor may list the property of such person or his principal, according to his best judgment and information, and shall also make a minute of the name of the person refusing to swear to such list or refusing to testify in relation to the property, and report the same, with all the facts relating thereto, to the county auditor at the time he makes his returns. [1897, ch. 126, § 22; R. C. 1899, § 1195.]

§ 1501. **Who are deemed to be merchants. Property consigned.** Whoever owns or has in his possession or subject to his control, any goods, merchandise, grain or produce of any kind or other personal property, within this state, with authority to sell the same, which has been purchased either in or out of the state with a view of being sold at an advanced price or profit, or which has been consigned to him out of this state, for the purpose of being sold at any place within this state, shall be held to be a merchant, and when he is by this article required to make out and deliver to the assessor a statement of his personal property, he shall state the value of such property pertaining to his business as a merchant. [1897, ch. 126, § 23; R. C. 1899, § 1196.]

§ 1502. **Who are deemed to be manufacturers. What to be listed.** Every person who purchases, receives or holds personal property of any description, for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying or by the combination of different materials, with a view of making gain or profit by so doing, shall be held to be a manufacturer; and he shall, when required to make and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the value of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining. Every person owning a manufacturing establishment of any kind, and every manufacturer shall list as a part of his manufacturer's stock the value of all his engines and machinery of every description, used or designed to be used in any process

of refining or manufacturing including all tools and implements of every kind used or designed to be used for the aforesaid purpose. [1897, ch. 126, § 24; R. C. 1899, § 1197.]

**§ 1503. Property of companies or associations, how and by whom listed.** The president, secretary or principal accounting officer of any company or association, whether incorporated or unincorporated, except banking corporations whose taxation is especially provided for in this article, shall make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company and association.
2. The amount of capital stock authorized and the number of shares into which said capital stock is divided.
3. The amount of capital stock paid up.
4. The market value, or if they have no market value, then the actual value of the shares of the stock.
5. The total amount of all indebtedness except the indebtedness of current expenses, excluding from such expenses the amount paid for purchase or improvement of property.
6. The value of all real property, if any.
7. The value of its personal property.

The aggregate amount of the fifth, sixth and seventh items shall be deducted from the total amount of the fourth, and the remainder if any, shall be listed as "bonds or stocks," under subdivision 23 of section 1496. The real and personal property of each company or association shall be listed and assessed the same as other real and personal property. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain. [1897, ch. 126, § 25; R. C. 1899, § 1198.]

**§ 1504. Assessment of grain in warehouses. Statement of ownership.** All grain in any elevator, warehouse or grainhouse in this state on the first day of April in each year shall be assessed and taxed in the name of the person, firm, company or corporation owning or operating such elevator, warehouse or grainhouse on said date. All agents or other persons in charge of any such elevator, warehouse or grainhouse shall furnish the assessor under oath a statement of all grain in any such elevator, warehouse or grainhouse on the first day of April in each year, such statement to include the number of bushels of each and all kinds of grain on said date in any elevator, warehouse or grainhouse of which he is agent or has under his care or control, and shall further show in said statement the owner, or owners, of such elevator, warehouse or grainhouse, or if said elevator, warehouse or grainhouse is not operated by the owner then the person, firm, company or corporation operating the same. [1899, ch. 5, §§ 1, 2; R. C. 1899, § 1199.]

Assessment of grain in elevators. Section 1504 to 1506 inclusive are constitutional. *Minneapolis & Northern Elevator Co. v. Trall County*, 9 N. D. 213, 82 N. W. 727; *State v. Elevator Co.*, 6 N. D. 41, 68 N. W. 81.

**§ 1505. Lien of agent or warehouseman for taxes.** If the grain so assessed is not owned by the person, firm, company or corporation against whom it is assessed and taxed under the provisions of this article then such person, firm, company or corporation shall have a lien upon such grain for the amount of the tax charged under such assessment and taxation, and can hold such an amount of the grain assessed and taxed under the provisions of this article as may be necessary to pay the tax charged against such person, firm, company or corporation on the grain so assessed and taxed. [1899, ch. 5, § 3; R. C. 1899, § 1200.]

**§ 1506. Penalty for failure to make true statements.** Any agent of any person, firm, company or corporation engaged in the handling, buying, selling,



transferring or storing of grain in this state or any person having any elevator, warehouse or grainhouse under his charge or control who shall refuse to make the statement as provided in section 1504 shall be deemed guilty of a misdemeanor, and any agent of any person, firm, company or corporation engaged in the handling, buying, selling, transferring or storing of grain in this state, or any person having any elevator, warehouse or grainhouse under his charge or control who in making the statement provided in section 1504 makes any false statements shall be deemed guilty of perjury, and it is hereby made the duty of the assessor to report any violation of this section to the state's attorney of the proper county for his action. [1899, ch. 5, § 4; R. C. 1899, § 1201.]

§ 1507. **Telephone property, where listed.** All telephone property within this state, including lines, instruments of every kind, office furniture, etc., owned, managed or constructed by companies, associations, partnerships or individuals shall be listed and assessed at its true value, as provided in section 1534. [R. C. 1895, § 1202.]

§ 1508. **Bank stock, where and at what valuation to be listed.** The stockholders of every bank located in this state, whether such bank has been organized under the banking laws of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock, in the county, town, district, city or village where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such places or not; such shares shall be listed and assessed annually, with regard to the ownership and value thereof on the first day of April of each year. To aid the assessor in determining the value of such shares of stock, the accounting officer of every bank shall furnish a statement to the assessor, verified by oath, showing the amount and number of such shares of capital stock of such bank, the amount of its surplus or reserve fund and undivided profits in excess of an amount equal to five per cent of the loans and discounts of such bank; the amount of its net investment in real estate, which real estate shall be returned in the name of the bank and shall be assessed and taxed as other real estate is under this article. To determine the real value of such real estate investments the assessor shall strike from his lists all real estate which said bank has sold to any party or parties under any contract whereby the party or parties making and signing such contract agrees to pay all taxes levied against said property. The assessor shall deduct the net amount of said investment in real estate from the aggregate amount of such capital and surplus, and the remainder shall be taken as a basis for the valuation of such shares of stock in the hands of the stockholders subject to the provisions of law requiring all property to be assessed at its true and full value. The shares of capital stock in national banks not located in this state, held in this state, shall not be required to be listed under this article. [1899, ch. 29; R. C. 1899, § 1203; 1903, ch. 159.]

§ 1509. **Bank to keep and furnish list of stockholders.** In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders, owners or parties interested therein, showing the number of shares and amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officer authorized to assess property for taxation; and it shall be the duty of the accounting officer or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county auditor and filed in his office. [1897, ch. 126, § 27; R. C. 1899, § 1204.]

§ 1510. **Taxes on bank stock to be a lien on dividends.** To secure the payment of taxes on bank stock or banking capital, it shall be the duty of every bank, or managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders or owners as shall be

necessary to pay any taxes levied upon their shares of stock or interest respectively, and the amount of such taxes shall be a lien on the dividends, the capital stock and the assets of the bank, and until it shall be made to appear to the county treasurer or to such bank or its officers that such taxes have been paid, any officer, or any such bank who shall pay over or authorize the paying over of any such dividend or a portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the county treasurer where said bank is located shall sell such shares or interest to pay the same, like other personal property; and in case of sale the provisions of law in regard to the transfer of stock when sold on execution shall apply to such sale. [1897, ch. 126, § 28; R. C. 1899, § 1205.]

**§ 1511. Certain property held to belong to lessee or equitable owner.** Property held under a lease for a term of years or a contract for the purchase thereof, belonging to the state (except such state lands as have been leased for pasture or grazing purposes), or to any religious, scientific or benevolent society or institution, whether incorporated or unincorporated, or to any railroad company or corporation whose property is not taxed in the same manner as other property, shall be considered for all purposes of taxation as the property of the person so holding the same. [1897, ch. 126, § 29; R. C. 1899, § 1206.]

**§ 1512. All property to be assessed at full value. Value, how determined.** All property shall be assessed at its true and full value in money. In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt as a criterion of value the price at which said property would sell at auction or at forced sale or in the aggregate with all the property in the town or district, but he shall value each article or description of property by itself and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract or lot of real property the value of the land, exclusive of improvements, shall be determined; also the value of all improvements and structures thereon, and the aggregate value of the property, including all structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash. Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof. Every credit for a sum certain, payable either in money, property of any kind, labor or services, shall be valued at the full price of the same so payable; if for a specific article or a specific number or quantity of any article of property, or for a certain amount of labor, or for services of any kind, it shall be valued at the current price of such property, or for such labor or services at the place where payable. [1897, ch. 126, § 30; R. C. 1899, § 1207.]

**§ 1513. Auditor to furnish books, etc. Real property. Mortgages. Meeting of assessors.** The county auditor shall annually provide the necessary books and blanks at the expense of the county for and to correspond with each assessment district or township. He shall make out in the real property assessment book complete lists of all lands or lots subject to taxation (showing the name of owners, if to him known, and if unknown so state it), the number of acres and the lots and parts of lots or blocks included in each description of property. The assessment books and blanks shall be in readiness for delivery to the assessors on the second Saturday in April in each year, and the assessors shall meet on that day at the office of the county auditor for the purpose of receiving such books and blanks and for conference

with the auditor in reference to the performance of their duties. [1897, ch. 126, § 31; R. C. 1899, § 1208; 1901, ch. 27.]

Description as W. 2 of W. 2 insufficient as basis for taxation. (For other descriptions see cases cited.) *Lee v. Crawford*, 10 N. D. 482, 88 N. W. 97; *Power v. Larabee*, 2 N. D. 141, 49 N. W. 724; *Power v. Bowdle*, 3 N. D. 107, 54 N. W. 404; *Stokes v. Allen*, 15 S. D. 421, 89 N. W. 1023; *Turner v. Hand Co.*, 11 S. D. 348, 77 N. W. 539; *Van Cise v. Carter*, 9 S. D. 234, 68 N. W. 539.

**§ 1514. Auditor to furnish tax list.** 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. [1905, ch. 175.]

**§ 1515. Assessors' districts. Vacancy. Compensation.** All counties, or parts of counties, in this state, not organized into civil townships, shall be divided into assessor districts, which shall be the same as the commissioner districts of said county, excluding organized civil townships, and the assessor thereof shall be elected at the same time that state officers are, and his term of office shall be two years from and after the first day of January following. In case of vacancy in the office of assessor in any such districts, such vacancy shall be filled by the board of county commissioners of the proper county. Each organized civil township in this state shall constitute an assessor district, and there shall be one assessor elected for each one of said districts annually at the time that other town officers are elected; provided, any vacancy in township assessor may be filled by appointment by the board of supervisors of said township where vacancy exists; provided, further, that cities, towns and villages organized under the general laws of this state shall not be included in the districts provided for in this section, but assessors of such cities, towns or villages shall act with the board of county assessors in any of their meetings. All assessors of this state shall receive three dollars per day, and no more, for the time actually employed in making and completing said assessment, but shall not receive more than sixty dollars for assessing any one civil or congressional township; provided, further, that no person shall be eligible to be assessor unless he is a voter and owner of real estate in the district or township for which he is to be assessor. [1897, ch. 138; R. C. 1899, § 1209; 1903, ch. 36.]

**§ 1516. Bond and oath of assessor.** Every person elected or appointed to the office of assessor shall, at or before the time of receiving the assessment books, file with the county auditor his bond payable to the state of North Dakota, with at least two good freeholder sureties, to be approved by the chairman of the board of township supervisors in counties organized into civil townships, and in counties not so organized by the board of county commissioners, and in cities as provided by law, in a penal sum of not less than five hundred dollars nor more than one thousand dollars, at the discretion of the board requiring such bond, conditioned that he will diligently, faithfully and impartially perform the duties enjoined on him by law; and he shall moreover take and subscribe on said bond the oath prescribed by section 211 of the constitution, and if any person so elected or appointed fails to give bond or fails to take the oath required within the time prescribed by law, such failure shall be deemed a refusal to serve and create a vacancy that shall be filled as hereinafter provided. [1897, ch. 126, § 33; R. C. 1899, § 1210.]

**§ 1517. Assessments, when and how made.** The assessor shall perform the duties required of him during the months of April and May of each year, except in cases otherwise provided, and in the following manner, to-wit:

He shall by actual examination determine the true and full value of each tract or lot of real property listed for taxation, and shall enter the value thereof in one column and the value of all improvements and structures thereon in another column, opposite each description of property; also the total value of the same including improvements and structures. He shall make an alphabetical list of the names of all persons in his town or when the assessor's district is the same as the commissioner's district he shall make in alphabetical order a list of all persons in each school district liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the prescribed form, which statement and list shall be subscribed and sworn to by the person listing the property with full name; and the assessor shall thereupon determine the value of the property included in such statement and enter the same in his assessment books opposite the name of the party assessed; and in making such entry in his assessment books he shall give the full name and post office address of the party listing the property, and if the party resides in a city, the assessor shall give the street and number or other brief description of residence or place of business; provided, that personal property shall be assessed upon view, by the assessor at any time within the limits prescribed by the provisions of this article, at its then actual value regardless of any change of ownership prior to such assessment; but if the owner, factor or agent can show by duly authenticated certificate that the property has been lawfully assessed in any other town, city, village or district in this state for that year, then such property shall not be assessed. [1897, ch. 126, § 34; R. C. 1899, § 1211.]

§ 1518. **Statement of personal property to be made by the owner.** The assessor shall call at the office, place of business or residence of each person required by this article to list property and list his name, and shall require such person to make a correct statement of his property in accordance with the provisions of this article, and every person so required shall enter a true and correct statement of such property in the form prescribed, which statement shall be signed and verified by the oath of the person listing the property and delivered to the assessor, who shall thereupon assess the value of such property and enter the same in his book; provided, if any such property is listed or assessed on or after the fourth Monday in May and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time. [1897, ch. 126, § 35; R. C. 1899, § 1212.]

§ 1519. **Sickness and absence of owner, duty of assessor.** If any person required by this chapter to list property be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the residence, office or usual place of business of such person, if known, a written or printed notice, requiring such person to make out and leave at the place named by such assessor, on or before some convenient day named therein, the statement or list required by this article; the date of leaving such notice, and the person required to list the property shall be noted by the assessor in his assessment book. [1897, ch. 126, § 36; R. C. 1899, § 1213.]

§ 1520. **Refusal to list or swear to statement, duty of assessor. Oath.** In any case where any person whose duty it is to list personal property for taxation, has refused or neglected to list the same when called on by the assessor for that purpose, or to take and subscribe an oath in regard to the truth of his statement of personal property, or any part thereof, when required by the assessor, the assessor shall enter opposite the name of such person in an appropriate column the words, "refused to list" or "refused to swear," as the case may be; and in every case where any person required to list property for taxation has been absent or unable by sickness to list the same, the assessor shall enter opposite the name of such person in an appropriate

column the words, "absent" or "sick." The assessor is hereby authorized to administer oaths to all persons who by the provisions of this article are required to swear, or whom he may require to testify in any case; and he may examine under oath any person whom he may suppose to have knowledge of the amount or value of the personal property of any person refusing to list or to verify his list of personal property. [1897, ch. 126, § 37; R. C. 1899, § 1214.]

**§ 1521. Number or name of school district to be given where property is assessed.** It shall be the duty of assessors when assessing personal property, to designate the number or name of the school district in which each person assessed is liable for tax, which designation shall be made by writing the number or name of the district opposite each assessment, in a column provided for that purpose in the assessment book. When the personal property of any person is assessable in several school districts, the amount in each shall be assessed separately and the name of the owner placed opposite each amount. [1897, ch. 126, § 38; R. C. 1899, § 1215.]

**§ 1522. Failure to obtain assessment, duty of assessor.** In all cases of failure to obtain a statement of personal property from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property, and assess the same at such amount as he believes to be the true value thereof. The assessor when requested shall deliver to the person assessed a copy of the statement of property so listed, which copy shall be signed by the assessor. The assessor of each district shall, on or before the first Monday in June of each year, file with the town or city clerk of each organized town or city, the assessment list or roll for such town or city, where it shall remain subject to the inspection of the residents or property owners of such town or city until the Saturday following. [1897, ch. 126, § 39; R. C. 1899, § 1216.]

#### ARTICLE 5.—BOARDS OF EQUALIZATION.

**§ 1523. Town board of review, duties. Complaints and grievances.** The board of supervisors of each town, the president and auditor of each incorporated village, and the mayor, auditor and senior aldermen from the several wards of each city (except cities organized under the general law and cities whose charters provide for a board of equalization) shall meet on the second Monday of June at the office of the town clerk or recorder for the purpose of reviewing the assessment of property in each town or district, and they shall immediately proceed to examine, ascertain and see that all taxable property in their town or district has been properly placed upon the list and duly valued by the assessor; and in case any property, real or personal, shall have been omitted by inadvertance or otherwise, it shall be the duty of the said board to place the same upon the list, with the true value thereof, and proceed to correct the assessment, so that each tract or lot of real property, and each article, parcel or class of personal property shall be entered on the assessment list at the true value thereof; but the assessment of the property of any person shall not be raised until each person shall have been duly notified of the intent of the board to do so, and on the application of any person considering himself aggrieved, they shall review the assessment and correct the same as shall appear to them just; any two of said officers are authorized to act at such meeting, and they may adjourn from day to day until they shall finish the hearing of all cases presented on that day; provided, that that they shall complete the equalization within ten days. All complaints and grievances of individuals, residents of the town or districts, in reference to the assessments of personal property, shall be heard and decided by the town board; provided, further, that the complaints of nonresidents in reference to the assessment on any property, real or personal, and of others, in reference to any assessment made after the meeting of the town board of

review, shall be heard and determined by the county board. The clerk of the city, town and township boards of equalization shall keep accurate record of the proceedings of said boards, showing the facts and evidence upon which their action is based, a copy of which shall be furnished the assessor and filed by him with the county auditor as part of the assessment returns. [1897, ch. 126, § 40; R. C. 1899, § 1217.]

§ 1524. **Notice of meeting of board of review to be posted.** The assessor shall cause, at least ten days previous, notice of the time and place of the meeting of the township board of review to be given by posting notice in at least three public places in each township or district; but failure to give such notice or hold such meeting shall not vitiate such assessment, except as to the excess of valuation of tax thereon shown to be unjustly made or levied. [1897, ch. 126, § 41; R. C. 1899, § 1218.]

§ 1525. **Assessor's statement and return to auditor.** The assessor shall add and note the amount of each column in his assessment books after making the corrections made by the town board of review. He shall also make in each book, under proper headings, a tabular statement showing the footings of the several columns upon the page, and shall add and set down under the respective headings the total amount of the several columns, and on or before the last Monday of June he shall make return to the county auditor of his assessment books, and deliver therewith the lists and statements of all persons assessed, all of which shall be filed and preserved in the office of the county auditor; except in cities having charters, the assessor's returns shall be made to the county auditor not later than July tenth. Such returns shall be verified by his affidavit substantially in the following form:

State of North Dakota, }  
County of ..... } ss.

I,.....assessor of.....do solemnly swear that the book to which this is attached contains a full list of all real property (or personal property, as the case may be) subject to taxation in..... so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is in each case the true and full value of such property, to the best of my knowledge and belief, (where the assessment has been corrected by the town board except as corrected by the town board) and that the footings of the several columns in said books and the tabular statement returned herewith are correct as I verily believe.

.....Assessor.  
Subscribed and sworn to before me this.....day of.....19..  
.....  
Auditor of.....County.

[1897, ch. 126, § 42; R. C. 1899, § 1219; 1901, ch. 28.]

§ 1526. **List given to auditor for persons sick or absent.** If any person required to list property for taxation is prevented by sickness or absence from giving to the assessor such statement, such person or his agent having charge of such property, may at any time before the extension of taxes thereon by the county auditor make out and deliver to the county auditor a statement of the same as required by this chapter, and the county auditor in such case shall make an entry thereof and correct the corresponding item or items in the return made by the assessor, as the case may require; but no such statement shall be received by the county auditor from any person who refused or neglected to make oath to his statement when required by the assessor, as provided herein; nor from any person unless he makes and files with the county auditor an affidavit that he was absent from his town and district without design to avoid the listing of his property, or was prevented

by sickness from giving the assessor the required statement when called upon for that purpose. [1897, ch. 126, § 43; R. C. 1899, § 1220.]

**§ 1527. Auditor to examine assessment books and have returns corrected.** The county auditor shall carefully examine the assessment books when returned to him by the assessors, and if he discovers that the assessment of any property has been omitted he shall enter the same upon the proper list and forthwith notify the assessor making such omission, who shall immediately proceed to ascertain the value of such property and make the necessary correction. [1897, ch. 126, § 44; R. C. 1899, § 1221.]

Personal notice required unless owner present and not protesting. *Abant v. Flynn*, 2 S. D. 153, 49 N. W. 15.

Auditor and board of equalization required to list property omitted by assessor. *Grigsby v. Minnehaha Co.*, 6 S. D. 492, 62 N. W. 105; *Billinghurst v. Spink Co.*, 5 S. D. 84, 58 N. W. 572.

**§ 1528. County board of review and equalization.** The board of county commissioners of each county at its regular meeting in July shall constitute a board of review and equalization of the assessments made within their respective counties and an accurate record of all its proceedings in pursuance of the provisions of this section shall be separately entered upon its minute book. Such board shall perform the duties prescribed by section 1523 as respects all assessments made in districts not embraced in an incorporated city, town or village or civil township having a board of review; and in addition thereto such board shall examine and compare the assessments returned by the assessors of all the districts within the county, including those embraced in incorporated cities (whether organized under general law or special charter), and in incorporated towns and villages and civil townships, and proceed to equalize the same throughout the county between the several assessment districts, subject to the following rules:

1. They shall raise the valuation of each tract or lot of real property which, in their opinion, is returned below its true and full value to such price and sum as they believe to be the true and full value thereof.

2. They shall reduce the valuation of each tract or lot of real property which, in their opinion, is returned above its true and full value to such price and sum as they believe to be the true and full value thereof.

3. They shall raise the valuation of each class or article of personal property which, in their opinion, is returned below its true and full value to such price and sum as they believe to be the true and full value thereof, and they shall raise the aggregate value of the personal property of each individual whenever they believe that such aggregate valuation is less than the valuation of the taxable personal property of such individual to such amounts as they believe was the true and full value thereof; provided, however, that the value of the property of any person or corporation shall not be raised until due notice shall be given to the owner or agent thereof.

4. They shall reduce the valuation of each class of personal property enumerated in section 1496 which, in their opinion, is returned above its true and full value to such price and sum as they believe to be the true and full value thereof; and upon complaint of any party aggrieved they shall reduce the aggregate valuation of the personal property of such individual, who, in their opinion, has been assessed at too large a sum, to such sum or amount as they believe is the true and full value of his personal property.

5. Except as provided in the second and fourth subdivisions of this section, they shall not reduce the aggregate value of the real property, or the aggregate value of the personal property of their county below the aggregate value thereof as returned by the assessors, except as it may be necessary to make the valuation in the different townships equal with the additions made thereto by the auditor as hereinbefore required, but they may raise the aggregate valuation of such real property and of each class:

of personal property of said county or any town or district thereof, whenever they believe the sum is below the true and full value of said property or class of property, to such aggregate amount as they believe to be the true and full value thereof.

6. The county auditor shall keep an accurate journal or record of the proceedings and orders of said board, showing the facts and evidence upon which their action is based; and said record shall be published the same as other proceedings of county commissioners, and a copy of such published proceedings shall be transmitted to the auditor of the state, with the abstract of assessment herein required. The county board of equalization shall continue in session until such equalization has been completed, and upon completion of such equalization the county commissioners must proceed to make the levy for taxes for the current fiscal year as in this chapter provided. [1897, ch. 126, § 45; R. C. 1899, § 1222.]

Board must meet at time and place fixed by statute. *Power v. Larabee*, 2 N. D. 141, 49 N. W. 724.

Less than a quorum may adjourn from day to day. *O'Neill v. Tyler*, 3 N. D. 47, 53 N. W. 434; *Eaton v. Bennett*, 10 N. D. 346, 87 N. W. 181.

**§ 1529. Town and municipal officers to advise with board.** The chairmen of the boards of township supervisors, the presidents of city councils and the presidents of the boards of trustees of towns and villages in each county may attend the meetings of the board of equalization in such county, and it shall be the duty of each of such officers to advise with such board of equalization in regard to the equalization of the assessment of such county, the amount of taxes to be levied in such county, and the best means of caring for the poor of such county. Any such officer who shall attend the meeting of such board, as herein prescribed, shall be allowed as full compensation for all services in connection therewith his actual expenses while in attendance, to be paid as other bills are paid, by such township, city, town or village. [1897, ch. 149; R. C. 1899, § 1223.]

**§ 1530. Corrected lists. Abstracts for state auditor.** The county auditor shall calculate the changes of the assessment lists determined by the county board of equalization, and make corrections accordingly. Having made such corrections, he shall make duplicate abstracts of the real and personal property lists, one copy of which he shall file in his office and one copy he shall forward to the auditor of the state, on or before the last day of July following each county equalization. [1899, ch. 137; R. C. 1899, § 1224.]

**§ 1531. State board of equalization, how constituted. Meetings. Rules for equalizing.** The governor, state auditor, state treasurer, attorney general and commissioner of agriculture and labor, shall constitute the state board of equalization, a majority of which shall constitute a quorum for the transaction of business. The governor shall be ex-officio president of said board, and the state auditor shall act as secretary. The said board shall meet annually on the first Tuesday in August, at the office of the state auditor, and shall then examine and compare the returns of the assessment of the property in the several counties of the state, and proceed to equalize the same, so that all taxable property in the state shall be assessed uniformly, and at its true value in money. In the performance of their duties they shall be governed by the following rules:

1. They shall raise the valuation of each class of personal property of every county, which in their opinion is returned below its true and full value, to such price and sum as they believe to be the true and full value thereof.

2. They shall reduce the valuation of each class of personal property enumerated in section 1496 of every county, which in their opinion is returned above its true and full value, to such price and sum as they believe to be the true and full value thereof.



3. They shall add to the aggregate valuation of the property of every county which they believe to be valued below its true and full value in money, such per centum in each case as will bring the same to its true and full value in money.

4. They shall deduct from the aggregate valuation of the property of every county, which they believe to be valued above its true and full value, such per centum in each case as will reduce the same to its true and full value in money.

5. They shall not reduce the aggregate valuation of all the property in the state, as returned by the several county auditors, more than one per centum on the whole valuation thereof.

6. Upon the completion of such equalization and determination of the aggregate valuation of all the property of the state, the said board shall then decide upon the rate of the state tax to be levied for the current year, together with any other general or special state taxes required by law to be levied. [1897, ch. 126, § 47; R. C. 1899, § 1225; 1903, ch. 182.]

**§ 1532. Record of proceedings to be published. Synopsis to be sent to county auditors.** The secretary shall keep a record of the proceedings of the board, which shall be published in the annual report of the state auditor, and upon final adjournment he shall transmit to each county auditor an abstract of such proceedings specifying the per centum added to or deducted from the valuation of the real property of each of the several counties, in case an equal per centum has not been added to or deducted from each, and specifying also the per centum added to or deducted from the several classes of personal property, in each of the counties in the state, and such other information as will enable each auditor to properly equalize the valuation in their respective counties and the taxable rates thereof. [1897, ch. 126, § 48; R. C. 1899, § 1226.]

**§ 1533. Duty of county auditor after equalization by the state board.** Upon receipt of the report of the proceedings of the state board of equalization it shall be the duty of the county auditor to add to or deduct from each tract or lot of real property in his county the required per centum on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of any separate tract or lot shall contain no fraction of a dollar, and shall also add to or deduct from such class of personal property in his county the required per centums on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding or deducting in manner as aforesaid, any fractional sum, so that the value of any separate class of personal property shall contain no fraction of a dollar. [1897, ch. 126, § 49; R. C. 1899, § 1227.]

#### ARTICLE 6.—ASSESSMENT OF EXPRESS AND OTHER COMPANIES.

**§ 1534. Express, telegraph, telephone, freight line and equipment companies, assessment of.** The state board of equalization shall at its annual meeting in August in each year assess at its actual value the franchise and all property within the state of all express companies, freight line companies, car equipment companies, sleeping car companies, dining car companies, telegraph or telephone companies. To enable said board to make a correct valuation of such franchises and property, it shall have access to all reports of such corporations which may be on file in any public office of the state, and they shall have power to compel and require every such company, on reasonable notice, to report to them a full statement of the property and mileage operated by it within this state, 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 franchises and property the board 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. It shall cause a record to be made of the estimated value placed upon each of the items which go to make up the aggregate valuation of such assessments. [1901, ch. 26, § 1.]

§ 1535. **Valuation, how apportioned.** The board of equalization shall divide the valuation so found and determined of each continuous line by the number of miles of such line contained in the state, and the result shall be the valuation per mile for which said line shall be assessed. Such valuation per mile shall be apportioned to each county according to the number of miles of such line contained in such county. [1901, ch. 26, § 2.]

§ 1536. **Miles of line and valuation. State auditor shall certify.** The state auditor shall at the time of certifying the equalized value of each organized county to the county auditor, also certify to the number of miles of line operated by each of the companies before mentioned contained in said county and the valuation per mile as determined by the state board of equalization, and the county auditor of such county shall apportion such valuation to the cities, towns, villages, townships and districts through which such lines run according to the number of miles contained in each, as a part of the valuation of such city, town, village, township and district for the purpose of taxation, and the same shall be taxed as personal property is taxed in each county. [1901, ch. 26, § 3.]

§ 1537. **Valuation in unorganized counties. Taxes for state purposes only.** The valuation so apportioned to unorganized counties shall be taxed for state purposes only; and such tax shall be levied annually by the state auditor at the same rate as other property is taxed for state purposes and the state auditor shall notify each company so taxed of the amount of such tax on or before the first day of December in each year, and such tax must be paid to the state treasurer at the same time, and subject to the same penalty, as is prescribed by law for the collection of personal property taxes in organized counties, and the state treasurer shall have the same powers and it shall be his duty to collect such tax in the same manner as county treasurers are authorized by law to collect personal property taxes. [1901, ch. 26, § 4.]

#### ARTICLE 7.—RATE OF TAXATION AND LEVY.

§ 1538. **Taxes to be levied in specific amounts. Rate, how determined.** All county, township, town, city and school district taxes, except special taxes for local improvements, in cities or villages, or unless specially provided for by law, shall be levied or voted in specific amounts and the rate per centum shall be determined from the amount of property as equalized by the state board of equalization each year. The state tax shall be levied by the state board of equalization at its annual meeting in August of each year, and the rate of such tax shall be certified by the state auditor to each county auditor on or before the first day of September annually. In levying said tax the state board of equalization shall be limited by the amount necessary to raise for the purpose of meeting the appropriations made by the legislative assembly and the estimated general expenses of the state, as made by the auditor. Such levy shall be made in a specific amount, and the rate shall be determined by the state auditor; provided, that if the amount is greater than the rate prescribed in the constitution will raise, then the state auditor shall only certify the limited rate. The county taxes shall be levied by the county commissioners at the time of their meeting in July in each year. Such taxes shall be based upon an itemized statement of the county expenses for the ensuing year and a general statement of the outstanding indebtedness of the county, which statements shall be included in the published proceedings of said board, and no greater levy of county tax shall be upon the taxable property of any

county than will equal the amount of such expense, plus five per cent of such amount, together with the amount of one year's interest upon, and ten per cent of the principal sum of its outstanding indebtedness. The taxes voted by incorporated cities, villages, townships or school districts, shall be certified by the proper authorities to the county auditor on or before the twentieth day of July in each year. The rate per centum of all taxes, except the state tax and such other taxes, the rate of which may be fixed by law, shall be calculated and fixed by the county auditor, according to the limitations hereinafter prescribed; provided, that if any county, city, town or school district shall return a greater amount than the prescribed rate will raise, then the county auditor shall only extend such amount of tax as the limited rate will produce. Any city, village, town, township or school district officer required by law to report the amount of taxes to be levied for such city, town, township, village, or school district, and neglecting or refusing to make such report within the time required by this section, shall be subject to a penalty of not less than twenty-five dollars for such refusal or neglect, to be recovered on complaint of the county auditor before any court of competent jurisdiction. [1897, ch. 126, § 50; R. C. 1899, § 1228.]

Railroad roadbed, franchises and rolling stock personal property for taxation purposes. *M., St. P. & S. Ste. M. Railroad v. Dickey Co.*, 11 N. D. 107, 90 N. W. 260.

Collection personal property tax will not be enjoined if no itemized statement of county expenses made or petition for building bridge or road improvement not filed. *M., St. P. & S. Ste. M. Railroad Co. v. Dickey Co.*, 11 N. D. 107, 90 N. W. 260.

**§ 1539. State and county tax. Rate. Road tax. Sinking fund.** The rate of the general state tax shall not be more than four mills on the dollar valuation; and for ordinary county revenue, including the support of the poor, not more than eight mills on the dollar; and for roads and bridges, a poll tax of one dollar and a half, or one day's work, on every male person between the ages of twenty-one and fifty years; a bridge tax not to exceed two mills on the dollar, and a road tax not to exceed five mills on the dollar, valuation, to be paid in money, or in labor at the rate of one dollar and a half per day, at the option of the person taxed, and the certificate that the person named therein has actually performed eight hours' labor for each day's work so certified, shall be received by the county treasurer in discharge of said tax to the amount so certified; and a further tax of not to exceed two mills on the dollar upon all taxable property in the county for emergency purposes; for county sinking fund, such rate as may be fixed by any funding act passed by the legislative assembly, or in the absence of a provision in any such act, or in counties that shall have not funded their indebtedness, then such rate as, in the estimation of the board of county commissioners, will pay one year's interest on all the outstanding debts of the county, with ten per cent on the principal sum of such debts. [1897, ch. 126, § 51; R. C. 1899, § 1229; 1901, ch. 151.]

**§ 1540. Electors may vote sums of money for road work.** The electors of each township have power at the annual meeting to vote to raise such sums of money for the repair and construction of roads and bridges, for the support of the poor, and for all township charges and necessary expenses, as they deem expedient; provided, that they may, at their annual meeting, direct such an amount of the poll or road tax of the township to be expended on the highways in an adjoining township, as they deem conducive to the interests of the township, which labor and tax shall be expended under the direction of the supervisors of the township furnishing the same; provided, further, that where more than one entire congressional township is included within an organized township, the poll and road taxes raised within the limits of each of such congressional townships shall be expended within such congressional townships, unless raised to be expended outside of such organized townships in an adjoining township; provided, further, that the amount of tax for road

purposes shall not exceed eight mills, and for bridge purposes shall not exceed two mills, and that the levy of all township taxes shall be in the manner prescribed in section 1538, and that the township clerk shall notify the county auditor of all such levies as provided in section 3177; provided, further, that none of the provisions of this section shall be construed as conflicting with the provisions of article 9, chapter 19, of the political code; provided, also, that the board of county commissioners shall have the same jurisdiction in relation to roads and bridges, and the same power to levy road taxes in the unorganized parts of counties, as the township supervisors now have in organized townships. [1883, sub-ch. 1, ch. 112, §§ 13, 101; 1895, ch. 91, § 3; R. C. 1899, §§ 2542, 2640, 2670; 1901, ch. 151, § 2; 1903, ch. 172.]

**§ 1541. Tax list made out by county auditor. Form.** As soon as practicable after the taxes are levied the county auditor shall make out the tax lists according to the prescribed form, and to correspond with the assessment districts of the county. The rate per cent necessary to raise the required amount of the various taxes shall be calculated on the assessed valuation of property as determined by the state board of equalization; but in calculating such rates, no rates shall be used resulting in any fraction of less than one-tenth of a mill; and in extending any tax whenever it amounts to the fractional part of a cent it shall be made one cent. The tax list shall also be made out to correspond with the assessment book, in reference to ownership and description of property, with columns for the valuation and for the various items of tax included in the total amount of all taxes set down opposite each description of property. The amount of special taxes shall be entered in the proper columns, but the general taxes may be shown by entering the rate per cent of each tax at the head of the proper columns without extending the same, in which case a schedule of the rates per cent of such taxes shall be made on the first page of each tax list; such lists shall also show in a separate column the years for which any piece or parcel has been sold for taxes, if the same has not been redeemed, or deeded for such taxes. The county auditor shall on or before the first day of November in each year, make and transmit to the state auditor, in such form as the state auditor may prescribe, a complete abstract of the tax list of his county. [1897, ch. 126, § 52; R. C. 1899, § 1230.]

**§ 1542. Certificate of county auditor in tax book.** It shall be the duty of the county auditor to make in each tax book or list a certificate in the following form, viz:

State of North Dakota, }  
 County of ..... } ss.

I, ..... auditor of ..... county, state of North Dakota, hereby certify that the following is a correct list of the taxes levied on the real and personal property in the town (or district as the case may be) of ..... for the year .....

Witness my hand and the official seal this..... day of.....19...  
 ..... County Auditor.

[1897, ch. 126, § 53; R. C. 1899, § 1231.]

**§ 1543. Tax lists, when delivered to treasurer.** The county auditor shall deliver the tax lists of the several districts of the county to the county treasurer on or before the first day of December in each year, taking his receipt therefor; and such list shall be full and sufficient authority for the county treasurer to receive and collect taxes therein levied. [1897, ch. 126, § 54; R. C. 1899, § 1232; 1903, ch. 164.]

ARTICLE 8.—THE COUNTY TREASURER AND HIS DUTIES.

**§ 1544. Notice of rates of taxation and time for payment. Deputy treasurer.** On receiving the tax lists from the county auditor, the treasurer shall give notice in one or more official newspapers of the county, once in each of

three successive weeks, specifying particularly in said notice the rates of taxation for all general purposes, and the amounts raised for each specific purpose, also designating a day on which he or his deputy will attend at the place of holding elections, or at some other convenient place in each town or district, which day shall not be prior to the first day of January in each year, for the purpose of receiving such taxes and the treasurer or his deputy shall attend, for the purpose aforesaid, on the day and at the place named in said notice. The county treasurer shall, if directed by the county commissioners, have duplicate tax lists made, at the expense of the county, for his use while collecting taxes away from the county seat; and he may appoint one or more deputies to assist him in the collection of taxes, and may take such bond as security from the person so appointed as he deems necessary for his indemnity, and shall in all cases be liable and accountable for the proceedings and misconduct of his deputies in office. [1897, ch. 126, § 55; R. C. 1899, § 1233.]

§ 1545. **County treasurer collector of taxes.** The county treasurer shall be the receiver and collector of all taxes extended upon the tax lists of the county, whether levied for state, county, city, town, school, poor, bridge, road or other purposes, notwithstanding anything in the charter of any city, or town, or in any other act heretofore passed to the contrary, including the special taxes of local improvements in cities as provided for by law, and also of all fines, forfeitures or penalties received by any person or officer for the school fund or for the use of his county and he shall proceed to collect the same according to law, and place the same when collected to the credit of the proper funds; but this provision shall not be construed so as to include any fines or penalties accruing to any municipal corporation for the violation of its ordinances. All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year, for which the same has been levied and assessed in this state. [1897, ch. 126, § 56; R. C. 1899, § 1234.]

§ 1546. **Tax receipts, what to specify. Numbered consecutively. Duplicates.** The county treasurer, upon the payment of any tax, shall give to the person paying the same a receipt therefor, specifying therein the land, town or city lot, or other property on which said tax was levied, according to its description on the tax list, or in some other sufficient manner, and the year or years for which the tax was levied, and each year's tax shall be on a separate receipt and the receipts for each year shall be numbered from one upwards, until the tax list is returned to the auditor. Each receipt shall also specify the years for which any of the real estate described therein has been sold for taxes and not redeemed. The said receipt shall be made in duplicate, showing the name of the person, description of property, and the amount and date of payment; and the county treasurer shall return all such duplicate receipts, made by himself or deputies, to the auditor at the end of each day, who shall file and preserve them in his office, charging the treasurer with the amount thereof. [1897, ch. 126, § 57; R. C. 1899, § 1235.]

§ 1547. **Treasurer may summon posse. Penalty for refusal.** If the treasurer is resisted or impeded in the execution of his office he may require any suitable person or persons to aid him therein, and if any such person refuses to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name and for the use of the county, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process. [R. C. 1899, § 1236.]

§ 1548. **Treasurer to keep a cash book.** The county treasurer is required to keep a cash book, in which he shall enter an account of all moneys by him received, specifying, in proper columns provided for that purpose, the date of the payment, the number of the receipt issued therefor, by whom paid, and

the several items as the same appear on the tax list, and the amount paid in road orders and supervisor's receipts, each in a separate column, and the total amount for which the order or receipt was given in another column, and the treasurer shall keep his account of money received for and on account of taxes levied and assessed for any one year separate and distinct from those levied or assessed for any other year, and all entries in said cash book of moneys received for taxes, shall be in the numerical order of the receipts issued therefor. [R. C. 1899, § 1237.]

**§ 1549. Receipts for fines. Office hours. Custodian of warrants.** Whenever the treasurer receives any money on account of fines or any other account, except taxes charged on the duplicate, he shall make out duplicate receipts, one of which receipts he shall deliver to the person paying, and the other he shall deposit with the county auditor at the close of business each day, in order that the treasurer may be charged with the amount thereof. The treasurer shall enter the same in his cash book, as in case of moneys received for taxes, but in a separate place, and with a separate and distinct series of numbers of receipts issued therefor. The county treasurer shall keep his office open from nine o'clock a. m. to four o'clock p. m. of each business day, and shall, within seven days after the close of business on each day, transmit to the county auditor the duplicate receipts of all moneys received and cancelled by him during the day, all warrants paid, all receipts taken and received for money paid out, except as hereinbefore provided. The auditor shall be custodian of such receipts, warrants and vouchers, and shall keep the same in some safe place to be provided by the county commissioners. He shall receipt to the treasurer for each and every receipt, warrant and voucher delivered to him, stating in said receipt the number and amount of each receipt, warrant and voucher. The county auditor shall forthwith compare said tax receipts and all other receipts, warrants and vouchers with the books of the treasurer; and if, upon said comparison, he finds said receipts are in all respects correct, and are given for the actual amount due and paid into the treasury or for the amount actually paid out, as the case may be, that the warrants were actually paid, and that all such items and amounts have been properly entered upon the treasurer's books, he shall so certify on the back of said receipts, but if any errors or omissions are found, he shall report the same to the county commissioners without delay, unless the error is corrected in his presence. [1881, ch. 117, § 1; R. C. 1899, § 1238.]

**§ 1550. Auditor to keep duplicate treasurer's cash book.** The county auditor is required to keep a duplicate of the treasurer's cash book, and to enter therein all duplicate receipts by him received from the treasurer, in the same manner and form as the treasurer is required to enter the same. [R. C. 1899, § 1239.]

**§ 1551. What orders receivable for taxes.** The county treasurer shall receive in payment of taxes, orders or warrants on the several funds for which taxes may be levied, to the amount of the tax for such fund, without regard to priority of the numbers of the same, except when otherwise provided by law; and he shall write or stamp across the face of all such orders or warrants the date of their receipt and the name of the person from whom received. [1897, ch. 126, § 58; R. C. 1899, § 1240.]

**§ 1552. Erroneous assessment, how and by whom corrected.** If on the assessment roll or tax list there is any error in the name of the person assessed or taxed, the name may be changed and the tax collected from the person intended, if he is taxable and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county auditor, who, upon being satisfied thereof, shall enter the same upon his assessment roll and assess the value, and the treasurer shall enter it upon the tax list and collect the tax as in other cases. [R. C. 1899, § 1241.]

## ARTICLE 9.—DELINQUENCY, PENALTY AND LIEN OF TAXES, DISTRESS AND SALE.

§ 1553. **Abatement of taxes, how made.** The board of county commissioners may, upon affidavit or other evidence, when satisfied beyond a doubt as to the illegality or unjustness of the assessment or in case of error, abate taxes whether real or personal. Full record of such abatement must be made, showing the reason for their action, and the county auditor shall certify such abatement to the county treasurer, who shall enter such facts opposite the tax so abated, which shall have the effect of discharging such tax. And whenever taxes on any real estate remain unpaid and such property has not been sold to any purchaser other than the county, by reason of depreciation in value or other cause, the board of county commissioners may compromise with the owner of such property by abating a portion of such delinquent taxes on payment of the remainder. The county auditor shall also make out a certified statement of the amount of state taxes so abated, which statement shall be forwarded to the state auditor, who shall give the county credit for the amount so abated. [1897, ch. 126, § 59; R. C. 1899, § 1242.]

§ 1554. **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 become 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 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 fifteenth each of the delinquents that such taxes have been placed in his hands for collection, and unless same are paid on or before October fifteenth 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 interest and costs, and shall immediately proceed to advertise the same by 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 mortgaged chattel property within such town or district, and no personal property shall be exempt from such distraint and sale; and if the tax for which said property is distrained, together with the penalty and accrued interest and costs 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 1546, 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 1555; 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 balance 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. [1899, ch. 134; R. C. 1899, § 1243; 1903, ch. 134; 1905, ch. 145.]

§ 1555. **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 intrusted with the collection thereof, stating that he has made diligent search and inquiry for goods and chattels out of which to make collection 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 canceled, and it shall be the duty of the county auditor to certify to the state auditor the amount of state taxes so canceled and the state auditor shall enter the same to the credit of the county accordingly. [1897, ch. 126, § 61; R. C. 1899, § 1244; 1903, ch. 134; 1905, ch. 145.]

§ 1556. **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 purpose 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. [1905, ch. 144.]

§ 1557. **Lien of state and county for personal taxes.** The right of the state and each and every county thereof to enforce the collection of personal property taxes shall take and have precedence of any and all liens on or against personal property of a tax debtor; provided, that any person holding a lien on personal property of any tax debtor may demand and require the



property of the tax debtor not covered by a lien to be first exhausted in the payment of such taxes. [1901, ch. 150.]

§ 1558. **Delinquent personal taxes. Collection.** Whenever it is deemed expedient by the board of county commissioners of any county to collect delinquent personal taxes by action, they shall have the power to institute such an action in the name of the county for and on behalf of the county. [1901, ch. 163.]

§ 1559. **Contract for collection.** In any county where for any reason personal property taxes that have been delinquent more than one year remain unpaid, uncanceled or not put into personal property tax judgment, or in any county where delinquent taxes have been put into tax judgment, the commissioners of such county may contract with the sheriff of the county to pay him a percentage of such delinquent personal property taxes, or personal property tax judgments, as compensation for collecting the same, in lieu of or in addition to the compensation now provided by law. And such expense of collection shall be borne pro rata by the state, county, city, village, township, or school district in which such tax is laid. [1901, ch. 164.]

§ 1560. **Lien for delinquent personal taxes.** After the county commissioners have canceled so much of the delinquent taxes as they deem uncollectable as provided in the preceding section, the county auditor shall extend to and enter upon the tax list in the hands of the treasurer for the same year in an appropriate column or columns for remarks, opposite each description of real property belonging to any person owning such uncollected personal property tax, words showing the year for which the same remains due, and the principal sum of such tax, as for example, "personal tax, 1896, \$12.78." And when the delinquent afterwards acquires any real property in the county such delinquent taxes may be entered in like manner upon any subsequent tax list; and from the time of such entry the delinquent taxes so entered shall become a lien on any real property of the delinquent against which they are so entered in the same manner and to the same extent as the taxes upon such real property, and collection thereof shall be enforced accordingly by sale of the lands against which they are so entered, or so much thereof as may be necessary, at the time when the lands are sold for delinquent taxes, and in the same manner as if originally charged against such lands. [1897, ch. 126, § 62; R. C. 1899, § 1245.]

§ 1561. **Neglect or refusal of treasurer or sheriff. Penalty.** If any county treasurer shall refuse or neglect to collect any tax assessed upon personal property where the same is collectable, or to file the delinquent list and affidavit as herein provided, he shall be held, in his next settlement with the auditor, liable for the whole amount of such taxes uncollected, and the same shall be deducted from his salary or fees and applied to the several funds for which they were levied, and any refusal or neglect on the part of the sheriff to perform the duties herein provided, whereby he fails to collect such delinquent taxes, shall be deemed malfeasance in office and he shall be liable to the county for the whole amount of tax, penalty and interest that he may neglect or refuse to collect. A failure of an assessor to return his assessment to the county auditor, or of the county auditor to report the changes made therein to the state auditor, or to return to the state auditor an abstract of the tax lists of his county, or to deliver said lists to the county treasurer, or a failure of the treasurer to return the same to the county auditor at the time or times specified in this article, or a failure on the part of the treasurer to do any of the things prescribed in section 1544 and section 1554, or a failure on the part of the sheriff to make an affidavit prescribed by section 1555, or to return his list at the time therein prescribed, or to make collection of any taxes appearing thereon, or a failure on the part of any officer to do any act at the particular time specified in this chapter, shall in no manner invalidate any tax levy, or any certificate of tax sale or tax deed. And when any

notice is required to be published in a newspaper by the provisions of this article, if the same is printed in a supplement mailed and distributed with and as a part of the newspaper receiving the same for publication, such publication shall be deemed sufficient. [1897, ch. 126, § 63; R. C. 1899, § 1246.]

**§ 1562. Removal of delinquent taxpayer to another county. Duty of auditor.** In case of the removal of any delinquent taxpayer from the county in which his personal property was taxed to any other county in the state, it shall be the duty of the assessor to immediately make proper effort to ascertain the place of his destination and report the same to the county auditor, and thereupon it shall be his duty to make out and forward to the clerk of the district court of any county in this state to which any delinquent taxpayer may have removed, a statement of the amount of such delinquent taxes, including all penalties, interest and costs that may have attached, specifying the value of property on which said taxes were levied. [1897, ch. 126, § 64; R. C. 1899, § 1247.]

**§ 1563. Manner of collecting from such person.** On receipt of any such statement or account, the clerk of the court receiving the same shall issue his warrant to the sheriff of his county, and the sheriff shall immediately proceed to collect the same of the person so charged with said taxes and per centum, together with a fee of twenty-five cents for each warrant so issued; which sum, when collected, shall be paid to the clerk as his fee for issuing the same, and all taxes thus collected shall be by him remitted to the treasurer of the county to which said taxes belong; and, at the same time he shall return the original statement or account to the auditor of the county from which it was received, stating the amount of his collections, and if any taxes remain unpaid, the reason why said taxes could not be collected, certifying in his official capacity to the same; and the auditor shall charge the treasurer to whom such remittance is made with the amount thereof, and cancel said taxes from the list; provided, that in all cases of delinquent taxes collected by the sheriff receipts shall be issued to him and payment shall be made in the manner provided in section 1546. [1897, ch. 126, § 65; R. C. 1899, § 1248.]

**§ 1564. Fees of sheriff.** The sheriff or his deputy shall be allowed the same fees for making distress and sale of goods and chattels, for the payment of taxes, as are allowed by law for making levy and sale of property on execution; provided, however, that the traveling fees shall be five cents a mile for each mile actually and necessarily traveled, and that in no case shall the mileage herein provided for be charged more than once under any pretext whatever, which fees shall be added to any tax and collected by the sheriff, and it shall be the duty of the sheriff or his deputy to furnish the county commissioners, together with his bill for such services, a full and complete description of his route traveled, and in no case shall mileage be charged more than once from the county seat of the county in which the services required in this article are performed; provided, further, however, that when the sheriff collects delinquent personal tax without distress and sale he shall receive a fee of one dollar on such collection, to be paid by the delinquent. [1897, ch. 126, § 66; R. C. 1899, § 1249; 1903, ch. 170.]

Error to assess in owner's name does not render tax void, statute merely directory. *Hertzler v. Cass Co.*, 12 N. D. 187, 96 N. W. 294.

**§ 1565. Payment of taxes after judgment. Duty of treasurer.** Upon payment to the county treasurer of any personal property tax for which judgment has been obtained, the treasurer shall deliver a certificate of the fact of such payment, to the clerk of the court who shall satisfy the judgment upon the margin of the record thereof, by stating the date of payment, and number of the receipt given therefor, and file such certificate. [1897, ch. 126, § 67; R. C. 1899, § 1250.]

**§ 1566. Settlement between treasurer and auditor.** On the first day of each month of each year, the county treasurer shall make a full settlement

with the county auditor of his receipts and disbursements since the last settlement, and turn over to the auditor, county warrants and other vouchers paid by him and all auditor's warrants paid, taking the receipt of the auditor for such vouchers, and the auditor and treasurer shall distribute and credit to the proper funds all sums received since the last settlement. [1897, ch. 126, § 68; R. C. 1899, § 1251.]

Distress may be made without actual seizure of bulky property. Elevator Co. v. Bottineau County, 9 N. D. 346, 83 N. W. 212.

§ 1567. **Accounts to be kept by auditor and treasurer with township.** The county auditor and county treasurer shall keep accounts with the state and county, and with each township, city, incorporated village and school district in the county; and immediately after the settlement as provided in the preceding section they shall credit the collections to the proper funds; and upon application of any town, city, village or school district treasurer, the auditor shall give him an order on the county treasurer for the amount due such township, city, village, or school district, and shall charge them respectively with the amount of such order; and at the same time shall notify the clerk of each township, city, village or school district of the issuance of such order; provided, that the county auditor shall not issue his order as in this section provided until the bond of the person applying for such order shall have been filed as required by law. [1897, ch. 126, § 69; R. C. 1899, § 1252.]

§ 1568. **When treasurer shall pay over the funds collected.** The county treasurer shall immediately after each settlement pay over to the treasurer of the state, upon warrant of the state auditor, and to any municipal corporation or organized township, or any body politic, on the order of the county auditor, all moneys received by him arising from taxes levied and collected, belonging to the state, or to such municipal corporation or organized township or school district. If any county treasurer shall willfully and negligently fail to settle with the state treasurer at the times and in the manner prescribed by law, he shall forfeit to the use of the state the sum of five hundred dollars, which sum may be recovered of him or his sureties on suit brought by the state treasurer in the name of the state, in any court in this state having jurisdiction; or, in case of failure of the state treasurer to bring such suit, then any citizen of the state may bring the same. [1897, ch. 126, § 70; R. C. 1899, § 1253.]

§ 1569. **County responsible for state taxes. Liability of county treasurer.** Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double or erroneous assessments as hereinafter provided. If any county treasurer proves to be a defaulter to any amount of state revenue, such amount shall be made up to the state within the next three coming years by additional levies in such manner in annual amounts as the board of commissioners may direct. In such case the county can have recourse to the official bond of the treasurer for indemnity. [R. C. 1895, §§ 1248, 1249; R. C. 1899, § 1254.]

§ 1570. **County treasurer's final settlement, how made.** When the county treasurer goes out of office, he shall make a full and complete settlement with the board of commissioners, and deliver up all books, papers, moneys and all other property pertaining to the office to his successor, taking his receipt therefor. The board of commissioners shall make a statement so far as state dues are concerned to the state treasurer, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, showing to what year and to what account the amount so paid over belongs. They shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer elect. They shall witness and attest the actual transfer and delivery of accounts, books, vouchers and all

funds by any outgoing treasurer to his successor in office, whether the treasurer is succeeded by himself or another; and they shall cause to be entered of record their full compliance with the requirements of this section. [1895, § 1254; R. C. 1899, § 1255.]

§ 1571. **Real estate taxes due and delinquent, when. Penalty and interest.** All real estate taxes shall become due on the first day of December in each and every year for which the tax is levied, and become delinquent on the first day of March following, and if unpaid there shall attach thereto a penalty of three per cent as soon as the same becomes delinquent; also, on the first day of April following an additional penalty of three per cent, and on the first day of June following an additional penalty of three per cent, and on the first day of November following a further penalty of five per cent on the original tax, and the same shall be charged and collected accordingly, without being especially entered or noted on the tax list. [1899, ch. 134; R. C. 1899, § 1256; 1903, ch. 163.]

§ 1572. **Taxes a perpetual lien. Vendor and vendee.** Taxes upon real property are hereby made a perpetual paramount lien thereupon against all persons and bodies corporate, except the United States and the state, and taxes due from any person upon personal property shall be a lien upon any and all real and personal property owned by him at the time the tax became due, or which may be subsequently acquired by him, and the title to any of which personal property so owned or subsequently acquired remains in him at the time of the distraint. All taxes shall, as between vendor and purchaser become a lien upon real estate on and after the first day of December in each year. [1897, ch. 126, § 72; R. C. 1899, § 1257.]

Tax not a personal obligation, mere charge on land. *Hertzler v. Cass Co.*, 12 N. D. 187, 96 N. W. 294.

§ 1573. **Return of tax list to county auditor.** Whenever any taxes are paid the treasurer shall immediately write upon the tax list opposite the same in a suitable column or columns for remarks, the word "paid" with the number of the receipt given. And when a receipt is given for the payment of any taxes on real property owned by any person who is charged with taxes on personal property for the same or any previous year which remain unpaid, he shall note the same on the tax list in like manner, and across the face of the tax receipt and duplicate substantially in the following form: "Personal taxes of A. B. for (giving the year or years) unpaid." And after comparing the tax lists with his duplicate receipts on file in the county auditor's office, he shall at the July meeting of the board of county commissioners exhibit such lists to the board and the county auditor, and the auditor shall make the entries concerning such personal taxes as prescribed by section 1560 without regarding any payment of taxes on such real property. On the first Monday in November in each year the treasurer shall return the tax lists of the preceding year to the county auditor, and thereafter any person desiring to pay his delinquent taxes charged on said lists, may pay the same to the treasurer at any time before sale of the real property charged therewith as in this chapter prescribed, on first obtaining from the auditor a statement of the amount due including penalties and costs of advertising. [1897, ch. 126, § 73; R. C. 1899, § 1258.]

#### ARTICLE 10.—TAX SALE.

§ 1574. **Auditor's notice of sale.** The county auditor under the direction of the board of county commissioners, or a majority thereof, shall give notice of the sale of real property by the publication thereof, once a week for three consecutive weeks, the first of which publications shall be made not less than nineteen days before the day of sale, in such newspaper as may be designated by the county commissioners for that purpose in the county, if there be one, and if there be no paper published in his county, he shall give notice by a

written or printed notice posted on the door of the court house or building in which courts are commonly held, or the usual place of meeting of the county commissioners, for three weeks previous to the sale. In counties having daily papers the delinquent tax list shall be published in one issue of the daily edition and in two issues of the weekly edition of the same paper, so selected by the board of county commissioners. Such notice shall contain a notice that all lands on which the taxes of the preceding year (mentioning it) remain unpaid, will be sold and the time and place of sale, which time shall be the first Tuesday in the December following, and said notice must contain a list of the lands to be sold and the amount of taxes and penalty due, to which amount the auditor shall add to each description of land so advertised the sum of twenty cents, and for each description of town lot, the sum of ten cents, to defray the expenses of advertising, and the cost of such advertising shall be paid by the county commissioners at the expiration of the sale upon the affidavit of the publisher; provided, that in no case shall the property so advertised be charged for such advertising an amount exceeding the sum actually paid for the same. [1897, ch. 126, § 74; R. C. 1899, § 1259.]

Publication must be for twenty-one days preceding the sale. *Finlayson v. Peterson*, 5 N. D. 587, 67 N. W. 953; *Dever v. Cornwell*, 10 N. D. 123, 86 N. W. 227.

Tax sales and tax deed considered and construed. *Fisher v. Betts*, 12 N. D. 197, 96 N. W. 132.

**§ 1575. Penalty and interest, disposition of.** All penalty and interest collected on taxes shall belong to the county and become a part of the general fund, or such other fund as the county commissioners may direct; except the penalty and interest collected on special assessments due to cities, and all such penalties and interest shall be paid to the city thereunto entitled. [1899, ch. 4; R. C. 1899, § 1260.]

All penalties and interest, except on special assessments, belong to the county collecting them. *Fargo v. Ross*, 11 N. D. 369, 92 N. W. 449.

**§ 1576. Auditor to sell at public vendue.** Said sale shall be made at public auction at the office of the county auditor or usual place of holding court in the same building, and shall commence at the hour of ten in the forenoon, but may be adjourned from day to day for a period of ten days, whenever it is necessary for the disposal of the lands advertised. The lands and lots shall be offered for sale by the county auditor or his deputy in the order in which they appear in the advertised list, and each tract or lot shall be offered separately and struck off to the bidder who will pay the total amount of taxes, penalties and costs charged against it, including any personal taxes specified in the list and in the advertisement, which are a lien upon it, and who will agree to accept the lowest rate of interest from the date of sale on the amount of such taxes, penalties and costs so paid by him, which said rate shall in no case exceed twenty-four per cent per annum. But if the sum bid for the same is not paid before the sale closes such tract or lot shall again be offered for sale in like manner. The county treasurer shall attend the sale and receive all moneys paid thereon and when any tract of land or lot remains unsold for want of bidders, the same shall again be offered before the sale closes, and if there is no other bidder he shall bid for the same in the name of the county and the same shall be struck off and become forfeited to the county. Such tract or lot shall be assessed and taxed like others until the period of redemption expires, but shall not again be offered for sale for such subsequent taxes unless the county has made an assignment of the certificate of sale, and if not so assigned such forfeiture shall become absolute at the expiration of such period for redemption. [1897, ch. 126, § 76; R. C. 1899, § 1261; 1901, ch. 154.]

Tax sale purchaser bound by rule of "caveat emptor." *Budge v. Grand Forks*, 1 N. D. 309, 47 N. W. 390; *Tyler v. Cass County*, 1 N. D. 369, 48 N. W. 232; *McHenry v. Brett*, 9 N. D. 68, 81 N. W. 65; *Investment Co. v. Beadle County*, 5 S. D. 410, 59 N. W. 212.

Land must be sold by same description as assessed. *O'Neill v. Tyler*, 3 N. D. 47, 53 N. W. 434.

**§ 1577. Certificate of sale of each parcel. What title passes.** The auditor shall execute to the purchaser of any piece or parcel of land a certificate which may include all lands sold to him and which may be substantially in the following form:

COUNTY CERTIFICATE OF SALE FOR TAXES.

I, ....., auditor of the county of ....., in the state of North Dakota, do hereby certify that the following described real estate in said county and state, to wit: (describing same) was on the ..... day of ..... 19..., sold by me in manner provided by law for the delinquent taxes of the year 19..., thereon, amounting to.....dollars, including interest and penalty thereon, and the costs allowed by law, to ..... for the sum of ..... dollars, he being the highest bidder for the same.

And I further certify that unless redemption is made of said real estate in the manner provided by law, the said ..... or assigns will be entitled to a deed therefor, on and after the.....day of....., A. D. 19..., on the surrender of this certificate.

In witness whereof I have hereunto set my hand and seal this ..... day of....., A. D. 19...

.....  
Auditor.

[1897, ch. 126, § 77; R. C. 1899, § 1262.]

**§ 1578. Certificates as evidence. Grounds for voiding sale.** Such certificates shall in all cases be prima facie evidence that all requirements of law with respect to the sale have been duly complied with, and that the grantee named therein is entitled to a deed therefor after the time of redemption has expired; and no sale shall be set aside or held invalid, unless the party objecting to the same shall prove either that the property upon which the tax was levied was not subject to taxation, or that the taxes were paid prior to such sale, or that notice of such sale as required by law was not given; or that the piece or parcel of land was not offered at said sale to the bidder who would pay the amount for which the piece or parcel was to be sold, in which cases, but in no other, the court may set aside the sale or reduce the amount of taxes upon such land, rendering judgment accordingly. [1897, ch. 126, § 78; R. C. 1899, § 1263.]

**§ 1579. Limitation of action to quiet title.** Any person having or claiming title to or lien or incumbrance upon any land, whether in his possession or the possession of another, or vacant or unoccupied, may commence and maintain an action, either in law or in equity, at any time before or after the issuing of a tax certificate, and within three years after the execution and delivery of a deed, or in case of deeds heretofore issued, then within three years after the taking effect of this section, against any party, person, county, state or corporation claiming any title to or interest in such lands or lien upon the same adversely to him by or through such tax sale, tax certificate or tax deed heretofore or hereafter made, to test the validity of the tax sale, tax certificate or tax deed, or to quiet the title to said lands as against such claims of such adverse claimant, or to remove the cloud from the title arising from such tax sale, tax certificate or tax deed, and if no action is commenced within the time aforesaid such tax deed shall vest in the grantee a fee simple title to the lands and premises described in such deed, free from all liens and incumbrances made or accrued at or prior to the date of the execution and delivery of such deed, except taxes, and such grantee may at any time thereafter maintain an action against any and all parties for the possession of such premises, and the rights of action herein given shall be governed by the same rules of procedure as rights of action given by section 7519;

provided, that nothing in this section shall be construed to prevent any person holding a tax deed from beginning an action against parties claiming title to or lien upon such premises at any time after the execution of the deed, to obtain possession of such premises, or to quiet the title to such lands as against such adverse claimants. [1897, ch. 126, § 79; R. C. 1899, § 1264.]

A tax deed void on its face cannot operate to set statute of limitations in motion. Attorney's fees not properly recoverable as damages. Allowance or not of interest on rental value optional with jury. *Hegar v. DeGroat*, 3 N. D. 354, 56 N. W. 150; *Sweigle v. Gates*, 9 N. D. 538, 84 N. W. 481; *Salmer v. Lathrop*, 10 S. D. 216, 72 N. W. 570; *Horsnill v. Farnham*, 16 S. D. 414, 92 N. W. 1062; *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049; *Eaton v. Bennett*, 10 N. D. 346, 87 N. W. 188.

In a suit to set aside a tax deed which is conceded by the record and admitted by the answer to have been merged in fee title, section does not apply. *McKinney v. Minnehaha County*, 17 S. D. 407.

Court can decree that party attacking tax deed shall reimburse the purchaser, if deed has been set aside for defects not affecting the validity of the tax. *Idem*, 17 S. D. 407.

Does not apply where plaintiff conceded on record and defendant's answer showed to have been merged in the fee title. *McKinney v. Minnehaha County*, 17 S. D. 407.

**§ 1580. Tax sale record.** The county auditor shall make a record of the sale of real estate for delinquent taxes in a book kept for that purpose, which shall show the name of the owner (if known) the description of each piece or parcel of property as contained in the tax list, the amount of tax, the penalty and costs, the amount sold for, date of sale, to whom sold, number of the certificate, to whom assigned, date and amount of redemption (if redeemed), and by whom redeemed. All lists, books and records pertaining to tax matters shall be turned over to the county auditor for the purposes of this chapter, who shall have authority to make redemptions and assignments of tax sale certificates and tax deeds thereon according to law. [1897, ch. 126, § 80; R. C. 1899, § 1265.]

**§ 1581. Who may not purchase. Effect of purchase by owner.** Any person except county auditors, county treasurers, and each of their deputies or clerks, may become the purchaser at such sale. If the owner purchase, the sale shall have the effect to pass to him (subject to redemption as herein provided) every right, title and interest of any and every person, company or corporation, free from any claim, lien or incumbrance, as the owner so purchasing may be legally or equitably bound to protect against such sale, or the taxes for which such sale was made; and no such sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner; provided, that nothing herein contained shall be so construed as to prevent any officer or his deputy or clerk from becoming the purchaser at such sale of any lands of which he may be the owner, or upon which he may have a lien; provided, further, that no county auditor, county treasurer, their deputies, or clerks, shall act as agent or attorney for the purchasers at such sale. [1897, ch. 126, § 81; R. C. 1899, § 1266.]

**§ 1582. Redemption of real estate.** 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. [1897, ch. 126, §§ 83-85; 1899, ch. 136; R. C. 1899, § 1267; 1905, ch. 158.]

§ 1583. **Warrants to be drawn for money due owners.** Upon application of the party entitled thereto, the auditor shall give to such party his warrant upon the treasurer for any money paid into the treasury on the sale of any piece or parcel of land in excess of the amount due upon such piece or parcel at the time of sale, or for any money paid in for redemption which may be due to the purchaser at the sale, or his assignee; provided, that the certificate of sale shall be surrendered and canceled at the time of such payment, or if the redemption is for a part or undivided interest in such piece or parcel the amount of such redemption and the proportion redeemed shall be indorsed thereon, which shall be a cancellation of such part of the certificate. [1897, ch. 126, § 86; R. C. 1899, § 1268.]

§ 1584. **Rights of purchaser. Land not redeemed.** The purchaser of any piece or parcel of land, shall, if there be no redemption, be entitled to the possession, rents and profits at the end of three years from the date of the certificate, and if on demand of such purchaser to the party or parties in possession, such party or parties refuse or neglect to render such possession, such party or parties may be proceeded against as parties holding over after the determination of his or their estate, which proceedings may be instituted and prosecuted pursuant to the provisions of law in such case made and provided; provided, however, that all rights of such purchaser and his assigns to possession, title or lien of any kind of, to or upon such piece or parcel of land, shall cease absolutely and be deemed forfeited and extinguished, unless possession thereof be taken by him, or them, or proceedings for such possession be by him or them instituted, or deed thereof be executed and delivered to him or them by the proper officer, prior to the expiration of six years from and after the date of such certificate, or in case of sales heretofore made and where five years or more have already elapsed since the date of such certificate, then prior to the expiration of one year after the taking effect of this section. [1897, ch. 126, § 87; R. C. 1899, § 1269; 1901, ch. 165.]

§ 1585. **Void sales. Void taxes. Repayment.** When any sale of land for taxes is adjudged to be void, the judgment shall state the reason why it is void, and in all such cases and in cases where, by mistake or wrongful act of the county treasurer or auditor, land has been sold upon which no taxes were due, and in cases where taxes have been or may be paid on lands not subject to taxation, or on lands where subsequent to payment the entry has been or may be canceled, the money so paid and all subsequent taxes, penalties and



costs which have been or which may be paid, shall be refunded, with interest at seven per cent per annum from the date of payment to the person making such payment, his heirs or assigns and the same shall be refunded out of the county treasury to which such money was paid, on an order from the county auditor, and a pro rata share of the money so refunded shall be charged to the state and to any incorporated city, town, village or school corporation which may have received any part of such void tax. Whenever any sale of land or certificate or tax deed made or delivered under this chapter is adjudged to be void, unless the judgment declares the tax to be illegal, the tax and all subsequent taxes returned to the purchaser or assignee, shall remain and be a lien upon the land sold, and the county auditor shall advertise and resell the same at the next succeeding annual sale for the full amount of taxes, penalties and costs due thereon. All lands which may have been or may be bid in for the state or any county in the state by virtue of the provisions of law, may be disposed of by the county auditor at public or private sale as the county commissioners may direct, subject to such rules and restrictions as they may prescribe. [1897, ch. 126, § 88; 1899, ch. 139; R. C. 1899, § 1270.]

Wrong description in assessment bars recovery under void tax sale. *Land Co. v. Barnes County*, 6 N. D. 601, 72 N. W. 1019; *Land Co. v. Barnes County*, 7 N. D. 31, 72 N. W. 1135.

Does not conflict with section 61 of constitution. *Paine v. Dickey County*, 8 N. D. 581, 80 N. W. 707.

County not liable for taxes paid on tax sale not adjudged void, though land exempt. Money paid to protect tax sale void because property exempt from taxation, not recoverable. *Van Ness v. Sargent County*, 7 N. D. 139, 73 N. W. 1083; *Sheets v. Paine*, 10 N. D. 103, 81 N. W. 118.

Repayment under erroneous sales. *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049; *Paine v. Dickey Co.* 8 N. D. 581, 80 N. W. 707; *Investment Co. v. Thayer*, 7 S. D. 72; *Investment Co. v. Beadle Co.* 5 S. D. 410.

**§ 1586. Irregularity does not annul tax.** In any action or proceeding for the collection or annulment of taxes levied or assessed against any person or property in this state and in any action or proceedings to determine adverse claims to real estate, no tax shall be set aside for any irregularity or defect in form, or illegality in assessing, laying or levying such tax if the person against whom or the property upon which such tax is levied, assessed or laid is in fact liable to taxation, unless it be made to appear to the court that such irregularity resulted to the prejudice of the party objecting, or that the taxes against such person or property have been partially, unfairly or unequally assessed, and in such cases the court may reduce the amount of such taxes and give judgment accordingly; the court shall also have power to amend and correct all irregularities or defects in the form or manner of assessment. [1903, ch. 166.]

**§ 1587. Sale of property bid in for the county.** All pieces or parcels of real property bid in for the county under the provisions of this chapter, and not redeemed or assigned within three years from the date of the certificate of sale, shall, upon the giving of the required notice of expiration of redemption, become the absolute property of the county and may be disposed of by the county auditor at public or private sale, as the county commissioners may direct, subject to such rules and restrictions as they may prescribe. The county auditor shall execute deeds for all property so sold to the purchasers thereof, in the same manner and with like effect as upon other certificates of purchase of tax sale, and the proceeds of such sale shall be paid into the county treasury, and the amounts due the state, or any city, township, incorporated village, or school district from the taxes for which the same were sold, or their just proportion thereof, shall be apportioned and placed to the credit of the state, city, township, incorporated village or school corporation entitled thereto, and the remainder shall go into the general fund of the county. Any person having an interest or lien upon any piece or parcel of forfeited land may redeem the same any time after forfeiture, and before the

sale thereof, by paying the amount due thereon. [1897, ch. 126, § 89; R. C. 1899, § 1271; 1903, ch. 168.]

**§ 1588. Property bid in for the county. Assignment form.** At any time after any piece or parcel of land shall have been bid in for the county, and before such piece or parcel of land shall become forfeited to the county, and while such tract or parcel of land shall remain unredeemed, the county auditor may assign and convey the same and all the right of the county in such piece or parcel of land acquired at such sale, to any person (except the county auditor, county 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 delinquent taxes, penalties, interest and costs upon the same; and shall execute to such persons a certificate of conveyance for each piece or parcel which may be substantially in the following form:

I, ..... auditor of the county of ..... state of North Dakota, do hereby certify that at the sale of real estate for the delinquent taxes thereon for the county of ..... and state aforesaid, which sale was held at the ..... in said county of ..... on the ..... day of ..... A. D. 19.... for the taxes of the year ....., the following described piece or parcel of land situate in said county of ..... state of North Dakota, to wit: (insert description) was offered for sale to the highest bidder above the amount for which the same was subject to be sold; and no one bidding upon such offer an amount equal to that for which the said piece or parcel was subject to be sold, the same was then bid in for the county at such amount, being the sum of ..... and the same still remaining unredeemed, and on this day ..... having paid into the treasury of said county the amount for which the same was bid in, and all subsequent taxes, penalties, interest and costs, amounting in all to ..... dollars; therefore, in consideration thereof, and pursuant to law, I do hereby assign and convey all the right, title and interest of said county to said piece or parcel of land, acquired therein at said sale to the said ..... his heirs and assigns, subject to redemption as provided by law.

And I further certify that unless redemption is made of said real estate in the manner provided by law, the said ..... or assigns will be entitled to a deed therefor on and after the expiration of the time for redemption, as provided by law, and upon the surrender of this certificate. In witness whereof I have hereunto set my hand and seal this ..... day of ..... 19....

.....County Auditor.

[1897, ch. 126 § 90; R. C. 1899, § 1272.]

ARTICLE 11.—TAX DEED.

**§ 1589. Deed to be given on sale of forfeited real property.** Upon the sale of any tract or lot of forfeited real property, the county auditor shall execute to the purchaser thereof a deed in fee simple of the property so purchased, which shall pass to such purchaser absolute title to the lands therein described. If the former owner of the forfeited property becomes the purchaser, such deeds shall pass to him any and all rights of any action which may have arisen, or may exist, for any trespass committed upon such property prior to the execution of the deed. Such deed may be recorded as other deeds of real estate, and the record thereof shall have the same force and effect in all respects as the record of such other deeds, and shall be evidenced in like manner. The proceeds of lands or lots sold at such sale for a sum equal to or exceeding the amount of taxes thereon shall be distributed the same as other collections of taxes, and all excess over the amount of taxes shall be credited to the county general fund. [1897, ch. 126, § 91; R. C. 1899, § 1273.]

**§ 1590. County auditor to execute deeds to persons entitled thereto.** It shall be the duty of the county auditor of each county in this state to execute, acknowledge and deliver to any person who shall be entitled to receive from the state or from the county the title to any piece, parcel or lot of land within the county, under or by virtue of any law providing for or relating in whole or in part to the levying or collection of taxes or the sale of real estate for nonpayment of taxes, a deed in fee simple of such piece, parcel or lot of land, and such deed shall pass to such person absolute title to the land therein described, and may be recorded as other deeds of real estate are recorded, and the record thereof shall have the same force and effect in all respects as the record of such other deeds and may be evidenced in like manner. [1897, ch. 126, § 92; R. C. 1899, § 1274.]

**§ 1591. Tax deeds. When and by whom made.** At the expiration of the time for redemption of lands sold for delinquent taxes and after the filing of the proof of notice of expiration of period for redemption, as provided in section 1608 and on production of the certificate of purchase, the county auditor of the county in which the sale of such lands took place, shall execute to the purchaser, his heirs or assigns, in the name of the state, a deed of the land remaining unredeemed, which shall vest in the said purchaser, his heirs or assigns, an absolute estate in fee simple in such land, subject, however, to all the claims which the state may have thereon for taxes, or other liens or incumbrances; and such deeds shall be executed by the county auditor under his hand and the seal of the county, and such deeds shall be conclusive evidence of the truth of all the facts therein recited and prima facie evidence of the regularity of all the proceedings from the assessment and valuation of the land by the assessor up to the execution of the deed, and such deed shall be substantially in the following or other equivalent form:

Whereas, A. B. did on the.....day of.....19....produce to the undersigned C. D., county auditor of the county of ..... in the state of North Dakota, a certificate of purchase in writing bearing the date of the ..... day of ..... 19...., signed by E. F., who at the last mentioned date was county auditor of said county, from which it appears that ..... did on the ..... day of ..... 19.... purchase at public auction at the office of the county auditor (or the usual place of holding court in the same building) the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to ..... for the sum of ..... dollars, being the amount of taxes, penalties and costs charged against said land, including personal taxes specified in the list and in the advertisement, constituting a lien thereon for the year (or years) 19...., to wit: (here insert the description of the land offered for sale), and it appearing that the said A. B. is the legal owner of the said certificate of purchase, and the time fixed by law for redeeming the land therein described, having now expired and proof of the notice of the expiration of the period of redemption having been filed in the office of the county auditor, prior to the maturing of such certificate as provided by law, and said land not having been redeemed from such purchase pursuant to law, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the smallest or least quantity of the said tract above described that would sell for the total amount of taxes, penalties and costs charged against it, including any personal taxes specified in the list and in the advertisement of the sale of said land, which were a lien upon it, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year (or years) 19...., and that said lands had been legally advertised for taxes and were sold on the ..... day of ..... 19....

Now, therefore, this indenture made this ..... day of ..... 19.... between the state of North Dakota by C. D. as county auditor of said county, of the first part and said A. B. of the second part;

Witnesseth, that the said party of the first part for and in consideration of the premises and the sum of one dollar in hand paid, has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said party of the second part ..... heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to-wit: (Describe the land). To have and to hold said mentioned tract or parcel of land with the appurtenances thereto belonging to the said party of the second part ..... heirs and assigns forever, in as full and ample manner as the said county auditor of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., as county auditor of said county of ..... has hereunto set his hand on the day and year aforesaid.

Attest:

(Seal.)

.....  
County Auditor ..... County, North Dakota.

Which deed shall be acknowledged by said county auditor before some one authorized by law to take acknowledgments of deeds, for which said deed the county auditor shall be entitled to a charge of fifty cents, to be paid by the grantee in such deed. In case the land is bid in for the county and the certificate assigned under the provisions of section 1588 the language of such deed inappropriate to such sales shall be stricken out and the following inserted in lieu thereof:

“Offer for sale to the highest bidder the following described tract or parcel of real property: (insert description), which property was returned delinquent for the non-payment of taxes for the year 19..., amounting to..... dollars, including interest and penalty thereon and the costs charged against said land including personal property taxes specified in the list and in the advertisement constituting the lien thereon, for the year (or years) 19..., and no one bidding upon such offer an amount equal to that for which said piece or parcel of land was subject to be sold, the same was bid in for the county. And it appearing by said certificate that the right, title and interest of the county in said tract or parcel of land acquired therein at said sale was on the ..... day of ..... 19.... assigned to ..... for the sum of ..... dollars, being the amount due thereon at that time.”

Which deed shall be acknowledged as aforesaid. [1899, ch. 155; R. C. 1899, § 1275.]

Tax deed cuts off prior delinquent taxes. *Emmons Co. v. Bennett*, 9 N. D. 131, 81 N. W. 22; *Meldahl v. Dobbin*, 8 N. D. 115, 77 N. W. 280.

Sale of part of lot for proportionate tax, void, if assessed as a whole. *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049.

Variance in description between tax deed and assessment record makes tax deed void. *Sheets v. Paine*, 10 N. D. 103, 80 N. W. 118.

In equity action the absence of assessor's affidavit from assessment roll does not invalidate sale or levy. Fatal in law action. *Douglas v. Fargo*, 13 N. D. 467, 101 N. W. 919.

To cancel and set aside tax sale and levy in equity, complaint must show tender. Legal portion of tax must be tendered as condition to equitable relief. *Idem*, 13 N. D. 467, 101 N. W. 919.

Recitation of time or place of tax sale at illegal time or place voids tax deed. *Gulmer v. Lathrop*, 10 S. D. 216, 72 N. W. 570.

Void tax deed may constitute color of title. *Parker v. Vinsen*, 11 S. D. 381, 77 N. W. 1023.

Statutory form must be substantially pursued or deed is void *Rector et al v. Maloney*, 15 S. D. 271, 88 N. W. 575.

Separate parcels sold to same person may be included in same deed. *Bennett v. Darling*, 15 S. D. 1, 86 N. W. 751.

**§ 1592. County auditor to keep tax deed record.** 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. [1905, ch. 157, § 1.]

§ 1593. **Certified copy prima facie evidence.** 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. [1905, ch. 157, § 2.]

§ 1594. **Fees of auditor.** 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. [1905, ch. 157, § 3.]

§ 1595. **Taxes paid by occupant or tenant.** When any tax on any real estate is paid by or collected of any occupant or tenant, or any other person, which, by agreement or otherwise, ought to have been paid by the owner, lessor or other party in interest, such occupant, tenant or other person may recover by action the amount which such owner, lessor or party in interest ought to have paid, with interest thereon at the rate of twelve per cent per annum, or may retain the same for any rent due and accruing from him to such owner or lessor for real estate on which such tax is so paid, and the same shall, until paid, constitute a lien upon said real estate. [1897, ch. 126, § 93; R. C. 1899, § 1276.]

§ 1596. **Taxes paid by mortgagees or others having liens.** Any person who has a lien by mortgage or otherwise upon any real property that has been sold for taxes or on which the taxes have not been paid, may redeem from such sale, or may pay such taxes and the interest, penalty and costs thereon, and the receipt of the county treasurer or the certificate of redemption, as the case may be, shall constitute an additional lien on such land to the amount therein stated, and the amount so paid and the interest thereon at the rate specified in the mortgage or other instrument, shall be collected with, as part of, and in the same manner as the amount secured by the original lien. [1897, ch. 126, § 94; R. C. 1899, § 1277.]

§ 1597. **Duty of county auditor.** When any deed is presented to the county auditor for transfer he shall ascertain from the books and records in his office if there be delinquent taxes due on the lands described therein, or special assessments due thereon, or if it has been sold for taxes and if there are delinquent taxes or special assessments due or installments of special assessments due, he shall certify to the same, and when the receipt of the county treasurer shall be produced for the said delinquent taxes, or special assessments or installments of special assessments, and for any other delinquent taxes or special assessments, or installments of special assessments, that may be in the hands of the county auditor for collection, the county auditor shall enter on every deed of real property so transferred over his official signature, "delinquent taxes and special assessments or installments of special assessments paid and transfer entered," or if the land described has been sold for taxes, "paid by sale of the land described within," or if it is an instrument entitled to record without regard to taxes, "transfer entered," and unless such entry is made upon any deed the register of deeds shall refuse to receive or record the same. A violation of the provisions of this section by the register of deeds shall be deemed a misdemeanor, and upon conviction thereof he shall be punished by a fine of not less than one hundred dollars, and not exceeding one thousand dollars, and he shall be liable to the grantee of any instrument so recorded for the amount of any damages sustained; provided, that sheriff's or referee's certificates of sale on execution, decrees, or foreclosures of mortgages and United States patents and certified copies thereof, and deeds which it may be desirable to have recorded solely for the purpose of correcting errors in and perfecting titles, and deeds which make no changes in the record title,

and final decrees of distribution entered in county courts shall have indorsed thereon "auditor's certificate, transfer entered," and may be recorded by the register of deeds without any such certificates from the county auditor. The county auditor shall keep a record of such transfers in a book kept for that purpose, showing the names of the grantor and grantee, a description of the property and the date of transfer, and shall receive twenty-five cents for each certificate from the person or persons presenting the same for certification, and said auditor may retain such fee as compensation for making such certificate. [1899, ch. 135; R. C. 1899, § 1278; 1901, ch. 144; 1903, ch. 167.]

§ 1598. **Division of valuation where part of a tract is transferred.** When the transfer of any land or town lot or any part thereof becomes necessary by reason of a sale or conveyance is of less value than the whole tract or lot, or part thereof as charged in the tax list, said county auditor shall transfer the same whenever the seller and purchaser agree thereto in writing, signed by them, or personally appear before the auditor and agree upon the amount of valuation to be transferred therewith; but if the seller and purchaser do not agree as to the amount of valuation to be transferred the auditor shall make such divisions of the valuation as may appear to him just. If the county auditor is satisfied that the proportion of valuation agreed by the parties in interest to be transferred is greater than the proportional value of the land or lot to be transferred therewith, and that such agreement was made by collusion of the parties and with a view fraudulently to evade the payment of any taxes which might be legally assessed on the entire tract or lot, he may refuse to make such transfer, and when any such transfer has been procured by fraudulent agreement the same shall be canceled by the auditor and the land or lot so transferred be charged with taxes in the same manner as though said transfer had not been made. [1897, ch. 126, § 96; R. C. 1899, § 1279.]

§ 1599. **Irregularities of land to be platted into lots if required.** In all cases when any tract or lot of said land is divided into irregular shapes that cannot be described except by metes and bounds, it shall be the duty of the owner of such tracts upon the request of the county auditor to have such land platted into lots; if such plat cannot be made without actual survey of the land then they shall have the same surveyed and the plat thereof recorded. If the owners of any such tract shall refuse or neglect to cause such plat and survey when necessary to be made and recorded within thirty days after such request, the county surveyor, upon the request of the county auditor shall make out such plat from the record of the register of deeds, if practicable; but if it cannot be made from such records, then he shall make the necessary survey and plat thereof, and the said auditor shall have the same recorded; such plats being duly certified and recorded the description of the property in accordance with the number and description set forth in such plat shall be deemed a good and valid description of the lots or parcels of land so described. When the owners of such land fail to comply with the provisions of this section the costs of surveying, platting and recording shall be paid by the county, upon allowance by the county commissioners and the amount thereof shall be added to the tax upon such tracts or lots the next ensuing year, which tax, when collected, shall be credited to the county fund. [1897, ch. 126, § 97; R. C. 1899, § 1280.]

ARTICLE 12.—ABBREVIATIONS IN DESCRIPTIONS AND PROCEEDINGS IN CASE OF FALSE LISTS AND RETURNS.

§ 1600. **Abbreviations in describing lands.** It shall be sufficient to describe land in all proceedings relative to assessing, advertising or selling the same for taxes by initial letters, abbreviations and figures to designate the township, range, section or parts of sections, and also the number of lots and blocks. Whenever the abbreviation "do" or characters ".,," or other similar

abbreviations or characters shall be used in any such proceedings, they shall respectively be construed and hold as meaning and being the same name, word, initial, letter or letters, abbreviations, figure or figures as the last preceding such "do" or "," or other similar characters. [1897, ch. 126, § 98; R. C. 1899, § 1281.]

**§ 1601. Auditor to correct false lists and returns.** The county auditor, if he has reason to believe or is informed that any person has given to the assessor a false statement of his personal property, or that the assessor has not returned the full amount of all personal property required to be listed in his township or district, or has omitted or made an erroneous return of any property which is by law subject to taxation, shall proceed at any time before the final settlement with the county treasurer, to correct the return of the assessor and to charge the owners of such property, on the tax lists, with the proper amounts of taxes, to enable him to do which, he is hereby authorized and empowered to issue compulsory process and require the attendance of any person whom he may suppose to have a knowledge of the articles or article of the property and examine such person on oath in relation to such statement or return; and the auditor in all such cases shall notify every such person before making the entry on the tax list that he may have an opportunity of showing that his statement on the return of the assessor is correct; and the county auditor shall, in all cases, file in his office a statement of the facts of evidence upon which he made such correction. [1897, ch. 126, § 99; R. C. 1899, § 1282.]

**§ 1602. Property omitted. Taxes 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. [1897, ch. 126, § 100; R. C. 1899, § 1283; 1903, ch. 156; 1905, ch. 149.]

**§ 1603. Debts of municipalities void if entailing taxation beyond the rate fixed by law.** It shall be unlawful for any city, town or village officer or for the officers of any school district, unless specially and expressly authorized by law, to contract any debt or incur any pecuniary liability, for the payment of either the principal or interest, for which during the current year, or any subsequent year, it shall be necessary to levy on the taxable property of such county, township, city, town or village or school district, a higher rate of tax than the maximum rate prescribed by law and every contract made in contravention of the provisions of this section shall be utterly null and void in

regard to any obligation thereby imposed on the corporation on behalf of which such contract purports to be made; but every commissioner, officer, agent, supervisor or member of any municipal corporation that makes or participates in making or authorizes the making of any such contract, shall be held individually liable for its performance; and every commissioner, supervisor, director or member of any city, town or village council, or other officer or agent of any such municipal corporation present when any such unlawful contract was made or authorized to be made, shall be deemed to have made or to have participated in making, or to have authorized the making of the same, as the case may be, unless, if present, he dissented therefrom and entered or caused to be entered such dissent on the records of such municipal corporation, or of its council, supervisors or other officer. [1897, ch. 126, § 101; R. C. 1899, § 1284.]

§ 1604. **Exempt property to be valued and assessed.** At the time of taking the assessment of real property the assessor shall enter on a separate list each description of property in the town or district exempt under the provisions of section 1484, and value and assess the same in the manner and subject to the same rules as he is required to assess all other property, designating in each case to whom such property belongs, and for what purpose used. [1897, ch. 126, § 102; R. C. 1899, § 1285.]

§ 1605. **Neglect of duty by officers.** Every county, district or township officer who in any case refuses or knowingly neglects to perform any duty enjoined upon him by this chapter, or who consents to or connives at any evasion of its provisions whereby any proceeding required by this chapter is prevented or hindered or whereby any property required to be listed for taxation is unlawfully exempted, or the valuation thereof is entered on the tax list at less than its true value, shall for every such neglect, refusal, consent or connivance, forfeit and pay to the state not less than two hundred nor more than one thousand dollars, at the discretion of the court, to be recovered before any court of competent jurisdiction. [1897, ch. 126, § 103; R. C. 1899, § 1286.]

§ 1606. **Suits against officers defended at expense of county.** Whenever civil action is brought against any person holding the office of county treasurer, county auditor or any town or district officer for performing or attempting to perform any duty authorized or decreed by any statute of this state for collection of the public revenue, such treasurer, auditor or other officer, may, in the discretion of the court before whom such action is brought, by an order made by said court and entered in the minutes thereof, be allowed and paid out of the county treasury, reasonable fees for counsel and other expenses of defending such action. [1897, ch. 126, § 104; R. C. 1899, § 1287.]

§ 1607. **When auditor to forward list of new taxable lands.** A list of all lands becoming taxable for the first time in any county of the state shall be procured by the state auditor from the proper land officers and forwarded by him to the county auditor of the proper county on or before the fifteenth day of March of each year. [1897, ch. 126, § 105; R. C. 1899, § 1288.]

§ 1608. **Notice of expiration of redemption. Certificate holders. Auditor.** Every person holding a tax certificate shall, at least ninety days before expiration of the time for the redemption of the lands therein described, present such certificate to the county auditor, and thereupon the auditor shall prepare, under his hand and official seal, a notice to the person in whose name such lands are assessed, specifying the description of such lands, the amount for which the same were sold, the amount required to redeem such lands from sale, exclusive of the costs to accrue upon such notice, and the time when the redemption period will expire, which notice the auditor shall cause to be delivered to the sheriff or his deputy who shall serve it personally upon the owner, if known to be a resident of the state, but which may, if the owner be a nonresident, be given by registered letter, addressed to such owner at his



last known post office address, and by publication once in each week, for three consecutive weeks in some newspaper printed and published in the county where such lands are situated, if there be one; if none, then in some newspaper printed and published at the capital of the state, and in case the property covered by such certificate is occupied, then service of such notice shall, in addition to the foregoing provision, be made upon the person in possession thereof. Proof of notice herein provided for must be filed in the office of the county auditor prior to the maturing of such certificate, and no deed shall issue until such proof has been duly filed. The fees for serving and the printer's fees for publishing such notice shall be added to the amount required to redeem such land, and shall be paid by the party offering to redeem such land before any certificate of redemption shall be issued. In case of failure on the part of the holder of any tax certificate to present the same to the auditor at the time hereinbefore provided, the same may be so presented at any time thereafter; and thereupon such notice shall be issued and served as hereinbefore provided, and the time for redemption of such lands shall expire ninety days after such notice; provided, that the county shall not be liable for any expense incurred under the provisions of this section; provided, further, that all interest shall cease at the expiration of three years from date of the certificate. [1897, ch. 126, § 106; R. C. 1899, § 1289; 1901, ch. 166.]

Notice of redemption omitting section, town and range insufficient. *Stokes v. Allen*, 15 S. D. 421, 89 N. W. 1023.

Published notice addressed "To whom it may concern" only, insufficient. *Rector et al v. Maloney*, 15 S. D. 271, 88 N. W. 575.

#### § 1609. Redemption when owner dies after sale. Auditor's certificate.

Whenever the lands of any person have been heretofore or shall be hereafter sold for taxes and the owner of such lands, after such sale and before the expiration of the period of redemption, heretofore has deceased or hereafter shall decease, the executor or administrator of such owner or any person interested in his estate as heir or devisee, or creditor, may redeem such lands from any such sale at any time within four years from the date thereof. If such redemption be made by a creditor, the amount paid to effect such redemption, with interest thereon at the rate of seven per cent per annum, shall constitute a valid claim against the estate of the deceased. If such redemption be made by an executor or administrator he shall at the time of the making thereof produce his letters testamentary, or of administration to the county auditor; if made by another person he shall make and file with such auditor an affidavit stating under what right or claim such redemption is made. Upon any such redemption being made, the county auditor shall make and deliver to the person making such redemption a certificate containing the name of the person redeeming, a statement of the claim or right upon which such redemption was made, the amount paid to redeem, a description of the land redeemed, the date of the sale of such lands and the year in which the taxes were levied for which such sale was made, which certificate shall have the effect to annul any such sale, and such certificate may be recorded as other deeds of real estate, and with like effect as evidence or otherwise. [1897, ch. 126, §§ 107, 108; R. C. 1899, § 1290.]

#### ARTICLE 13.—ASSESSMENT AND TAX LEVY IN UNORGANIZED COUNTIES.

§ 1610. **Assessment and taxation in unorganized counties.** Any property not exempt from taxation, which is situated or kept in any unorganized county in this state, shall be listed and assessed by an assessor, to be appointed by the board of county commissioners of the organized county to which such unorganized county is attached for judicial purposes; and the taxes due and payable on property in such unorganized county shall be paid to and collected by the treasurer of such organized county, but such property shall be assessed and taxed for state purposes only. The board of county commissioners of

the county to which such unorganized county is attached for judicial purposes shall, at the time and place it equalizes and corrects the assessment roll of its county, equalize and correct the assessment roll of such unorganized county, and at the same time and place it makes its tax levy for county purposes levy a tax upon the assessed property of such unorganized county for state purposes only, and in the same manner and form that it makes levy for state purposes in its own county; and when the tax list is completed the board of county commissioners shall attach to such list its warrant under its hand and official seal in general terms requiring the county treasurer of such unorganized county to collect the tax therein levied according to law; and it shall require an additional bond from such county treasurer in such amount as it may deem necessary for the faithful discharge of his duties in collecting such tax and it shall audit and allow the necessary expenses of the assessor, auditor and treasurer for the assessment and collection of such taxes, which shall be paid upon its warrant out of the taxes so assessed and collected. [1897, ch. 126, § 109; R. C. 1899, § 1291.]

§ 1611. **Duplicate tax list.** The county auditor of the county to which such unorganized county is attached for judicial purposes shall prepare a tax list in duplicate, with the warrant of the county commissioners attached, and deliver the duplicate thereof to the county treasurer on or before the first day of December following the date of the levy for the current year, and such duplicate tax list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained. The original tax list shall be kept by such auditor as the property of such unorganized county. It shall be the duty of the county treasurer, upon receipt of the tax list aforesaid, to collect such tax in the same manner and form in which other taxes are collected, and he shall pay the warrants drawn by the county commissioners upon such tax for necessary expenses of assessing and collecting the same, and remit the remainder of such tax to the state treasurer. [1897, ch. 126, § 109; R. C. 1899, § 1291.]

#### ARTICLE 14.—TAXING LIVE STOCK OF NONRESIDENT OWNERS.

§ 1612. **Nonresident owners of live stock pay for ranging. Amount. Collection by seizure.** Any owner of live stock nonresident of this state, who shall enter any county in the state of North Dakota with horses, mules, cattle or sheep for the purpose of herding or feeding them upon the range of said state, or who shall permit or suffer any stock owned by him to enter any county of the state of North Dakota and feed upon the range thereof, shall pay into the treasury of the county thus entered the sum of fifty cents per month for each head of stock so entering and feeding on such range, for each and every month said stock so fed, which tax shall be in addition to other taxes now or hereafter imposed by law. Said amount of fifty cents per head per month as herein provided shall be paid monthly in advance. Should the owner of such stock fail to comply with the provisions of this article within ten days after the time, as herein provided, said tax shall become due, the county treasurer of the county so entered by such stock shall immediately proceed to collect said tax by seizure and sale in the same manner as delinquent personal property taxes are collected by law. [1901, ch. 155.]

#### ARTICLE 15.—LEGALIZING IRREGULARITIES IN ASSESSMENTS AND LEVIES.

§ 1613. **Tax levy of 1895 legalized.** The levy of taxes as made in the various counties for the year 1895 is hereby legalized and made valid for all intents and purposes the same as if made in conformity to the law then in force. [1897, ch. 99; R. C. 1899, § 1312.]

§ 1614. **All tax levies of 1895, 1896, 1897, 1898, 1899 and 1900 legalized.** The levy of taxes for the state of North Dakota as made by the state board of

equalization, and all levies made in the various counties, townships and school districts in said state for the years 1895, 1896, 1897, 1898, 1899 and 1900, whether the same was levied in mills or in specific amounts, or both, is hereby legalized and made valid in all respects and purposes the same as if made in conformity to the laws then in force. [1897, ch. 99; R. C. 1899, § 1312; 1901, ch. 159.]

**§ 1615. Assessments and levies in certain unorganized counties for county purposes. Assessment of taxes.** All assessments and tax levies for state and county purposes heretofore made within any territory within the state of North Dakota, over which any county has exercised jurisdiction in criminal and civil matters, and which has to all intents and purposes been treated as a portion of said county for not less than four years last past, shall be and the same is hereby in all respects legalized. [1901, ch. 158.]

**§ 1616. How collected.** It shall be the duty of the treasurer of the county exercising such jurisdiction as is mentioned in section 1615 to make out a list of such taxes in the same order as it appears in the tax list, and deliver said list of unpaid delinquent personal taxes to the sheriff of his county, whose duty it shall be to collect such delinquent personal taxes by distraining sufficient goods and chattels belonging to the persons charged with such taxes, together with penalty and interest and all accruing costs and interest, and shall immediately proceed to advertise the same in three public places in said county and in the official newspapers, if there be any in said county, for a period of ten days before such sale, stating the time and place where such property shall be sold, which place of sale shall be at the county seat of said county, and no personal property shall be exempt from such distraint and sale; and if on the date of sale such taxes remain unpaid, then the sheriff shall sell said property, or so much thereof as may be necessary to pay such taxes, together with the interest and penalty and accruing costs, at public auction. [1901, ch. 158.]

ARTICLE 16.—VALIDATING ASSESSMENTS SINCE 1889.

**§ 1617. Validating assessments since 1889.** Every assessment of real or personal property for the purpose of taxation, and every assessment roll, heretofore and since the year 1889 made by any officer authorized by law to assess the property described in such assessment roll for the purpose of taxation, and returned to the county auditor of any county in this state, and acted upon and adopted by the board of equalization of such county as an assessment, or assessment roll, is hereby made valid; provided, such assessment or assessment roll, if it purports to be an assessment of real property, contains sufficient data from which can be definitely ascertained the description of the property intended to be assessed, and the valuation fixed thereon by the assessor; and if it is an assessment of personal property, contains the name of the owner of the property assessed, and the valuation of such property. [1903, ch. 158, § 1.]

**§ 1618. Validating tax levies since 1889. Exceptions.** All taxes levied for any purpose, heretofore and since the year 1889, made in this state, by any board or officer authorized by law to make the same, and all tax levies heretofore and since the year 1889 made by the state board of equalization, or by any county board of equalization, are hereby made valid; provided, it can be definitely ascertained from the official records of the proceedings of such officer or board, what amount of taxes, or what rate per cent of taxation was intended to be levied; and provided, further, that this article shall not be construed to validate any tax levy made for any purpose unauthorized by law, or which is in excess of the amount allowed by law to be levied. [1903, ch. 158, § 2.]

§ 1619. **Fatal defects enumerated.** In all actions hereafter tried, in which the validity of any tax heretofore levied comes in question, no tax shall be held invalid unless it shall be made to appear, by the party objecting thereto, that one or more of the following defects exist, to wit:

1. That the property assessed was not subject to taxation; or in the case of an assessment of personal property that the person assessed was not liable to taxation at the time such assessment was made, for the property or some part thereof assessed to him.

2. If the tax is upon real property, that the description of the property intended to be assessed, or the valuation thereof, cannot be definitely ascertained from the assessment roll which is the basis of such tax; and if the tax is upon personal property, that the assessment roll containing the assessment of the property upon which the tax is levied, does not contain either the name of the owner of such property or the valuation thereof.

3. That it cannot be definitely ascertained from the official record of the proceedings of the board or officer levying the tax, what amount of taxes, or what rate per cent of taxation was intended to be levied.

4. That such taxes have been paid.

5. That the valuation of the property assessed upon which such taxes were levied, was unfair and unequal; provided, however, that no claim of any unfairness or inequality of any valuation of property in the assessment roll shall be heard, unless it appears, either that there was no meeting of the board of equalization authorized by law to equalize such assessment at the time fixed by law to hear and determine such complaint, or if there was such a meeting of such board of equalization, that such board acted in excess of its powers in relation to the valuation objected to; or that the valuation as fixed by the proper board of equalization has been unlawfully increased; but in all such cases the court shall hear the evidence and determine therefrom the amount that is justly due for such taxes, and the tax list containing the record of such taxes shall be prima facie evidence of the amount thereof justly due.

6. That the tax, or some part thereof, is in excess of the amount limited by law, or for a purpose unauthorized by law, but in such case the court shall not cancel the taxes, except as to such excess or as to such unlawful purpose. [1903, ch. 158, § 3.]

§ 1620. **Portion of tax shall be valid.** In all cases where part of any tax heretofore levied is declared void by the court, the remainder of such tax shall be valid, and shall be enforced against any property liable therefor in the same manner that taxes of like nature are now or hereafter may be enforced. [1903, ch. 158, § 4.]

§ 1621. **Taxes, when delinquent.** All taxes which are validated by this article shall become and be delinquent on the first day of July, 1903, and if then unpaid there shall attach thereto a penalty of five per cent, and thereafter such taxes shall be subject to the same penalties and interest as taxes of like nature under the laws which may then be in force; provided, however, that the provision of this section shall not apply to cases where part of a tax, only, is held valid, as provided in the preceding section, but in all such cases such part of a tax so held valid shall become and be delinquent on the first day on which penalties attach to delinquent taxes of like nature under the laws then in force, next succeeding the entry of a judgment declaring such part of tax valid, and thereupon and thereafter such penalties and interest, or either, shall attach thereto as attach to other delinquent taxes of like character under the laws then in force. [1903, ch. 158, § 5.]

§ 1622. **Taxes held valid. Exception.** In all cases where real property has been sold for delinquent taxes which shall have been validated by this article, and such sale shall be adjudged void, and such taxes shall be adjudged valid under the provisions of this article, in any action, such taxes

so held valid, shall remain and be a lien upon the land so sold, and be subject to the penalties and interest, if any, as in the preceding section provided, unless the party to such action claiming such sale to be invalid, shall have tendered to and deposited in the office of the county treasurer, before commencing such action, the full face amount of such taxes, and unless the action in which the validity of such sale, or of such taxes comes in question shall have been commenced before January 1, 1904; provided, that the provisions of this article shall not apply to any action or proceeding now pending between the fee owner of land, and any person or corporation holding a tax certificate or tax deed therefor, involving the validity of such tax certificate or tax deed. [1903, ch. 158, § 6.]

ARTICLE 17.—VALIDATING FUTURE ASSESSMENTS AND TAX LEVIES.

§ 1623. **Assessments valid, when.** Every assessment of real or personal property for the purposes of taxation, and every assessment roll, hereafter made by any officer authorized by law to assess the property described in such assessment roll for the purpose of taxation, and returned to the county auditor of any county in this state, and acted upon and adopted by the board of equalization of such county as an assessment, or assessment roll, shall be held valid; provided, such assessment or assessment roll, if it purports to be an assessment of real property, contains sufficient data from which can be definitely ascertained the description of the property intended to be assessed, and the valuation fixed thereon by the assessor; and if it is an assessment of personal property, contains the name of the owner of the property assessed, and the valuation of such property. [1903, ch. 157, § 1.]

§ 1624. **Taxes valid, when.** All taxes, levied for any purpose, hereafter made in this state, by any board or officer authorized by law to make the same, shall be held valid, provided it can be definitely ascertained from the official records of the proceedings of such officer or board, what amount of taxes, or what rate per cent of taxation was intended to be levied; and provided, further, that this article shall not be construed to validate any tax levy made for any purpose unauthorized by law or which is in excess of the amount allowed by law to be levied. [1903, ch. 157, § 2.]

§ 1625. **Tax held invalid, when.** In all actions in which the validity of any tax hereafter levied comes in question, no tax shall be held invalid unless it shall be made to appear, by the party objecting thereto, that one or more of the following defects exist, to wit:

1. That the property assessed was not subject to taxation; or in the case of an assessment of personal property, that the person assessed was not liable to taxation at the time such assessment was made, for the property or some part thereof assessed to him.

2. If the tax is upon real property, that the description of the property intended to be assessed, or the valuation thereof, cannot be definitely ascertained from the assessment roll which is the basis of such tax; and if the tax is upon personal property, that the assessment roll containing the assessment of the property upon which the tax is levied, does not contain either the name of the owner of such property, or the valuation thereof.

3. That it cannot be definitely ascertained from the official record of the proceedings of the board or officers levying the tax, what amount of taxes, or what rate per cent of taxation was intended to be levied.

4. That such taxes have been paid.

5. That the valuation of the property assessed upon which such taxes were levied, was unfair and unequal; provided, however, that no claim of any unfairness or inequality of any valuation of property in the assessment roll shall be heard, unless it appears, either that there was no meeting of the board of equalization authorized by law to equalize such assessment at the

time fixed by law to hear and determine such complaint, or if there was such a meeting of such board of equalization, that such board acted in excess of its powers in relation to the valuation objected to; or that the valuation as fixed by the proper board of equalization has been unlawfully increased; but in all such cases the court shall hear the evidence and determine therefrom the amount that is justly due for such taxes, and the tax list containing the record of such taxes shall be prima facie evidence of the amount thereof justly due.

6. That the tax, or some part thereof, is in excess of the amount limited by law, or for a purpose unauthorized by law, but in such case the court shall not cancel the taxes, except as to such excess or as to such unlawful purpose. [1903, ch. 157, § 3.]

**§ 1626. Portion of tax valid. Delinquent, when.** In all cases where part of any tax hereafter levied is declared void by the court, the remainder of such tax shall be valid, and shall be enforced against any property liable therefor in the same manner that taxes of like nature are now or hereafter may be enforced, and in all such cases such part of a tax so held valid shall become and be delinquent on the first day on which penalties attach to delinquent taxes of like nature under the laws then in force, next succeeding the entry of a judgment declaring such part of tax valid, and thereupon and thereafter such penalties and interest, or either, shall attach thereto as attach to other delinquent taxes of the character under the laws then in force. [1903, ch. 157, § 4.]

#### ARTICLE 18.—ASSESSMENT OF RAILROAD PROPERTY.

**§ 1627. 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. [1890, ch. 135, § 1; R. C. 1899, § 1313; 1905, ch. 151.]

**§ 1628. Apportionment to counties according to mileage.** The board of equalization shall divide the valuation so found and determined of each continuous line by the number of miles of such line contained in the state, and the result shall be the valuation per mile for which said line shall be assessed. The value of each branch line shall be determined in the same manner, and such valuation per mile shall be apportioned to each county according to the number of miles of such line or branch line contained in such county. [1890, ch. 135, § 2; R. C. 1899, § 1314.]

**§ 1629. Mileage and valuation, how certified to various political subdivisions for taxation.** The state auditor shall at the time of certifying the equalized value of each organized county to the county auditor, also certify the number of miles of each main line of railroad, and branches and sidetracks thereof contained in said county and the valuation per mile of such line or branch line as determined by the state board of equalization and the county auditor of such county shall apportion such valuation to the cities, towns, townships and districts through which such railroads run according

to the number of miles contained in each, as a part of the valuation of such city, town, township and district for the purpose of taxation, and the same shall be taxed as personal property is taxed in each county. [1890, ch. 135, § 3; R. C. 1899, § 1315.]

The franchise, roadway, roadbed, rails and rolling stock of a railroad are personal property for purposes of taxation. *M. & S. Ste. M. Ry. Co. v. Dickey County*, 11 N. D. 107, 90 N. W. 260; *Milwaukee Ry. v. Cass County*, 8 N. D. 18, 76 N. W. 239.

**§ 1630. Taxation in unorganized counties.** The valuation so apportioned to unorganized counties in this state shall be taxed for state purposes only; and such tax shall be levied annually by the state auditor at the same rate as other property is taxed for state purposes, and the state auditor shall notify each railroad company so taxed of the amount of such tax, on or before the first day of December in each year, and such tax must be paid to the state treasurer at the same time and subject to the same penalty as is prescribed by law for the collection of personal property taxes in organized counties, and the state treasurer shall have the same powers, and it shall be his duty to collect such tax in the same manner as county treasurers are authorized by law to collect personal property taxes. [1890, ch. 135, § 4; R. C. 1899, § 1316.]

**§ 1631. Provisions of this article inoperative, when.** If at any time the legislative assembly shall provide by law for the payment of a per cent of gross earnings by railroads as authorized by section 176 of the constitution of this state, then and during the time such law shall be in force the provisions of this article shall be inoperative. [1890, ch. 135, § 5; R. C. 1899, § 1317.]

#### ARTICLE 19.—TAXATION OF BANKRUPT STOCKS.

**§ 1632. Bankrupt stocks, etc., how assessed.** All itinerant, transient or other merchants, salesmen or other persons, and all merchants or salesmen of bankrupt stocks of goods or merchandise, or of stocks of goods or merchandise claimed to have been injured by fire or otherwise, who shall bring into this state any stock of goods at any time after the annual assessment is made and returned shall be liable to taxation upon such stock of goods and merchandise, and the assessor of the township or city, in which such goods or merchandise are offered for sale, shall immediately assess such stock at the same rate at which other merchandise of the same character has been assessed and forthwith return his assessment roll thereof, if an assessor in an incorporated city, to the city auditor, and if not, then to the county auditor. [1890, ch. 141, § 1; 1893, ch. 111, § 1; R. C. 1899, § 1318.]

**§ 1633. Proceedings by city council.** If such assessment roll is returned to the city auditor he shall immediately notify the mayor thereof, who shall thereupon call a meeting of the city council for the purpose of equalizing or correcting such assessment. Such meeting shall be held not less than three nor more than ten days after the return of such assessment, and not less than twenty-four hours' notice of the time and place and purpose of such meeting shall be given to the owner of such stock, which notice must be in writing and may be served personally or by leaving a copy thereof with any person in charge of such stock or employed in selling the same. The city council shall at such meeting hear any complaint as to the assessment of such stock and equalize and assess the same, and may adjourn from day to day until the same is completed; and in the absence of a quorum such meeting may be adjourned from day to day by the city auditor and upon the completion of such equalization the city auditor shall immediately certify such equalized assessment roll to the county auditor, who shall thereupon add such assessment to the tax list for the current year, and extend the taxes for such year thereon, and on the duplicate thereof, or if such duplicate has been delivered to the county treasurer, shall certify the same to such treasurer,

who shall thereupon immediately, upon the receipt of such duplicate or certificate, demand such taxes and collect the same by distraint and sale in default of payment thereof on demand. [1893, ch. 111, § 2; R. C. 1899, § 1319.]

§ 1634. **Assessment by township assessor.** If such assessment is made by a township assessor he shall return the same to the county auditor, who shall thereupon call a meeting of the board of county commissioners in the manner and within the time provided in the preceding section for calling a meeting of the city council, and thereupon the same proceedings shall be had by the board of county commissioners for the equalization of such assessment, and the same notice given of such equalization as provided in said section, and upon the equalization thereof the county auditor shall enter such assessment on the tax list as provided in said section, and the same proceedings shall be had for the collection of such tax as therein provided. [1893, ch. 111, § 3; R. C. 1899, § 1320.]

ARTICLE 20.—COUNTY COMMISSIONERS TO LEVY TAXES IN CERTAIN CASES.

§ 1635. **Tax in incorporated towns and cities to be levied by the county commissioners, when.** Whenever any incorporated city, town or village having an existing liability or indebtedness and authorized to levy taxes for the payment of the indebtedness for which such city, town or village may be liable, fails or refuses to elect proper officers for the government of such city, town or village, it shall be the duty of the board of county commissioners of the county in which such city, town or village is located, upon a proper showing by any person having a legal or subsisting claim against such city, town or village, that there are no legal officers in such city, town or village authorized to levy a tax for the payment of such indebtedness, to levy a tax in the same manner and for the same purposes that the board of directors, trustees or city council would be authorized to levy the same for the payment of such indebtedness; and any person having a claim against such municipality shall have the same right to enforce the levy of such tax by the board of county commissioners that he would have had to compel such levy by the proper authorities of such city, town or village, had they been properly elected and qualified. [1890, ch. 143, § 1; R. C. 1899, § 1321.]

ARTICLE 21.—GOPHER TAX.

§ 1636. **County commissioners 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. [1890, ch. 144, §§ 1, 2; R. C. 1899, § 1322; 1901, ch. 107; 1905, ch. 114, § 1.]

See *State v. Ryan*, 9 N. D. 419, 83 N. W. 865.

§ 1637. **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 requesting 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. [1905, ch. 114, § 2.]

ARTICLE 22.—ADJUSTMENT OF DELINQUENT TAXES DUE THE STATE FROM COUNTIES.

§ 1638. **Discrepancies.** Whenever any material discrepancy shall be found to exist between the statements returned from the several counties and the accounts as shown by the books of the state auditor's office, it shall be the duty of the state examiner, when ordered so to do by the state auditor, to make an examination of the accounts and tax lists of such county and ascertain wherein the discrepancy lies, and make the adjustments in accordance with such examination. [1899, ch. 73; R. C. 1899, § 1323.]

§ 1639. **Statement of taxes charged.** The state auditor shall furnish the board of county commissioners of each county with a statement showing the amount of state or territorial taxes charged to such county for each year preceding the fourth day of November, 1889; also, showing the amount received by the state treasurer on account of such year's taxes, and the balance still unpaid as shown by the books in his office; such statement shall also show the amount of abatements claimed and allowed, if any; also the amount of penalty and interest paid each year. [1891, ch. 102, § 2; R. C. 1899, § 1324.]

§ 1640. **Statement of unpaid taxes.** It is the duty of the board of county commissioners of each county on receipt of such statement to prepare or cause to be prepared at the expense of such county, a statement of the unpaid taxes for each of the years mentioned in the preceding section, showing the amount of unpaid personal property taxes, the amount of abatements remaining in the hands of the treasurer for collection or the amount stricken from the list under the provisions of any law heretofore in force; also showing the amount of taxes on real property uncollected for each year, the amount of abatements or taxes refunded each year and the reasons therefor. Said statement shall be made on such forms and in such manner as may be prescribed by the commission and forwarded to the state auditor as soon as completed. [1891, ch. 102, § 3; R. C. 1899, § 1325.]

§ 1641. **Abatements, how allowed.** Upon the receipt of the statements provided for above, it shall be the duty of the commission carefully to compare the same with the accounts of the state treasurer now in the auditor's office, and if it is satisfied that the abatements claimed are just and reasonable, it may allow the same and the state auditor shall credit each county with such abatements and notify the county auditor of each county of the adjustment as so determined, and the amount due each fund in the county and each township, city or school district shall be determined and adjusted on the same basis. [1891, ch. 102, § 4; R. C. 1899, § 1326.]

§ 1642. **Abatements allowed, for what reason.** Such commission shall also allow abatements on real property for the following reasons: On account of double assessments of property; on all lands assessed and taxed prior to the entry thereof according to the laws of the United States; on all lands when the taxes have been declared illegal by a court of competent jurisdiction. [1891, ch. 102, § 5; R. C. 1899, § 1327.]

§ 1643. **Consolidated tax account.** When the true balance due from each county to the state shall have been determined, the state auditor shall open an account with each county, and charge the balance due for each year in one account to be known as the "consolidated tax account," and all taxes collected by the counties for the years so adjusted shall be credited to such account and may be reported as collections on account of the "consolidated tax account." [1891, ch. 102, § 6; R. C. 1899, § 1328.]

§ 1644. **Attorney general to enforce payment, when.** In the event of the refusal or neglect of any county to furnish the statement herein required, such commission shall have power to have such statement made at the expense of the county, and in case of the refusal of any county to pay the expense of the county so incurred, the attorney general shall proceed to enforce such payment according to law. [1891, ch. 102, § 8; R. C. 1899, § 1329.]

ARTICLE 23.—REFUNDING OF OUTSTANDING BONDED AND OTHER INDEBTEDNESS OF THE STATE.

§ 1645. **Refunding indebtedness.** To provide for refunding at a lower rate of interest, if possible, the outstanding bonds of the state the payment of which was assumed by the state of North Dakota under the provisions of the report of the joint commission which was approved by the people of the states of North Dakota and South Dakota, and further to provide for the payment or refunding of any maturing bonds of the state, and the capitol warrants issued pursuant to the provisions of chapter 24 of the laws of 1889, the payment of which was assumed by this state, the state treasurer is hereby authorized and empowered and it is made his duty to prepare for issue, and to issue from time to time as occasion requires, the negotiable bonds of the state of North Dakota for such amounts as may be necessary to refund all such outstanding indebtedness, matured or maturing, or subject to the call of the state, or soon to become subject to such call, and for such amounts as may be necessary to refund all the outstanding bonds, whenever the rate of interest can be reduced, or when they become absolutely due, in accordance with the provisions of this article. Such bonds shall be made payable to the purchaser or bearer, be payable in not less than ten years nor more than thirty years from the date of their issue, and bear interest at a rate not exceeding four per cent per annum, payable semi-annually, on the first day of January and July of each year, with coupons attached for each interest payment, and they may be made payable anywhere in the United States. Such bonds shall be executed under the great seal of the state by the governor and treasurer, shall be attested by the secretary of state, and shall be negotiated by the treasurer. [1897, ch. 133, § 1; R. C. 1899, § 1355h.]

§ 1646. **Sealed proposals.** Such bonds shall be exchanged by the state treasurer, at not less than their par value for an equal amount of the indebtedness of the state permitted to be refunded under the provisions of this article, or such bonds may be sold by him for the highest cash price obtainable, but not less than par, and the proceeds shall be applied solely to the payment of such outstanding indebtedness. If such bonds or any part thereof are to be sold for cash, as provided in this section, the state treasurer shall receive sealed proposals for the purchase of the same, and shall give public notice of the sale for at least thirty days preceding such sale, in two or more newspapers of general circulation, one of which shall be published in the city of New York, giving date of such sale, and such bonds shall be sold to the highest bidder for cash. [1897, ch. 133, § 2; R. C. 1899, § 1355i.]

§ 1647. **Board of equalization.** The state board of equalization at the time the other taxes are levied shall levy a sufficient tax annually to pay the interest on such bonds as the same becomes due, which tax shall be collected in the same manner as other state taxes are collected. Such board shall before the maturity of such bonds provide a sinking fund sufficient to retire and pay such bonds at their maturity, and for such purpose shall annually levy a tax sufficient to provide such fund. No tax or fund provided for the payment of such bonds or interest thereon shall be used for any other purpose. [1897, ch. 133, § 3; R. C. 1899, § 1355j.]

§ 1648. **Cancellation of coupons.** Whenever the interest coupons attached to such bonds become due or any of such bonds mature, it shall be the duty of the state treasurer to pay the same on presentation out of any funds in

his hands applicable thereto, and to cancel them when paid. Whenever any of such bonds become subject to the call of the state and funds are in the hands of the treasurer to be applied to the payment thereof, he shall call in for payment and cancellation such portion of the same as he may have funds to pay; and, if to the advantage of the state he may purchase any of said bonds at their market value and retire and cancel the same, with the sinking fund tax, as the same shall be collected and received by him. [1897, ch. 133, § 4; R. C. 1899, § 1355k.]

§ 1649. **Appropriation.** There is hereby appropriated out of the state treasury all of the funds realized by the sale of the bonds provided for in this article for the purposes in this article provided. [1897, ch. 133, § 5; R. C. 1899, § 1355l.]

#### ARTICLE 24.—TAX FOR BONDED INDEBTEDNESS AND SINKING FUND.

§ 1650. **State board of equalization to levy tax for bonded indebtedness.** The state board of equalization, at the time the other taxes are levied, shall levy a tax in 1902 and annually thereafter, equal in amount to one-thirtieth of the present bonded indebtedness of the state, which tax shall be collected in the same manner as other taxes are collected, and when collected shall be used to retire and pay any state bonds at their maturity to the extent of the tax then collected and available for that purpose. No tax or fund provided for the payment of such bonds shall be used for any other purpose. Nothing in this section shall be construed to repeal any prior law for the levying of a sinking fund, but in no case shall the board levy a double tax for the same purpose. [1901, ch. 43.]

§ 1651. **Bond interest, normal schools.** The state board of equalization at its meeting in 1903, and annually thereafter, is hereby authorized and required to include in the tax levy for bond interest, a sufficient amount to pay the interest on the state normal school bonds issued under the provisions of section 10, chapter 89, session laws of 1891. [1903, ch. 125, § 1.]

§ 1652. **Sinking fund, normal schools.** The state board of equalization at its meeting in 1903, and annually thereafter, is hereby authorized and required to include in the tax levy for bond sinking fund a sufficient amount to create a fund to pay the state normal school bonds issued under the provisions of section 10, chapter 89, session laws of 1891, at maturity. [1903, ch. 125, § 2.]

§ 1653. **Duties of state treasurer.** The state treasurer is hereby authorized and required to pay all interest that may hereafter become due upon the state normal school bonds issued under the provisions of section 10, chapter 89, session laws of 1891, out of the state bond interest fund, and he is further authorized and required to pay said bonds at maturity out of the state bond sinking fund as provided in section 1652. [1903, ch. 125, § 3.]

#### ARTICLE 25.—STATE REVENUE BONDS.

§ 1654. **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. [1905, ch. 55, § 1.]

§ 1655. **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. [1905, ch. 55, § 2.]

§ 1656. **Tax for interest and sinking fund.** 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. [1905, ch. 55, § 3.]

§ 1657. **Cancellation of coupons and bonds.** 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. [1905, ch. 55, § 4.]

§ 1658. **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. [1895, ch. 55, § 5.]

§ 1659. **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. [1905, ch. 55, § 6.]

ARTICLE 26.—PROVIDING FOR ASSESSMENT, LEVY AND COLLECTION OF TAXES WHERE TAXABLE PROPERTY FOR ANY REASON ESCAPED TAXATION FOR THE YEAR 1889 AND PRIOR YEARS.

§ 1660. **When assessment omitted.** In all cases when any buildings or lands in this state have heretofore been subject to taxation for the year 1889, and subsequent years, but the assessment or levy of taxes therein for any year or years has been omitted, or such assessment and levy has for any cause been omitted, or set aside, and such property has thereby escaped taxation when subject to taxation, all such taxes the assessment or levy of which has heretofore or may hereafter be omitted or set aside, including all buildings on lands heretofore declared forfeited to the state and omitted from assessment by reason thereof, shall hereafter be assessed and levied upon such buildings and lands and collected in the manner hereinafter provided. [1897, ch. 28, § 1; R. C. 1899, § 1355m.]

§ 1661. **Auditor to make list. Duty of county commissioners. Publication of notice.** It shall be the duty of each county auditor, on or before the first day of June next, after the passage of this act, to make a separate list of all lands in his county since the year 1889, and of all buildings standing upon lands owned by parties other than the owners of such buildings, upon which taxes were not assessed and levied for any such year or years, or were for any cause set aside, or omitted, or has for any reason escaped taxation, but which were subject to taxation for such year. Upon the completion of such list or lists, it shall be the duty of the county auditor to forthwith notify each county commissioner of his county of such completion, and thereupon a special meeting of the board of county commissioners of such county for the purpose set forth in this act, shall be called in the manner prescribed by law, to be held at a time and place in such call designated,

not less than two weeks from the time of the making of such call and not later than the fifteenth day of July next, after the passage of this act. After any such meeting shall have been called, it shall be the duty of the county auditor of the county to give notice of the time and place of such meeting, by publication in a newspaper published in his county, if there be any newspaper published therein, and if there be none, then in a newspaper published in the judicial district. Such notice shall be published at least three times before the day appointed for such meeting, and at intervals of not less than five days. Such notice may be in the following form:

State of North Dakota, }  
County of ..... }  
Office of County Auditor. }

Notice is hereby given that a special meeting of the board of county commissioners of the county, for the purpose set forth in an act of the legislative assembly, entitled "An act to provide for the assessment, levy and collection of taxes upon property in cases where such property was subject to taxation, but the assessment and levy of taxes thereon have been omitted, or when such property has from any cause escaped assessment and taxation, approved, eighth day of March, A. D. 1897," will be held at the court house in.....county, commencing on the.....day of .....A. D. 1897, at.....o'clock a. m.

.....  
County Auditor.

[1897, ch. 28, §§ 2, 3; R. C. 1899, § 1355n.]

§ 1662. Meeting of county commissioners. The board of county commissioners shall meet at the time and place appointed therefor in such call, and at such meeting shall add to the list aforesaid, furnished by the county auditor, a description of each tract of land within the county, owned by parties other than the owners of such buildings, not already upon such list, upon which taxes were not assessed and levied for the year or years for which such list shall have been made, which were subject to taxation for such year, but no accidental failure or omission by either the county auditor or the board of county commissioners to place upon any such list any tracts of land or buildings within the county, subject to be placed therein under the provisions of this act, shall in any manner affect the validity of anything done under the provisions of this act with reference to such lands and buildings as are actually placed upon such list. [1897, ch. 28, § 4; R. C. 1899, § 1355o.]

§ 1663. Shall ascertain cash value. After such list shall have been perfected as hereinbefore provided, such board shall proceed at such meetings to ascertain the true and actual cash value for each year for which such lists shall have been made, of each tract of land and of each building described in such list, and for that purpose may summon before it and examine under oath such witnesses as it may deem necessary for its information in regard to such value. In making such valuation the board shall have due regard for the average valuation of real property in the county, made according to law, for the year for which such lists shall have been made, for the purpose of taxation, and also for the relative situation, quality of soil, improvements and natural advantages possessed by such tract and lot. Any person interested in any lands or any buildings on such list shall have a right to be present at such meeting, and to be heard as to the valuation of such lands or buildings, and to swear and examine witnesses before such board upon the question of such valuation. After the valuation of any tract of land or building upon such list shall have been ascertained, as hereinbefore provided, such value shall thereupon be entered upon such list opposite to the description of such tract or building, in a column set apart for that purpose. When the valuation of all of the several tracts of lands and buildings upon such

lists shall have been ascertained and entered thereon, such list and valuation shall be authenticated by the signature of the chairman of the board, which shall be a sufficient authentication thereof for all purposes. Such meeting may be adjourned from day to day, but shall not continue longer than for ten days, and the valuation of all tracts of lands and buildings upon such list shall be fully completed and authenticated in the manner hereinbefore provided, on or before the first day of August next, after the passage of this act. [1897, ch. 28, § 5; R. C. 1899, § 1355p.]

**§ 1664. Duty of state board of equalization.** After such list and valuation shall have been completed, as hereinbefore provided, the same shall remain in the custody of the county auditor of the county, and he shall on or before August first of each year, make a certified copy of such list and valuation, and forward the same to the state auditor. At the next session of the state board of equalization it shall be the duty of the state auditor to lay before the same all certified copies of such lists and valuation as shall have been received by him, and it shall thereupon be the duty of such state board to equalize the valuation of the property contained in each of such lists with the valuation of the property throughout the state, made according to law for purposes of taxation for the year for which such lists shall have been made, which equalization shall be made in the same manner as near as may be, as is provided by law for equalization of values of property throughout the state by such board. [1897, ch. 28, § 6; R. C. 1899, § 1355q.]

**§ 1665. Lists returned to county auditor.** When the state board shall have completed its equalization of the property contained in each of such lists as hereinbefore provided, the state auditor shall return each of such copies of lists received by him as aforesaid to the auditor of the county wherein the property therein described is situated, together with a statement specifying the per centum, if any, to be added to or deducted from the valuation as made by the county board as determined by such state board, and upon the receipt of such copy and statement it shall be the duty of the county auditor to add to or deduct from each tract and building upon such list the required per centum on the valuation thereof as made by the county board, and the value of each tract of land and of each building upon such list as corrected shall be entered by such county auditor upon such list, opposite to the description thereof, in a column provided for that purpose. [1897, ch. 28, § 7; R. C. 1899, § 1355r.]

**§ 1666. Authenticated by county auditor.** After the valuation of such property shall have been corrected as hereinbefore provided, it shall be the duty of the county auditor to ascertain and set down in a list, opposite to the description thereof, in columns provided for that purpose, the rate of taxation for all purposes to which each tract of land and each building upon such list was subject for the year for which such list shall have been made, and such auditor shall thereupon calculate the amount of tax upon each of such tracts of land and buildings at such rate, and set down such amount upon such list, opposite to the description of the tract or building upon which such amount of taxes so calculated, in columns appropriated for that purpose. When such amounts shall have been so calculated and set down on such list the same shall be authenticated by the signature to such list by such auditor, which shall be deemed a sufficient authentication thereof for all purposes. [1897, ch. 28, § 8; R. C. 1899, § 1355s.]

**§ 1667. Taxes constitute lien on property.** After the amount of tax upon each tract of land and each building upon such list shall have been calculated and entered thereon as hereinbefore provided, the county auditor shall make out and certify two complete duplicates of such list as the same items appear, one of which shall be transmitted to the state auditor for custody in his office, and the other of which shall be forthwith delivered to the county treasurer of the county, and shall constitute his warrant for the collection

of the taxes herein specified. Upon the receipt of such duplicate by the county treasurer, the respective amounts of tax therein specified upon each tract of land and buildings therein described shall become forthwith due and payable, and become a lien upon the tract or buildings upon which the same shall have been so levied, and it shall become the duty of such treasurer forthwith to collect such tax. [1897, ch. 28, §§ 9, 10; R. C. 1899, § 1355t.]

§ 1668. Notice to be published. In case any tax upon any such duplicate shall not be paid within three months after the receipt of such duplicate by the county treasurer, such tax shall thereafter draw interest at the rate of twelve per cent per year, and it shall be the duty of such treasurer to apply to the district court of the county, at the next term after the receipt by him of such duplicate for judgment against the tract of land or building upon which such tax shall have been assessed for the aggregate amount of the taxes and interest thereon, upon all duplicates in his hands made under the provisions of this act. Notice of such application shall be given by publication in a newspaper published in the county, if any there be published, and if no newspaper be published in such county, then in a newspaper published in the judicial district. Such notice shall be published at least three times, at intervals of at least five days, the last publication being made at least ten days before the term of court at which such application for judgment is made. Such notice may be in the following form:

State of North Dakota, }  
County of ..... } ss.  
Treasurer's Office, }

Notice is hereby given that in pursuance of an act of the legislative assembly entitled (quote title) I shall apply to the district court in and for this county, at a term thereof to be held at.....in..... in this county, commencing on the.....day of.....A. D. 189.., on the first day of such term, for judgment against each and every one of the tracts of land and buildings hereinafter described for all taxes levied thereon, under provisions of said act, remaining unpaid, together with interest thereon, and costs as allowed by such act. The following is a description of the lands and buildings against which judgment will be applied for:

Dated at.....this ..... day of .....A. D. 189..

.....  
County Treasurer.

No service of summons nor notice other than publication of the notice in this section provided for shall be necessary to give the court to which such application is made jurisdiction to receive and act upon the same as hereinafter provided. [1897, ch. 28, § 11; R. C. 1899, § 1355u.]

§ 1669. Application. The application referred to in the previous section may be in the following form:

To the district court in and for the county of.....  
The application of.....county treasurer, in and for .....county:

That in pursuance of an act of the legislative assembly entitled (quote title), certain taxes were levied upon each of the several tracts of lands and buildings hereinafter described, situated in said county, and duplicate lists of such tracts and buildings, and such taxes were placed in my hands in accordance with such act for the collection of such taxes; that more than three months have elapsed since the receipt by me of such duplicates, and there remains unpaid upon each of the following described tracts of lands and buildings, taxes charged against the same in such duplicates to the amount in aggregate in the sum hereinafter set opposite the description of

such tract or building; and that said duplicates were placed in my hands on the.....day of.....A. D. 189..

The following is a list of the lands and buildings referred to, and of the amount of the tax charged against the same upon such duplicates remaining unpaid. (Insert list.)

The applicant therefore prays the judgment of the court that the respective amounts above specified, together with interest thereon from the..... day of.....189.. at the rate of twelve per cent a year, be adjudged to be a lien upon the respective tracts of lands and buildings opposite to the description of which the same are set, and that such lands and buildings be sold for the payment thereof.

.....  
County Treasurer.

All taxes remaining unpaid upon such duplicates shall be included in one application. [1897, ch. 28, § 12; R. C. 1899, § 1355v.]

**§ 1670. Filing of application and proof.** Upon filing such application with the court, together with proof of publication of the notice hereinbefore provided for, which may be by the affidavit of the publisher of the newspaper in which the same shall have been published, or the foreman, clerk or business manager thereof, the court shall forthwith proceed to enter judgment against each tract of land or building in such application described for which no objection shall be filed, as provided for in the next section; adjudging that the amount of tax stated in such application to be one therein, together with interest thereon as hereinbefore provided, and costs be a lien upon such tract of land or building, as the case may be, and the whole thereof, and that such tract of land or building, as the case may be, be sold for the payment of the same. All the several tracts of lands and buildings described in such application, for which no objection shall be filed, shall be included in one judgment. [1897, ch. 28, § 13; R. C. 1899, § 1355w.]

**§ 1671. Objections filed. Costs.** Any person legally or equitably interested in any such tract of land or in any building described in such application, may at the time mentioned in such notice of application, appear in court and file objections in writing against the rendition of judgment against such tract or building, as the case may be, and thereupon the court shall proceed to try and determine the issue raised by such objections, and shall render judgment according to law and the rights of the parties. All the several tracts of lands and buildings in such application, for which objections shall be filed, but against which judgment shall be rendered upon the trial thereof shall be included in one judgment. No appeal, certiorari or other proceedings to review any judgments shall stay proceedings upon such judgment. The costs included in any such judgment shall consist of the expense of publication, of notice of application for judgment and fees of officers of the court, as allowed by law for like services in civil actions; such costs shall be apportioned among the several tracts of land and buildings in such judgment described according to the amount of the tax and interest for which judgment is rendered against the same. [1897, ch. 28, §§ 14, 15; R. C. 1899, § 1355x.]

**§ 1672. Duties of all officers.** All tracts of land or buildings against which any judgment shall be rendered shall be sold by the sheriff of the county to satisfy such judgment, together with costs and expenses of advertisement of and sale, in the same manner and upon like notice as is now or may hereafter be prescribed by law for sales of real estate for nonpayment of taxes; and purchasers at such sales shall acquire like rights as are acquired by purchasers of lands at sales of real property made under the laws of this state for nonpayment of taxes, and the duties of all officers in reference to such sales shall be the same as the duties in reference to the sales of real property under the laws of the state for nonpayment of taxes; and such



lands and buildings shall be subject to redemption within three years from the time of such sales, in like manner as redemption of real property from sales made under the laws of this state for nonpayment of taxes; provided, however, that the holder of any certificate for any piece or parcel of land sold under any tax judgment must, ninety days preceding the maturity of such certificate, give personal notice to the owner, if a resident of the state, of the expiration and maturity of such certificate, and if the owner of any such piece or parcel of land is a nonresident of the state, such notice may be given by registered letter, addressed to such owner at his last known post office address, and in case the property covered by such certificate is occupied, the service of such notice shall in addition to the foregoing provision be made upon the person in possession thereof; also, by publication of the maturity of such certificate in some newspaper published in the county where the land is situated; or otherwise as hereinbefore provided, at least thirty days preceding the expiration and maturity of such certificate, and the owner may redeem such certificate by paying the amount named therein, together with accrued interest and costs. Proof of the notice herein provided for must be filed in the office of the clerk of the district court prior to the maturity of such certificate. The fee simple of any piece or parcel of land named in any certificate shall not rest in the holder thereof until the notice provided for herein is given and due proof thereof filed with the clerk of the district court. [1897, ch. 28, § 16; R. C. 1899, § 1355y.]

§ 1673. **Moneys, how accounted for. Article, how construed.** All moneys collected or received by the county treasurer under the provisions of this article shall be distributed and accounted for in like manner as taxes levied and collected under the laws of this state. This article shall not be construed to charge taxes against any property which at the time the same may have been purchased in good faith and prior to the taking effect of this article, appeared upon the books of the county as clear and free from any prior taxes thereon. [1897, ch. 28, §§ 17, 18; R. C. 1899, § 1355z.]

#### ARTICLE 27.—PROTECTION OF PUBLIC CREDIT.

§ 1674. **Funding warrants, when issued.** The state treasurer, with the advice and consent of the governor and state auditor, is authorized and directed to pay all state warrants legally issued, that may have been or may hereafter be presented to him for payment; provided, that the money to pay the same can be obtained at a rate of interest not to exceed eight per cent; and the auditor is authorized and directed to issue funding warrants in lieu of the warrants so paid and the treasurer is authorized and directed to apply all state funds by him received and not otherwise lawfully appropriated, to the payment and cancellation of the so-called funding warrants; provided, further, that nothing in this chapter shall authorize said treasurer, nor shall said auditor and governor consent to issue funding warrants in excess of eighty thousand dollars, nor shall they anticipate the needs of the state for a longer period than sixty days at any one time. [1879, ch. 58, § 2; 1890, ch. 113, § 1; 1891, ch. 94, § 1; R. C. 1899, § 1330.]

#### ARTICLE 28.—PROPERTY SOLD TO STATE OR COUNTY FOR TAXES.

§ 1675. **County commissioners to institute and conduct proceedings.** The board of county commissioners in any county in this state is hereby authorized to cause the proceedings hereinafter provided to be instituted and conducted, whenever in the judgment of the said board it is advisable to do so. Whenever the board of county commissioners desire such proceedings to be instituted, it shall, at some regular meeting, pass a resolution to that effect, and the proceedings hereinafter provided shall be thereupon instituted forthwith. [1901, ch. 161, § 1; 1903, ch. 161, § 1.]

**§ 1676. County auditor to make list of lands. Contents** The county auditor shall make a list of every tract of land which appears upon the records of said county to have been sold to the state or county more than three years prior to the date of such resolution, and upon which land the taxes for which it was sold have not been paid to the county by redemption or assignment to an actual purchaser, subsequent to the sale. Such list shall include all such pieces or parcels which may at such tax sale or sales have been struck off or declared to have been forfeited to the state or county, whether such sale or forfeiture was valid or invalid. The list shall contain a description of each piece or parcel of land upon which said taxes shall not have been paid as aforesaid, the name of the person in whose name the piece or parcel was last assessed at the time of filing the list, or if assessed to unknown owner, so state, and the amount of tax for each year up to but excluding the taxes for the year in which the list is filed, with accrued penalty and interest. The county auditor shall attach to said list his affidavit to the effect that the same is correct. He shall immediately file such list in the office of the clerk of the district court in his county, or in the county to which his county is attached for judicial purposes. The filing of such list shall have the force and effect of the filing of a complaint in an action by the county against each piece or parcel of land in such list described, to enforce against it the taxes therein appearing against it, and the penalties and interest for the several years for which such taxes remain unpaid and also the effect of notice of pendency of such action to all parties interested in such lands or who may become interested therein subsequent to the filing of such list. [1897, ch. 67, § 1; R. C. 1899, § 1331; 1901, ch. 161, § 2; 1903, ch. 161, § 2.]

Sufficient affidavit to delinquent tax list. *Emmons Co. v. Lands First National Bank of Bismarck*, 9 N. D. 583, 84 N. W. 379.

"Immediately and forthwith" are directory. List filed in time. *Idem*, 9 N. D. 583, 84 N. W. 379.

**§ 1677. Duty of county clerk.** When the list required in section 1676 shall have been filed the clerk shall forthwith make a copy thereof, and attach thereto a notice which may be in substantially the following form:

State of North Dakota, } District Court,  
 )  
 ) ss.  
 County of ..... } ..... Judicial District.

The state of North Dakota, to all persons, companies or corporations who have or claim any estate, right, title or interest in, or claim to, or lien upon any of the several pieces or parcels of land in the list hereto attached described.

Pursuant to a resolution of the board of county commissioners of ..... county, adopted on the ..... day of ....., 19...., the county auditor of said county has filed in my office a list of all real property heretofore sold to the state or county for taxes, and remaining unredeemed for more than three years, a copy of which list is hereto attached. Therefore you, and each of you, are hereby required to file in the office of the clerk of said court within thirty days after the last publication of this notice, your answer in writing, setting forth any objections or defense you may have to the taxes or any part thereof, or the penalties or interest thereon, upon any piece or parcel of land described in such list, in, to or on which you have or claim any estate, right, title, interest, claim or lien, and in default thereof, judgment will be entered against each piece or parcel of land for taxes in such list appearing against it, for penalties and costs.

(Signed) .....

Clerk of the District Court in the County of .....

[1897, ch. 67, § 3; R. C. 1899, § 1333; 1901, ch. 161, § 3; 1903, ch. 161, § 3.]

**§ 1678. County auditor shall publish list. Publisher shall make affidavit of publication.** The county auditor shall cause the said notice and list to be forthwith published, once in each of three consecutive weeks, in some news-

paper of general circulation, printed in the English language, published in the county in which the proceedings are instituted, or if there be no such newspaper published in either county, then in some newspaper published within the judicial district. The newspaper in which such publication shall be made shall be designated by a resolution of the board of county commissioners of the county in which the taxes are laid, at least ten days before the publication of such list; a copy of which resolution, certified by the county auditor, shall be filed in the office of the clerk of the district court. The owner, publisher, manager or foreman in the printing office of the newspaper in which such notice and list shall be published, shall make and file with the clerk of the district court an affidavit of such publication, stating the day in which each publication was made, and shall also file with the clerk three copies of each number of the paper in which the notice and list shall have appeared. 1897, ch. 67, § 4; R. C. 1899, § 1334; 1901, ch. 161, § 4; 1903, ch. 161, § 4.]

Paper for publication, how selected. Cass County v. Improvement Co., 7 N. D. 528, 75 N. W. 775.

Publication of delinquent tax list legal. Emmons County v. Lands First National Bank of Bismarck, 9 N. D. 583, 84 N. W. 379.

Deviations in phraseology or arrangement not fatal. Darling et al v. Purcell et al, 13 N. D. 288, 100 N. W. 726.

Not vulnerable to the objection that it delegates legislative power. Act complete and in force in every county. Is constitutional. Pickton v. Cass County, 13 N. D. 242, 100 N. W. 711.

Jurisdiction to enter judgment hinges on the fact of publication. Cruser & Baker v. Williams, 13 N. D. 284, 100 N. W. 721.

Absence of county seal does not invalidate certificate designating newspaper. Darling et al v. Purcell et al, 13 N. D. 288, 100 N. W. 726.

§ 1679. **Answer of defense.** Any person, company or corporation having any estate, right, title, or interest in, or lien upon any piece or parcel of land embraced in such list as published, may within thirty days after the last publication of such notice, file in the office of the clerk of the district court an answer verified as pleadings in civil actions setting forth the defense or objections to the tax or penalty against such piece or parcel of land, which answer need not be in any particular form, but shall clearly refer to the piece or parcel of land intended and shall set forth in ordinary and concise language the facts constituting the defense or objections to such taxes or penalties; and if the list shall embrace the taxes for two or more years, the defense or objections may be to the taxes or penalties for one or more of such years. [1897, ch. 67, § 5; R. C. 1899, § 1335; 1901, ch. 161, § 5; 1903, ch. 161, § 5.]

§ 1680. **County clerk shall enter judgment, when. Form of.** Upon the expiration of thirty days from the last publication of such notice and list, the said clerk shall, the affidavit of publication being filed, enter judgment against each and every one of such pieces or parcels as to which no answer shall have been filed for the amount of taxes, interest and penalty appearing from the list to be due thereon and the costs of the proceedings, which judgment shall include all of such pieces or parcels and shall be substantially in the following form:

State of North Dakota, } District Court,  
  } ss  
County of ..... } .....Judicial District.

In the matter of proceedings to enforce payment of taxes on real property sold to the state or county and remaining unredeemed for more than three years.

A list of real property sold to the state or county for taxes and remaining unredeemed more than three years, in the county of ....., having been duly filed in the office of the clerk of this court, and the notice and list required by law having been duly published as required by law, and no answer having been filed by any person, company or corporation as to the taxes upon any pieces or parcels of land hereinafter described, and more than thirty days

having elapsed since the publication of such notice and list, it is hereby adjudged and decreed that each piece or parcel of land hereinafter described is liable to taxes, interest, penalties and costs to the amounts set opposite the same, as follows: (Here insert correct description of each piece or parcel and the aggregate amount due thereon.)

And the amount of taxes, interest, penalties and costs to which as hereinbefore stated each of such pieces or parcels of land is liable, is hereby declared a lien upon such piece or parcel of land as against the estate, right, title, interest, claim or lien of whatever nature in law or in equity of every person, company or corporation whatsoever. And it is adjudged that unless the amount to which each of such pieces or parcels is liable, be paid, each of such pieces or parcels be sold as provided by law, to satisfy such amount to which it is liable.

.....  
 Clerk of District Court, County of.....

Such judgment shall be entered by the clerk in a book to be kept by him to be called the "Real Estate Tax Judgment Book," and shall be dated and signed by the clerk. The judgment shall be written out on the left hand pages of said book, leaving the right hand pages blank for entries hereinafter provided; provided, however, that if any person shall desire to pay the taxes charged against any piece or parcel in said list before judgment is entered, he shall procure from the clerk a statement, showing the amount so charged, for the several years against such tract in said list, including accrued costs, and upon the payment of the original taxes so charged, with interest thereon from the time each of the same became delinquent and accrued costs, to the county treasurer, the treasurer shall issue his receipt to such person showing said taxes to be paid in full and shall file a duplicate of such receipt in the clerk's office, the filing of which duplicate shall be equivalent to a dismissal of the proceedings as to the tract on which the taxes have been paid, and such tax shall be omitted from the judgment entered by the clerk. [1897, ch. 67, § 6; R. C. 1899, § 1336; 1901, ch. 161, § 6; 1903, ch. 161, § 6.]

Publication and filing affidavit authorizes entry of judgment. Order for judgment not necessary; clerk acts ministerially. *Emmons Co. v. Thompson et al*, 9 N. D. 598, 84 N. W. 379.

Judgment not affected by errors in computation of interest or penalty. *Darling et al v. Purcell et al*, 13 N. D. 288, 100 N. W. 726.

**§ 1681. Commissioners employ attorney, when. Court to dispose of case.** If an answer shall be filed within the time hereinafter provided, as to the taxes and penalties upon any piece or parcel of land embraced in said list as published, the issue raised by the answer shall stand for trial at any general or special term appointed to be held in said county. The county commissioners of the county in which such taxes are laid may employ any other attorney to assist the state's attorney therein. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall proceed without delay, without a jury, and summarily hear and determine the objections or defenses made by the several answers, and shall dispose of all said answers, and direct judgment accordingly at said term, and in the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits, and any person making answer as herein provided shall be entitled to a separate trial upon the issues raised by his answer. [1897, ch. 67, § 7; R. C. 1899, § 1337; 1901, ch. 161, § 7; 1903, ch. 161, § 7.]

**§ 1682. Judgment against land, when.** If after a hearing the court shall sustain the taxes and penalties in whole or in part against any piece or parcel of land, judgment shall be rendered against each of such pieces or parcels for the amount which the court decides is chargeable against the same, which judgment may be substantially in the form prescribed in section 1680, except that it shall, in addition, state that the same was rendered after answer and

trial; and, after the description of each piece or parcel shall be stated the name of the person, company or corporation answering as to said piece or parcel. If the court sustains the defense or objection to the taxes and penalties as to any piece or parcel of land, the judgment shall after the statement of the lands against which judgment is given, state that all other pieces or parcels not embraced in that or the prior judgments of the court, and which are described in the list as published, are discharged from the taxes in said list set down against such other pieces or parcels, and from all penalties, and the court may in its discretion award disbursements against the county laying such taxes, and in favor of the party answering as to the pieces or parcels so discharged. [1897, ch. 67, § 8; R. C. 1899, § 1338; 1901, ch. 161, § 8; 1903, ch. 161, § 8.]

**§ 1683. List filed with clerk prima facie evidence. Tax invalid, when.** In all proceedings under this article the list filed with the clerk of the district court shall be prima facie evidence of the validity of all taxes charged therein. No tax involved in such proceedings shall be held invalid by reason of any irregularity in the assessment or assessment roll, or levy; provided, the assessment roll contains sufficient data from which can be definitely ascertained the description of the property intended to be assessed and the valuation fixed thereon by the assessor; and provided, the levy of such tax was made by any board or officer authorized by law to make the same, and it can be definitely ascertained from the official records of the proceedings of such officer or board what amount of taxes or what rate per cent of taxation was intended to be levied; and, provided, such levy was for a lawful purpose and within the limit authorized by law. No tax involved in proceedings under this article shall be held invalid unless it be made to appear by the party objecting thereto that one or more of the following defects exist, to wit:

1. That the property was not subject to taxation.
2. That the description or valuation of the property cannot be definitely ascertained from the assessment roll.
3. That it cannot be definitely ascertained from the official record of the proceedings of the board or officer levying the tax what amount of taxes or what rate per cent of taxation was intended to be levied.
4. That such taxes have been paid.
5. That the valuation of the property for taxation was unfair or unequal; provided, however, that no claim of any unfairness or inequality of any valuation of property shall be heard unless it appears either, that there was no meeting of the board of equalization authorized by law, to hear and determine such complaint, or if there was such meeting of such board, that it acted in excess of its powers in relation to the valuation objected to; or, that the valuation fixed by the proper board has been unlawfully increased; but in all such cases the court shall hear the evidence and determine therefrom the amount that is justly due for such taxes.
6. That the tax or some part thereof is in excess of the amount limited by law, or for a purpose unauthorized by law; but in such cases the court shall not cancel the taxes except as to such excess or as to such unlawful purpose. [1903, ch. 161, § 9.]

Judgment may be rendered notwithstanding taxes paid. *Purcell et al v. Farm Land Co. et al*, 13 N. D. 327, 100 N. W. 700.  
See note, 13 N. D. 386.

**§ 1684. Judgment final. Exceptions.** The judgment which the court shall render shall be final, except that upon application of the county, or other party against whom the court shall have decided the point raised by any defense or objection, the court may, if in its opinion the point is of great public importance, or likely to arise frequently, make a brief statement of the facts established, bearing on the point and of its decision, and forthwith transmit the same to the clerk of the supreme court, who shall enter the same as a cause pending in such court, and place the same on the term calendar of such court

for the term then in session, or for the first term thereafter. And the same shall be entitled to preference over any other business before such court, and shall be decided by such court at the term for which it shall be entered on the calendar. As soon as it shall be decided, the clerk of the supreme court shall enter the proper order and forthwith transmit a certified copy of such order to the clerk of the proper district court; provided, that such proceedings if applied for by a party objecting to the taxes shall not stay the entry of judgment nor stay the sale thereunder unless the party applying therefor shall execute and file with the clerk of the district court an undertaking with at least two sufficient sureties to be approved by the judge of the district court, conditioned, that such party will pay all taxes, penalties, interest and costs awarded against him in such proceedings if the decision of the district court is affirmed in whole or in part. The same costs and disbursements shall be allowed to either party on such proceedings as are allowed by law in appeals to the supreme court. [1897, ch. 67, § 10; R. C. 1899, § 1340; 1901, ch. 161, § 10; 1903, ch. 161, § 10.]

§ 1685. **Tax judgments. Duty of clerk of court.** When the tax judgment pursuant to this article shall be entered against those tracts as to which no answer has been filed, the clerk of the district court shall forthwith deliver to the sheriff of the county a certified transcript of such judgment, written on the left hand pages of a book to be provided by the county, and the sheriff upon receipt of such transcript shall proceed as hereinafter provided. [1897, ch. 67, § 11; R. C. 1899, § 1341; 1901, ch. 161, § 11; 1903, ch. 161, § 11.]

§ 1686. **Taxes paid before sale.** If before sale, any person wishes to pay the amount adjudged against any piece or parcel of land, such person may pay the same to the sheriff, with interest and accrued costs, if any; and the sheriff shall thereupon give a receipt for such payment and pay the amount collected, after deducting his fees, to the county treasurer. [1901, ch. 161, § 12; 1903, ch. 161, § 12.]

§ 1687. **Sheriff shall sell land, when.** After thirty days from the date of any tax judgment, if the amount therein charged shall not have been paid, the sheriff shall sell the piece or parcel of land upon which the taxes stand charged in such judgment; before making such sale he shall give notice thereof by posting such notice, one copy in the office of the clerk where the judgment shall have been entered; one copy in the office of the treasurer; and one copy at the county seat of the county, in some conspicuous place, at least ten days before the day of sale; and by publishing such notice, once in each of three consecutive weeks, the last publication to be not less than ten days before the day of sale, in some newspaper printed in the English language and of general circulation, published in the county where such lands are situated, to be designated by resolution of the board of county commissioners; if there be no such newspaper published in the county where the proceedings are instituted, then in some newspaper published within the judicial district, which notice may be substantially in the following form:

TAX JUDGMENT SALE.

Pursuant to a real estate tax judgment of the district court in the county of ..... entered on the ..... day of ....., 19...., in proceedings for enforcing payment of taxes upon real estate sold for taxes to the state or county and remaining unredeemed, I shall on the ..... day of ..... at ten o'clock in the forenoon, at ....., in the town of ....., and county of ....., sell the lands which are charged with taxes in said judgment and on which such taxes shall not have been previously paid.

.....  
 Sheriff of .....County.

At the time and place appointed in such notice, the sheriff shall commence the sale of such land, and proceed to the sale thereof from day to day (Sundays

and legal holidays excepted), until the whole shall be sold. [1897, ch. 67, § 12; R. C. 1899, § 1342; 1901, ch. 161, § 13; 1903, ch. 161, § 13.]

§ 1688. **Sale by public vendue, how.** The sheriff shall sell by public vendue each piece or parcel of land separately in the order in which they are described in the judgment and by the description therein, but if the sum bid for any piece or parcel shall not be paid before the sale closes, he shall again offer such piece or parcel for sale. In offering the lands for sale, he shall state the amount for which each piece or parcel is to be sold; he shall then offer the same in fee to the highest bidder, who shall bid not less than the amount for which the same is to be sold. If no bidder shall bid an amount equal to that for which the piece or parcel is to be sold, then the county treasurer shall bid in the same for the county at such an amount. The treasurer shall attend at the sale and receive all money paid thereon. [1897, ch. 67, § 13; R. C. 1899, § 1343; 1901, ch. 161, § 14; 1903, ch. 161, § 14.]

Act of legislative assembly annulled prior tax sales. *McHenry v. Kidder County*, 8 N. D. 413, 79 N. W. 875.

Cannot charge five dollars for each piece of property sold. *Wilson v. Cass County*, 8 N. D. 456, 79 N. W. 985.

§ 1689. **Sheriff executes certificate to purchaser. Form.** The sheriff shall execute to the purchaser of any piece or parcel a certificate, which may be substantially in the following form: I, ..... sheriff of the county of .....North Dakota, do hereby certify that at a sale of land pursuant to the real estate tax judgment entered in the district court in the county of ....., North Dakota, on the ..... day of ..... 19...., in proceedings to enforce payment of taxes on lands forfeited to the state or county for taxes, which sale was held at ..... in said county of ..... North Dakota, the following described piece or parcel of land in said county, to wit: (Insert description) was struck off and sold to ....., for the sum of ..... dollars; and in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby convey the above described piece or parcel of land to said ..... his heirs and assigns, to have and to hold the same unto the said ..... his heirs and assigns forever, subject, however, to redemption as provided by law.

Witness my hand this ..... day of ..... 19....

.....  
Sheriff of ..... County North Dakota.

Such certificate in case the land shall not be redeemed, shall pass to the purchaser or county the absolute title to the land therein described without any other act or deed whatever, subject, however, to any taxes levied thereon for the year in which the list is filed and subsequent years. Such certificate shall be acknowledged and may be recorded as other deeds of real estate. If any purchaser shall at such sale purchase more than one piece or parcel or if more than one shall be bid in for the county, all of the pieces or parcels so purchased or bid in for the county may be included in the same certificate; but in all cases the certificate must state the amount at which each piece or parcel was sold or was bid in for the county. [1897, ch. 67, § 14; R. C. 1899, § 1344; 1901, ch. 161, § 15; 1903, ch. 161, § 15.]

Title complete at end of redemption period if notice of redemption given. *Darling et al v. Purcell et al*, 13 N. D. 288, 100 N. W. 726.

§ 1690. **Redemption, notice how.** Not more than ninety days preceding the expiration of one year from the day of sale, the owner of such certificate of sale, except the county, shall give notice of the expiration of the time for redemption as follows: He shall deliver to the sheriff of the county for service a notice in writing containing a description of the land sold, the date of sale, the amount sold for, the amount of any subsequent taxes paid by the purchaser or assigns, with date of payment, and further stating that the time for redemption will expire one year from the date of sale; or if the notice

is served less than sixty days before the expiration of the year, then sixty days after the service of said notice; said notice to be signed by the holder of the certificate or his agent or attorney. The said notice shall be served by the sheriff on the occupant of the land therein described in the same manner as a summons in a civil action is served; but if the land is unoccupied the sheriff shall post a copy of the notice in a conspicuous place on the premises. Immediately after completing service of the notice the sheriff shall return the notice to and file the same with the county auditor, together with his return of service thereon, which return shall show when and how the notice was served, and shall be prima facie evidence of the facts therein recited. The time for redemption from any such sale shall not expire until the expiration of sixty days from the date of service of such notice. After the period of redemption shall have expired and no redemption made, the county auditor shall issue to the holder of the certificate of sale a certificate to the effect that the right to redeem has expired, which auditor's certificate of no redemption may be recorded in the office of the register of deeds as an instrument affecting real property. Such certificate or the record thereof shall be prima facie evidence that the right to redeem has expired and after the expiration of two years from its date shall be conclusive evidence of the service of the notice and failure to redeem. [1901, ch. 161, § 16; 1903, ch. 161, § 16.]

**§ 1691. Certificate evidence of compliance.** The certificate of sale shall in all cases be prima facie evidence that all the requirements of law with respect to the sale have been duly complied with. And no sale shall be set aside or held invalid unless the party objecting to the same shall prove, either that the court rendering the judgment pursuant to which the sale was made had no jurisdiction to render the judgment, or that after the judgment, and before the sale such judgment had been satisfied; and such certificate shall be conclusive evidence that due notice of sale, as required by this article, was given and that the piece or parcel of land was duly offered for sale and sold, and the validity of any sale shall not be called in question unless the action in which the validity of the sale shall be called in question shall be brought, or the defense alleging its invalidity be interposed within three years from the date of sale. [1897, ch. 67, § 15; R. C. 1899, § 1345; 1901, ch. 161, § 17; 1903, ch. 161, § 17.]

Irregularity in entry of judgment no ground to vacate sale. *Emmons Co. v. Thompson et al*, 9 N. D. 598, 84 N. W. 385.

Certificate of sale is evidence of lien only. *Cruser & Baker v. Williams*, 13 N. D. 284, 100 N. W. 721.

**§ 1692. Duty of sheriff.** The sheriff shall immediately after such sale set out in his transcript of judgment book opposite the description of each piece or parcel of land, to whom and for what amount the same was sold, and shall deliver the book to the county auditor, who shall keep the same as one of the records of his office; and the sheriff shall also, as soon as possible after the sale, file with the clerk of the district court a report of his proceedings on such sale showing the completion of the same and accompanied by a copy of the notice of sale as published, and an affidavit of the owner, publisher, manager or foreman in the printing office of the newspaper in which such notice was published, showing the date on which the same was published; the clerk shall then mark said judgment satisfied on his records. [1897, ch. 67, § 16; R. C. 1899, § 1346; 1901, ch. 161, § 18; 1903, ch. 161, § 18.]

**§ 1693. Lands bought by county not sold for subsequent taxes. Exception.** Taxes for subsequent years shall be levied on lands bid in for the county the same as on other lands subject to taxation, but such lands shall not again be sold for subsequent taxes unless the lands are redeemed or the right of the county as a purchaser assigned. After the expiration of the time for redemption all lands bid in for the county remaining unredeemed or unassigned after sale shall cease to be taxed, unless the board of county commissioners other-



wise direct. [1897, ch. 67, § 18; R. C. 1899, § 1348; 1901, ch. 161, § 19; 1903, ch. 161, § 19.]

§ 1694. Auditor assigns right to unredeemed lands. Form of assignment.

After any piece or parcel of land shall have been bid in for the county, at any time before the time to redeem expires, and while the same shall remain unredeemed, the county auditor shall assign the right of the county in such piece or parcel of land to any person who shall at any time before the time for redemption expires pay the amount for which the same shall have been bid in, with interest and the amount of any subsequent taxes, penalties and interest upon the same, and shall execute to such person an assignment which may be substantially in the following form:

Whereas, at the sale of land pursuant to the tax judgment entered in the district court in the county of ..... on the ..... day of ..... in proceedings to enforce the payment of taxes for the county of ..... which sale was had on the ..... day of ....., the following described piece or parcel of land situated in the county of ....., state of North Dakota, to wit: (Here insert description) was bid in for the county, and on this day ..... having paid into the treasury of said county the amount for which the same was bid in, and all subsequent taxes, penalties and interest, amounting in all to ..... dollars.

Therefore, pursuant to the law in such cases made and provided, the whole right, title and interest of said county of ..... in or to said piece or parcel of land, acquired at said sale, is hereby assigned to said ....., his heirs and assigns forever.

Witness my hand and seal this ..... day of .....

(Signed) .....

Auditor of the County of .....

Which assignment shall be acknowledged and may be recorded as deeds of real estate. Such assignee of the county shall succeed to all rights acquired by the county at such sale, but as a condition precedent to acquiring any absolute title to the lands sold, he must give the same notice of the expiration of the time of redemption as is herein required to be given by a purchaser at the sale. [1897, ch. 67, § 19; R. C. 1899, § 1349; 1901, ch. 161, § 20; 1903, ch. 161, § 20.]

Assignment valid when required payment made. Darling et al v. Purcell et al, 13 N. D. 288, 100 N. W. 726.

§ 1695. Redemption, how. Any person having any estate or interest in the property, wishing to redeem from such sale, may make such redemption at any time within one year by paying into the treasury of the county, to the use of the person entitled thereto:

1. If such piece or parcel shall have been bid in for the county, and the right of the county shall not have been assigned, the amount for which the same was bid in, with interest, and the amount of subsequent taxes, penalties and interest.

2. If the right of the county shall have been assigned, the amount paid by the assignee with interest from the day when so paid, and, if he shall have paid any taxes, penalties or interest, accruing subsequent to the assignment, the amount so paid by him, with interest from the day of such payment, and all unpaid taxes, interest and penalty that may have accrued on such piece or parcel after such assignment, including the fees, if any, for serving notice of expiration of redemption.

3. If the same shall have been sold to a purchaser the amount paid by such purchaser, with interest, and if he shall have paid any taxes, penalties or interest, accruing subsequent to sale, the amount so paid by him, with interest from the day of paying the same and all unpaid taxes, interest and penalties accruing subsequent to such sale including the fees, if any, for serving notice of expiration of redemption.

Upon receipt of such payment from a redemptioner, the treasurer shall deliver to him a receipt therefor and upon the production of such receipt to the county auditor, he shall execute to the person redeeming a certificate which may be substantially in the following form:

I, ....., auditor of the county of ..... state of North Dakota, do hereby certify that on the.....day of.....19...., ..... paid into the treasury of the county the sum of.....dollars, for redemption of the following described piece or parcel of land situated in the county of ....., state of North Dakota, to wit: (Insert description of land,) from the sale thereof made on the ..... day of ....., pursuant to a tax judgment entered in the district court in the county of ..... on the ..... day of ..... in proceedings to enforce payment of taxes for the county of ..... and that said piece or parcel of land is redeemed from such sale pursuant to law.

Witness my hand and seal this.....day of....., 19...  
 .....

Auditor of the County of .....

And such certificate may be recorded. If the amount so paid for the purpose of redemption is less than that required by law, it shall not invalidate such redemption, but the auditor shall be liable for the deficiency to the person entitled thereto. Such redemption shall have the effect to annul the sale. [1897, ch. 67, §§ 20, 21; R. C. 1899, § 1350; 1901, ch. 161, § 21; 1903, ch. 161, § 21.]

**§ 1696. Minors, insane persons, etc., redeem, when.** Minors, insane persons, idiots, or persons in captivity or in any country with which the United States is at war, having any estate in, or lien on lands sold for taxes, may redeem the same within one year after such disability shall cease, but in such cases the right to redeem must be established in a suit for that purpose, brought against the party holding the title under the sale. [1901, ch. 161, § 22; 1903, ch. 161, § 22.]

**§ 1697. Person interested may redeem, how.** Any person who has an interest in or lien on an undivided estate in any piece or parcel of land sold or an estate or interest in any part thereof, may redeem such part of the undivided estate by paying into the treasury a proportionate part of the amount required to redeem the whole estate, and in such case the certificate shall express the estate, portion of, or interest redeemed. [1897, ch. 67, § 22; R. C. 1899, § 1351; 1901, ch. 161, § 23; 1903, ch. 161, § 23.]

**§ 1698. Procedure in redemption.** Upon application of the party entitled thereto, the treasurer upon the order of the auditor shall pay to such applicant any money paid into the treasury on the sale of any piece or parcel of land in excess of the amount due thereon. The procedure upon redemption except as herein otherwise provided shall be the same as that prescribed by law in respect to sales for delinquent taxes. [1897, ch. 67, § 23; R. C. 1899, § 1352; 1901, ch. 161, § 24; 1903, ch. 161, § 24.]

**§ 1699. Person in possession may redeem, when.** Any person in possession under a lease of any piece or parcel of land, or any part thereof, against which a judgment pursuant to this article shall have been rendered, may before the time to redeem shall expire, redeem the same. And the amount paid by him shall, unless by the terms of the lease he is bound to pay such taxes, operate as a payment of the same amount of rent to the party from whom he leases. [1897, ch. 67, § 24; R. C. 1899, § 1353; 1901, ch. 161, § 25; 1903, ch. 161, § 25.]

Redemption expires and title passes when statutory notice of redemption given and proof thereof filed. *Cruser & Baker v. Williams*, 13 N. D. 284, 100 N. W. 721.

**§ 1700. Fees of clerk of court.** The fees charged by the clerk of the district court in said proceedings shall be as follows: For making a copy of list for publication, the sum of five cents for each piece or parcel of land described in said list. For entry of judgment against tracts as to which no

answer was filed, five cents for each piece or parcel as to which judgment is entered. For making transcript of judgment for sheriff, the sum of five cents for each piece or parcel described in said transcript. For filing an answer, ten cents; for entering judgment against any tract as to which an answer is filed, fifty cents, and said fees shall be included in the amount charged to each tract in the judgment. The auditor shall charge for preparing and filing the list aforesaid, the sum of ten cents for each tract therein described, and said fees shall be included in the amount charged to each tract in the judgment. All such fees shall be retained by the county wherein such proceedings are instituted. [1897, ch. 67, § 25; R. C. 1899, § 1354; 1901, ch. 161, § 26; 1903, ch. 161, § 26.]

§ 1701. **County commissioners award advertising, how.** The county commissioners shall award the advertising, provided in sections 1678 and 1687, to the publisher or publishers of some newspaper, daily if there be one published in the county, if not, then in some weekly newspaper, which shall have been published for at least six months prior to the time of such publication, the sum of twenty cents per folio of nonpareil type for each of the three publications, as provided in sections 1678 and 1687, and who shall give a bond to the county, with at least two sureties, freeholders of the county, to be approved, and in an amount to be fixed by said county commissioners, conditioned for the correct and faithful performance of such advertising. And in any suit by the county on such bond, for breach of the conditions thereof, the county shall recover as damages, one-half of the taxes, penalty and interest upon each piece or parcel of land in the copy list made by the clerk which may be affected by an error in the publication of the notice and list, or either, mentioned in section 1677, wherein the printer departed from the copy furnished him. [1897, ch. 67, § 26; R. C. 1899, § 1355; 1901, ch. 161, § 27; 1903, ch. 161, § 27.]

§ 1702. **Clerk delivers transcript to sheriff, when.** When judgment shall have been entered on the issue raised by answer to any tract under the provisions of this article, the clerk shall deliver to the sheriff a transcript thereof in the same manner as is provided by section 1685, and the same proceedings shall thereupon be taken as to such additional tract as is herein provided as to the tracts as to which no answer was made; provided, however, that the clerk may withhold the transcript of any judgment entered in contested cases until all or a convenient number of pending cases are determined and may include all such judgments in one transcript. And the notice of sale in such cases to be posted and published by the sheriff shall specifically describe each tract to be sold. [1901, ch. 161, § 28; 1903, ch. 161, § 28.]

§ 1703. **Fees of sheriff.** The sheriff for all acts required of him under the provisions of this article shall receive the following compensation:

First, for receiving and collecting of money under the provisions of section 1686, the same fees as are allowed by law upon an execution in a civil action.

Second, for making the sale and issuing the certificate, the sum of seventy-five cents for each piece or parcel of land sold, which sum shall be included in the amount for which the tract is offered for sale, and shall be paid to the sheriff out of the general fund of the county.

Third, for serving notice of expiration of redemption, or posting same, the same fees as are allowed by law for service of summons in a civil action. [1901, ch. 161, § 29; 1903, ch. 161, § 29.]

§ 1704. **Purchaser entitled to possession, when.** When any piece or parcel of land shall be sold, the purchaser, after the time for redemption shall have expired, shall be entitled to immediate possession of the piece or parcel purchased by him, and if, on demand and presentation of the certificate of sale, the person in possession of the piece or parcel refuses or neglects to deliver such possession, such person may be proceeded against as a person holding over after the termination of his estate, which proceeding may be

instituted and prosecuted as prescribed in the code of civil procedure. [1897, ch. 67, § 27; R. C. 1899, § 1355a; 1901, ch. 161, § 30; 1903, ch. 161, § 30.]

§ 1705. **Purchase price refunded when sale declared void.** When a sale of lands as provided in this article is for any cause declared void by judgment of court, the money paid by the purchaser at the sale, or by the assignee of the state or county, upon taking the assignment, shall, with interest at the rate of seven per cent per annum from the date of such payment be refunded to the purchaser or assignee or the party holding his right out of the county treasury on the order of the county auditor, and so much of such money as has been paid to the state, city, village, township and school district shall be charged to the same respectively, and deducted from the next money due the state, city, village, township and school district respectively on account of taxes; provided, that if such purchaser or assignee or party holding his right, shall after such purchase or assignment from the county have paid the taxes, penalties and interest upon such piece or parcel of land, he shall have a lien upon such piece or parcel for the amount of taxes, penalties and interest so paid, with interest at the rate by this article allowed, and may enforce such lien by action, or if he is in possession of such piece or parcel shall not be ejected therefrom until such amount and interest shall be paid. [1897, ch. 67, § 28; R. C. 1899, § 1355b; 1901, ch. 161, § 31; 1903, ch. 161, § 31.]

§ 1706. **Taxes, who pay. When.** Whenever the proceeding herein provided for shall have been directed to be instituted by the board of county commissioners, any person may pay the taxes mentioned in section 1676, on or before the day when the list is filed with the clerk of the district court as provided in section 1676, by paying the amount of the tax for the several years, with interest at the rate of seven per cent per annum from the time when the taxes of each year became delinquent, and without any other interest, penalty or costs; and such payment shall relieve the piece or parcel of land on which the taxes shall be so paid from any forfeiture to the county whether valid or invalid. Judgment rendered pursuant to this article shall bear interest at the rate of two per cent per month; the amount for which any piece or parcel shall have been sold or bid in shall bear interest at the same rate from the date of the sale. All subsequent taxes paid by the purchaser or an assignee shall bear interest at the same rate from the date of such payment; the amount paid by any person taking an assignment of the right of the county shall bear interest at the same rate, from the time of such payment. [1897, ch. 67, § 29; R. C. 1899, § 1355c; 1903, ch. 161, § 32; 1903, ch. 161, § 32.]

§ 1707. **Proceedings in assignment.** Whenever an assignment of any right derived from a sale provided in this article, shall be made before the time for redemption expires, the assignee shall present the assignment to the auditor, who shall note on the copy of the judgment book provided by section 1685, the name of the assignee, and the date of the assignment, and indorse on such assignment the word "countersigned," and sign his name to the same; and no such assignment shall be recorded by the register of deeds until such indorsement is made. [1897, ch. 67, § 30; R. C. 1899, § 1355d; 1901, ch. 161, § 33; 1903, § 33.]

§ 1708. **Record of certificates. Force and effect of.** The record of certificates provided for in this article shall have the same force and effect as evidence or otherwise as the records of deeds of real estate. [1897, ch. 67, § 31; R. C. 1899, § 1355e; 1901, ch. 161, § 34; 1903, ch. 161, § 34.]

§ 1709. **Local assessments deemed taxes.** Local assessments shall be deemed taxes for all the purposes of this article. [1897, ch. 67, § 32; R. C. 1899, § 1355f; 1901, ch. 161, § 35; 1903, ch. 161, § 35.]

§ 1710. **Duty of clerk.** The clerk shall attach together and keep in his office the list, notices, affidavit of publication, one copy of the newspaper in

which the notice and list were published, all answers, all orders made in the proceedings, and all affidavits and other papers filed in the course of the proceedings. [1897, ch. 67, § 33; R. C. 1899, § 1355g; 1901, ch. 161, § 36; 1903, ch. 161, § 36.]

§ 1711. **Proceedings, how often.** The proceedings provided in this article shall not be resorted to in any county oftener than once in six years. [1903, ch. 161, § 37.]

§ 1712. **Powers of county commissioners. Forfeit lands.** This article shall not be construed so as to repeal any existing laws with respect to the power of county commissioners to dispose of lands forfeited to the state or county for taxes. [1903, ch. 161, § 38.]

§ 1713. **Valid judgment not waived.** Nothing herein contained shall be construed to waive the conclusive effect of any valid judgment heretofore entered against any of the lands affected by this article in proceedings under chapter 67 of the general laws of 1897, and in entering judgment in proceedings under this article against such lands for taxes included in a judgment entered against such land under said former act, the amount of such taxes included in said former judgment with the interest accrued thereon under said act shall be included in the judgment under this article. [1903, ch. 161, § 39.]

## CHAPTER 21.

### THE MILITIA.

#### ARTICLE 1.—GENERAL PROVISIONS.

§ 1714. **Who compose militia.** All able bodied male citizens, residents of this state, being eighteen years of age and under the age of forty-five years, excepting persons exempt by law, shall be enrolled in the militia and perform military duty in such manner, not incompatible with the constitution and laws of the United States, as hereinafter prescribed. [1891, ch. 86, § 1; R. C. 1899, § 1356.]

§ 1715. **Assessors to make list of persons.** It shall be the duty of the assessors in each assessor district in this state, when making the assessment, to make out a list containing the names of all persons in their respective districts liable to perform military duty, and file a copy of such list with the register of deeds in the county, to be by him kept as a matter of reference, and also to transmit to the secretary of state a copy to be by him kept as a matter of reference in his office, which copy shall be filed in the offices of the persons aforesaid on or before the first day of January in each year. [1891, ch. 86, § 2; R. C. 1899, § 1357.]

§ 1716. **When and how militia called into service.** The militia thus enrolled shall be subject to perform no active military duty, except in case of war, invasion, or to prevent invasion, riot or insurrection. In such case the commander in chief is authorized to order out, from time to time, for actual service, as many of the militia thus enrolled as necessity may require, and to provide for their organization in the manner hereinafter prescribed for the organization of volunteer militia; but in all such cases the organized volunteer militia shall first be ordered into service. [1891, ch. 86, § 3; R. C. 1899, § 1358.]

§ 1717. **How governed.** The militia while in active service shall be governed by the military law of the state, and the rules and articles of war of the United States; and when any troops are in the field for the purposes aforesaid, the senior ranking officer of the troops present shall take command; provided, that no person shall be eligible to a command in the militia of this

state, except citizens of the United States or persons who have declared their intention to become such. [1891, ch. 86, § 3; R. C. 1899, § 1358.]

§ 1718. **North Dakota National Guard, how composed.** The organized militia of the state shall be known as the North Dakota National Guard, and shall consist of one regiment of infantry, one adjutant general's department, one inspector and judge advocate department, one supply department, an engineer and ordnance department, a medical department and such staff officers as may be necessary; provided, that in the discretion of the governor, a battalion of artillery and one or more troops of cavalry may be organized, but only one company, battery or troop shall be organized in a county. This section shall not affect existing organizations. [1891, ch. 86, § 4; R. C. 1899, § 1359.]

§ 1719. **Governor, commander in chief. Brigadier general may select aides-de-camp.** The governor shall be the commander in chief of the militia, and may appoint as many aides-de-camp as he may deem necessary who shall have the rank of colonel. He shall have full power to appoint the adjutant general, inspector and judge advocate general, chief of supply, chief of engineers and ordnance, and officers of the medical department. He may at his discretion organize the North Dakota National Guard into a brigade, in which case he shall appoint a brigadier general to command the same. The brigadier general may select two aides-de-camp from the captains or lieutenants of the national guard. [1891, ch. 86, § 5; R. C. 1899, § 1360.]

§ 1720. **Commissions issued by governor, tenor of.** All commissions shall be issued by the governor, and no commissioned officer shall be removed from office except by sentence of court martial. [1891, ch. 86, § 6; R. C. 1899, § 1361.]

§ 1721. **Appointments 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, to wit: The adjutant general's department, the supply department, the engineer and ordnance 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. [1905, ch. 136, § 1.]

§ 1722. **Term of office.** No appointment to any department office shall be for a longer period than two years. [1905, ch. 136, § 2.]

§ 1723. **Officers placed upon retired list.** 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 term of duty, two years, be placed upon the retired list of the national guard of this state. [1905, ch. 136, § 3.]

#### ARTICLE 2.—ORGANIZATION AND EQUIPMENT.

§ 1724. **How equipped and organized. May be increased, when.** The troops of the line which are uniformed and equipped may at the discretion of the governor be organized into a brigade under the command of the brigadier general as senior officer, but the commander in chief shall have power to change the brigade organization, and in case of riot, invasion or other imminent danger beyond the control of the civil authorities, to increase the numerical strength of the existing organization, or form new brigades, regiments and companies as the exigencies of the service may require. [1891, ch. 86, § 7; R. C. 1899, § 1362.]

§ 1725. **Battalion of artillery, what to consist of.** The battalion of artillery shall consist of two batteries of two guns each, one major, one assistant sergeant with the rank of captain, one adjutant and one commissary of supply, each of the rank of first lieutenant, one sergeant major, one sergeant of supply, one hospital sergeant and one chief trumpeter; provided, that two batteries are organized. [1891, ch. 86, § 8; R. C. 1899, § 1363.]

§ 1726. **Battery of artillery, what to consist of.** Each battery of artillery shall consist of two guns with one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, two teamsters, not less than twenty nor more than forty privates, except as the commander in chief may direct; provided, that two troops are organized. [1891, ch. 86, § 9; R. C. 1899, § 1364.]

§ 1727. **Cavalry battalion, what to consist of.** The battalion of cavalry shall consist of two troops, one major, one assistant surgeon with rank of captain, one adjutant and one commissary of supply, each with rank of first lieutenant, one sergeant major, one hospital sergeant, and one chief trumpeter. [1891, ch. 86, § 10; R. C. 1899, § 1365.]

§ 1728. **Cavalry troop, what to consist of.** Each troop of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, one farrier, one saddler, two teamsters, and not less than twenty nor more than forty privates except as the commander in chief may direct. [1891, ch. 86, § 11; R. C. 1899, § 1366.]

§ 1729. **Infantry regiments, what to consist of.** Each regiment of infantry shall consist of ten companies, one colonel, one lieutenant colonel, one major, one surgeon with rank of major, one adjutant, one commissary of supply, one assistant surgeon and one chaplain, each with rank of captain, one sergeant major, one sergeant of supply, one hospital sergeant, one chief musician, one drum major, two color sergeants, and not more than twenty musicians; provided, that in the discretion of the governor the number of companies may be increased to twelve, and the number of majors may be increased to three in case there shall be a twelve company organization. [1891, ch. 86, § 12; R. C. 1899, § 1367.]

§ 1730. **Infantry company, what to consist of.** Each company of infantry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, and not less than twenty nor more than forty privates, except as the commander in chief may direct. [1891, ch. 86, § 13; R. C. 1899, § 1368.]

§ 1731. **Commander in chief may discharge or consolidate, when.** Whenever any troop, battery or company shall have less than the minimum number of privates fixed for each organization, the commander in chief may at his discretion discharge or consolidate such organizations, and all officers and men honorably discharged under the provisions of this section shall be entitled to receive a certificate of discharge, showing length of service, which time shall be credited to them in case of re-entering the service. [1891, ch. 86, § 14; R. C. 1895, § 1369.]

§ 1732. **Who may enlist in North Dakota National Guard.** All able-bodied men of good character and proper age may be enlisted in the national guard for a term of three years, and after the expiration of the first enlistment may re-enlist at any time thereafter for terms of one or more years, at their option. Any person having an honorable discharge from the regular or volunteer service of the United States, or militia of this state, may on enlisting in the national guard be credited with length of service as shown by such discharge, but no person over forty-five years of age shall be re-enlisted except with the approval of the surgeon, and no enlisted man shall leave one organization to join another unless he shall be duly transferred. [1891, ch. 86, § 15; R. C. 1899, § 1370.]

§ 1733. **Enlisted men entitled to discharge, when.** Each officer and enlisted person shall be held as in the service until properly discharged; and each enlisted person shall be entitled to and receive his discharge and certificate of service on the expiration of his term of enlistment, from his immediate commanding officer. [1891, ch. 86, § 16; R. C. 1899, § 1371.]

§ 1734. **Officers and men may be transferred or discharged, when.** Officers and men removing from one location to another in the state may be transferred from one organization to another on application to the adjutant general, approved by their respective commanding officers. Any member of the guard moving permanently out of the state or the vicinity of the station of the organization to which he belongs, may be discharged and a certificate of service furnished upon his own application, but any member of the national guard who moves away from the vicinity of his company or other permanent headquarters, or absents himself from all duty for six months, shall unless proper explanation is accepted by his immediate commanding officer, be dropped from the rolls without discharge or certificate of service. [1891, ch. 86, § 17; R. C. 1899, § 1372.]

§ 1735. **Adjutant general's department.** The adjutant general's department shall consist of one adjutant general with the rank of brigadier general. [1891, ch. 86, § 18; R. C. 1899, § 1373.]

§ 1736. **Duties of adjutant general.** The adjutant general shall keep a register of all the officers and enlisted men of the military forces of the state; he shall make a full report on or before the first day of December in each year to the commander in chief upon the condition of the national guard, and a detailed statement of all duty performed by them during the preceding year; he shall publish from time to time, as may be necessary, at the expense of the state, all laws, rules, regulations and orders relating to the military forces thereof, and distribute one copy to each commissioned officer and organization of the national guard, and to such officers of the state as may be affected thereby; he shall cause to be prepared and issued all blanks, books, forms and notices required for his office, or for the use of the national guard, and all books and forms so furnished shall be the property of the state. The seal of his office shall be transferred to his successor in office, and all copies of papers or records in his office, duly certified and authenticated under such seal, shall be evidence in all cases in like manner as the originals. On the certificate of the adjutant general the state auditor is directed to draw his warrant on the state treasurer, to be paid from the general fund, for the expenses incurred in carrying out the provisions of this section. [1891, ch. 86, § 19; R. C. 1899, § 1374.]

§ 1737. **Additional duties of adjutant general.** The adjutant general shall, in addition to his other duties, organize and conduct a bureau of pensions, for the purpose of assisting ex-soldiers or 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 fee 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. [1891, ch. 86, § 20; R. C. 1899, § 1375; 1905, ch. 12.]

§ 1738. **Inspector and judge advocate general's department.** The inspector and judge advocate general's department shall consist of one inspector and judge advocate general, with the rank of colonel. He shall inspect each company, troop and department of the North Dakota National Guard at least once a year. He shall examine all officers as to their qualifications and fitness to fill the positions to which they have been elected or appointed, and all officers of such national guard shall hereafter, before being commissioned by the governor, procure a certificate from the inspector and judge advocate general certifying that such officer has passed a satisfactory examination, and is qualified and fit to fill the position to which he has



been elected or appointed; but such examination shall not be deemed necessary in cases of officers appointed on the staff of the commander in chief or on the regimental staff. He shall make a full report on or before the first day of December in each year to the commander in chief, upon the efficiency, discipline and general condition of each organization. He shall also perform such duties as judge advocate general as the commander in chief may direct. The inspector and judge advocate general shall receive his actual expenses and the sum of five dollars for each day actually on duty, and on the voucher of such officer, approved by the adjutant general and governor, the state auditor shall draw his warrant on the state treasurer, to be paid from the general fund; but the sum so paid shall not in any year exceed five hundred dollars. [1891, ch. 86, § 21; R. C. 1899, § 1376.]

§ 1739. **Supply department.** The supply department shall consist of one chief of supply with the rank of colonel and two assistant commissaries of supply with the rank of major. The assistants shall be assigned to appropriate duties with the brigade. [1891, ch. 86, § 22; R. C. 1899, § 1377.]

§ 1740. **Chief of supply, bond and duties of.** The chief of supply shall give a bond to the state in the sum of ten thousand dollars with two sureties to be approved by the commander in chief, conditioned for the faithful discharge of his duties. He shall keep a just and true account of all expenses necessarily incurred in the military service of the state and such account shall be paid on the order and approval of the commander in chief. He shall purchase and distribute to the national guard all military stores and supplies authorized by law, shall pay all incidental expenses of the service, including transportation, freight, express, postage and telegrams on public business, pay the officers and members of the national guard, furnish clothing, rations, tools, camp and garrison equipage, make contracts for and pay the rent for offices, armories, storehouses, camp grounds, and such other duties authorized by law, as he may be directed to perform by the orders of the commander in chief. [1891, ch. 86, § 23; R. C. 1899, § 1378.]

§ 1741. **Engineer and ordnance department.** The engineer and ordnance department shall consist of one chief of engineers and ordnance, with the rank of colonel, and one assistant with the rank of major. [1891, ch. 86, § 24; R. C. 1899, § 1379.]

§ 1742. **Duty of officers.** It shall be the duty of the officers of this department to provide arms, ammunition and equipments for the national guard, to inspect buildings, lay out camps, be inspectors of rifle practice, and to perform such other service as the commander in chief may direct. [1891, ch. 86, § 25; R. C. 1899, § 1380.]

§ 1743. **Medical department.** The medical department shall consist of one surgeon general with the rank of colonel, one medical purveyor with the rank of lieutenant colonel, and one apothecary and storekeeper with the rank of captain; but no person shall be appointed to this department or commissioned to similar duties in this line unless he is a graduate of some legally incorporated school of medicine. [1891, ch. 86, § 26; R. C. 1899, § 1381.]

§ 1744. **Duties of.** It shall be the duty of these officers, assisted by the medical officers of the line, to provide the necessary medical supplies and care for the sick and wounded of the national guard when on duty and perform such other service as the commander in chief may direct. [1891, ch. 86, § 27; R. C. 1899, § 1382.]

§ 1745. **Grades below the rank of field officer filled by election.** Every vacancy below the grade of field officer shall be filled by election, under such rules as the commander in chief may determine, and in case of no election, he may appoint a suitable person to such office. The commander in chief shall decide all appeals in election cases under this section and order a new election in case he deems it necessary. [1891, ch. 86, § 28; R. C. 1899, § 1383.]

§ 1746. **Rank determined by date of election or appointment.** The respective rank of all officers shall be determined by the date of their election or appointment and the length of time of service in the North Dakota National Guard as a commissioned officer of such rank; provided, that in case of reelection or reappointment his rank shall be determined by the date of the first commission. [1891, ch. 86, § 29; R. C. 1899, § 1384.]

§ 1747. **Commanding officers appoint their staff, how.** Commanding officers of regiments or battalions shall detail their staff officers from the officers or enlisted men of their command, and appoint the noncommissioned officers of the organization by warrants. Staff officers so detailed will be dropped from the company rolls and the vacancy filled by promotion or appointment. [1891, ch. 86, § 30; R. C. 1899, § 1385.]

§ 1748. **Noncommissioned officers appointed, how.** Company, troop or battery commanders shall appoint noncommissioned officers of their commands, and forward the same to regimental or battalion headquarters, where a warrant shall be issued for the same, signed by the commanding officer. [1891, ch. 86, § 31; R. C. 1899, § 1386.]

§ 1749. **Officers to take and subscribe oath.** Each officer, before entering upon the duties of his office, shall take and subscribe an oath of allegiance to the United States and to the state of North Dakota, which oath, duly executed, shall be filed in the office of the adjutant general. [1891, ch. 86, § 32; R. C. 1899, § 1387.]

§ 1750. **Recruits to sign enlistment papers.** Each person recruited for the national guard shall sign enlistment papers in triplicate, which shall contain an oath of allegiance to the United States and to the state of North Dakota, and a resume of the duties to be performed. Such oath shall be taken before the troop, battery, company or battalion commanders, and when executed, one copy shall be forwarded to the adjutant general's office, one copy to the headquarters of the regiment or battalion, and the other copy filed with the official records of the organization to which the recruit is assigned. [1891, ch. 86, § 33; R. C. 1899, § 1388.]

§ 1751. **Officers and men may be discharged, when.** Officers and enlisted men of the national guard may be discharged for physical or mental disability on the certificate of a surgeon, and under such rules and regulations as may be determined upon, but no honorable discharge shall be given any member of the national guard until he shall produce a certificate from his immediate commanding officer that he has returned, or satisfactorily accounted for all the money or other property of the state or any organization of the national guard issued to him or coming into his possession; and provided, no certificate of service shall include the time any member was absent from duty without leave, which time of absence shall in no case be allowed in computing length of service. [1891, ch. 86, § 34; R. C. 1899, § 1389.]

§ 1752. **Drill, discipline and uniform.** The drill, discipline and uniform of the national guard shall be the same as that of the army of the United States; but nothing in this section shall be so construed as to require companies now uniformed to supply new uniforms in the place of those now worn, until such time as it shall become necessary to provide a new uniform, which new uniform shall be the same as that worn by the United States regular army. The regulations of the army, articles of war and acts of congress of the United States shall be authority and shall govern in all cases not provided for by the laws of the state or the regulations and orders of the commander in chief. [1891, ch. 86, § 35; R. C. 1899, § 1390.]

§ 1753. **Annual encampment.** There shall be an annual encampment, inspection and muster of all organizations of the national guard for at least six consecutive days at the state military encampment grounds, Rock Island, Ramsey county, North Dakota. No person shall be mustered at such times or allowed to appear as a part of the national guard, unless he is duly

commissioned or enlisted in the same, nor any member who does not appear uniformed, armed and equipped as required by the provisions of this chapter. Any officer who shall knowingly or willfully place or cause to be placed on such muster roll the name of any person not regularly or lawfully commissioned or enlisted or the name of any man who is dead, or who has been discharged or transferred or dropped, or has lost his membership for any cause whatsoever, or one who has been convicted of a felony or has refused to do military duty for the six months immediately preceding the annual inspection, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than fifty nor more than one hundred dollars, or may be cashiered. [1899, ch. 111; R. C. 1899, § 1391.]

§ 1754. **The governor controls encampment ground and appoints military board.** The governor as commander in chief, shall have full control of the state encampment grounds on Rock Island, Ramsey county, North Dakota, and may from time to time appoint an advisory board of three officers to manage the same under such rules and regulations as he may prescribe; provided, that all moneys received from the sale of timber, stone or other material taken from the grounds shall be paid into the state treasury and be kept as a separate fund for the improvement of the property for military uses, and shall be paid out upon proper vouchers approved by the governor. [1895, ch. 80, § 4; R. C. 1899, § 1392; 1901, ch. 32.]

§ 1755. **Compensation of members of the board.** The compensation of the members of such military board when in actual attendance at meetings of the board, shall be such as prescribed by law for field duty and their actual traveling expenses in going to and returning from the place of meeting. [1895, ch. 80, § 5; R. C. 1899, § 1393; 1901, ch. 32.]

§ 1756. **Duty of each troop, battery and company each year.** In addition to the annual muster and inspection, each troop, battery or company, shall be obliged to perform during the year not less than five drills, parades, musters and inspections. There shall also be not less than six additional drills, at such times as the commanding officer may determine. Such other exercises may be had as the members of such organization shall prescribe in their by-laws. Any officer or man absent from any compulsory drill or parade, shall be fined or punished as fixed by the regulations. [1891, ch. 86, § 38; R. C. 1899, § 1394.]

§ 1757. **Powers of commanding officer.** The commanding officer at any parade, drill, muster or other rendezvous, may cause those under his command to perform any military duties he may require, and may place in arrest during the time of such meeting, and confine under guard if necessary, any officer or enlisted man who shall disobey the orders of his superior officer and may remove any other person who shall trespass upon the parade ground or armory, or in any way interrupt the orderly discharge of duty of those under arms. He shall prohibit and prevent the sale or use of all spirituous liquors, wine, ale or beer within the limits of the encampment, parade grounds or armory, and such limits shall be prescribed in orders by the officer commanding the parade or encampment, and also hucksters, auction sales, gambling or games of chance must be abated as nuisances. [1891, ch. 86, § 39; R. C. 1899, § 1395.]

§ 1758. **Target practice.** To accustom the troops to the use of their arms target practice must be encouraged. The commander in chief shall order such practice as the allowance of ammunition shall permit and he shall offer suitable medals, badges or trophies to be inscribed and given in the name of the state to the persons and organizations, who upon competition shall show their superior attainments as marksmen. The provisions of this section shall be carried out under orders and regulations issued by the commander in chief; provided, that not more than one hundred dollars shall be expended

in any one year for the purchase of medals, badges or trophies. [1891, ch. 86, § 40; R. C. 1899, § 1396.]

**§ 1759. Officers and men, how warned.** For the purpose of warning the officers, noncommissioned officers and other enlisted men for any parade, encampment or place of rendezvous the commanding officer shall issue his orders to such number of noncommissioned officers as he may deem necessary, requiring them respectively to warn each person belonging to the organization to appear at the place of rendezvous in compliance with such order. Each noncommissioned officer, to whom such order shall be directed, shall warn each person whom he shall therein be required to warn by reading the order or stating the substance thereof in the hearing of such person, or by leaving a notice thereof at his usual place of abode or business, as appears by the roster, with some person of suitable age and discretion, or by sending the same to him by mail, directed to him at his residence or post office nearest thereto. The return of service made by such noncommissioned officer, to his commanding officer, sworn to and certified, shall be evidence on the trial of any person returned as delinquent. In cases of riot, tumult, breaches of the peace and in aid of the civil authorities a verbal warning or order shall be sufficient. [1891, ch. 86, § 41; R. C. 1899, § 1397.]

**§ 1760. When member excused.** The officer ordering a rendezvous of his command, may, upon good and sufficient grounds, excuse any member thereof from attendance at the same. [1891, ch. 86, § 42; R. C. 1899, § 1398.]

**§ 1761. Power of commander in chief in case of public disturbance.** The commander in chief shall have power in case of insurrection, invasion or breaches of the peace, or imminent danger thereof to order into the active service of the state any or all of the national guard, militia or other military organizations of the state that he may deem necessary, and no member thereof, who shall be ordered out by proper authority for such duty shall be held answerable by any court, nor liable to civil prosecution for any acts done by him in the discharge of his lawful military duty on such occasion; and in such cases the forces called into service shall receive the same pay and allowance as is provided in section 1774. [1891, ch. 86, § 43; R. C. 1899, § 1399.]

Forces other than state militia not entitled to subsistence. *Stanton v. State*, 5 S. D. 515, 59 N. W. 738.

**§ 1762. Sheriff or mayor may call out troops, when.** In case of any breach of the peace, tumult, riot or resistance to process of this state, or such imminent danger thereof as will not admit of delay, it shall be lawful for any sheriff, or the mayor of any city to call in writing, under his hand and seal, for aid, upon the commandant of the national guard stationed therein or nearest thereto, and it shall be the duty of such commanding officer upon whom the call is made, to order out in aid of the civil authorities, such portion of his command, armed and equipped, as may be necessary to overcome the resistance and vindicate the supremacy of the law, and he shall immediately report to the commander in chief all that has been done and the circumstances of the case, and the forces called into service by such order shall receive the same pay and allowance as is provided in section 1774 and the amount of such pay and allowance shall be a portion of the county and city charges of such county or city from the state, to be levied and raised as other charges are levied and raised. [1891, ch. 86, § 44; R. C. 1899, § 1400.]

**§ 1763. Member of national guard deemed deserter, when.** Any member of the national guard ordered into service under the provisions of the two preceding sections, who does not appear at the time and place fixed by his commanding officer, or produce a certificate of physical disability from a physician in good standing, shall be deemed a deserter and punished according to the rules and articles of war. [1891, ch. 86, § 45; R. C. 1899, § 1401.]

§ 1764. **Articles of war of United States adopted, when.** The articles of war governing the army of the United States, so far as they are practicable and not incompatible herewith, are adopted for the government of the national guard and militia of this state with the following exceptions: The commander in chief is alone authorized to order general courts-martial and courts of inquiry; battalion or other superior commanders may order garrison courts-martial, which are authorized to try all offenders. The maximum number of members of these courts is fixed as follows: General courts, seven members; courts of inquiry and garrison courts-martial, five members. Minimum number general courts, five members, and courts of inquiry and garrison courts, three members each, as the exigencies of the case permit. [1891, ch. 86, § 46; R. C. 1899, § 1402.]

§ 1765. **Fines, how disposed of.** Fines of offenders under the preceding section may be paid to the court or to the treasurer of the organization to which the offender belongs. All fines imposed and collected shall be deposited to the credit of the clothing and equipment fund of the organization to which the member paying the fine belongs or, if a staff officer, to the general fund of the state. A receipt for money so deposited shall be forwarded to be filed with the proceedings of the court in such case. [1891, ch. 86, § 47; R. C. 1899, § 1403.]

§ 1766. **Powers of courts-martial.** Any court authorized by this chapter shall have the same power as other courts of the state to compel the attendance of witnesses through the senior officer or president of the court, to administer oaths to witnesses and to issue subpoenas for all witnesses that may be deemed necessary by the court. He may issue attachment for a witness, and all sheriffs and constables are required to execute any precept issued by such president or court for that purpose. The person attached for nonattendance shall pay the usual fees for such service, besides the penalty provided, unless he satisfies the court that his failure to attend was excusable. Each witness not appearing in obedience to such subpoena when duly served with a copy of the same, and not having a sufficient excuse, shall forfeit to the state a sum not less than one nor more than ten dollars, to be paid and credited as fines for similar offenses before other courts of the state. [1891, ch. 86, § 48; R. C. 1899, § 1404.]

§ 1767. **Power to punish for contempt.** Any person behaving in a disrespectful manner, or using any insulting language in the presence of any military court or a member thereof in open court, intending to disturb or impair the authority of such court, may be punished as for contempt of court by confinement in the jail of the county in which the court sits, by warrant under the hand of the president of such court. The warrant shall be directed to the sheriff or any constable or marshal of such county or to the officer attending the court, and shall set forth the circumstances of the offense adjudged to have been committed, and shall command the officer to whom it is directed to take the body of such person and commit him to the jail of the county, there to remain without bail and in close confinement for a limited time, not to exceed three days. Such sheriff shall obey the warrant and keep the person as directed, unless he is discharged by a judge of a court of record in the same manner and under the same rules as in cases of imprisonment for contempt in such courts. [1891, ch. 86, § 49; R. C. 1895, § 1405.]

§ 1768. **Sheriff of county, marshal of court.** A military court sitting in any county shall be attended by the sheriff of such county or some suitable person designated by him, who shall be the marshal of the court and perform the usual duties of such marshal, and execute any process lawfully issued by such court and perform all acts and duties by this chapter imposed on and authorized to be performed by any sheriff, marshal or constable, and the officer ordering the court shall furnish a copy of his order to the sheriff

of the county where the court is directed to meet, which order shall be notice to the sheriff to appear or to designate some one to appear as marshal of the court. [1891, ch. 86, § 50; R. C. 1899, § 1406.]

§ 1769. **Compensation of marshal. Conversion of money is embezzlement.** Each marshal appointed for a military court, shall be paid two dollars for each day's attendance before the court, and his actual and necessary traveling expenses in serving subpoenas or executing any process of the court, the same to be paid on the certificate of the president of the court, certifying the number of days employed, and the other duties performed, and be paid in the same manner that other accounts of the state are paid; but no marshal shall receive any fees from the person served, and any refusal or neglect on the part of the sheriff or marshal to execute any warrant herein required, or make return and pay over all the money collected as fines, shall subject the officer so offending to double the amount of such fines and penalties. The conversion to his own use of moneys so collected by any sheriff or marshal shall be deemed embezzlement, and punished as such in any court of the state having jurisdiction of such offense. [1891, ch. 86, § 51; R. C. 1895, § 1407.]

§ 1770. **Fines, how collected.** For the purpose of collecting fines imposed by courts-martial, the president of the court shall, within twenty days after the proceedings of the court have been approved, make a list of all the persons fined, describing them distinctly and showing the sums imposed on each person, and not paid. He shall then draw his official warrant directed to the sheriff of the county or the marshal of the court, commanding him to levy such fines, together with the costs, out of the goods and chattels of the delinquent, sale thereof to be made as provided by law, and no property shall be exempt from the payment of such fines and penalties. In default of sufficient goods and chattels to satisfy the same, such sheriff, marshal or constable shall take the body of such delinquent and confine him in the county jail, and the jailer shall keep such delinquent closely confined without bail for two days for any fine or penalty not exceeding five dollars and one additional day for each dollar above that sum, unless such fine with the costs and jailer's fees is sooner paid; but no such imprisonment shall extend beyond ten days and the officer ordering the court may remit such fines and penalties. [1891, ch. 86, § 52; R. C. 1895, § 1408.]

§ 1771. **Refusal or neglect to pay fine.** Any member of the national guard fined by a general or other court-martial who shall neglect or refuse to pay such fine within twenty days after the same was imposed, may be published in orders by the officer ordering the court, and dishonorably dismissed from the service without allowance of time for which he has served and such dismissal shall disqualify him from serving in the national guard for three years thereafter. For offenses against the by-laws, rules and regulations of any organization any dues may be collected by court-martial as provided in this chapter. [1891, ch. 86, § 53; R. C. 1899, § 1409.]

§ 1772. **Action against members of military court.** No action shall be maintained against any member of the military court on account of the imposition of a fine or penalty, or for the execution of a sentence on any person, if such person shall have been returned as delinquent, and duly summoned before such court or shall have appeared before such court to answer to the charges made against him. [1891, ch. 86, § 54; R. C. 1899, § 1410.]

§ 1773. **No action, when.** When a suit or proceeding is commenced in any court by any person against an officer of the national guard for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or against any person acting under authority or order of such officer, or by virtue of any warrant issued by him pursuant to law, the judge advocate general or some officer designated by the governor, shall

appear for him and the plaintiff in such suit, may be required to file security for the payment of the costs which may be incurred therein by the defendant. In case the plaintiff shall be nonsuited, or have verdict or judgment rendered against him, the defendant shall recover treble costs and such attorney's fee as the court shall allow, which fee shall be in the first instance paid by the state, and be refunded by defendant on collection of the judgment. [1891, ch. 86, § 55; R. C. 1899, § 1411.]

**§ 1774. Compensation of officers and men.** There shall be allowed and paid as hereinafter provided to such officers and enlisted men as shall be ordered to attend annual encampments in pursuance of the provisions of this chapter, the following sum each, for each day actually on duty, or in going to and returning from the same, the certificate of the officer ordering the duty to be evidence of such service; all officers and men ordered into actual service shall be paid double the amount paid at annual encampments:

To musicians, privates and teamsters, seventy-five cents.

To corporals, farriers and saddlers, one dollar.

To sergeants and drum majors, one dollar and fifteen cents.

To first sergeants, principal musicians and chief trumpeters, one dollar and twenty-five cents.

To sergeant majors, sergeants of supply, hospital sergeants and chief musicians, one dollar and fifty cents.

To second lieutenants, one dollar and seventy-five cents.

To first lieutenants, one dollar and seventy-five cents.

To captains and company commanders, two dollars.

To lieutenant colonels, majors, or battalion commanders, two dollars and twenty-five cents.

To brigadier general and colonel, three dollars.

To staff officers, the same as officers of like grade in the line or field. [1891, ch. 86, § 56; R. C. 1899, § 1412.]

**§ 1775. Members of guard to provide horses. Compensation therefor.** All members of the national guard who are required to be mounted shall provide for their own use a horse and horse equipments, but shall be allowed forage for the same when on duty, and be paid the sum of one dollar for each day such horse is on duty in the service of the state, or as may be provided in this chapter. The sums authorized by this section shall be paid by the chief of supply in such manner as the commander in chief may direct. [1891, ch. 86, § 57; R. C. 1899, § 1413.]

**§ 1776. Compensation of officers detailed on courts or under orders.** All officers detailed to serve on any board or commission ordered by the commander in chief or on any court of inquiry, court-martial or delinquency court ordered by the proper authority in pursuance of this chapter shall be paid their subsistence and actual traveling expenses, and for each day actually employed on such board or engaged in the business thereof or in traveling to and from the place of meeting of such board or court, a sum equal to one day's pay for field duty. [1891, ch. 86, § 58; R. C. 1899, § 1414.]

**§ 1777. Compensation of officers and men on duty.** All officers and enlisted men of the national guard while on duty in camp, or assembled pursuant to the order of the commander in chief or the sheriff of any county or the mayor of any city shall receive the compensation provided for in section 1774 and also their subsistence in kind, or commutation thereof and their transportation or mileage. The rates of commutation or mileage shall be fixed by order of the commander in chief. [1891, ch. 86, § 59; R. C. 1899, § 1415.]

**§ 1778. Clothing and equipment fund, how constituted.** On the certificate of the adjutant general each regimental headquarters, staff and band, battalion and staff, troop, battery or company shall be allowed annually a sum equal to seven dollars for each of its officers and men present for duty, based

upon the percentage present for duty for the year at the five compulsory parades required in section 1756, and the annual muster and inspection, which sums, together with fines and penalties collected from delinquent officers and men, shall constitute the clothing and equipment fund of such organization and the clothing and equipment purchased with such fund shall be the property of the state. [1891, ch. 86, § 60; R. C. 1899, § 1416.]

§ 1779. **Transportation.** The officers and members of the national guard shall be allowed free transportation for themselves, their horses and equipments and the property of the state, going to and returning from any service authorized or directed by law, their subsistence in kind or commutation therefor and their quarters, tents and camp equipments, and the chief of supply and the officers of his departments shall at all times be prepared to furnish such things as may be required by order of the commander in chief. [1891, ch. 86, § 61; R. C. 1899, § 1417.]

§ 1780. **Property exempt from taxation.** All property belonging to any organization of the national guard shall be exempt from taxation or assessment for any purpose whatever, and in case any such organization shall erect or purchase an armory or assembly room, the annual rent of the same authorized in the following section may be paid into the treasury of such organization. [1891, ch. 86, § 62; R. C. 1899, § 1418.]

§ 1781. **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 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. [1899, ch. 112; R. C. 1899, § 1419; 1903, chs. 20, 22; 1905, ch. 14.]

§ 1782. **National guard exempt from jury duty and poll tax.** Each member of the North Dakota National Guard shall be exempt from jury duty and from the payment of poll tax. [1891, ch. 86, § 64; R. C. 1899, § 1420.]

§ 1783. **Exempt from arrest, when. Have right of way on highway.** No person belonging to the military forces shall be arrested on any civil process while going to, remaining at or returning from any place at which he may be required to attend for military duty. Any portion of the national guard performing any duty according to law shall have the right of way in any street or highway through which they may pass; provided, the carriage of the United States mails, the legitimate functions of the police and the progress and operations of fire engines and fire departments shall not be interfered with thereby. [1891, ch. 86, § 65; R. C. 1899, § 1421.]

§ 1784. **Officers to report, when.** Each officer who receives arms, accoutrements, clothing, camp equipage, rations or stores of any kind for the use of his command, or for issue to troops shall render to the chief of the departments furnishing the same a report or return of such supplies, according to the forms which may be prescribed, and such reports shall be furnished when called for, but not oftener than once in two months. [1891, ch. 86, § 66; R. C. 1899, § 1422.]

§ 1785. **Military outfits and supplies not to be sold or disposed of.** The clothing, arms, military outfits, accoutrements and stores furnished by the state



to the national guard shall not be sold, bartered, exchanged, pledged, loaned or given away and the possession of any property by any person not a member of the guard shall be prima facie evidence of such sale, barter, exchange, pledge, loan or theft. Such property may be seized and taken from any person not authorized to keep the same, by any officer or soldier of the state, and shall thereupon be delivered to any officer of the state authorized to receive the same. [1891, ch. 86, § 67; R. C. 1899, § 1423.]

§ 1786. **Lost or stolen property, how valued.** All property of the state which is lost, stolen, damaged or destroyed in the military service, shall be acted upon by a disinterested inspector or officer, detailed for that purpose, who shall make a full investigation and report of all the facts and circumstances of the case, and if any person is found or deemed responsible for the loss or damage of the property beyond reasonable wear and tear by service, the inspector shall assess and fix a reasonable value on the property lost, damaged or destroyed, and such person shall pay the sum so assessed into the state treasury. In the event of such person's failure or neglect to reimburse the state, suit may be brought in the name of the state in any court of competent jurisdiction for the recovery of the same under such regulations as the governor shall prescribe. [1891, ch. 86, § 68; R. C. 1899, § 1424.]

§ 1787. **Appropriation.** For the purpose of paying the expenses for the maintenance of the national guard there is hereby annually appropriated the sum of nineteen thousand dollars out of any moneys in the state treasury, not otherwise appropriated, and all warrants against such appropriation shall be drawn by the state auditor upon the state treasurer, upon the voucher of the chief of supply, certified to by the adjutant general, and approved by the governor, said sum of nineteen thousand dollars per annum to remain subject to warrants drawn as herein provided, until expended. [1891, ch. 87, § 1; R. C. 1899, § 1425; 1903, ch. 32.]

§ 1788. **Training school and armory, organization and management.** Any number of persons, not less than three, being members or ex-members of regularly enrolled companies of the national guard of this state, may form a corporation for the purpose of erecting, obtaining and maintaining a building to be used by the company of which they are members or ex-members, as a military training school, armory and place of meeting, which corporation shall possess the powers and be subject to the duties and liabilities of other corporations, except as herein otherwise provided. The principal office of said corporation must be located at the town or city wherein the national guard company for the benefit of whom the military training school is erected or maintained, is stationed. The general management of such company shall be vested in a board of not less than three nor more than eleven directors, each of whom shall during his term of office be a member of the national guard of the state of North Dakota. Such corporation may lease or buy real estate upon which to erect a military training school, armory or drill hall to be by the corporation erected or maintained, and may purchase or lease land upon which a rifle range may be maintained, and all such land, and the buildings thereon which are used for a military training school, drill hall, armory or rifle range, shall be exempt from taxation. The articles of incorporation of such corporation shall be filed and a certificate of incorporation issued by the secretary of state without fee. [1897, ch. 101; R. C. 1899, § 1425a.]

Corporation organized under this section is private, except as to taxes and charter fees, possesses same powers and subject to same liabilities and duties as other private corporations; property is subject to mechanic's lien laws. *Arrison v. Co. D*, 12 N. D. 554, 98 N. W. 83.

## ARTICLE 3.—NATIONAL GUARD ARMORIES.

§ 1789. **Bonds. Armory supervisors.** Whenever a company, troop, battery or regimental band of the North Dakota National Guard shall deposit with the state treasurer the sum of two thousand dollars, and shall convey to the state of North Dakota, by good and sufficient deed of warranty, the title to a site for an armory, which site shall be subject to the approval of the board of armory supervisors, bonds of the state of North Dakota shall be issued, the proceeds of which, together with the said sum of two thousand dollars deposited with the state treasurer, shall be used to construct an armory. The governor, adjutant general and the colonel commanding the regiment are hereby constituted a board of armory supervisors, whose duty it shall be to approve the selection of all armory sites, to approve the plans and specifications for the erection of all armories, and to audit and approve all bills, claims and accounts in connection with the construction of all armories before such bills, claims, and accounts shall be paid. [1903, ch. 48, §§ 1, 2.]

§ 1790. **Duty of state treasurer.** The state treasurer shall keep a separate account with each company, troop, battery or regimental band that shall avail itself of the provisions of this article, crediting the same with the money deposited with the state treasurer, and the proceeds of the bonds authorized by this article, and all bills for the construction of armories, after being approved by the board of armory supervisors and the state board of auditors shall be paid out of said account or fund, upon the warrant of the state auditor. [1903, ch. 48, § 3.]

§ 1791. **Bonds, how issued.** For the purpose of carrying out the provisions of this article 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 five thousand dollars for each company, troop, battery or regimental band whenever the same desires to avail itself of the provisions of this article. Such bonds shall be in the denomination of one thousand dollars each, payable to the purchaser or bearer; one thousand dollars thereof payable in five years; one thousand dollars thereof payable in ten years; one thousand dollars thereof payable in fifteen years, and two thousand dollars thereof 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 semiannually on the first day of January and July in each year, with coupons attached for each interest payment, said coupons to be payable anywhere in the United States; 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. [1903, ch. 48, § 4.]

§ 1792. **Interest, how paid. Sinking fund.** Whenever any company, troop, battery or regimental band shall avail itself of the provisions of this article, the amount now appropriated by law as and for armory rent, shall be used for the purpose of paying the interest on the bonds, authorized by this article, and to create a sinking fund to retire said bonds when the same shall mature; such company, troop or battery, or regimental band, shall not receive any other or further amount of appropriation for armory rent as such. [1903, ch. 48, § 5.]

§ 1793. **State treasurer to pay interest.** When the said interest coupons become due and whenever the 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. [1903, ch. 48, § 6.]

## ARTICLE 4.—RETIREMENT OF OFFICERS IN NATIONAL GUARD.

§ 1794. **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 acts of his office may, upon his own application to the governor of the state be placed upon the retired list. [1905, ch. 135, § 1.]

§ 1795. **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. [1905, ch. 135, § 2.]

§ 1796. **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. [1905, ch. 135, § 3.]

§ 1797. **Retired officers 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 canceled, 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. [1905, ch. 135, § 4.]

§ 1798. **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. [1905, ch. 135, § 5.]

§ 1799. **Medals for service. Appropriation.** 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. There is hereby appropriated out of the funds in the state treasury, not otherwise appropriated, the sum of one hundred dollars for the purpose of carrying out the provisions of this section, the same to be paid out on the order of the commander in chief, who shall file vouchers with the state auditor. [1905, ch. 36.]

## CHAPTER 22.

### MINES AND MINING.

#### ARTICLE 1.—LOCATION AND SIZE OF CLAIMS.

§ 1800. **Length of lode claim fifteen hundred feet.** The length of any lode claim hereafter located within this state may equal but shall not exceed fifteen hundred feet along the vein or lode. [R. C. 1899, § 1426.]

§ 1801. **Width of lode one hundred and fifty feet.** The width of lode claims shall be one hundred and fifty feet on each side of the center of the vein or crevice; provided, that any county may at any general election determine upon a greater width not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at such election, and any county by such vote at such election may determine upon a less width than specified; provided, that less than twenty-five feet on each side of the vein or lode shall be prohibited. [R. C. 1899, § 1427.]

§ 1802. **Discoverer must record his claim.** The discoverer of a lode shall within sixty days from the date of discovery record his claim in the office of the register of deeds of the county in which such lode is situated by a location certificate, which shall contain:

1. The name of the lode.
2. The name of the locator.
3. The date of location.
4. The number of feet in length claimed on each side of the discovery shaft.
5. The number of feet in width claimed on each side of the vein or lode.
6. The general course of the lode as near as may be. [1881, ch. 96, §§ 1, 2; R. C. 1899, § 1428.]

§ 1803. **Certificate void, when.** Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the number of feet in width claimed, the general course of the lode and such descriptions as shall identify the claim with reasonable certainty shall be void. [R. C. 1899, § 1429.]

§ 1804. **Manner of locating claim.** Before filing such location certificate the discoverer shall:

1. Locate his claim by first sinking a discovery shaft thereon sufficient to show a well defined mineral vein or lode.

2. By posting at the point of discovery on the surface, a plain sign or notice containing the name of the lode, the name of the locator and the date of discovery, the number of feet claimed in length on either side of the discovery and the number of feet in width claimed on each side of the lode.

3. By marking the surface boundaries of the same. [1881, ch. 96, § 3; R. C. 1899, § 1430.]

§ 1805. **Marking surface boundaries.** Such surface boundaries shall be marked by eight substantial posts hewed or blazed on the side facing the claim and plainly marked with the name of the lode and the corner, end or side of the claim that they respectively represent and sunk in the ground as follows: One at the corner and one at the center of each side line and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone. [1881, ch. 96, § 4; R. C. 1899, § 1431.]

§ 1806. **Requisites of location.** Any open cut, cross-cut or tunnel at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft. [R. C. 1899, § 1432.]

§ 1807. **Time within which labor must be performed.** The discoverer shall have sixty days from the time of uncovering or disclosing a lode in which to sink a discovery shaft thereon. [1881, ch. 96, § 5; R. C. 1899, § 1433.]

§ 1808. **Certificate construed to contain what.** The location or location certificate of any lode claim shall be so construed as to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lies inside of such lines extended vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode. [R. C. 1899, § 1434.]

§ 1809. **Claim not extended beyond the exterior line.** If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior. [R. C. 1899, § 1435.]

§ 1810. **Owner of land may demand security of miner.** When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner and if it is refused may enjoin such miner from working until such security is given. The injunctive order shall fix the amount of bond. [R. C. 1899, § 1436.]

§ 1811. **Amended certificate may be filed.** If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this chapter, such locator or his assigns may file an additional certificate subject to the provisions of this chapter; provided, that such relocation does not interfere with the existing rights of others at the time of such relocation; and no such relocation nor the record thereof shall preclude the claimant from proving any such title as he may have held under previous locations. [R. C. 1899, § 1437.]

§ 1812. **Amount of work that must be done annually.** The amount of work to be done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States; provided, that the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of the location of such claim. [1881, ch. 96, § 6; R. C. 1899, § 1438.]

§ 1813. **Relocating abandoned claims.** The relocation of abandoned lode claims shall be made by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim, or the relocater may sink the original shaft, cut or adit to a sufficient depth to comply with sections 1804 and 1808, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property. [R. C. 1899, § 1439.]

§ 1814. **Certificate can contain but one location.** No location certificate shall claim more than one location, whether the location is made by one or several locators; and if it purports to claim more than one location it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all. [R. C. 1899, § 1440.]

§ 1815. **Fee for recording.** The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him and shall furnish the locator with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents. [R. C. 1899, § 1441.]

#### ARTICLE 2.—DISPUTED MINING PROPERTY.

§ 1816. **Judge may order survey of mines in cases of disputed property.** In all actions in any district court of this state wherein the title or right of possession to any mining claim shall be in dispute, the court or judge thereof may, upon application of any of the parties to such suit, enter an order for the underground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties to such suit or in anywise interested in the result of the same and upon the application of the party adverse to such application, the court may

also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such survey and observe the method of making the same; such second survey shall be at the cost of the party asking the same. It shall also be lawful in such order to specify the names of witnesses named by either party not exceeding three on each side, to examine such property, who shall be allowed to enter into such property and examine the same; such court or the judge thereof may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of such property, when such removal is shown to be necessary to a just determination of the question involved; provided, however, that no such order shall be made for survey and inspection except upon notice of the application for such order of at least six days, and not then except by agreement of parties or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavit shall state the facts in such case and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party. [R. C. 1899, § 1442.]

Power of court of equity to order survey not abridged. *Duggan v. Davey*, 4 Dak. 110, 26 N. W. 887.

§ 1817. **Writs of injunction may be issued for affirmative relief.** The district court or the judge thereof in vacation shall have, in addition to the powers already possessed, power to issue writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person to the possession of any mining property from which he may have been ousted by force and violence or by fraud or from which he is kept out of possession by threats or whenever such possession was taken from him by entry of the adverse party on a Sunday or legal holiday or while the party in possession was temporarily absent therefrom. The granting of such writ shall extend only to the right of possession under the facts of the case in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued. [R. C. 1899, § 1443.]

## CHAPTER 23.

### DRAINS.

§ 1818. **When drains may be constructed.** Water courses, ditches and drains for the drainage of sloughs and other low lands may be established, constructed and maintained in the several counties of this state whenever the same shall be conducive to the public health, convenience or welfare under the provisions of this chapter. The word "drain" when used in this chapter shall be deemed to include any natural water course opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains constructed for such purpose. [1895, ch. 51, § 1; R. C. 1899, § 1444.]

Drainage warrants not a county liability. Law constitutional. *Redmon v. Chacey*, 7 N. D. 231, 73 N. W. 1081.

Courts will not determine constitutionality of statutory provisions at instance of persons not beneficially interested or damaged. *Turnquist v. Drain Com'rs*, 11 N. D. 514, 92 N. W. 852; *Ely v. Rosholt*, 11 N. D. 559, 93 N. W. 864; *State v. McNulty*, 7 N. D. 169, 73 N. W. 87; *State ex rel McClory v. Donovan*, 10 N. D. 203, 86 N. W. 709; *State v. Becker*, 3 S. D. 29, 51 N. W. 1018.

Is constitutional. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Constitutional. Hearing upon notice before assessments final overcomes objection "without due process of law." *Erickson et al v. Cass County et al*, 11 N. D. 494, 92 N. W. 841.

§ 1819. **Power of county commissioners. Petitions.** The board of county commissioners of any organized county in this state shall have power and is authorized at any meeting of the board by a majority vote of all the members to appoint on the petition of any person interested, three freeholders of the county, as a board of drain commissioners of such county, who shall hold office for two years, and until their successors are appointed and qualified. The board of county commissioners may remove for cause any or all of such drain commissioners, and in case of a vacancy may fill the same by appointment. [1895, ch. 51, § 2; R. C. 1899, § 1445.]

§ 1820. **Oath of office. Bond.** Any person appointed as a member of the board of drain commissioners shall within ten days after his appointment take, subscribe and file in the office of the county auditor an oath faithfully to perform the duties of a drain commissioner under the law, and within the same time make, execute and file in the auditor's office a bond to the county with sureties to be approved by the auditor in such sum as shall be ordered by the board of county commissioners, conditioned for the faithful discharge of his duties as drain commissioner. [1895, ch. 51, § 3; R. C. 1899, § 1446.]

§ 1821. **How established.** A petition for the construction of a drain may be made in writing to the board of drain commissioners. If among the leading purposes of the proposed drain are benefits to the health, convenience or welfare of the people of any city or other municipality, the petition shall be signed by a sufficient number of the citizens of such municipality or municipalities, to satisfy the board of drain commissioners that there is a public demand for such drain. If the chief purpose of such drain is the drainage of agricultural, meadow, grazing or other lands, the petition shall be signed by at least six or more freeholders whose property shall be affected by the proposed drain. Upon the presentation of a petition as hereinbefore provided, and filing of the same, the board of drain commissioners shall, personally, as soon as practicable, proceed to examine the line of the proposed drain, and if in its opinion it is necessary and for the public good, it shall cause a survey of the line thereof to be made by a competent surveyor, who shall establish the commencement and terminus and determine the route, width, length and depth thereof. For the purpose of making examinations or surveys, the board of drain commissioners, surveyors and their employes may enter upon land traversed by any such proposed drain, or upon other lands when necessary. Such surveyor shall prepare profiles, plans and specifications of the proposed drain, an estimate of the cost thereof and a map or plat of the lands to be drained, showing the regular subdivisions thereof, all of which shall be filed in the office of the county auditor of the county in which the drain is proposed to be constructed, subject to inspection. In locating a drain the board of drain commissioners may, under the advice of the surveyor, vary from the line described in the petition as it seems best. When the line proposed is along highways already established, the drain shall be located at a sufficient distance from the center of such highway to permit a good road along the central line thereof; when the length of the line described in the petition does not give sufficient fall to drain the lands sought to be drained, the board of drain commissioners may extend the drain below the outlet named in the petition far enough to obtain a sufficient fall and outlet. Drains shall, as far as practicable, be located on dividing lines between sections or regular subdivisions thereof, but the general utility of the drain must not be sacrificed to avoid crossing any tract of land in such direction as the board of drain commissioners find advisable. All persons whose land may be affected by any such drain may appear before the board of drain commissioners and fully express their opinion upon the matters pertaining thereto. [1899, ch. 79; R. C. 1899, § 1447; 1903, ch. 80.]

§ 1822. **Commissioners may deny petition, when.** If upon such examination and survey, or upon the trial in the district court it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of benefit to be derived therefrom, the board of drain commissioners shall deny the petition, and the petitioners shall be jointly and severally liable to such board for all costs and expenses incurred in the proceedings to be recovered by such board by action. If it shall appear that there was sufficient cause for the making of such petition, and that the proposed drain will not cost more than the amount of the benefit to be derived therefrom, the board of drain commissioners shall thereupon make an order establishing the drain, and give the same a name by which it shall be recorded and indexed. [1899, ch. 79; R. C. 1899, § 1448.]

§ 1823. **Right of way.** The title to the right of way for the construction of any proposed drain, if not conveyed to the county by the owner, may be acquired in such manner as may now or hereafter be prescribed by law. Such right of way when acquired shall be the property of the county. [1895, ch. 51, § 6; R. C. 1899, § 1449.]

§ 1824. **Assessment of damages, how made.** Upon the assessment by the jury, court or referee, of the amount of damages to which the respective owners of the right of way to be used for the construction of any proposed drain are entitled, the board of drain commissioners may issue warrants in a sum sufficient to pay the damages assessed for right of way, drawn upon the proper county treasurer, and payable out of any funds in the hands of the treasurer, for the construction of the drain for which such right of way is sought to be obtained, and shall negotiate the same at not less than the par value thereof, and pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer, who shall place the same to the credit of the proper drain fund. If warrants cannot be negotiated, the board of drain commissioners shall assess the per cent of the cost of acquiring the right of way in the manner provided in section 1826, making return to the county auditor containing all that is required in section 1827, and make, serve and file the list provided for in section 1831, and no further proceedings shall be taken until the special tax levied to pay for the right of way is collected and paid into court for the benefit of the owners of the right of way. [1899, ch. 79; R. C. 1899, § 1450.]

§ 1825. **Assessment of benefits subject to review.** Every assessment of benefits provided for in this chapter shall be subject to review and ten days' notice of the time and place when and where such assessment will be reviewed by the board of drain commissioners shall be given in the manner provided in section 1828. At the time and place appointed such board shall proceed to hear all complaints relative to such assessment and correct or confirm the same. [1895, ch. 51, § 8; R. C. 1899, § 1451.]

§ 1826. **Accruing benefits.** Upon acquiring the right of way, if the assessment of benefits has not already been made under the provisions of section 1824, the board of drain commissioners shall assess the per cent of the cost of constructing and maintaining such drain, and of providing the right of way therefor, which any county, township, city, village or town shall be liable to pay by reason of the benefits of such drain to the public health, convenience, or welfare, and which any railroad company shall be liable to pay by reason of benefits to accrue to its property, and which any lot, piece or parcel of land shall be liable to pay by reason of benefits to accrue thereto, either directly or indirectly, by reason of the construction of such drain, whether such lands are immediately drained thereby, or can be drained only by the construction of other and connecting drains, but such assessment



shall be subject to review by the commissioners as hereinafter provided. [1899, ch. 79; R. C. 1899, § 1452.]

Assessments are special to land assessed and not "conjectural" or "speculative." *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

**§ 1827. Commissioners shall make return to auditor.** After the assessment of benefits has been made, as provided in the last section, the board of drain commissioners shall make return thereof to the county auditor, who shall record the same in a book to be provided by the county for that purpose. Such return shall contain the petition for the drain, the minutes of the survey signed by the surveyor, a copy of the order establishing the drain, conveyances of the right of way, if any, and the assessment of benefits. [1899, ch. 79; R. C. 1899, § 1453.]

**§ 1828. Manner of letting contracts. Notice published.** After filing the return with the county auditor, as hereinbefore provided, the board of drain commissioners shall without delay divide the line thereof into convenient divisions for construction, make diagrams of the same with specifications of the width of excavation at the bottom, the slope of the sides, and such other matters as may be necessary for the proper construction of the drain, and set suitable stakes in such places as may be necessary to show the beginning and end of divisions, and grade stakes to show the depth of cuts at such intervals as may be necessary. Such board shall give at least ten days' notice of the time when and the place where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county and printed notices not less than five in all and at least one in each township or municipality interested in such drain shall be posted in such township and municipalities at such points as will be likely in the opinion of the board, to secure the greatest publicity for such notice. Such notice shall also state that at the time and place of such letting of contracts the assessment of benefits will be subject to review, unless such assessment has already been reviewed, under the provisions of section 1825. [1899, ch. 79; R. C. 1899, § 1454.]

Alleged defects in right of way deeds does not invalidate proceedings of board. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

**§ 1829. Commissioners may defer letting of contract.** At the time and place appointed the board of drain commissioners shall proceed to hear all complaints relative to such assessments, unless a hearing has already been had under the provisions of section 1825, and correct and confirm the same. Such board shall then proceed to let contracts for the construction of the drain by divisions as it shall have divided the same, to the persons who will do the work according to the specifications, for the lowest price and give adequate security for the performance of the same within such time as the contract shall specify. Such board may adjourn such letting in whole or in part and from time to time to such other time and place, to be by it at the time of such adjournment publicly announced, as shall to it seem proper and it may reserve the right to reject any and all bids. The parties who are to be assessed for the construction of such drain and who may be bidders for contracts thereon shall, if equal bidders with other parties, be preferred in the awarding of such contracts; provided, that contracts for the building of bridges and culverts mentioned in section 1838 may be deferred, until the construction of the drain has reached such a stage of completion that the character of the bridges and culverts which will be needed can be determined. As soon as the character of such bridges and culverts can be determined such board shall cause plans and specifications of the bridges and culverts to be constructed in connection with such drain to be prepared and shall give at least ten days' notice of the time and place when and where it will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county. Such

contracts shall be let to the lowest bidder as hereinbefore in this section provided. [1895, ch. 51, § 12; R. C. 1899, § 1455.]

**§ 1830. General duties of commissioners.** After the letting of such contracts or a major portion thereof such board shall make a computation of the cost of such drain which shall include all the expenses of locating and establishing the same, including the cost of right of way, the drain commissioners' fees, cost of survey, cost of building bridges and culverts, interest on all warrants issued or to be issued by the board of drain commissioners on account of the drain, accumulated or to accumulate prior to the time when the tax levied or to be levied to pay for the right of way or construction of the drain is collectible by law and all other expenses and the amount of the contracts and in case contracts shall not have been let for the construction of the whole of the drain or of the bridges and culverts, the board of drain commissioners shall estimate the cost of such unlet portion and of the bridges and culverts, predicating its estimate so far as may be upon the cost of those portions that have been let or upon similar work. The sum of all the costs and expenses incurred or to be incurred shall be the cost of the construction of the drain. [1895, ch. 51, § 13; R. C. 1899, § 1456.]

**§ 1831. Lands benefited. Special tax.** The board of drain commissioners shall make a list showing the amount which each municipality and lot or tract of land benefited by the drain for which the tax is levied is liable to pay on account of procuring the right of way or the construction of any drain, or both according to the per cent which by section 1826 it is required to fix and determine, a copy of which shall be served on the clerk or auditor of each municipality against which taxes are to be assessed. Such list shall thereupon be filed in the office of the county auditor of the county in which the municipalities and lands benefited by the drain are situated, and the auditor shall thereupon extend upon the tax lists as a special tax as provided by law the several amounts shown by the drain commissioners' list, specifying in such tax lists the particular drain for the construction or procurement of the right of way of which the special tax is assessed, which special tax shall be collected and enforced in the same manner as other taxes. When such special tax is for the right of way the same shall when collected be paid by the county treasurer into court for the benefit of the owners of the right of way. And the common council, or other proper taxing authorities of each city, or other municipality, against which such assessment is made as aforesaid, shall include in the first general tax levy thereafter made in said city or municipality, the amount so assessed against it, by the board of drain commissioners, and the same shall be extended upon the tax lists of the county for the current year by the county auditor against all the taxable property in such city or municipality in the same manner and with the same effect as other taxes are extended. [1899, ch. 79; R. C. 1899, § 1457.]

**§ 1832. County treasurer shall collect drain tax.** The drain taxes shall be collected by the county treasurer and all moneys so collected shall be credited to the drain fund to which they belong and the county treasurer shall be the treasurer of such drain funds. Payment of all expenses and costs of locating and constructing any drain shall be made by the board of drain commissioners issuing warrants in such amounts and to such persons as by such board may be found due. All warrants drawn by such board in payment for the right of way or construction of any drain shall be payable from the proper drain fund and shall be receivable for the taxes levied for the right of way or construction of such drain by the treasurer. All such warrants after presentation to the county treasurer for payment, if not paid for want of funds, shall be registered by the county treasurer and thereafter shall bear interest at the rate of seven per cent per annum. [1895, ch. 51, § 15; R. C. 1899, § 1458.]

§ 1833. **Additional assessment, when necessary.** In case the amount realized from the assessment made for right of way or for the construction of any drain shall not be sufficient to pay for such right of way or to complete such drain, and to pay fees and all incidental expenses, or in case an enlargement or deepening of such drain or an extension of the line thereof becomes necessary, a further assessment shall be made to meet the deficit or additional expense, and the amount thereof shall be levied and collected in the manner hereinbefore provided. [1895, ch. 51, § 16; R. C. 1899, § 1459.]

§ 1834. **Extension of time to contractors.** The board of drain commissioners shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board of drain commissioners may in its discretion at any time thereafter, relet such unfinished portion or any part thereof, after not less than five days' notice thereof to the lowest responsible bidder and shall take security as before. The cost of completing such parts over and above the contract price, and the expense of notices and reletting shall be collected by the board of drain commissioners of the parties at first contracting; provided, that in no case shall the board of drain commissioners forfeit and annul a contract without five days' notice to the contractor, if found, and if not found, then by written notice left at his last place of residence, if known to be within the county. [1895, ch. 51, § 17; R. C. 1899, § 1460.]

§ 1835. **Extension of powers, when necessary.** The powers conferred by this chapter for establishing and constructing drains shall also extend to and include the deepening and widening of any drains which have heretofore been or may hereafter be constructed; also to straightening, clearing out and deepening the channels of creeks and streams and the construction, maintaining, remodeling and repairing of levees, dykes and barriers for the purpose of drainage and the board of drain commissioners may relocate or extend the line of any drain if the same is necessary to provide a suitable outlet and shall cause a survey thereof to be made, but no proceedings affecting the right of persons or property shall be had under this section, except upon the notice, hearing and award prescribed in this chapter for the construction of drains in the first instance. [1895, ch. 51, § 18; R. C. 1899, § 1461.]

§ 1836. **Joint powers of drain commissioners in two or more counties. Apportionment of cost.** 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 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. [1905, ch. 97.]

§ 1837. **Duty of railroad companies.** Drains may be laid along, within the limits of or across any public road, and when so laid out and constructed or when any road shall thereafter be constructed along or across any drain it shall be the duty of the board of county commissioners, or township supervisors, as the case may be, to keep the same open and free from all obstructions. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad it shall be the duty of such railroad company, when notified by the board of drain commissioners to do so, to make the necessary opening through said road and to build and keep in repair suitable culverts or bridges. [1895, ch. 51, § 19; R. C. 1899, § 1462.]

§ 1838. **Construction of bridges and culverts.** When any drain crosses a highway the cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of constructing such drain, after which such bridge or culvert shall be maintained as part of the highway. The board of drain commissioners shall construct such bridges or culverts over or in connection with each drain as may in its judgment be necessary to furnish a passage from one part to another of any farm or tract of land intersected by such drain and the cost of the construction thereof shall be charged as part of the cost of constructing such drain and such bridge or passageway shall be maintained under the authority of the board of county commissioners or township supervisors, as the case may be, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. [1895, ch. 51, § 20; R. C. 1899, § 1463.]

§ 1839. **Blind drains, how constructed.** Blind drains may be constructed by the use of drain tile or sewer pipe, when the nature of the ground will admit of so doing. When blind drains are constructed the entrance shall be protected from drift wood and other debris. [1895, ch. 51, § 21; R. C. 1899, § 1464.]

§ 1840. **Legal drains shall be recorded.** All drains regularly established, opened or constructed under existing provisions of law shall be deemed legal drains and it shall be the duty of all boards of county commissioners, in cases where the records of any drain may not have been preserved, to see that such record is made in the best manner practicable in the office of the county auditor. [1895, ch. 51, § 22; R. C. 1899, § 1465.]

§ 1841. **Tax or assessment void, when. New proceedings.** The collection of no tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under this chapter, shall be perpetually enjoined or declared absolutely void in consequence of any error of any officer or board in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which any drain shall have been located or established, nor for want of proper conveyance or condemnation of the right of way, but the court in which any proceeding may hereafter be brought to reverse or to declare void the proceedings by which any drain has been located or established or to enjoin the tax levied to pay the labor and cost and expenses shall on application of either party appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary and the court

shall on a final hearing make such order in the premises as shall be just and equitable, and may order such tax to remain on the tax list for collection, or any part thereof, or if the same shall have been paid under protest shall order the whole or such part thereof as may be just and equitable to be refunded, the costs of said proceedings to be apportioned among the parties as justice may require. If any proceeding for the location, establishment or construction of any drain under the provisions of this chapter, have been heretofore, or shall be hereafter enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board of drain commissioners, in consequence of any error, irregularly or want of jurisdiction affecting the validity of such proceedings, and if any drainage warrants have been or shall hereafter be issued in connection with such aforesaid invalid or abandoned proceedings, the board of drain commissioners may nevertheless proceed under the provisions of this chapter to locate, establish and construct drains under the same or different names, and in the same or different locations from those described in the invalid or abandoned proceedings; provided, however, such new proceedings shall be in accordance with the general provisions of this chapter. In case new proceedings shall be had, resulting in the location and establishment of a drain in the same or substantially the same location as that described in the invalid or abandoned proceedings, then the board of drain commissioners shall proceed to ascertain and determine the real value of services rendered, moneys expended, and work done under such invalid or abandoned proceedings, and the extent to which the same have contributed or will contribute to the construction and completion of such drain, as subsequently established and constructed. A meeting of said board of drain commissioners shall be held for the purpose of determining and fixing the value aforesaid, at which meeting all persons interested, whether as holders of warrants issued under invalid or abandoned proceedings, or as owners of land benefited or to be benefited by such drain, may appear and be heard. Ten days' notice of such meeting shall be given, in the manner, at the time, and as a part of the notice provided for in sections 1825 or 1828, and the notice as published shall state briefly the purpose of such meeting, and that all persons interested may appear and be heard. The board shall thereupon, and after such hearing, by an order made and entered in their minutes, find and determine: (1) the real value of all work done, money expended and services rendered under such invalid or abandoned proceedings, to the extent only to which they contribute to the drain as subsequently located and established; (2) the names of all persons or corporations owning or holding drain warrants issued under such invalid or abandoned proceedings, and the dates and several amounts of such warrants. The board shall then proceed to issue warrants to an amount not exceeding the value of the work done, moneys expended and services rendered under such invalid or abandoned proceedings, and deliver such new warrants to the owners or holders of the old warrants upon surrender and return of the latter; provided, however, that the value of any service rendered, or money expended, or work done, shall in no case be declared to be greater than the warrant issued therefor, under the invalid or abandoned proceedings, and if found to be less, the new warrant shall not be issued or delivered except upon the surrender and return of the old warrant, in lieu of which it is issued. The real purpose and intent of this section is to afford compensation for services rendered, work done, and moneys expended, under invalid or abandoned proceedings, to the extent only to which the same contributes to the completion of a drain located and established in pursuance of the provisions of this chapter. [1899, ch. 79; R. C. 1899, § 1466.]

Amendatory act constitutional. Title does not violate section 61, constitution. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Board is a tribunal to determine benefits. Determination not open to collateral attack. Courts will not inquire into correctness of their judgment in assessment of benefits. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841; *Turnquist v. Drain Com'rs*, 11 N. D. 514, 92 N. W. 852.

**§ 1842. Drain kept open and in repair. Cost of.** All drains that may have been constructed under any law of this state or that may be constructed under the provisions of this chapter and which are in this state, shall, except as otherwise provided be under the charge of the board of county commissioners and their successors in office and they shall keep them kept open and in repair. In all cases when any completed drain is or may be situated in more than one county the care of the portion thereof lying within any county is hereby assigned to the board of county commissioners of such county to be by it kept open and in repair. The cost of such keeping open and in repair shall in all cases be assessed, levied and collected in the same manner as is provided in this chapter for the construction of drains in the first instance, and in cases when no assessments of benefits shall have been made, the board of commissioners having charge of or to whose care such drain may be assigned shall make such assessment. [1895, ch. 51, § 24; 1899, § 1467.]

**§ 1843. Rules and regulations.** The board of county commissioners of any county may make rules and regulations on the subject of drainage within such county, as it may deem proper, not inconsistent with the provisions of this chapter and especially with regard to clearing out and keeping clear the channels of streams and the construction and maintenance of dams thereupon, with reference to their capacity for drainage and may require of the owners of such dams reasonable service in cleaning and keeping such streams clear as a consideration for the right to erect dams thereupon. [1895, ch. 51, § 25; R. C. 1899, § 1468.]

**§ 1844. Liability of drain commissioner.** Each board of drain commissioners shall make a report to the board of county commissioners of all drains begun, in process of construction or finished and shall also render a full account of all moneys which shall come into its hands; and every drain commissioner shall be liable on his bond for any misapplication of money coming into his hands as such commissioner. The report required by this section shall include an itemized statement of all expenses and warrants drawn on account of each and every drain. [1895, ch. 51, § 26; R. C. 1899, § 1469.]

**§ 1845. Compensation of commissioners and publishers.** Drain commissioners shall receive for their services such amount, not less than two nor exceeding three dollars per day, for the time actually spent by them in performing the duties of their offices as may be fixed by the board of county commissioners. Publishers of newspapers shall receive for publishing legal notices and furnishing evidence of such publication the fees prescribed by law for legal advertisements. [1895, ch. 51, § 27; R. C. 1899, § 1470.]

**§ 1846. Penalty.** If any person shall willfully and maliciously remove any surveyor's stake set along the line of any drain laid out under the provisions of this chapter, or obstruct or injure any such drain, he shall for each and every such offense be subject to a penalty not exceeding ten dollars together with such sum as will be required to repair such damage and costs of suit, which penalty may be recovered in an action by the board of drain commissioners or county commissioners as the case may be. Whenever the amount of any recovery shall be collected it shall be deposited with the county treasurer to the credit of the proper drain fund. [1895, ch. 51, § 28; R. C. 1899, § 1471.]

**§ 1847. State and county officers not eligible.** No person holding any state or county office shall be eligible to the office of drain commissioner, and any drain commissioner accepting any state or county office shall thereupon be considered as having vacated the office of drain commissioner. [1895, ch. 51, § 29; R. C. 1899, § 1472.]

§ 1848. **Power to administer oath.** Drain commissioners shall have power to administer any oath required in any proceeding had before them or in which they may be called to act officially. [1895, ch. 51, § 30; R. C. 1899, § 1473.]

§ 1849. **Bonds, when and how issued.** The board of county commissioners of any county in which any such drain is proposed to be located and constructed is authorized to issue bonds in such sums as may be necessary for the purpose of defraying the expenses incurred, or to be incurred, in obtaining the right of way or in locating or constructing any such drain, said word "expenses" to be construed to mean and to cover every item of cost of such drain from its inception to its completion as hereinbefore provided, which bonds shall be paid out of the revenues to be derived from taxes levied, or to be levied, and collected from that portion of the county found by the board of drain commissioners to be benefited thereby. Such bonds shall bear interest at a rate not exceeding seven per cent, and shall be payable in not less than three and in not more than seven years from the date thereof; provided, that any land owner who may desire to pay the entire amount assessed against his land for the entire cost of such drain, including warrants and interest thereon may, prior to the sale of such bonds, pay into the county treasury the amount of said assessments for which the treasurer shall give his receipt in full, and such lands shall not be included in the list of the lands assessed. The money paid in shall be used to take up warrants and the bonds issued shall be for such an amount as will pay the remainder of the warrants outstanding and the said board shall provide sinking funds for the payment at maturity of each series of bonds issued and for the payment of the annual interest on the same. The bonds issued under the provisions of this chapter shall be signed by the chairman of the board of county commissioners of such county and countersigned by the county auditor, who shall keep a record of the bonds issued under the provisions of this chapter. Such board shall have the power to negotiate such bonds at not less than the par value thereof as it may deem best for the interest of all persons interested in such drain. Such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this chapter and that they are to be paid out of sinking funds to be created as in this chapter provided. Whenever such bonds shall be issued the tax hereinbefore provided for shall not be collected all in one year, but shall be divided into as many parts as such bonds have years to run, and one of such parts shall be extended upon the tax lists by the county auditor against the proper parcels of land and property liable to taxation for that purpose in each and every year and collected in such year, and such fund shall constitute the sinking fund provided by this section. [1895, ch. 51, § 31; R. C. 1899, § 1474; 1901, ch. 39.]

Issuance of bonds for cost of construction. Postponement of assessments and division thereof not taking property without "due process of law." Erickson v. Cass County, 11 N. D. 494, 92 N. W. 841.

Rights vested under a contract resting for its validity upon a statute not impaired or annulled by repeal of statute. May et al v. Cass County et al, 12 N. D. 137, 96 N. W. 292.

§ 1850. **Levy of tax for interest. Sinking fund.** The board of county commissioners shall in each year at the time of levying the taxes, levy upon the property liable to taxation on account of the location and construction of any drain a tax sufficient to pay the annual interest on any bonds which may have been issued for the purpose of locating and constructing the drain. Separate sinking funds shall be provided for each separate drain for the construction of which bonds shall have been issued, and no funds in any such sinking fund shall be applied to any other purpose than the payment of the bonds for the payment of which such fund was

created. No county shall be liable for the payment of any bonds issued under the provisions of this chapter, but such bonds shall be paid only out of the sinking funds created as in this chapter provided. [1895, ch. 51, § 31; R. C. 1899, § 1474; 1901, ch. 39.]

## CHAPTER 24.

### POLICE OF THE STATE.

#### ARTICLE 1.—SUPPORT OF THE POOR.

§ 1851. **County commissioners overseers of the poor.** The county commissioners of the several counties in this state shall be overseers of the poor within their respective counties and shall perform all the duties with reference to the poor that may be prescribed by law. Each board of county commissioners shall in discharging the duties imposed by this chapter, be designated as overseers of the poor. [R. C. 1899, § 1475.]

§ 1852. **Suits in name of county.** In all suits or proceedings in favor of or against any such overseers of the poor, pertaining to or connected with the poor of their respective counties, the same shall be conducted by or against such county. [R. C. 1895, § 1476.]

§ 1853. **Each county shall relieve its poor.** Each county shall relieve and support all poor and indigent persons residing therein, whenever they shall be in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the manner provided in section 1867. [R. C. 1899, § 1477.]

Acceptance of service by one removed to pest house by order of commissioners makes patient liable for medicine and service of physician. *Ostland v. Porter*, 4 Dak. 98, 25 N. W. 731.

County not bound for unauthorized relief furnished. *St. Luke's Hospital Ass'n v. Grand Forks County*, 8 N. D. 241, 77 N. W. 598.

No legal duty imposed upon a county to provide relief or support to one who has a legal settlement therein while without the county. *Hamlin County v. Clark County*, 1 S. D. 131, 45 N. W. 329.

§ 1854. **Residence acquired. Married women and children.** Residence may be acquired in any county so as to oblige such county to relieve and support the persons acquiring such residence, in case they are in need of relief, as follows:

1. The residence of a married woman follows that of her husband if he has any within the state, otherwise her own at the time of her marriage, and if she then had any residence it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her residence, and the husband shall need relief, he shall receive it in the place where his wife shall have her residence.

2. Legitimate children shall follow and have the residence of their father if he has any within the state, until they shall gain a residence of their own, but if the father has no residence they shall in like manner follow and have the residence of their mother if she has any.

3. Illegitimate children shall follow and have the residence of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a residence by birth in the place where they were born, unless their parent or parents had a residence therein at the time.

4. Each male person and each unmarried female over the age of twenty-one years, who shall have resided in any county in this state ninety days, shall thereby gain a residence in such county.

5. Each minor whose parents, and each married woman whose husband, has no residence in this state, who shall have resided ninety days in any county in this state, shall thereby gain a residence in such county.



6. Each minor who shall be bound as an apprentice to any person shall immediately upon such binding, if done in good faith, thereby gain a residence where his master has a residence.

7. Each residence when once legally acquired shall continue until it is lost or defeated by acquiring a new one in this state, or by voluntary absence from the county in which such residence had been obtained, for ninety days or more; and upon acquiring a new residence, or upon the happening of such voluntary absence all former residences shall be defeated and lost, and the provisions of this section shall apply to cases of residences begun to be acquired or lost or defeated, as well heretofore as hereafter. [R. C. 1895, § 1478.]

§ 1855. **Overseers have care of the poor.** The overseers of the poor in each county shall have the oversight and care of all poor persons in their county so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner provided by law. [R. C. 1899, § 1479.]

§ 1856. **Allowance for the support of poor persons.** The board of county commissioners may in its discretion allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound mind, and who from their general character will probably be benefited thereby, and also the parents of idiots and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for such children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, such board taking the usual amount of charges in like cases as the rule for making such allowance. [R. C. 1899, § 1480.]

§ 1857. **Complaint in behalf of the poor. Duty of overseers.** It shall be the duty of the overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint, and if in their judgment the poor have not been sufficiently provided with the common necessaries of life, or have in any respect been illtreated by the person under whose charge they have been placed, to withhold any part of the compensation allowed to the person keeping them, as such overseers may deem reasonable and proper, and remove such poor and place them in the care of some other person. [R. C. 1899, § 1481.]

§ 1858. **Poor book to be kept.** The overseers of the poor shall enter in the poor book of their respective counties the names of all poor persons in their county who are unable to care for themselves, and who are in their judgment entitled to the benefits of the provisions of this article, together with the date of such entry. [R. C. 1899, § 1482.]

§ 1859. **Appeal to district judge.** If any poor person shall suppose that he is entitled to the benefits of this article, and the overseers of the poor of the county in which he resides shall refuse to give such person the benefit thereof, upon application of such person the judge of the district court of the county or judicial subdivision may, if he thinks proper, direct such overseers to receive such person on the poor list on his application therefor. [R. C. 1899, § 1483.]

§ 1860. **When residence is uncertain.** If any one within the description of poor persons specified in this article shall be found in any county, and the overseers of the poor of such county shall be unable to ascertain and establish the last place of legal residence of such person, they may proceed in their discretion to provide for such person in the same manner as other persons are provided for. [R. C. 1899, § 1484.]

§ 1861. **Temporary relief for certain poor.** Whenever any person entitled to temporary relief as a pauper shall be in any county in which he has not

a legal residence, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief by placing him temporarily in the poor house of such county, if there is one; but if there is no poor house they may provide the same relief as is customary in other cases. [R. C. 1895, § 1485.]

§ 1862. **Justice of the peace may issue warrant of removal.** Upon complaint of any overseer of the poor, any justice of the peace may issue his warrant, directed to and to be executed by any constable or by any other person therein designated, to cause any poor person found in the county, likely to become a public charge, and having no legal residence therein, to be sent at the expense of the county to the place where such person belongs, if the same can be conveniently done; but if he cannot be removed, such person shall be relieved by such overseers whenever such relief is needed. [R. C. 1899, § 1486.]

§ 1863. **Overseers of poor aggrieved by removal.** If the overseers of the poor of any county in this state, to which any pauper shall have been removed as above provided, shall feel themselves aggrieved by such order of removal, they may at any time within twenty days after such removal shall be known to them, appeal from the decision of the justice ordering such removal, to the district court of the county or judicial subdivision from whence the removal was ordered, such appeal to be taken, tried and determined and costs taxed as in other cases of appeal from the judgment of a justice of the peace, and the order of removal may be vacated or affirmed as the facts warrant. [R. C. 1899, § 1487.]

§ 1864. **Appeal heard, how.** Such appeal shall be heard at the term of court next after the same is filed therein, if in the opinion of the court reasonable notice of the appeal has been given to the opposite party; but if not thus given, the cause shall stand continued until the next term of the court. [R. C. 1895, § 1488.]

§ 1865. **When order of removal defective.** If the order of removal is defective, the court shall permit the same to be amended without costs, and after such amendment is made the appeal shall be heard and determined as in other cases. [R. C. 1895, § 1489.]

§ 1866. **Removal. Duty of overseers of county to which removed.** If any person is removed by virtue of the provisions of this article from any county to another place within this state, by warrant or under the hand of any justice of the peace as hereinbefore provided, the overseers of the poor of the county to which such person is removed are required to receive such person if he has a legal residence in their county. [R. C. 1899, § 1490.]

§ 1867. **Overseers to make return to county auditor.** The overseers of the poor shall make return to the county auditor of the sums of money required for the poor of their respective counties, which sum shall be paid in quarterly installments out of the county treasury upon the order of the board of county commissioners in the same manner as other claims against the county are paid. [R. C. 1895, § 1491.]

§ 1868. **Compensation of overseers.** The overseers of the poor shall be entitled to receive two dollars per day each for every day during which they shall be necessarily employed in the discharge of their duties as such, to be allowed by the board of county commissioners. [R. C. 1899, § 1492.]

§ 1869. **Overseers shall submit accounts, when.** The overseers of the poor shall annually at the first session of the board of county commissioners in each year, submit their accounts and make a report of their proceedings for the past year, which report shall be presented to the county auditor at least one day prior to the meeting of such board, and the board may allow such accounts so presented, and draw on the county treasurer therefor, whose duty it shall be to pay the same out of any money in the county treasury not otherwise appropriated. [R. C. 1899, § 1493.]

§ 1870. **Nonresident sick or dying within county.** It shall be the duty of the overseers of the poor, on complaint made to them that any person not a resident of their county is lying sick therein or in distress, without friends or money, so that he is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the case may require; and if any person shall die within any county, who shall not have money or means necessary to defray his funeral expenses, it shall be the duty of the overseers of the poor of such county, to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable expenses thereof shall be paid by the county treasurer upon the order of the board of county commissioners. [R. C. 1899, § 1494.]

ARTICLE 2.—ASYLUM AND POOR FARM.

§ 1871. **Election. Management.** It shall be lawful for the board of county commissioners in the several counties in the state after having submitted the question to the legal voters of the county at any special, county or general election whenever the commissioners may deem it advisable, and if at such election a majority of the legal voters shall vote in favor of the proposition, to purchase a tract of land in the name of the county and build, establish and organize thereon an asylum for the poor and to employ some humane and responsible person, a resident of the county, to take charge of the same upon such terms, and under such restrictions as the board shall consider most advantageous for the interest of the county, who shall be called superintendent of the county asylum; and it shall be lawful for the county commissioners of two or more counties, after having been so authorized, by a majority of the legal voters of their respective counties, in the manner prescribed in this section, jointly to purchase lands and erect asylums and to continue such joint ownership during their pleasure; and to do such other things necessary and proper for the relief of the poor within such counties as might be done by a county acting alone. [1899, ch. 6; R. C. 1899, § 1495.]

§ 1872. **Duty of superintendent of asylum.** The superintendent shall receive into his care and custody all persons who may become a county charge as paupers, and take such measures for the employment and support of such paupers, and perform such other duties as the board of county commissioners shall from time to time order and direct, consistent with the laws of this state. [R. C. 1899, § 1496.]

§ 1873. **Shall appoint a physician.** The board of county commissioners shall annually appoint a well qualified physician to attend the county asylum, and allow him a reasonable compensation for his services. [R. C. 1899, § 1497.]

§ 1874. **May bind out poor children.** The overseers of the poor shall bind out such poor children as fall under their care and charge from time to time; and the overseer shall see that the children so bound out are properly treated by the persons to whom they are bound, and take legal means of redress in case of maltreatment. [R. C. 1899, § 1498.]

§ 1875. **Assessment of tax for purchase of poor farm.** To raise the sum necessary for the purchase of land and the erection and furnishing of buildings for such asylum, the board of county commissioners in the several counties shall have power to assess a tax on property liable to taxation for raising a county revenue, not exceeding five hundred dollars unless the amount of taxes to be assessed shall be submitted to a vote of the people at the special election held pursuant to section 1871, and a majority of all the votes cast at such election is in favor of such assessment. [R. C. 1895, § 1499.]

§ 1876. **All poor shall go to the asylum, when.** As soon as the necessary provisions are made by the erection of suitable buildings, the board shall

order and direct that all persons who have become permanent charges as paupers in the county be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable, and thereafter the overseers of the poor shall from time to time, as persons may become permanent charges as paupers, have such persons removed to such asylum. [R. C. 1899, § 1500.]

§ 1877. **Superintendent to give bond.** The superintendent shall execute a bond to the state in the sum of five hundred dollars with two or more sureties to be approved by the board, conditioned for the faithful discharge of his duties, and he shall make to such board at the first and third sessions in each year a detailed report in writing of the time and manner of the admission of each pauper, his health and fitness to labor, the results of his industry, and the expenses incurred; the members of such board shall in person annually inspect such asylum with regard to its fitness in all respects for the objects of its establishment. [R. C. 1899, § 1501.]

§ 1878. **Children shall be educated, when.** Whenever it shall be necessary and practicable, poor children of the asylum who cannot be bound out or whom it may not be expedient to bind out as apprentices, shall be educated thereat. [R. C. 1899, § 1502.]

§ 1879. **Superintendence of the education of children.** The superintendent shall superintend and direct the education of such poor children and send them to any common school within the county, during the continuance of its session. [R. C. 1895, § 1503.]

§ 1880. **Discontinuance of asylum.** Such asylum or poor farm may be discontinued by such board, and the property real and personal sold, leased or otherwise disposed of or applied in such manner as may be best for the interests of the county. [R. C. 1895, § 1504.]

§ 1881. **Board of county commissioners may levy poor tax.** The board of county commissioners may, if it deems it expedient, annually, at its session at which the county tax is ordered to be levied and assessed, levy and assess a tax for the support of the poor of its county. Such tax shall be collected by the county treasurer. [R. C. 1899, § 1505.]

§ 1882. **Board appoints visitors.** The board of county commissioners may in its discretion appoint a board of visitors annually, consisting of three residents of the county, to visit at least once in each year the asylum in such county, and report to the commissioners its condition, and the treatment, management and condition of the inmates thereof. [R. C. 1899, § 1506.]

§ 1883. **Compensation.** Such visitors shall receive such compensation as the board shall adjudge reasonable. [R. C. 1899, § 1507.]

§ 1884. **Sending pauper out of county is unlawful.** No person shall either directly or indirectly send or be instrumental in sending or causing to be sent out of the county where such person properly belongs, any pauper or person who is or is likely to become an object of public charity, into any other county of this state, except in the manner provided for in this article. [R. C. 1899, § 1508.]

§ 1885. **Penalty for violation of last section.** Any person who shall violate the provisions of the preceding section is guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or to imprisonment in the county jail not exceeding one year or both. [R. C. 1899, § 1509.]

§ 1886. **Penalty for bringing pauper into the county.** Every person who shall bring into and leave any pauper in any county wherein such pauper has not a lawful residence, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for each offense, to be sued for and recovered by and for the use of such county, by an action in the name of the county, and no property shall be exempt from seizure and sale in such cases; and it shall be the duty of the board of county commissioners to

institute suits for all violations of this section; and any such sum when collected shall be paid into the county treasury for the use of the county. [R. C. 1899, § 1510.]

ARTICLE 3.—FOR RELIEF OF NEEDEY SETTLERS.

§ 1887. **Appropriation for.** There is hereby appropriated annually out of any funds in the state treasury not otherwise appropriated, the sum of seven thousand dollars, or so much thereof as may be necessary, to be expended by the commissioner of agriculture and labor by and with the advice and consent of the governor, for the relief of the needy settlers in such counties, as by reason of their having reached their constitutional limit of indebtedness, may be unable to provide the necessaries of life needed by destitute residents of such county. [1891, ch. 24, § 1; R. C. 1899, § 1511.]

§ 1888. **Accounts, how audited.** The state auditor is authorized and directed to audit and allow the accounts of such commissioner of agriculture and labor when approved by the governor, secretary of state and attorney general, and he shall issue his warrants on the state treasurer for the amount of such accounts. [1891, ch. 24, § 2; R. C. 1895, § 1512.]

ARTICLE 4.—CARE OF THE INSANE.

§ 1889. **Appointment of commissioners of insanity.** In each organized county of this state there shall be a board of commissioners consisting of three persons, to be styled "commissioners of insanity," two of whom shall constitute a quorum. The county judge shall be a member of such board and its chairman. The other two members shall be appointed by the board of county commissioners, one of whom shall be a reputable practicing physician, and the other a reputable practicing attorney; and such appointment shall be made from persons residing as near as may be to the county seat. Such commissioners shall be appointed for the term of two years and until their successors are appointed and qualified. The appointment of successors can be made at any time within three months prior to the expiration of the term of the incumbents. In case of the temporary absence of such commissioners or their inability to act, the county judge shall call to his aid a reputable practicing physician or attorney, who after qualifying as in other cases, may act in the same capacity. The record in such cases must show the fact of such absence. [1879, ch. 23, § 16; R. C. 1895, § 1513.]

§ 1890. **Oath of commissioners. Organization and meetings.** Before entering upon the duties of their office the persons so appointed shall take and subscribe an oath to support the constitution of the United States and the constitution of this state, and faithfully to discharge their duties as such commissioners according to law, which oath shall be filed with the county judge who shall enter a memorandum thereof on the records. On organizing they shall choose one of their number as clerk of such board. They shall hold their meetings at the office of the county judge unless for good reasons they shall fix some other place. If they deem it necessary or advisable, they may hold sessions at such regular times as they may fix. They shall also meet on notice from the chairman of the board. [1879, ch. 23, § 17; R. C. 1895, § 1514.]

§ 1891. **Duties of chairman. Books to be kept. Notices.** The chairman of the board shall sign and issue all notices, appointments, warrants, subpoenas and other process required to be given or issued by the commissioners, affixing thereto his official seal as county judge. He shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with notices, reports and other communications. He shall keep separate books in which to record the proceedings of the board, and his entries shall be sufficiently full to show, with the papers

filed, a complete record of the findings, orders and transactions. The notices, reports and communications herein required to be given or made, may be sent by mail unless otherwise provided, and the fact and date of such sending and their reception must be noted on the proper record. [1879, ch. 23, § 18; R. C. 1899, § 1515.]

§ 1892. **Duties and powers of commissioners.** Such commissioners shall have cognizance of all applications for admission to the hospital or for the safe-keeping otherwise of insane persons within their county, except in cases otherwise specially provided for. They shall have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any act necessary and proper in the premises. [1879, ch. 23, § 19; R. C. 1899, § 1516.]

§ 1893. **Applications for admission to hospital.** Applications for admission to the hospital must be made in writing in the nature of an information verified by affidavit. Such information must allege that the person in whose behalf the application is made is believed by the informant to be insane and a fit subject for custody and treatment in the hospital for the insane; that such person is found in the county and has a legal residence therein, if such is known to be the fact; and if such residence is not in the county, where it is, if known, or where it is believed to be, if the informant is advised on the subject. [1879, ch. 23, § 20; R. C. 1899, § 1517.]

§ 1894. **Investigation by commissioners as to the alleged insanity.** On the filing of an information as above provided, the commissioners shall at once investigate the grounds of such information. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his presence, and they may issue their warrant therefor and provide for the suitable custody of such person until their investigation is concluded. Such warrant may be executed by the sheriff or any constable of the county, or if they shall be of opinion from such preliminary inquiries as they may make, and in making which they shall take the testimony of the informant if they deem it necessary or desirable, and of other witnesses if offered, that such course would probably be injurious to such person or attended with no advantages, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if offered. Any citizen of the county or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners, whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county to visit such person and make a personal examination touching the truth of the allegations in the information, and touching the actual condition of such person, and forthwith report to them thereon. Such physician may or may not be of their own number, and the physician so appointed and acting shall certify under his hand that he has, in pursuance of his appointment, made a careful personal examination as required, and that on such examination he finds the person in question insane, if such is the fact, and if otherwise, not insane; and in connection with his examination such physician shall endeavor to obtain from the relatives of the person in question, or from others who know the facts, correct answers, as far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogatories and answers shall be attached to his certificate. [1879, ch. 23, § 21; R. C. 1899, § 1518.]

§ 1895. **How patient shall be sent to hospital.** On the return of the physician's certificate, the commissioners shall as soon as practicable, conclude their investigations, and having done so they shall find whether the person alleged to be insane is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal residence of such person is in their county, and if not in their county, where it is, if ascertained.

If they find such person is not insane, they shall order his discharge, if in custody. If they find such person insane, and a fit subject for treatment and custody in the hospital, they shall forthwith issue their warrant and a duplicate thereof, stating such finding, with the residence of the person, if ascertained; and if not ascertained, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Such warrant and duplicate with the finding and certificate of the physician shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital and delivering him with such duplicate and physician's certificate and finding to the superintendent thereof. The superintendent over his official signature shall acknowledge such delivery on the original warrant, which the sheriff shall return to the county judge with his fees and expenses indorsed thereon. If neither the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff or any other person so appointed may take to his aid such assistance as he may need to execute such warrant; but no female shall thus be taken to the hospital without the attendance of some other female, or some relative of such person. The superintendent in his acknowledgment of delivery must state whether there was any such person in attendance, and give the name, if any. If any relative or intimate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of taking and executing such warrant in preference to the sheriff or any other person, and without taking such oath, and for so doing he shall be entitled to his necessary expenses, but no fees. [1879, ch. 23, § 22; R. C. 1899, § 1519.]

**§ 1896. Disposition of insane person when accommodations of hospital are insufficient.** If in the case of any persons found to be insane and fit subjects for custody and treatment in the hospital as above provided, it shall be shown to the satisfaction of the commissioners that they cannot at once be admitted therein, and they cannot with safety be allowed to go at liberty, the commissioners shall require that such patients shall be suitably provided for otherwise until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as public or private patients. Those shall be treated as private patients whose relatives or friends will obligate themselves to take care of and provide for them without public charge. In the case of any one treated as a private patient, the commissioners shall appoint some suitable person a special custodian, who shall have authority and whose duty it shall be in all suitable ways to restrain, protect and care for such patient in such manner as best to secure his safety and comfort, and in such manner as best to protect the persons and property of others. In the case of public patients the commissioners shall require that they be in like manner restrained, protected and cared for by the overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such overseers of the poor, who shall forthwith comply with the same. If there is no poor house for the reception of such patients, or if no more suitable place can be found, they may be confined in the county jail in the charge of the sheriff, or such commissioners in their discretion, may require that such persons be taken to the asylum of any state that may be designated by the governor, who is hereby authorized and empowered to make the best terms he can with the authorities of any asylum in any state for the admission of such patients. [1879, ch. 23, § 25; R. C. 1899, § 1520.]

**§ 1897. Insane persons cared for by county.** On application to the commissioners, on behalf of persons alleged to be insane and whose admission to the hospital is not sought, made substantially in the manner above prescribed and asking that provision be made for their care as insane, either

public or private within the county, and on proof of their insanity and need of care as above provided, the commissioners may provide for their care, protection and restraint as in other cases. [1879, ch. 23, § 26; R. C. 1899, § 1521.]

§ 1898. **Commissioners to provide for insane persons.** On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded they shall make all needful provision for the care of such person as provided in other cases. [1879, ch. 23, § 27; R. C. 1899, § 1522.]

§ 1899. **Insane not to be restrained of liberty except by proper authority.** No person supposed to be insane shall be restrained of his liberty by any other person otherwise than in pursuance of authority obtained as herein required, excepting to such extent and for such brief period as may be necessary for the safety of persons and property until such authority can be obtained. [1879, ch. 23, § 28; R. C. 1899, § 1523.]

§ 1900. **Penalty for cruelty to insane.** Any person having the care of an insane person and restraining such person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty, or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable to an action for damages. [1879, ch. 23, § 29; R. C. 1899, § 1524.]

§ 1901. **Transfer of insane under county care.** Insane persons who shall have been under care either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may on application be transferred to the hospital whenever they can be admitted thereto, on the warrant of such commissioners. Such admission may be had without another inquest at any time within six months after the inquest already had, unless the commissioners shall deem a further inquest advisable. [1879, ch. 23, § 30; R. C. 1899, § 1525.]

§ 1902. **Application for admission to hospital.** In each case of application for admission to the hospital, full and correct answers must be given to the following interrogatories, so far as they can be obtained by examination of the patient and other witnesses, and shall accompany the physician's certificate; and if on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected. All questions under the heading "property statement" must be fully answered and a statement thereof and the certificate accompany the patient before the patient is entitled to admission to the hospital. A failure on the part of the county commissioners of insanity to fully inquire and report upon the property of the patients, their estate or husbands, parents, guardians or relatives, shall be a sufficient excuse for refusal to receive such patients at said hospital:

1. What is the patient's name? Married or single? If any children, how many? Age of youngest child, and age of patient.
2. Where was the patient born?
3. Where is his place of residence?
4. What has been the patient's occupation?
5. Is this the first attack? If not, when did others occur and what was their duration?
6. When were the first symptoms of this attack manifested, and in what way?
7. Does the disease appear to be increasing, decreasing or stationary?
8. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?
9. On what subject or in what way is derangement now manifested? (State fully.)
10. Has the patient shown any disposition to injure others?



- 11. Has suicide ever been attempted? If so, in what way? Is the propensity now active?
- 12. Is there a disposition to filthy habits, destruction of clothing, breaking glass, etc?
- 13. What relatives, including grandparents and cousins, have been insane?
- 14. Did the patient manifest any peculiarities of temper, habits, disposition or pursuits, before becoming insane? Any predominant passion, religious impression, etc?
- 15. Has the patient been subject to any bodily disease, epilepsy, suppressed eruptions, discharge of sores, or ever had an injury of the head?
- 16. Was the patient ever addicted to intemperance in any form?
- 17. Has restraint or confinement been employed? If so, what kind and how long?
- 18. What is supposed to be the cause of the disease?
- 19. What treatment has been pursued for the relief of the patient? (Mention particulars and the effect.)
- 20. State any other matters supposed to have any bearing on the case.

PROPERTY STATEMENT.

.....of.....being first duly sworn, makes answer to the following questions as herein set forth:

- 1. What is your name, address and relation to the above insane person?
- 2. What is the description and value of the real estate of said insane person?
- 3. What, if any, mortgages are out against it? Give date, amount, rate of interest, and when due and to whom given.
- 4. What personal property, insurance or money has said insane person? Give full description, stating value of each.
- 5. What, if any, mortgages are out against said personal property? Give date, amount, when due, and rate of interest.
- 6. What real estate has the parents of said insane person, if..... is under 21 years of age?
- 7. Is same incumbered? If so, give date, amount, and when such incumbrance is due.
- 8. What personal property, money, grains, etc., have the parents of said insane person?
- 9. What is the rental value of said real estate of said insane person?
- 10. What is the saleable value thereof?
- 11. What is the value of the personal property of said insane person?
- 12. What is the value of the real estate of the parents of said insane person?
- 13. What is the value of the personal property of the parents of said insane person?
- 14. If said insane person is married, give description of his wife's or her husband's real estate. Give value of same.
- 15. Is it mortgaged? If so, for how much, to whom, when, and when due.
- 16. Give description and value of personal property of the husband or wife of said insane person.
- 17. Who is the guardian of said insane person? What, if any, property does he hold belonging to him or her? Give its value.

(Signed).....

I hereby certify that the foregoing.....was by me duly sworn and that.....he gave the foregoing answers, and after reading (or having read) the same, made oath that the said answers

were true, to the best of his knowledge and belief, and subscribed his name thereto this.....day of.....A. D. 19....

County Judge and Chairman of Commissioners of Insanity in and for..... County, North Dakota.

CERTIFICATE OF VALUE OF PROPERTY.

In the matter of the insanity of.....

This to certify that we..... and..... and.....the commissioners of insanity of..... county, have made a thorough examination and faithful investigation as to the property holdings of the above insane person.....parents or guardian, and attach hereto a duplicate copy of our testimony and we find the property of.....worth.....dollars.

By order of the insanity board of.....county, North Dakota.

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

..... County Judge.
..... Member.
..... Member.

[1879, ch. 23, § 31; R. C. 1899, § 1526; 1903, ch. 106.]

§ 1903. Insane nonresident, disposition of. Whenever any person shall be found by the commissioners of insanity to be insane, and a fit subject for custody and treatment in the hospital for the insane, and such person has no legal residence within this state, such person shall be sent, at the expense of the state, to the place where such person belongs in every case where such place of residence can be ascertained. And it shall be the duty of the commissioners of insanity at the inquest, to ascertain the place where such person belongs when the same can be conveniently done. The sheriff of the county shall convey such person to the place where he belongs, and shall charge the same fees for such services as he is now allowed by law for transporting patients to the hospital for the insane, which shall be paid out of the state treasury. [1903, ch. 107.]

§ 1904. Proceedings for release of persons alleged not to be insane. On a statement in writing verified by affidavit, addressed to the county judge of the county in which the hospital is situated, or of the county in which any person confined in the hospital has his residence, alleging that such person is not insane and is unjustly deprived of his liberty, such judge shall appoint a commission of not more than three persons in his discretion, to inquire into the merits of the case, one of whom shall be a physician; and if two or more are appointed, one shall be an attorney. Without first summoning the person to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed as to prevent him, if possible, from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall deem it prudent and advisable, they may disclose to the person the object of their visit, and in the presence of such person make further investigation of the matter. They shall forthwith report to such county judge the result of their examination and inquiries. Such report shall be accompanied by a statement of the facts and signed by the superintendent. If on such report and statement and hearing of the testimony, if any is offered, the county judge shall find the person sane, he shall order his discharge. If he shall find him insane he shall authorize his continued detention. The finding and order of such judge

with the report and other papers, shall be filed in his office, and entered on his records, and he shall forthwith notify the superintendent of his findings and order and the superintendent shall carry out such order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses, and a reasonable compensation to be allowed by such judge and paid by the state out of any funds not otherwise appropriated; provided, that the applicant shall pay the same if the judge shall find that such application was made without probable grounds, and shall so order. [1879, ch. 23, § 33; R. C. 1899, § 1527.]

§ 1905. **Same. Not to be repeated oftener than once in six months.** The commission so provided for shall not be appointed oftener than once in six months for the same person, nor shall such commission be appointed for any patient within six months of the time of his admission. [1879, ch. 23, § 34; R. C. 1899, § 1528.]

§ 1906. **Insane persons entitled to habeas corpus.** All persons confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person shall have been restored to reason. [1879, ch. 23, § 35; R. C. 1899, § 1529.]

§ 1907. **Salaries and fees, by whom paid.** The commissioners of insanity shall each be allowed the sum of two dollars per day for the time actually employed in the duties of their office. The county judge, in addition to what he is entitled to as commissioner of insanity, shall be allowed one-half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed. He shall also be allowed twenty-five cents for such notice or process given or issued under seal as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for services, other than conveying a patient to the hospital and returning therefrom, the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The compensation and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner, except the fees and expenses of the sheriff for conveying the patient to the hospital for the insane, or to the authorities of another state, which shall be paid out of the state treasury in the usual manner. [1879, ch. 23, § 41; 1885, ch. 58, § 1; R. C. 1899, § 1530; 1903, ch. 58.]

§ 1908. **Penalty for neglect of duty.** Any officer required to perform any act and any person accepting an appointment under the provisions of this article who willfully refuses or neglects to perform his duty as herein prescribed shall be guilty of a misdemeanor besides being liable to an action for damages. [1879, ch. 23, § 42; R. C. 1899, § 1531.]

§ 1909. **Terms "insane" and "idiot" defined.** The term "insane" as used in this article includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot shall be admitted into the hospital for the insane. [1879, ch. 23, § 45; R. C. 1899, § 1532.]

#### ARTICLE 5.—PAYMENT BY COUNTIES FOR CARE OF INSANE AND FEEBLE MINDED.

§ 1910. **Counties required to pay. Duty of county commissioners.** 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. [1905, ch. 76, § 1.]

§ 1911. **Fifty dollars to be paid semi-annually.** If 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 article. [1905, ch. 76, § 2.]

§ 1912. **County commissioners collect amount sufficient to reimburse county.** In any case in which, in the judgment of the county commissioners, the person on account of whom the county paid the money in this article 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 commissioners 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 article; provided, however, payments made under the provisions of this article 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. [1905, ch. 76, § 3.]

#### ARTICLE 6.—POSTAL RIGHTS OF INSANE PERSONS.

§ 1913. **Postal rights, how secured.** Each inmate of the hospital for the insane shall be allowed to choose one individual to whom he may write when or whatever he desires, and over letters to or from such individual no censorship shall be exercised or allowed by any person and each inmate shall have the right to make a new choice of such individual every three months if he so desires; and it is the duty of the superintendent to furnish each inmate with suitable material for writing letters, sufficient for the writing at least of one letter a week if the same is requested, unless he is otherwise furnished with such materials; and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a post office box provided by the state at the hospital, and kept in some place of easy access to all patients. The attendant is required in all cases to see that each letter is directed to the patient's correspondent, and if it is not so directed it must be held subject to the superintendent's disposal; and the contents of these boxes shall be collected once every week by an authorized person from the post office department and by him placed in the hands of the United States mail for delivery. [1887, ch. 122, § 1; R. C. 1895, § 1533.]

§ 1914. **Duty of superintendent of hospital.** It is the duty of the superintendent to keep registered and posted in some public place at the hospital a true copy of the names of each individual chosen as the inmate's correspondent, and by whom chosen; and to inform each of the individuals so chosen of the name of the person choosing him. The superintendent shall request each person so chosen to write his name on the outside of the envelope of each letter written to the inmate; and all letters bearing the individual writer's name on the outside shall be delivered, or caused to be delivered, by the superintendent to

the inmate to whom directed without being opened, unless there is reason to believe the letter contains some foreign substance which might be used for medication, in which case the letter shall be opened in the presence of a competent witness and the substance, if any, shall be delivered to the superintendent. [1887, ch. 122, § 2; R. C. 1899, § 1534.]

§ 1915. **Penalty for violation.** Any person refusing or neglecting to comply with, or willfully or knowingly violating any of the provisions of this article, shall be guilty of a misdemeanor and be ineligible to any office in the hospital afterwards. A printed copy of this article shall be framed and kept posted in each ward of the hospital. [1887, ch. 122, §§ 3, 4; R. C. 1895, § 1535.]

#### ARTICLE 7.—MARKS AND BRANDS.

§ 1916. **Office for recording brands.** A general office for recording marks and brands, shall be maintained at the seat of government, and the duties thereof shall be performed by the commissioner of agriculture and labor. [1891, ch. 40, § 1; R. C. 1899, § 1536; 1901, ch. 124, § 1.]

§ 1917. **Brands, how obtained and recorded.** Whenever any person desires the exclusive use of any mark or brand, he may make application therefor to the commissioner of agriculture and labor, setting forth a description of the mark or brand of which he desires the exclusive use, accompanying the same with a facsimile thereof and stating for what the same is to be used and the place or position it is to occupy, and it shall be the duty of the commissioner to record such mark or brand with a description of the place or position such mark or brand shall occupy on the animal, consulting always the choice and convenience of the applicant therefor, so far as may be, without conflicting or interfering with any previous mark or brand. [1891, ch. 40, § 2; R. C. 1895, § 1537; 1901, ch. 124, § 1.]

§ 1918. **Commissioner of agriculture and labor records brands.** The commissioner of agriculture and labor shall keep a record of all marks and brands, showing the names and residences of the persons owning the same, together with a description and facsimile of such mark or brand, and in case of live stock the range occupied by such stock, as near as may be, which record shall be open to the inspection of any person interested, and he shall deliver to the owner of such mark or brand a certificate thereof, which certificate shall be deemed evidence of ownership, for which he shall charge and collect a fee of two dollars. [1899, ch. 108; R. C. 1899, § 1538; 1901, ch. 124, § 1.]

§ 1919. **Brands must be vented.** It shall be the duty of all persons who sell live stock of any kind to another to vent their brand on the part of the animal which the purchaser may determine; provided, that such vent brand shall be upon the same side of the animal as the original, either by inverting the original brand, or by a vent brand prepared for that purpose. Such vent brand shall be not less than one-half the size of the original brand, and shall be of the type of the original brand, and such venting as above provided shall be prima facie evidence of the sale or transfer of such stock. [1891, ch. 40, § 6; R. C. 1899, § 1540.]

§ 1920. **When similar brands may be recorded.** The commissioner of agriculture and labor shall refuse to receive for record any brand, which, being the same as any previously recorded, shall have added thereto any or either of the following: A bar, a circle, a half circle, a quarter circle, a diamond or a half diamond; provided, that a similar device, figure or letter, but placed on a different part of the animal, may be so received and recorded. [1891, ch. 40, § 7; R. C. 1899, § 1541.]

§ 1921. **Who have a right to record brands.** All persons who have heretofore recorded any mark or brand in any county of this state, shall have the prior right to the exclusive use of such mark or brand; provided, that where two or more of such marks or brands conflict with each other, the one first recorded shall have priority; provided, further, that all stock brands recorded

in the office of the secretary of state prior to the first day of December, 1891, under the provisions of law, shall be in no wise invalidated by any of the provisions of this article. [1891, ch. 40, § 9; R. C. 1899, § 1542; 1901, ch. 124, § 1.]

§ 1922. **Exclusive trade mark obtained, how.** Any person desiring to secure within this state the exclusive use of any name, mark, brand, print, designation or description for any article of manufacture or trade or for any mill, hotel property, machine shop or other business as a trade mark, shall deliver or cause to be delivered to the secretary of state a particular description or facsimile of such mark, brand, name, print, designation or description as he desires to use, and if there is not an application already filed for the same or a similar mark, brand, name, print, designation or description, he shall immediately record the same in a book to be provided and kept for that purpose, which book shall be at all times subject to public inspection and examination, and after the same shall have been recorded as herein provided, the person causing the same to be recorded shall have the exclusive right to the use thereof; provided, that nothing herein contained shall be construed to authorize the use of figures, letters or Roman numerals. [1891, ch. 40, § 10; R. C. 1899, § 1543; 1901, ch. 124, § 2.]

#### ARTICLE 8.—HERDING AND DRIVING.

§ 1923. **Stock grower and drover defined.** Each person who shall keep neat cattle, horses, mules, sheep, swine or goats for their growth or increase within the state, shall be deemed a stock grower. Any person who shall drive or bring live stock into or through this state shall be deemed a stock drover. [1881, ch. 60, § 1; R. C. 1899, § 1544.]

§ 1924. **The term drover defined.** For the purposes of this article every person having charge or control of any herd of neat cattle, horses or mules, numbering five or more, or any flock of sheep numbering twenty-five or more, as owner, agent or employe, while the same is being driven from one place to another not within the same range or neighborhood, is deemed a drover; and every person having charge or control of any such herd or flock while subsisting on any public or other range land to which he has no right of possession, is deemed a herder, whether personally present with such herd or not. [1897, ch. 69, § 1; R. C. 1899, § 1544a.]

§ 1925. **Shall not entice animals away.** No drover or herder of any such herd or flock, or assistant of any such drover or herder, shall drive or entice any animal of like kind, without the owner's consent, away from his premises or the range or other place usually frequented by such animal or suffer such animal to be driven or enticed away, or to follow, join or remain with such herd; and if necessary in order to prevent any such animal belonging to another person from being so driven or enticed away or from following, joining or remaining with such herd, it is the further duty of every person aforesaid to deliver such animal without delay to the owner thereof, if known, or if unknown, to some resident of the neighborhood or peace officer of the county to be by him returned to the owner or disposed of as an estray according to law. [1897, ch. 69, § 2; R. C. 1899, § 1544b.]

§ 1926. **Uniform brand.** It is also the duty of every drover to have all animals in his charge or control branded or marked with one uniform brand or mark. All such horses, mules and cattle shall be branded on a conspicuous place on each, with one distinct ranch or road brand of the owner; and all such sheep shall be marked distinctly with a mark or device sufficient to distinguish the same readily from other sheep. Whenever any animal mentioned in this article shall be found with any herd or flock of like kind, as hereinbefore defined, proof of such finding, in addition to the fact that such animal was there without the owner's consent, shall be deemed presumptive evidence of a violation of the provisions of section 1925, by each drover, herder or assistant having charge or control of such herd at the time of the finding, and shall

be admissible as such in any action herein contemplated. [1897, ch. 69, §§ 3, 4; R. C. 1899, § 1544c.]

§ 1927. **Costs a lien.** Every person violating any of the restrictions or requirements prescribed by section 1924 is responsible to each person injured thereby, to the extent of his damages; which shall include the reasonable expenses incurred in searching for and recovering such animal; and whenever judgment is recovered therefor such judgment and costs shall be enforceable as a lien upon the interest of the defendant in the animals constituting such herd or flock. [1897, ch. 69, § 5; R. C. 1899, § 1544d.]

§ 1928. **Penalty.** Whoever shall wrongfully violate any of the provisions of section 1925, or fail to observe and fulfill the requirements of section 1926, shall for each delinquency forfeit and pay into the court rendering judgment therefor a penalty of not less than fifty nor more than two hundred dollars, one-half of the sum collected to be paid over to the person complaining or informing of such delinquency and the remainder into the general fund of the county treasury. Such penalty may be recovered in a civil action before any justice of the peace of the proper county, and such justice shall have power to hear and determine the same and enforce the judgment in the same manner as other courts of competent jurisdiction. [1897, ch. 69, § 6; R. C. 1899, § 1544e.]

§ 1929. **Driving stock and trespassing.** Any person owning or having charge of any cattle, horses, swine or sheep, who shall drive the same into or through any county of which the owner is not a resident or land owner or stock grower, and when the land in such county is already occupied by settlers on ranches, it shall be the duty of such owner or person in charge of such horses, cattle swine or sheep to prevent the same from mixing with the cattle, horses, swine or sheep belonging to actual settlers, and also to prevent such animals from trespassing on such land as may be the property of an actual settler or may be held by him under a homestead or leasehold right, and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops. If any owner or person in charge of any such animals shall willfully, carelessly or negligently injure any resident of the state by driving such animals from the public highways and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor and shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, at the discretion of the court, and render the owner or person in charge of such animals liable for such damages as may be done to the property of such settler. [1881, ch. 60, § 5; R. C. 1895, § 1545.]

§ 1930. **Wrongful driving of stock. Penalty.** When the stock of any person shall be driven off its range within the state, against his will, by the owners of any drove, and the same shall be found among such drove, every person engaged as drover of such drove shall be liable for damages to the person injured to the amount of the value of the animal for each head so driven off, together with all costs accruing in the trial of such cause, and the owner of the animals so driven off shall have a lien on such herd for the amount of all such damages and costs. [1881, ch. 60, § 6; R. C. 1895, § 1546.]

§ 1931. **Duty of drover when stock of resident mixes with drove.** When the stock of any resident of the state shall mix with any drove of animals, it shall be the duty of any drover or person in charge of such drove to cut out and separate such stock from such drove immediately. Each person, either owner or drover or otherwise connected with such drove, who neglects to comply with the provisions of this section shall be fined in a sum not exceeding one hundred dollars. [1881, ch. 60, § 7; R. C. 1895, § 1547.]

§ 1932. **Concerning skinned dead animals.** It shall be unlawful for any person other than the owner, his agent or employe, to skin or remove from the carcass, the skin, hide, or pelt of any neat cattle, swine or sheep found dead,

except when such stock is killed by railroad trains, in which case the employes of such railroad may remove the hides from stock so killed. [1881, ch. 60, § 8; R. C. 1899, § 1548.]

ARTICLE 9.—HERD LAW.

§ 1933. **When lawful for stock to run at large.** It shall be lawful for cattle, horses, mules, ponies, swine, goats and sheep to run at large from the first day of December until the first day of April of each year, except within the corporate limits of any city or village; provided, that no stallion or vicious bull or any other animal known to be vicious, shall be allowed to run at large at any time; but nothing in this code shall be construed to repeal any special act establishing a fence law for any county in this state. [1890, ch. 89, § 1; R. C. 1895, § 1549; 1901, ch. 123, § 1.]

Live stock may roam at large; exception. *Ely v. Rosholt*, 11 N. D. 559, 93 N. W. 864.

§ 1934. **County commissioners vote on abolishing of provisions of this article. How conducted.** The board of county commissioners of any county shall, whenever they deem it advisable, vote upon the question of abolishing the provisions of this article in such county. Such vote shall be in all respects conducted by said board of county commissioners in their regular meeting and according to the provisions of the law. [1895, ch. 69, § 1; R. C. 1899, § 1550; 1901, ch. 123, § 2.]

§ 1935. **When proposition submitted to vote. How conducted.** Whenever the county commissioners shall have voted it is unlawful for stock to run at large, then at the next general election, but at no other time, this question shall be submitted to vote of the people, and the order of the board of county commissioners for such election shall be made at least sixty days before such election is held, and notice of such election shall be given in the same manner and for the same length of time as notices of all general elections. [1901, ch. 123, § 3.]

§ 1936. **Law, when abolished.** The ballots to be used at such elections shall be in the following form: "Lawful for stock to run at large" and "against lawful for stock to run at large." In voting on the question, each voter must place at the right of the proposition he favors, the mark "X." If a majority of the ballots cast at such election is against "lawful for stock to run at large" the provisions of this article shall be thereby abolished in such county. [1895, ch. 69, §§ 2, 3; R. C. 1899, § 1551; 1901, ch. 123, § 4.]

§ 1937. **When proposition may be again submitted.** At any subsequent general election, but at no other time, after an election has once been held under the provisions hereof, the question of re-establishing the provisions of this article within any county having abolished the same, may be again submitted by the board to a vote of the qualified electors thereof, to be voted upon in the same manner as hereinbefore provided for the first election. The result of any election held under the provisions hereof shall remain in force until changed at some subsequent election held hereunder; provided, that in any county wherever it is lawful for stock to run at large, none of the provisions of chapter 44 of the code of civil procedure shall apply in such county. [1895, ch. 69, § 4; R. C. 1899, § 1552; 1901, ch. 123, §§ 5, 6.]

§ 1938. **When fences shall be sufficient and lawful.** In any county in which an election has been held under the provisions hereof and in which the result of such election shall have been declared to be in favor of abolishing the provisions of said chapter 44, a fence constructed as hereinafter described shall be sufficient and lawful. [1895, ch. 69, § 5; R. C. 1899, § 1553.]

§ 1939. **How fences shall be constructed.** The posts or other uprights of reasonable strength and firmness in position shall be not more than thirty-two feet distant from each other, with two suitable stays between posts, nearly equally dividing such space in three parts. Three strands of ordinary barbed



fence wire shall be well stretched and firmly fastened to such posts, uprights and stays, with the upper strand not more than forty-eight nor less than forty-two inches above the general surface of the ground thereunder, and the lower strand not more than eighteen nor less than twelve inches above the general surface of the ground, and the middle strand nearly equally dividing the space between the upper and lower strands; provided, that all corral fence exclusively for the purpose of inclosing stacks, if outside of any lawful inclosure, shall not be less than sixteen feet distant from such stack so inclosed, shall be substantially built with posts not more than eight feet distant from each other, and with not less than five strands of barbed fence wire, and shall be not less than five feet high. Any other kind of a fence or barrier which is as effective for the purpose of a fence as that above prescribed is hereby declared sufficient and lawful. [1895, ch. 69, §§ 6, 7; R. C. 1899, § 1554.]

§ 1940. **Liability of owners of stock.** Any person owning or having in charge any horses, mules, cattle, sheep or goats, or any such animals, which shall breach or break through, over or under any lawful fence, not the property of the owner of such offending animal, shall be liable to the party having sustained injury by reason of such breaching or breaking, to be recovered in a civil action before any court of competent jurisdiction, and it shall be sufficient in any such action, that it was a lawful fence where the breach was made, and the proceedings shall be the same as in other civil actions, except as herein modified. [1895, ch. 69, § 8; R. C. 1899, § 1555.]

§ 1941. **Trespass of swine.** Any person owning or having in charge in any county, adopting the provisions hereof as herein provided, any swine which shall trespass upon the lands or premises of another, including premises in towns, villages and cities, whether such lands or premises are fenced or not fenced, shall be liable to any party sustaining such injury for all damages he may sustain by reason of such trespassing. [1895, ch. 69, § 9; R. C. 1899, § 1555.]

§ 1942. **Damages by trespassing animals.** The persons sustaining damages as aforesaid shall before commencing an action therefor, notify the owner or person having in charge such offending animals of such damages, and the probable amount thereof if known, and a resident of and within the county, and he may retain and keep in custody such offending animals until the damages so sustained and costs are paid, or until sufficient security is given for the same; provided, that the person so restraining such offending animals shall, without unnecessary delay, notify the owner or person in whose custody the same were at the time the trespass was committed of the seizure of such animals, if such owner or person is known to him to be within or to reside within the county. [1895, ch. 69, § 10; R. C. 1899, § 1556.]

§ 1943. **Fees.** For serving such notice the person making the same shall be entitled to the same fees and mileage as are allowed a sheriff in serving a summons. [1895, ch. 69, § 11; R. C. 1899, § 1556.]

§ 1944. **Damages a lien upon the animals.** Upon the trial of an action under the provisions hereof, the plaintiff shall prove the amount of damages sustained and the amount of expense incurred for restraining and keeping the offending animals, if such have been by him restrained, and any judgment rendered for damages against the defendant shall be a lien upon the animals committing the damages, and they may be sold and the proceeds applied to the satisfaction of the judgment. [1895, ch. 69, § 12; R. C. 1899, § 1557.]

§ 1945. **Service in case of unknown defendant.** If upon the trial it shall appear that the defendant is not the owner or person in charge of such offending animals, he shall be discharged, and the action may proceed against a defendant, whose name is unknown, and, if at the commencement of the action the plaintiff does not know the name of the owner or keeper of such offending animals, he may bring an action against a defendant unknown. In such case service shall be made by publishing a copy of the summons, with a

notice stating the nature of the action, in a newspaper, if there is one published in the county, and if not, by posting copies of the summons and notice in three public places in the county, in either case at least ten days previous to the day of trial. [1895, ch. 69, § 13; R. C. 1899, § 1558.]

§ 1946. **Judgment and costs collected, how.** After judgment shall have been rendered against the defendant, unknown as aforesaid, the offending animals, or so many of them as may be necessary, shall be sold as in other civil actions, and after said judgment and costs have been satisfied, if there is any surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same within six months from the day of sale, it shall be paid into the school fund for the use of the public schools of the county. [1895, ch. 69, § 14; R. C. 1899, § 1559.]

§ 1947. **Misdemeanor, when.** Taking or attempting to take, or advising or assisting in the taking from the possession of the person having them in charge, without the consent of such person, except by due course of law, any animals restrained and held by virtue of the provisions hereof, is declared to be a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed fifty dollars, or by imprisonment in the county jail not to exceed thirty days, or by both, at the discretion of the court. [1895, ch. 69, § 15; R. C. 1899, § 1560.]

§ 1948. **Judgment of court final, when. Jury trial.** In all actions under and by virtue of the provisions hereof wherein the amount of damages claimed does not exceed twenty-five dollars, the judgment of the court having original jurisdiction thereof shall be final; provided, that either party to such action shall be entitled, upon demand therefor, to a jury trial. [1895, ch. 69, § 16; R. C. 1899, § 1561.]

§ 1949. **Actions commenced. When barred.** No property shall be exempt from seizure and sale under execution upon a judgment obtained under and by virtue of the provisions hereof. No action shall be commenced under the provisions hereof after the expiration of six months from the date of the alleged damages. [1895, ch. 69, § 17; R. C. 1899, § 1562.]

§ 1950. **Stock must be branded.** All droves of horses, mules, cattle or sheep which may hereafter be driven from any other state or territory of the United States, or any foreign country, into or through any county of this state, shall be plainly branded or marked with one uniform brand or mark. All such horses, mules and cattle shall be branded with one distinct ranch or road brand of the owner so as to show distinctly in such place as the owner may adopt. All such sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily should they become intermingled with other flocks of sheep in this state. [1895, ch. 50, §§ 1, 2, 3; R. C. 1899, § 1563.]

§ 1951. **Fine.** Any owner or person in charge of such drove of stock which may be driven into or through this state, who shall fail to comply with the provisions of the last section shall be fined in a sum not less than fifty nor more than three hundred dollars, together with costs of suit. [1895, ch. 50, § 4; R. C. 1899, § 1564.]

§ 1952. **Duties of county auditor and sheriff.** It shall be the special duty of the county auditor, sheriff and any constable of each and every county of this state to enforce the provisions of the last two sections. [1895, ch. 50, § 5; R. C. 1899, § 1565.]

#### ARTICLE 10.—SHEEP HUSBANDRY.

§ 1953. **Bounty for killing wolves.** The county commissioners of each county shall offer a bounty of two dollars for each wolf or coyote killed within the limits of their county. [1890, ch. 157, § 1; 1891, ch. 71, § 1; R. C. 1899, § 1566; 1901, ch. 215.]

§ 1954. **Claimant to make affidavit before auditor.** Before payment of such bounty the applicant therefor must subscribe and make oath before the county auditor of the county in which the wolf or coyote was killed, setting forth that the wolf or coyote was killed in such county, giving the date thereof, and by whom, and that the two ears of the scalp thereof which are produced before such county auditor are the ears of such wolf or coyote. [1890, ch. 157, § 2; R. C. 1895, § 1567.]

§ 1955. **Must produce scalp.** No claim shall be allowed unless the applicant exhibits and furnishes to such county auditor at the time of making such affidavit, the two ears of the wolf or coyote killed, attached to such skin, which shall then and there in the presence of such county auditor be detached from such wolf or coyote skin. [1890, ch. 157, § 2; R. C. 1895, § 1567.]

§ 1956. **Auditor to retain affidavit. Destruction of scalp.** The county auditor shall retain such affidavit until the next regular meeting of the board of county commissioners, when the board shall audit the claim and order a warrant drawn upon the county treasurer for the bounty in favor of the person killing such wolf or coyote. The county treasurer is further required forthwith to destroy such ears by burning the same. [1890, ch. 157, § 3; R. C. 1895, § 1568.]

§ 1957. **When dog may be killed.** If any person shall discover any dog in the act of killing, wounding, or chasing sheep in this state, or shall discover any dog under such circumstances as satisfactorily to show that it has been recently engaged in killing or chasing sheep, such person is authorized immediately to pursue and kill such dog. [1890, ch. 155, § 9; R. C. 1895, § 1569.]

§ 1958. **Owner of dog liable.** The owner of any dog shall be liable in a civil action for all damages that may accrue to any person by reason of such dog's killing, wounding or chasing any sheep or other domestic animal belonging to such person. [1890, ch. 155, § 8; R. C. 1895, § 1570.]

§ 1959. **No exemption.** No exemption shall be allowed in favor of any person against whom a judgment has been recovered under the provisions of this section. [1890, ch. 155, § 8; R. C. 1895, § 1570.]

#### ARTICLE 11.—STATE WOLF BOUNTIES.

§ 1960. **County reward for buffalo or timber wolf.** The board of county commissioners of any county within the state, may offer a reward of a sum, not to exceed twenty dollars, nor less than five dollars, for the destruction of each buffalo or timber wolf killed within their respective counties, and the provisions of sections 1962, 1963, 1964 and 1965 shall apply in every case where the reward is called for under the provisions of this section. [1901, ch. 216.]

§ 1961. **State bounty for wolves and coyotes.** For the purpose of encouraging the destruction of wolves and coyotes, a bounty shall be paid by the state of North Dakota, for each wolf or coyote killed, the sum of two dollars and fifty cents. [1903, ch. 207, § 1.]

§ 1962. **Skins to be exhibited.** Any person killing any of the aforesaid animals, to obtain the bounty thereon, shall within ninety days from the date of the killing, exhibit or cause to be exhibited the skins and skulls of said animal or animals, including the tail and the skin from the forehead, including both ears, to the county auditor in the county in which said animal or animals were killed, and shall at the same time file with the auditor an affidavit setting forth that he killed or caused to be killed the animal or animals from which the skin or skins were taken; that the same were killed within the bounds of the county to whose auditor the same are presented. [1901, ch. 207, § 2.]

§ 1963. **Verification.** The county auditor shall, before issuing the certificate hereinafter provided for, require statements of two resident taxpayers of the county that they are acquainted with the person presenting the skin or skins, and that to the best of their knowledge and belief the animal

or animals from which said skin or skins were taken were killed within the limits of said county. [1903, ch. 207, § 2.]

§ 1964. **Fraud prevented.** The county auditor shall thereupon call to his assistance either the county treasurer, or, in his absence, the clerk of the district court, who being present, both shall, in order to prevent fraud, minutely examine each skin presented; and should examination disclose that the scalps and ears belonging to such skins have not been severed, patched or punched, the county auditor shall there, in the presence of the other officer above named, mark each ear by punching a hole one inch in diameter in the same, and then redeliver the skin or skins to the person presenting the same, and shall at the same time make out and deliver to the said person a certificate showing the number and kind of the skins so punched and the name of the person presenting, the fact of the filing of the affidavits herein provided for, and the examination made as required, said certificate to be duly signed by him in his official capacity, and attested by the officer acting with him; said county auditor shall keep a record in a bound book of all skins so punched, showing the date, number and kinds, the names of the persons presenting them and the names of the witnesses, which book shall be an official record. The holders of the certificates issued under the provisions of this article to be deposited with the county auditor of the county wherein issued, who shall on the first business day of each month forward all such certificates in his possession to the state auditor for registration and payment as hereinafter provided. All services rendered by officials under this article to be without fee. [1903, ch. 207, § 3.]

§ 1965. **Duty of county auditor.** Should any county auditor or officer acting with him have reason to believe that any person presenting a skin or skins as above provided, has evaded the provisions of this article to obtain the bounty unlawfully, such officer shall require satisfactory evidence of the time, place and manner of the killing of said animal or animals. [1903, ch. 207, § 4.]

§ 1966. **Duty of state auditor.** It shall be the duty of the state auditor, upon the written order of the county auditor, to give the person presenting said order a warrant upon the state wolf bounty fund, hereinafter provided for, in the amount required to compensate at the bounty prices by this article provided, for the number of animals mentioned in the order, taking the receipt on the back of the order of the person presenting, for the full amount received; and the state auditor and the state treasurer shall keep an account of all warrants so issued and paid, and list them in their annual report to the governor. [1903, ch. 207, § 5.]

§ 1967. **Wolf bounty fund created.** For the purpose of providing for the payment of said bounty and the warrants thereon drawn, there is hereby created a fund to be known as the state wolf bounty fund. [1903, ch. 207, § 6.]

§ 1968. **Duty of state board of equalization.** It shall be the duty of the state board of equalization, at the time of the levy of the annual tax, to levy a special tax of two-tenths mills on the dollar upon the assessed valuation of all property, and when collected paid into the hands of the state treasurer, who shall at once enter the same into the state wolf bounty fund. Said fund shall be preserved inviolate for the payment of the state bounties provided for herein. [1901, ch. 207, § 7.]

§ 1969. **Animals killed in unorganized counties.** Any person claiming the bounties provided for in this article for any of the animals specified herein, killed or caused to be killed in any unorganized county of this state, shall make application to the county auditor of the organized county to which such unorganized county is attached for judicial purposes. [1903, ch. 207, § 8.]

§ 1970. **Secretary of state to supply blanks.** The secretary of state shall provide each county auditor with the necessary blanks for the purpose of carrying into effect the provisions of this article. [1903, ch. 207, § 9.]

**§ 1971. Penalty for forgery.** Any person who shall falsely make, alter, forge or counterfeit any of said certificates or orders shall be deemed guilty of forgery, and any person who shall swear falsely to any affidavit provided herein, or procure the same to be done by another, with the intent of obtaining any one of the said certificates or orders, shall be guilty of perjury; and any person convicted of any of the offenses declared in this section shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than five years. Any person or persons who shall patch up any skin or scalp, or who shall present any punched skin or scalp with intent to defraud the state, or any officer who shall sign any certificate herein provided for without first counting the skins, or shall intentionally evade any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not exceeding three months, or by both such fine and imprisonment. [1903, ch. 207, § 10.]

## ARTICLE 12.—ESTRAYS.

**§ 1972. By whom and when taken up.** No person shall take up an estray animal except in the county wherein he resides and is a householder, nor unless such estray is found in the vicinity of his place of residence, nor take up an estray animal mentioned in the next section between the first day of December and the first day of April, inclusive, unless the same is found trespassing upon the premises or within the inclosure of the person taking up the same. [1890, ch. 66, §§ 1, 2; R. C. 1899, § 1571.]

**§ 1973. 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 wherein 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. [1890, ch. 66, § 3; R. C. 1899, § 1572; 1903, ch. 96; 1905, ch. 112.]

**§ 1974. Official estray paper. Payment of fees.** It shall be the duty of such newspaper to transmit, if such property is uncalled for while being published in a local paper, the third insertion of such advertisement to such newspaper published weekly in the state as the governor shall designate as the official newspaper, in which all estray notices of the state shall be published once, and any failure on the part of the proprietor of such local paper so to do shall be a misdemeanor. It shall be the duty of the official estray paper to transmit one copy weekly to the office of the county auditor of each county in the state, and the county auditor shall keep such copies on file in his office, and the board of county commissioners of each county shall on the first Monday in

January of each year appropriate the sum of five dollars to pay the official estray paper for such publication. [1890, ch. 66, §§ 4-6; R. C. 1899, §§ 1573, 1574.]

§ 1975. **Owner may take estray, when. Arbitration.** Whenever any person shall appear and make claim to any estray so taken up, such claimant and the person taking up such estray may go before a justice of the peace in the county and such claimant shall make affidavit in writing setting forth his name and place of residence and that he is the actual owner of such estray, describing it, and thereupon the person taking up such estray shall be authorized to deliver the same to such claimant on payment of all fees advanced by him and the actual cost of caring for and keeping such estray. If the persons cannot agree as to the amount of such charges the owner of the animal and person taking up such estray shall each choose one disinterested freeholder as arbitrator, and the two so chosen shall choose a third person living in the vicinity where the estray was taken up. The amount assessed by such arbitrators shall be final. [1890, ch. 66, §§ 7, 8; R. C. 1895, § 1575.]

§ 1976. **Advertiser becomes owner, when. Exception. Appraisal.** If such estray shall not be claimed and taken away within one year after advertisement thereof in such official newspaper, and if the person taking up such estray shall have caused the same to be duly advertised as herein provided, and shall not in any respect have violated the provisions of this article, the property therein shall immediately vest in the person taking up the same, provided, the appraised value of such estray does not exceed twenty-five dollars. The person taking up such estray shall notify the board of county commissioners to appraise or appoint some suitable person whose duty it shall be to appraise the value of such estray. [1890, ch. 66, §§ 9, 10; R. C. 1899, §§ 1576, 1577; 1903, ch. 97, § 1.]

§ 1977. **Charges allowed.** Any person taking up estrays may charge for actual time employed and for actual damage done to his crops or premises. He shall also be allowed his actual cost of feeding and caring for such estrays; provided, however, that if any person taking up an estray shall have caused the same while so in his possession to perform any labor for his own benefit, no compensation whatever shall be allowed him for feeding or caring for such estray for any portion of the time after such animal shall have been taken up by him. [1890, ch. 66, § 11; R. C. 1899, § 1578; 1903, ch. 97, § 2.]

§ 1978. **In case of two or more animals.** If two or more animals are taken up at the same time by the same person, they shall be enumerated in the same advertisement, and the same fees are allowed as for the advertisement or appraisement of one estray. [1890, ch. 66, § 12; R. C. 1895, § 1579.]

§ 1979. **May be sold, when.** If the appraised value of any estray exceeds twenty-five dollars, and the same is not called for within one year after the advertisement in the official estray paper, the person taking up such estrays shall notify some justice of the peace of the county, and such justice shall designate a place where such sale shall be held, and shall name the day, and the time of day for such sale, and cause notice of such sale to be published three times in a weekly newspaper, if there is one published in the county; in case no paper is published in the county, this notice shall be posted in three public places in the county at least twenty-two days before such sale, and on the appointed day the person taking up such estray shall have the same present at the place, and the justice shall proceed to sell such estray at public auction for cash, and after paying the proper fees and charges for taking up such estray and feeding and caring for same, to be fixed by such justice, and the fees advanced for the advertisement and appraisement of such estray as herein provided, and after deducting the fees allowed such justice for such sale and advertisement thereof, the residue of the proceeds of such sale shall be paid to the county treasurer, who shall receipt to the justice therefor. All moneys so deposited with the county treasurer shall

by him be retained in the treasury for six months thereafter, separate and apart from all other moneys, and if the owner of any such estray shall within such period appear before the board of county commissioners and establish his title to such estray, such board shall order the amount so paid into the treasury to be paid to such owner. If no such person appear within six months after the deposit of such money as herein provided, the same shall be passed to the school fund of the county and shall be accounted for and expended as other school money. [1890, ch. 66, §§ 13, 14; R. C. 1899, § 1580; 1903, ch. 97, § 3.]

§ 1980. **Record of sold estray.** Whenever any sum of money is paid into the county treasury under the provisions of the last section the justice paying the same shall deliver to the county treasurer a certificate setting forth the description of the estray from the sale of which the same was obtained and the marks and brands of such estray and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall be filed by the county treasurer and preserved in his office. [1890, ch. 66 § 15; R. C. 1895, § 1581.]

§ 1981. **Fees, how paid and collected.** The fees of the justice, and for advertising and appraising, shall be paid by the person taking up the estray, and the same shall constitute a first lien upon the estray and shall be paid by the owner before he shall be entitled to take away such estray. [1890, ch. 66, § 16; R. C. 1899, § 1582.]

§ 1982. **Penalty for violation.** If any person not authorized so to do shall take up any estray or lost goods or if any person taking up such estray or lost goods shall willfully neglect to cause the same to be advertised as herein provided, or shall fail to feed sufficiently or properly care for the same, such person shall be liable to the owner thereof for all damages. [1890, ch. 66, § 17; R. C. 1895, § 1583.]

§ 1983. **Liability in case of death of estray.** If any estray after being duly advertised as herein provided, shall, without fault of the person taking up the same, die or be stolen or escape and wander away, the person taking up the same shall not be responsible therefor. [1890, ch. 66, § 18; R. C. 1899, § 1584.]

§ 1984. **Other personal property governed by this article.** The manner of taking up, appraising, advertising and disposing of any lost goods or personal property which may be found upon the highways or in any other place shall be the same as herein provided for estrays. [1890, ch. 66, § 19; R. C. 1899, § 1585.]

#### ARTICLE 13.—CRUELTY TO ANIMALS.

§ 1985. **Agent to investigate. Appointment and duties of.** The governor shall appoint a discreet and suitable person whose duty it shall be to investigate all cases of violation of the laws against cruelty to animals of which information can be obtained and bring the facts relating thereto before the proper authorities and it shall be the duty of such persons to organize humane societies in different places in the state, where it can be done, whose members shall pledge themselves to the use of all reasonable means for the enforcement of the laws relating to cruelty to animals. It shall be the duty of the state's attorneys in this state to aid and co-operate with such person in the enforcement of such laws. [1893, ch. 47, §§ 1, 2; R. C. 1899, § 1586.]

§ 1986. **Expenses. Appropriation.** The person so appointed shall act without compensation further than the payment of his actual expenses incurred. The state auditor shall issue warrants for such expenses upon presentation of itemized and verified accounts therefor, and there is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of five hundred dollars annually for the payment of such expenses. [1893, ch. 47, § 3; R. C. 1899, § 1587.]

## ARTICLE 14.—TEXAS OR CHEROKEE CATTLE.

§ 1987. **When unlawful to import or own.** It shall be unlawful for any person, railroad company or other corporation or association:

1. To bring into this state any Texas or Cherokee cattle, except between the first day of November of each year and the first day of February following; or,

2. To own or have in possession or control within this state any Texas or Cherokee cattle at any time, which may have been brought into this state at any time except between the first day of November of each year and the first day of February following. [1883, ch. 111, §§ 1, 2; R. C. 1899, § 1588.]

§ 1988. **Penalty for violation.** Any person who brings into this state or causes to be brought therein, any Texas or Cherokee cattle, except at the time prescribed in section 1987 or who shall own, possess or control any such cattle except as allowed in the preceding section, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding ten thousand dollars nor less than two hundred dollars, and in addition thereto may be imprisoned in the penitentiary for a period not exceeding three years. Any railroad conductor or employe, agent or officer of any railroad company who brings any such cattle into this state upon any railroad or vessel connected with such railroad, or who carries any such cattle upon any railroad or vessel connecting therewith from one point to another within this state shall be deemed to have possession of such cattle within the meaning of this section. [1883, ch. 111, § 3; R. C. 1895, § 1589.]

§ 1989. **Who liable for damage caused by such cattle.** Whenever in any case any damage is occasioned to any person, resulting in any manner from any such Texas or Cherokee cattle having been brought into this state at any time by any person, railroad company or other corporation or association, then such person so bringing into, or owning, possessing or controlling such cattle in this state shall be liable jointly and severally to any person who may suffer loss or damage by reason of such bringing into or conveying through, possessing, owning or controlling within the state any such cattle; and in any action for the recovery of damages for any loss or damage which may be sustained by any person from any such cattle, it shall be sufficient for the plaintiff to show that the injury of which he complains arose from any such Texas or Cherokee cattle which may have been owned or had in possession or brought into this state at any time within the year by any such defendant, or that such cattle so brought in, owned or possessed had been where such loss or damage had been sustained. And it shall not be necessary for the plaintiff to show that the injury of which he complains accrued while any such Texas or Cherokee cattle were in the possession or ownership or control of any such defendant, it being the intention of this section to make all persons liable in the first instance for any injury which may arise from disease spreading or communicating from such Texas or Cherokee cattle so brought into, owned, possessed or controlled by them in this state. [1883, ch. 111, § 5; R. C. 1895, § 1590.]

§ 1990. **What no defense. Proof necessary to recovery.** The right to bring into this state such cattle between the first day of November and the first day of February following shall in no case be any defense for any loss or damage that may accrue from such cattle to any person; nor shall the right to own, possess or control any such cattle in any case be a defense for any injury or loss which may arise to any person by reason of such right to own, possess or control such cattle. In all actions for any loss or injury which may arise or accrue to any person by reason of any injury or loss done or caused to be done to any native or domestic cattle from or by any such Texas or Cherokee cattle, the proof of the loss of any native or domestic cattle or any damage thereto, and the amount of such loss or damage, and



proof that any such defendant brought into this state or owned, possessed or controlled in this state at any time any such Texas or Cherokee cattle which may have caused such injury or loss, shall be prima facie evidence of plaintiff's right to recover. And it shall be competent in the trial of such actions for witnesses to give their opinion as to whether or not any such Texas or Cherokee cattle caused the injury complained of. [1883, ch. 111, § 7; R. C. 1899, § 1591.]

§ 1991. **Proceedings when Texas cattle are spreading disease.** In case any such Texas or Cherokee cattle shall be found spreading or communicating any disease among the native domestic cattle of this state, it shall be the duty of any judge of the district court, or justice of the peace, upon oath of any householder setting forth that such cattle are spreading or communicating disease among native or domestic cattle within this state, and the name of the owner or person in whose possession or control such Texas or Cherokee cattle may be, forthwith to issue a warrant to any sheriff or constable of the county commanding him forthwith to arrest and imprison in some safe place such cattle so spreading or communicating disease and to summon the owner thereof or the person found in the possession of such cattle, to appear before such judge or justice of the peace forthwith and show cause why such cattle should not be impounded until the first day of November following, and after allowing the parties a reasonable time to be heard, such judge or justice shall proceed to hear and determine whether such cattle have so spread or communicated disease. It shall be the duty of such judge or justice of the peace to order the officer in charge of such cattle to impound them and keep them by themselves until the first day of November following, when it shall be the duty of the officer in charge of such cattle to present to the owner or person entitled to the possession thereof a sworn statement of the cost of taking, keeping and impounding such cattle, including the costs of building the pound and providing materials for the same in case the board of county commissioners or township supervisors where such cattle were impounded had ordered the pound to be built for the purpose of impounding such cattle, and demand payment of the same together with the costs of such trial aforesaid; and upon payment of the same he shall deliver such cattle to the owner or person entitled to possession thereof. [1883, ch. 111, § 8; R. C. 1899, § 1592.]

§ 1992. **Texas cattle defined.** Texas or Cherokee cattle as mentioned in the foregoing sections shall be taken to mean a class or kind of cattle without reference to where they may have come from; provided, that that portion of this state west of the Missouri river is exempted from the provisions hereof; but the right to bring into, own, possess or control such cattle in such exempted territory shall give no right to send, convey or cause to be sent or conveyed such cattle into that part of the state subject to the provisions hereof, or own or possess the same therein, except that such cattle may be shipped or conveyed by themselves across said river to an inclosure upon the left bank thereof upon the line of any railroad crossing this state and may be conveyed from such inclosure across and without the state by continuous passage in cars upon such railroad. [1883, ch. 111, § 9; R. C. 1899, § 1593.]

#### ARTICLE 15.—DISTRICT VETERINARIANS.

§ 1993. **State veterinarian to take oath.** The professor of veterinary science of the state agricultural college is made chief state veterinarian, who shall serve as such without salary, and who shall upon entering upon his duties take an oath well and truly to perform all the duties required of him by law, which said oath shall be taken before any judge of a district court or notary public within the state, and shall be filed with the secretary of state. [1895, ch. 35, § 1; R. C. 1899, § 1594.]

§ 1994. **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. [1887, ch. 146; R. C. 1899, § 1595; 1905, ch. 190.]

§ 1995. **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, La-Moure 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 ninety, and that portion of the Sioux Indian reservation lying north of the seventh 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 one hundred forty-three, 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 ninety.

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 one hundred forty-three. [1897, ch. 146; R. C. 1899, § 1596; 1901, ch. 207; 1905, ch. 190.]

§ 1996. **Duties of chief veterinarian.** The duties of the chief state veterinarian shall be to ascertain by personal examination, or through reports from the district veterinarians, in such manner as he shall prescribe, all information that he can obtain regarding the existence of contagious, infectious and epidemic diseases in the state. He shall also make a complete and permanent record of all reports of the district veterinarian; shall make an examination of all diseased animals or portions thereof that may be forwarded to him by the district veterinarians, and upon completion of such examination shall instruct the district veterinarians in such way as he may deem proper in regard to the treatment of similar cases. It shall also be his duty to furnish material as far as lies in his power for the diagnosis of contagious diseases, and instruction as to its uses. In case remedies are discovered for the prevention or cure of contagious diseases such as glanders, tuberculosis, anthrax, hog cholera, foot and mouth diseases and foot rot, it shall be his duty to furnish the district veterinarians, or any person he may see fit to appoint, the remedies so discovered with full directions for application. He shall also be empowered to make quarantine regulations and enforce the same after the approval of the governor. He shall further prescribe, with the consent of

the governor, the rules and regulations necessary to carry out the purposes of this article. [1895, ch. 35, § 4; R. C. 1899, § 1597.]

**§ 1997. Duties of district veterinarians.** The duties of district veterinarians shall be:

1. To investigate in person any or all cases of contagious, infectious and epidemic diseases among cattle, horses, mules, sheep, asses and other domestic animals within his district of which he may have knowledge, and which may be brought to his notice by any resident, or any other person, in any locality within his district where such disease may exist, and it shall also be his duty in the absence of specific information to make visits of inspection to any locality within his district where he may have reason to believe that there are contagious or infectious diseases existing among such domestic animals.

2. To seize and inspect at the state line bordering on his district, or at any point within his district, any horses, mules, cattle, asses or sheep which may be driven into or unloaded at any point within such district to graze or run at large upon any of the lands within this state, and for such seizure and inspection such veterinarian shall collect the fees fixed by law, together with all costs and expenses of seizing and holding such animals, and such fees and costs shall become a lien upon such animals, which, if not paid within five days after such seizure and inspection shall be completed, may be foreclosed by such veterinarian in the same manner as other liens upon personal property, and until such inspection shall be fully completed and such animals released by such veterinarian, they must be confined by the owner, agent or person in charge of such animals, to a reasonable space to be designated by such veterinarian; provided, however, that if such veterinarian shall become satisfied by an examination of health certificates issued by a duly authorized veterinarian or examiner of the state from which such animals were shipped, that such animals are in good health and have not been exposed to any contagious, infectious or epidemic disease, such veterinarian may allow such animals to graze or run at large within such state, upon payment to him of mileage at the rate of ten cents per mile for each mile actually and necessarily traveled by him to make such inspection, and five dollars per day for each day necessarily spent by him in going to the place of such inspection.

3. To examine in person, as often as he may deem reasonable, all pens, inclosures and cars within the district within which domestic animals may be confined or transported, and to require the owner, agent or person in charge of all such pens, inclosures and cars, to keep the same in proper sanitary condition.

4. To require in person the owner, agent or person in charge of all pens, inclosures and cars within which domestic animals may be confined or transported to cleanse, fumigate and disinfect the same within two days after written notice when, in his opinion such cleansing, fumigation and disinfection shall be necessary for the prevention of the spread or outbreak of any contagious or infectious disease among the animals.

5. To seize and inspect all domestic animals coming into and remaining within his district without a certificate of the health of such animals from a duly authorized state or district veterinarian or examiner of the state from which said animals have been shipped, or which he has reason to believe have contracted any infectious or contagious disease or have been exposed thereto, and such veterinarian shall be entitled to charge therefor the per diem and mileage prescribed in subdivision 2 of this section and enforce collection thereof as is therein provided. But where the owner is a resident of this state importing such animals for breeding purposes or the ordinary purpose of husbandry and has notified the district veterinarian of the time and place where the same may be inspected, and they are found free from any infectious or contagious disease, the inspection shall be made free of fee, per diem or mileage to the owner. [1897, ch. 147, § 1; R. C. 1899, § 1598.]

§ 1998. **Seizure of animals.** Whenever any domestic animals are seized and inspected under the provisions of this article by the district veterinarian while such animals are being transported in cars or shipboard or brought into the state in any other manner, the district veterinarian making such seizure and inspection shall require the owner, agent or person in charge of such animals to pay five cents each for the inspection of sheep, fifteen cents each for the inspection of cattle, and one dollar each for the inspection of horses, mules or asses. One-half of the money so collected shall be immediately transferred to the chief state veterinarian, together with a detailed report of the seizure and inspection, and it shall be the duty of the chief veterinarian to transmit monthly all money collected as inspection fees under the provisions of this article to the state treasurer who shall receipt to the chief state veterinarian. All such fees shall be paid by the state treasurer into the general fund and one-half shall be immediately transferred to the county treasurer of the county in which such inspection was made, and the county treasurer shall place all money so received in the general county fund and the county treasurer shall receipt to the district veterinarian; provided, that no inspection shall be made by any district veterinarian of any domestic animals in transit through the state without special instructions from the chief state veterinarian where the owner, agent or person in charge thereof shall produce certificates of health of such animals from a duly authorized veterinarian or examiner of the state from which such animals have been shipped. [1897, ch. 147, § 2; R. C. 1899, § 1599.]

§ 1999. **Quarantine.** In all cases of contagious or infectious diseases among domestic animals in this state the district veterinarian shall have authority to order a 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. [1891, ch. 125, § 6; 1895, ch. 35, § 7; R. C. 1899, § 1600; 1905, ch. 190.]

§ 2000. **Epidemic diseases, notice of.** In case of any epidemic diseases where premises and animals have been previously quarantined by order of the chief state veterinarian or by the district veterinarian as hereinbefore provided, the district veterinarian is further authorized and empowered, when in his judgment it is necessary, to order that any and all diseased animals shall be quarantined at such places and in such manner as he may direct and held in such quarantine until released by certificate of the chief state veterinarian as provided in the preceding section, and in case the district veterinarian shall find that any one or more of the animals so quarantined is so diseased that it becomes necessary to destroy the same to prevent the spread

of such disease to other animals, he shall at once serve, in person, a written notice of his intention to destroy the same, upon the owner, agent or person in charge of the animals so quarantined and condemned, and if such owner, agent or person in charge of such animals feels aggrieved by the decision of the district veterinarian, and shall desire a consultation of veterinarians, notice in writing to that effect must within twenty-four hours thereafter be served upon the district veterinarian issuing the notice, and it is made the duty of the resident district veterinarian to summon two district veterinarians from adjoining districts to appear and assist in diagnosing and pronouncing upon the character of the disease with which said animal is supposed to be infected, and in case all three district veterinarians, or any two of them, declare said disease to be contagious or epidemic in its character, and that such animal or animals should be destroyed to prevent the spread of such disease to other animals, the district veterinarian of the district wherein the animal is located shall immediately slaughter such animal, and not otherwise, and shall then make in duplicate a written statement, setting forth distinctly the nature of the disease for which such animal was condemned and destroyed, to be served on each owner thereof, the original of each order to be filed by the district veterinarian with the chief veterinarian and the duplicate thereof given to the owner, agent or person in charge of said condemned animals. It shall be the duty of the owner, agent or person in charge of any and all animals slaughtered under the provisions of this article immediately to bury the carcass of such slaughtered animal in a trench at least six feet in depth and at least four feet beneath the surface of the ground, or burn and consume such carcass under the direction of the district veterinarian; and it is made the duty of the district veterinarian, in person, to require the owner, agent or person in charge of such slaughtered animal within his district immediately to bury or burn under his personal supervision the carcass of such slaughtered animal as herein provided, except in all cases where the cause of death is due to anthrax, when it shall immediately be burned. [1891, ch. 125, § 7; 1895, ch. 35, § 8; R. C. 1899, § 1601.]

**§ 2001. Manner of burial.** It shall be the duty of the owner of any cattle or other domestic animals, or any person in the actual charge of such animals, within this state, that die from or on account of any contagious disease (and the death of any such animal from disease shall be presumed to be contagious until the contrary is proven, also any such animal found dead shall be presumed to have died of such disease unless other causes of death are apparent), to cause the same within twenty-four hours after receiving knowledge of the death of such animal to be buried at least four feet below the surface of the ground and covered with dirt to that depth. [1899, ch. 36, § 1; R. C. 1899, § 1601a.]

**§ 2002. Duty of overseers and coroner.** It is also hereby made the duty of all road and street overseers, under whatever name called, and of the county coroner in such districts where there are no road overseers to bury or cause to be buried all animals dying as in section 2001, when the same have been dead for thirty-six hours and are still unburied by the owner or person in charge thereof. The said road or street overseers and the said coroner are authorized to enter upon or into any premises where such dead cattle may be for the purpose of removing the same for burial and may bury the same on such premises, but must not bury said animals within one thousand feet of any dwelling house or barn. The board of county commissioners of such county shall allow such sums for such services as they may deem reasonable and the same shall be paid as other services for said county are paid. It is further provided that the owner of such animal or animals shall be liable to the county for such expenses, to be recovered in a civil action in the same manner as other debts are collected unless the owner pays said burial expenses within thirty days after being notified by the county

auditor of the same, and no property except absolute exemptions shall be exempt from sale for the payment of any judgment that may be recovered against said owner, including costs and such attorney's fee as may be allowed by the court, not exceeding the sum of twenty-five dollars, said attorney's fee to be paid into the general fund of the county. [1899, ch. 36, § 2; R. C. 1899, § 1601b.]

**§ 2003. Report of district veterinarians.** Each district veterinarian shall make a report at the end of every three months, and at such other times as may be required, to the chief state veterinarian of all matters connected with his work, the forms of such reports to be furnished by the chief state veterinarian and the chief state veterinarian shall transmit to the several boards of county commissioners, as often as he deems necessary, such parts of said reports as may be of general interest to the breeders of live stock, and he shall also give information in writing as soon as he obtains it to the various boards of county commissioners, of each case of suspicion of fresh outbreak of disease in any locality, its causes and the measures adopted to check it. [1891, ch. 125, § 8; 1895, ch. 35, § 9; R. C. 1899, § 1602.]

**§ 2004. Certificate of health. Fine and imprisonment.** It shall be the duty of any owner, agent or person in charge of any cattle, horses, mules, asses, sheep or other domestic animals, where such owner, agent or person in charge thereof intends to bring any such animals into the state for distribution, sale, transportation, or permanent location therein, without a certificate of health from a duly authorized veterinarian or examiner of the state from which such animals are shipped, to give notice in writing to the district veterinarian of the district of the state bordering on the state line from which said animals are brought, at least three days before such animals are brought into this state beyond the quarantine station at the state line of such district, and it shall be the duty of any person who shall have knowledge or suspect that there is upon his premises or upon the public domain, any case of contagious, infectious or epidemic disease among domestic animals, immediately to report the same to the district veterinarian of the district wherein such animals or cattle may be, and a failure so to do, or any attempt to conceal the existence of such diseases or a failure to give notice, before passing the quarantine station at the state line of said district, as in this section required, or willfully or maliciously to obstruct or resist or disobey any order issued by the chief state veterinarian or the district veterinarian, or in any way interfere in the discharge of their duties, as set forth in this article, shall be deemed a misdemeanor, and any person who shall be convicted of any of the above acts or omissions shall be fined not less than fifty dollars nor more than two thousand dollars for each and every such offense and upon conviction of such offense a second time, shall, in addition to the above named fine, be imprisoned in the county jail of the county wherein convicted, or as otherwise provided by law, for a term of not less than ninety days nor more than one year. [1891, ch. 125, § 9; 1895, ch. 35, § 10; R. C. 1899, § 1603.]

**§ 2005. Duty of owners of stock. Animals in transit.** The following regulations shall be observed in all cases of disease covered by this article:

1. It shall be unlawful to sell, give away or in any manner part with any animal affected with or suspected of being affected with any contagious or infectious disease, and in case of any animal that may be known to have been affected with or exposed to any such disease within one year prior to such disposal, due notice of the fact shall be given in writing to the person receiving the animal.

2. It shall be unlawful to kill for butcher purposes any such animal, or to sell, give away or use any part of it, or its milk, or to remove any part of the skin. A failure to observe these provisions shall be deemed a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars; and, in addition to such fine, be imprisoned in the county jail for a

term of not less than ninety days nor more than one year. It shall be the duty of the owner, agent or person having in charge any animal infected or suspected of being infected with any contagious or infectious disease, immediately to confine the same in a safe place, isolated from all other animals, and with all necessary restrictions to prevent the dissemination of the disease until the arrival of the district veterinarian of the district wherein the same may be at the time. The above regulation shall apply as well to animals in transit through the state as to those resident therein, and the district veterinarian shall have full authority, within his district, to examine whether in yard, pasture or stables, or upon the public domain, all animals passing through the state, within his district or any part of it, and on detection or suspicion of disease, take possession of and treat and dispose of such animals in the same manner as is prescribed for animals resident within the state. [1891, ch. 125, § 10; 1895, ch. 35, § 11; R. C. 1899, § 1604.]

**§ 2006. 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. [1891, ch. 125, § 11; 1895, ch. 35, § 12; R. C. 1899, § 1605; 1905, ch. 191.]

**§ 2007. Places of quarantine.** The district veterinarians shall select the place or places within their respective districts at which animals referred to herein shall be quarantined. [1891, ch. 125, § 12; 1895, ch. 35, § 13; R. C. 1899, § 1606.]

**§ 2008. Fines.** All fines collected under the provisions of this article shall be paid into the general fund of the state. [1891, ch. 125, § 13; 1895, ch. 35, § 14; R. C. 1899, § 1607.]

**§ 2009. Duty of attorney general.** It is the duty of the attorney general or the state's attorney of the respective counties of the veterinarian district, to prosecute any case complained of by the district veterinarian of such district for prosecution in any justice's or district court within the jurisdiction of which any violation of this article may have occurred, and on conviction of violation of any of the provisions of this article, the court, in addition to the penalties prescribed by law, shall add thereto such reasonable attorney's fees, as may be determined to be just in the premises. [1891, ch. 125, § 14; 1895, ch. 35, § 15; R. C. 1899, § 1608.]

**§ 2010. Duty of sheep inspector.** It shall, in addition to their duties already defined by law, be the duty of all sheep inspectors, and the district veterinarian, who is hereby authorized to appoint such inspectors, in any county in his district, where the county commissioners fail to make such appointment, and he may deem such an appointment necessary, and shall require all sheep inspectors within his district to report to him in writing, at the end of each calendar month, any knowledge or information such sheep inspectors may possess relative to any diseased sheep which may be within their own or adjacent counties within the veterinarian district of which said

county or adjacent counties may form a part, and the district veterinarian shall report to the chief veterinarian all the information that he obtains from the reports received from the sheep inspectors; and whenever, in the opinion of the district veterinarian, any sheep inspector within his district is incompetent, or neglects or refuses to attend in a proper manner to his duties, the district veterinarian of such district shall take charge of any diseased sheep in such county, and dip and treat them in the manner provided for in the law relating to sheep inspectors, and when such action shall become necessary he shall report the same to the chief state veterinarian, who shall give such assistance as is in his power, and in addition thereto the district veterinarian shall, when such sheep inspector is incompetent or neglects to perform his duties, remove said inspector and appoint some competent person in his place. The owner, agent or person in charge of such sheep shall be required by the district veterinarian upon his performance of duty as set forth in this section, to pay a fee of five dollars per day, together with the necessary expenses, and said fee shall be a lien upon the sheep inspected, subject to foreclosure the same as chattel mortgages. All fees or moneys collected by the district veterinarian, under the provisions of this article shall be remitted, turned over and receipted for, the same as other funds that may pass through his hands, as prescribed by section 1998. [1899, ch. 147; R. C. 1899, § 1609.]

§ 2011. **Jurisdiction of inspector.** In all counties of this state where a sheep inspector has been or may be appointed as provided for by law, the resident sheep therein shall be under the supervision and inspection of such sheep inspector; provided, that upon a written application signed by not less than three sheep owners the district veterinarian shall visit such county and take such authority or give such directions as in his judgment is necessary. [1891, ch. 125, § 16; 1895, ch. 35, § 17; R. C. 1899, § 1610.]

§ 2012. **Inspector's compensation.** The inspector shall receive for his services five dollars per day while necessarily employed in inspecting, which shall be paid out of the county general fund in the same manner and form as claims against the county are paid; provided, that the board of county commissioners shall require such sheep inspector to present an itemized statement of the number of sheep inspected and the number of days actually employed in the performance of his official duties, such statement to be approved by the district veterinarian of the district in which such inspector is engaged. [1895, ch. 35, § 18; R. C. 1899, § 1611.]

§ 2013. **State veterinarian, additional duties.** In addition to the duties of the chief state veterinarian hereinbefore prescribed, he shall make an annual report to the governor on or before the first day of December of all matters connected with his work, and in addition thereto may, from time to time, as in his judgment seems best, publish bulletins for general distribution, giving information as to the existence of animal diseases in the state, and such suggestions in addition thereto as to the care and treatment as he thinks proper. [1895, ch. 35, § 19; R. C. 1899, § 1612.]

§ 2014. **Appropriation.** For the purpose of carrying out the provisions of this article as herein set forth, there shall be appropriated out of any money in the state treasury not otherwise appropriated, an annual sum of thirty-six hundred dollars with which to pay the salaries of the district veterinarians, and the further annual amount of five hundred dollars for stationery, clerk hire and traveling and other necessary expenses of the chief state veterinarian. [1895, ch. 35, § 20; R. C. 1899, § 1613.]

§ 2015. **Serious outbreaks of diseases.** In case of any serious outbreak of any contagious, infectious or epidemic diseases among domestic animals, which cannot be supervised by the district veterinarian, the chief state veterinarian shall at once notify the governor, who shall thereupon appoint a sufficient number of deputies to perform the required duties at such com-



pensation as he may deem proper, not to exceed five dollars per day for the actual time employed, the same to be paid out of the general fund of the state upon vouchers duly approved by the governor and the chief state veterinarian. [1895, ch. 35, § 21; R. C. 1899, § 1614.]

ARTICLE 16.—STATE BOARD OF VETERINARY MEDICAL EXAMINERS.

§ 2016. **Qualifications of veterinarians.** Each person practicing veterinary medicine, surgery or dentistry in any of its departments in this state, shall possess the qualifications required by this article; provided, that any person who has practiced veterinary medicine, surgery or dentistry as a profession in this state for three years immediately preceding the taking effect of this article, and who shall be a citizen of the United States, or shall have declared his intention to become such, shall be deemed eligible to registration, and shall receive a certificate upon presentation of a sworn affidavit and letters of recommendation from five reputable free holders in his locality, or upon presentation of a diploma from a legally authorized veterinary school, college or university, if made before July 1, 1895. [1895, ch. 113, §§ 1, 2; R. C. 1899, § 1615.]

§ 2017. **Board of examiners, how appointed. Term.** The governor shall appoint a board of examiners within thirty days after the taking effect of this article to be known as the state board of veterinary medical examiners. Such board shall consist of three practicing veterinarians, who shall each be the holder of a diploma granted by a legally authorized veterinary school, college or university, who shall hold office, one for one year, one for two years, and one for three years, after such appointment, or until their successors are appointed. Thereafter, each year, the governor shall appoint one member of said board to fill the vacancy occasioned by the expiration of the term of office of those previously appointed and is further authorized to fill such vacancies as may occur. [1895, ch. 113, § 3; R. C. 1899, § 1616.]

§ 2018. **Organization of board.** Said board shall elect a president, secretary and treasurer. It shall have a common seal, and the president and secretary shall have power to administer oaths. Said board shall hold meetings for the examination of candidates, on the second Wednesday of April and October of each year, and such other meetings as may be deemed necessary, at such time and place as the board may appoint, no session to exceed two days. The board shall issue a certificate of qualification to all applicants who shall pass the required examination, and who shall be citizens of the United States, or shall have legally declared their intention to become such, and to all applicants who are eligible to registration under section 2016, signed by the president and secretary of the board. Such certificate or diploma shall be conclusive as to the right of the lawful holder of the same to practice veterinary medicine, surgery or dentistry in this state. Said board shall keep a record of all the proceedings thereof, and also a record or register of each applicant for a license, together with his age, name and time spent in the study and practice of veterinary medicine, surgery or dentistry; and if a graduate, the name and location of the school, college or university granting such diploma. Said books and records shall be prima facie evidence of all the matter therein recorded. [1895, ch. 113, §§ 4, 6; R. C. 1899, § 1617.]

§ 2019. **Permit to practice.** Any person wishing to practice veterinary medicine, surgery or dentistry, who is qualified under section 2022, may apply to the president of the board of examiners for a permit to practice. The president shall upon the payment of five dollars, if satisfied that the applicant is qualified and a suitable person, issue to him a permit to practice until the next meeting of the board, and such permit shall have the same force as a certificate from the board, but shall expire upon the adjournment of the next meeting of the board of examiners. [1895, ch. 113, § 5; R. C. 1899, § 1618.]

§ 2020. **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 or hereafter registered under this article. 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 nonpayment of fees, from renewing his registration within two years by paying such fees, without examination. [1895, ch. 113, § 7; R. C. 1899, § 1619; 1905, ch. 192.]

§ 2021. **Misdemeanor to practice, when.** Any person who either:

1. Practices veterinary medicine, surgery or dentistry, in this state without compliance with the provisions of this article; or
2. Willfully and falsely claims or pretends to have or hold a certificate of registration issued by such board; or
3. Willfully and falsely, with intent to deceive the public, claims or pretends to be a graduate of, or to hold a diploma granted by a legally authorized veterinary school, college or university, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than fifty nor more than one hundred dollars, and in case of nonpayment of such fine, the person so offending shall be liable to imprisonment for a period not exceeding six months; provided, that the provisions of this section do not apply to persons practicing castration. All fines received under this article shall be paid into the common school fund of the county in which such conviction takes place. [1899, ch. 168; R. C. 1899, § 1620.]

§ 2022. **Examination.** All persons commencing the practice of veterinary medicine, surgery, or dentistry in this state shall be graduates of a legally authorized veterinary school, college or university, and shall subject themselves to such examination as the board may require. [1895, ch. 113, § 10; R. C. 1899, § 1621.]

§ 2023. **Certificates recorded.** Every person holding a certificate from the board of examiners shall have it recorded in the office of the register of deeds in the county in which he resides, within thirty days after the date of said certificate, and the record shall be indorsed thereon. Any person removing to another county to practice shall record within thirty days the certificate in a like manner in the county to which he removes, and the holder of the certificate shall pay to the register of deeds a fee of one dollar for making the record. [1895, ch. 113, § 11; R. C. 1899, § 1622.]

§ 2024. **Gratuitous services.** Gratuitous services in cases of emergency in the dehorning of cattle, or castration of animals, shall not be construed as coming within the meaning of this article. [1895, ch. 113, § 12; R. C. 1899, § 1623.]

§ 2025. **Witnesses. Expert fees.** Any person complying with the provisions of this article shall be entitled to expert fees as a witness in all civil actions relating to the veterinary profession. [1895, ch. 113, § 13; R. C. 1899, § 1624.]

## ARTICLE 17.—GLANDERS.

§ 2026. **Penalty for having glandered animals in possession.** It shall be unlawful for any person to own, have in possession or in any manner keep, use or control any horse, gelding, mare, ass or mule infected with the disease commonly known as glanders; and each person who knowingly owns or possesses or in any manner keeps, uses or controls a glandered animal as aforesaid, shall be deemed guilty of a misdemeanor and shall be punished accordingly and all such diseased animals shall be summarily destroyed as hereinafter provided. [1883, ch. 65, § 1; R. C. 1895, § 1625.]

§ 2027. **Complaint to justice of the peace. Duty of justice.** When complaint in writing is made to a justice of the peace of the proper county, verified by oath or affirmation, stating that any person owns, possesses or in any manner keeps, uses or controls any horse, gelding, mare, ass or mule infected with the disease commonly known as glanders, it shall be the duty of the justice upon filing such complaint immediately to cause notice to be served upon the person so owning, possessing, keeping, using or controlling such animal, which notice shall set forth briefly the allegations of the complaint and command such person forthwith to appear before such justice and show cause why such justice shall not issue a warrant for the destruction of such animal, and either the complainant or the person summoned may demand a trial by jury of six men to whom the hearing of the matter shall be submitted, and both parties shall be entitled to witnesses, to be summoned by subpoena as in other actions and such examination and hearing shall be conducted in all respects as civil actions in such courts, and if the jury or court desires, they may cause such person to bring such animal before them for inspection. Upon the conclusion of the trial the court, or jury, if trial is had by jury, shall forthwith render a judgment or verdict, stating that the charge in the complaint is or is not true, which judgment or verdict shall be final in the matter. [1883, ch. 65, § 2; R. C. 1895, § 1626.]

§ 2028. **Duty of justice after verdict.** In case the verdict of the jury shall be that the complaint is true and that such animal is infected with glanders, the justice shall forthwith direct by warrant that the owner or person having such animal in possession forthwith kill and bury or otherwise destroy the same, which warrant may be served upon such owner or person the same as a summons and in the case of a corporation, each officer thereof shall be responsible in its behalf for the acts of the corporation, and such service may be made upon any officer thereof. [1883, ch. 65, § 3; R. C. 1899, § 1627.]

§ 2029. **Penalty for disobeying warrant.** If the owner or person having possession of such diseased animal, after having been served with a warrant as hereinbefore provided, shall for the period of twelve hours after such service neglect or refuse to kill and bury or otherwise destroy such animal, such animal shall be forthwith killed and buried or otherwise destroyed by order of the justice directed to the person serving such warrant, or some other competent person to be named by the justice in the order, and the officer or person executing the same shall make return thereof to the justice. The officer or person executing such order shall be entitled to a fee of ten dollars to be audited and paid as hereinafter provided. [1883, ch. 65, § 4; R. C. 1899, § 1628.]

§ 2030. **Justice to preserve record and certify costs.** The justice of the peace before whom any such proceedings shall be had shall enter in his docket a record of all such proceedings, and shall allow and tax all costs of the justice, officers, jurors and witnesses the same as in other cases, together with the fee

provided herein for destroying such animal, which costs and fee shall be certified by him to the board of county commissioners, and shall be audited and paid out of the general county fund the same as costs in criminal actions before justices of the peace; but the justice may tax the costs against the complainant if he finds that the action was malicious or without probable cause, and such judgment for costs shall be enforced as judgments for costs in criminal actions, and execution may issue therefor. [1883, ch. 65, § 5; R. C. 1899, § 1629.]

#### ARTICLE 18.—SHEEP INSPECTORS.

**§ 2031. Appointment of sheep inspectors. Term of office.** The county commissioners of any organized county, shall upon the presentation of a petition, signed by ten wool growers of such county, appoint a sheep inspector who is acquainted with the diseases to which sheep are subject, and who shall be a resident of the county for which he is appointed, and who shall hold his office for two years, unless sooner removed. Such inspector may appoint as many deputies as he may deem necessary. [1891, ch. 116, § 1; R. C. 1899, § 1630.]

**§ 2032. Duties of sheep inspector.** It shall be the duty of the sheep inspector whenever he has knowledge or information that any sheep within his jurisdiction have the scab or any other malignant contagious diseases, to inspect such sheep and report in writing the result of his inspection to the district veterinarian, to be filed by him for reference by the county commissioners or any person concerned, and if such disease continues he shall once every four weeks thereafter reinspect such sheep and report in writing the result and treatment, if any, in the same manner until said disease is reported cured. [1891, ch. 116, § 2; R. C. 1895, § 1631.]

**§ 2033. Duty of owner or agent of diseased flock.** The owner, or his agent, of any sheep reported by the inspector to be so diseased shall immediately herd them so that they cannot range upon or within one mile of any grounds accustomed to be ranged upon by any other sheep, or shall restrain them from passing over or traveling upon or within one mile of any public highway or road, and in case this cannot be done he shall immediately remove said sheep to a locality where they shall not be permitted to range within less than five miles of any other sheep, and such sheep shall continue to be herded under such restrictions until, upon inspection, they shall be reported free from such disease. [1891, ch. 116, § 3; R. C. 1899, § 1632.]

**§ 2034. Oath and bond of inspector, where recorded.** Each inspector before entering upon the duties of his office shall take the oath of office required of other civil officers and shall give bond to the state of North Dakota in the sum of one thousand dollars with good sureties, conditioned that he will faithfully perform the duties of his office; such bond shall be approved by the board of county commissioners, and with the oath indorsed thereon shall be recorded in the office of the county auditor of the county in which the inspector shall reside and may be sued on by any person injured on account of the unfaithful performance of said inspector's duty; provided, that no suit shall be so instituted after more than twelve months have elapsed from the time the cause of action accrued. [1891, ch. 116, §§ 8, 9; R. C. 1899, § 1633.]

**§ 2035. When infected sheep dipped. Penalty.** Every owner of sheep having scab or other malignant contagious disease shall dip or otherwise treat the same upon his own premises; provided, that when he has more than one ranch or set of ranches and the diseased sheep are not upon the ranch where the dipping works or other facilities for treating the disease are situated, he shall have the right to drive through intermediate ranges, but in so doing shall consult the owners or occupants of said range as to where he shall cross the same, and in no case shall he enter another corral or water at his troughs or accustomed watering places with his diseased sheep without the written or otherwise expressed consent of the owner, and for every violation of the

provisions herein he shall be subject to a fine of not exceeding one hundred dollars. [1891, ch. 116, § 10; R. C. 1899, § 1634.]

§ 2036. **Salary of inspector, how paid.** The inspector shall receive for his services five dollars per day while necessarily employed in inspecting, which shall be paid out of the county general fund in the same manner as other claims against the county are paid; but the board of county commissioners shall require such sheep inspector to present an itemized statement duly verified of the number of sheep inspected and the number of days actually employed in the performance of his official duties. [1891, ch. 116, § 11; R. C. 1895, § 1635.]

§ 2037. **Power of inspectors.** Five days notice shall be given to the sheep inspectors, by persons intending to bring sheep into any county in this state from another state for the purpose of grazing said sheep upon lands in this state, which notice shall state the place where such sheep are located, and the nearest place to the line where the said sheep may be inspected. In all cases where scab or other contagious diseases are found in a flock of sheep, the sheep inspector is hereby empowered to prescribe what dip or other remedy shall be applied, and specify the manner of treatment. [1891, ch. 116, § 12, R. C. 1899, § 1636; 1901, ch. 182.]

§ 2038. **Duty of inspectors.** It is hereby made the duty of sheep inspectors of this state to cause to be dipped all sheep that come into the state for the purpose of running upon or grazing on the lands of this state, which dipping shall be done under such rules and regulations as the sheep inspector may prescribe. And after said dipping the said inspector shall cause the sheep so dipped to be quarantined for not less than twenty days, or until the said sheep inspector shall be satisfied that the said sheep are entirely free from disease; provided, that this section shall not apply to sheep while on railway cars or in railway stock yards, accompanied by proper certificates of health and which sheep are not detained in the state more than sixty hours. [1897, ch. 130, § 1; R. C. 1899, § 1636a; 1901, ch. 182.]

§ 2039. **Compensation.** For his services under the provisions of the foregoing section the inspector shall receive the same compensation as in other cases, which compensation, together with the costs of dipping, shall be a lien upon the sheep so inspected and dipped and shall be collectible as such in an action before any court of competent jurisdiction. But where the owner is a resident of this state importing such animals for breeding purposes or the ordinary purpose of husbandry and has notified the district veterinarian of the time and place where the same may be inspected, as well as the place where such animals are to be dipped, and they are found free from any infectious or contagious disease, the inspection shall be made free of fee, mileage or per diem to the owner. [1897, ch. 130, § 2; R. C. 1899, § 1636b.]

§ 2040. **Owners must notify inspectors.** In all cases where sheep are brought into any county of this state the owner or person in charge of said sheep shall notify the inspector of the date of the arrival in said county and before being allowed to mingle with other sheep shall be quarantined for a period of not less than forty days, in a location approved of by the sheep inspector of said county; provided, however, where sheep have been ranged for not less than forty days near the county line of the county to which said sheep are to be removed and are known to be free from disease, the provisions of this section shall not apply. [1891, ch. 116, § 13; R. C. 1899, § 1637.]

§ 2041. **Penalty for violation of.** The owner or his agent or employes, of any flock of sheep to be inspected shall afford the inspector all reasonable facilities for making such inspection, and for every violation of any of the provisions of this article such owner or his agent or employes shall be fined not less than ten dollars nor more than three hundred dollars, and every separate day's offense shall constitute a separate offense, and the written

report of an offense made by an inspector under oath shall be prima facie evidence of the commission of such offense, and any justice of the peace of the county in which the offense is committed shall have jurisdiction thereof, and such inspector shall report all violations of the provisions of this article, of which he has knowledge. [1885, ch. 135, § 5; R. C. 1899, § 1638.]

§ 2042. **Record of official acts of inspector.** Every inspector shall keep a fair and correct record of all his official acts, and if required give a certified copy of any record upon payment of the fees therefor, and in case of the inspector's death, resignation or removal said record shall be deposited with the register of deeds. [1885, ch. 135, § 8; R. C. 1899, § 1639.]

§ 2043. **Fine for false report of inspector.** Whenever a sheep inspector shall willfully or falsely report any sheep subject to disease, he shall be subject to a fine of ten times the amount of the fees charged by him for the inspection, and if he shall willfully or falsely report free from disease any sheep inspected by him that are thus infected, he shall be subject to a penalty of not exceeding three hundred dollars for each offense. [1885, ch. 135, § 11; R. C. 1899, § 1640.]

§ 2044. **Removal of inspector. Cause.** If any sheep inspector shall be found guilty of either of the offenses set forth in the last section, or if on complaint in writing by any three wool growers of the county the county commissioners, after allowing the inspector a fair hearing, shall be of opinion that he is incompetent to discharge intelligently and efficiently the duties of his office, or that having sufficient knowledge or information he has for any cause willfully or negligently failed to make the required inspection, or has needlessly made inspections for the purpose of securing fees, or that his reports have been influenced by favors or prejudice, or from any cause he has failed in the proper discharge of the duties of his office, it shall be the duty of the commissioners to declare such office vacant and to make a new appointment. [1885, ch. 135, § 12; R. C. 1899, § 1641.]

#### ARTICLE 19.—LIVE STOCK INSPECTION.

§ 2045. **Appointment of inspector.** Whenever the board of county commissioners in any county are petitioned so to do by at least ten per cent of the voters of their county, as evidenced by the number of votes cast for congressman at the last general election, they may appoint the sheriff of their county as live stock inspector, and when so appointed, the said sheriff shall perform the duties and receive the compensation therefor as hereinafter prescribed by this article. [1901, ch. 121, § 1; 1903, ch. 121, § 1.]

§ 2046. **Inspection before shipping.** It shall be the duty of said stock inspector to inspect all horses of which he has knowledge are about to be loaded for shipment, or to be driven or shipped out of the county in which he resides, to any other point within the state or to a point outside of the state, before the same is shipped. [1901, ch. 121, § 2; 1903, ch. 121, § 2.]

§ 2047. **Record of inspection.** Said inspector shall make and keep a record in his office in a book expressly for that purpose, which record shall be open to the public, and shall contain: First, the marks and brands upon each of said animals; second, if no marks or brands appear thereon, he shall take a general description of the same; third, the owner of said horses, if ascertainable, and if not, he shall so state in his record; fourth, the person in whose name said horses are shipped; fifth, the name of the person in charge of the same; and, sixth, the point of destination, together with such other information as may assure the inspector that the person shipping or driving is the owner, or has lawful right to ship or drive the same. If the inspector shall be satisfied from his inspection that the person shipping or driving said horses is the owner or has lawful right to ship or drive the same, he shall, on payment of the fees hereinafter prescribed, give to such person a permit to ship or drive the same, which permit shall be in writing, and shall set forth the number and description of the animals. [1901, ch. 121, § 3; 1903, ch. 121, § 3.]

§ 2048. **Unlawful to ship without permit.** It shall be unlawful for any person or persons to cause to be shipped or driven, any horses from any county in this state to any other county therein, or to a point without said state, without such person or persons first notifying the said stock inspector of the proposed shipment or driving, and request that an inspection of the animals to be shipped or driven be made, and until the permit shall have been issued, as specified in this article, no railway or transportation company shall ship any such stock. But the said stock inspector may at his discretion issue a written permit to drive horses from one county to another within this state without any personal inspection or fees. [1901, ch. 121, § 4; 1903, ch. 121, § 4.]

§ 2049. **Inspector's fees.** The said stock inspector shall be entitled to demand and collect as fees for inspection, ten cents per head for each horse; and he is hereby given a lien upon said animals for such inspection fees, and mileage at the rate of ten cents per mile for each mile actually traveled in going to and returning from the place of inspection. [1901, ch. 121, § 5; 1903, ch. 121, § 5.]

§ 2050. **Penalty.** Any person who shall ship any horses from any county in this state without having first procured the inspection of said stock and received a permit authorizing said shipment, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than two hundred dollars, or imprisonment in the county jail for not less than thirty days, nor more than six months, or by both such fine and imprisonment. [1901, ch. 121, § 6; 1903, ch. 121, § 6.]

#### ARTICLE 20.—DIPPING TANKS.

§ 2051. **Established, how. Cost, how paid.** 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 live stock 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 article 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. [1905, ch. 96, § 1.]

§ 2052. **Appropriation for chemicals and materials.** 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 direction of the district veterinarian for the purpose of purchasing material and chemicals used in the operation of such stations. [1905, ch. 96, § 2.]

§ 2053. **Commissioners shall levy dipping fee pro rata.** 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. [1905, ch. 96, § 3.]

§ 2054. **Fees chargeable against owner of stock. Lien on animals.** 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 article shall be paid in to the county treasurer and placed in the general fund. [1905, ch. 96, § 4.]

§ 2055. **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. [1905, ch. 96, § 5.]

§ 2056. **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. [1905, ch. 96, § 6.]

#### ARTICLE 21.—LIVE STOCK PROTECTIVE ASSOCIATION.

§ 2057. **County live stock protective fund, how raised and expended.** 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 taxpayers 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. [1905, ch. 80, § 1.]

§ 2058. **Petition, contents of.** 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 disbursement of the appropriation herein provided for. [1905, ch. 80, § 2.]

§ 2059. **Annual report. Reimbursement.** 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 expenditures, which amount, however, must not exceed the amount then in the special fund herein created for that purpose. [1905, ch. 80, § 3.]

§ 2060. **Appropriation made 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. [1905, ch. 80, § 4.]



## ARTICLE 22.—PRAIRIE FIRES.

§ 2061. **Prairie fires forbidden.** If any person shall set or cause to be set on fire any woods, marsh or prairie, or any grass or stubble lands, except in the months of July or August, except as hereinafter provided, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten nor more than one thousand dollars, and be imprisoned in the county jail for a period not exceeding six months, or either or both, at the discretion of the court, and shall also be liable in a civil action to any person damaged by such fire to the amount of such damage. [Pen. C. 1877, ch. 60, § 1; R. C. 1899, § 1654.]

Not necessary to negative process in other sections of act than one under which indictment is found. *Territory v. Scott*, 2 Dak. 212, 6 N. W. 435.

Question whether one setting fire is agent of principal, who is being prosecuted, is one for the jury. *Knight v. Towles*, 6 S. D. 575, 62 N. W. 964.

The setting of fire in stubble land in month of April, May or June is negligence per se. Setting fire to a straw stack in stubble field is setting fire to the stubble. *Kelley v. Anderson*, 15 S. D. 107, 87 N. W. 579.

§ 2062. **Fire permitted, when.** For the purpose of destroying any grass or stubble that may be on any piece of land at the time any person commences to break or plow the same, it shall be lawful for such person to set the same on fire at any time in the year; provided, that at the time of setting such grass or stubble on fire there shall be a strip of land well plowed or burned over at least fifty feet in width completely encompassing the place where such fire is set. [Pen. C. 1877, ch. 60, § 2; R. C. 1899, 1655.]

§ 2063. **Accidental damages.** If any fire, set as provided in the last section, shall by accident and without any fault or neglect of the person setting the same, get beyond his control, such person shall be liable as provided in section 2061, for all damages done by such fire, but not otherwise. But if such fire is carelessly, negligently or intentionally permitted to spread beyond the bounds of such strip of land mentioned in the last section, then the person setting such fire shall be liable both civilly and criminally, as provided in section 2061. [Pen. C. 1877, ch. 60, § 3; R. C. 1895, § 1656.]

§ 2064. **Grasshopper destruction.** It shall be lawful for any person at any time between the twentieth day of April and the twentieth day of June, to set on fire, for the purpose of destroying grasshoppers, any marshes, prairies, grass or stubble lands, owned or occupied by him, or any marshes, prairies, grass or stubble lands adjacent thereto; provided, that the person desiring to set such fire shall give at least twenty-four hours' notice to all persons residing within one and a half miles of the place where the fire is to be set, and shall state at the time of giving such notice the time when and place where such fire will be set. Such person shall take all necessary precaution before the setting of such fire, to prevent damage by the same. [Pen. C. 1877, ch. 60, § 4; R. C. 1895, § 1657.]

§ 2065. **Fire limited.** Fire set under the provisions of the last section shall not be allowed to spread beyond the control of the person setting the same, and shall be extinguished the same day on which it is set. [Pen. C. 1877, ch. 60, § 5; R. C. 1899, § 1658.]

§ 2066. **Penalty for violation.** Any person violating the provisions of the last section shall be liable in a civil action to any person damaged by such fire to the amount of such damage; and in case any person shall negligently, carelessly, willfully, maliciously or intentionally violate the provisions of the last section, such person shall be liable both civilly and criminally the same as though he had violated the provisions of section 2061. [Pen. C. 1877, ch. 60, § 6; R. C. 1899, § 1659.]

§ 2067. **Penalty for setting fire to woods or prairies.** If any person shall willfully, negligently or carelessly set or cause to be set on fire any woods, marsh or prairie in this state, or if any person having made any camp or

other fire, shall leave such fire without having thoroughly extinguished the same, so that the fire shall spread and burn any wood, marsh or prairie, the persons guilty of setting or causing to be set such fire or leaving such camp or other fire without having thoroughly extinguished the same, so that the fire shall not spread therefrom, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding one year, or by both in the discretion of the court, and shall also be liable in a civil action to any person damaged by such fire to the amount of such damage. [1881, ch. 106, § 1; 1887, ch. 123, § 1; R. C. 1899, § 1660.]

**§ 2068. Responsibility for damages of persons setting fire.** If the ranch, building, improvements, fences, timber, marsh or other property of any person shall be injured or destroyed by any such fire, the person who causes or allows the same shall be responsible to the person injured thereby for all damage or injury caused or sustained by reason of such fire. If the cattle range or improvements of any person are injured or destroyed by any such fire, or if the hay upon any such range or the grass growing thereon shall be injured as aforesaid, the person causing or allowing the same shall be responsible to the person owning or claiming the same and injured thereby, for all the damage or injury caused or sustained by reason of any such fire. [1881, ch. 106, §§ 2, 3; R. C. 1895, § 1661.]

**§ 2069. Proof necessary to sustain claim for damages.** In any action instituted in any court to recover damages under the provisions of the foregoing section, it shall not be necessary for the person injured by such fire to allege or prove on the trial of such action, title to the real property over which such fire has spread, but it shall be sufficient in any such action to allege and prove that the person so injured was in the occupancy or possession of such ranch, building, improvement, fencing, timber or other property, claiming the right to and occupying with cattle any such cattle range, it being the purpose and intention to protect the possession as aforesaid, whether such person has title to such land or not. [1881, ch. 106, § 4; R. C. 1895, § 1662.]

**§ 2070. Tools and appliances.** It shall be lawful for the county commissioners in any county in this state to provide from the fire break fund hereinafter provided for, such tools and appliances as may be necessary to aid and assist in making fire breaks to prevent the spread of prairie fires. [1899, ch. 122; R. C. 1895, § 1663.]

**§ 2071. County divided into districts.** Whenever a petition signed by at least ten per centum of the qualified electors of any county in this state as determined by the vote for governor at the last preceding general election, is presented to the board of county commissioners of any such county, such board of county commissioners shall, at the time of levying other taxes, in each year, levy an amount not exceeding five mills on the dollar upon all taxable property in the county, for the purpose of making fire breaks in said county in each year, which sum shall constitute and be known as the fire break fund, and said board of county commissioners shall from time to time divide the county into as many districts as may in its judgment be necessary, and each district so formed shall be known and designated as fire district No. . . . .; and said board of county commissioners may, in their discretion, appoint a suitable person, residing in each of said districts, as fire warden thereof, who shall carry out all instructions of said board in said district in reference to the making of fire breaks and the prevention of the spread of prairie fires, which fire warden shall be paid such sum as may be fixed by said board, not exceeding three dollars per day for each day actually employed in the discharge of his duties. Such fire warden shall take and subscribe the official oath and shall file a bond in the sum of five hundred dollars with at least two good and sufficient sureties, to be approved

by the said board, conditioned for the faithful discharge of the duties of such fire warden. All fire breaks made under the provisions hereof shall be made in each year at as early a date as possible, with a view to the most efficient protection of property from prairie fires. [1899, ch. 122; R. C. 1899, § 1664.]

§ 2072. **Fire breaks.** The fire warden shall have the right, and it shall be his duty when ordered to do so by the board of county commissioners, to give notice by public advertisement that bids will be received for the making of fire breaks in the district designated in said advertisement, and specifying where and how said fire break shall be made. It shall be the duty of said fire warden to let to the lowest bidder the making of such fire break; provided, if in the judgment of the board of county commissioners, all of the bids for the making of said fire breaks are too high to justify the making of the same, then all such bids shall be rejected and the proposal for bids again published. [1897, ch. 80; R. C. 1899, § 1665.]

§ 2073. **When fire break to be made.** All fire breaks made for the protection of ranges in this state shall be made not later than June twentieth of each year, and the grass between the strips of ground shall be burned not later than September. [1897, ch. 80; R. C. 1899, § 1666.]

§ 2074. **Districts, how mapped out.** The county commissioners may use their discretion and take advantage of any creek, river or other natural or artificial barrier to prairie fires and of broken or plowed fields and may in their judgment map out each of said fire districts in any form so that when the fire guards are made upon their instructions, as hereinbefore provided for, a prairie fire may be confined to the smallest possible area consistent with the amount of funds available. [1899, ch. 122; R. C. 1899, § 1667.]

§ 2075. **Legal fire break.** A legal fire break shall consist of a strip of land two hundred feet wide, plowed on either side and burned out inside the plowing. Before any person who shall receive the contract to make any fire breaks in this state shall receive any compensation therefor, the work performed by him shall be inspected by a committee of three persons appointed by the board of county commissioners, whose duty it shall be to report to the county commissioners the manner in which such fire break has been constructed, and whether or not the same complies with the contract for making the same. [1897, ch. 80; R. C. 1899, § 1668.]

§ 2076. **When prairie may be set on fire.** For the purpose of making a fire guard it shall be lawful to set on fire a strip of prairie not exceeding one hundred feet in width, which shall be protected on each side by a strip of plowing or burning not less than five feet wide, and at such burning there shall not be less than four men present prepared with water and suitable appliances to keep such fire under control. [1891, ch. 93, § 7; R. C. 1899, § 1669.]

§ 2077. **Railroad companies to burn weeds.** It is the duty of each railroad company within this state whose railroad is operated by steam power, as soon as possible in each year to burn or otherwise destroy all grass, weeds or other combustible matter upon the right of way of such company. [1891, ch. 93, § 11; R. C. 1899, § 1673.]

§ 2078. **Liability for carelessly setting fires.** Each person who willfully, negligently or carelessly sets or causes to be set on fire any woods, hay, weeds or prairie grass shall be guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars or by imprisonment in the county jail not more than one year, or by both in the discretion of the court, and shall also be liable to any person damaged by such fire to the amount of such damage. [1891, ch. 93, § 12; R. C. 1895, § 1674.]

Negligence is a question for the jury. *Owen v. Cook*, 9 N. D. 134, 81 N. W. 285.

## ARTICLE 23.—PROMOTION OF ANATOMICAL SCIENCE.

§ 2079. **Bodies of deceased persons buried at public expense given to physicians and surgeons, when.** 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; 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 article, shall furnish the same to students of medicine and surgery who may be under their instruction. [1905, ch. 134, § 1.]

§ 2080. **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, and 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 article shall be guilty of a misdemeanor, and shall pay a fine of not less than fifty dollars. [1905, ch. 134, § 2.]

§ 2081. **Bodies to be buried or burned, when. Penalty for neglect.** 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 article, 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 article the party or parties so neglecting shall be guilty of a misdemeanor, and on conviction shall pay a penalty of one hundred dollars. [1905, ch. 134, § 3.]

## ARTICLE 24.—BOUNTY FOR TREE PLANTING.

§ 2082. **Bounty for tree planting.** 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 eighty acres, one hundred sixty acre 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. [1905, ch. 187, § 1.]

§ 2083. **Along highways. Limit of bounty.** 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 article 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 article for a longer period than five years upon any one tract or row of trees. [1905, ch. 187, § 2.]

§ 2084. **Proof of planting.** Any person wishing to secure the benefits of this article 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 article 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. [1905, ch. 187, § 3.]

§ 2085. **Examination and report by 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 article, 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. [1905, ch. 187, § 4.]

#### ARTICLE 25.—NOXIOUS WEEDS.

§ 2086. **Noxious weeds, manner of destroying.** Each person shall destroy upon all lands which he shall own or occupy, all weeds of the kind known as Canada thistle, cocklebur, mustard, wild oats, French weed and Russian cactus, at such time and in such manner as shall effectually prevent their bearing seed. And it shall be a misdemeanor for such person or persons to deposit or cause to be deposited in the highway or in or along the banks of any natural water course any of the noxious weeds above described. And such misdemeanor shall be punishable by a fine of not to exceed fifty dollars nor less than ten dollars. The time and manner of destroying such weeds shall be prescribed by the board of county commissioners, and the same shall be published at least two weeks in some newspaper in the county, not less than two weeks before the time so prescribed; and if there is no newspaper published in the county, then written notice of the same shall be posted, the same as election notices are posted, in lieu of such publications. [1897, ch. 103; R. C. 1899, § 1683.]

§ 2087. **Decision to be published.** It shall be the duty of the board of county commissioners, at its regular meeting in April of each year, to determine the time and manner of destroying such noxious weeds, and to cause its determination to be published as provided for in the last section.

It shall also cause to be mailed to the chairman of each board of township supervisors and to each overseer of highways and road supervisor in the county, a copy of its proceedings. [1891, ch. 91, § 2; R. C. 1899, § 1684.]

§ 2088. **Road supervisors to destroy weeds. Obtain judgment.** Whenever any individual, firm or corporation owning or occupying any lands within this state shall neglect or refuse to comply with the provisions of this article for more than ten days after the time prescribed by said board of county commissioners, then it shall be the duty of the overseer or road supervisor, as the case may be, to proceed forthwith to destroy the same in the manner provided for said destruction by the board of county commissioners; it shall also be the duty of such overseers or road supervisors to destroy all such noxious weeds that may grow on the highways and railroad right of ways and school sections and timber culture claims of his road district, and for so doing such overseers or road supervisors shall receive such compensation, payable out of the township treasury or county treasury, as the township board of supervisors or board of county commissioners, upon presentation of his account therefor, verified by oath and specifying by separate items the charges on each piece of land, shall deem reasonable: and the respective accounts, so far as correct, shall be allowed and paid by the township board or board of county commissioners, and upon being so allowed the board of supervisors or board of county commissioners shall take proper proceedings in the district court of the county in which said land is situated to obtain a judgment against the owner of each of said tracts of land for the amount expended on said lands under this article for the destruction of noxious weeds thereon, to pay the expenses of said destruction and all costs that have since accrued under this article and in obtaining judgment therefor, which judgment shall be declared a first lien on said land, to be enforced either by sale or as taxes on the lands are collected, at the option of the court. [1895, ch. 83, § 1; R. C. 1899, § 1685.]

§ 2089. **Penalty.** Whenever any overseer of highways or road supervisor shall neglect or refuse to comply with the provisions of this article after having received notice as provided for herein, he shall be subject to a fine of fifty dollars, and it is the duty of the state's attorney to enforce the provisions of this article. [1891, ch. 91, § 4; R. C. 1899, § 1686.]

Penalties can only be recovered in civil actions by the party for whose benefit recovery can be had. *State v. Messner*, 9 N. D. 186, 82 N. W. 737.

An action for penalty can only be maintained in the name of the party beneficially interested. Not maintainable in name of state. *State v. Messner*, 9 N. D. 186, 82 N. W. 737.

#### ARTICLE 26.—MANUFACTURE AND SALE OF DAIRY PRODUCTS.

§ 2090. **Assistant dairy commissioner. Duties. Salary.** In order to secure the better enforcement of the provisions of this article, 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. 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 imitations 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 co-operate 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 article, to be paid for such purposes out of any moneys in the treasury not otherwise appropriated. All charges, accounts and expenses authorized by this article 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 article. [1899, ch. 72, § 1; R. C. 1899, § 1687; 1905, ch. 95, § 1.]

**§ 2091. 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. [1899, ch. 72, § 2; R. C. 1899, § 1688; 1905, ch. 95, § 2.]

**§ 2092. 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 article, 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 articles named in this article. 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. [1899, ch. 72, § 3; R. C. 1899, § 1689; 1905, ch. 95, § 3.]

**§ 2093. Creameries, cheese factories, etc. License required. 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 the number of same. All fees for licenses collected under this article 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 article. [1899, ch. 72, § 8; R. C. 1899, § 1694; 1905, ch. 95, § 4.]

**§ 2094. Stencil or brand required. Contents.** 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 article. [1899, ch. 72, § 7; R. C. 1899, § 1693; 1905, ch. 95, § 5.]

**§ 2095. Blanks 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 article, 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. [1899, ch. 72, § 5; R. C. 1899, § 1691; 1905, ch. 90, § 6.]

**§ 2096. Adulterated or skimmed milk in creameries or cheese factories 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, abscesses 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 article. [1899, ch. 72, § 10; R. C. 1899, § 1696; 1905, ch. 95, § 7.]

**§ 2097. What constitutes adulteration.** For the purposes of this article 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. [1899, ch. 72, § 11; R. C. 1899, § 1697; 1905, ch. 95, § 8.]

**§ 2098. State standard milk and cream measures. Use of other sizes 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 of 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 2106 of this article. [1905, ch. 95, § 9.]

§ 2099. **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. [1905, ch. 95, § 10.]

§ 2100. **Adulterated butter, etc., prohibited from sale. Oleomargarine 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 article 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. [1899, ch. 72, § 12; R. C. 1899, § 1698; 1905, ch. 95, § 11.]

§ 2101. **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. [1899, ch. 72, § 13; R. C. 1899, § 1699; 1905, ch. 95, § 12.]

§ 2102. **Provisions regulating renovated butter.** No person by himself, or his agents or servants, shall manufacture, sell or 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. [1899, ch. 72, § 14; R. C. 1899, § 1700; 1905, ch. 95, § 13.]

§ 2103. **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. [1899, ch. 72, § 16; R. C. 1899, § 1702; 1905, ch. 95, § 14.]

§ 2104. **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. [1899, ch. 72, § 16; R. C. 1899, § 1702; 1905, ch. 95, § 15.]

§ 2105. **City councils 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. [1905, ch. 95, § 16.]

§ 2106. **Violation constitutes misdemeanor. Penalty.** Whoever violates any of the provisions of this article 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. [1905, ch. 95, § 17.]

§ 2107. **Guests apprised of use of oleomargarine, butterine, etc.** Whoever furnishes or causes to be furnished in any hotel, restaurant, boarding house or at any lunch counter, oleomargarine or butterine to any guest or patron of such hotel, restaurant, boarding house or lunch counter in the place or stead of butter shall notify said guest or patron that the substance so furnished is not butter and any party so furnishing without such notice shall be punished by a fine of not less than five dollars nor more than ten dollars for each and every offense. [1899, ch. 72, § 15; R. C. 1899, § 1701.]

#### ARTICLE 27.—DESTRUCTION OF GRASSHOPPERS.

§ 2108. **Duty of county commissioners.** The board of county commissioners shall have power, and it shall be their duty to order the plowing of land and such other means as they deem expedient wherever and whenever they deem it necessary to cause the destruction of grasshoppers and Rocky Mountain locusts and grasshopper and Rocky Mountain locust's eggs, and said plowing and other means shall be done at the time and in the manner directed by said board of county commissioners by the owner or incumbrancer, if any, of said land immediately after receiving notice thereof from said board of county commissioners. [1899, ch. 95, § 1; R. C. 1899, § 1704.]

§ 2109. **Notice, how and when served.** Where the owner of the land on which said board shall have decided plowing must be done for the purposes herein specified, cannot with reasonable diligence be served with notice within the state, it shall be sufficient to serve the said notice by publication thereof for two successive issues in the official newspaper nearest said tract. [1899, ch. 95, § 2; R. C. 1899, § 1705.]

§ 2110. **Must plow in five days.** If the owner or incumbrancer, if any, shall fail to plow said tract or tracts as ordered and directed by said board of county commissioners within five days after notice as herein provided, then, in that event said board of county commissioners shall cause said tract or tracts to be plowed, or so much thereof as may be by them deemed necessary, and audit and pay for said work out of the general fund of said county, upon warrant as in other cases made and provided. [1899, ch. 95, § 3; R. C. 1899, § 1706.]

§ 2111. **Expense a lien upon land.** Immediately after the said accounts are audited and paid by said county commissioners it shall be the duty of the county auditor to certify to the county treasurer the amount so expended upon each piece and parcel of land, which certificate shall contain the name of the record owner or incumbrancer of said tract, a true description of said land, the amount paid by the county for plowing done thereon, and the county treasurer shall thereupon enter said amount against said land as taxes are entered against land, and the said amount shall constitute a lien upon said land prior to all other incumbrances, and shall bear interest at the rate of seven per cent per annum from date of entry by the county treasurer and collection thereof may thereafter be made and enforced in the same manner as delinquent taxes are enforced and collected against real property. [1899, ch. 95, § 4; R. C. 1899, § 1707.]

§ 2112. **Payment out of general fund.** When the board of county commissioners shall deem the plowing of state land necessary for the purposes herein specified they shall order the same done, and payment therefor may be made out of the general fund of the county upon warrant as in other cases provided; provided, however, that no growing crops shall be destroyed under the provisions of this article; provided, further, that where the board of county commissioners shall deem it necessary to cause plowing upon government land held by resident claimants, or other means to cause the destruction or grasshoppers and Rocky Mountain locusts, said claimant shall be liable to the county in a civil action for all moneys necessarily expended in carrying out the directions of the board of county commissioners for the purposes herein specified. [1899, ch. 95, § 5; R. C. 1899, § 1708.]

#### ARTICLE 28.—ADULTERATION OF OILS.

§ 2113. **Boiled linseed oil.** No person, firm or corporation or agent or employe of any person, firm or corporation shall manufacture for sale or offer or expose for sale in this state any flaxseed or linseed oil unless the same answers a chemical test for purity recognized in the United States Pharmacopoeia or any flaxseed or linseed oil as “boiled linseed oil” unless the same shall have been put in its manufacture to a temperature of two hundred and twenty-five degrees Fahrenheit. [1899, ch. 106, § 1; R. C. 1899, § 1709.]

§ 2114. **Painted, stamped or stenciled.** No person, firm or corporation or agent or employe of any person, firm or corporation shall sell, expose or offer for sale any flaxseed or linseed oil unless it is done under its true name and each tank car, tank, barrel, keg or any vessel of such oil has distinctly and durably painted, stamped, stenciled or labeled thereon the true name of such oil and in ordinary bold face capital letters the words “pure linseed oil raw” or “pure linseed oil boiled” and the name and address of the manufacturer thereof and sold only under the brand of such manufacturer. [1899, ch. 106, § 2; R. C. 1899, § 1710.]

§ 2115. **Misdemeanor. Penalty.** Any person, firm or corporation or agent or employe of any person, firm or corporation who shall sell without stamp as required by this article or who shall falsely stamp or label such tank cars, tanks, barrels, kegs or other vessels as containing flaxseed or linseed oil or knowingly permit such stamping or labeling or whoever shall violate any provision of this article shall be deemed guilty of a misdemeanor and upon conviction shall be punished with a fine of not less than twenty-five dollars nor more than fifty dollars and in default of the payment of such fine shall be committed to the county jail until the same is paid. [1899, ch. 106, § 3; R. C. 1899, § 1711.]

§ 2116. **Commissioner of agriculture must enforce law.** It shall be the duty of the state commissioner of agriculture and labor and the state’s attorneys of the different counties of this state to enforce the provisions of this article; and for that purpose the said commissioner is hereby authorized and em-

powered to appoint such assistants, experts and chemists as he shall deem necessary or expedient from the state university or the state agricultural college, and the said commissioner and said assistants, experts and chemists so appointed shall have access, ingress and egress to and from all places of business and buildings where flaxseed or linseed oil so called, whether pure or adulterated, is believed by them to be kept or stored; and they shall also have power and authority to open any tank car, tank, barrel, keg or other vessel of such oil and inspect the contents thereof and take samples thereof therefrom sufficient in quantity only for analysis; and all clerks, bookkeepers, express agents, railroad agents or officials, employes, common carriers and all other persons shall render them all the assistance in their power when so requested in tracing, finding or discovering the presence of any such adulterated oil. [1899, ch. 106, § 4; R. C. 1899, § 1712.]

§ 2117. **Experts and chemists.** In all prosecutions under this article the costs thereof shall be paid in the manner provided by law and the said assistants, experts and chemists appointed by the commissioner of agriculture and labor, shall be entitled when testifying on such prosecutions to the same witness fees as are now provided by law for expert witnesses. [1899, ch. 106, § 5; R. C. 1899, § 1713.]

#### ARTICLE 29.—ADULTERATION OF FOOD.

§ 2118. **Adulteration 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 article. The having in possession of such adulterated article or articles shall be deemed prima facie evidence of the violation thereof. For the purposes of this article 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. [1901, ch. 4, § 1; 1903, ch. 6, § 1; 1905, ch. 11, § 1.]

§ 2119. **What constitutes adulteration.** Any article of food or beverage shall be considered as unwholesome or adulterated within the meaning of this article:

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

2. If it contains formaldehyde benzoic acid, sulphurous acid, boric acid, salicylic acid, hydrofluoric acid, saccharin, betanaphthol, or any salt or anti-septic compound derived from these products.

3. 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.

4. 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.

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

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

7. If it be labeled, branded, or colored so as to deceive or mislead the purchaser, or if it be falsely labeled in any respect.

8. 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.

9. 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:

(a) If it be a compound or mixture of recognized food products not included in definitions 6 and 8 of this section.

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

(c) 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.

(d) 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 is 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. [1901, ch. 4, § 2; 1903, ch. 6, § 2; 1905, ch. 11, § 2.]

**§ 2120. Penalty for violation.** Any person violating any of the provisions of this article 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 article. Products found to be adulterated within the meaning of this article may by order of the court be seized and ordered destroyed. [1901, ch. 4, § 3; 1903, ch. 6, § 3; 1905, ch. 11, § 3.]

**§ 2121. 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 article when the evidence thereof has been presented by the North Dakota government agricultural experiment station, as provided in sections 2124 and 2125 of this article. [1903, ch. 6, § 4.]

**§ 2122. North Dakota experiment station to inspect and analyze foods and beverages.** The North Dakota government agricultural experiment station shall make analysis of food products and beverages 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, and the sheriffs of the respective counties of the state are hereby appointed and constituted agents for the enforcement of this article, and any agent or agents and sheriffs shall have free access, at all reasonable hours, for the purpose of examining into any place wherein it is suspected any article of food or beverage adulterated with any deleterious or foreign ingredient or ingredients exist, and such agent, agents or sheriffs 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, and the said station may adopt or fix standards of purity, quality or strength when such standards are not specified or fixed by statute. [1903, ch. 6, § 5.]

§ 2123. **Citizen may send sample of food or beverage for analysis.** Any citizen of the state may, by prepaying the transportation charges, send any article of manufactured food or food product, or beverage, in the original package to said station to be analyzed. And such article, if not before analyzed, shall be analyzed and included in the next report of the station as provided for in section 2126 of this article. [1903, ch. 6, § 6.]

§ 2124. **Facts, how transmitted.** Whenever said station shall find by its analysis that adulterated food products have been on sale in this state, it shall forthwith transmit the facts so found to the state's attorney of the county in which said adulterated food product was found. [1903, ch. 6, § 7.]

§ 2125. **Certificates of 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 food, food products or beverages, shall be presumptive evidence of the facts therein stated. [1903, ch. 6, § 8.]

§ 2126. **Station to make report.** The said station shall make an annual report to the governor upon adulterated food products, and said report may be included in the report which said station is already authorized by law to make to the governor, and in June and December of each year the said station shall furnish to the auditor of each county in the state a certified list of all adulterated foods, food products and beverages as found by such analysis, showing the name and brand of the article, the manufacturer and the name of the injurious adulterant. The county auditor of each county shall cause the said list to be printed in the official papers of such county. Said publication shall be made in July and January of each year, and shall continue for two successive issues, to be paid for by such county at the rate allowed by law for publishing the proceedings of the board of county commissioners. [1903, ch. 6, § 9.]

§ 2127. **Violation. Duty of sheriff.** It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provision of this article, to at once proceed to obtain by purchase a sample of the adulterated food, food product or beverage complained of, and forward the same to the said station for analysis, marking the package or wrapper containing the same, for identification, with the name of the person from whom procured, the date on which the same was procured and the substance therein contained. [1903, ch. 6, § 10.]

§ 2128. **Fees.** For his services hereunder the said sheriff shall be allowed the same fees for travel as are now allowed by law to sheriffs on service of criminal process, together with such compensation as may be by the county commissioners of his county deemed reasonable, and all amounts expended by him in procuring and transmitting the said samples, which fees and amount expended shall be audited and allowed by the said commissioners and paid by his said county as other bills of said sheriff. [1903, ch. 6, § 10.]

§ 2129. **No action in court.** No action shall be maintained in any court in this state on account of any sale or other contract made in violation of this article. [1903, ch. 6, § 12.]

#### ARTICLE 30.—FERTILIZERS.

§ 2130. **Dealers must affix certificate on packages. Contents.** Every person who shall sell, offer or expose for sale in this state any commercial fertilizer or any material to be used as a fertilizer, the selling price of which exceeds five dollars per ton, shall stamp on or affix to each package of such fertilizer,

in a conspicuous place on the outside thereof, a plainly printed statement which shall certify as follows:

1. The number of net pounds of fertilizer in the package sold or offered for sale.
2. The name, brand or trade mark under which the fertilizer is sold.
3. The name and address of the manufacturer of the fertilizer.
4. The chemical composition of the fertilizer expressed in the following form and order:
  - .....Per cent phosphoric acid soluble in water.
  - .....Per cent phosphoric acid reverted.
  - .....Per cent phosphoric acid insoluble.
  - .....Per cent phosphoric acid total.
  - .....Per cent nitrogen in nitrates.
  - .....Per cent nitrogen as ammonia.
  - .....Per cent nitrogen total.
  - .....Per cent potash soluble in water.
  - .....Per cent chlorin.

If any fertilizer be sold, offered or exposed for sale in bulk, such printed statement shall accompany every lot and parcel so sold, offered or exposed for sale. [1903, ch. 101, § 1.]

**§ 2131. What deemed violation.** It shall be a violation of the provisions of this article if the statement required by section 2130 shall be false in regard to the number of net pounds of fertilizer in the package sold, offered or exposed for sale, or in the name, brand or trade mark under which the fertilizer is sold, or in the name, brand or trade mark under which the fertilizer is sold, or in the name and address of the manufacturer of the fertilizer. It shall also be a violation of the provisions of this article if any commercial fertilizer or material to be used as a fertilizer shall contain a smaller percentage of nitrogen, phosphoric acid or potash than is certified therein, when such deficiency shall be greater than one-third of one percentum of nitrogen, or one-half of one per centum of available phosphoric acid (or one per centum of total phosphoric acid in the case of undissolved bone,) or one-half of one per centum of potash soluble in distilled water. [1903, ch. 101, § 2.]

**§ 2132. Conditions to be complied with before sale.** Before any commercial fertilizer or any material to be used as a fertilizer is sold, offered or exposed for sale in this state, the manufacturer, importer or person who causes the same to be sold, offered or exposed for sale, shall file with the North Dakota government agricultural experiment station a certified copy of the statement prescribed in section 2130, and, in addition, such statement shall be filed thereafter annually during the month of December. Each manufacturer, importer or person, before selling, offering or exposing for sale in this state any brand of commercial fertilizer, shall annually, during the month of December, pay to the director of the North Dakota government agricultural experiment station a license fee of twenty dollars for each and every brand of fertilizer, bearing a distinctive name, brand or trade mark, which said manufacturer, importer or person is to sell, offer or expose for sale in this state during the calendar year next succeeding said payment; provided, always, that the placing of any new brand upon the market at any time during said calendar year shall be preceded by such payment. Each manufacturer, importer or person who has complied with the provisions of this article relative to filing the aforesaid certified statement and to the payment of the aforesaid license fee shall be entitled to receive a certificate from the director of said station setting forth said facts. Said director shall pay all money received as aforesaid to the treasurer of the North Dakota government agricultural experiment station, which treasurer, when said money is so appropriated by the board of trustees of said station, shall pay the money so received, or so much of it as may be necessary, in maintaining the expenses of

enforcing the provisions of this article. Said board of trustees shall report annually the expenditures so incurred for salaries, laboratory expenses, chemical supplies, traveling expenses and printing. [1903, ch. 101, § 3.]

§ 2133. **What prohibited.** No person shall sell, offer or expose for sale in this state leather or its products or other inert nitrogenous material in any form, as a fertilizer or as an ingredient of any fertilizer, unless an explicit printed statement of the fact shall be conspicuously affixed to every package of such fertilizer, and shall accompany every parcel or lot of the same. [1903, ch. 101, § 4.]

§ 2134. **Penalty for violation.** Every person violating any of the provisions of this article shall forfeit and pay to the people of the state of North Dakota the sum of one hundred dollars for every such violation. [1903, ch. 101, § 5.]

§ 2135. **Certificate of chemist presumptive 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 commercial fertilizer, shall be presumptive evidence of the facts therein stated. [1903, ch. 101, § 6.]

§ 2136. **What constitutes violation.** The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article 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 article relative to the things so directed to be done. [1901, ch. 101, § 7.]

§ 2137. **Director of experiment station to enforce.** The director of the North Dakota government agricultural experiment station is charged with the enforcement of the provisions of this article, and for this purpose, may employ agents, chemists and experts, and whenever he shall know or have reason to believe that any penalty has been incurred by any person for the violation of any of the provisions of this article, or that any sum has been forfeited by reason of any such violation he shall report the said violation with a statement of the facts to the state's attorney for the district wherein the offense is committed, who shall begin proceedings according to the state law. [1901, ch. 101, § 8.]

#### ARTICLE 31.—PROTECTION OF MANUFACTURERS OF BEVERAGES.

§ 2138. **Protection of manufacturers of soda water, etc. Registration of trade mark.** It shall be the duty of the register of deeds of any county in this state, on the application of any person, firm or corporation lawfully manufacturing, selling or bottling within his county, soda water, mineral water, and other like beverages, to record in a book suitable for such purposes, a description of the names, brands, trade marks and labels, or any of them, used by such person, firm or corporation for making his or its casks, kegs, barrels, bottles, jugs, fountains, boxes or other packages, which book shall be and remain a public record in his office. The register of deeds shall collect of any such person, firm or corporation making application to have any such description of name, brand or trade mark recorded in said register of deed's office, a registration fee of fifty cents for each and every such description of name, brand, label or trade mark before the same shall be received for record and entered upon the books of the register of deeds office. [1901, ch. 185.]

#### ARTICLE 32.—ADULTERATION OF PAINTS.

§ 2139. **Label must show mineral constituents of paints offered for sale.** 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 article 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. [1905, ch. 8, § 1.]

§ 2140. **Possession prima facie evidence of violation, when.** 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 2139, shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this article and punishable under it. [1905, ch. 8, § 2.]

§ 2141. **Director experiment station and assistants to enforce.** The director of the North Dakota government agricultural experiment station is charged with the proper enforcement of all the provisions of this article. 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 article. This article shall take effect and be in force from and after January 1, 1906. [1905, ch. 8, §§ 3, 4, 5.]

#### ARTICLE 33.—ADULTERATING FORMALDEHYDE.

§ 2142. **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. 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 guaranty 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. [1905, ch. 7, § 1.]

§ 2143. **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 2142 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. [1905, ch. 7, § 2.]

§ 2144. **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 article. [1905, ch. 7, § 3.]

§ 2145. **Duty of director of North Dakota agricultural college experiment station.** 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 this article 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. [1905, ch. 7, § 4.]

§ 2146. **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. [1905, ch. 7, § 5.]

§ 2147. **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 article when the evidence thereof has been presented by the North Dakota government agricultural experiment station as provided for in sections 2145 and 2146. [1905, ch. 7, § 6.]

§ 2148. **What constitutes violation.** The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article 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 article 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. [1905, ch. 7, § 7.]

#### ARTICLE 34.—ADULTERATION OF PARIS GREEN.

§ 2149. **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 of 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 guaranty to the purchaser that every package of such Paris green contains not less than the amount of combined arsenic set forth in the statement. [1905, ch. 9, § 1.]

**§ 2150. Regulation of sale. Legal strength.** 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 2149 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. Paris green, when sold, offered or exposed for sale, as an insecticide, in this state, shall contain at least fifty per centum of arsenious oxide, and shall not contain more than four per centum of the same in the uncombined state. [1905, ch. 9, §§ 2, 3.]

**§ 2151. Duty of the director of North Dakota agricultural college experiment station.** 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 article, 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 article the said director shall report the said facts to the state's attorney for the district wherein the offense is committed. [1905, ch. 9, § 4.]

**§ 2152. Certificates of 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. [1905, ch. 9, § 5.]

**§ 2153. 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 article when the evidence thereof has been presented by the North Dakota government agricultural experiment station, as provided for in sections 2151 and 2152. [1905, ch. 9, § 6.]

**§ 2154. What constitutes violation.** The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article 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 article 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. [1905, ch. 9, § 7.]

## ARTICLE 35.—ADULTERATION OF DRUGS.

§ 2155. **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 article. [1905, ch. 10, § 1.]

§ 2156. **Drugs defined.** The term “drug” as used in this article shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. [1905, ch. 10, § 2.]

§ 2157. **What constitutes adulteration.** A drug shall be deemed adulterated:

1. If, when sold under or by a name recognized in the United States Pharmacopoeia, 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.

2. If, when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity prescribed in such work.

3. 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 Pharmacopoeia, no prosecution relative to it shall be maintained until such change of standard has been published throughout the commonwealth. [1905, ch. 10, § 3.]

§ 2158. **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 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. [1905, ch. 10, § 4.]

§ 2159. **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. [1905, ch. 10, § 5.]

§ 2160. **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.” [1905, ch. 10, § 6.]

§ 2161. **Physician’s prescription to be filled.** Nothing in this article 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. [1905, ch. 10, § 7.]

§ 2162. **Penalty for violation.** Any person violating any of the provisions of this article 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 article, and all such adulterated or misbranded articles may by order of the court be seized and destroyed. [1905, ch. 10, § 8.]

§ 2163. **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 article when the evidence thereof has been presented by the

North Dakota government agricultural experiment station as provided for in sections 2165 and 2166. [1905, ch. 10, § 9.]

§ 2164. **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 article, 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. [1905, ch. 10, § 10.]

§ 2165. **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 article, 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. [1905, ch. 10, § 11.]

§ 2166. **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. [1905, ch. 10, § 12.]

§ 2167. **Station to make annual report.** The said station shall make an annual report to the governor upon the work done under this article and said report may be included in the report which said station is already authorized by law to make to the governor. [1905, ch. 10, § 13.]

§ 2168. **Goods exempt.** All goods coming into the state after July 1, 1905, shall be subject to the provisions of this article while those goods within the state prior to that date shall be considered as exempt until January 1, 1906. [1905, ch. 10, § 14.]

#### ARTICLE 36.—AUTOMOBILES.

§ 2169. **Speed regulated.** No person, driver or operator in charge of any automobile or motor cycle on any public road, highway or street within this 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. [1905, ch. 49, § 1.]

§ 2170. **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. [1905, ch. 49, § 2.]

§ 2171. **Must use muffler, when. Must have lights.** Every automobile or motor cycle using gasoline, steam or any other substance 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. [1905, ch. 49, § 3.]

§ 2172. **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. [1905, ch. 49, § 4.]

§ 2173. **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. [1905, ch. 49, § 5.]

§ 2174. **Penalty for violation.** Any person, driver or operator of any such automobile or motor cycle who shall violate any provisions of this article 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 article. [1905, ch. 49, § 6.]

#### ARTICLE 37.—FIRE ESCAPES.

§ 2175. **Hotel owners must provide fire escapes.** The owners and proprietors of all hotels, factories, public halls, offices and other buildings in this state, over two stories in height, are required to provide safe and suitable fire escapes from all rooms above the second story of such hotel or other building, and when rooms have no outside windows there shall be affixed to the window in the hallway leading from such room at least three fire escapes in each window as herein directed. Such fire escape shall consist of at least one good cotton rope not less than one inch in diameter, to be securely and permanently fastened with iron rings or bolts at a point immediately outside or inside of at least one window in each room above the second story; and such rope shall be of sufficient length to reach to the ground; provided, that if the owner or proprietor of any such buildings shall provide good and sufficient iron ladders extending from each of the windows herein mentioned, and from points immediately adjacent to each of such windows, to the ground, securely and permanently fastened to such building, or shall have the fire escape ladder in each of the rooms and hall windows aforesaid, of sufficient length to reach from such windows to the ground, he will be deemed to have complied with the requirements of this section. [1883, ch. 58, § 1; R. C. 1895, § 1717.]

§ 2176. **Penalty for neglect.** Any person violating any of the provisions of the last section shall be punished by a fine of not less than twenty-five dollars for each room in such hotel or other building not provided with fire escapes as aforesaid. [1883, ch. 58, § 2; R. C. 1899, § 1718.]

#### ARTICLE 38.—DOORWAYS IN PUBLIC BUILDINGS.

§ 2177. **Doors of public buildings, construction of.** All doors of ingress and egress in all buildings used for public assemblages of any character in this state, including school houses, churches, theatres, public halls, city halls, court houses, factories, hotels and all other public buildings, wherein numbers of persons are employed or are in the habit of meeting together for any purpose, shall be so constructed as to open and swing outward, and doorways

shall not be less than four feet in width, with proper landings and stairways of at least equal width. [1887, ch. 54, § 1; R. C. 1899, § 1719.]

§ 2178. **Who shall comply with this article.** It shall be the duty of all persons owning or having charge of such buildings, including trustees, boards of directors and boards of education, to comply with the provisions of the last section within six months after the same shall take effect; but nothing herein shall be construed to require a change in the width of existing stairways and doorways, and this article shall not apply to churches and school houses not within the limits of any city or village. [1887, ch. 54, § 2; R. C. 1899, § 1720.]

§ 2179. **Penalty for failure to comply.** Any person failing to comply with the provisions of this article, or who shall build, maintain or permit to be used any such building contrary to the provisions hereof shall be deemed guilty of a misdemeanor. [1887, ch. 54, § 3; R. C. 1899, § 1721.]

#### ARTICLE 39.—WEIGHTS AND MEASURES.

§ 2180. **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. [1905, ch. 194, § 1.]

§ 2181. **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 sureties, 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. [1905, ch. 194, § 2.]

§ 2182. **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. [1905, ch. 194, § 3.]

§ 2183. **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. [1905, ch. 194, § 4.]

**§ 2184. 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. [1905, ch. 194, § 5.]

**§ 2185. 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. [1905, ch. 194, § 6.]

**§ 2186. 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 fraudulently makes use of it, he shall forfeit for each offense fifty dollars, such 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 weight, 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. [1905, ch. 194, § 7.]

**§ 2187. Penalty for obstructing or misleading inspector.** Any person who shall willfully obstruct or mislead the inspector in the execution of his duties as herein prescribed, shall be subject 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. [1905, ch. 194, § 8.]



§ 2188. **Bushel consists of how many pounds.** A bushel of each of the articles enumerated in this section shall consist of the number of pounds avoirdupois respectively affixed to each:

Barley, forty-eight pounds.  
 Beans, sixty pounds.  
 Bran, twenty pounds.  
 Buckwheat, forty-two pounds.  
 Beets, sixty pounds.  
 Broom corn seed, thirty pounds.  
 Corn, shelled, fifty-six pounds.  
 Corn, in the ear, seventy pounds.  
 Clover seed, sixty pounds.  
 Coal, stone, eighty pounds.  
 Flax-seed, fifty-six pounds.  
 Lime, eighty pounds.  
 Oats, thirty-two pounds.  
 Onions, fifty-two pounds.  
 Potatoes, Irish, sixty pounds.  
 Potatoes, sweet, forty-six pounds.  
 Peas, sixty pounds.  
 Rye, fifty-six pounds.  
 Salt, eighty pounds.  
 Turnips, sixty pounds.  
 Timothy seed, forty-five pounds.  
 Wheat, sixty pounds.  
 Speltz, forty pounds.  
 Millet, fifty pounds.  
 Apples, fifty pounds.  
 Bromus inermis, fourteen pounds.

[R. C. 1899, § 1722; 1901, ch. 213; 1903, ch. 209.]

§ 2189. **Ton of hay, cubic measure.** A ton of hay shall consist of two thousand pounds; or by measurement, three hundred and forty-three cubic feet, after the same shall have been stacked thirty days, or such time as may be agreed upon between the parties. [R. C. 1899, § 1723.]

§ 2190. **Perch of stone.** A perch of mason work or stone shall consist of twenty-five feet, cubic measure. [R. C. 1899, § 1724.]

§ 2191. **Standard of weights and measures kept by state treasurer.** The state treasurer shall procure and keep in his office the following standards of weights and measures, which shall conform in every particular to the United States standards of weights and measures: One bushel, one half bushel, one peck, one-half peck, one quart, one wine gallon, one wine half gallon, one wine quart, one wine pint, one wine gill. Such measures shall be made of copper or other suitable and substantial material; also one surveyor's chain thirty-three standard feet in length, one yard measure, one foot measure and one inch measure; also one one hundred pound weight, one fifty pound weight, one twenty-five pound weight, one ten pound weight, one one pound weight, one half pound weight, one quarter pound weight, one one-eighth of a pound, one one-sixteenth of a pound or one ounce weight, one set of apothecaries' weights from one pound to one grain, one set of troy weights from one pound to one grain; besides such other scales, beams and balances as shall be necessary to test other weights by these standards; which measures, weights, scales, beams and balances are hereby declared to be the legal standards of weights and measures for this state. Such treasurer shall be charged with the custody and be accountable to the state for the proper use and care of the same. Such standards shall be used only for testing the standards provided for in this article, and such treasurer shall keep a record of all county weights, measures, beams

and balances marked and tested by him. [1885, ch. 151, § 1; R. C. 1899, § 1725.]

ARTICLE 40.—PUBLIC SCALES.

§ 2192. **County commissioners to establish scales.** The board of county commissioners of any county is authorized in its discretion, when petitioned by fifteen or more residents and actual farmers of the county, to establish and locate public scales at suitable railway stations in its county. [1893, ch. 98, § 1; R. C. 1899, § 1733.]

§ 2193. **Care and capacity of scales.** Such scales shall be purchased by the county, and shall be under cover, and of not less than five tons' weighing capacity, and shall be the property of the county, and at all times under its control and subject to removal when the county commissioners shall so require. [1893, ch. 98, § 2; R. C. 1899, § 1734.]

§ 2194. **Appointment of weighmasters. Bond.** The board shall also appoint at each place where it establishes such scales, a public weighmaster, who shall have the custody and care of such property, and who shall give a bond in the sum of five hundred dollars, conditioned for the safe keeping of the same and for the faithful and impartial discharge of his duties. [1893, ch. 98, § 3; R. C. 1895, § 1735.]

§ 2195. **Weighmaster to keep record.** Each public weighmaster shall keep a stub record of all weighing, which record and the receipt of such weighmaster shall show for whom property was weighed, and shall, with such receipt, constitute prima facie evidence of the facts therein contained. [1893, ch. 98, § 4; R. C. 1895, § 1736.]

§ 2196. **Compensation. Removal.** Such public weighmasters shall receive such compensation and shall be governed by such rules and regulations as may be adopted by the board of county commissioners, and may be removed at any time by such board for cause. [1893, ch. 98, §§ 5, 6; R. C. 1899, § 1737.]

ARTICLE 41.—COMMISSION MERCHANTS.

§ 2197. **License required.** It shall be unlawful for any commission merchant or other factor to receive any wheat, flax or other grain, or butter, cheese or other dairy or creamery product, in this state, to be sold for other persons, or to have any agent or correspondent in this state receiving or soliciting any consignment or deposit of grain or creamery or dairy product to be sold or forwarded for sale here or elsewhere, without being licensed and authorized so to do as hereinafter prescribed. [1897, ch. 54, § 1; R. C. 1899, § 1738; 1903, ch. 56, § 1.]

§ 2198. **License, how obtained. Bond required.** To obtain such license, a statement must be filed in the office of the secretary of state, giving the name of the person, firm or corporation making application therefor, and the place at which said person, firm or corporation has its headquarters or principal place of business and post office address. There must also be filed and deposited in the office of the secretary of state, subject to his approval, a good and sufficient bond in a penal sum not less than ten thousand dollars, nominally payable to the state of North Dakota, executed by the applicant and at least one surety having the qualification of a fidelity insurance company authorized to do business as such in this state, and containing a condition to the effect that the person, firm or corporation named as principal therein shall well and truly pay and discharge any and all liability which said principal shall incur to consignors within this state, in or on account of any disposition that shall be made of any and all grain, creamery or dairy product, or the proceeds thereof, or of either, received by such principal

wherever the same shall be received. [1897, ch. 54, § 2; R. C. 1899, § 1739; 1903, ch. 56, § 2.]

§ 2199. **Bond.** The applicant for such permit must also, by a duly executed instrument filed with such bond, constitute and appoint the secretary of state and his successors the true and lawful agent and attorney upon whom process may be served in any action or proceeding against such applicant, and agree therein that any process served on said attorney shall have the same force and validity as if served on said applicant personally in this state, and that such appointment shall continue in force irrevocable so long as an action may be maintained on the bond therewith given. [1897, ch. 54, § 3; R. C. 1899, § 1740.]

§ 2200. **Approval of bonds. Certificate issued. Revoked, how.** When the requirements of section 2199 are complied with and the secretary of state finds the bond and the surety thereon sufficient, he shall approve the same and issue to the applicant a certificate to the effect that, having complied with the law, such applicant is duly authorized by agent or otherwise, to procure and receive consignments of grain and creamery products from owners and shippers in this state, to be sold or disposed of for the consignors in the usual course of trade. Such certificate shall continue in force until revoked by the secretary of state, because the surety on said bonds has given notice of withdrawal therefrom or become insufficient, and no new surety with the requisite qualifications has been substituted, or for other sufficient cause. [1897, ch. 54, § 4; R. C. 1899, § 1741; 1903, ch. 56, § 3.]

§ 2201. **Fees collected.** For examining and approving such bond and issuing a certificate as hereinbefore provided the secretary of state shall charge and collect from the applicant a fee of five dollars, and for each duplicate or copy of such certificate a further fee of fifty cents, which fee shall be immediately paid into the general fund of the state treasury, and whenever process is served on the secretary of state in any action or proceeding as provided in section 2202, he shall as a condition of valid and effectual service require the payment of a fee of two dollars, and pay the same into the state treasury. He shall also keep a record of such process showing the time and hour of service, and forthwith mail a copy of the same, postage paid and directed to the post office address of the defendant, and thereupon the service shall be deemed sufficient. [1897, ch. 54, § 5; R. C. 1899, § 1742.]

§ 2202. **Action for breach of condition.** Every bond given as hereinbefore provided shall continue and remain in force until the principal or surety thereon gives notice to the contrary in writing to the secretary of state and for thirty days thereafter but such notice shall not affect any liability incurred by the principal for, or on account of consignments received or forwarded in this state before the expiration of said time. Successive actions may be brought on such bonds for a breach of the condition thereof by the persons injured thereby, until the entire amount of the penalty is exhausted. [1897, ch. 54, § 6; R. C. 1899, § 1743.]

§ 2203. **Penalty.** Every person who shall solicit or procure within this state any consignment or deposit of wheat, flax or other grain, or of butter, cheese or other creamery or dairy product, or any farm product, to be sold or consigned for sale or otherwise disposed of for the benefit of the consignor or depositor, without having license and authority so to do as heretofore provided, and every person who shall act as agent, solicitor or correspondent in procuring any consignment or deposit of grain, or creamery or dairy product, for consignment, to be so sold or disposed of to any person, firm or corporation not having such license and authority, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly. [1897, ch. 54, § 7; R. C. 1899, § 1743a; 1903, ch. 56, § 4.]

## ARTICLE 42.—HAWKERS AND PEDDLERS.

§ 2204. **License required.** It shall be unlawful for any person to travel from place to place in any county of this state, for the purpose of carrying to sell, or exposing or offering to sell, barter or exchange, any goods, wares merchandise or any other property whatever, without first obtaining a license therefor from the auditor of said county. [1903, ch. 165, § 1.]

§ 2205. **How obtained.** Each person desiring to obtain a license as peddler, shall make application to the county auditor of the county in which he desires to peddle, which application shall be signed by the applicant, and shall state in what manner the applicant desires to travel as a peddler, whether on foot, or with one or more horses, or other beasts of burden. [1903, ch. 165, § 2.]

§ 2206. **Fee.** Each applicant, before he shall be entitled to such license, shall pay into the treasury of such county where his application is made, the following sums respectively, as and for the taxes due from him on account of the pursuit of the occupation of peddling, to wit: If for a license to travel on foot, the sum of five dollars; if for a license to travel and carry his goods with a single horse, or other beast, carrying or drawing a burden, the sum of twenty-five dollars; if for a license to travel and carry with a vehicle or carriage, drawn by two horses or animals, the sum of fifty dollars; if for a license to travel and carry his goods with a vehicle or carriage drawn by more than two horses or animals, or propelled in any other manner, the sum of seventy-five dollars. Such license shall authorize the holder thereof to pursue within said county the business of hawking and peddling in the manner set forth in said license, for the period of one year from the date of its issue, and no longer. [1903, ch. 165, § 3.]

§ 2207. **County auditor to grant license.** The county auditor upon the filing of such application, together with the treasurer's receipt for the proper license fee, shall grant such applicant a license under his official seal, authorizing said licensee to travel and pursue the business in the manner stated in his application, for the term of one year from the date of the issuance of such license. [1903, ch. 165, § 4.]

§ 2208. **Contents.** It shall be the duty of the county auditor issuing such license under this article, to make a record of the same, including the date when issued, the name of the person receiving the license, the purpose for which issued, and the amount received therefor. [1903, ch. 165, § 5.]

§ 2209. **Revenue, how disposed of.** All money paid into the county treasury under the provisions of this article shall be placed to the credit of the ordinary county revenue, including the support of the poor, to be disbursed in the same manner as the funds derived from the usual course of taxation for such account. [1903, ch. 165, § 6.]

§ 2210. **Penalty.** Any person found traveling or trading in any county in this state contrary to the provisions of this article, or who shall refuse to produce a license for examination, when requested so to do by any resident or officer of the county in which said person shall be traveling as a peddler, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail where the offense was committed, not exceeding thirty days, or both such fine and imprisonment. [1903, ch. 165, § 7.]

§ 2211. **Exception.** Nothing herein contained shall be so construed as to impair, interfere with or take away any existing rights or authority of incorporated cities, towns and villages to license and regulate peddlers within their incorporated limits. [1903, ch. 165, § 8.]

## ARTICLE 43.—LOGS AND LUMBER.

§ 2212. **Lawful to boom logs in navigable rivers.** It shall be lawful for any person having logs or lumber in any stream navigable for water crafts

in this state, to boom such logs or lumber along the shore and to secure the boom by means of piles driven in the stream, or by chains, ropes, timber or traverse poles made fast at points along the shore; provided, that there shall be at all times sufficient channel left clear for the free passage of any crafts or rafts usually navigating such stream. [R. C. 1899, § 1758.]

ARTICLE 44.—OIL INSPECTION.

§ 2213. **Governor appoints 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 article, 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 in a separate fund to be known as the "Oil Inspection Fund." [1890, ch. 107, § 1; R. C. 1895, § 1759; 1901, ch. 128, § 1; 1903, ch. 129, § 1; 1905, ch. 141, § 1.]

§ 2214. **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. [1890, ch. 107, § 3; R. C. 1899, § 1761; 1901, ch. 128, § 2; 1903, ch. 129, § 2; 1905, ch. 141, § 2.]

§ 2215. **Apparatus.** The state inspector of oils shall, immediately upon the appointment and qualification of the deputies named in section 2213, procure and furnish to such deputies such apparatus as may be necessary to carry out the provisions of this article. He may also purchase from time to time the apparatus for making tests of illuminating oils and gasoline as here-



inafter provided. The funds for the purchase shall be taken from the oil inspection fund. [1901, ch. 128, § 3; 1903, ch. 129, § 3; 1905, ch. 141, § 3.]

§ 2216. **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 therefrom 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. [1901, ch. 128, § 4; 1903, ch. 129, § 4; 1905, ch. 141, § 4.]

§ 2217. **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." [1890, ch. 107, § 5; R. C. 1899, § 1763; 1901, ch. 128, § 5; 1903, ch. 129, § 5; 1905, ch. 141, § 5.]

§ 2218. **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:

1. The color shall be water white when viewed by transmitted light through a layer of oil four inches long.

2. 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.

3. The gravity test shall not be less than forty-six degrees measured by the Beaume hydrometer.

4. It shall not contain water nor tarlike matter, nor shall it contain more than a trace of any sulphur compound.

5. 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 sixty-eight degrees (Beaume) or higher shall be branded "Approved for Sale," and any gasoline which tests below

sixty-eight 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." [1897, ch. 90; R. C. 1899, § 1760; 1901, ch. 128, §§ 6, 7; 1903, ch. 129, § 6; 1905, ch. 141, § 6.]

§ 2219. **Records and fees.** Each and every inspector and deputy inspector who shall inspect any consignment of oils or gasoline as provided in this article, 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 the 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 in each year, make and deliver to the governor 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. [1890, ch. 107, §§ 4, 6; R. C. 1895, §§ 1762, 1764; 1901, ch. 128, § 9; 1903, ch. 129, § 7; 1905, ch. 141, § 7.]

§ 2220. **Inspector 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. [1890, ch. 107, § 13; R. C. 1899, § 1771; 1901, ch. 128, § 12; 1903, ch. 129, § 8; 1905, ch. 141, § 8.]

§ 2221. **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 article, 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 article. Any inspector or state's attorney who willfully 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. [1890, ch. 107, § 12; R. C. 1899, 1770; 1901, ch. 128, § 13; 1903, ch. 129, § 9; 1905, ch. 141, § 9.]

§ 2222. **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 article. It shall be unlawful for any person to falsely 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 article before thoroughly canceling, removing or effacing the inspection brand on the same. It shall be unlawful for any person, firm or corporation to adulterate with paraffine or other substance for the purpose of sale or use any of the illuminating oils and gasoline specified in this article 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. [1890, ch. 107, § 7; R. C. 1899, § 1765; 1901, ch. 128, § 14; 1903, ch. 129, § 10; 1905, ch. 141, § 10.]

§ 2223. **Responsibility for damage.** Whoever shall knowingly use, sell or cause to be sold unlawfully any of the illuminating oils specified in this article 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. [1890, ch. 107, § 10; R. C. 1899, § 1768; 1901, ch. 128, § 15; 1903, ch. 129, § 11; 1905, ch. 141, § 11.]

§ 2224. **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 article are being violated. When the state inspector of oils shall discover any violation of the provisions of this article, he shall at once make complaint and institute prosecutions thereunder. [1901, ch. 128, § 16; 1903, ch. 129, § 12; 1905, ch. 141, § 12.]

§ 2225. **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 article, 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. [1901, ch. 128, § 17; 1903, ch. 129, § 13; 1905, ch. 141, § 13.]

§ 2226. **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: Fairmount, 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. [1899, ch. 117, § 5; R. C. 1899, § 1773d; 1901, ch. 128, § 18; 1903, ch. 129, § 14; 1905, ch. 141, § 14.]

§ 2227. **Salaries of inspector and deputies to take effect April 1, 1906.** The provisions of section 2213 in so far as it relates to the salary of the oil inspector and his deputies shall not take effect until April 1, 1906. [1905, ch. 141, § 14a.]

§ 2228. **Marking of vessels in which gasoline is kept.** Every person, firm or corporation buying gasoline for the purpose of selling same, shall paint or color red, or cause the same to be done, every barrel, keg, can or vessel into which is put any gasoline, for the purpose of storing or keeping the same, or for the sale thereof. [1903, ch. 104, § 1.]

§ 2229. **Labeling of vessels in which gasoline is sold.** Every person, firm or corporation, shall first label with a red label, not less than three inches long,



by two inches wide, with the word "gasoline" printed in black thereon, all bottles, cans, jugs or vessels, into which gasoline is placed, before allowing such vessels to be filled or given the person or persons buying the same. [1903, ch. 104, § 2.]

§ 2230. **Penalty.** Every person, firm or corporation keeping or handling gasoline, except in vessels marked, or selling the same without first labeling, as provided by this article, is guilty of a misdemeanor. [1903, ch. 104, § 3.]

#### ARTICLE 45.—ABSTRACTERS.

§ 2231. **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. [1889, ch. 1, § 1; R. C. 1895, § 1774; 1905, ch. 2.]

§ 2232. **Certificate issued, when.** When any abstracter shall have filed his bond and the same shall have been approved as above provided, he shall be entitled to receive from such county auditor a certificate reciting that such bond has been duly approved and that the same has been filed in his office, which certificate shall be valid so long as such abstracter shall maintain his sureties upon the bond, unimpaired. [1889, ch. 1, § 2; R. C. 1899, § 1775.]

§ 2233. **Certificate of authority.** It is the duty of the county auditor after the bond of any abstracter shall have been filed and approved to issue to such abstracter on demand a certificate of authority in writing, under his hand and official seal, which shall authorize him to make such abstracts. Such certificate shall continue in force for five years, unless recalled or canceled as provided in the next section. After such certificate shall have been issued, the person, firm or corporation holding the same during the continuance of such certificate shall have full access to all records of the county during office hours; and it is the duty of any person, firm or corporation holding such certificate, to furnish an abstract of the title to any tract of land in such county when requested to do so, on payment of the fees hereinafter provided. [1889, ch. 1, § 2; R. C. 1895, § 1776.]

§ 2234. **Additional security.** The bond herein provided for may run during the continuance of such person, firm or corporation in such abstract business, not to exceed five years, and the board of county commissioners, may at any time require such abstracter upon ten days' notice to furnish an additional bond, and show cause why the same should not be declared invalid, and the certificate thereof recalled and annulled, and if within such time such additional bond is not furnished and no sufficient reason is shown to the commissioners why the same should not be required, then the certificate issued to such abstracter shall be recalled and annulled. [1889, ch. 1, § 3; R. C. 1895, § 1777.]

§ 2235. **Appeal.** The abstracter or complainant may have an appeal to the district court of such county from the decision of the board of county com-

missioners, by preserving the evidence taken at the hearing, which shall be certified up by the county auditor of such county; and such appeal shall be summarily decided by the court on such evidence, and the costs of such appeal, including the furnishing of such evidence, shall be adjudged against the defeated party. [1889, ch. 1, § 4; R. C. 1899, § 1778.]

§ 2236. **Penalty for violation.** Any person, firm or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars nor less than twenty-five dollars for each offense. [1889, ch. 1, § 5; R. C. 1899, § 1779.]

§ 2237. **Officer's certificates to abstracts.** The provisions of this article shall not be construed to prevent the register of deeds, county treasurer, and clerks of court of the different counties from certifying to abstracts of title to lands from the records of the respective offices; but such officers shall be liable on their official bond for the faithful performance of all acts as abstracters. [1889, ch. 1, § 6; R. C. 1895, § 1780.]

§ 2238. **Fees.** For making and certifying to abstracts under the provisions of this article, the following fees and no more shall be allowed: For the first entry on any one abstract, one dollar; for each subsequent entry or transfer on such abstract, twenty-five cents; for entry relating to taxes, twenty-five cents; for entry relating to mechanic's liens, twenty-five cents; for entry as to judgments, which may constitute liens on the property so abstracted, fifteen cents for each name certified to; for certificate to abstract, twenty-five cents. It shall be the duty of such abstracters to continue any abstract so made by them, on the payment of twenty-five cents for each entry made thereon, and twenty-five cents for the certificate of continuation thereto. Each and every deed, mortgage, affidavit, lease, lis pendens, judgment, mechanic's lien or other instrument on file or of record in the offices of the registers of deeds or clerks of court affecting the title to the real estate so abstracted shall constitute an entry; for the abstracting of estates in county courts which are not recorded in the office of the register of deeds, such fees may be charged by such abstracters as may be reasonable, but in no case to exceed five dollars for each estate. [1889, ch. 1, § 7; R. C. 1895, § 1781.]

§ 2239. **Seal.** Any person, firm or corporation furnishing abstracts of title to real property under the provisions of this article, shall first provide a seal, which seal shall have stamped thereon the name and location of such person, firm or corporation, and shall deposit with the county auditor an impression of such seal before the certificate mentioned in section 2233 shall issue, which seal shall be affixed to every abstract or certificate of title, issued by such abstracters. [1889, ch. 1, § 8; R. C. 1899, § 1782.]

§ 2240. **Auditor to certify abstracts. Fees.** It shall be the duty of the county auditor to attach his certificate to each abstract of title to real estate of his county that may be presented to him for that purpose, which certificate shall show the amount of taxes due and unpaid against, or tax title affecting the land described in such abstract, as the same may appear from the records of his office; and as compensation therefor he shall receive the sum of twenty-five cents for each abstract so certified, and for each failure or refusal to comply with the provisions of this section, he shall be liable to a fine of not exceeding one hundred dollars. [1901, ch. 1.]

#### ARTICLE 46.—PUBLIC WAREHOUSES.

§ 2241. **Commissioners of railroads, powers and duties.** The duties imposed by the provisions of this article and the powers conferred herein devolve upon the commissioners of railroads. [1891, ch. 126, § 1; R. C. 1899, § 1783.]

§ 2242. **Handling, weighing and storage of grain.** It shall be the duty of the commissioners of railroads to supervise the handling, weighing and storage of grain and seed; to establish all necessary rules and regulations for the weighing of grain and for the management of the public warehouses of the state, so far as such rules and regulations may be necessary to enforce the provisions of this article or any law in this state in regard to the same, investigate all complaints of fraud or oppression in the grain trade of this state, and correct the same as far as it may be in their power. [1891, ch. 126, § 2; R. C. 1899, § 1784.]

Held constitutional. *State ex rel Stoesser v. Brass*, 2 N. D. 482, 52 N. W. 408. Affirmed in *Brass v. State*, 153 U. S. 391.

§ 2243. **Rules to be published.** The rules and regulations so established shall be printed and published by the commissioners of railroads in such manner as to give the greatest publicity thereto, and the same shall be in force and effect until they are changed or abrogated by such commissioners in a like public manner. [1891, ch. 126, § 3; R. C. 1899, § 1785.]

§ 2244. **Public warehouse defined.** All buildings, elevators and warehouses, and all grist and flour mills doing a shipping business in this state, erected and operated, or which may hereafter be erected or operated by any person, association, copartnership, corporation or trust, for the purpose of buying, selling, storing, shipping or handling grain for profit, are declared public warehouses, and the person, association, copartnership or corporation owning or operating such buildings, elevators, or warehouses, which are now, or may hereafter be located or doing business within this state, whether such owners or operators reside within this state or not, are public warehousemen within the meaning of this article, and none of the provisions of this article shall be construed so as to permit discrimination with reference to buying, receiving and handling grain of standard grades or in regard to the persons offering such grain for sale, storage and handling at such public warehouses, while the same are in operation. [1899, ch. 126; R. C. 1899, § 1786; 1901, ch. 140.]

§ 2245. **License, how obtained. Fee, how determined.** An annual state license must be maintained through the commissioners of railroads for each and every public grain warehouse in operation in this state. No license issued under this article shall describe more than one public grain warehouse, or grant permission to operate any other public grain warehouse than the one therein described. The license fee is hereby fixed at two dollars for warehouses of a capacity of less than ten thousand bushels; and three dollars for warehouses of a capacity of ten thousand bushels and over, for each public grain warehouse; provided, that before any license is issued the person applying therefor shall file with the commissioners of railroads the receipt of the state treasurer, showing that the applicant has paid into the state treasury the amount of said license fee. [1895, ch. 115, § 1; R. C. 1899, § 1787.]

§ 2246. **License to be conspicuously posted. Penalty.** The license thus obtained shall be posted in a conspicuous place in the public warehouse so licensed. Every such license shall expire on the first day of August next following the issuance thereof, and no license shall run for a longer period than one year. Any person or association, who shall transact the business of public warehouseman without first procuring a license as herein provided, shall on conviction, be fined in a sum not less than twenty-five dollars for each and every day such business is carried on. [1895, ch. 115, § 2; R. C. 1899, § 1788.]

§ 2247. **Bond to be filed.** The proprietor, lessee, or manager of any public warehouse or elevator in this state shall file with the commissioners of railroads a bond to the state with good and sufficient sureties to be approved by such commissioners in the penal sum of not less than five thousand nor more than seventy-five thousand dollars, in the discretion of the commissioners, conditioned for the faithful performance of their duty as public

warehousemen and a compliance with all the laws of this state in relation thereto. One bond only need be given for any line of elevators or warehouses owned, controlled or operated by one individual, firm or corporation. Such bond, specifying the location of each elevator or warehouse operated by such individual, firm or corporation, shall be in a sufficient amount to protect the holders of outstanding tickets. [1891, ch. 126, § 5; R. C. 1895, § 1789.]

§ 2248. **Warehouse receipts, what to contain.** All owners of such elevators and warehouses shall, upon the request of any person delivering grain thereat, give a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain, and shall state upon its face the quantity and grade upon the same. All warehouse receipts shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. No warehouse receipt shall be issued except upon actual delivery of grain into such warehouse. No such warehouseman shall insert in any warehouse receipt issued by him any language in anywise limiting or modifying his liability as imposed by the laws of this state. [1891, ch. 126, § 6; R. C. 1899, § 1790.]

One depositing grain and receiving general storage ticket loses control over identical wheat deposited. *Best v. Muir*, 8 N. D. 44, 77 N. W. 95; *Plano Mfg. Co. v. Jones*, 8 N. D. 315, 79 N. W. 338.

Evidence of value at time of demand necessary to recovery in conversion. *Towne v. Elev. Co.* 8 N. D. 200, 77 N. W. 608.

Holder of general storage ticket not entitled to possession of identical wheat. *Best v. Muir*, 8 N. D. 44, 77 N. W. 95; *Plano Co. v. Jones*, 8 N. D. 315, 79 N. W. 338; *Towne v. Elev. Co.* 8 N. D. 200, 77 N. W. 608.

Unrecorded contract of sale not binding upon elevator company without actual knowledge of contents of contract. *Towne v. Elev. Co.* 8 N. D. 200, 77 N. W. 608.

In suit for conversion it is necessary to prove the value of wheat at time of demand. *Towne v. Elev. Co.* 8 N. D. 200, 77 N. W. 608.

Replevin will not lie against an elevator company for wheat held under general storage elevator tickets. *Best v. Muir*, 8 N. D. 44; *Plano Mfg. Co. v. Jones*, 8 N. D. 315; *Marshall v. Andrews & Gage*, 8 N. D. 364.

Refusal to deliver grain prima facie evidence of conversion. *Marshall v. Andrews & Gage*, 8 N. D. 364, 79 N. W. 851.

Warehouse receipts evidence. *Willard v. Monarch Elev. Co.* 10 N. D. 400, 87 N. W. 996.

Evidence of value. *Willard v. Monarch Elev. Co.* 10 N. D. 400, 87 N. W. 996.

A pledgee of warehouse receipts may institute action in his own name and account to pledgor for amount he may recover. *Bank v. Elev. Co.*, 13 S. D. 2, 82 N. W. 186.

§ 2249. **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. 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, that grain placed in a special bin be excepted from the provisions of this section. [1891, ch. 126, § 7; R. C. 1899, § 1791; 1905, ch. 110.]

§ 2250. **Bailment not a sale. Insolvency.** Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, ware-

house or grain elevator business in this state and the receipt issued therefor provides for the delivery of a like amount and grade to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except actions by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of the failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding warehouse receipts for grain so stored with such bailee. And in such event grain on hand in any particular elevator or warehouse shall first be applied to the redemption and satisfaction of receipts issued by such warehouse. [1891, ch. 126, § 8; R. C. 1899, § 1792.]

**§ 2251. Larceny. Punishment.** Each person and each member of any association, firm or corporation doing a grain, warehouse or grain elevator business in this state, who shall, after demand, tender and offer as provided in the last section, willfully neglect or refuse to deliver to the person making such demand, the full amount of grain of the grade or the market value thereof, which such person is entitled to demand of such bailee, shall be deemed guilty of larceny. [1891, ch. 126, § 9; R. C. 1899, § 1793.]

**§ 2252. Rates of storage.** The charges for storage and handling of grain shall not exceed the following rates: For receiving, elevating, insuring, delivering and twenty day's storage, two cents per bushel. Storage rates after the first twenty days, one-half cent per each fifteen days or fraction thereof, and not exceeding five cents for six months. The grain shall be kept insured at the expense of the warehouseman for the benefit of the owner. [1891, ch. 126, § 11; R. C. 1899, § 1794.]

**§ 2253. Penalty for violation of this article.** Any person who shall knowingly cheat, or falsely weigh any wheat or other agricultural products, or who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall on conviction thereof be subject to a fine of not less than two hundred dollars nor more than one thousand dollars and be imprisoned in the penitentiary for a period not exceeding one year, in the discretion of the court. [1891, ch. 126, § 12; R. C. 1899, § 1795.]

**§ 2254. Warehouse on railroad right of way. Application.** Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain for the public for hire may make application in writing, containing a description of that portion of the right of way of said railroad on which said person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain said warehouse or elevator, to the person, firm or corporation owning, leasing or operating the railway at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in said application, and for reasonable compensation such warehouse or elevator as aforesaid, upon the right of way appertaining to such railway at such siding or station, and within and between the outside switches of the yard of such railway station or siding and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid, shall absolutely and unconditionally be entitled to the same. [1903, ch. 142, § 1.]

**§ 2255. Compensation. Notice to applicant.** The application provided in section 2254 shall also state the amount the applicant deems a reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation, from whom such easement is sought, the sum stated in such application, and in case the amount so named and tendered is not accepted, and the

parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises, and shall at all times be deemed open and in session for the purposes of this article. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of this article, to within ten days after the receipt of said application notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case said person, firm or corporation fails to notify the applicant within said ten days, said person, firm or corporation shall be deemed to have accepted said amount, and upon payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for. [1903, ch. 142, § 2.]

§ 2256. **Procedure in district court.** Proceedings in the district court shall be instituted and carried on as follows: The party seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing and under oath specifying and describing the right, privilege and easement sought and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition and thereupon it shall at once be the duty of the court, by its order in writing, to fix upon a place and a time not more than thirty days thereafter where and when the court will try, ascertain, assess and determine the amount of such compensation; a certified copy of which order at least twenty days before the time so fixed upon, shall be served upon the party from whom the right, privilege and easement is sought, as summons are served in civil actions of said court, and such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings. [1903, ch. 142, § 3.]

§ 2257. **Trial. Election of gross sum or annual rental. Writ.** At the time and place so fixed for ascertaining, assessing and determining the compensation aforesaid, the court shall immediately proceed to try said matter, without a jury, if the parties consent, and if they do not consent and if the time and place fixed for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to a hearing of such matter with a jury selected and sworn from the panel present at such term, in the same manner as jurors are selected and sworn from the panel present at such term, in the same manner as jurors are selected in civil actions, and if the regular panel is exhausted before a jury is secured, talesmen may be summoned. In case said proceedings are made returnable at any other time than at a term where a petit jury shall have been summoned, the court shall make an order requiring the selection of twenty-four jurors from those returned by the county commissioners, which jury shall be drawn and selected in the same manner as provided by law for the drawing of jurors for general terms of the district court, and from the jurors so returned, a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions, and the court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by this

party, then the other party to the proceedings may make such election, and after election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid, and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid. [1903, ch. 142, § 4.]

§ 2258. **Forfeiture. Appeal. Costs.** In case the annual rental is elected the same shall be paid, yearly in advance, and if not so paid after thirty days' default the right, privilege and easement aforesaid shall be absolutely forfeited. Within thirty days after the entry of said judgment as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court, but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Costs and disbursements as in civil actions shall, in each court, be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party; but if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. In the supreme court, if the judgment or order appealed from is reversed or modified, the appellant shall be deemed the successful party; but if the judgment or order appealed from is affirmed, the respondent shall be deemed the successful party. [1903, ch. 142, § 5.]

§ 2259. **Warehouses deemed public. Open, when.** All elevators and warehouses erected and maintained under the provisions of this article, shall be deemed public elevators and public warehouses and shall be subject to legislative control and shall be kept open for business for the public for reasonable business hours from the fifteenth day of September in each calendar year to the fifteenth day of January in each succeeding calendar year. Any person, firm or corporation who fails to comply with the provisions of this section shall forfeit the rights, privileges and easements acquired under this article. [1903, ch. 142, § 6.]

§ 2260. **Erection of warehouses.** Any persons, firms or corporations availing themselves of the provisions of this article shall within sixty days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator stated in the application referred to in section 2254 and complete the same within ninety days thereafter, and in case of failure to comply with the provisions of this section they shall be deemed to have abandoned the right, privilege and easement acquired, and the part or portion of the railroad right of way described in their application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this article. [1903, ch. 142, § 7.]

§ 2261. **Side tracks provided by railroad company.** Every railroad company or corporation organized under the laws of this state, or doing business therein, shall upon application in writing provide reasonable side track facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations; and every such railroad corporation shall permit connections to be made and



maintained in a reasonable manner with its side tracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any side tracks except upon its own land or right of way; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart the railroad company when required so to do by the commissioners of railroads shall construct and maintain a side track for the use of shippers between such stations. [1890, ch. 189, § 3; R. C. 1899, § 1798.]

ARTICLE 47.—STORAGE COMPANIES.

§ 2262. **License keepers of public warehouses.** The governor may license any suitable person, persons or corporations established under the laws of this state, and having their place or places of business within this state, to carry on the business of public storage companies, or public warehousemen, who may keep and maintain public warehouses for the storage of goods, wares and merchandise, etc., excepting grain in bulk. Said license may be obtained upon the payment annually into the treasury of the state of the sum of ten dollars, to be credited to the school fund of the state. [1901, ch. 141, § 1.]

§ 2263. **Bonds.** Each person or corporation licensed under section 2262 shall give a bond to the treasurer of the state in the penal sum of five thousand dollars, with good and sufficient sureties to be approved by the governor, for the faithful discharge of the duties of a public warehouseman. [1901, ch. 141, § 2.]

§ 2264. **Subject to action in name of state.** When any one licensed to do business as a public storage company or as a public warehouseman fails to perform his duty, or violates any of the provisions of this article, any person, persons or corporations injured by such failure or violation may, with the consent of the attorney general, bring an action in the name of the state, but to his or their own use, in any court of competent jurisdiction, on the bond of such company or warehouseman. In such action the person, persons or corporation in whose behalf the action is brought shall file with the court a satisfactory bond for costs, and the state shall not be liable for any costs. [1901, ch. 141, § 3.]

§ 2265. **Insuring property stored.** Every public storage company or warehouseman shall when requested thereto in writing by any party placing property with him in storage, cause such property to be insured for whom it may concern; and such storage company or warehouseman shall not be held liable for the loss or damage by fire to the owner or owners of any property stored with him, unless such request to insure is made as aforesaid and he or they fail to comply therewith; provided, that such loss or damage is not occasioned through the negligence of himself, his agents, servants, or employes; provided, that such storage company or warehouseman may, in case they deem it necessary and proper, insure such property without such request, in writing, in which event the cost of such insurance shall be and become a valid lien and charge thereon as provided in section 2269. [1901, ch. 141, § 4.]

§ 2266. **Title of goods stored.** The title of goods and chattels stored with a public storage company or in a public warehouse shall pass to a purchaser, or pledgee, by the indorsement and delivery to him of the storage company's or warehouseman's negotiable receipt therefor, signed by the party to whom such receipt was originally given, or by an indorsee of such receipt, subject to all liens and charges thereon for warehousing, advanced charges and insurance. [1901, ch. 141, § 5.]



§ 2267. **Storage charges. No discrimination.** Every such storage company or warehouseman shall receive, forward and store all property offered for such purposes by any person, persons or corporation, impartially and at as low a rate of charge, and in a manner and on terms, and in quantities as favorable to the party offering such property as it or he at the same place receives, forwards and stores, in the ordinary course of business, property of like description and in similar quantities offered by any other person, persons, or corporation. No such storage company or warehouseman shall discriminate against any particular person, persons, or corporation, or subject them or him to any undue and unreasonable prejudice or disadvantage. Any court having jurisdiction shall have power to enforce the provisions of this article by injunction, or other suitable process. [1901, ch. 141, § 6.]

§ 2268. **Penalty.** Every such storage company or warehouseman who neglects or refuses to comply with the provisions of section 2267 shall forfeit, for every such offense, not less than fifty nor more than five hundred dollars, to be recovered in an action by the party offering the property for storage. [1901, ch. 141, § 7.]

§ 2269. **Lien thereon.** Every such storage company or warehouseman who stores, keeps, cares for, or advances money on, or insures personal property, shall have a lien thereon for his reasonable charges for storing, keeping, caring for, and insuring the same, and for the charges he may have advanced on the same and legal interest thereon. [1901, ch. 141, § 8.]

§ 2270. **Unlawful without license.** It shall be unlawful for any person, persons or corporation, not duly licensed as herein provided, to conduct or carry on the business of a public storage company or public warehouseman in the state. [1901, ch. 141, § 9.]

§ 2271. **Guilty of misdemeanor. Punishment.** Any person, persons or corporation who shall violate the provisions of this article shall be deemed guilty of a misdemeanor, and shall be punishable by a fine of not exceeding one thousand dollars. [1901, ch. 141, § 10.]

§ 2272. **To whom applied.** This article shall not be construed to apply to any implement transfer company, or to any railroad or transportation company; provided, such railroad or transportation company shall, within forty-eight hours after the receipt of such goods, wares and merchandise, notify the consignee of the arrival thereof in writing, and in case such consignee, or his assigns, fails and neglects to call for or receive said goods, wares, or merchandise, within twenty days after such receipt of same by any railroad or transportation company as aforesaid, said railroad or transportation company must then turn over said goods, wares or merchandise to a storage company or warehouseman, licensed as in this article provided, upon the payment of the charges of said carriers thereon, which charges thus paid by said storage company or warehouseman to said carriers shall be a lien on said goods, wares or merchandise. [1901, ch. 141, § 11.]

#### ARTICLE 48.—SUPERIOR GRAIN AND WAREHOUSE COMMISSION.

§ 2273. **Governor appoints member, when. Term of office. Salary.** 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 the state of Wisconsin, the name or names of the person or persons so recommended. [1893, ch. 191, § 1; 1905, ch. 115.]

§ 2274. **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. [1903, ch. 191; 1905, ch. 115.]

#### ARTICLE 49.—HABITUAL DRUNKARDS.

§ 2275. **Treatment of drunkards. Method of procedure.** Any inhabitant of this state, who is of kin to, or a friend of an habitual drunkard as hereinafter defined, may petition the board of county commissioners of the county where such drunkard resides for leave to send such drunkard, at the expense of the county, to any reputable institute for the treatment of drunkenness, designated by a committee of three persons to be appointed by the governor; which petition shall set forth the name, age and condition of such drunkard; that such drunkard or those of his kin petitioning are not financially able to incur the expense of such cure, and that such habitual drunkard is willing and has agreed to attend such institute for the cure of drunkenness, which petition shall be verified by the person making such request, and shall contain, in addition thereto, the written agreement of such habitual drunkard, his desire to take such treatment, and the names of three reputable taxpayers in the county where such habitual drunkard resides, stating that they are familiar with the facts set forth in the petition, and with the financial circumstances of the drunkard and of the petitioner and think it a proper case for assistance by the board of county commissioners. [1895, ch. 68, § 1; R. C. 1899, § 1800.]

§ 2276. **Duties of county commissioners.** When such petition is filed the board of county commissioners, if satisfied from examination that the facts set forth in the petition are true, that such drunkard has been a resident of the county for six months, and of his own free will desires to take such treatment, shall send such drunkard to some reputable institute for the treatment of such disease, which will treat the same at the lowest figure; but such board shall not be compelled to send such person to the institute making the lowest bid, unless, in its judgment, the best interests of such drunkard will be promoted thereby; and the board shall order that the expense for the treatment be paid out of the county treasury in the manner that other claims and bills against the county are paid. The treatment of such drunkard shall at all times be under the supervision of the board of county commissioners, who may at any time it deems proper, discontinue the treatment of such drunkard, or change him from one institute to another, as to it shall deem best. No county shall be required to send the same person a second time at its expense to any such institute. [1895, ch. 68, § 2; R. C. 1899, § 1801.]

§ 2277. **Drunkard defined.** A drunkard, as defined herein, includes a person who uses alcoholic, spirituous, malt, fermented or intoxicating liquors, morphia, laudanum, cocaine, opium, or other narcotics to such a degree as to deprive him of a reasonable degree of self-control. [1895, ch. 68, § 3; R. C. 1899, § 1802.]

§ 2278. **May reimburse the county.** Any person who shall be treated for drunkenness under the provisions of this article, and who desires to reimburse the county at whose expense he has been treated, may pay to the county treasurer of such county the amount expended for his treatment, and the treasurer shall give him a receipt for the amount so paid, which receipt shall state that such payment is for reimbursement as aforesaid, and the amount so paid shall be covered into the treasury of the county. [1895, ch. 68, § 4; R. C. 1899, § 1803.]

#### ARTICLE 50.—NEWSPAPERS QUALIFIED TO DO LEGAL PRINTING.

§ 2279. **Newspapers qualified to do legal printing. File copies with 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 this state, or any public notices for any county, city or other municipality within this state, such newspaper must have been established at least 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. [1897, ch. 98; R. C. 1899, § 1804; 1905, ch. 139.]

§ 2280. **Publisher to file affidavit.** It shall be the duty of the owner or manager of any newspaper in this state, before such newspaper can be awarded any contract for public printing of any nature whatsoever, or publish any legal notices of any kind or nature, to file with the county auditor of the county in which such newspaper is published a verified statement setting forth the number of regular and continuous subscribers and the length of time such newspaper has been established and in general circulation. [1890, ch. 120, § 2; R. C. 1899, § 1805.]

§ 2281. **Penalty.** Any person, association or corporation publishing any legal notices or doing any public printing contrary to the provisions of this article, shall be liable to a fine of not less than twenty-five dollars nor more than two hundred dollars, and to a forfeiture of all pay for any such printing. [1890, ch. 120, § 3; R. C. 1899, § 1806.]

§ 2282. **Public printing to be done in the state.** All state, county and other public printing, book binding and blank book manufacturing shall be done only by established printing and publishing houses in this state, which have been conducting a printing and publishing business in this state not less than four months. Where practicable all county printing shall be done in the county ordering the same, and no bid or tender for advertising or furnishing any printed matter, blanks, blank books, or other printed matter shall be accepted or considered from any person, firm or corporation not complying with and fulfilling the requirements of this section. Any violation of the provisions of this section on the part of any public official shall constitute a misdemeanor. [1899, ch. 125; R. C. 1899, § 1807.]

County printing must be done within state. Not repugnant to constitution. Does not discriminate against nonresidents. *Tribune v. Barnes*, 7 N. D. 591, 75 N. W. 904.

## CHAPTER 25.

## WOOL MARKET.

§ 2283. **Markets, how established.** If any city or village in this state shall in any year provide a building wherein not less than one hundred thousand pounds of wool may be stored free of charge from June fifteenth to August thirty-first, it may direct its clerk to notify the commissioner of agriculture and labor on or before May first, in such year, of the fact that provision has been made, stating the regulations established by such city for receiving, storing and marketing wool, and the quantity of wool which will probably be marketed at such city in that year. [1891, ch. 127, § 1; R. C. 1899, § 1808.]

§ 2284. **Proclamation by commissioner of agriculture and labor.** The commissioner of agriculture and labor shall thereupon make proclamation to the sheep raisers of this state, to the manufacturers of woolen goods and to the wool buyers of this state and other states, by notices in newspapers, circulars and such other means as he shall deem most effective, that a wool market will be held at such city, naming the same, stating the beginning and duration of such market, the provision for free storage, the quantity of wool likely to be received, and such other facts as he may deem proper for publication. [1891, ch. 127, § 2; R. C. 1899, § 1809.]

§ 2285. **Wool to be held free of liens, etc.** Any person purchasing any wool while the same is stored in any building thus provided for between June fifteenth and August thirty-first, both inclusive, shall hold the wool so purchased free and clear of any and all liens, claims and incumbrances of which he does not have notice at the time he purchases and pays for the same, and such purchaser shall not be liable in any action either for the delivery of such wool or for the damages to the holder of any lien or incumbrance on such wool. [1891, ch. 127, § 3; R. C. 1899, § 1810.]

§ 2286. **Expenses of commissioner.** The commissioner of agriculture and labor shall make a verified and itemized statement of his expenses and disbursements incurred under the provisions of this chapter and file the same with the state auditor, who shall thereupon issue his warrant on the state treasurer therefor, but such expenses shall not in any one year exceed in the aggregate the sum of two hundred dollars. [1897, ch. 51; R. C. 1899, § 1811.]

## CHAPTER 26.

## SOLDIERS AND SAILORS.

## ARTICLE 1.—BURIAL.

§ 2287. **State to pay funeral expenses, when.** All honorably discharged soldiers, sailors or marines who served in the army, navy or marine corps of the United States during the war of the Rebellion, who shall hereafter die within this state and whose relatives and friends are unable or unwilling to defray the expenses of their funeral, shall be buried at the expense of this state; but such funeral expenses, including cost of burial lot, shall not in any case exceed the sum of fifty dollars. [1887, ch. 151, § 1; R. C. 1899, § 1812.]

§ 2288. **Interment.** The interment shall be in this state and shall not be made in any cemetery or plot used exclusively for the burial of the pauper dead. [1887, ch. 151, § 2; R. C. 1899, § 1813.]

§ 2289. **Duty of county judge.** Upon notice to the county judge of the death of any soldier, sailor or marine within his county, it shall be the duty of such judge to appoint a suitable person to carry into effect the provisions of this article in reference to the burial of such deceased soldiers, sailors or marines, for which service the person so appointed shall receive a fee not to exceed three dollars. It shall also be the duty of such judge immediately to notify the secretary of war of the death of any such soldier, sailor or marine, furnishing him with the name, age, date of birth, date of death, designating the company, regiment and name of the organization in which such soldier, sailor or marine served, and request the secretary of war to furnish a headstone for such deceased soldier, sailor or marine, under the provisions of an act of congress authorizing the secretary of war to erect headstones over the graves of union soldiers who have been interred in private, city or village cemeteries, approved February 3, 1879; and when such headstone is so furnished it shall be the duty of the county judge or other person designated by him for such purpose, to cause the grave of such soldier, sailor or marine to be marked with such headstone; and the expense of erecting the same, not exceeding in any case the sum of five dollars, shall be paid by the state. [1887, ch. 151, § 3; R. C. 1899, § 1814.]

§ 2290. **Duty of other officers.** All expenses under this article shall be approved, allowed and certified to in duplicate by the county judge of the county in which such soldier, sailor or marine died or is buried, which duplicate certificate shall be delivered by such judge to the county auditor of the county, the original of which shall be forwarded by him at once to the state auditor, the duplicate to remain on file in his office. Upon the receipt by the state auditor of such certificate he shall draw his warrant on the state treasurer in favor of the county judge for the amount specified therein, and the county judge shall pay the same to the person entitled thereto. [1887, ch. 151, § 4; R. C. 1899, § 1815.]

§ 2291. **Appropriation.** There is hereby appropriated out of the state treasury a sum sufficient to carry out the provisions of this article. [1887, ch. 151, § 5; R. C. 1899, § 1816.]

#### ARTICLE 2.—PREFERMENT FOR OFFICIAL APPOINTMENT.

§ 2292. **Preferred for appointment.** In each public department and upon all public works of the state and of the cities and villages therein, honorably discharged union soldiers and sailors of the late war shall be preferred for appointment, and age, loss of limb or other physical impairment which does not in fact incapacitate shall not be deemed to disqualify them, if they possess the requisite qualifications and business capacity necessary to discharge the duties of the position involved. [1887, ch. 205, § 1; R. C. 1899, § 1817.]

§ 2293. **Officials to comply with this article.** All officials or other appointing power in the public service shall comply with the provisions of the last section. [1887, ch. 205, § 2; R. C. 1895, § 1818.]

### CHAPTER 27.

#### AMENDMENTS TO CONSTITUTION.

§ 2294. **Amendments to be published.** Whenever any amendment to the constitution of this state is referred to the legislative assembly to be chosen at the next general election after the session in which such amendment is first proposed, the same shall be published for three months previous to the time of making such choice in one weekly paper in each county in which

a weekly paper is published, once in the first month, once in the second month and four times in the third month. [1891, ch. 46, § 1; R. C. 1899, § 1819.]

§ 2295. **Papers, how selected.** The paper in which such publication is made shall be designated by the secretary of state. The secretary of state in making such designation shall as far as possible endeavor to select the paper having the largest circulation. [1891, ch. 46, § 2; R. C. 1899, § 1820.]

§ 2296. **Fees. Accounts, how audited.** The compensation for such publication shall be at the rate of twenty-five cents per square of twelve lines of solid brevier type or its equivalent, to each newspaper designated to publish such amendment. The state auditor, upon receipt of an account of the expenditure required by the provisions of this chapter, duly certified as correct by the secretary of state, shall draw his warrant on the state treasurer for the amount due each of such papers as shown by such account. [1891, ch. 46, §§ 3, 4; R. C. 1899, §§ 1821, 1822.]

## CHAPTER 28.

### COUNTIES AND COUNTY OFFICERS.

#### ARTICLE 1.—ORGANIZATION OF CONTIGUOUS COUNTIES.

§ 2297. **Petition for organization.** Any number of contiguous unorganized counties in this state which in the aggregate possess a population of at least one thousand bona fide inhabitants, may become organized as one county by presenting to the governor a petition signed by at least one hundred and fifty qualified electors of such contiguous unorganized counties, setting forth that in the aggregate said counties have the requisite number of inhabitants to form a county organization, and requesting him to organize such county as hereinafter provided; provided, however, that no organized county mentioned in the petition for the organization of such proposed contiguous unorganized counties shall become a part thereof unless a majority of the qualified electors residing within such unorganized county shall, by a majority vote so decide at the election hereinafter provided for. [1903, ch 64.]

§ 2298. **Duty of the governor.** Whenever the qualified electors from any contiguous unorganized counties in this state shall petition the governor as provided in the preceding section, and the governor shall be satisfied that such contiguous counties contain a population of at least one thousand bona fide inhabitants, it shall be the duty of the governor, and he is authorized to call an election in the territory composing such contiguous unorganized counties and fix one or more places in such territory as polling places therein, and shall fix the time for holding such election. And the governor shall thereupon issue a notice of election, which shall be substantially in the following form:

Notice is hereby given that on the ..... day of ....., 19..., at ..... in the unorganized county of ....., an election will be held for the purpose of electing the following officers in the organization of the proposed county of ....., to be formed out of the following named contiguous unorganized counties, viz: (Name the officers to be elected) and also for the temporary location of the county seat of such proposed county, at which election the polls will be open at the hour of eight o'clock in the morning and will continue open until five o'clock in the afternoon of said day.



Dated this ..... day of ....., 190...
.....Governor.

Attest:
.....Secretary of State.

[1903, ch. 64.]

§ 2299. Election of officers. There shall be elected by the qualified electors of such contiguous unorganized counties all of the officers of such proposed county which are now, or may hereafter be provided by law for organized counties, which officers shall hold their respective offices until the next general election thereafter, and until their successors are elected and qualified. [1903, ch. 64.]

Note:—The above article, chapter 64, laws of 1903, impliedly amends sections 2300-2302, and would abolish all law for the organization of single counties as they now exist. The constitutionality of the article is questioned and the old sections as well as the new are compiled.

ARTICLE 2.—ORGANIZATION OF COUNTIES.

§ 2300. Petition for organization. Any unorganized county in this state, having a population of at least one thousand bona fide inhabitants, may become organized by presenting to the governor a petition signed by at least one hundred and fifty qualified electors of such county setting forth that they have the requisite number of inhabitants to form a county organization, and requesting him to organize such county as hereinafter provided. [1885, ch. 40 § 1; R. C. 1895, § 1823.]

§ 2301. Duty of governor. Whenever the qualified electors of any unorganized county in this state shall petition the governor as provided in the preceding section and the governor shall be satisfied that such county contains a population of at least one thousand bona fide inhabitants, it shall be the duty of the governor and he is authorized to call an election in such unorganized county and fix one or more places in such county as polling places therein, and shall fix the time for holding such election; and the governor shall thereupon issue a notice of election, which notice shall be substantially in the following form:

Notice is hereby given that on the ..... day of ....., 19...., at ..... in the county of ....., an election will be held for the following officers of such county in the organization thereof: (Name the officers to be elected), and also for the temporary location of the county seat of such county, at which election the polls will be open at the hour of eight o'clock in the morning and will continue open until five o'clock in the afternoon of the same day.

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

Attest:
.....Secretary of State.

[1885, ch. 40, § 2; R. C. 1895, § 1824.]

§ 2302. Election of officers. There shall be elected by the qualified electors of such unorganized county all of the officers of such county which are or may be provided by law for organized counties, which officers shall hold their respective offices until the next general election thereafter, and until their successors are elected and qualified. [1885, ch. 40, § 3; R. C. 1895, § 1825.]

§ 2303. County seat selected, how. The electors at such elections are empowered to vote for and select a county seat for such county temporarily, subject to be changed thereafter as provided by law; and each voter at such election may designate on his ballot the place of his choice for county seat,

and the place receiving the highest number of votes shall be the temporary county seat. [1885, ch. 40, § 4; R. C. 1895, § 1826.]

Description by metes and bounds not necessary in location of county seat when location is well known by other designation. *Fall River County v. Powell*, 5 S. D. 49, 58 N. W. 7.

§ 2304. **Election precincts, how prescribed.** Whenever the governor shall have made out and completed such notice of election he shall cause the same to be delivered to the clerk of the district court of the judicial subdivision to which such unorganized county is attached for judicial purposes at least fifty days prior to the time fixed for such election, and thereupon and at least forty days prior to the time fixed by the governor in the notice for such election, such clerk shall take to his assistance the chairman of the board of county commissioners and register of deeds, who shall meet at the office of such clerk at the time fixed by him, and such officers or a majority of them shall thereupon, if the governor shall have fixed more than one place for holding the election in such unorganized county, divide such county into election precincts in accordance with such notice, regard being had for the convenience of the voters, and such clerk shall thereupon add at the foot of each certified copy of such notice of election a certificate signed by him under the seal of the court, showing the division of such county into election precincts and the boundaries thereof as determined by such board; and such clerk shall cause such notice and certificate to be published for at least thirty days prior to such election in a newspaper of general circulation in such judicial subdivision, printed and published in the county where the court for such subdivision is held, and deliver to the sheriff or coroner of such county, or other person designated by him, five certified copies of such notice and the certificate at the foot thereof, which original notice shall be filed in the office of such clerk as a record therein. [1885, ch. 40, § 5; R. C. 1895, § 1827.]

§ 2305. **Judges of election.** It shall be the duty of such clerk, register of deeds and chairman of the board of county commissioners, or a majority thereof, at the meeting mentioned in the preceding section, to appoint three capable and discreet persons possessing the qualifications of electors in such unorganized county to act as judges of election at each polling place in such county, and thereupon such clerk shall make out and deliver to the sheriff, coroner or other person, after the appointment of such judges, a notice thereof in writing, directed to the judges of election so appointed, and it shall be the duty of the sheriff, coroner or other person so appointed within ten days after receiving such notice to serve the same upon each of the judges so appointed. [1885, ch. 40, § 6; R. C. 1895, § 1828.]

§ 2306. **Posting notices.** The sheriff, coroner, or other person to whom such notice of election is delivered as aforesaid shall put up in five of the most public places in each of the voting precincts in such unorganized county at least twenty days previous to the time of holding such election one copy of such notice with the certificate thereto, and one shall be posted at the house where such election is authorized to be held. [1885, ch. 40, § 7; R. C. 1895, § 1829.]

§ 2307. **Judges of election. Vacancies, how filled.** If any person appointed to act as judge of election as aforesaid shall neglect or refuse to act in such capacity or shall not be present, the place of such person shall be filled by the qualified electors residing within the county or voting precinct, present at the election, and the persons so elected to fill such vacancy are vested with the same powers as if appointed judges of election as provided for in this article. The judges of election shall choose two persons who are qualified electors to act as clerks of such election. [1885, ch. 40, § 8; R. C. 1895, § 1830.]



§ 2308. **Election law to apply.** All the provisions contained in the chapter on elections in this code, not inconsistent with the provisions of this article, shall apply to elections held under the provisions of this article. [1885, ch. 40, § 9; R. C. 1895, § 1831.]

§ 2309. **Inspector of election to be appointed.** The governor at the time of calling such election or at least thirty days prior to the time fixed for such election, shall appoint an inspector of elections for each polling place in such unorganized county, who shall not be a resident of such county or in any manner interested in the vote therein, but shall possess all the qualifications of a state officer. Such inspector shall, before he enters upon the duties of his office, take and subscribe the oath of office required of civil officers, and also an oath that he is not and will not in any manner be directly or indirectly interested in the location of any county seat in such county and is not the owner of any land or interest therein situated in such county, which oath shall be filed in the office of the secretary of state. [1885, ch. 40, § 10; R. C. 1895, § 1832.]

§ 2310. **Inspector to furnish ballot box and poll books.** Such inspector shall furnish at such election a ballot box in due form for use thereat, but if he shall fail or neglect so to do, then any qualified elector at such election shall have authority to furnish such ballot box; and such inspector shall at the same time and place furnish the proper and necessary poll books for use at such election in the form provided by law, but if he shall neglect or fail so to do, any qualified elector is authorized to furnish and deliver the same to the judges of election. [1885, ch. 40, § 11; R. C. 1895, § 1833.]

§ 2311. **Powers and duties of inspector.** The inspector of election is authorized and required to attend at all times at the place for holding such election for the purpose of counting the votes cast thereat, challenging the vote of any person whose qualifications he may doubt, and to be and remain where the ballot boxes are kept at all times after the polls are opened until each vote cast at such election has been counted and until the canvass of such votes is completed and the proper certificate or returns made by the judges and clerks of election, and personally to inspect and scrutinize from time to time on the day of election the manner in which the voting is done and the manner in which the poll books and tally sheets therein are kept; the inspector of elections is also required personally to scrutinize and assist in the count and canvass of each ballot cast in the precinct for which he is inspector, and to make out and deliver to the clerk of the district court a statement as to the truth or accuracy of the poll books and the truth or fairness of the election and canvass of votes, and whether in his opinion there was illegal voting at such election, and if so, the extent of such illegal voting and the nature and character thereof, which report shall remain on file in the office of the clerk of such court. [1885, ch. 40, § 12; R. C. 1895, § 1834.]

§ 2312. **Penalty for illegal voting.** If any person shall interfere with the clerks, judges or inspectors of election in the exercise of their duties or shall interfere, hinder, molest or threaten to molest any such officer in the discharge of his duties, or shall cast any illegal vote at such election, he shall be deemed guilty of a felony, and shall upon conviction thereof be punished as provided in section 2316. [1885, ch. 40, § 14; R. C. 1895, § 1835.]

§ 2313. **Ballots to be numbered.** The ballots shall be folded by the voters and delivered to one of the judges of election, and if the judges and inspector, or a majority of them, are satisfied that the person offering the vote is a legal voter, the clerk shall enter the name of the voter and his proper number under the proper heading in the poll books, and one of the judges shall receive and place such ballot in the ballot box. [1885, ch. 40, § 15; R. C. 1895, § 1836.]

§ 2314. **No adjournment. Ballots, how preserved.** After the opening of the polls no adjournment shall be had, nor shall any recess be taken until

the votes cast at such election shall have been counted and the result publicly announced. All the ballots counted by the judges and inspector of elections shall, after being read, be strung upon a strong thread or twine in the order in which they have been read, and after such ballots have been counted and strung as aforesaid the thread shall be tied in a knot which knot shall be covered by wax, as directed by the inspector, and thereupon it shall be inclosed in an envelope and carefully sealed up by the judges of election in the presence of the inspector and immediately placed in the ballot box together with the poll books, which ballot boxes shall be carefully locked up and sealed by the judges of election in the presence of such inspector before the same shall be delivered to them or either of them, as provided in this article. [1885, ch. 40, § 16; R. C. 1895, § 1837.]

§ 2315. **Return of poll books.** After the canvass of the votes has been completed the judges of election shall inclose and seal one of the poll books and under cover direct the same to the county auditor of the county to which such unorganized county is attached for judicial purposes, and the book thus sealed shall thereupon be delivered to the inspector of elections, who shall deliver the same to the county auditor within three days after the closing of the polls, and such poll book shall be subject to inspection at any time thereafter as a public record. The other poll book inclosed in the ballot box as aforesaid, together with the ballots inclosed and sealed therein by such judges and inspector shall, within the same time, be deposited by such inspector with the clerk of the district court for such judicial subdivision, and the ballots and ballot boxes with the poll book therein, shall be kept carefully closed and sealed until ordered opened by the district court of such subdivision, or the judge thereof. [1885, ch. 40, § 17; R. C. 1895, § 1838.]

§ 2316. **Penalty for misconduct of officers of election.** If any of the inspectors, judges or clerks of election shall in any manner interfere with any of the ballots, ballot boxes or poll books, other than as provided by law, or shall willfully aid or assist in making any false count of the ballots, or willfully falsify the poll books in any manner, or willfully make any false return of the votes, or if any inspector of elections shall willfully refuse or neglect to deliver such poll book and ballot boxes to the officers provided for in this article within the time herein specified, safe and with the seals unbroken, or if any inspector shall in any manner interfere with such poll books, ballots or ballot boxes, other than to deliver them to the officers provided for in this article, he shall be deemed guilty of a felony, and upon conviction thereof shall be fined in a sum not exceeding five thousand dollars, and be imprisoned in the penitentiary for not less than one year and not more than five years. [1885, ch. 40, § 18; R. C. 1895, § 1839.]

§ 2317. **Canvass of votes.** The county auditor of the county to which such unorganized county is attached for judicial purposes shall, within the time prescribed by law for the canvass of votes, take to his assistance the county judge, the clerk of the district court and a majority of the county commissioners of such county, who shall proceed to open such returns and make an abstract of the votes cast at such election in the following manner: The abstract of the votes for county officers shall be on one sheet, and the abstract of votes for the temporary location of the county seat shall be on a separate sheet; and it shall be the duty of such county auditor immediately to make out a certificate of election to each of the persons receiving the highest number of votes for such county offices, and deliver such certificates to the person so elected; and immediately after canvassing the returns and making an abstract of the votes such county auditor shall make a certified copy of each abstract and forward the same to the secretary of state, and when the votes are canvassed for county seat the place receiving the highest number of votes shall be the temporary county seat, and such place shall

be so declared the county seat by such board or a majority of the members thereof. [1885, ch. 40, § 19; R. C. 1895, § 1840.]

§ 2318. **Officers to qualify.** The officers elected under the provisions of this article shall qualify in the manner provided by law within twenty days after the canvass of such votes as provided for in the preceding section, and the county commissioners after they have so qualified shall immediately convene at the place so selected as the county seat and proceed to the discharge of their duties as such county commissioners in the organization of such county; and if any person elected to any office shall fail or refuse to qualify within thirty days after such canvass his office shall be deemed vacant and shall be filled in the manner required by law for filling vacancies. [1885, ch. 40, § 20; R. C. 1895, § 1841.]

§ 2319. **Power of county commissioners.** The county commissioners elected or appointed under the provisions of this article shall have power to divide the county into three commissioner districts, which shall be numbered from one to three, and such districts shall not be changed oftener than once in four years, and then only at a regular session of the board. Three commissioners shall be elected, one from each of said districts, at the next general election after such organization, one of whom shall be chosen for the term of two years, two for four years, and thereafter as provided by law. The inspectors of election shall receive for their services the sum of four dollars per day for the time actually and necessarily employed, and ten cents per mile for each mile actually and necessarily traveled, the account thereof to be approved by the governor and audited and paid out of the state treasury. [1885, ch. 40, § 22; R. C. 1895, § 1842; 1901, ch. 52, § 1.]

§ 2320. **Compensation of other officers.** The officer or person serving the notices on the judges of election and posting the same as provided in this article, shall receive for his services the amount authorized by law for like services performed by the sheriff in organized counties; and the clerk of the district court and other county officers required to perform the services mentioned in this article shall receive two dollars per day for the time actually and necessarily employed; and the printers and publishers shall receive the legal rates for the publication of such notices; all of which sums shall be audited and paid by such unorganized county as soon as such county is organized under the provisions of this article. [1885, ch. 40, § 23; R. C. 1895, § 1843.]

§ 2321. **Failure to post notice not to invalidate. Proceedings set aside, when.** A failure to publish or post the notices provided for in this article shall not invalidate an election held under the provisions hereof but, if any officer shall willfully fail to perform any of the duties required of him he shall be deemed guilty of a misdemeanor. If from any cause the whole election held under the provisions of this article shall be set aside by the court or a judge thereof and declared invalid, the governor shall have authority to call a new election, and such county shall be organized as in this article provided. [1885, ch. 40, §§ 24, 25; R. C. 1895, §§ 1844, 1845.]

§ 2322. **Annexed territory part of county.** Such portions of the state, not organized into counties, as are annexed to any organized county shall for judicial and other purposes be deemed to be within the limits and a part of the county to which they are annexed. [R. C. 1899, § 1846.]

Attached for judicial purposes not annexation for other purposes. State ex rel Dollard v. Hughes County, 1 S. D. 292, 46 N. W. 1127.

#### ARTICLE 3.—CHANGING COUNTY LINES.

§ 2323. **County lines, how changed.** When a majority of the legal voters residing in any territory, not less than one congressional township, shall petition the board of county commissioners of their county, and also the county to which they desire such territory to be transferred, for leave to have

such territory transferred to such county, it shall be the duty of the boards of county commissioners so petitioned to order an election for such purpose in their respective counties, to be held within three months from the time of receiving such petition; which election shall be governed by the laws relating to general elections, and the returns of such election shall be made to the secretary of state. [R. C. 1895, § 1847.]

§ 2324. **Notices of election, how posted.** Notices of such election shall contain a description of the territory proposed to be transferred, the name of the county from and to which such transfer is intended to be made, and shall be posted as required for general elections. [R. C. 1895, § 1848.]

§ 2325. **Taxes. Officers. Ballots. Transfer of Territory.** The ballots to be used at such election shall be in the following form: "For transferring territory," and "against transferring territory." If a majority of the voters voting upon such question in each of such counties shall be for transferring territory, then such territory shall be transferred to and become a part of the county to which it is proposed to transfer the same, on and after the first day of March succeeding such election, and shall be subject to all the laws, rules and regulations thereof; provided, that the assessment and collection of taxes and judicial and other official proceedings commenced prior to such first day of March shall be continued, prosecuted and completed in the same manner as if no such transfer had been made; and provided, further, that all township officers within such transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire. [R. C. 1895, § 1849.]

§ 2326. **Area and population.** The area of no county shall be reduced, under the provisions of this article, to less than twenty-four congressional townships, nor the population to less than one thousand bona fide inhabitants. [R. C. 1895, § 1850.]

§ 2327. **Debts, how paid by territory transferred.** No territory transferred under the provisions of this article shall be released from the payment of its proportion of the debts of the county from which it was transferred; and such proportionate indebtedness from such transferred territory shall be collected by the county to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred, such rate to be ascertained by the certificate of the county auditor of such last named county, and when so collected the same shall be paid over to the county entitled thereto. When the county to which such territory is transferred is also indebted, the county board of such county shall release such transferred territory from the payment of such indebtedness to an amount equal to that which such territory is required to pay to the county from which it was transferred. [R. C. 1895, §§ 1851, 1852.]

§ 2328. **Election, how called.** When a majority of the legal voters of any territory less than one-half of one congressional township shall petition the boards of county commissioners as above provided, such boards may in their discretion order elections to be held as herein provided, and in any case where elections have been held under this article and the result has been adverse to the petitioners, it shall be in the discretion of such boards of county commissioners to order another election on a petition to transfer the same territory, presented within three years from the time of holding such former election. [R. C. 1895, § 1853.]

#### ARTICLE 4.—DIVISION OF COUNTIES.

§ 2329. **Electors may petition.** Whenever it is desired to form a new county out of one or more of the then existing counties, and a petition praying for the formation of such new county, describing the territory proposed to be taken for such new county, together with the name of such proposed

new county, signed by a majority of the legal voters residing in the territory to be stricken from such county or counties, shall be presented to the board of county commissioners of each county to be affected by such division, and it appearing that such new county can be constitutionally formed, it shall be the duty of such boards of county commissioners to make an order providing for the submission of the question of the formation of such new county to a vote of the people of the counties to be affected, at the next succeeding general election, and notice thereof shall be given, the votes canvassed, and the returns made as in the case of the election of members of the legislative assembly; and the form of the ballot to be used in the determination of such question shall be "for new county" and "against new county." [1887, ch. 38, § 1; R. C. 1895, § 1854.]

§ 2330. **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. [1887, ch. 38, § 5; R. C. 1899, § 1855; 1905, ch. 75.]

§ 2331. **County commissioners to appoint county officers.** The county commissioners appointed under the provisions of the preceding section, after having qualified according to law, shall appoint all the county officers of the county so organized, who after having qualified shall hold their offices until the first general election thereafter and until their successors are elected and qualified; provided, that all justices of the peace and constables in office within the boundaries of any county organized under this article shall continue to hold such offices in such new county during the remainder of their term, and shall give bonds to the county organized under this article of the same amount and in the same manner as to the original county. [1887, ch. 38, § 6; R. C. 1895, § 1856.]

§ 2332. **County seat, how located.** The county commissioners of such county shall have power temporarily to fix the county seat and such location shall remain the county seat until the first general election thereafter, when the qualified voters of such county are empowered to vote for and select the place of county seat by ballot as provided by law. Immediately after the selection of such county seat either by the county commissioners or by the canvass of returns of votes the county commissioners shall issue their proclamation announcing such fact and publish the same in a newspaper published in such county if there is one, and if not, by posting a copy thereof in a public place in each election precinct in such county. [1887, ch. 38, § 7; R. C. 1895, § 1857.]

§ 2333. **Commissioners governed by existing law.** In all matters not specially provided for in this article the county commissioners appointed as hereinbefore provided shall be governed by the laws then existing. [1887, ch. 38, § 8; R. C. 1899, § 1858.]

§ 2334. **Election governed by general law.** All elections under this article, where not otherwise provided, shall be conducted in the same manner as required by law for general elections, and no refusal or neglect on the part of any official to perform his lawful duties in connection therewith shall in anywise affect the validity of such election. [1887, ch. 38, § 9; R. C. 1899, § 1859.]

§ 2335. **Records to be transcribed.** When a new county is organized in whole or in part from an organized county or from territory attached to such organized county for judicial purposes, it shall be the duty of the commissioners of such new county to cause to be transcribed in the proper books all the records or deeds or other instruments relating to real estate in such new county, and all contracts heretofore made by any board of county commissioners for the transcribing of any such records are hereby made valid and all records transcribed thereunder or under the provisions of this section shall have the same effect in all respects as original records, and any person authorized by such board of county commissioners to transcribe such records shall having free access at all reasonable times to such original records for the purpose of transcribing the same. [1887, ch. 38, § 10; 1895, ch. 38, § 1; R. C. 1899, § 1860.]

§ 2336. **New counties, indebtedness of.** Any county organized under this article shall assume and pay as herein provided a just proportion of the indebtedness of the county from which it is segregated, based upon the last assessed valuation of such original county and in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county; and it is the duty of the commissioners of both the county organized under this article and the county from which the latter segregates to meet together at the county seat of the original county on the third Monday in the sixth month following the appointment of county commissioners by the governor as provided for in this article. They shall ascertain as near as may be the total outstanding indebtedness of the original county on the first day of January or July, as the case may require, next preceding the date of the joint session provided for in this section and from such total they shall make the following deductions:

1. The amount of all dues for rents.
2. The amount of outstanding bonds given or money paid for public property owned by and remaining within the limits of the original county.
3. The amount of public funds on hand and belonging to the original county on the day for which its outstanding indebtedness is ascertained by the joint board of county commissioners as provided for in this section and not belonging to the special funds hereinafter mentioned. The amount remaining after such deductions shall have been made shall, for the purpose and as a basis for the settlement herein provided, be the amount which the county organized under this article shall pay a portion of, in the proportion hereinbefore specified, and it shall be the duty of such commissioners to ascertain and fix the amount the county organized under this article shall assume and pay to the county from which it segregates. [1887, ch. 38, § 11; R. C. 1899, § 1861.]

§ 2337. **Division of property.** All moneys belonging to special funds such as fire, school, road and other funds and property owned by the districts within the boundaries of a county organized under this article, on hand at the time of the settlement provided for in the preceding section, in a county from which a portion segregates, shall be turned over in full by the treasurer of the original county to the treasurer of the county organized under this article and shall be duly receipted for by the latter and placed to the credit of the districts within his county to which they properly belong. [1887, ch. 38, § 12; R. C. 1899, § 1862.]

§ 2338. **Moneys turned over to new county, when.** Any county in which the amount of public funds on hand at the time of the settlement provided for in section 2336 exceeds the total of its outstanding indebtedness shall, after deducting such outstanding indebtedness and after making the deductions provided for in section 2336 from the amount of such public funds on hand, pay over to the county segregated from it and organized under this article a just proportion of such funds, based upon the assessed valuation



of the whole of the original county in and for the year prior to the date of such segregation and in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county. The boards of county commissioners shall meet as provided in section 2336 and ascertain the amount so to be paid and the board of county commissioners of the original county shall issue warrants for such amount, payable immediately to the treasurer of the county organized under this article and the amount so received by the latter shall be by him placed to the credit of the proper funds of his county. [1887, ch. 38, § 13; R. C. 1899, § 1863.]

§ 2339. **Commissioners to redistrict counties.** The county commissioners of a county from which a portion segregates under this article shall immediately after such segregation redistrict their county into the districts provided for by the laws then existing and shall fill the vacancies occasioned by such segregation in the manner provided by law for filling vacancies. [1887, ch. 38, § 14; R. C. 1895, § 1864.]

§ 2340. **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 redistrict the said county into commissioner districts, and such redistricting may be done at a regular or special meeting. In redistricting 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. [1905, ch. 71.]

§ 2341. **Districts renumbered and renamed.** School districts and road districts within counties affected by this article shall be renumbered so as to make their numbers in each county run consecutively, and the names of school townships may when necessary be changed. [1887, ch. 38, § 15; R. C. 1899, § 1865.]

§ 2342. **When districts liable for bonds.** When the boundaries of any school district or school township have been changed under the provisions of this article that portion of such school district or school township in which the school houses and other property remain shall be liable for the payment of the bonds, if any, issued by such school district or school township, and if such portion shall have been attached to another school district or school township the school district or school township to which such portion has been attached shall be liable for the payment of the bonds, if any, of the school district or school township to which such portion formerly belonged. [1887, ch. 38, § 16; R. C. 1899, § 1866.]

§ 2343. **Validity of bonds.** The validity of bonds issued by school districts or school townships prior to the division of any county under this article shall in nowise be affected by such division nor by the renumbering or renaming of the school district or school township that issued them. [1887, ch. 38, § 17; R. C. 1899, § 1867.]

§ 2344. **Fees of county commissioners.** County commissioners while in the discharge of their duties as provided for in the preceding sections of this article shall receive the same compensation as is allowed by law for the performance of their ordinary official duties. [1887, ch. 38, § 18; R. C. 1899, § 1868.]

§ 2345. **Indebtedness of new county.** The amount of indebtedness of a county organized under this article as ascertained by the two boards of county commissioners as aforesaid shall be paid to the county from which it segregates in the bonds of the new county thus segregated as hereinafter provided. [1887, ch. 38, § 19; R. C. 1899, § 1869.]

§ 2346. **When bonds to be dated.** Such bonds shall be dated on the first day of January or July, from which the outstanding indebtedness of the original county is calculated as provided in section 2336; shall be issued for a period corresponding with the time or term on which the obligations of the original county become due and payable; shall be payable at the same place and shall bear the same rate of interest as the obligations of the original county, said commissioners taking care to classify the liquidating bonds, issuing a due proportion of each in proportion to each of the original county obligations bearing different rates of interest and places of payment; and such original county shall have authority to exchange such bonds for an equal amount of obligations of its own of the same class. [1887, ch. 38, § 20; R. C. 1899, § 1870.]

§ 2347. **County treasurer to keep bond register.** The county treasurer of a county issuing bonds under the provisions of this article shall provide himself with a book to be called the "bond register" wherein he shall note the number and denomination of each bond issued by his county, the date of issue, when and where payable, with such other facts as the county commissioners of his county shall direct, which bond register when completed shall be deposited with the county auditor of his county and shall be and remain a part of the records of his office. [1887, ch. 38, § 21; R. C. 1899, § 1871.]

§ 2348. **Commissioners to issue liquidating bonds.** The board of county commissioners of a county organized under this article is empowered and directed to issue such liquidating bonds in denominations as may be required by the old county, not to exceed one thousand dollars each, and deliver the same to the county auditor of the old county who shall receipt therefor, affixing the seal of his office to such receipts, and the county auditor of the county organized under this article shall enter such receipts at large upon the records of the board of county commissioners and note the same in the bond register of his county. [1887, ch. 38, § 22; R. C. 1899, § 1872.]

§ 2349. **Commissioners to levy tax.** The board of county commissioners of a county issuing bonds under the provisions of this article shall for each year after the date of such bonds, levy and cause to be collected a tax sufficient to pay the interest on such bonds as it shall become due, and also such sinking funds as shall correspond with the laws under which the bonds of the original county were issued, sufficient to redeem such bonds at maturity; and as fast as such sinking fund shall become available, they shall redeem such bonds in the manner provided for redeeming the bonds of the original county; provided, that public notice shall be given by such board in a newspaper, if one is published within the county, setting forth that certain bonds, giving their number and description, will be redeemed by such county, and naming the date of such redemption. [1887, ch. 38, § 23; R. C. 1899, § 1873.]

§ 2350. **Interest for redemption of bonds.** The money collected for the payment of the interest or principal of said bonds shall not be used for any other purpose until such bonds are redeemed; any surplus thereafter shall be placed in the county general fund. [1887, ch. 38, § 24; R. C. 1899, § 1874.]

§ 2351. **Revenue of counties.** The authority of any county, from which a portion segregates under the provisions of this article, for the collection of revenue within the boundaries of the portion segregating, shall cease from the date upon which the two boards of county commissioners under the provisions of section 2336 base the settlement between their counties, and all assessments and levies made by the authority of the county, from which a portion segregates, by its officers in the lawful performance of their official duties, affecting any of the territory embraced in the boundaries of such new county, shall remain the same and shall be payable to and collectible by the lawful authorities of the latter only. [1887, ch. 38, § 25; R. C. 1899, § 1875.]

§ 2352. **Judicial subdivision.** Any county organized under the provisions of this article shall, as soon as its organization shall have been completed,



constitute and be created a judicial subdivision of the judicial district to which it properly belonged at and before its organization. [1887, ch. 38, § 26; R. C. 1899, § 1876.]

§ 2353. **Judge to appoint term of district court.** The judge of the judicial district in which a county organized under this article is created a legal subdivision of his district under the provisions of the last section shall appoint and hold at least two terms of the district court each year at the county seat of such county. [1887, ch. 38, § 27; R. C. 1895, § 1877.]

§ 2354. **Venue, when changed.** In all actions or proceedings, civil or criminal, for the prosecution of a crime committed or a cause of action arising within the boundaries of any judicial subdivision created under the provisions of this article, and properly triable in such subdivision under the provisions of the codes of civil and criminal procedure, the venue thereof shall be changed to the new county by order of the court upon the demand of either party, which demand shall be served upon the opposite party or his attorney, if either can conveniently be found in the state; but if neither can conveniently be found therein, then such change of venue may be made upon filing such demand with the clerk of the district court. [1887, ch. 38, § 28; R. C. 1895, § 1878.]

§ 2355. **Writs, bonds and recognizances.** All process, writs, bonds, notices, appeals, recognizances, papers and proceedings in actions changed to a new county under this article, issued and made returnable to the district court of the county from which a portion has been segregated and organized under this article prior to the creation of such legal subdivision, shall be taken and considered as made, taken and returnable to the district court within the boundaries of such new judicial subdivision, and such bonds, recognizances and obligations shall be payable to such new county and recoverable upon in the name of such new county, and all papers and certified copies of all proceedings had in such action shall be transmitted by the clerk of the district court of the old to the clerk of the district court of the new county. [1887, ch. 38, § 29; R. C. 1899, § 1879.]

§ 2356. **Jurisdiction of officials.** All territory within the state of North Dakota over which any county has exercised jurisdiction in civil and criminal matters and which has for all intents and purposes been treated as a portion of such county for not less than two years last past, shall be and the same is hereby declared a part of such county, and all of the official acts and doings of all state, county, township, school, district or other officials within such county in the exercise of such jurisdiction are hereby ratified in so far as to give such acts the same validity as they would have had if such territory had been a part of such county when such acts were performed. [1889, ch. 57, R. C. 1899, § 1879a.]

§ 2357. **Unorganized counties attached to Stark county for judicial purposes.** The unorganized counties of McKenzie, Wallace, Dunn, Hettinger and Bowman and the territory formerly known as the unorganized county of Williams, the same lying south of the Missouri river and between the unorganized county of Dunn and the county of Mercer, is hereby attached to the county of Stark for judicial purposes. [1903, ch. 70; see article 6, ch. 28, political code.]

**Note:**—The provisions of this section abrogated by article 6 of this chapter.

#### ARTICLE 5.—COUNTY SEATS.

§ 2358. **County seat, removal of.** Whenever the inhabitants of any county in this state desire to remove the county seat of the county from the place where it is fixed by law, or otherwise, to another place, they may present a petition to the board of county commissioners of their county praying such removal and that an election be held to determine whether or not such removal shall be made. Such petition must be verified by the affidavit of each of the

signers thereof, stating that he is a resident of the county, a qualified elector therein, and that he personally signed his name thereto knowing the contents and purposes of the petition; provided, however, that where any city, town or village has been recognized as the county seat of any county for the period of more than ten years last past, and where all of the public business required by law to be transacted at the county seat has been transacted at said place during all of said period, said city, town or village shall be deemed to be the county seat of such county, and the county seat can be removed therefrom only in the manner now provided by law. [R. C. 1895, § 1880; 1901, ch. 57.]

Mandamus proper remedy to determine whether county seat has been legally changed. Two-thirds vote polled means on particular question. Determination of county board final on sufficiency of petition. *State ex rel Little v. Langlie*, 5 N. D. 594, 67 N. W. 958.

Under South Dakota constitution majority of votes cast on such question insufficient. Change of location effected only by a majority of all votes cast at the general election. *Adkins v. Lien et al*, 10 S. D. 436, 73 N. W. 909.

§ 2359. **Commissioners to submit question to vote, when.** If the petition is signed by qualified electors of the county equal in number to at least three-fifths of all the votes cast in the county at the last preceding general election, the board must, at the next general election, submit the question of removal to the electors of the county. [1899, ch. 70; R. C. 1899, § 1881.]

§ 2360. **Notice of election.** Notice of such election, clearly stating its object, must be given and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law. [R. C. 1895, § 1882.]

§ 2361. **Ballot, how marked. Notice of result.** 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 and compared and the result ascertained by the board, if two-thirds or more 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 posting notices thereof in all the election precincts in the county and by publishing a like notice in a newspaper published in the county at least once a week for four weeks. [R. C. 1895, § 1883.]

§ 2362. **County seat, when deemed changed.** In the notice provided for in the last section the place selected to be the county seat of the county must be so declared from a day specified in the notice, not more than ninety days after the election. After the day thus named in the notice, the place chosen shall be the county seat of the county. [R. C. 1895, § 1884.]

§ 2363. **Statement of result of election, where filed.** Whenever any election has been held as provided in this article, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county auditor, and whenever the board gives the notice prescribed in the last section, it must transmit a certified copy thereof to the secretary of state. [R. C. 1895, § 1885.]

§ 2364. **Election held only once every four years.** When an election has been held and at least two-thirds of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter. [R. C. 1895, § 1886.]

§ 2365. **Subsequent removal, petition for.** When the county seat of a county has been once removed by a two-thirds vote of the people of the county, it may be again removed from time to time in the manner provided in this article; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by the qualified electors of the county equal in number to at least two-thirds of all the votes cast at the last

preceding general election, nor unless at such election, when ordered, two-thirds of all the votes cast are in favor of some other place as the county seat of the county, and such election, when so ordered, shall take place at the first general election held thereafter, nor must two elections to effect such removal be held within four years. [R. C. 1895, § 1887.]

Election held not oftener than once in four years. State ex rel Cosper v. Porter, 13 S. D. 126, 82 N. W. 415.

§ 2366. **Special provisions where no court house has been constructed.** In all organized counties in this state wherein prior to the taking effect of this article 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. [1905, ch. 77, § 1.]

§ 2367. **Notice of, how given.** Notice of such election shall be given in the manner prescribed by section 2360. [1905, ch. 77, § 2.]

§ 2368. **Ballots, how marked. Notice of result.** 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. [1905, ch. 77, § 3.]

§ 2369. **Record of result. Counties exempt.** The board of county commissioners shall cause a statement of the result of said election to be deposited and transmitted as provided by section 2363. This article shall not apply in counties having more than six thousand five hundred inhabitants according to the last census. [1905, ch. 77, §§ 4, 5.]

#### ARTICLE 6. ORGANIZATION OF MCKENZIE COUNTY.

§ 2370. **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. [1905, ch. 73, § 1.]

§ 2371. **Boundaries.** The boundaries of said McKenzie county shall be as follows, to wit: Commencing at the southeast corner of township one hundred forty-five north, of range ninety-eight west: thence running north between ranges ninety-seven and ninety-eight west to the twelfth standard parallel: thence east and along said twelfth standard parallel to the southeast corner of township one hundred forty-nine north, of range ninety-four west: thence north between ranges ninety-three and ninety-four 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 one hundred forty-five north, of range ninety-eight west, and the place of beginning. [1905, ch. 73, § 2.]

§ 2372. **Governor to locate temporary county seat and appoint officers.** The governor of this state is hereby authorized and directed, within sixty days after this article takes effect 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. [1905, ch. 73, § 3.]

§ 2373. **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 article, 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. [1905, ch. 73, § 4.]

§ 2374. **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. [1905, ch. 73, § 5.]

§ 2375. **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. [1905, ch. 73, § 6.]

§ 2376. **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. [1905, ch. 73, § 7.]

#### ARTICLE 7.—CORPORATE POWERS AND LIABILITIES.

§ 2377. **County a corporate body. Powers.** Each organized county is a body corporate for civil and political purposes only and as such may sue and be sued, contract and be contracted with, and in all cases where lands have been granted to any county for public purposes and any part thereof has been sold, and the purchase money or any part thereof, shall be due and unpaid, all proceedings necessary to recover possession of such lands or to enforce the payment of the purchase money shall be instituted in the name of the proper county. [R. C. 1899, § 1888.]

May sue and be sued in corporate name. *Barrett v. Stutsman County*, 4 N. D. 175, 59 N. W. 964; *McCook County v. Kammos*, 7 S. D. 558, 64 N. W. 1123; *State v. Davis*, 11 S. D. 111, 75 N. W. 897; *Lyman County v. State*, 9 S. D. 413, 69 N. W. 601.

§ 2378. **Judgments against counties, how paid.** When any judgment is obtained against a county the board of county commissioners shall have power at any time after the expiration of six months from the rendition thereof to assess and collect a sufficient amount of revenue to pay off and discharge such judgment in addition to the ordinary expenses of the county. But the property of the county, and of persons owning property situated or liable to taxation therein, shall in no case be subject to judgment lien nor to seizure or sale upon execution or other process of any court. [1881. ch. 54. § 1; R. C. 1899, § 1889.]

ARTICLE 8.—STATE ACCOUNTS WITH COUNTIES.

§ 2379. **Auditor to keep account with each organized county.** The state auditor shall keep an account with each organized county of the state in which each county shall be charged with the amount of delinquent tax now due the state and with all sums hereafter levied in each county for state purposes; and credited with all sums paid into the state treasury on account of such taxes. [1890. ch. 183, § 1; R. C. 1899, § 322.]

§ 2380. **County auditors to furnish abstract of tax lists.** He shall require the county auditors to furnish him with an abstract of the tax lists of their respective counties when the same are completed, on such blanks as he shall prescribe. [1890, ch. 183, § 2; R. C. 1899, § 323.]

§ 2381. **Monthly statements of taxes collected. County treasurer to furnish.** He shall require the several county treasurers to furnish him with a statement, attested by the county auditor, on the fifteenth day of each month, showing the amount of state taxes collected during the preceding calendar month, and the October statement shall be an abstract of the total receipts by the county treasurer for the preceding year. [1890. ch. 183. § 3; 1891. ch. 1. § 1; R. C. 1895. § 324.]

§ 2382. **Auditor to deliver to state treasurer order on county treasurer.** The state auditor shall immediately after receiving the statement provided for in the preceding section draw and deliver to the state treasurer an order on each county treasurer for the amount so certified as collected for the state, and charge the state treasurer with the same, giving the county credit for the amount and sending to the county auditor of each county a duplicate of such order or draft. [1890. ch. 183, § 4; R. C. 1899, § 325.]

§ 2383. **State treasurer to notify county treasurer.** The state treasurer shall notify each county treasurer of the amount of such draft or order and designate the manner in which the money shall be forwarded to him, and upon receipt of the same shall forward such draft or order to the county treasurer with his endorsement, and such draft or order shall be the county treasurer's receipt for the amount stated. All funds collected by or in the hands of the treasurer of any county in this state shall be promptly remitted by such county treasurer without expense to the state, and at the risk of the county treasurer, for which the county treasurer shall be allowed his actual expenses by the board of county commissioners. [1890, ch. 183, § 5; 1899. ch. 152; R. C. 1899, § 326.]

ARTICLE 9.—COUNTY OFFICERS.

§ 2384. **Number and election of.** Each organized county shall have the following officers: One county auditor, one register of deeds, one clerk of the district court, one state's attorney, one sheriff, one county judge, one county treasurer, one county surveyor, one coroner, one county superintendent of schools, one public administrator, four justices of the peace and four constables. And there shall be three or five county commissioners as hereinafter provided, who shall constitute the board of county commissioners. Such officers shall be chosen by the qualified electors of their respective counties at the general election in each even numbered year, except the commissioners

who shall be chosen by the electors of their respective districts, of which district such commissioners shall be qualified electors. [1883, ch. 33, § 3; R. C. 1895, § 1890; 1903, ch. 140.]

§ 2385. **Sheriff and treasurer eligible two terms only.** The sheriff and the county treasurer shall not be eligible for election to such offices for more than two successive terms of two years each [1889, ch. 103, § 1; R. C. 1899, § 1891.]

ARTICLE 10.—COUNTY COMMISSIONERS.

§ 2386. **Number of county commissioners may be changed, how.** The number of county commissioners of any county may be increased to five, or reduced to three, in the manner following: Whenever the legal voters of the county equal in number to one-third the number of legal votes cast at the last preceding general election, petition the board of county commissioners for an increase or decrease in the number of county commissioners, said board shall submit the question to a vote of the electors of the county at the next general election. Notice of the submission of such question shall be given in the notice of election prescribed by section 637. If the petition is for an increase in the number of commissioners the proposition shall be submitted in this form:

“For five commissioners.”

“Against five commissioners.”

If it is for a reduction, the proposition shall be in this form:

“For three commissioners.”

“Against three commissioners.” [1897, ch. 45; R. C. 1899, § 1892.]

§ 2387. **Districts, how formed. Commissioners, how designated.** When the returns of such election show a majority of all the legal votes cast to be for an increase from three to five, it shall be the duty of the board of county commissioners, within ten days after the votes have been canvassed, to divide the county into five districts. The districts shall be numbered from one to five, those last created being designated fourth and fifth respectively. At the ensuing general election commissioners for such additional districts shall be elected, the commissioner for the fourth district for a term of two years, and the commissioner for the fifth district for a term of four years. The tenure of office of the existing board of county commissioners shall not be affected. The district which each commissioner shall represent shall be designated by such board. When the special election results in a majority for a decrease of from five to three, the existing county board shall, at the end of the first two expiring terms of the same year declare such districts vacant, and at their first regular meeting thereafter proceed to divide the county into three commissioner districts, and in such division designate the district which each of the three remaining commissioners shall represent. [1890, ch. 48, § 2; R. C. 1899, § 1893; 1901, ch. 52, § 2.]

§ 2388. **Commissioner districts redistricted, when.** The county judge, auditor and clerk of the district court of each county shall constitute a redistricting board with power to redistrict the commissioner districts in any county whenever twenty-five per cent of the legal voters of the county, as shall be determined by the votes cast at the last preceding general election for congressmen, shall petition said board to change the boundaries of the commissioner districts and file said petition with the county auditor. Within twenty days after the filing of said petition it shall be the duty of the county auditor to call a meeting of the redistricting board to consider such petition, and if it shall appear that the commissioner districts of such county are not reasonably equal in population or extent of territory they shall proceed at once to redistrict such county into commissioner districts. [1895, ch. 34, § 1; R. C. 1899, § 1894; 1901, ch. 54.]



§ 2389. **Duty of redistricting board.** In redistricting any county it shall be the duty of the redistricting board to make the districts as regular and compact in form as practicable, and as equal in population as possible, as shall be determined by the vote cast at the last preceding general election, but no new district shall be so formed that any two of the then acting commissioners shall reside in the same district, and no county shall be redistricted oftener than once in five years. [1895, ch. 34, § 2; R. C. 1899, § 1895; 1901, ch. 54.]

§ 2390. **Term of office of commissioners.** The commissioners shall hold their office for the term of four years, except as provided by law for the organization of counties, and in counties now organized the order of their election and succession shall be as herein provided, and commissioner districts in such county shall continue as now constituted until changed as provided by law; provided, that in all counties in this state, wherein heretofore commissioners have been elected under the provisions of any special law, that at the next regular meeting of the board of county commissioners, immediately after the taking effect of this article, the county commissioners in such counties shall by lot settle and determine upon the order of their succession, three commissioners to hold their office for four years and two for two years from the first Monday in January, 1903. [R. C. 1899, § 1896; 1901, ch. 52, § 3; 1903, ch. 74, § 1.]

§ 2391. **County seal.** The board of county commissioners shall procure and keep a seal with such emblems and devices as they may think proper, which shall be the seal of the county and no other seal shall be used by the county auditor; and the impression of such seal by the stamp shall be sufficient sealing in all cases where sealing is required. [R. C. 1899, § 1897.]

Affixing corporate seal makes instrument a specialty. *Heffleman v. Pennington County*, 3 S. D. 162, 52 N. W. 851.

§ 2392. **Meetings of board, time and place of.** The county commissioners shall meet and hold sessions for the transaction of business at the court houses in their respective counties, or at the usual places of holding court, on the first Mondays in January, April, July and October of each year and may adjourn from time to time; and the county auditor shall have power to call special sessions when the interests of the county demand it, upon giving five days' notice of the time and object of such meeting by posting up notices in three public places in the county or by publication in one newspaper in the county; provided, that in case of a vacancy in the office of the county auditor the chairman of the board shall have power to call a special session for the purpose of filling the same. [R. C. 1899, § 1898.]

Call for special meeting must state object. Words "for transaction of other business which may come before board" not sufficient. *Emmons County v. Bank*, 9 N. D. 583, 84 N. W. 379.

§ 2393. **Chairman, duties of.** At the first meeting of the board each year they shall elect one of their number chairman who shall act as chairman of such board during the year in which he is elected or until his successor is elected, and in case of a vacancy from any cause whatever the board shall elect another chairman. It shall be the duty of the chairman to preside at the meetings of the board; and all orders made by the board and all warrants drawn on the county treasurer, except warrants for salaries of county officers, shall be signed by the chairman and attested by the county auditor. [R. C. 1895, § 1899.]

Signature of the acting chairman of board of commissioners necessary to make warrant valid. *State v. Ryan*, 9 N. D. 419, 83 N. W. 865; *State ex rel Wiles v. Heinrich*, 11 N. D. 31; 88 N. W. 734.

Acts of de facto board held valid. *Bank v. McKinney*, 2 S. D. 106, 48 N. W. 841.  
County bonds signed by chairman and clerk of board unauthorized by board, invalid. *Brown v. BonHomme County*, 1 S. D. 216, 46 N. W. 173.

§ 2394. **Tie vote defers decision.** When the board is equally divided on any question it shall defer a decision until the next meeting at which time the matter shall be decided by a majority of the board. [R. C. 1899, § 1900.]

§ 2395. **Proceedings. Copies as evidence.** Copies of the proceedings of the board duly certified and attested by the county auditor under seal shall be received as evidence in all courts of this state. [R. C. 1899, § 1901.]

§ 2396. **Power of board to preserve order.** The board shall have power to preserve order when sitting as a board and may punish contempts by fines not exceeding five dollars or by imprisonment in the county jail not exceeding twenty-four hours; and it may enforce obedience to its orders by attachment or other compulsory process, and when fines are assessed by it the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines within ten days after they are collected. [R. C. 1899, § 1902.]

§ 2397. **Boards to keep record books.** They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges; and all orders for the allowance of money from the county treasury shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively as allowed from the first day of January to the thirty-first day of December in each year; also a book for the entry of all proceedings relating to bridges and the establishment, change or discontinuance of roads, and a book for the entry of warrants on the county treasurer, showing the number, date, amount and name of the payee of each warrant drawn, which book shall be known as the warrant book, and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn. [R. C. 1899, § 1903.]

§ 2398. **Warrants canceled, when. Description of in minutes.** The board is authorized and required at each regular meeting to cancel and destroy all warrants drawn on any fund of the county which may have remained uncalled for and on file for a period of six years or more next preceding the regular meeting on which such cancellation takes place. Such board shall before canceling and destroying any such warrants cause to be entered in the minutes of its proceedings a brief description thereof, containing the name of the payee, and the number, date and amount of each warrant to be destroyed. [1887, ch. 3, §§ 1, 2; R. C. 1899, § 1904.]

§ 2399. **Board, powers of.** It shall have power to institute and prosecute civil actions in the name of the county for and on behalf of the county. It shall also have power to make all orders respecting property of the county, to sell the public grounds of the county and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section it shall be sufficient to convey all the interest of the county in such grounds when an order is made for the sale and a deed is executed in the name of the county by the chairman of the board reciting the order and signed and acknowledged by him for and on behalf of the county; provided, that the question of the sale of such public grounds or land shall first be submitted to a vote of the people of the county as hereinafter provided and sanctioned by a majority vote thereof. [R. C. 1899, § 1905.]

County commissioners no right to employ other counsel where the control and management of action is vested in attorney general. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

Unauthorized to make contract to collect judgment. Bring supplementary proceedings or actions against judgment debtors. Exclusive control and jurisdiction is in district court. *Fox v. Walley et al*, 13 N. D. 610, 102 N. W. 161.

Commissioners have power in absence of fraud to compromise disputed claims by accepting less than amount of judgment. *State v. Davis*, 11 S. D. 111, 75 N. W. 897; *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.



§ 2400. **Additional powers.** In addition to the powers hereinbefore mentioned such board shall have power:

1. To levy a tax not exceeding the amount authorized by law and to liquidate indebtedness.

2. To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit.

3. To construct and repair bridges, and to open, lay out, vacate and change highways in the cases provided by law.

4. To establish election precincts in its county and to appoint the judges of election in cases provided by law.

5. To equalize the assessments of the county in the manner provided by law.

6. To furnish the necessary blank books, blanks and stationery for the clerk of the district court, county auditor, register of deeds, county treasurer, county judge, sheriff, public administrator, and state's attorney of its county, to be paid out of the county treasury; also to furnish a fire proof safe, when in its judgment the same shall be advisable, in which to keep all the books, records, vouchers and papers pertaining to the business of the board; provided, that the county auditor, county treasurer, and the chairman of the board of county commissioners together shall constitute a committee, empowered and required to purchase and provide all necessary blanks, books and other stationery for the use of all county officers in their official capacity.

7. To do and perform such other duties as now are or may hereafter be prescribed by law. [1899, ch. 59; R. C. 1899, § 1906.]

§ 2401. **Board to superintend fiscal affairs of county.** It shall superintend the fiscal affairs of the county and secure their management in the best manner. It shall keep an account of the receipts and expenditures of the county and on the first Monday of July annually it shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year to be made out in detail under separate heads with an account of all debts payable to and by the county treasurer and it shall have the same published in at least one newspaper in its county. If there is no newspaper in the county the same shall be posted up at the usual place of holding its sessions. [R. C. 1895, § 1907.]

Board of county commissioners superintend fiscal affairs of county and constitute the auditing board to audit claims. State ex rel Wiles v. Heinrich, 11 N. D. 31, 88 N. W. 734.

County commissioners acting in good faith may for value sell outstanding overdue notes belonging to county. Brown County v. Jenkins, 11 S. D. 330, 77 N. W. 579.

§ 2402. **Special tax levy for immigration.** The board is authorized at the time fixed by law for the levying and assessment of taxes to levy a tax not exceeding one-fourth of one mill on the dollar upon the assessed valuation of all the property in the county upon presentation of a petition signed by one-third of the legal voters of the county, taking the total vote at the last general election for a basis, the proceeds of which shall be used solely for the purpose of promoting and assisting immigration to this state. [1891, ch. 72, § 1; R. C. 1899, § 1908.]

§ 2403. **Immigration fund.** The funds provided to be raised in accordance with the last section shall be denominated the "immigration fund" and shall be kept separate and distinct by the county treasurer and shall be expended by and under the direction and control of the board of county commissioners at such time and in such manner as is by such commissioners deemed best for the purpose of securing immigration to the state. [1891, ch. 72, § 2; R. C. 1899, § 1909.]

§ 2404. **Board may procure original field notes.** The board is authorized to procure for its county a copy of the field notes, as soon as practicable, of

the original survey of its county by the United States, and cause a map of the county to be constructed therefrom on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, the same to be kept open in the office of the county auditor and the field notes to be deposited therein. [R. C. 1899, § 1910.]

§ 2405. **Board to submit extraordinary outlay to a vote.** It shall submit to the people of the county at any regular or special election any question involving an extraordinary outlay of money by the county or any expenditure greater in amount than can be provided for by the annual tax, or the question of the construction of any court house, jail or other public building, or whether it will aid in constructing or construct any highway or bridge. [R. C. 1895, § 1911.]

If bonds are to be voted, resolution submitting question must contain amount. *Territory v. Steele*, 4 Dak. 78, 23 N. W. 91.

§ 2406. **Extraordinary expenditures authorized by vote.** If the county commissioners deem any expenditure necessary greater in amount than can be provided for by the annual tax, they shall require a vote of the county thereon, either at a general election, or one called especially for the purpose. In either case four weeks' notice of said election shall be given in the official newspapers of the county, and the notice shall specify the amount to be raised, and the precise purpose for which it is to be expended; and if a majority of the votes cast authorize the tax, the county commissioners shall authorize the same to be levied and collected in the same manner as the annual tax, and if possible, at the same time; provided, however, that no new assessment shall be made for any special tax; provided, further, that whenever in the opinion of the board of county commissioners of any county, or a majority thereof, it shall be deemed for the best interests of said county that any land adjoining the court house, is, or shall thereafter be necessary for the enlargement of said court house, or the county jail of said county, or for the purpose of beautifying such county buildings, or for the prevention of other buildings in such close proximity to said court house and jail that the transaction of public business would be thereby discommoded or rendered inconvenient, then said board of county commissioners, or a majority thereof, shall have power and authority and they are hereby vested with such power and authority, to purchase such land so adjoining said court house, without submitting such question to a vote of the people, and the money required for the purpose of such additional land hereinbefore provided for shall be raised as provided for the raising of funds for general county purposes. [R. C. 1899, § 1311; 1901, ch. 73.]

§ 2407. **Mode of submitting propositions.** The mode of submitting questions to the people contemplated by the last section shall be the following: The whole question including the sum desired to be raised and the amount of the tax desired to be levied or the rate per annum, shall be published at least four weeks in some newspaper published in the county. If there is no such newspaper the publication shall be made by posting in at least one of the most public places in each election precinct in the county; and in all cases the notices shall name the time when such questions shall be voted upon and the form in which the question will be submitted; and a copy of the question submitted shall be posted at each voting place during the day of election. [R. C. 1895, § 1912.]

§ 2408. **Proposition to tax must accompany question submitted.** When the question submitted involves the borrowing or expenditure of money, such proposition must be accompanied by a proposition to levy a tax for the payment thereof, in addition to the usual taxes required to be levied; and no vote adopting the question proposed shall be valid unless it likewise adopts the amount of tax to be levied to meet the liability incurred. [R. C. 1895, § 1913.]

§ 2409. **Tax not to exceed three mills annually.** The rate of tax levied in pursuance hereof shall in no case exceed three mills on the dollar on the assessed valuation of the county in any one year. When the object is to borrow money to aid in the erection of public buildings the rate shall be such as to pay the debt in ten years; when the object is to construct or aid in constructing any road or bridge the annual tax rate shall not exceed one mill on the dollar of the valuation; and any special tax or taxes levied in pursuance of this article, after becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of law. [R. C. 1899, § 1914.]

§ 2410. **Record of vote. Board cannot rescind.** Such commissioners upon being satisfied that the above requirements have been substantially complied with and that a majority of the votes cast are in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing a record of their proceedings, and they shall then have power to levy and collect the special tax in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board. [R. C. 1899, § 1915.]

§ 2411. **Money to be specifically applied.** Money raised by the county commissioners in pursuance of the last five sections is specifically appropriated and constitutes a fund distinct from all others, in the hands of the county treasurer, until the obligations assumed are discharged. [R. C. 1899, § 1916.]

§ 2412. **Board may transfer unexpended balances, when.** The board of county commissioners may at any regular meeting thereof, whenever in their judgment there is immediate need for the erection and repairing of court houses, jails or other necessary buildings within and for the county, by resolution, create a county building fund, and thereafter at their regular meeting in July of each year, may transfer to said building fund any unexpended balances which are or may be in the hands of the treasurer belonging to the road and bridge fund, penalty and interest fund or emergency fund, after current bills or authorized expenditures against said funds have been audited and paid, or any balance in the interest on bonds fund in excess of the forthcoming installment of interest on any outstanding bonds, or any balance remaining in any sinking fund created for the purpose of paying bonded indebtedness, when all bonds for which said fund was created have been retired and paid. In cases where there are no immediate demands for the erection and repairing of any court houses, jails or other necessary buildings within and for the county, then the transfers herein contemplated may be made to the county general fund. [1890, ch. 175, § 1; 1891, ch. 3, § 1; R. C. 1899, § 1917; 1903, ch. 73.]

Appeal must be taken as provided by statute. *Lyman County v. Board*, 14 S. D. 341, 85 N. W. 597; *Wood v. Bangs*, 1 Dak. 179, 46 N. W. 586; *Taubman v. Board*, 14 S. D. 206, 84 N. W. 784.

Appeal from the board of county commissioners must be tried de novo in the district court. *Goldstreet v. Newton*, 2 Dak. 149, 3 N. W. 329.

Action on claim not barred by failure to appeal from action of board thereon. *Spencer v. Sully County*, 4 Dak. 474, 33 N. W. 97.

§ 2413. **Special funds may be transferred, when.** Whenever there remains in the treasury of any county an unexpended balance of any special fund and all claims against such fund have been fully paid, and the purpose for which it was created has been fully subserved and there remains no further use for such balance for the purpose for which it was created, it shall be lawful for the board to transfer such balance to any other fund of the county or subdivisions to which such balance belongs. [1887, ch. 144, § 1; R. C. 1899, § 1918.]

§ 2414. **Warrants, how signed and attested.** All warrants upon the county treasury, except warrants for salaries of county officers, shall be issued upon the order of the board of county commissioners, signed by the

chairman thereof and attested by the signature of the county auditor with the county seal affixed, and shall designate the fund upon which they are drawn. Warrants for salaries of county officers may be drawn by the county auditor from time to time as such salaries become due and payable. [R. C. 1895, § 1919.]

Affixing corporate seal makes instrument specialty. Warrant sealed instrument. Action must be brought within statutory period of twenty years. *Heffelman v. Pennington County*, 3 S. D. 162, 52 N. W. 851.

§ 2415. **Sessions of board to be public.** The board shall hold its sessions with open doors and transact all business in the most public manner, and, if the county has no court house or the court house shall be unfit or inconvenient, such sessions may be held at any other suitable place at the county seat. All matters pertaining to the affairs of the county shall be heard by the board in session only, but they may continue any business from any regular session to an intermediate day. [R. C. 1899, § 1920.]

§ 2416. **Record, what constitutes.** The books required to be kept by this article shall constitute the records of the board of county commissioners. [R. C. 1899, § 1921.]

§ 2417. **Where records to be kept.** The office of county auditor, county treasurer, clerk of court, county judge, sheriff, county superintendent of schools, or any other county officer having in charge any public records, shall be in the court house in said county, in rooms provided for said offices by the county commissioners. Any person elected to any office mentioned in this section who refuses or neglects to keep the records of his office in the room in the court house provided for that purpose, shall be deemed guilty of a misdemeanor; provided, however, that in counties not having court houses of sufficient size to accommodate all of these offices, the commissioners may make other provision for same. [1903, ch. 77.]

§ 2418. **Board to provide offices, court room, jail, etc.** In any county where there is no court house or jail erected by the county, or where those erected have not sufficient capacity, it shall be the duty of the board to provide a court room and jail, also offices for the following named officers: Sheriff, treasurer, register of deeds, auditor, clerk of the district court, state's attorney, county judge and county superintendent of schools, to be furnished by such county in a suitable building at the lowest rent to be obtained at the county seat, or to secure and occupy suitable rooms at a free rent within the limits of the county seat or any of the additions thereto until such county builds a court house. It shall also provide the courts appointed to be held therein with attendants, fuel, lights and stationery suitable for the transaction of their business. If the board neglects, the court may order the sheriff to do so, and the expense incurred by him in carrying such order into effect, when certified by the court, shall be a county charge. [1885, ch. 41, § 1; R. C. 1899, § 1922.]

Officer may compel board to furnish office. *Cleary v. Eddy County*, 2 N. D. 397, 51 N. W. 586.

Offices must be maintained at county seat by certain officers. *State ex rel Coper v. Porter*, 15 S. D. 387, 89 N. W. 1012.

§ 2419. **To erect and repair buildings from current revenue.** The board shall have authority under the provisions of this article to provide for the erection and repairing of court houses, jails and other necessary buildings within and for the county, and to make contracts on behalf of the county for the building and repairing of the same; but no expenditure for the purpose herein named greater than can be paid out of the annual revenue of the county for the current year shall be made unless the question of such expenditure shall have first been submitted to a vote of the qualified electors of such county and shall have been approved by a majority of the votes

so cast; and the board shall determine the amount and rate of taxes to be submitted to a vote for such purpose. [R. C. 1899, § 1923.]

Expenditures greater than revenue for current year must be authorized by vote. State ex rel Diebold Safe and Lock Co. v. Getchell, 3 N. D. 243, 55 N. W. 585.

Expenditures greater than current revenue must be authorized by vote of people. Acceptance of benefits will not bind county, when. State ex rel Diebold Safe and Lock Co. v. Getchell, 3 N. D. 243, 55 N. W. 585.

Contract for collecting taxes for percentage void. Storey v. Murphy, 9 N. D. 115, 81 N. W. 23.

County commissioners cannot declare office vacant after state's attorney has entered upon duties. Howard v. Burns, 14 S. D. 383, 85 N. W. 920.

When judge may appoint additional counsel. Idem.

§ 2420. **Duty to use building fund.** After a building fund has been accumulated either from the proceeds of the sale of town lots, or from any other source, it shall be the duty of the board, within one year from the time such fund becomes available, to proceed to the erection of the necessary county buildings, including a jail, if such fund shall in the judgment of the board be sufficient for that purpose. [R. C. 1899, § 1924.]

§ 2421. **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 2392 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 section 4801, 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. [1899, ch. 59; R. C. 1899, § 1925; 1905, ch. 72.]

§ 2422. **Unused buildings may be destroyed, when.** In any county containing a population of less than six thousand inhabitants as shown by the last state or federal census, it shall be lawful for the board of county commissioners, when petitioned by one hundred or more of the voters of such county, to sell or repair any building owned by the county and not used for county purposes and which is unsafe to remain standing, or to cause such building to be torn down and to do anything in the premises which a private owner might or could do with his property. [1893, ch. 44, § 1; R. C. 1895, § 1926.]

§ 2423. **Appeals lie from decision of board.** From all decisions of the board upon matters properly before it an appeal may be taken to the district court by any person aggrieved, upon filing an undertaking in such sum and with such sureties as may be approved by the county auditor, conditioned that the appellant will prosecute such appeal without delay and pay all costs adjudged against him in the district court. Such undertaking shall be executed to the county and may be sued on in the name of the county. The state's attorney, upon the written demand of at least seven taxpayers of the county, shall take an appeal from an action of the board of county commissioners to the district court, when the interests of the county are affected, which appeal shall be taken in the name of the county, and in such case no bond shall be required. Upon serving the notice provided for in the next section the county auditor shall proceed the same as if an undertaking had been filed, and his fees for making the transcript shall be paid as other claims by the county. [1883, ch. 5, § 1; R. C. 1895, § 1927.]

Action of board final unless appeal is taken. *Tillotson v. Potter County*, 10 S. D. 60, 71 N. W. 754.

Where appeal is taken by state's attorney notice must be served on claimant. *Lyman County v. Board*, 14 S. D. 341, 85 N. W. 597.

Appeal furnishes no remedy where commissioners have refused to consider a petition to increase their number. *State ex rel Schilling v. Menzie et al*, 17 S. D. 535, 97 N. W. 745.

Action of board sitting as board of equalization appealable. *Pierre Water Works Co. v. Hughes County*, 5 Dak. 145, 37 N. W. 733.

Where court would not have original jurisdiction it cannot acquire jurisdiction upon appeal. *Champion v. Board of Co. Com'rs*, 5 Dak. 416, 41 N. W. 739.

§ 2424. **Appeal, how taken.** Such appeal must be taken within thirty days after the decision of the board by serving a written notice of appeal upon one of the members of the board; and the county auditor shall, upon the filing of the undertaking and the payment of his fees as hereinafter provided, make out a complete transcript of the proceedings of such board relating to the matter in controversy, and shall deliver the same to the clerk of the district court. [R. C. 1899, § 1928.]

§ 2425. **Appeals to be filed, when.** Such appeal shall be filed on or before the first day of the next term of the district court after such appeal is taken, and the cause shall stand for trial at such term. [R. C. 1899, § 1929.]

§ 2426. **Appeals docketed and tried de novo.** All appeals thus taken shall be docketed as other causes pending in the district court and the same shall be heard and determined de novo. [R. C. 1899, § 1930.]

§ 2427. **Power of district court.** The district court may enter a final judgment and cause the same to be executed, or may send the same back to the board with an order how to proceed and require such board to comply

therewith by mandamus, or by attachment for contempt. [R. C. 1899, § 1931.]

§ 2428. **Officers to make settlement.** All treasurers, sheriffs, clerks, constables and other officers chargeable with money belonging to any county, shall render their account to and settle with the county commissioners at the time required by law, and pay into the county treasury any balance which may be due the county, taking duplicate receipts therefor, and deposit one of the same with the county auditor within five days thereafter. [R. C. 1899, § 1932.]

§ 2429. **Board to ascertain amount of redemption money.** It is the duty of the board at each annual meeting to examine the county treasurer's tax sale book and stub receipts, and ascertain the amount of redemption money in the treasury, and require such treasurer to account for the same. [1879, ch. 49, § 10; R. C. 1899, § 1933.]

§ 2430. **Penalty for failure to render or settle accounts.** If any person thus chargeable shall neglect or refuse to render true accounts or settle as aforesaid, the board of county commissioners shall adjust the accounts of such delinquent according to the best information it can obtain and ascertain the balance due the county and order suit to be brought in the name of the county therefor; and such delinquent shall not be entitled to any commission and shall forfeit and pay to the county a penalty of twenty per cent on the amount of funds due the county. [R. C. 1899, § 1934.]

Sureties on bond are liable for penalty of twenty per cent under judgment obtained against principal. *Jerauld County v. Williams*, 7 S. D. 196, 63 N. W. 905.

§ 2431. **Warrants draw interest, when.** All county warrants hereafter drawn by the proper authorities shall, after having been presented to the county treasurer for payment and by him indorsed "not paid for want of funds," from such date draw interest at the rate of seven per cent per annum. [1881, ch. 139, § 1; R. C. 1899, § 1935.]

§ 2432. **Proceedings of board to be published.** It shall be the duty of the board to cause to be published in three newspapers published in its county, or in case there are not three newspapers within the county qualified to make such publication, then in as many as there are, a full and complete report of all its official proceedings at each regular and special meeting, such proceedings to be published as soon after each meeting as practicable, and the board shall pay at the rate of twenty-five cents per square of twelve lines of solid brevier type, or its equivalent, to each newspaper designated to publish such proceedings, which shall file or cause to be filed with the county auditor an affidavit of publication executed in proper form; provided, that not more than two newspapers in any congressional township shall be so designated, and when there are but two papers in the county and both are in the same congressional township, the commissioners shall designate but one of such papers. In case there is no newspaper published in the county, the board shall cause such proceedings to be published in such newspaper in the state as has the largest circulation in such county, and shall also cause such report to be posted in three public places in the county, one of which places shall be the office of the county auditor. [1887, ch. 51, § 2; R. C. 1895, § 1936.]

§ 2433. **Auditor to furnish copy of proceedings.** The county auditor shall make out a full and complete report of the proceedings of each regular and special meeting of the board, and transmit the same to the publishers of the newspapers selected by such board to publish such proceedings, such report to be made out and transmitted within one week from the time such proceedings are had. [R. C. 1895, § 1937.]

§ 2434. **Proceedings to be published, when.** It shall be the duty of the publisher of each newspaper selected to publish the proceedings of the

board to cause such proceedings to be published in the issue of his paper next succeeding the time of their reception. [R. C. 1895, § 1938.]

ARTICLE 11.—DEPOSITARIES OF COUNTY FUNDS.

§ 2435. **Commissioners to designate depositaries.** The board of county commissioners of each county in this state at its first regular meeting after the adoption of this code and thereafter at its first regular meeting in January of each odd numbered year, shall designate one or more national or state banks in its county as county depositaries, in which all the funds of such county shall be deposited. [1893, ch. 49, § 2; R. C. 1895, § 1939.]

§ 2436. **Proposals, advertisement for.** The county auditor of each county shall advertise in one or more newspapers of the county for at least two weeks immediately prior to such meeting for sealed proposals for the deposit of the funds of such county, which advertisement shall state the date up to which such proposals will be received, which date shall be the first day of the meeting of the board at which such proposals are to be opened. Such proposals shall state in writing what rate of interest will be paid on the 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 inclosed in sealed envelopes addressed to the county auditor and marked "proposals for deposit of county funds," and shall be by the county auditor filed in his office. [1893, ch. 49, § 3; R. C. 1895, § 1940.]

§ 2437. **Proposals, acceptance of. Bonds.** Such proposals shall be presented to the board at such meetings, and then, but not until then, shall be opened by the county auditor in the presence of the board, and the board shall thereupon proceed to accept the proposal of the bank or banks offering the highest rate of interest not inconsistent herewith, subject to the filing of a satisfactory bond as hereinafter provided, the amount of which bond shall then and there be fixed by the board. Before any bank shall be designated as such depository it shall submit to the board for its approval a bond payable to the county, conditioned for the safe keeping and repayment of any and all funds deposited in such bank, which bond shall be signed by not less than five freeholders of the county as sureties; such bond to be in the sum required by the 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 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 board, and the approval thereof indorsed thereon by the chairman of the board and by him deposited with the county auditor; and any bank whose bond shall have been so approved shall thereupon be designated by the board as a county depository and shall continue as such until such time as the board shall readvertise for bids as aforesaid. If the board fails or refuses to approve any such bond, the same may be presented to the judge of the district court, upon three days' notice to the county auditor, who shall proceed to hear and determine the sufficiency of such bond, and may approve or disapprove the same as the facts warrant. If he approves such bond said bank shall be declared a public 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 board of county commissioners may require such bank or banks to file a surety company bond for a sum equal to the amount of funds such bank may receive according to this article. If at any time the amount of funds on deposit in any such depositories shall exceed the amount named in such surety bond, it shall be the duty of the 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 bonds shall be approved as provided by law. [1893, ch. 49, § 4; R. C. 1895, § 1941; 1901, ch. 65.]

Erasure of surety's name releases sureties, when. *Cass County v. Amer. Ex. Bank*, 11 N. D. 238, 91 N. W. 59.

§ 2438. **Equal bidders. Depository, how determined.** When two or more banks in the same county proposing to become depositaries, offer the same rate of interest, it shall be the duty of the board to select impartially as many of such banks as depositaries as offer ample security for such deposit. 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. [1893, ch. 49, § 5; R. C. 1899, § 1942; 1901, ch. 68.]

§ 2439. **Sinking funds. Duty of county commissioners.** Whenever there shall be accumulated in the sinking fund, or any other revenue county fund established by law, in any of the counties in this state, an amount of money exceeding three thousand dollars, and for which there is no immediate use, the board of county commissioners of such county are 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 county depositaries as created by law, or such state or national bank as the said board of county commissioners may designate. [1903, ch. 75, § 1.]

§ 2440. **Depositaries, how designated.** The depositaries for such time deposits of the said county funds, may be designated at any regular meeting of the board of county commissioners of such county, upon the advertisement and proposals as provided by law for designating the depositaries of the general county funds, and the bank or banks designated as the depository or depositaries of such time deposits of such county funds, shall be required to furnish a bond in the same amount, manner and form as prescribed by law for the several county depositaries. [1903, ch. 75, § 2.]

§ 2441. **Two or more depositaries. Duty of treasurer.** In case two or more banks are designated as depositaries the county treasurer shall as far as practicable, keep in each of the several depositaries equal balances at all times; provided, that in counties where two or more banks are designated as depositaries, the amount deposited in any bank shall not exceed the capital of such bank; provided, further, that in counties where the county deposits exceed the capital of the banks in the county, then the county commissioners shall deposit the funds of the county, in the banks of the county, upon their giving a bond according to law. [1899, ch. 63; R. C. 1899, § 1943.]

§ 2442. **Duty of board in designating depositaries.** 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 depositaries, 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. [1893, ch. 49, § 7; R. C. 1899, § 1944; 1905, ch. 74.]

§ 2443. **Treasurer to deposit funds.** All funds of the county shall be deposited in the name of the county by the county treasurer as soon as received by him in such bank or banks as shall have been designated as county depositaries. [1893, ch. 49, § 1; R. C. 1899, § 1945.]

§ 2444. **Penalty for violation.** If any county treasurer shall deposit any of the funds of his county or loan the same in any manner except in accordance with the provisions of this article he shall be liable to a penalty of five hundred dollars for each deposit or loan so made. [1893, ch. 49, § 9; R. C. 1899, § 1946.]

§ 2445. **Monthly statement by depository.** Each depository shall furnish to the county auditor on the first day of each month an itemized statement

of the county's account 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 county auditor. 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 county auditor on the first day of each month and the auditor shall charge the treasurer with the amount thereof and credit the same to the general fund of the county. [1893, ch. 49, § 8; R. C. 1899, § 1947.]

§ 2446. **Checks, how signed.** All checks drawn upon the county depositories shall be signed by the county treasurer in the name of the county by himself as treasurer. [1893, ch. 49, § 10; R. C. 1899, § 1948.]

§ 2447. **Depositaries where only one bank 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 depositaries, but such bank or banks must furnish bonds in the same manner as other depositaries. [1897, ch. 61; R. C. 1899, § 1949; 1905, ch. 74.]

§ 2448. **Treasurer exempt from liability, when.** When the funds of any county are deposited by the county treasurer as provided herein, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such funds from the failure, bankruptcy or any other act of any 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. [1893, ch. 49, § 12; R. C. 1899, § 1950.]

§ 2449. **Violation of this article a misdemeanor.** Any officer violating any of the provisions of this article shall be deemed guilty of a misdemeanor. [1893, ch. 49, § 13; R. C. 1895, § 1951.]

#### ARTICLE 12.—REGISTER OF DEEDS.

§ 2450. **Record of instruments.** The register of deeds shall keep a full and true record in proper books kept for that purpose of all deeds, mortgages, bills of sale, chattel mortgages and all other instruments authorized by law to be admitted to record, filed with him for that purpose, if the person so filing them for record shall first pay him the fees provided by law for filing or recording the same. When an instrument is filed with him for record he shall indorse thereon the date and hour and minute of the day of such filing and when recorded, also the pages and designating the letter or number of the book or records in which the record thereof is made; and in a note at the foot of the record of each instrument recorded by him he shall write the date, the hour and minute of the day when it was filed with him and the page on which it is recorded. [R. C. 1895, § 1952.]

Official duty to record certain instruments upon payment of fees. *Erskine v. Steele County*, 4 N. D. 339, 60 N. W. 1050.

§ 2451. **Seal of register of deeds.** He shall provide himself with a seal and make an impression of the same upon each instrument to which he attaches his official signature. Such seal shall bear the following inscription: "Register of deeds of . . . . . County." [1883, ch. 95, § 1; R. C. 1895, § 1953.]

§ 2452. **Numerical index required.** He shall prepare from the records of his office and thereafter keep a numerical index of the deeds, mortgages and other instruments of record in his office affecting or relating to the title to real property. [R. C. 1899, § 1954.]

§ 2453. **Separate indexes to be kept.** There shall be prepared and kept one index of the deeds and contracts and other instruments, not liens merely, and another index of mortgages and other liens, which indexes shall be substantially or as near as may be in the following forms:

FORM OF NUMERICAL INDEX TO CITY AND TOWN PROPERTY.  
BLOCK NO. 1, IN.....

No. of Lot.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1																
2																
3																
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17																
18																

FORM OF SECTIONAL SYSTEM OF NUMERICAL INDEX TO REAL ESTATE.  
TOWNSHIP NO..... RANGE NO..... SECTION NO.....

No. of Section.	Quarter Sec.	Part Qr. Sec.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	
1	N. E.	N. E. quarter													
		N. W. quarter													
		S. W. quarter													
		S. E. quarter													
	N. W.	N. E. quarter													
		N. W. quarter													
		S. W. quarter													
		S. E. quarter													
	S. W.	N. E. quarter													
		N. W. quarter													
		S. W. quarter													
		S. E. quarter													
S. E.	N. E. quarter														
	N. W. quarter														
	S. W. quarter														
	S. E. quarter														

§ 2454. **Grantor and grantee indexes required.** He shall prepare from the records of his office and keep grantor and grantee indexes of the deeds, mortgages and other instruments of record in his office, affecting or relating to the title of real property, in addition to the numerical indexes above provided for. [1887, ch. 134, § 1; R. C. 1899, § 1956.]

§ 2455. **Separate indexes of deeds and liens.** He shall prepare and keep one index of the deeds and contracts and other instruments not liens merely, and another index of the mortgages and other instruments which are liens, which indexes shall show the name of the grantor and grantee, dates of instruments, dates of filing and description of property affected. [1887, ch. 134, § 2; R. C. 1899, § 1957.]

§ 2456. **Document number. Priority of filing.** It shall be the duty of each register of deeds in this state when any deed, patent, mortgage, receiver's receipt, contract, notice of lis pendens, copy of decree or other instrument affecting the title to, or creating a lien upon any real estate within his county, is filed in his office, immediately to write or stamp thereon a document number, which numbers shall be consecutive in the order of filing commencing with number one in each county, and following in the order of filing of the various documents; and priority of number shall be prima facie evidence of priority of filing; provided, that when such register of deeds shall receive by mail or other like inclosure more than one instrument at a time he shall affix such numbers in the consecutive order in which such instruments actually come to his hand on opening such inclosure save that when more than one instrument is received from the same source at the same time he may follow such directions if any, as the sender may give in such numbering. [R. C. 1895, § 1958.]

§ 2457. **Reception book to be kept.** There shall be provided by the county commissioners of each county in the state in the same manner that other record books are provided a book for use in the office of the register of deeds to be known as the reception book, in which shall be entered, immediately after numbering, all documents and papers enumerated in the last section and such book shall be ruled in parallel columns showing, in the first column at the left hand side of the page, the document number; in the second column, the date of filing; in the third column, the grantor; in the fourth column, the grantee; in the fifth column, the character of the instrument; in the sixth, the book and page where recorded; in the seventh, to whom delivered; and in the last column at the right, a brief description of the property, if any, described therein, and such books shall be a part of the public records of the office and open to public inspection during office hours. [R. C. 1895, § 1959.]

§ 2458. **Duty of register of deeds.** When such instruments are numbered and entered in the reception book and indexed, they shall be recorded or filed as now provided by law and it shall be the duty of the register of deeds to write or stamp, or cause to have written or stamped at the beginning of the record thereof, if recorded, the words "document number" and add thereto the number stamped or written on such document and to add, immediately after the record of such instrument, a certificate setting forth that the same was filed in his office, giving the date and hour as now provided by law, which certificate he shall authenticate with his official signature, but to which he need not affix his official seal. [R. C. 1895, § 1960.]

§ 2459. **Record, when complete. Penalty for alteration.** The affixing of the signature of the register of deeds to such record shall be deemed to have completed the record thereof, and any person who shall thereafter willfully erase, add to, interline, mutilate, conceal, destroy or in any manner change such record shall be deemed guilty of a violation of section 8690 of the penal code of this state and on conviction thereof be punished as therein provided. [R. C. 1895, § 1961.]

§ 2460. **Chattel mortgages excluded.** The last four sections shall not be construed to extend to or cover the filing and indexing of chattel mortgages as now provided by law. [R. C. 1895, § 1962.]

## ARTICLE 13.—COUNTY TREASURER.

§ 2461. **Duties of.** It shall be the duty of the county treasurer to receive all moneys belonging to the county from whatever source they may be derived and other moneys which by law are directed to be paid to him, and all moneys received by him for the use of the county shall be paid out by him only on the warrant of the board of county commissioners drawn according to law, except as otherwise specially provided, and all other moneys shall be paid over by him as provided by law. [R. C. 1895, § 1963.]

§ 2462. **Method and publicity of accounts.** He shall be the collector of taxes and shall be charged with the amount of all tax lists in his hands for collection, and credited with the amounts collected thereon, and the delinquent list, and shall keep a fair and accurate current account of the moneys by him received, showing the amount thereof, the time when, from whom and on what account received; also of all disbursements by him made showing the time when, to whom, on what account and the amount paid; and he shall so arrange his books that the amounts received and paid on account of each separate and distinct fund or appropriation shall be exhibited in separate and distinct columns and accounts, and he shall at all times exhibit such accounts, when desired, to the state, county or school officers entitled to examine the same, and shall at any time pay over the balance in his hands to the proper officer, upon receiving proper vouchers. [R. C. 1895, § 1964.]

§ 2463. **Board examines and settles accounts.** The books, accounts and vouchers of the county treasurer and all moneys, warrants or orders remaining in the treasury shall at all times be subject to the inspection and examination of the board of county commissioners and at the regular meetings of the board in January and July of each year and at such other times as it may direct, he shall settle with the board his accounts as treasurer, and for that purpose shall exhibit to it all his books, accounts and moneys and all vouchers relating to the same to be audited and allowed, which vouchers shall be retained by the board as evidence of such settlement; and if found correct the account shall be so certified; if not, he shall be liable on his bond. [R. C. 1895, § 1965.]

§ 2464. **To insure county property.** When directed by the board, he shall cause to be insured at the expense of the county any or all of the public buildings of the county and other property belonging to the same, in the name of the county or otherwise as the board may direct; and in case of the destruction or damage to the buildings or the property so insured, such treasurer shall demand and receive the moneys due on account of such insurance and pay the same into the county treasury, and such moneys shall be applied to the fund for rebuilding or restoring such buildings or property. [R. C. 1895, § 1966.]

§ 2465. **To certify abstracts. Fees.** It shall be his duty to attach his certificate to each abstract of title to real estate of his county that may be presented to him for that purpose, which certificate shall show the amount of taxes due and unpaid against, or tax title affecting the land described in such abstract, as the same appears from the records in his office; and as compensation therefor he shall receive the sum of twenty-five cents for each abstract so certified, and for each failure or refusal to comply with the provisions of this article, he shall be liable to a fine of not exceeding one hundred dollars. [1887, ch. 1, § 1; R. C. 1899, § 1967.]

§ 2466. **Report to township clerks, when.** The county treasurer of each county shall, between the fifth and twentieth days of February of each year, notify by mail the township clerk of each organized township in his county of the amount of money on hand in the county treasury belonging to the township on the fifth of February, the amount belonging to each fund being stated

separately. He shall also between the fifteenth day of November and the first day of December of each year, mail a like notice to each township clerk stating the amount of money in the county treasury belonging to the township on the fifteenth day of November, the amount in each fund being stated separately. [1895, ch. 47, § 1; R. C. 1899, § 1968.]

§ 2467. **Statement of amount paid.** Whenever the county treasurer pays or remits any township funds to a township treasurer he shall on the same day mail to the township clerk of such township a statement of the amount so paid or remitted, stating the amount belonging to each fund separately. [1895, ch. 47, § 2; R. C. 1899, § 1969.]

§ 2468. **Township clerk to keep record.** The township clerk shall make a record of the statements thus received from the county treasurer, and shall keep an account of the township funds in the same manner as is required of the township treasurer; and at the annual township meeting in March of each year the books of each officer shall be examined, compared and balanced. [1895, ch. 47, § 3; R. C. 1899, § 1970.]

§ 2469. **Treasurer to keep warrant book, form of.** Each county treasurer is required to keep a book called a "warrant book," in which he shall enter every county, road or other warrant or order paid by him, or received in payment of road or poll taxes, specifying the date at which the same was received and canceled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was originally drawn, the total amount of indorsements or payments made thereon, the principal sum for which it was received, the interest allowed and the total amount for which it was received; and the treasurer shall keep his accounts of road warrants, receipts and orders by him received for and on account of taxes, separate and distinct from the warrants paid by him in cash, and in another and separate place he shall enter an account of all indorsements made on road warrants or orders in part payment thereof. Such warrant book shall be in the following form, to wit:

TREASURER'S WARRANT BOOK.....COUNTY, N. D.

Date.	From What Received.	Payee of Warrant.	Number of Warrant.	Date of—Amount—Warrant.	Indorsement.	Receipts.	Interest.

[R. C. 1899, § 1292.]

§ 2470. **Warrants, order of payment.** All warrants upon the state treasurer, the treasurer of any county, or any municipal corporation therein, shall be paid in the order of their presentation therefor. [R. C. 1899, § 1293.]

§ 2471. **Warrant register, by whom kept. Form of.** The state treasurer and the treasurer of every organized county, and every incorporated city or town therein, shall provide himself with and keep a warrant register, which register shall show in a column arranged for that purpose, the number and registered number, date and amount of each warrant presented, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the same is registered, and subsequent assignees, if furnished therewith, the date of payment when made, the amount of interest and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered, is mailed as hereinafter provided. [R. C. 1899, § 1294.]

§ 2472. **Registration of warrants. Paid in order of registration.** It shall be the duty of every such treasurer to enter such warrant in his warrant register for payment in the order of presentation for registration, and upon every warrant so registered he shall indorse "registered for payment," with the date of such registration, and shall sign such indorsement: provided, that nothing in this chapter shall be construed to require the holder of any warrant to register the same, unless on presentation of the same to the treasurer for payment it shall be indorsed by him. "not paid for want of funds," and when so indorsed and registered it shall draw interest at seven per cent per annum from the date of such indorsement, but not otherwise. When the treasurer shall have received money belonging to any particular fund sufficient to pay the warrant against such fund, which by his warrant register appears to be next due and payable, such treasurer shall by mail immediately notify the person in whose name the same is registered, or his assignee, if notified of the assignment, and interest upon such warrant shall immediately cease. [1881, ch. 140, § 1; R. C. 1899, § 1295.]

Failure to register warrant by officer does not defeat recovery thereon. *Freeman v. City of Huron*, 10 S. D. 368, 73 N. W. 260.

Suit cannot be maintained on a township registered warrant until there are funds in treasurer's hands to pay. Statute of limitations does not begin to run until such time. *Brannon v. White Lake Twp.* 17 S. D. 83, 95 N. W. 284.

§ 2473. **Cash book and register to be footed and closed annually. Penalty.** Every such treasurer shall daily, as moneys are received, foot the several columns of his cash book and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants so registered, he shall close the account for that year, in such register, and shall carry forward the excess. Any such treasurer who shall fail regularly to enter upon his cash book the amounts so received, or who shall fail to keep his cash book footed from day to day, as required by this chapter, for the space of three days, shall forfeit, for each offense, the sum of one hundred dollars, to be recovered in a civil action on his official bond, by any person holding a warrant drawn on such treasurer. The cash book and register of every such treasurer shall at all times be open to the inspection of any person in whose name any warrant is registered and unpaid. [R. C. 1899, § 1296.]

§ 2474. **Failure to register warrants. Liability of treasurer.** Any such treasurer who shall fail to register any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration shall be liable on his official bond to each and every person, the payment of whose warrant is thereby postponed, in the sum of three hundred dollars to be recovered in a civil action. [R. C. 1899, § 1297.]

§ 2475. **Dereliction of duty, penalty for.** In the case of dereliction of duty on the part of any officer or person, required by law to perform any duty under the provisions of this chapter, in any county, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in such county, on receiving satisfactory evidence of such dereliction or failure to perform, as required by law, any duty enjoined by this chapter, shall refuse to pay such person or persons any sum whatever for such services. [R. C. 1899, § 1299.]

§ 2476. **Redemption of warrants. Duty of treasurer. Warrants marked "redeemed," when.** When the county treasurer shall redeem any county warrants, or shall receive any road warrants in payment of taxes, on which any interest is due, he shall note on such warrants or orders the amount of interest paid by him thereon, and shall enter in his accounts the amount of such interest distinct from the principal. When the county treasurer of any county shall pay any warrants drawn on him by the board of county commissioners, or when he shall take or receive any warrant, or receipt in payment



for any tax, he shall write on the face of each warrant, order or receipt, "redeemed," and the date of redemption, and shall sign his name thereto. [R. C. 1899, § 1300.]

§ 2477. **Indorsements of road warrants.** When any person desiring to pay any taxes due and unpaid, shall present a warrant on the road fund of his road district, in payment for such taxes as it may be applied to, which shall exceed the amount that the treasurer is authorized to receive in such warrants in payment for such taxes, the treasurer shall indorse on the back of such warrant in part payment, the amount he is authorized by law to receive, and date the same; said treasurer shall take two receipts from the holder thereof for the amount so indorsed and paid, showing the date of the indorsement, a full description of such warrant, including the date thereof, to whom issued, the amount for which it was given, and all the indorsements, including registration, if registered; one of which receipts he shall, on the day received, file with the county auditor, and the other he shall retain as his voucher. [R. C. 1899, § 1301.]

§ 2478. **Partial payment of taxes, how made.** When any person shall desire to pay only a portion of the tax charged on any real estate, such person shall pay a like proportion of the several taxes charged thereon, and no person will be permitted to pay one of said taxes without paying the others, except taxes the collection of which shall have been enjoined by law. [R. C. 1899, § 1302.]

§ 2479. **County auditor to sue treasurer, when.** If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county auditor on receiving instructions for that purpose from the state auditor, or from the board of county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties, or any of them. [R. C. 1899, § 1303.]

§ 2480. **Suit against delinquent treasurer. Commissioners may remove, when.** Whenever suit shall have been commenced against any delinquent county treasurer, as aforesaid, the board of county commissioners of such county may, at their discretion, remove such treasurer from office and appoint some suitable person to fill the vacancy thereby created, as provided by law. [R. C. 1899, § 1304.]

§ 2481. **Additional bond may be required, when.** The board of county commissioners of any county may require the treasurer to give an additional bond, whenever in the opinion of a majority of said commissioners the existing security shall have become insufficient; and the commissioners are also authorized and empowered to demand and receive from said county treasurer an additional bond, as required by law, with good and sufficient freehold security, in such sum as said commissioners or a majority of them may direct, whenever in their opinion, more money shall have passed or is about to pass into the hands of said treasurer than is or would be recovered by the penalty in the previous bond; but the giving of such additional bond or bonds, as provided in this section, shall not invalidate any previous bond or bonds, nor discharge the sureties from any liability thereon. If any county treasurer shall fail or refuse to give such additional bond, for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be considered vacant and another treasurer shall be appointed, agreeably to the provisions of law. [R. C. 1899, § 1305.]

§ 2482. **Treasurer not to speculate in county warrants. Penalty for.** No county treasurer shall either directly or indirectly contract for or purchase any warrant or warrants, or other evidence of indebtedness issued by the county of which he is treasurer, at any discount whatever upon the sum due on such warrant or warrants, or other evidence of indebtedness; and



if any county treasurer shall so contract for or purchase any warrant or warrants, or other evidence of indebtedness, he shall not be allowed, in settlement, the amount of said warrant or warrants or other evidence of indebtedness, or any part thereof, and shall also forfeit the whole amount due on such warrant or evidence of indebtedness, to be recovered by civil action at the suit of the state of North Dakota, for the use of the county. [R. C. 1899, § 1306.]

§ 2483. **Treasurer not credited with interest paid, when.** The county treasurer, on his settlement with the county commissioners, shall not be credited with any sum for interest paid on any warrant or order, unless he shall, at the time of receiving the same, have noted thereon the amount of interest due thereon. [R. C. 1899, § 1307.]

§ 2484. **Loaning county funds, penalty for.** If any county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own purposes, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars nor less than one hundred dollars to be recovered in an action at law, at the suit of the state of North Dakota, for the use of the county. [R. C. 1899, § 1308.]

§ 2485. **Auditor and treasurer jointly to make annual statement.** The county auditor and county treasurer conjointly shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year, also the assets and liabilities at the time of making out the same. Said exhibit shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed and on what account; also the liabilities of the county stated in detail, and the assets of every kind, as near as may be; showing also the amount of funds in the treasury at the time of making said exhibit; on what account paid in and in the kind of funds. Said exhibit shall be made out annually up to and including the thirty-first day of December, and filed with the county auditor, and a copy posted up on the same day in the office of the treasurer. [R. C. 1899, § 1309.]

#### ARTICLE 14.—COUNTY AUDITOR.

§ 2486. **Clerk of board of county commissioners.** The county auditor shall by virtue of his office be clerk of the board of county commissioners of his county and he shall keep an accurate record of its official proceedings and carefully preserve all the documents, books, records, maps and other papers required to be deposited or kept in his office, and prepare a financial statement of the county annually, unless otherwise ordered by the board, and carefully do and perform all other acts and duties required by law. [1887, ch. 10, § 4; R. C. 1899, § 1971.]

§ 2487. **To keep account current with treasurer.** He shall keep an accurate account current with the treasurer of his county, and when any person shall deposit with him any receipt given by the treasurer for money paid into the treasury, he shall file such receipt in his office and charge the treasurer with the amount thereof. [1887, ch. 10, § 5; R. C. 1899, § 1972.]

§ 2488. **To deliver moneys and records to successor.** On going out of office he shall deliver up to his successor in office all the moneys, books, records, documents, maps, papers, vouchers and other property in his hands belonging to the county, and in case of his death his personal representatives shall in like manner deliver the same to his successor as aforesaid. [1887, ch. 10, § 6; R. C. 1899, § 1973.]

§ 2489. **To draw all county warrants.** He shall draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the board of county commissioners; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person

or tribunal. All warrants must distinctly specify the liability for which they are drawn and when it accrued. [1887, ch. 10, § 7; R. C. 1895, § 1974.]

Warrants non-negotiable instruments, and the rule relating to innocent purchasers does not apply. *Erskine v. Steele County*, 4 N. D. 330, 60 N. W. 1050.

The law-making powers of the state did not grant to county commissioners unrestricted authority as to county funds. Auditor must draw warrants; chairman county commissioners signs them. *State v. Ryan*, 9 N. D. 419, 83 N. W. 865.

Issuance of warrants a ministerial act controlled by mandamus. *State ex rel Wiles v. Albright*, 11 N. D. 22, 88 N. W. 729.

§ 2490. **Warrants consecutively numbered and registered.** All warrants issued by the county auditor during each year, commencing with the first Monday in January, must be numbered consecutively and the number, date and amount of each and the name of the person to whom payable and the purpose for which drawn, must be stated therein and they must at the time they are issued be registered by him in a book kept for that purpose. [1887, ch. 10, § 7; R. C. 1895, § 1975.]

§ 2491. **General duties.** He shall do, perform and transact all county business without any extra or greater compensation than is allowed by law; and shall keep all the books required to be kept by the county commissioners; shall file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies of which, certified under the hand and seal of the auditor, shall be admitted as evidence in all courts in this state. [R. C. 1899, § 1976.]

§ 2492. **Election duties.** He shall perform all the duties required of him by law relative to the making out and delivering notices of general and special elections, making abstracts of and canvassing the votes cast at any such election, issuing certificates of election and forwarding the abstracts of votes cast at such elections to the secretary of state; and whenever the county commissioners for any cause shall fail or refuse to call special elections, the county auditor shall have authority to provide for and call any such election upon the petition of a majority of the legal voters of the county, to be determined by the poll lists of the preceding general election. [1881, ch. 73, § 1; R. C. 1895, § 1977.]

§ 2493. **Liability of auditor.** If any county auditor fails to make settlement or pay over any moneys with which he stands charged at the time and in the manner prescribed by law or misapplies any money which comes into his possession in the discharge of his official duties, the county commissioners shall commence an action against him and his sureties in the district court of such county, and he shall be proceeded against as provided by law in other cases. In case of suspension under the provisions of this section, such auditor, if restored to office, shall not be deprived of his salary during the time of such suspension and the reasonable expenses of his defense upon such hearing shall be paid by the county. If upon the trial of such action such auditor is adjudged guilty of any neglect of duty, his office shall be deemed vacant. [1887, ch. 10, § 11; R. C. 1899, § 1978.]

#### ARTICLE 15.—STATE'S ATTORNEYS.

§ 2494. **Duties of state's attorney.** The state's attorney is the public prosecutor, and must:

1. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed and for that purpose, when not engaged in criminal proceedings in the district court, must attend upon the magistrates in cases of arrest, when required by them, except in cases of

assault and battery and petit larceny, and attend before, and give advice to the grand jury whenever cases are presented to them for their consideration.

3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all bonds forfeited in the courts of record and all actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or his county.

4. Deliver receipts for money or property received in his official capacity, and file duplicate receipts therefor with the county auditor.

5. On the first Mondays of January, April, July and October in each year, file with the county auditor an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months and at the same time pay it over to the county treasurer.

6. Give when required, and without fee, his opinion in writing to the county, district, township and school district officers, on matters relating to the duties of their respective offices.

7. Keep a register of all official business, in which must be entered a note of each action, whether civil or criminal, prosecuted officially, and of the proceedings therein.

8. Make a written report to the attorney general, on the first day of each month, of all proceedings instituted or pending in his county in any court, other than justice courts, wherein the state is a party or is interested; which reports shall give the title of the case, the date when commenced, the purpose of the action, the proceedings had and taken therein, and the final disposition of such cases.

9. It is the intention of this article to make the attorney general, his assistants, and the state's attorney the only public prosecutors in all cases civil and criminal, wherein the state, or county, is a party to the action, and that they only shall be authorized and empowered to perform the duties herein set forth, except as hereinafter provided. The attorney general or his assistants are authorized to institute and prosecute any cases in which the state is a party whenever in their judgment it would be to the best interests of the state so to do, and in case the state's attorney of any county refuses or neglects to perform any of the duties prescribed in subdivisions 2 and 3 of this section, after it has been properly brought to his attention, or when he has information that a public offense has been committed, or that a civil suit in which the state is a party, should be instituted and the fact of such refusal or neglect to perform such duty, and that the action is one that should be prosecuted, has been brought before the judge of the district court in the judicial district having jurisdiction of such action, by affidavit or otherwise, and said judge is satisfied that such action should be prosecuted, and that said state's attorney has failed or neglected to perform his duty, then in that case, he shall request the attorney general or an assistant attorney general to take charge of such prosecution, or he shall appoint, by an order to be entered upon the minutes of the court, some suitable person, an attorney at law, and the person so appointed shall thereupon be vested with all the powers of such state's attorney for that action, but for no other purpose, and the district court shall by order, to be entered in the minutes of the court, fix his fee therefor, which amount shall be allowed by the board of county commissioners and which amount, if so ordered by the court, shall be deducted from the salary of the state's attorney and the person so appointed shall be the only person authorized to proceed therein; provided, however, that nothing herein contained shall prevent the county commissioners of any county, in cases of public importance and with the advice and consent of the state's attorney, employing such additional counsel as may be deemed advisable, to assist the state's attorney, upon such compensation as may be agreed upon; provided, further, that the provisions of this article shall not be construed so as to abridge any of the powers conferred upon the attorney

general, his assistants, or the state's attorney, or to relieve them from the infliction of any punishment, fine or forfeiture, for neglect of duty, as prescribed by the provisions of chapter 65 of the penal code, commonly known as the prohibition law.

10. He is the legal adviser of the board of county commissioners. He must attend their meetings when required, and must oppose all claims and accounts presented against the county which are unjust or illegal.

11. If the board of county commissioners without authority of law orders any money paid as a salary, fees or for any other purpose, and such money has been actually paid, or if any other county officer has drawn any warrant in his own favor or in favor of any other person, without being authorized by the board of county commissioners, or by law, and the same has been paid, the state's attorney is empowered, and it is his duty to institute an action in the name of the county against such person to recover the money so paid, and no order of the board of county commissioners therefor is necessary to maintain such action; but when the money has not been paid on such order or warrants, it is the duty of the state's attorney upon receiving notice thereof, to commence an action in the name of the county to restrain the payment of the same, and no order of the board of county commissioners is necessary to maintain such action.

12. The state's attorney, except for his own services, must not present any claim, account or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

13. He shall not receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counselor for either party, other than for the state or county, in any civil action depending on a state of facts upon which any criminal prosecution then pending shall depend; nor shall any state's attorney be eligible to or hold any judicial office whatever. When required to go to any other county or from one part to another part of his county to transact any official business as such state's attorney, he shall be entitled to receive from his county the amount of his actual and necessary expenses in transacting such business, in addition to the salary fixed by law, which expenses shall be audited and paid by the board of county commissioners as other county expenses are audited and paid. [R. C. 1895, §§ 1979, 1983; 1901, ch. 178.]

Private parties may employ counsel to assist state's attorney. *State v. Kent*, 4 N. D. 577, 62 N. W. 631.

Commissioners' employment of private counsel void, when. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

Contract with county to prosecute suit upon contingent fee void. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

Penalty for unlawful exaction of money from county. *In re Simpson*, 9 N. D. 379, 83 N. W. 541.

Order deducting fee of substitute from salary of state's attorney upon refusal to prosecute, reviewable on writ of certiorari. *State ex rel Clyde v. Lauder*, 11 N. D. 136, 90 N. W. 564.

Court has no authority to appoint attorney to argue appeal in supreme court. *State v. Marshall County*, 14 S. D. 149, 84 N. W. 775.

**§ 2495. To receipt for public moneys.** It shall be his duty, whenever he shall receive any moneys from fines, penalties or costs, to deliver to the officer or person paying the same duplicate receipts, one of which shall be filed by such officer or person in the office of the county treasurer. [1883, ch. 43, § 8; R. C. 1899, § 1984.]

**§ 2496. Penalty for failure to pay over moneys.** Whenever such state's attorney shall refuse or neglect to account for or pay over the moneys so received by him as required by law, he shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars, and it shall be the duty of the county treasurer to cause an action to be instituted upon the

bond of such state's attorney for the recovery of the moneys so received and unpaid by him. [1883, ch. 43, § 10; R. C. 1895, § 1985.]

**§ 2497. Court may appoint state's attorney, when and how.** In judicial districts in this state, containing unorganized counties or territory, the district court shall have the power to appoint a state's attorney for such unorganized counties or territory, said attorney, when so appointed, to be the prosecuting officer for offenses arising within said unorganized counties or territory. The said court, whenever there shall be no state's attorney for an organized county, or when the state's attorney is absent or unable to attend to his duties, may, when necessary, appoint, by an order to be entered in the minutes of the court, some suitable person, an attorney at law, to perform for the time being the duties required by law to be performed by the state's attorney, and the person so appointed shall thereupon be vested with all the powers of such state's attorney for that purpose; and the district court shall, by order, to be entered in the minutes of the court, fix his fee therefor, which amount shall be allowed by the board of county commissioners, and which amount shall be deducted from the salary of the state's attorney. Nothing in this section shall be so construed as to give the court the power permanently to fill vacancies in such office in organized counties, but such power is vested in the board of county commissioners, as elsewhere provided in this code. [1883, ch. 43, § 7; 1889, ch. 59, § 1; R. C. 1895, § 1986; 1903, ch. 179.]

Failure to prosecute no ground for appointment of substitute when state's attorney present. *State ex rel Clyde v. Lauder*, 11 N. D. 136, 90 N. W. 564.

An ineligible incumbent cannot be summarily removed by county commissioners. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

**§ 2498. State's attorney may appoint, and duties prescribed for assistant.** The state's attorney is authorized and empowered to appoint an assistant state's attorney within his county, who, when qualified, by filing his oath of office, shall have the same power, and perform any and all duties now required of the state's attorney; provided, however, that the state's attorney shall be responsible, under his official bond, for any and all acts of such assistant. [R. C. 1895, § 1987; 1903, ch. 180.]

**§ 2499. Judge may appoint special counsel. Compensation.** The judge of the district court may in his discretion appoint special counsel to assist the state's attorney in important cases. Such special counsel shall be paid a reasonable fee therefor to be approved by the court and paid by the county for which the services were rendered. [R. C. 1895, § 1988.]

District court in cases pending or to be instituted, if important cases, has discretion to appoint special counsel. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

#### ARTICLE 16.—CLERK OF DISTRICT COURT.

**§ 2500. Duties of.** The clerk of the district court shall perform the following duties:

1. Take charge of and safely keep and dispose of according to law all books, papers and records which may be filed or deposited in his office.
2. Act as clerk of the district court and attend each session thereof and upon the judge at chambers when required.
3. Issue all process and notices required to be issued; enter all orders and judgments proper to be entered; keep in his office a register of all actions, which must state the names of the attorneys and all fees charged therein and such other matters as are required by law.
4. Keep for the district court in separate volumes an index of all suits, labeled "General Index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads alphabetically arranged as follows, "Number of action," "plaintiffs," "defendants," "date of judgment," "number of judgment," "page of entry of judgment in judgment

book," "page of minute book of district court;" also an index labeled "General Index—Defendants," each page of which must be divided into seven columns as above provided.

5. Keep a minute book, which must contain the daily proceedings of the court, which must be signed by the clerk, which book must be indexed in the names of both plaintiff and defendant.

6. Keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have declared, or who may hereafter declare their intention to become citizens of the United States, and the date of such declaration, which book must be labeled "Declaration of Intention to Become Citizens of the United States," and in the other of which must be entered in alphabetical order the names of all persons who have been or may be hereafter admitted citizens of the United States by the court of which he is clerk, which book must be labeled "Naturalization, Final Papers," and enter in a separate column, opposite each name, the country of which such person was before a citizen or subject, the date of his admission and the page of the minute book or book of record containing the order admitting him a citizen.

7. Keep a book called "Register of Criminal Actions," in which must be entered the title and number of the action, with a memorandum of each paper filed, order or proceeding had therein, with the date thereof, and the name of each witness, number of days in attendance and his legal fees, with a proper index to the same.

8. Keep a book called "Book of Jurors' Certificates," in which must be contained the blank certificates and stubs to be filled, as provided in this code.

9. Keep a "Witness Book," in which must be contained blank certificates and stubs, to be filled as provided in this code.

10. Keep a record of the attendance of all jurors, and of witnesses in criminal actions and compute the mileage of each.

11. Keep such other records and perform such other duties as are prescribed by law. [R. C. 1895, § 1989.]

§ 2501. **Penalty for neglect of duty.** Any person who may at any time be injured or aggrieved by reason of the violation of the duties of his office upon the part of any such clerk, or by any willful neglect or refusal to perform any of the duties of his office, may institute legal proceedings upon the bond of such clerk and collect therein double the amount of damages actually sustained by such aggrieved person; and the county treasurer is also authorized and required for every such violation and neglect of duty to collect a fine of not less than fifty dollars for every such violation of duty, or refusal or neglect on the part of such clerk. [R. C. 1895, § 1990.]

§ 2502. **Clerk may adjourn court, when.** Whenever the judge, whose duty it may be to preside at any term of the district court, is hindered or delayed from any cause from being at the place of holding the same on the first, second or third day of the term, such clerk is authorized, and it shall be his duty to adjourn such court from day to day, until the fourth day of the term, and if such judge does not appear and take his seat to preside therein on the fourth day of such term, and the clerk does not at or before such fourth day receive a written order of adjournment, he shall adjourn such court without day; but the judge may by written order to the clerk made at any place in the state adjourn such court to such other time as he may appoint, and such adjourned term shall be considered as a regular term for all purposes. [R. C. 1899, § 1991.]

Adjournment for more than four days presumed to be made by court, contrary not appearing. *Myers v. Mitchell*, 1 S. D. 249, 46 N. W. 245.



## ARTICLE 17.—SHERIFF.

§ 2503. **Duties of.** It is the duty of the sheriff:

1. To preserve the peace.
2. To arrest and take before the nearest magistrate, or the magistrate who issues the warrant, all persons who attempt to commit or have committed a public offense.
3. To prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.
4. To attend each term of the district court held within his county and obey its lawful orders and directions.
5. To command the aid of as many male inhabitants of his county as he may think necessary in the execution of his duties.
6. To take charge of and keep the county jail and the prisoners therein.
7. To indorse upon all notices and process received by him for service, the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of his fees, a certificate showing the names of the parties, title of paper and time of reception.
8. To serve all process or notices in the manner prescribed by law.
9. To certify under his hand upon process or notices the time and manner of service, or, if he fails to make service, the reasons of his failure and return the same without delay. [R. C. 1895, § 1992.]

§ 2504. **Foreign process, how returnable.** When process or notices are returnable to another county, the sheriff may inclose such process or notices, in an envelope, addressed to the officer or person sending them, and deposit it in the post office, prepaying postage. [R. C. 1895, § 1993.]

§ 2505. **Return prima facie evidence.** The return of the sheriff upon process or notices is prima facie evidence of the facts stated in such return. [R. C. 1895, § 1994.]

§ 2506. **Liability for failure to return.** If the sheriff does not return a notice or process with the necessary indorsement thereon without delay, he is liable to the party aggrieved for all damages sustained by him. [R. C. 1895, § 1995.]

§ 2507. **Liability for failure to execute process.** If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses after being required by the creditor or his attorney to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property. [R. C. 1895, § 1996.]

§ 2508. **Liability for failure to pay over money.** If he neglects or refuses to pay over on demand to the person entitled thereto any money which may come into his hands by virtue of his office, after deducting his legal fees, the amount thereof with twenty-five per cent damages and interest at the rate of ten per cent per month from the time of demand may be recovered by such person. [R. C. 1895, § 1997.]

§ 2509. **Liability for escapes and rescues.** A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail.
2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment.
3. When the arrest is on an execution or commitment, other than to enforce the payment of money, he is liable for the actual damages sustained. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation or exculpation. He is liable for a rescue of a person arrested in a civil action equally as for an escape. [R. C. 1895, §§ 1998, 1999.]

§ 2510. **Action, when cannot be maintained against.** An action cannot be maintained against the sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff. [R. C. 1895, § 2000.]

§ 2511. **Office, when vacant.** When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office and remains committed for sixty days, his office shall become vacant. [R. C. 1895, § 2001.]

§ 2512. **To execute all process.** A sheriff or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceeding upon which they were issued. [R. C. 1895, § 2002.]

§ 2513. **To exhibit process.** The officer executing such process must at all times, so long as he retains it, upon request, show the same with all papers attached to any person interested therein. [R. C. 1895, § 2003.]

§ 2514. **To open and adjourn court.** The sheriff in attendance upon court must act as the crier thereof and make proclamation of the opening and adjournment of the court and of any other matter under its direction. [R. C. 1895, § 2004.]

§ 2515. **Service of papers on sheriff, how made.** Service of a paper, other than a process, may be made upon the sheriff by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or, if no such person is there, by leaving it in a conspicuous place in the office. [R. C. 1895, § 2005.]

§ 2516. **Coroner or constable to execute process, when.** 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. [R. C. 1895, § 2006; 1905, ch. 93.]

§ 2517. **To perform all lawful duties.** The sheriff must perform such other duties as are required of him by law. [R. C. 1895, § 2007.]

#### ARTICLE 18.—CORONER.

§ 2518. **Coroner to act as sheriff, when.** When there shall be no sheriff or deputy sheriff in any organized county, it shall be the duty of the coroner in such county to exercise all the powers and duties of that office until the same shall be filled as provided by law; and when the sheriff is committed to jail or otherwise disqualified the coroner shall be the keeper of the jail and perform the duties of sheriff during the continuance thereof. When the sheriff is sued the coroner shall serve the papers on him if required, and his return on all papers served by him shall have the same credit as the sheriff's return; and he shall receive the same fees as the sheriff for like service. [R. C. 1899, § 2008.]

§ 2519. **To hold inquests.** The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, except as otherwise specially provided. When he has notice of the dead body of a person supposed to have died by unlawful means found or being in his county, he is required to issue his warrant to the sheriff or any constable of his county, requiring him to summon forthwith three electors, having the qualifications of jurors of the county, to appear before the coroner at the time and place named in the warrant, or when the services of such sheriff or constable cannot conveniently be procured, then the coroner may summon such electors from the bystanders. [1881, ch. 55, § 1; R. C. 1895, § 2009.]



§ 2520. **Warrant, form of.** The warrant may be in substance as follows:  
State of North Dakota, }  
County of . . . . . } ss.

To the sheriff or any constable of said county:

You are hereby required to summon forthwith three electors, having the qualifications of jurors of your county, to appear before me at (name the place) at (name the day and hour or say forthwith), then and there to hold an inquest on the dead body of . . . . . there lying and find by what means he died.

Witness my hand this . . . . . day of . . . . . 19....

Coroner.

[R. C. 1899, § 2010.]

§ 2521. **Completing jury and oath.** If any juror fails to appear the coroner shall cause the proper number to be summoned from the bystanders and immediately proceed to empanel them and administer the following oath in substance: You do solemnly swear (or affirm) that you will diligently inquire and true presentment make, when, how and by what means the person whose body here lies dead came to his death, according to your knowledge and the evidence given you. [R. C. 1899, § 2011.]

§ 2522. **Subpenas for witnesses. Contempts.** The coroner may issue subpenas within his county for witnesses, returnable forthwith or at such time and place as he shall direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner has the same authority to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the state. [R. C. 1899, § 2012.]

§ 2523. **Oath to witnesses.** An oath shall be administered to the witnesses, in substance as follows:

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead shall be the truth, the whole truth and nothing but the truth. So help you God. [R. C. 1899, § 2013.]

§ 2524. **Return by jury. Form.** The jurors having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition in writing under their hands, in substance as follows, and stating the matters in the following form suggested, as far as found:

State of North Dakota, }  
County of . . . . . } ss.

An inquisition held at . . . . . in . . . . . county, state aforesaid, on the . . . . . day of . . . . . A. D. 19...., before . . . . ., coroner of such county, upon the body of . . . . . (or person unknown) there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say (here state when, how, by what person, means, weapon, or accident, he came to his death, and whether feloniously).

In testimony whereof, said jurors have hereunto set their hands the day and year aforesaid.

Such inquisition shall be attested by the coroner. [R. C. 1899, § 2014.]

§ 2525. **Not to disclose name of accused.** If at such inquisition it is found that a crime has been committed on the deceased, the name of the person whom the jury believe has committed it shall not be made public until after the arrest directed in the next section. [R. C. 1895, § 2015.]

§ 2526. **May order arrest.** If the person charged is present the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. If the person charged is not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff and

constables of the county, requiring them to arrest the person and take him before a justice of the peace. [R. C. 1899, § 2016.]

§ 2527. **Warrant returnable to a justice of the peace.** The warrant of the coroner in such case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, the same proceedings shall be had as in other cases under a complaint, and he shall be dealt with as a person under a complaint in the usual form in criminal cases. [R. C. 1899, § 2017.]

§ 2528. **Warrant to recite verdict.** The warrant of the coroner shall recite substantially the transactions before him and the verdict of the jury leading to the arrest, and such warrant shall be sufficient foundation for the proceedings of the justice. [R. C. 1899, § 2018.]

§ 2529. **Testimony reduced to writing.** The testimony of all witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction, and be subscribed by the witnesses respectively, and the coroner shall forthwith file such testimony together with a record of all proceedings had before him, in the office of the clerk of the district court of the county wherein such inquest is held. In all cases brought to the attention of the coroner wherein he does not deem it necessary to hold an inquest he shall file with such clerk a certificate setting forth the facts in relation thereto. The clerk of said district court shall forthwith duly file, index and enter such case or proceeding in a book or books to be kept for that purpose, in the same manner as proceedings in civil actions are now entered, and shall receive from the treasury of said county the same fees as are now allowed by law for like services, and he shall index and enter in the manner above described all the proceedings of the coroner that have heretofore at any time been filed in his office. [1895, ch. 37, § 1; R. C. 1899, § 2019.]

§ 2530. **Disposition of body. Payment of expenses.** The coroner shall cause the body of each deceased person, which he is called to view, to be delivered to his friends, if any, but if there are no friends, he shall cause such body to be decently buried, and the expenses thereof shall be paid from the county treasury and the county shall be reimbursed therefor out of any property found with his body. The coroner shall certify an account of such expenses to the county auditor and the board of county commissioners shall allow the same if deemed reasonable and direct a warrant to issue therefor. [R. C. 1895, § 2020.]

§ 2531. **Justice may act as coroner, when.** When there is no coroner, or in case of his absence or inability to act, any justice of the peace of the county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before him by his warrant, and may proceed with him as a justice of the peace. [R. C. 1899, § 2021.]

§ 2532. **Physicians summoned as experts, when.** In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and shall allow in such case a reasonable compensation, instead of witness fees. [R. C. 1899, § 2022.]

§ 2533. **Disposition of property found on body.** The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representative of the deceased. If he fails to do so the treasurer may proceed against him for its recovery by a civil action in the name of the county. [R. C. 1899, § 2023.]

§ 2534. **Treasurer's duty with money and property.** Upon the delivery of money to the treasurer he must place it to the credit of the county. If it is other property he must within thirty days sell it at public auction upon

reasonable public notice and must in like manner place the proceeds to the credit of the county. [R. C. 1899, § 2024.]

§ 2535. **Money, when and how paid.** If the money in the treasury is demanded within six years by the legal representatives of the deceased, the treasurer must pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter; or it may be paid at any time thereafter upon the order of the board of county commissioners. [R. C. 1899, § 2025.]

§ 2536. **Statement by coroner.** Before auditing and allowing the account of the coroner, the board of county commissioners must require him to render a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased or to the county treasurer. [R. C. 1899, § 2026.]

§ 2537. **To perform all lawful duties.** The coroner must perform such other duties as may be prescribed by law. [R. C. 1895, § 2027.]

#### ARTICLE 19.—COUNTY SURVEYOR.

§ 2538. **Duties of.** The county surveyor shall make in a good and professional manner all surveys of land, within the county which he may be called upon by the owner thereof or his representative or directed by the district or county courts, the board of county commissioners or the board of township supervisors to make; and also all lands, tracts or lots owned by the county, and public roads, when so directed by said board; and his surveys shall be held as presumptively correct. [R. C. 1895, § 2028.]

Failure to describe highway as originally established overcomes presumption of correctness. *Dunstan v. City of Jamestown*, 7 N. D. 1, 72 N. W. 899.

Presumption of accuracy extends only to surveys made in conformity to the requirements of the statute. Surveyor has no authority to determine disputed boundaries and starting points. *Radford v. Johnson*, 8 N. D. 182, 77 N. W. 601.

Presumption extends only to surveys made, authenticated and proved as provided by statute. *Arneson v. Spawn*, 2 S. D. 269, 49 N. W. 1066.

Duty to survey public roads when directed by county commissioners. *Van Antwerp v. Dell Rapids Twp.* 3 S. D. 305, 53 N. W. 82.

§ 2539. **Record of field notes and plats.** He shall transcribe the field notes and plats of such surveys into convenient and substantial record books to be furnished by the county, when the board of county commissioners shall deem it advisable, and said records shall be entered in an orderly manner, easy of reference, and shall be delivered to his successor in office. They may be kept in the office of the county auditor and said record shall be competent evidence in all courts of the facts therein set forth. [R. C. 1899, § 2029.]

§ 2540. **Resurvey and subdivision, how made.** The resurvey and subdivision of lands by all surveyors shall in all respects be according to the laws of the United States and the instructions issued by the officers thereof in charge of the public land surveys and in the subdivision of fractional sections bounded on any side by a meandered lake or river or the boundary of any reservation or irregular survey, the subdivision lines running toward and closing upon the same shall be run at courses in all points intermediate and equidistant, as near as may be, between the like section lines established by the original survey. [R. C. 1899, § 2030.]

When monuments are destroyed question of location is for jury. Surveyor to locate lines from original government field notes. *White v. Amrhien*, 14 S. D. 270, 85 N. W. 191.

Must recognize only government monuments. *Cope v. Eckert*, 15 S. D. 177, 87 N. W. 972.

Resurvey must follow survey made by government. *Randall v. Burk Twp.*, 4 S. D. 337, 57 N. W. 4; *Dowdle v. Cornue*, 9 S. D. 126, 68 N. W. 194; *McGray v. Monarch Elev. Co.* 16 S. D. 109, 91 N. W. 457.

§ 2541. **Sworn chainmen in disputed cases.** Whenever the survey is of lines and monuments in dispute between parties, or is made by order of the district or county court, the chainmen must be disinterested persons, approved and sworn by the surveyor to measure justly and impartially to the best of their skill and ability. [R. C. 1899, § 2031.]

§ 2542. **Fullness and accuracy of field notes and plats.** The record of the field notes and plats shall show distinctly of what piece of land it is a survey, at whose request it was made, what owners were notified and present, the date of the survey, the names of the chainmen and that they were approved and sworn by the surveyor, when so required by law. The courses shall be taken according to the true meridian, and the variation of the magnetic needle therefrom shall be noted, and also when any material change therein shall occur. [R. C. 1899, § 2032.]

§ 2543. **Retracing lines to avoid errors.** In retracing lines or making any survey he shall take care to observe and follow the boundaries and monuments as run and marked by the original survey, but shall not give undue weight to partial and doubtful evidence or appearances of monuments, the recognition of which shall require the presumption of marked errors in the original survey, and he shall note an exact description of such apparent monuments. [R. C. 1899, § 2033.]

Where boundary is not fixed and known and the location of monuments is disputed or in doubt, courses and distances will be considered in fixing boundaries. *Hanson v. Township of Red Rock*, 4 S. D. 358, 57 N. W. 11; *Randall v. Burk Twp.*, 4 S. D. 337, 57 N. W. 4; *White v. Amrhien*, 14 S. D. 270, 85 N. W. 191; *Cope v. Eckert*, 15 S. D. 177, 87 N. W. 972.

§ 2544. **Assistants, how paid.** All necessary chainmen and other assistants must be paid for their services by the person for whom the survey is made, unless otherwise specially agreed. [R. C. 1899, § 2034.]

#### ARTICLE 20.—PUBLIC ADMINISTRATOR.

§ 2545. **Creation.** There is hereby established and created in every organized county in this state the office of public administrator. [1903, ch. 140, § 1.]

§ 2546. **Election. Term and qualifications.** Every organized county in this state shall elect a public administrator at the general election in 1904, and every four years thereafter, who shall be ex-officio public guardian in and for his county, and shall hold his office four years and until his successor is elected, or appointed and qualified. The term of office of such officer shall commence on the first day of January following his election. He shall be an elector in the county where elected or appointed. [1903, ch. 140, § 2.]

§ 2547. **Oath. Bond and certificate of election.** Before entering upon the duties of his office he shall file his oath, certificate of election and bond with the judge of the county court, which bond, oath and certificate shall be recorded at length in the record book of said court. Said bond shall run to the state of North Dakota for the benefit of the parties damaged by breach of the conditions thereof, and shall be in a sum of not less than ten thousand dollars, with sufficient sureties justifying and conditioned that he will:

1. Faithfully discharge all the duties of his office.
2. Account annually to the judge of the county court for all estates and property under his official control and care, or whenever required so to do by the said judge.
3. Turn over to his successor in office all property and estates in his official care and control, and truly account for the same.
4. Turn over all property and estates in his official care and control to any other administrator, executor or guardian designated by the judge of the county court, and truly account for the same.
5. Perform such other acts and duties properly relating to his office, as may be ordered by the county judge.

Which bond shall be approved and indorsed as provided for administrators and executors; and it shall be the duty of the judge of the county court to require the public administrator to make a statement annually, under oath, of the amount of property in his hands or under his control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property, and the court may from time to time, as occasion shall require, demand additional security of such administrator, and in default of giving the same within twenty days of such demand, may remove the public administrator and appoint another. [1903, ch. 140, § 3.]

**§ 2548. Compensation. How removed from office. Why.** He shall receive the same compensation for his services as may be allowed by law to executors, administrators and guardians, unless the court, for special reasons, allows a higher compensation. Such public administrator may be removed from office in the same manner and for the same reasons as other public officers, except as provided in sections 2547 and 2551, in which case the removal may be summary and upon motion of the judge of the county court. [1903, ch. 140, § 4.]

**§ 2549. Duties and powers of public administrator.** It shall be the duty of the public administrator to take into his charge, without application to the county court, or special appointment, the estates of all deceased persons, and the person and estate of all minors, and the estate or person and estates of all insane persons in his county, in the following cases:

1. When a person dies intestate in the county without relations, or dies leaving a will, and the executor named is absent or fails to qualify.

2. When persons die intestate without any known heirs.

3. When persons unknown die or are found dead in the county.

4. When money, property, papers or other estate are left in a situation exposed to loss or damage, and no other person administers on the same.

5. When any estate of any person who dies intestate therein or elsewhere, is left in the county liable to be injured, wasted or lost, when such intestate does not leave a known husband, widow or heirs in this state.

6. The persons of all minors under the age of fourteen years, whose parents are dead, and who have no legal guardian.

7. The estate of all minors whose parents are dead, or if living refuse or neglect to qualify as guardian, or having qualified, have been removed, or are, from any cause, incompetent to act as such guardian, and who have no one authorized by law to take care of and manage their estates.

8. The estates or person and estates of all insane persons in his county who have no legal guardian and no one competent to take charge of such estate, or to act as such guardian can be found, or is known to the court having jurisdiction, who will qualify.

9. Where from any other good cause, said court shall order him to take possession of any estate to prevent its being injured, wasted, purloined or lost. [1903, ch. 140, § 5.]

**§ 2550. Additional powers. Duties and remedies.** In addition to the provisions of the foregoing sections he shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions and proceedings as are enjoined upon or authorized against special administrators and guardians by the probate code, so far as the same may be applicable. And he may be appointed in proper cases as general administrator without giving additional bond, except as provided in section 2546, and shall then continue the administration until finally settled, unless he resigns, dies, is discharged in the ordinary course of law as the administrator, or is removed for cause as public administrator or as administrator, and may exercise the powers conferred upon, and shall be subject to the duties and liabilities imposed upon such administrators. [1903, ch. 140, § 6.]



§ 2551. **Giving notice on taking charge of estate. Penalty for failure.** It shall be the duty of every public administrator immediately upon taking charge of any estate, except those which he shall have taken charge under the order of the county court for the purpose of administering the same, to file a notice of the fact in the office of the county court. If any public administrator shall fail to file the notice provided for in this section, he shall forfeit and pay to the persons entitled to the estate a sum not exceeding two hundred dollars to be recovered before said court, on motion, and after reasonable notice thereof to said public administrator; and said court may in its discretion remove such public administrator from office. [1903, ch. 140, § 7.]

§ 2552. **Civil officers to inform him as to property, when.** It shall be the duty of all civil officers to inform the public administrator of all property and estate known to them which is liable to loss, waste or injury and which by law ought to be in the hands of the public administrator. [1903, ch. 140, § 8.]

§ 2553. **Shall prosecute necessary suits.** The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers or other estates of the person deceased, or of any minor, or insane person, in his charge or custody. [1903, ch. 140, § 9.]

§ 2554. **Court may order him to account to successor, when.** The probate court may at any time, for good cause shown, order the public administrator to account for and deliver all money, property or papers belonging to any estate in his hands to his successor in office or to the heirs of said estate, or to any executor or administrator regularly appointed as provided by law. [1903, ch. 140, § 10.]

#### ARTICLE 21.—COUNTY BONDS.

§ 2555. **Bonds, how issued. Disputed claims.** Each organized county in this state is authorized and empowered by and through its board of county commissioners, when in the judgment of said board it is deemed to be to the best interests of the county, to issue its negotiable bonds in the name of said county for the sole purpose of funding or refunding the outstanding indebtedness of such county, represented by the county warrants, bonds or orders of such county: or for the purpose of funding and paying claims against such county which have heretofore been disputed, but which may have been or may hereafter be adjusted and allowed by such board; or for the purpose of paying any final judgment which may have been rendered against such county; provided, that the board in making settlement of disputed claims shall not allow interest at a greater rate than seven per cent per annum: provided, however, that no county shall in any event issue its bonds in any amount which, with its prior bonded indebtedness, will exceed the maximum indebtedness allowed by law: but the issuing of new bonds in lieu of outstanding bonds or indebtedness shall not be considered as the creation of a new debt. [1890, ch. 30, § 1; R. C. 1895, § 2035.]

§ 2556. **Appeal in disputed claims.** Whenever any disputed or litigated claim shall have been adjusted and determined by the board, an appeal may be taken from said settlement in the manner and within the time now allowed by law to the district court in and for said county; and no bonds shall be issued as hereinafter provided until the expiration of the period allowed by law within which said appeal may be taken. [1890, ch. 30, § 2; R. C. 1899, § 2036.]

§ 2557. **Bonds. Rate of interest. Mode of issue.** Said bonds shall be in denominations of not less than one hundred dollars nor more than one thousand dollars, shall bear the date of their issue, and shall be made payable to the order of the purchaser in not less than five nor more than twenty years from their date, and bear interest not to exceed six per cent per annum, payable semiannually, with coupons attached for each interest installment;

said bonds and coupons shall be signed by the chairman of the board of county commissioners and shall be attested by the county auditor. The seal of the county shall be affixed to each bond but not to the coupons. Such bonds shall be printed, lithographed or engraved on bond paper, and each bond shall state on its face that it is issued in accordance with the provisions of this article, and that portion of this article relating to the issuance of funding and refunding bonds shall be printed on the back of each bond. Such bonds may be made payable anywhere in the United States. [1890, ch. 30, § 3; R. C. 1895, § 2037.]

§ 2558. **Bonds may be exchanged or sold.** Said bonds may be exchanged at par value for an equal amount of indebtedness of said county with the holder of such indebtedness, whether evidenced by county warrants, bonds or orders, judgment or adjusted claim; or said bonds may be sold by the board at not less than par value, and the proceeds applied solely to the payment of the indebtedness for which they were issued. A record of each bond so issued shall be kept by the county treasurer showing the number of each bond so issued, its date, amount, rate of interest, when and where payable, the amount received therefor, to whom sold, and how the proceeds were disposed of, and it shall be the duty of the county auditor to keep a duplicate account of the same. [1890, ch. 30, § 4; R. C. 1899, § 2038.]

§ 2559. **Tax to be levied.** The board of county commissioners shall levy each year upon the taxable property of the county a sufficient tax to pay the interest on said bonds as the same accrues, and a reasonable time before maturity a sufficient tax to provide a sinking fund for the payment of the bonds when they mature. [1890, ch. 30, § 5; R. C. 1899, § 2039.]

§ 2560. **County treasurer to pay, when.** When said bonds and the coupons thereto attached mature, it shall be the duty of the county treasurer to pay the same on presentation out of any funds in his hands applicable thereto; and he shall then cancel them by writing or stamping across the face of each coupon or bond the words "paid this . . . . . day of . . . . ." (inserting the date of the payment.) [1890, ch. 30, § 6; R. C. 1899, § 2040.]

§ 2561. **Commission allowed treasurer.** The county treasurer shall be allowed a commission of one-fourth of one per cent on the face value of said bonds for receiving and disbursing all funds arising from the sale or exchange thereof and the commission herein provided for shall be in lieu of all other commissions allowed by law and shall be paid into the salary fund and be disposed of as is now provided by law. [1890, ch. 30, § 7; R. C. 1899, § 2041.]

§ 2562. **Bonds negotiable, when.** Bonds issued in substantial conformity with this article shall in law be deemed negotiable. [1890, ch. 30, § 8; R. C. 1899, § 2042.]

#### ARTICLE 22.—BONDS FOR COUNTY BUILDINGS.

§ 2563. **Power to bond.** Whenever any county in this state, having three hundred voters or more, shall have been organized for four years or more, and the county seat of such county has been permanently located as provided by law and the buildings occupied by such county for court house, office or jail purposes are inadequate to the wants thereof, or unsafe by reason of extraordinary risk of fire or otherwise, such county may issue bonds for the purpose of purchasing a site for and erecting a court house or jail, or both, under the restrictions and according to the provisions of this subdivision of this article. [1889, ch. 42, § 1; 1893, ch. 43, § 1; R. C. 1899, § 2043.]

§ 2564. **Limit of issue.** No county shall issue its bonds under the provisions of the last section in excess of five per cent of its valuation according to the last assessment thereof, including all the outstanding indebtedness of such county at the time of issuing such bonds. [1889, ch. 42, § 2, 1890, ch. 31, § 1; R. C. 1899, § 2044.]

§ 2565. **Election for bonds.** Whenever in the judgment of a majority of the board of county commissioners in any county which comes under the provisions of this subdivision such county has insufficient or inadequate buildings for its use for court house or jail, or both, such board may order an election for the purpose of determining by a vote of the electors of such county the question of issuing its bonds for the purpose of the erection of a court house or jail, or both, as by this subdivision provided, including the purchase of a site for such court house and jail, or both, at such county seat, if none is provided. Such election shall be held in the manner and upon the notice prescribed by law for other elections, but the published and posted notices of such election shall state its object, the amount of bonds to be issued, the denominations of such bonds, the length of time for which they shall run and the rate of interest which they shall bear, and the ballots shall have printed or written, or partly printed and partly written thereon "for issue of bonds" or "against issue of bonds" and if a majority of the ballots so cast shall be for the issue of bonds, then the county commissioners shall issue and dispose of said bonds as provided by this subdivision, and erect a court house or jail, or both, for the use of such county according to the provisions hereof. [1889, ch. 42, § 3; R. C. 1899, § 2045.]

§ 2566. **Power of county commissioners. Contracts.** The board of county commissioners of any county erecting county buildings under the provisions of this subdivision shall have power to purchase ground for a site if necessary, let contracts for the building and completion of such court house or jail, or both, and the buildings connected therewith, and shall have the entire supervision of its construction; provided, that all contracts connected with the erection of such buildings shall be let to the lowest responsible bidder, after notice of the letting of such contracts shall have been published in one of the newspapers of such county, and in case there is no newspaper in such county, then in a newspaper in some adjoining county, for at least once a week for four consecutive weeks, before the letting of such contracts, and the board shall have power to reject any or all bids. [1889, ch. 42, § 4; R. C. 1895, § 2046.]

§ 2567. **Board of auditors.** The county auditor, county treasurer and some qualified elector and freeholder of such county appointed by the board of county commissioners outside of its own number shall act as a board of auditors to audit accounts of such board of county commissioners in connection with the erection of county buildings, pursuant to the provisions hereof, and the members of such board of auditors shall receive for their services the sum of three dollars each for every day actually and necessarily employed in such capacity, to be paid upon the warrant of such board of county commissioners. [1889, ch. 42, § 5; R. C. 1899, § 2047.]

§ 2568. **Denominations. Interest. Mode of issue.** All bonds issued pursuant to the provisions hereof shall be in denominations of not less than one hundred dollars and not more than one thousand dollars, shall bear the date of their issue, shall be made payable to the purchaser or bearer and become due in not less than ten years nor more than twenty years from their date and shall bear interest at the rate of not exceeding seven per cent per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of county commissioners and shall be attested by the county auditor. The seal of the county shall be affixed to each bond but not to the coupons, and said bonds shall each contain a recital in substantially the following words: "Issued in pursuance of sections 2563 to 2576 inclusive of the revised codes of 1905, authorizing and empowering organized counties to erect county buildings for court house and jail purposes and to issue and dispose of bonds to provide funds to pay therefor, and to provide for the payment of the principal and interest of such bonds." Such bonds shall be printed, engraved



or lithographed on bond paper and may be made payable anywhere in the United States. They shall be sold by the board of county commissioners at not less than their par value and the proceeds applied solely to the payment of the indebtedness incurred in the erection of a court house or jail or both, and the purchase of a site therefor. [1889, ch. 42, § 6; R. C. 1899, § 2048.]

§ 2569. **Notice of sale.** No such bonds shall be sold until after having been duly advertised at least once a week for four consecutive weeks in one of the newspapers published at the seat of government, and for the same length of time at any other point deemed advisable by the board. [1889, ch. 42, § 6; R. C. 1899, § 2049.]

§ 2570. **Proceeds.** The proceeds of the sale of such bonds shall be deposited in the treasury of such county, to be paid out by the county treasurer on the order of such board. The county treasurer shall give an additional bond in double the amount of the bonds so issued and sold, and shall receive as compensation for the receiving and disbursing of all funds arising from the sale of such bonds one per cent of the par value of such bonds, and the compensation herein provided for shall be in lieu of all other commissions allowed him by law. [1889, ch. 42, § 6; R. C. 1899, § 2050.]

§ 2571. **Tax to be levied.** The board of county commissioners at or before the issuance of such bonds shall levy upon the taxable property of the county a sufficient tax to pay the interest on such bonds as the same accrues and the principal thereof when due. [1889, ch. 42, § 7; R. C. 1895, § 2051.]

§ 2572. **Treasurer to pay and cancel at maturity.** When such bonds and the several coupons thereto attached mature it shall be the duty of the county treasurer to pay the same on presentation and to cancel them when paid. [1889, ch. 42, § 8; R. C. 1899, § 2052.]

§ 2573. **Bonds to be registered.** Before the bonds are delivered to the purchaser they shall be presented to the county auditor, who shall register them in a book kept for that purpose and known as the "bond register," in which register he shall enter the number of each bond, its date of maturity, amount, rate of interest, to whom and where payable. [1889, ch. 42, § 9; R. C. 1899, § 2053.]

§ 2574. **Bonds negotiable, when.** Bonds issued in substantial conformity herewith shall be in law considered negotiable. [1889, ch. 42, § 10; R. C. 1899, § 2054.]

§ 2575. **Funding bonds, when issued.** Any county which has issued warrants or other evidences of indebtedness since the first day of January, 1887, for the purpose of building a court house or jail, or both, may issue bonds under the provisions of this subdivision to fund such warrants or other evidences of indebtedness and if such indebtedness was authorized by a majority vote of the qualified electors of such county previous to the incurring of the same, no new election shall be had, and the board of county commissioners of any such county is hereby authorized and empowered when in the judgment of such board it is deemed to be the best interests of such county to issue such bonds, and to apply the proceeds solely to the redemption of such warrants or other evidences of indebtedness; provided, that the bonds issued under the provisions of this section shall bear a lower rate of interest than the outstanding indebtedness proposed to be funded. [1889, ch. 42, § 11; R. C. 1899, § 2055.]

§ 2576. **When election not necessary.** Any county which has heretofore and since the first day of January, 1887, submitted to the voters of such county the question of building a court house or jail, or both, and issuing bonds therefor and upon such election the building of a court house or jail, or both, and the issuing of bonds therefor was authorized or directed by a majority vote of the qualified electors of such county as evidenced by a majority of the votes cast at such election upon said question so submitted to them, no new election shall be had, but such elections and the bonds when issued thereunder are hereby held and declared legal and valid as if the election

had been held after the taking effect of this article, and the board of county commissioners of any such county are authorized and empowered to issue such bonds, and with the funds so obtained from the sale thereof to construct a court house or jail, or both, and are also hereby empowered to purchase a site for such court house or jail, or both, at such county seat if none is provided and pay for the same out of any unappropriated moneys in the county treasury; or contract in the name and in behalf of the county for the purchase and conveyance of such site, to be paid for from the proceeds of such bonds when negotiated. [1889, ch. 42, § 12; R. C. 1899, § 2056.]

ARTICLE 23.—CERTIFICATE OF DEBT LIMIT.

§ 2577. **Certificate of debt limit necessary.** No bond or evidence of debt of any county, or bond of any township or other political subdivision of this state, shall be valid unless the same has indorsed thereon a certificate stating that such bond or evidence of debt is issued pursuant to law and is within the debt limit, which certificate in case of a county shall be signed by the county auditor, and in the case of a township or other political subdivision shall be signed by the treasurer of such township or other political subdivision. [1890, ch. 33, § 1; R. C. 1899, § 2057.]

CHAPTER 29.

FEES AND SALARIES OF COUNTY, TOWNSHIP AND OTHER OFFICERS.

ARTICLE 1.—STATE'S ATTORNEYS.

§ 2578. **Salary of state's attorney and assistant.** As compensation for his services the state's attorney shall be paid, in all counties, an annual salary, based on the assessed valuation, as follows: In counties having a valuation under five hundred thousand dollars, three hundred dollars; over five hundred thousand dollars and under one million dollars, five hundred dollars; over one million dollars and under one million five hundred thousand dollars, six hundred dollars; over one million five hundred thousand dollars and under two million dollars, seven hundred dollars; over two million dollars and under two million five hundred thousand dollars, eight hundred dollars; over two million five hundred thousand dollars and under three million dollars, one thousand dollars; over three million dollars and under six million dollars, twelve hundred dollars; over six million dollars and under seven million dollars, fifteen hundred dollars; over seven million dollars and under eight million dollars, seventeen hundred and fifty dollars, and in all counties having a valuation over eight million dollars two thousand dollars for his personal services; provided, that in counties of over nine million dollars assessed valuation an assistant state's attorney shall be appointed by the state's attorney, who shall receive a salary fixed by the county commissioners in an amount not to exceed one thousand dollars, and in counties of less than nine million dollars valuation the salary of assistant state's attorney shall be fixed by the county commissioners. [1899, ch. 149; R. C. 1899, § 2058.]

§ 2579. **Office to be furnished. Salary not diminished.** The county commissioners in each county, the population of which does not exceed ten thousand, shall provide a suitable and convenient office for the state's attorney or in lieu thereof may allow a reasonable sum not exceeding forty per cent of the salary prescribed by law for the rental and maintenance of such office.

The salary of the state's attorney shall not be diminished during the term for which he was elected. [R. C. 1895, § 2060.]

ARTICLE 2.—CLERK OF THE DISTRICT COURT.

§ 2580. **Salary of the clerk of the district court, how determined.** The salary of the clerk of the district court shall be regulated by the value of the property in his county as fixed by the state board of equalization for the preceding year, as follows: He shall be entitled to receive not to exceed four hundred dollars in counties where the assessed valuation does not exceed five hundred thousand dollars; five hundred dollars in counties where the assessed valuation exceeds five hundred thousand dollars but does not exceed one million dollars; six hundred dollars in counties where the assessed valuation exceeds one million dollars but does not exceed one million five hundred thousand dollars; seven hundred dollars in counties where the assessed valuation exceeds one million five hundred thousand dollars but does not exceed two million dollars; eight hundred dollars in counties where the assessed valuation exceeds two million dollars but does not exceed three million dollars; nine hundred dollars where the assessed valuation exceeds three million dollars but does not exceed four million dollars; one thousand one hundred dollars where the assessed valuation exceeds four million dollars but does not exceed five million dollars; twelve hundred dollars where the assessed valuation exceeds five million dollars but does not exceed six million dollars; thirteen hundred dollars where the assessed valuation exceeds six million dollars but does not exceed seven million dollars; fifteen hundred dollars where the assessed valuation exceeds seven million dollars but does not exceed eight million dollars; sixteen hundred dollars where the assessed valuation exceeds eight million dollars but does not exceed nine million dollars, and in counties where the assessed valuation exceeds nine million dollars but does not exceed ten million the clerk shall receive the sum of eighteen hundred dollars, and in counties where the assessed valuation exceeds ten million dollars the clerk shall receive two thousand dollars; provided, that no clerk of the district court shall receive for his personal service an amount in excess of two thousand dollars in any one year, as provided by this article, to be paid monthly from the general county fund on the warrant of the county auditor. [1889, ch. 64, § 1; R. C. 1899, § 2061.]

Classification of counties by population for the purpose of fixing salaries, legal. *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.

§ 2581. **Clerk to keep fee book. Monthly report to county auditor.** Each clerk of the district court shall keep a book to be provided by the county and which shall be a part of the public records of his office, in which shall be entered each item of fees for services rendered and shall within three days after the close of each calendar month and also at the close of his term of office, file with the county auditor a statement under oath showing the amount of fees which he has received as such officer since the date of his last report, and shall within three days deposit with the county treasurer the total sum of such fees, which sum so deposited shall be placed to the credit of the salary fund. Any clerk of the district court who shall neglect or omit to charge or collect the fees charged in section 2584 to be charged and collected by him for services rendered, or shall fail or neglect to keep a record of the same, or to make a correct statement thereof to the county auditor, with intent to evade the provisions of this article, shall be deemed guilty of a misdemeanor. [1890, ch. 64, § 2; R. C. 1899, § 2062.]

§ 2582. **Deputy clerk of the district court.** If in the judgment of the board of county commissioners of any county in the state it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the clerk of the district court that a deputy or clerks be employed therein,

they shall by resolution, fix the number of clerks to be employed and the compensation which they shall receive, which compensation shall be paid monthly from the general salary fund by warrant of the county auditor; provided, that the officer in whose office such deputy or clerks are to be employed shall have the sole power of appointing the same and removing them at pleasure; provided, further, that any officer who shall receive and appropriate to his own use and benefit any part of the salary allowed any clerk employed under the provisions of this article, shall be deemed guilty of a misdemeanor. [1899, ch. 64, § 3; R. C. 1899, § 2063.]

§ 2583. **Excess of fees, how disposed of.** In case the fees paid into the county treasury in any calendar year by the clerk of the district court shall exceed the salary fixed herein, and the compensation of a deputy or clerks as herein provided, then and in that case the county treasurer and the county auditor of the county in which such excess shall have occurred shall within thirty days thereafter credit such excess to the general fund of the county. [1899, ch. 64, § 4; R. C. 1899, § 2064.]

§ 2584. **Fees to be charged.** Clerks of the district court shall charge and collect the following fees:

1. In actions for the recovery of money only, in which judgment is entered by default, for all services prior to execution, three dollars.

2. In all other actions in which judgment is entered by default, for services prior to execution, five dollars.

3. In special proceedings, for all services prior to appeal, five dollars.

4. In actions, in which an issue of fact is tried, for all services prior to execution, seven dollars.

5. In actions in which only a question of law is tried, the fees shall be the same as on default in like actions.

6. In addition to the foregoing fees, for all services growing out of a provisional remedy, there shall be charged and paid at the time the remedy is applied for, for the first paper in connection therewith filed, two dollars and fifty cents.

7. For issuing execution in any action, one dollar.

8. For filing execution on return, fifty cents.

9. For filing and indexing a mechanic's lien, one dollar.

10. For filing and indexing any other paper authorized to be filed in his office, but not connected with any civil action or proceeding, fifty cents.

11. For making certified abstracts of any judgment, or certified copy of any judgment, order or other paper, filed or recorded in his office, for the first four folios, fifty cents; for each additional folio, ten cents.

12. For entering satisfaction of any judgment or lien, fifty cents.

13. For taking declaration of intention to become a citizen of the United States and making a certified copy of the record thereof, one dollar.

14. For final naturalization papers, including copy of the record thereof, one dollar.

15. For each additional copy of either of such citizen's papers, fifty cents.

16. For approving bond of a notary public, fifty cents.

17. For entering and indexing commission of notary public, fifty cents.

18. For taking an acknowledgment or administering an oath, twenty-five cents.

19. For recording and indexing any paper, not filed in an action or proceeding, for the first four folios, fifty cents; for each additional folio, ten cents.

20. For a certificate of the official capacity of a notary public, or other officer, fifty cents.

21. For certifying an abstract of real property as to judgments and liens, for each person named in the abstract as to whom search is made, ten cents.

22. For receiving, keeping and paying out money in pursuance of law or an order of court, one per cent of the amount, which shall be paid by the person receiving such money.

23. For issuing commission to take depositions, one dollar.

24. For certifying the record on appeal to the supreme court, or to the district court of any other county and transmitting the same, five dollars.

25. For all services on remittitur from supreme court, two dollars.

26. For taking depositions, per folio, ten cents.

27. For making certified transcripts of any judgment, one dollar.

28. For filing and docketing transcript of judgment from justice's court or from any other county, one dollar.

29. For filing and entering affidavit and other papers, for renewal of any judgment, two dollars. [1899, ch. 64, § 5; R. C. 1899, § 2065; 1901, ch. 92; 1903, ch. 55.]

§ 2585. **Deposit of fees to be required.** No civil action, appeal or proceeding shall be entered in the clerk's office of said district court until the person desiring such entry shall deposit with the clerk the sum of five dollars on account of fees in the case, and out of which the clerk shall satisfy the fees due in such case as they accrue, and whenever said sum or any other deposit is exhausted, said clerk may require as a condition for further entries, or clerk's fees, an additional deposit of two dollars for the purpose and applications as aforesaid. Any balance remaining with said clerk after such application and the determination of the case shall be returned to the party disposing the same, his agent or attorney. [1899, ch. 64, § 6; R. C. 1899, § 2067.]

#### ARTICLE 3.—COUNTY JUDGES.

§ 2586. **Salary of county judge.** As compensation for his services the county judge shall be paid in all counties an annual salary based on the assessed valuation as follows: In counties having a valuation under five hundred thousand dollars, three hundred dollars; over five hundred thousand and under one million five hundred thousand dollars, four hundred dollars; over one million five hundred thousand dollars and under two million dollars, five hundred dollars; over two million dollars and under two million five hundred thousand dollars, seven hundred dollars; over two million five hundred thousand dollars and under four million five hundred thousand dollars, one thousand dollars; over four million five hundred thousand dollars and under seven million dollars, fourteen hundred dollars; over seven million and under eight million dollars, fifteen hundred dollars; and in all counties having a valuation over eight million dollars, eighteen hundred dollars, and no more for his personal services; provided, that the salary of county judge in counties having increased jurisdiction shall not be affected by the provisions of this article. [1899, ch. 68; R. C. 1899, § 2068.]

§ 2587. **Provision for deputies. Salaries.** If in the judgment of the board of county commissioners of any county it is deemed necessary for the prompt and accurate dispatch of the business in the office of county judge that deputies or clerks be employed therein, it shall by resolution fix the number of clerks to be employed and amount of compensation to be paid such deputies or clerks, which compensation shall be paid monthly from the special salary fund, when the salary fund is exhausted then out of the general fund by warrant; provided, that the officer in whose office such deputies or clerks are employed shall have the sole power of appointing and removing them at pleasure. In no case shall the county judge be allowed for clerk hire unless such services have been actually rendered. [1899, ch. 69; R. C. 1899, § 2069.]

§ 2588. **Misappropriation of salary, misdemeanor.** Any officer who shall receive and appropriate to his own use and benefit any part of the salary

allowed to any such clerk or deputy shall be guilty of a misdemeanor. [1899, ch. 69; R. C. 1899, § 2069.]

§ 2589. **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 appraisalment 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 appraisalment, 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. [1890, ch. 50, § 4; R. C. 1899, § 2071; 1903, ch. 66; 1905, ch. 87.]

§ 2590. **Payments to treasurer. Receipts.** When the payments provided for in the foregoing sections are made to the treasurer of the proper county he shall execute therefor duplicate receipts, one of which shall be filed with the county auditor and one with the judge of the county court. [1890, ch. 50, § 5; R. C. 1899, § 2072.]

#### ARTICLE 4.—COUNTY AUDITORS.

§ 2591. **Term of office commences, when.** The term of office of the county auditor shall commence on the first Monday in April next succeeding his election. [1897, ch. 43; R. C. 1899, § 2072a; 1903, ch. 72.]

§ 2592. **Salary of, how determined.** The salary of the county auditor shall be regulated by the value of the property in his county as fixed by the state board of equalization for the preceding year as follows: He shall be entitled to receive not to exceed seven hundred and fifty dollars in counties where the assessed valuation does not exceed five hundred thousand dollars; eight hundred and fifty dollars in counties where the assessed valuation exceeds five hundred thousand dollars but does not exceed one million dollars; one thousand dollars in counties where the assessed valuation exceeds one million dollars but does not exceed one million five hundred thousand dollars; twelve hundred dollars in counties where the assessed valuation exceeds one million five hundred thousand dollars but does not exceed two million dollars; fourteen hundred dollars where the assessed valuation exceeds two million dollars but does not exceed four million dollars; fifteen hundred dollars in counties where the assessed valuation exceeds four million dollars but does not exceed five million dollars; sixteen hundred dollars in counties where the assessed valuation exceeds five million dollars but does not exceed six million dollars; seventeen hundred dollars in counties where the assessed valuation exceeds six million dollars but does not exceed seven million dollars; eighteen hundred dollars in counties where the assessed valuation exceeds seven million dollars but does not exceed eight million dollars; nineteen hundred dollars in counties where the assessed valuation exceeds eight million dollars but does not exceed nine million dollars; two thousand dollars in counties where the assessed valuation exceeds nine million dollars; provided, that no county auditor shall receive for his personal services an amount to exceed two thousand dollars in any one year. [1899, ch. 56; R. C. 1899, § 2073.]



§ 2593. **Provision for deputies.** If in the judgment of the board of county commissioners of any county it is deemed necessary for the prompt and accurate dispatch of the business in the office of the county auditor, that clerks or deputies be employed therein, they shall authorize the same, and the allowance for such clerk hire shall be paid in the same manner as all other similar claims against the county, but in no case shall the auditor be allowed for clerk hire unless such services have been actually rendered. [1891, ch. 52, § 2; R. C. 1899, § 2074.]

## ARTICLE 5.—REGISTER OF DEEDS.

§ 2594. **Salary, how determined.** As compensation for his services the register of deeds shall be paid in all counties an annual salary based on the assessed valuation as follows: In counties having a valuation under five hundred thousand dollars, five hundred dollars; over five hundred thousand dollars and under one million dollars, seven hundred and fifty dollars; over one million dollars and under one million five hundred thousand dollars, one thousand dollars; over one million five hundred thousand dollars and under two million dollars, twelve hundred dollars; over two million dollars and under three million dollars, fourteen hundred dollars; over three million dollars and under five million dollars, sixteen hundred dollars; over five million dollars and under eight million dollars, seventeen hundred dollars; over eight million dollars and under nine million dollars, eighteen hundred dollars; and in all counties having a valuation over nine million dollars, two thousand dollars and no more for his personal services. [1899, ch. 132; R. C. 1899, § 2075.]

§ 2595. **Fee book to be kept. Monthly reports. Penalty.** Each register of deeds shall keep a book provided by the county in which shall be entered each item of fees for services rendered and shall, within three days after the close of each calendar month and also at the end of his term of office, file with the county auditor a statement under oath showing the fees which he has received as such officer since the date of his last report, and also within three days deposit with the county treasurer the total sum of such fees, which sum so deposited shall be placed to the credit of the special salary fund. Any register of deeds, who shall neglect or omit to charge or collect the fees allowed by law for services rendered, or shall fail or neglect to keep a record of the same, or to make a correct statement thereof to the county auditor, with intent to evade the provisions of this section, shall be deemed guilty of a misdemeanor. [1891, ch. 52, § 4; R. C. 1899, § 2076.]

§ 2596. **County commissioners may employ deputies, when. Compensation.** If, in the judgment of the board of county commissioners, it shall be deemed necessary for the prompt and accurate dispatch of the business in the office of the register of deeds that deputies or clerks be employed therein, it shall by resolution fix the number of clerks to be employed and the compensation which they shall receive, which compensation shall be paid monthly from the special salary fund by warrant; provided, that the officers in whose office such deputies or clerks are to be employed shall have the sole power of appointing and removing them at pleasure; provided, further, that the total amount paid to the register of deeds for salary and clerk hire shall in no case exceed the amount of fees by such officer collected; and in counties having a population of less than fifteen thousand, to be ascertained as hereinafter provided, such amount so paid such register of deeds and clerk hire shall not exceed the sum of five thousand dollars; and in counties having a population of more than fifteen thousand, to be ascertained as hereinafter provided, such amount so paid to such register of deeds and clerk hire shall not exceed the sum of seven thousand five hundred dollars; provided, however, that all moneys received for compiling or the continuation of abstracts of title, shall be turned over to the county treasurer, who shall credit the same to

the county general fund. Such population shall be ascertained by taking the total number of votes cast at the last presidential election in said county and multiplying the same by five. Any officer who shall receive and appropriate to his own use and benefit any part of the salary allowed to any such clerk or deputy, shall be guilty of a misdemeanor. [1891, ch. 52, § 6; R. C. 1899, § 2078; 1903, ch. 154.]

Entitled to amount of fees of office, only. *Smithson v. Fall River Co.*, 15 S. D. 34, 87 N. W. 1.

§ 2597. **Fees.** The register of deeds shall charge and collect the following fees:

1. For recording a deed, mortgage or other instrument, and indexing, for the first four hundred words, seventy-five cents; for each additional folio, ten cents.
2. Copy of record, for each ten words, one cent.
3. Certificate and seal, twenty-five cents.
4. Making certified abstracts of title, for the first deed or transfer, one dollar, and for each additional deed or transfer, twenty-five cents.
5. Whenever any person presents an abstract to the register of deeds who made the same for continuation of such abstract, it shall be his duty to continue the same, and he shall be entitled to receive twenty-five cents for each new transfer, and twenty-five cents for his certificate thereto, and no more.
6. Entering satisfaction of mortgage or lien, twenty-five cents.
7. For discharging notice of lis pendens, twenty-five cents.
8. For recording marks and brands, each twenty-five cents.
9. For filing and indexing a chattel mortgage, or for filing and indexing a renewal of a chattel mortgage, twenty-five cents, but no fee shall be charged for releasing the same.
10. For filing and indexing other instruments not herein specified, authorized by law to be filed, twenty-five cents.
11. For recording a final receipt from the receiver of any United States land office, fifty cents. [1897, ch. 124; R. C. 1899, § 2079.]

ARTICLE 6.—COUNTY TREASURER.

§ 2598. **Salary, how determined.** The county treasurer of each county shall be allowed at the time of his settlement all sums paid by him for printing such advertisements as he is required to have done, at the rates prescribed by law; and all sums paid by him for blank books and stationery necessarily used in his office, and shall receive for his services such sums as may be allowed by law for the collection and paying over all moneys collected or received by him for the leasing, sale or interest on school or other state lands, and all other public moneys by him collected or received as such county treasurer for each year's services as follows: Four and one-half cents on each dollar for the first ten thousand dollars; three cents on each dollar on the next twenty thousand dollars; and two cents on each dollar on all sums over thirty thousand dollars and less than sixty thousand dollars, and one cent on each dollar on sums over sixty thousand dollars, to be paid on the warrant of the county auditor out of the salary fund, and whenever the salary fund shall be exhausted the auditor shall draw his warrant on the general fund; provided, that no compensation shall be allowed the treasurer for any moneys received from his predecessor in office, or his legal representatives, nor on moneys received from the current school funds of the state arising from the lease or sale of such lands; provided, that no treasurer shall receive more than one thousand two hundred dollars for his personal services in any one year in counties where the valuation of taxable property is less than one million five hundred thousand dollars; nor more than one thousand four



hundred dollars in counties where the assessed valuation exceeds one million four hundred thousand dollars but does not exceed two million dollars; nor more than one thousand five hundred dollars in counties where the assessed valuation exceeds two million dollars but does not exceed three million dollars; nor more than one thousand six hundred dollars in counties where the assessed valuation exceeds three million dollars but does not exceed four million dollars; nor more than one thousand seven hundred dollars in counties where the assessed valuation exceeds four million dollars but does not exceed four million five hundred thousand dollars; nor more than one thousand eight hundred dollars in counties where the assessed valuation exceeds four million five hundred thousand dollars but does not exceed five million dollars; nor more than one thousand nine hundred dollars in counties where the assessed valuation exceeds five million dollars but does not exceed six million dollars; nor more than two thousand dollars in counties where the assessed valuation exceeds six million dollars but does not exceed seven million dollars; nor more than two thousand one hundred dollars in counties where the assessed valuation exceeds seven million dollars but does not exceed eight million dollars; nor more than two thousand two hundred dollars in counties where the assessed valuation exceeds eight million dollars but does not exceed nine million dollars; nor more than two thousand three hundred dollars in counties where the assessed valuation exceeds nine million dollars but does not exceed ten million dollars; nor more than two thousand four hundred dollars in counties where the assessed valuation exceeds ten million dollars but does not exceed eleven million dollars; nor more than two thousand five hundred dollars in counties where the assessed valuation exceeds twelve million dollars; and all moneys received as fees for certifying to abstracts in excess of the salary as limited by this article, shall be paid by the county treasurer at the end of each month into the revenue fund of the county; provided, further, that whenever the salary of the county treasurer is limited to a fixed sum by the second proviso of this section, such sum shall be paid in the manner provided above at the end of each month in twelve equal installments and no treasurer receiving pay for his services under said second proviso, whose salary cannot be certainly and exactly fixed at the beginning of his official year, shall receive more than one twelfth of his annual salary at the end of each month, as carefully estimated and recorded by the board of county commissioners at its January meeting in each year; and the balance of the year's pay found to be due the treasurer shall be paid to him on the computation of such board of commissioners at its next January meeting. [1899, ch. 67; R. C. 1899, § 2080.]

A county treasurer is not entitled to commission on money received from the sale of bonds for the erection of a court house. *Sandager v. Walsh County*, 6 Dak. 31, 50 N. W. 196; *Territory v. Cavanaugh*, 3 Dak. 325, 19 N. W. 413.

**§ 2599. Deputies, when appointed. Salaries.** If in the judgment of the board of county commissioners of any county it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the county treasurer, that a deputy or clerk be employed therein, it shall by resolution fix the number of deputies or clerks to be employed, and the length of time they shall be employed together with the compensation which they shall receive, which compensation shall be paid monthly, in the same manner as the salary of the county treasurer; but the officer in whose office such deputy or clerks are to be employed shall have the sole power of appointing and removing them at pleasure. Any county treasurer who shall receive and appropriate to his own use any part of the salary allowed any clerk or deputy in his office shall be deemed guilty of a misdemeanor. [1891, ch. 53, § 2; R. C. 1899, § 2081.]

## ARTICLE 7.—SHERIFF.

§ 2600. **Fees to be charged.** The sheriff shall be entitled to charge and receive the following fees:

1. Serving *capias* with commitment of bail and return, two dollars.
2. For each search or search warrant, one dollar.
3. Arresting under search warrant, each defendant, one dollar.
4. Serving summons, warrant of attachment, order of replevin, injunctive order, citation or other mesne process and return thereon, sixty cents; each defendant besides the first, fifty cents.
5. Copy of summons, or order of attachment, twenty-five cents.
6. Copy of injunctive order, twenty-five cents.
7. Serving subpoena for witness, each person, twenty-five cents.
8. Taking and filing bond in claim and delivery, or other undertaking to be furnished to and approved by the sheriff, one dollar.
9. Traveling expenses for each mile actually and necessarily traveled, ten cents; provided, that when it is necessary to travel by team, the actual cost of the same may be charged in addition to such mileage, not exceeding three dollars per day.
10. Making copy of any process bond or paper, other than herein provided, for each ten words, one cent.
11. Levying writ of execution and return thereof, one dollar.
12. Levying writ of possession with the aid of the county, three dollars and fifty cents.
13. Levying writ of possession without the aid of the county, two dollars.
14. Summoning grand jury, including mileage to be paid by the county, eight dollars.
15. Summoning petit jury, including mileage to be paid by the county, sixteen dollars.
16. Summoning special jury, for each person empaneled, twenty-five cents.
17. Serving notice of motion or other notice or order of the court, fifty cents.
18. Executing writ of habeas corpus and return, one dollar and twenty-five cents.
19. Serving writ of restitution and return, one dollar and twenty-five cents.
20. Calling inquest to appraise any goods and chattels which he may be required to have appraised, sixty cents, and to each appraiser, to be taxed as costs, one dollar.
21. Advertising sale in newspaper, in addition to the publisher's fees, sixty cents.
22. Advertising in writing for sale of personal property, one dollar.
23. Executing writ or order of partition, two dollars.
24. Making deed for land sold on execution or order of sale, two dollars.
25. Committing prisoner to prison, or discharging therefrom, fifty cents.
26. Opening court and attending thereon, four dollars per day, to be paid by the county; and the sum of two dollars per day shall be allowed for attendance in justice's courts, in criminal actions, but this per diem shall not be construed to apply to deputies.
27. Commissions on all moneys received and disbursed by him on execution, order of sale, order of attachment, decree, or on sale of real or personal property, shall be:
  - (a) For each dollar not exceeding four hundred dollars, three cents.
  - (b) For each dollar above four hundred dollars, and not exceeding one thousand dollars, two cents.
  - (c) For each dollar in excess of one thousand dollars, one cent.
28. In all cases in the district court where persons in whose favor the execution order of sale is issued, shall bid in the property sold on execution

or judgment, the sheriff or person making such sale shall receive the following compensation:

(a) When the amount for which the property is bid in does not exceed one thousand dollars, the sum of five dollars, and no more.

(b) When the amount for which the property is bid in exceeds one thousand dollars, the sum of ten dollars, and no more.

29. For services in case of redemption of property from sale under execution or mortgage foreclosure, for issuing certificate of redemption, one dollar.

30. For selling real property under foreclosure of mortgages by advertisement, the same fees as are allowed by law for the sale of real property under a judgment of foreclosure and sale of such property, and no more.

31. For boarding prisoners, not exceeding seventy-five cents per day each, to be determined by the board of county commissioners.

32. For distributing ballot boxes to the various precincts, two dollars per day and mileage.

33. In all cases where personal property shall be taken by the sheriff on execution or under a warrant of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same percentage on the appraised value thereof as in case of sale.

34. For the expense of taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court may order, not to exceed the actual expense incurred, and no keeper must receive to exceed three dollars per day, nor must he be so employed, unless the property is of such character as to require the personal attention and supervision of a keeper. No property must be placed in charge of a keeper if it can be safely and securely stored, or when there is no reasonable danger of loss. [1881, ch. 77, §§ 1, 2; 1885, ch. 56, § 1; 1897, ch. 100; R. C. 1899, § 2082; 1903, ch. 178; 1903, ch. 99.]

Sheriff not entitled to fee of five dollars upon each description. *Wilson v. Cass County*, 8 N. D. 456, 79 N. W. 985.

Parts of section construed. *Remer v. Lawrence County*, 13 S. D. 418, 83 N. W. 554; *Neher v. McCook County*, 11 S. D. 422, 78 N. W. 998.

Legal fees actually due only, can be taxed in chattel mortgage foreclosure. *De Luce v. Root*, 12 S. D. 141, 80 N. W. 181.

**§ 2601. Mileage for summoning jury.** The sheriff shall be entitled to receive five cents a mile for each mile actually and necessarily traveled in summoning a grand and petit jury, to be paid by the county in addition to the compensation now allowed by law; provided, that no additional mileage shall be allowed as sheriff for summoning talesmen over and above that fixed by law. [1887, ch. 52 § 1; R. C. 1899, § 2083.]

**§ 2602. Fees for transportation of prisoners and patients.** The necessary expenses and legal fees of sheriffs and other officers incurred in conveying prisoners to the penitentiary or reform school, or patients to the hospital for the insane, shall be audited as other accounts against the state are audited, and paid out of the state treasury. The auditor may allow for such expenses and fees, the following rates:

1. Three dollars per day for the time of the sheriff or other officers necessarily spent in going to and returning from such penitentiary, reform school or hospital, by the nearest route.

2. Two dollars and fifty cents per day for each guard necessary for conveying prisoners to the penitentiary or reform school, and one dollar and fifty cents per day for each guard necessary for conveying patients to the hospital for the insane, and in either case actual traveling expenses.

Not more than one guard shall be allowed for one prisoner, and one additional guard for every two additional prisoners or patients. When conveyance by team is necessary, a team and driver may be employed at a rate of compensation not exceeding five dollars per day, but not less than forty

miles per day shall be taken as a day's travel. All bills shall be in writing and fully itemized and verified by oath, and accompanied by the receipt of the warden of the penitentiary or superintendent of the reform school, or of the hospital for the insane for the delivery of such prisoner or patient. Such accounts shall first be approved by the board of county commissioners of the county from which the prisoner or patient is committed, and be entered in the record of their official proceedings, which approval shall be indorsed thereon. [1879, ch. 23, § 41; 1885, ch. 57, § 1; 1885, ch. 58, § 1; 1895, ch. 111, § 1; R. C. 1899, § 2084; 1901, ch. 196.]

§ 2603. **Fees in county and justice's court.** The sheriff, for performing the duties required by law to be performed by him in the county or justice's court, shall receive the same fees as are allowed for similar services in the district court, to be taxed against the proper party. [R. C. 1899, § 2085.]

§ 2604. **Fees to be indorsed on process.** When any sheriff or other officer shall serve any summons, subpoena, bench warrant, venire or other process in any action to which this state or any county is a party, such officer shall be required to indorse upon such writ or process, or upon a paper attached thereto, at the time he makes his return of service thereon, a statement of his fees for such service, the number of miles traveled and the amount of his mileage, and in case he shall fail to make his return with such statement and file the same with the clerk of the court from which such process issued before judgment is rendered in the action to which such process relates, he shall receive no fees for such service, and the county commissioners of the county are prohibited from allowing the same. [1883, ch. 54, § 1; R. C. 1899, § 2086.]

Entitled to fees for return of fugitives from justice, on properly itemized bills to county commissioners, without return having been made to justice issuing warrant. *Thomas v. Douglas County*, 13 S. D. 320, 83 N. W. 580.

§ 2605. **Fees for boarding United States prisoners.** The United States shall be liable to pay for the board of prisoners committed to any county jail in this state by authority of United States courts the same charges as are allowed for the board of prisoners committed under authority of this state; the United States shall also be liable to pay such sum for guard hire and board of guards as is actually expended by the sheriff; provided, that no sheriff shall employ more than one guard when the number of United States prisoners in his custody is less than six, and but one additional guard for each additional six prisoners or fractional number thereof; provided, further, that there shall not be paid to any guard a sum exceeding two dollars per day for his services for the time actually employed. [R. C. 1895, § 2087.]

§ 2606. **Liability of the United States.** Whenever United States prisoners are committed to any county jail in this state, the United States shall be liable to pay to the county in which such jail is situated the sum of one dollar per day during the time such county jail is used for the keeping of United States prisoners. The jail rent provided in this section shall be exclusive of the charge for support of United States prisoners provided for in the preceding section. [R. C. 1895, § 2088.]

#### ARTICLE 8.—CORONER.

§ 2607. **Fees to be charged** The coroner shall be entitled to charge and receive the following fees:

1. For a view of each body and taking and returning an inquest, five dollars.
2. For a view of each body and examination without inquest, three dollars.
3. For taking information, fifty cents.
4. For issuing subpoena, warrant or order for a jury, fifty cents.
5. For qualifying an inquest, fifty cents.

6. For administering an oath or affirmation to a witness, ten cents.
7. For each adjournment, fifty cents.
8. For taking deposition, drawing and returning inquisition, for each ten words, one cent.
9. For each mile traveled to and returning from an examination or inquest, ten cents.
10. For physician making post-mortem examination of dead body, ten dollars.
11. For all other services rendered, the same fees as are allowed the sheriff, and mileage.

Such fees shall be paid out of the county treasury when they cannot be obtained from the estate of the deceased; but in all cases of murder or manslaughter, out of the goods, chattels, lands and tenements of the slayer, if he has any; otherwise by the county, with mileage for distance actually traveled to and from the place of securing the dead body. [1881, ch. 75, § 1; R. C. 1899, § 2089.]

#### ARTICLE 9.—REFEREES.

§ 2608. **Fees to be charged.** Referees shall be entitled to charge and receive the following fees:

1. For copying any paper or instrument or taking testimony, for every ten words, one cent.
2. Swearing each witness, ten cents.
3. Making report of facts or conclusions of law, or upon exceptions, for every ten words, one cent.
4. And such additional fees as the court shall allow not exceeding in any one case, the sum of ten dollars per day, except by agreement of the parties.
5. Certificate and seal, twenty-five cents.
6. Taking affidavit, twenty five cents.
7. For all services pertaining to the sale of real estate, the same fees as are allowed by law to the sheriff in like cases. [R. C. 1895, § 2090.]

#### ARTICLE 10.—NOTARIES PUBLIC.

§ 2609. **Fees to be charged.** Notaries public are entitled to charge and receive the following fees:

1. For each protest, one dollar and fifty cents.
2. For recording the same, fifty cents.
3. For taking affidavit and seal, twenty-five cents.
4. For administering an oath or affirmation, ten cents.
5. For taking a deposition, each ten words, one and one-half cents.
6. For each certificate and seal, twenty-five cents.
7. For taking proof of acknowledgment, twenty-five cents. [R. C. 1899, § 2091.]

#### ARTICLE 11.—JUSTICES OF THE PEACE.

§ 2610. **Fees to be charged.** Justices of the peace shall be entitled to charge and receive the following fees:

1. Docketing each cause, twenty-five cents.
2. Taking affidavit, twenty-five cents.
3. Filing petition, bill of particulars or other paper necessary in a cause, ten cents.
4. Issuing summons, warrant, subpoena, order of arrest, or venire for jury, fifty cents.
5. Issuing execution, order of sale, or writ of attachment and entering return therein, fifty cents.
6. Issuing writ of restitution and entering return therein, one dollar.

7. Administering oath or affirmation to witness, ten cents.
8. Entering judgment in any cause, fifty cents.
9. Taking acknowledgment of deed or other instrument, **twenty-five cents.**
10. Swearing jury, twenty-five cents.
11. Copy of appeal, copy of pleadings or other papers for **any purpose**, for each ten words, one cent.
12. Taking depositions, for each ten words, one cent.
13. Certificate, twenty-five cents.
14. Taking information and complaint, fifty cents.
15. Discharge to jailer, twenty-five cents.
16. Dismissal, discontinuance or satisfaction, twenty-five cents.
17. Written notice to party, ten cents.
18. Filing notice and opening judgment for rehearing, **fifty cents.**
19. Each adjournment, **fifty cents.**
20. Performing marriage ceremony, three dollars.
21. Each day's attendance upon the trial of a cause after **the first day**, two dollars.
22. Taking and approving bail bond, twenty-five cents.
23. Entering voluntary appearance of defendant, **twenty-five cents.**
24. Issuing attachment, **fifty cents.**
25. Entering motion, or order, ten cents.
26. Order of reference to arbitrators, fifty cents.
27. Entering award of arbitrators, twenty-five cents.
28. Commission on money collected on judgment without **execution shall** be one per cent on the amount. [R. C. 1895, § 2092.]

ARTICLE 12.—CONSTABLES.

§ 2611. **Fees allowed.** Constables shall be allowed the same fees as are allowed to sheriffs for like services. [R. C. 1899, § 2093.]

ARTICLE 13.—COUNTY SURVEYORS.

§ 2612. **Fees allowed.** County surveyors shall be allowed to charge and receive the following fees:

1. For time actually employed, three dollars per day and **mileage.**
2. For each lot laid out and platted in any city or village, **twenty-five cents.**
3. For each copy of plat and certificate, fifty cents.
4. Recording each survey, twenty-five cents.
5. For each mile actually and necessarily traveled in going to and returning from work, ten cents.
6. For establishing each corner, twenty-five cents.
7. For ascertaining the location of a city or village lot in **an old survey** and measuring and marking the same, two dollars.
8. For surveying county roads, three dollars per day.
9. Expenses of necessary assistance shall in addition be paid by the person requiring the work to be done. [R. C. 1899, § 2094.]

ARTICLE 14.—COUNTY COMMISSIONERS.

§ 2613. **Compensation allowed. Office hours.** County commissioners shall each be allowed for the time they are necessarily employed in the duties of their office, the sum of four dollars per day, and five cents per mile for the distance actually traveled in attending the meetings of the board and when engaged in other official duties, to be paid out of the general fund of the county, and their office hours shall not be less than from nine to twelve a. m., and two to six p. m., during regular or special sessions held by such board. [R. C. 1899, § 2095; 1901, ch. 53.]

Expense of team hire proper. State v. Bauer, 1 N. D. 273, 47 N. W. 378.



## ARTICLE 15.—JURORS.

§ 2614. **Fees allowed.** Jurors are entitled to receive:

1. For each day's attendance in district court as grand, petit or special juror, to be paid by the county, three dollars.
2. Traveling expenses for each mile actually and necessarily traveled each way, to be paid by the county, five cents.
3. For each day's attendance as juror in justice's court, one dollar.
4. For each day's attendance as juror at coroner's inquest, to be paid by the county, one dollar. [1885, ch. 59, § 1; R. C. 1895, § 2096; 1903, ch. 117.]

## ARTICLE 16.—WITNESSES.

§ 2615. **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. [R. C. 1899, § 2097; 1905, ch. 88.]

§ 2616. **Duplicate fees not permissible.** A witness who is subpoenaed in two or more cases by the same party shall be entitled only to one compensation from such party for the same day's attendance or travel. [1890, ch. 194, § 1; R. C. 1899, § 2098.]

## ARTICLE 17.—SALARIES OF DEPUTIES.

§ 2617. **Salaries of deputies, 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. [1905, ch. 79, § 1.]

§ 2618. **Deputies and clerks allowed, when.** In all counties under the classification given in section 2617 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. [1905, ch. 79, § 2.]

§ 2619. **County commissioners may employ additional help.** The provisions of this article 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 article, 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 article or by a board of county commissioners, shall be entitled to choose such deputy or clerk. [1905, ch. 79, § 3.]

## ARTICLE 18.—PRINTERS.

§ 2620. **Legal rates.** In all cases where publication of legal notices of any kind is required or allowed by law, the person or officer desiring such publication shall be required to pay seventy-five cents per square of twelve lines of nonpareil type or its equivalent for the first insertion and fifty cents per square for each subsequent insertion. And in all cases of publication of notices in connection with sales upon execution the plaintiff, except in divorce cases, may designate the newspaper published within the county in which such notice shall be published; in all legal advertisements fractional parts of

twelve lines shall be paid for at the rate of ten cents per line of nonpareil type or its equivalent. [1887, ch. 51, § 1; R. C. 1899, § 2099.]

ARTICLE 19.—FEES IN MATTERS OF ESTRAYS.

§ 2621. **Fees allowed.** The following fees are allowed in cases of estrays:

1. To justices of the peace, for issuing any warrant of appraisement, fifty cents.
2. For filing and entering in his docket the sworn report of appraisers, fifty cents.
3. Taking and entering the affidavit of the taking up of any estray, fifty cents.
4. For posting notices of estray and certifying to a copy of the sworn reports of the appraisers to the register of deeds, fifty cents.
5. Posting notices and selling an estray, two dollars.
6. Advertising an estray, if published in a newspaper, three dollars.
7. To each appraiser, twenty-five cents.
8. To the register of deeds for entering certified copy of sworn report of appraisers, twenty-five cents.
9. For each inspection of the estray register, ten cents. [R. C. 1899, § 2100.]

ARTICLE 20.—OFFICIAL REPORTS OF COUNTY AND OTHER OFFICERS.

§ 2622. **Penalty.** Any county, city, village, civil township, school township or school district officer, who is required by law to make an official report to any other county, city, village, civil township, school township or school district officer, board, tribunal or state officer, and who willfully neglects to make such report, or fails to perform such official duties, shall forfeit and pay to the state a penalty of not less than ten nor more than two hundred dollars, to be recovered from such delinquent officer, or from him and the sureties upon his official bond, in a civil action to be brought by the state's attorney in any court of record having jurisdiction. [1891, ch. 98, § 1; R. C. 1899, § 306.]

§ 2623. **Examination of records. State's attorney to prosecute.** It shall be the duty of the board of county commissioners and the state's attorney in each county to examine the records of the several county officers at the end of the officer's term of office to see that they have been properly kept. Any failure must be remedied or it shall become the duty of the state's attorney to prosecute any such officer for neglect as provided in the last section. It shall also be the duty of the city council, board of aldermen, village trustees, civil township supervisors, school township or school district board, as the case may be, to examine the records of their several officers in a like manner, or upon complaint by the proper board the state's attorney shall prosecute as provided in the last section. [1891, ch. 98, § 2; R. C. 1899, § 307.]

§ 2624. **Blanks to be furnished.** It shall be the duty of the county, city, village, civil township, school township or school district officer to provide at the expense of the county, city, village, civil township, school township or school district such blanks and records as are necessary for making the proper record and the transaction of any official business connected with his office. [1891, ch. 98, § 3; R. C. 1899, § 308.]

ARTICLE 21.—MISCELLANEOUS PROVISIONS.

§ 2625. **Fees for interpreters.** Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be paid and collected as other costs, but the same shall not exceed two dollars per day. [R. C. 1899, § 2101.]



§ 2626. Fees for acknowledgments. Officers authorized by law to take and certify acknowledgments of deeds and other instruments are entitled to charge and receive twenty-five cents each therefor, and for administering oaths and certifying the same, ten cents. [R. C. 1899, § 2102.]

§ 2627. Taxing costs. In all actions, motions and proceedings in the supreme, district or justice's courts, the costs of the parties shall be taxed and entered on record separately. [R. C. 1899, § 2103.]

§ 2628. Fees paid in advance or security given. The clerk of the supreme court and of each district court, the county judge, sheriff, justice of the peace, constable or register of deeds may in all cases require the party for whom any service is to be rendered to pay the fees in advance of the rendition of such service, or to give security for the same, to be approved by the officer. [R. C. 1899, § 2104.]

§ 2629. Fee bill to be posted. Penalty. All officers whose fees are by this chapter determined are required to make a schedule of their respective fees and keep the same in their respective offices in a conspicuous place; and if any such officer shall neglect to do so, he shall for such neglect forfeit and pay the sum of five dollars, to be recovered by a civil action before any justice of the peace for the use of the county in which the offense was committed. [R. C. 1899, § 2105.]

§ 2630. Bailiffs, compensation of. It shall be the duty of the district court at each term thereof to appoint a competent number of bailiffs to wait on the jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county. [R. C. 1895, § 2106.]

§ 2631. Per diem oath. Penalty. Each officer, whose salary is in the nature of a per diem, shall, before drawing any money on account of such salary, subscribe an oath or affirmation in the following form:

I, A. B., do solemnly swear (or affirm) that I have been..... days necessarily and diligently engaged in the duties of my office as (insert title of office).  
.....(Officer's name.)

Any disbursing officer of this state, who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is taken and subscribed, shall forfeit to this state the sum of fifty dollars, which forfeiture may be sued for by any taxpayer. [R. C. 1899, § 2107.]

CHAPTER 30.

CITIES.

ARTICLE 1.—ORGANIZATION OF CITIES.

§ 2632. Cities incorporated, how. 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 chapter, 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 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 chapter, 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. [1887, ch. 73, art. 1, § 1; R. C. 1899, § 2108; 1905, ch. 62, § 1.]

In cities organized under general law special act providing for school board ceases to be in force. State ex rel Power v. Power, 5 S. D. 627, 59 N. W. 1090.

Special charter not repealed by failure to organize under general law. Tripp v. Yankton, 10 S. D. 516, 74 N. W. 447.

§ 2633. **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. [1887, ch. 73, art. 1, § 2; R. C. 1899, § 2109; 1905, ch. 62, § 2.]

§ 2634. **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 chapter; and the city, village or town officers then in office, shall thereupon exercise the powers conferred upon like officials by this chapter, until their successors shall be elected and qualified. [1887, ch. 73, art. 1, § 3; R. C. 1899, § 2110; 1905, ch. 62, § 3.]

§ 2635. **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 chapter. 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 2634 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. [1905, ch. 62, § 4.]

§ 2636. **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 chapter, 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 chapter 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 2635, 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. [1905, ch. 62, § 5.]

§ 2637. **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 chapter. [1905, ch. 62, § 6.]

§ 2638. **Special charter.** Whenever any city in this state shall organize under this chapter any special charter that may have been granted to such city shall be null and void. [1905, ch. 62, § 7.]

§ 2639. **Court take judicial notice.** All courts in this state shall take judicial notice of the existence of cities organized under this chapter, and of the change of the organization of any city from its original organization to its organization under this chapter; and from the time of organization the provisions of this chapter 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 chapter shall continue in force and be applicable to any such city the same as if such change had not taken place. [1887, ch. 73, art. 1, § 4; R. C. 1899, § 2111; 1905, ch. 62, § 8.]

§ 2640. **Bodies corporate.** Cities organized under this chapter 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 corporate purposes, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred. [1887, ch. 73, art. 1, § 5; R. C. 1899, § 2112; 1905, ch. 62, § 9.]

§ 2641. **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 chapter, but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this chapter, 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 chapter, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this chapter, the same shall be deemed cumulative to the remedies before provided and used accordingly. [1887, ch. 73, art. 1, § 6; R. C. 1899, § 2113; 1905, ch. 62, § 10.]

§ 2642. **Filing and recording proceedings.** The corporate authorities of any city which may become organized under this chapter 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 such 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 chapter. [1887, ch. 73, art. 1, § 7; R. C. 1899, § 2114; 1905, ch. 62, § 11.]

§ 2643. **Legal identity of cities not changed.** All ordinances and resolutions in force in any city at the date of its organization under this chapter 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. [1887, ch. 73, art. 1, § 8; R. C. 1899, § 2115; 1905, ch. 62, § 12.]

ARTICLE 2.—THE MAYOR.

§ 2644. **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. [1887, ch. 73, art. 2, § 1; R. C. 1899, § 2116; 1905, ch. 62, § 13.]

§ 2645. **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. [1887, ch. 73, art. 2, § 2; R. C. 1899, § 2117; 1905, ch. 62, § 14.]

§ 2646. **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. [1887, ch. 73, art. 2, § 3; R. C. 1899, § 2118; 1905, ch. 62, § 15.]

§ 2647. **Removal.** If the mayor at any time during his term of office removes from the city, his office shall thereby become vacant. [1887, ch. 73, art. 2, § 5; R. C. 1899, § 2119; 1905, ch. 62, § 16.]

§ 2648. **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. [1887, ch. 73, art. 2, § 6; R. C. 1899, § 2120; 1905, ch. 62, § 17.]

§ 2649. **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. [1887, ch. 73, art. 2, § 7; R. C. 1899, § 2121; 1905, ch. 62, § 18.]

Mayor may remove officer when interest of city demands. *State ex rel Dickson v. Williams*, 6 S. D. 119, 60 N. W. 410.

§ 2650. **Peace officer.** He may exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace. [1887, ch. 73, art. 2, § 8; R. C. 1899, § 2122; 1905, ch. 62, § 19.]

§ 2651. **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. [1887, ch. 73, art. 2, § 9; R. C. 1899, § 2123; 1905, ch. 62, § 20.]

§ 2652. **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. [1887, ch. 73, art. 2, § 10; R. C. 1899, § 2124; 1905, ch. 62, § 21.]



§ 2653. **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. [1887, ch. 73, art. 2, § 11; R. C. 1899, § 2125; 1905, ch. 62, § 22.]

§ 2654. **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. [1887, ch. 73, art. 2, § 12; R. C. 1899, § 2126; 1905, ch. 62, § 23.]

§ 2655. **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. [1887, ch. 73, art. 2, § 13; R. C. 1899, § 2127; 1905, ch. 62, § 24.]

§ 2656. **Removal.** In case the mayor or any other municipal officer shall at any time be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct 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. [1887, ch. 73, art. 2, § 14; R. C. 1899, § 2128; 1905, ch. 62, § 25.]

§ 2657. **Ordinances revised, how.** 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 be valid and effective without publication in a newspaper. [1887, ch. 73, art. 2, § 15; R. C. 1899, § 2129; 1905, ch. 62, § 26.]

§ 2658. **May sign or veto.** He shall have power to sign or veto any ordinance or resolution passed by the council. [1887, ch. 73, art. 2, § 16; R. C. 1899, § 2130; 1905, ch. 62, § 27.]

§ 2659. **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. [1887, ch. 73, art. 2, § 17; R. C. 1899, § 2131; 1905, ch. 62, § 28.]

#### ARTICLE 3.—CITY COUNCIL.

§ 2660. **City council.** The city council shall be composed of the mayor and aldermen. [1887, ch. 73, art. 3, § 1; R. C. 1899, § 2132; 1905, ch. 62, § 29.]

§ 2661. **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. [1897, ch. 40, § 1; R. C. 1899, § 2133; 1905, ch. 62, § 30.]

§ 2662. **Term of office.** Aldermen shall hold their office for two years and until their successors are elected and qualified. [1887, ch. 73, art. 3, § 3; R. C. 1899, § 2134; 1905, ch. 62, § 31.]

§ 2663. **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. [1887, ch. 73, art. 3, § 4; R. C. 1899, § 2135; 1905, ch. 62, § 32.]

§ 2664. **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. [1897, ch. 40, § 2; R. C. 1899, § 2136; 1905, ch. 62, § 33.]

§ 2665. **Council judge of election and qualification of members.** The city council shall be judge of the election and qualifications of its own members. [1887, ch. 73, art. 3, § 6; R. C. 1899, § 2137; 1905, ch. 62, § 34.]

§ 2666. **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. [1887, ch. 73, art. 3, § 7; R. C. 1899, § 2138; 1905, ch. 62, § 35.]

§ 2667. **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. [1887, ch. 73, art. 3, § 8; R. C. 1899, § 2139; 1905, ch. 62, § 36.]

§ 2668. **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. [1887, ch. 73, art. 3, § 9; 1895, ch. 29, § 1; R. C. 1899, § 2140; 1905, ch. 62, § 37.]

§ 2669. **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. [1887, ch. 73, art. 3, § 10; 1889, ch. 33, § 1; R. C. 1899, § 2141; 1905, ch. 62, § 38.]

§ 2670. **Meetings and record of proceedings.** It shall sit with open doors and shall keep a journal of its proceedings. [1887, ch. 73, art. 3, § 11; R. C. 1899, § 2142; 1905, ch. 62, § 39.]

§ 2671. **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 herein, or where at least one week has not intervened between the first and second reading of said ordinance, as provided by this chapter, 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 law heretofore, but which would be authorized under the provisions of this chapter, are hereby declared to be in full force and effect, the same as if re-adopted and republished after the adoption of this chapter. [1887, ch. 73, art. 3, § 12; R. C. 1899, § 2143; 1905, ch. 62, § 40.]

Passage of ordinance vote of members recorded in journal. Journal must show how each member voted. Parol evidence inadmissible to supply omission. *Pickton v. City of Fargo*, 10 N. D. 469, 88 N. W. 90; *O'Neil v. Tyler*, 3 N. D. 47, 53 N. W. 434.

Passage of resolution levying general city tax, yeas and nays unnecessary. *Shattuck v. Smith*, 6 N. D. 56, 69 N. W. 5.

Mandatory. *Pickton v. City of Fargo*, 10 N. D. 469, 88 N. W. 90.

City not liable under an implied contract for professional services rendered at request of mayor, where the employment was not authorized or ratified by a yeas and nays vote of the council. *Bosard v. City of Grand Forks*, 13 N. D. 587, 102 N. W. 164.

As a general rule, the corporation is only liable upon express contracts authorized by ordinance. *Idem*.

§ 2672. **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. [1887, ch. 73, art. 3, § 13; R. C. 1899, § 2144; 1905, ch. 62, § 41.]

§ 2673. **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. [1887, ch. 73, art. 3, § 14; R. C. 1899, § 2145; 1905, ch. 62, § 42.]

§ 2674. **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. [1887, ch. 73, art. 3, § 15; R. C. 1899, § 2146; 1905, ch. 62, § 43.]

§ 2675. **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 objection 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 ordinances 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 ordinances 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." [1887, art. 3, ch. 73, § 16; R. C. 1899, § 2147; 1905, ch. 62, § 44.]

§ 2676. **Publication by posting.** Whenever any ordinance, notice or other instrument is required to be published, in any city where no newspaper is published, 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. [1905, ch. 62, § 45.]

§ 2677. **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. [1905, ch. 62, § 46.]

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

§ 2678. **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 pro-



visions 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 irrevocable 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 chapter shall be issued for a longer period than twenty years.

Water works constructed and maintained by city are charged with a public trust which cannot be discharged by a sale thereof by the council without legislative sanction. *Huron Water Works Co. v. Huron*, 7 S. D. 9, 62 N. W. 975.

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.

Debt cannot be increased beyond constitutional limit even to refund. *Birkholz v. Dinnie*, 6 N. D. 511, 72 N. W. 931.

Bonds refunding existing indebtedness valid even if debt limit exceeded. *Nat'l Life Ins. Co. v. Mead*, 13 S. D. 37, 82 N. W. 78; *Hyde v. Ewert*, 16 S. D. 133, 91 N. W. 474.

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.

Cities have power to exercise right of eminent domain in laying out streets. Essentials of complaint prescribed by section 7592. *City of Lidgerwood v. Michalek et al*, 12 N. D. 348, 97 N. W. 541.

8. To plant trees on the same.

9. To regulate the use of the same.

City liable for injuries from defective sidewalks. Proximate cause. *Chacey v. City of Fargo*, 5 N. D. 173, 64 N. W. 932.

Public traveling on sidewalk includes travel by bicycle. City liable only when sidewalks unsafe for pedestrians. *Gagnier v. City of Fargo*, 11 N. D. 73, 88 N. W. 1030.

City franchise to telephone company creates vested right, not impairable by subsequent private grants. Removal of buildings, extraordinary use of streets, subject to public and vested rights. Mover of houses liable for damages to telephone lines. *N. W. Tel. Co. v. Anderson et al*, 12 N. D. 585, 98 N. W. 706.

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 agencies, 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.

To maintain the action of eminent domain, not necessary to allege that provision has been made to pay the award, either by general taxation or special assessment. *City of Lidgerwood v. Michalek et al*, 12 N. D. 348, 97 N. W. 541.

An ordinance making decision of building inspector final, without allowing appeal, is unconstitutional. *Sioux Falls v. Kirby*, 6 S. D. 62, 60 N. W. 156.

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 inclosures 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.

Expense of putting in and maintaining lateral service pipes must be borne by owner. City may sever on refusal to pay for repairs. *Jackson v. City of Ellendale*, 4 N. D. 478, 61 N. W. 1030.

Power to construct water works not of necessity granted by incorporation. *Huron Water Works v. City of Huron*, 7 S. D. 9, 62 N. W. 975.

Ordinance not necessary before contracting for construction of water works. *Nat'l Tube Works v. Chamberlain*, 5 Dak. 54, 37 N. W. 761.

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.

City liable for injuries caused by negligent acts of its officials or others acting for it or under its authority. *Ludlow v. City of Fargo*, 3 N. D. 485, 57 N. W. 506.

Agents and officers cannot bind a municipal corporation by any act which transcends their lawful powers. *Treadway v. Schnauber*, 1 Dak. 227, 46 N. W. 464.

When a city contracts without an ordinance, the irregularity is not a defense where city received and retained benefits under the contract. *McGuire v. Rapid City*, 6 Dak. 346, 43 N. W. 706.

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. [1899, ch. 40; R. C. 1899, § 2148; 1905, ch. 62, § 47.]

§ 2679. **Power to enforce charter by ordinance.** When by this chapter 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. [1905, ch. 62, § 48.]

City council has no power to pass ordinance which imposes penalty of imprisonment at hard labor. *City of Lead v. Klatt*, 13 S. D. 140, 82 N. W. 391.

Actions brought to enforce ordinances are not criminal. *City of Sioux Falls v. Kirby*, 6 S. D. 62, 60 N. W. 156; *City of Madison v. Horner*, 15 S. D. 359, 89 N. W. 474; *City of Huron v. Carter*, 5 S. D. 4, 57 N. W. 947.

§ 2680. **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 chapter 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. [1905, ch. 62, § 49.]

§ 2681. **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. [1887, ch. 73, art. 4, § 2; R. C. 1899, § 2149; 1905, ch. 62, § 50.]

§ 2682. **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. [1887, ch. 73, art. 4, § 3; R. C. 1895, § 2150; 1905, ch. 62, § 51.]

§ 2683. **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. [1887, ch. 73, art. 4, § 4; R. C. 1899, § 2151; 1905, ch. 62, § 52.]

§ 2684. **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. [1887, ch. 73, art. 4, § 5; R. C. 1899, § 2152; 1905, ch. 62, § 53.]

§ 2685. **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. [1887, ch. 73, art. 4, § 6; R. C. 1899, § 2153; 1905, ch. 62, § 54.]



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

§ 2686. **Election of officers.** There shall be elected in each city organized under this chapter 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 chapter 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 2661. [1897, ch. 40, § 2; R. C. 1899, § 2154; 1905, ch. 62, § 55.]

§ 2687. **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. [1887, ch. 73, art. 5, § 2; R. C. 1899, § 2155; 1905, ch. 62, § 56.]

§ 2688. **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. [1887, ch. 73, art. 5, § 3; R. C. 1899, § 2156; 1905, ch. 62, § 57.]

§ 2689. **Additional assessors.** The mayor of any city incorporated under the provisions of this chapter 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. [1889, ch. 28, § 1; R. C. 1899, § 2157; 1905, ch. 62, § 58.]

§ 2690. **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. [1887, ch. 73, art. 5, § 4; R. C. 1899, § 2158; 1905, ch. 62, § 59.]

§ 2691. **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. [1887, ch. 73, art. 5, § 5; R. C. 1895, § 2159; 1905, ch. 62, § 60.]

§ 2692. **Certificate of appointment. Delivery of books to successor.** All officers elected or appointed under this chapter, 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 damages caused thereby, and to such penalty as may by ordinance be prescribed. [1887, ch. 73, art. 5, § 6; R. C. 1899, § 2160; 1905, ch. 62, § 61.]

§ 2693. **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. [1887, ch. 73, art. 5, § 7; R. C. 1899, § 2161; 1905, ch. 62, § 62.]

§ 2694. **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. [1887, ch. 73, art. 5, § 8; R. C. 1899, § 2162; 1905, ch. 62, § 63.]

§ 2695. **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. [1887, ch. 73, art. 5, § 9; R. C. 1899, § 2163; 1905, ch. 62, § 64.]

§ 2696. **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. [1887, ch. 73, art. 5, § 10; R. C. 1899, § 2164; 1905, ch. 62, § 65.]

§ 2697. **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. [1887, ch. 73, art. 5, § 11; R. C. 1899, § 2165; 1905, ch. 62, § 66.]

§ 2698. **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 ordinances 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. [1887, ch. 73, art. 5, § 12; 1893, ch. 35, § 1; R. C. 1895, § 2166; 1905, ch. 62, § 67.]

§ 2699. **May administer oaths.** The mayor and auditor of each city shall have power to administer oaths and affirmations. [1887, ch. 73, art. 5, § 13; R. C. 1899, § 2167; 1905, ch. 62, § 68.]



## ARTICLE 6.—CITY AUDITOR.

§ 2700. **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. [1887, ch. 73, art. 6, § 1; R. C. 1899, § 2168; 1905, ch. 62, § 69.]

§ 2701. **Reports.** 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. [1887, ch. 73, art. 6, § 2; R. C. 1899, § 2169; 1905, ch. 62, § 70.]

§ 2702. **General duties.** 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 evidence 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. [1887, ch. 73, art. 6, § 3; R. C. 1899, § 2170; 1905, ch. 62, § 71.]

ARTICLE 7.—CLAIMS FOR INJURIES.

§ 2703. **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 damages 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. [1893, ch. 31, § 2; R. C. 1899, § 2172; 1905, ch. 62, § 72.]

§ 2704. **No action unless claim is 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. [1893, ch. 31, § 3; R. C. 1899, § 2173; 1905, ch. 62, § 73.]

Construed. *Coleman v. Fargo*, 8 N. D. 69, 76 N. W. 1051.

§ 2705. **Limitation of actions.** No action shall be maintained upon any claim mentioned in section 2703, 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. [1893, ch. 31, § 4; R. C. 1899, § 2174; 1905, ch. 62, § 74.]

ARTICLE 8.—CITY ATTORNEY.

§ 2706. **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. [1887, ch. 73, art. 7, § 1; R. C. 1899, § 2175; 1905, ch. 62, § 75.]

## ARTICLE 9.—CITY TREASURER.

§ 2707. **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 chapter, 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 canceled 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. [1897, ch. 102; R. C. 1899, § 2176; 1903, ch. 53; 1905, ch. 62, § 76.]

§ 2708. **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 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. [1887, ch. 73, art. 8, § 2; R. C. 1899, § 2177; 1905, ch. 62, § 77.]

§ 2709. **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 so paid. [1887, ch. 73, art. 8, § 3; R. C. 1899, § 2178; 1905, ch. 62, § 78.]

Every valid municipal warrant must be paid in the order of its registration, even if for indebtedness of a prior year. *State ex rel City of Huron v. Campbell*, 7 S. D. 568, 64 N. W. 1125.

Payment of city warrants. *Blackman v. City of Hot Springs*, 14 S. D. 497, 85 N. W. 996; *Freeman v. City of Huron*, 10 S. D. 368, 73 N. W. 260.

§ 2710. **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. [1887, ch. 73, art. 8, § 4; R. C. 1899, § 2179; 1905, ch. 62, § 79.]

§ 2711. **Treasurer to give duplicate receipts.** The city treasurer shall give to each person paying money in to 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. [1887, ch. 73, art. 8, § 5; R. C. 1899, § 2180; 1905, ch. 62, § 80.]

§ 2712. **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 other's 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. [1887, ch. 73, art. 8, § 6; R. C. 1899, § 2181; 1905, ch. 62, § 81.]

§ 2713. **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. [1887, ch. 73, art. 8, § 7; R. C. 1899, § 2182; 1905, ch. 62, § 82.]

§ 2714. **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. [1887, ch. 73, art. 8, § 8; R. C. 1899, § 2183; 1905, ch. 62, § 83.]

City not prevented from reimbursing a fund for special improvements for advances made therefrom. *Pine Tree Lumber Co. v. City of Fargo*, 12 N. D. 360, 96 N. W. 357.

§ 2715. **Additional bond of city treasurer.** The city council of any city incorporated under this chapter, may require the city treasurer to give additional sureties whenever in the opinion of the city council the existing security shall have become insufficient; and such city council is authorized and empowered to require from the city treasurer an additional bond as required by law, with good and sufficient sureties in such sums as it may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of such treasurer than is or would be recovered by the penalty in the previous bond. [1901, ch. 42, § 1.]

§ 2716. **Failure to give additional bond. Effect.** If any city treasurer shall fail or refuse to give such additional bond or sureties for twenty days from and after the day on which such city council shall require him so to do, his office shall become vacant and the city council shall appoint another treasurer to fill such vacancy, who shall hold his office until his successor has been elected and qualified. [1901, ch. 42, § 2.]

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

§ 2717. **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 chapter provided and said auditor shall deliver the same to the city board of equalization at its regular meeting first thereafter held. [1887, ch. 73, art. 9, § 1; R. C. 1899, § 2184; 1905, ch. 62, § 84.]

§ 2718. **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. [1887, ch. 73, art. 9, § 2; 1893, ch. 33, § 1; R. C. 1899, § 2185; 1905, ch. 62, § 85.]

**§ 2719. 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. [1887, ch. 73, art. 9, § 3; R. C. 1899, § 2186; 1905, ch. 62, § 86.]

**§ 2720. 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. [1887, ch. 73, art. 9, § 4; R. C. 1899, § 2187; 1905, ch. 62, § 87.]

Value of property for purposes of taxation is that fixed by the board of equalization. *Dakota Loan & Trust Co. v. Codrington County*, 9 S. D. 159, 68 N. W. 314.

**§ 2721. 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. [1887, ch. 73, art. 9, § 5; R. C. 1899, § 2188; 1905, ch. 62, § 88.]

**§ 2722. 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. [1887, ch. 73, art. 9, § 6; 1893, ch. 33, § 2; R. C. 1899, § 2189; 1905, ch. 62, § 89.]

ARTICLE 11.—POLICE MAGISTRATE AND CITY JUSTICE OF THE PEACE.

§ 2723. **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. [1887, ch. 73, art. 10, § 1; 1899, ch. 33, § 5; R. C. 1899, § 2193; 1905, ch. 62, § 90.]

The decision of an inferior court, acting within its jurisdiction, is final unless provision is made for an appeal. *City of Huron v. Carter*, 5 S. D. 4, 57 N. W. 947.

§ 2724. **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. [1887, ch. 73, art. 10, § 2; R. C. 1899, § 2194; 1905, ch. 62, § 91.]

§ 2725. **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. [1887, ch. 73, art. 10, § 3; R. C. 1899, § 2195; 1905, ch. 62, § 92.]

§ 2726. **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. [1887, ch. 73, art. 10, § 4; R. C. 1899, § 2196; 1905, ch. 62, § 93.]

§ 2727. **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. [1887, ch. 73, art. 10, § 5; R. C. 1899, § 2197; 1905, ch. 62, § 94.]

§ 2728. **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. [1887, ch. 73, art. 10, § 6; R. C. 1899, § 2198; 1905, ch. 62, § 95.]

§ 2729. **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. [1887, ch. 73, art. 10, § 7; R. C. 1899, § 2199; 1905, ch. 62, § 96.]

§ 2730. **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. [1887, ch. 73, art. 10, § 8; R. C. 1899, § 2200; 1905, ch. 62, § 97.]

§ 2731. **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. [1887, ch. 73, art. 10, § 9; R. C. 1899, § 2201; 1905, ch. 62, § 98.]

§ 2732. **Not to remit fines.** Any person convicted before such magistrate of an offense against the ordinances of the city shall be punished by a 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. [1887, ch. 73, art. 10, § 10; R. C. 1899, § 2202; 1905, ch. 62 § 99.]

§ 2733. **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' court; 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. [1889, ch. 33, § 6; R. C. 1899, § 2203; 1905, ch. 62, § 100.]

§ 2734. **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. [1889, ch. 33, § 7; R. C. 1899, § 2204; 1905, ch. 62, § 101.]

§ 2735. **Duty of magistrate when prosecution 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. [1887, ch. 73, art. 10, § 12; 1889, ch. 33, § 5; R. C. 1899, § 2205; 1905, ch. 62, § 102.]

§ 2736. **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. [1887, ch. 73, art. 10, § 13; 1889, ch. 33, § 5; R. C. 1899, § 2206; 1905, ch. 62, § 103.]

§ 2737. **Proceedings, how governed.** In all cases not herein specially provided for, the process and proceeding of said court shall be governed by the laws regulating proceedings in justices' courts in criminal cases. [1887, ch. 73, art. 10, § 14; R. C. 1899, § 2207; 1905, ch. 62, § 104.]

§ 2738. **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. [1887, ch. 73, art. 10, § 15; R. C. 1899, § 2208; 1905, ch. 62, § 105.]

#### ARTICLE 12.—CITY ENGINEER.

§ 2739. **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. [1887, ch. 73, art. 11, § 1; R. C. 1899, § 2248; 1905, ch. 62, § 106.]



## ARTICLE 13.—POLICE OFFICERS.

§ 2740. **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 chapter; 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. [1887, ch. 73, art. 12, § 1; R. C. 1899, § 2249; 1905, ch. 62, § 107.]

§ 2741. **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. [1887, ch. 73, art. 12, § 2; R. C. 1899, § 2250; 1905, ch. 62, § 108.]

## ARTICLE 14.—ELECTIONS.

§ 2742. **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. [1897, ch. 40, § 4; R. C. 1899, § 2251; 1905, ch. 62, § 109.]

§ 2743. **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. [1897, ch. 40, § 5; R. C. 1899, § 2252; 1905, ch. 62, § 110.]

An election held in city precincts established by board of county commissioners, merely irregular, not invalid and void. *State ex rel Byrne v. Wilcox et al*, 11 N. D. 329, 91 N. W. 955.

§ 2744. **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. [1887, ch. 73, art. 13, § 3; Const. 121; R. C. 1899, § 2253; 1905, ch. 62, § 111.]

§ 2745. **Effect of election.** This chapter 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. [1887, ch. 73, art. 13, § 4; R. C. 1899, § 2254; 1905, ch. 62, § 112.]

§ 2746. **Oath and duties of judges and clerks of election.** The manner of conducting and voting at elections to be held under this chapter, 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. [1887, ch. 73, art. 13, § 5; R. C. 1899, § 2255; 1905, ch. 62, § 113.]

§ 2747. **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. [1887, ch. 73, art. 13, § 7; R. C. 1899, § 2256; 1905, ch. 62, § 114.]

§ 2748. **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. [1887, ch. 73, art. 13, § 8; R. C. 1899, § 2257; 1905, ch. 62, § 115.]

§ 2749. **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 chapter, 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. [1887, ch. 73, art. 13, § 9; R. C. 1899, § 2258; 1905, ch. 62, § 116.]

§ 2750. **When term of office commences.** The term of each officer elected under this chapter shall commence on the third Tuesday of April of the year for which he was elected. [1887, ch. 73, art. 13, § 10; R. C. 1899, § 2259; 1905, ch. 62, § 117.]

§ 2751. **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. [1887, ch. 73, art. 13, § 11; R. C. 1899, § 2260; 1905, ch. 62, § 118.]

## ARTICLE 15.—FINANCE.

§ 2752. **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. [1887, ch. 73, art. 14, § 1; R. C. 1899, § 2261; 1905, ch. 62, § 119.]

§ 2753. **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 provision 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. [1887, ch. 73, art. 14, § 2; R. C. 1899, § 2262; 1905, ch. 62, § 120.]

Annual appropriation bill must be passed at time prescribed by law, otherwise void. *Engstad v. Dinnie*, 8 N. D. 1, 76 N. W. 292.

Contract requiring expenditure of money without an appropriation therefor is ultra vires and void. *Roberts v. City of Fargo et al*, 10 N. D. 230, 86 N. W. 726.

Where a city council failed to pass an appropriation ordinance such failure did not affect the validity of the tax levy thereafter made. *Henderson v. Hughes County*, 13 S. D. 576, 83 N. W. 682.

§ 2754. **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. [1887, ch. 73, art. 14, § 3; R. C. 1899, § 2263; 1905, ch. 62, § 121.]

Extraordinary expenditures for improvements are ultra vires and void, when. *Engstad v. Dinnie*, 8 N. D. 1, 76 N. W. 292; *Roberts v. Fargo*, 10 N. D. 230, 86 N. W. 726; *City of Fargo v. Keeney*, 11 N. D. 484, 92 N. W. 836; *Pine Tree Lumber Co. v. City of Fargo*, 12 N. D. 360, 96 N. W. 357.

§ 2755. **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. [1887, ch. 73, art. 4, § 3; R. C. 1899, § 2264; 1905, ch. 62, § 122.]

Though contract should have been preceded by ordinance, city estopped to claim no power to make contract because the manner of entering into was not strictly as prescribed by the charter, if it retains the benefit of the contract, unless it is ultra vires. *Nat'l Tube Works v. Chamberlain*, 5 Dak. 54, 37 N. W. 761.

Contract made prior to an appropriation, ultra vires and void. *Roberts v. City of Fargo*, 10 N. D. 230, 86 N. W. 726.

Provisions mandatory and prohibitive. No contract nor expense can be incurred unless an appropriation made to cover. *Roberts v. City of Fargo*, 10 N. D. 230, 86 N. W. 726.

**§ 2756. 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 chapter, 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 education 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. [1905, ch. 62, § 123.]

Valid tax levy must be made by ordinance. *Engstad v. Dinnie*, 8 N. D. 1, 76 N. W. 292.

**§ 2757. 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. [1905, ch. 62, § 124.]

**§ 2758. 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 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. [1905, ch. 62, § 125.]

**§ 2759. Provisions not applicable to cities operating under general law.** The provisions of sections 2962, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3009, 3010 and 3011, revised codes, 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 chapter are inconsistent with any other provisions of the revised codes, or of any other law heretofore enacted, the provisions of this chapter shall be deemed to supersede all others. [1905, ch. 62, § 125½.]

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

**§ 2760. 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. [1887, ch. 73, art. 15, § 12; R. C. 1899, § 2276; 1905, ch. 62, § 126.]

**§ 2761. 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 judgments; 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. [1895, ch. 62, § 127.]

**§ 2762. 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. [1905, ch. 62, § 128.]

**§ 2763. Vacation of streets and alleys. Petition. Appeal.** No public grounds, streets or alleys, or parts thereof, over or 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. [1887, ch. 73, art. 15, § 13; R. C. 1899, § 2277; 1905, ch. 62, § 129.]

Resolution must specifically designate improvement to be made. Statute authorizing improvements strictly construed. *McLaurin v. Grand Forks*, 6 Dak. 397, 43 N. W. 710; *McGuire v. Rapid City*, 6 Dak. 346, 43 N. W. 706; *Mason v. City of Sioux Falls*, 2 S. D. 640, 51 N. W. 770.

#### ARTICLE 17.—SIDEWALKS.

§ 2764. **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. [1905, ch. 62, § 130.]

§ 2765. **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 newspaper 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 2768. [1905, ch. 62, § 130½.]

§ 2766. **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. [1905, ch. 62, § 131.]

§ 2767. **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 2764, 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. [1905, ch. 62, § 132.]

§ 2768. **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." [1905, ch. 62, § 133.]

§ 2769. **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. [1905, ch. 62, § 134.]

§ 2770. **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. [1905, ch. 62, § 135.]

## ARTICLE 18.—SEWERS, PAVING AND WATER MAINS.

§ 2771. **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. [1905, ch. 62, § 136.]

§ 2772. **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. [1905, ch. 62, § 137.]

§ 2773. **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. [1905, ch. 62, § 138.]

§ 2774. **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 contained 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. [1905, ch. 62, § 139.]

§ 2775. **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. [1905, ch. 62, § 140.]

§ 2776. **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. [1905, ch. 62, § 141.]

Assessment of damages before change of grade. *Searle v. City of Lead*, 10 S. D. 312, 73 N. W. 101; *Whittaker v. City of Deadwood*, 12 S. D. 608, 82 N. W. 202.  
Grade must be established before passage of ordinance to grade. *Whittaker v. City of Deadwood*, 12 S. D. 608, 82 N. W. 202.

§ 2777. **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. [1905. ch. 62, § 142.]

**§ 2778. 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. [1905, ch. 62, § 143.]

**§ 2779. 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. [1905, ch. 62, § 144.]

**§ 2780. 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 indorsed 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. [1905, ch. 62, § 145.]

§ 2781. **Bids.** Each bid for any work to be done under the provisions of this article 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, indorsed 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 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. [1905, ch. 62, § 146.]

§ 2782. **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. [1905, ch. 62, § 147.]

§ 2783. **Council may reject bids.** The city council shall have the right to reject any and all bids for work to be done under this article, 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. [1905, ch. 62, § 148.]

§ 2784. **Contracts.** All contracts entered into for any work provided for in this article, 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 2764 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. [1905, ch. 62, § 149.]

§ 2785. **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. [1905, ch. 62, § 150.]

§ 2786. **Special assessment funds. Warrants.** All special assessments levied under the provisions of this article 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. [1905, ch. 62, § 151.]

§ 2787. **Errors and mistakes.** In case errors or mistakes in making an assessment, in respect to the total cost of such improvements, 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. [1905, ch. 62, § 152.]

§ 2788. **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 article, or of any law of any city prior to this article, 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

article or under any law of any city prior to this article, 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 article, 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. [1905, ch. 62, § 153.]

Power to reassess cannot be given by subsequent statute. Extinguished by sale of property. *Budge v. Grand Forks*, 1 N. D. 309, 47 N. W. 390.

Reassessment for local improvements. *Phillips v. City of Sioux Falls*, 5 S. D. 524, 59 N. W. 881.

**§ 2789. 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 article, 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. [1905, ch. 62, § 154.]

**§ 2790. 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 article, 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 article takes effect. [1905, ch. 62, § 155.]

**§ 2791. 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. [1905, ch. 62, § 156.]

§ 2792. **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. [1905, ch. 62, § 157.]

§ 2793. **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. [1905, ch. 62, § 158.]

§ 2794. **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. [1905, ch. 62, § 159.]

§ 2795. **Sidewalk assessments.** All special assessments for sidewalks and for the expense of opening, widening or extending streets shall be payable in a single amount. [1905, ch. 62, § 160.]

§ 2796. **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. [1905, ch. 62, § 161.]

§ 2797. **Special assessments due. Interest.** All special assessments levied under the provisions of this article 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. [1905, ch. 62, § 162.]

§ 2798. **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. [1905, ch. 62, § 163.]

§ 2799. **Special assessment commission.** The mayor of each city shall, as soon as practicable after this article 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 2691, 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. [1905, ch. 62, § 164.]

§ 2800. **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. [1905, ch. 62, § 165.]

§ 2801. **Special assessments, how made. Review.** It shall be the duty of such commission, whenever required under the provisions of this article 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 benefited 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 benefited 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 benefited 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. [1905, ch. 62, § 166.]

Limitation of assessment for local improvements. *Webster v. City of Fargo*, 9 N. D. 208, 82 N. W. 732; *Rolph v. City of Fargo*, 7 N. D. 640, 76 N. W. 242.

Publication of statutory notice mandatory. *McLaurin v. Grand Forks*, 6 Dak. 397, 43 N. W. 710.

Tax for street improvements upon abutting property invalid unless authorized by law. *Pickton v. City of Fargo*, 10 N. D. 469, 88 N. W. 90.

Presumption of regularity of proceedings to improve streets and levy tax. *Phillips v. City of Sioux Falls*, 5 S. D. 524, 59 N. W. 881.

Assessment full cost improvement to abutting property is constitutional. *Webster v. City of Fargo*, 9 N. D. 208, 82 N. W. 732; *Rolph v. City of Fargo*, 7 N. D. 640, 76 N. W. 242; *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049; *Tripp v. City of Yankton*, 10 S. D. 516, 74 N. W. 447.

**§ 2802. Publication of assessment list.** 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 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. [1905, ch. 62, § 166.]

**§ 2803. 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 his 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. [1905, ch. 62, § 167.]

**§ 2804. 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. [1905, ch. 62, § 168.]

**§ 2805. Warrants may be issued 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 canceled and retired by the city treasurer. [1905, ch. 62, § 169.]

**§ 2806. 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 article 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. [1905, ch. 62, § 170.]

**§ 2807. 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. [1905, ch. 62, § 171.]



§ 2808. **Delinquent special assessment taxes.** 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. [1905, ch. 62, § 172.]

§ 2809. **Certificate of redemption.** 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. [1905, ch. 62, § 172.]

§ 2810. **When no bidders.** Whenever any parcel of land shall be offered for sale for a special assessment, as provided in section 2808, 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 two preceding sections. 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 1588. [1905, ch. 62, § 173.]

§ 2811. **Tax deed.** 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. [1905, ch. 62, § 173.]

§ 2812. **Vacation of judgment in condemnation proceedings.** Whenever any property is to be taken under this article 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. [1905, ch. 62, § 174.]

§ 2813. **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 article, 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. [1905, ch. 62, § 175.]

§ 2814. **Abbreviations.** In all proceedings taken for the levy and collection or 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. [1905, ch. 62, § 176.]

§ 2815. **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. [1905, ch. 62, § 177.]

§ 2816. **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 article, but all future steps and proceedings not so commenced, taken for any purpose hereinbefore provided for, shall be taken under the provisions of this article, 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 article. [1905, ch. 62, § 178.]

§ 2817. **Water main provisions, applicable when.** The provisions of this article with reference to water mains shall apply only to cities which own a system of water works and water mains. [1905, ch. 62, § 179.]

§ 2818. **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. [1905, ch. 62, § 180.]

#### ARTICLE 19.—IMPROVEMENT OF ROADS LEADING TO CITIES.

§ 2819. **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. Such notice shall state:

1. The purpose of raising such money.
2. The object for which the same is to be expended.
3. The amount thereof.
4. 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. [1905, ch. 62, § 181.]

§ 2820. **Funds for improvement, how raised.** 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. [1905, ch. 62, § 181.]

§ 2821. **Money, how expended.** 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. [1905, ch. 62, § 181.]

#### ARTICLE 20.—CORPORATE LIMITS.

§ 2822. **Power to extend city limits.** Any city in this state that shall become incorporated under this article may extend its corporate limits in the manner hereinafter provided. [1887, ch. 73, art. 17, § 1; R. C. 1899, § 2327; 1905, ch. 62, § 182.]

§ 2823. **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. [1887, ch. 73, art. 17, § 2; R. C. 1899, § 2328; 1905, ch. 62, § 183.]

§ 2824. **Plat of city to be recorded.** The mayor of any city incorporated under this chapter 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 chapter, and any change in said city limits made subsequent to its incorporation under this chapter. [1887, ch. 73, art. 17, § 3; R. C. 1899, § 2329; 1905, ch. 62, § 184.]

§ 2825. **Extension of limits.** Any city in this 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. [1889, ch. 32, § 1; R. C. 1899, § 2330; 1905, ch. 62, § 185.]

§ 2826. **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. [1889, ch. 32, § 2; R. C. 1899, § 2331; 1905, ch. 62, § 186.]

§ 2827. **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. [1889, ch. 32, § 3; R. C. 1899, § 2332; 1905, ch. 62, § 187.]

ARTICLE 21.—MISCELLANEOUS.

§ 2828. **Mayor and 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. [R. C. 1899, § 2333; 1905, ch. 62, § 188.]

§ 2829. **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. [1887, ch. 73, art. 18, § 3; R. C. 1899, § 2335; 1905, ch. 62, § 189.]

§ 2830. **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. [1887, ch. 73, art. 18, § 4; R. C. 1899, § 2336; 1905, ch. 62, § 190.]

§ 2831. **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. [1887, ch. 73, art. 18, § 5; R. C. 1899, § 2337; 1905, ch. 62, § 191.]

§ 2832. **Construing act.** The provisions of this chapter, so far as they are the same as existing statutes, must be construed as continuations thereof and not as new enactments. [1905, ch. 62, 192.]

ARTICLE 22.—CORRECTION OF VILLAGE PLATS.

§ 2833. **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. [1905, ch. 64, § 1.]

§ 2834. **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. [1905, ch. 64, § 2.]

§ 2835. **Notice.** Notice shall be given and served in the manner provided by law for the service of summons in district court. [1905, ch. 64, § 2.]

§ 2836. **Persons having adverse interests may intervene.** 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 inter-

vene and appear in person or by attorney, and make defense in such manner as in civil actions. [1905, ch. 64, § 3.]

§ 2837. **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. [1905, ch. 64, § 4.]

ARTICLE 23.—VALIDATING CERTAIN CITY ORDINANCES.

§ 2838. **Validating city ordinances.** All ordinances and resolutions heretofore enacted or adopted by the city council of any city in this state, under and pursuant to which any work of local improvements has been undertaken and completed in such, are hereby declared to be valid, notwithstanding any irregularity in the enactment or adoption of such ordinance or resolution. [1903, ch. 54, § 1.]

§ 2839. **Contracts and obligations valid.** All contracts heretofore made, and all obligations heretofore incurred, and evidences of debt issued thereunder, by any city in this state, for the execution of any work of local improvement in such city, which work has been completed, are hereby declared to be valid, notwithstanding any irregularity in the proceedings relative to such special improvement, or omission by any officer or officers, of any act required to be done by such officer or officers, under the law pursuant to which the local improvement was ordered done, and notwithstanding the invalidity of the ordinance or resolution providing for such local improvement. [1905, ch. 54, § 2.]

§ 2840. **Courts to determine amount of assessment in actions testing validity.** In all actions now pending or hereafter commenced in any of the courts of this state, in which the validity of any assessment for local improvements in any city comes in question, the courts shall, if the proceedings relative to the local improvement are found to be irregular, ascertain the true amount for which the property involved in said action is liable for such improvement. In order to ascertain the amount for which any lot or tract is liable, the court shall hear the evidence and ascertain the total cost of the improvement and the several lots or tracts liable to assessment therefor under the laws pursuant to which the work was done, and shall thereupon ascertain and determine the amount for which the lots or tracts in question should properly be assessed, according to the provisions of the law prescribing the method of paying for such local improvement. [1903, ch. 54, § 3.]

§ 2841. **Lien on land.** The amount so ascertained, together with interest thereon at the rate of seven per cent per annum from the date on which interest would attach, had the assessment been valid from the beginning, shall be adjudged to be a lien upon the lot or tract affected by such action, and shall be collected in the same manner as other taxes of like nature are collected under the laws in force and at the time the judgment is entered. [1903, ch. 54, § 3.]

§ 2842. **Action to test validity, commenced when.** No person shall be heard to object to the validity of any assessment heretofore made for local improvements in any city of this state, unless the action or proceeding in which the validity of such assessment comes in question shall be commenced before the first day of January, 1904. [1903, ch. 54, § 4.]

## CHAPTER 31.

## VILLAGES.

## ARTICLE 1.—INCORPORATION OF VILLAGES.

§ 2843. **Townsite to be surveyed and platted.** Persons intending to make application for the incorporation of a village as hereinafter provided shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such village; such survey shall be made by a practical surveyor, and show the courses and distances of the boundaries thereof, and the quantity of land contained therein, the accuracy of which survey and map shall be verified by the affidavit of such surveyor written thereon or annexed thereto. [R. C. 1895, § 2344.]

Distinction between township and incorporated town. *Town of Dell Rapids v. Irving*, 7 S. D. 310, 64 N. W. 149.

§ 2844. **Census to be taken.** Such persons shall cause an accurate census to be taken of the resident population of such territory as it may be, on some day not more than sixty days previous to the time of presenting such application to the board of county commissioners, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day and the number of persons then belonging to such family; and it shall be verified by the affidavit of the person taking the same. [1897, ch. 150; R. C. 1899, § 2345.]

§ 2845. **Survey, map and census subject to examination.** Such survey, map and census when completed and verified as aforesaid shall be left at some convenient place within said territory for examination by those having an interest in such application, for a period of not less than thirty days. [R. C. 1899, § 2346.]

§ 2846. **Petition for incorporation.** Such application shall be by petition subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained according to such census, and such petition shall have attached thereto or written thereupon affidavits verifying the facts alleged therein, and it shall be presented at the time indicated in the notice of such application or as soon thereafter as the board can receive and consider the same. [R. C. 1899, § 2347.]

§ 2847. **Commissioners to make order of incorporation.** The board of county commissioners on hearing such application shall first require proof either by affidavit or by oral examination of witnesses before them that the said survey, map and census were subject to examination in the manner and for the period required by section 2845; and if the board is satisfied that the requirements of this chapter have been fully complied with, it shall then make an order declaring that such territory shall with the assent of the qualified voters thereof as hereinafter provided be an incorporated village by the name specified in the application aforesaid, which name shall be different from that of every other town in this state, and it shall also include in such order a notice for a meeting of the qualified voters resident in said proposed village at a convenient place therein to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated village. [R. C. 1895, § 2348.]

§ 2848. **Notice of meeting to be given.** The board shall cause ten days' notice to be given of such meeting by publication in a newspaper if one is published in the county, and by posting not less than ten copies of such

notice in the most public places in said proposed incorporated village. [R. C. 1895, § 2349.]

§ 2849. **Opening of polls.** At the meeting of the qualified voters as herein provided the polls shall be opened at nine o'clock in the forenoon of such day and shall be kept open until four o'clock in the afternoon, when they shall be closed. [R. C. 1899, § 2350.]

§ 2850. **Election of inspectors.** The voters at such meeting shall first proceed to the election of three inspectors who, after being duly chosen and qualified and one of their number elected clerk, shall without delay proclaim to the meeting that the polls are now opened and that they are ready to receive the ballots of the voters. [R. C. 1899, § 2351.]

§ 2851. **Manner of voting.** The qualified voters of said proposed incorporated village shall vote by ballot, having thereon the words, "for incorporation, yes," or the words "for incorporation, no;" and if a majority of the votes given at such meeting shall have thereon the word "no," the voters of such proposed village shall be deemed not to have assented to the incorporation thereof as a village and no further proceedings shall be had in reference thereto; but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated village and shall thereafter, for all purposes except the payment of any prior bonded indebtedness, be separate and disconnected from any civil township of which it theretofore formed a part and to have continuance thereafter by the name and style specified in the order made by the board of county commissioners as hereinbefore provided; and the inspectors of such election shall make a statement showing the whole number of ballots cast at such election, the number having the word "yes" thereon, and the number having the word "no" thereon, which statement shall be verified by the affidavit of such inspectors and shall be returned to the board of county commissioners at its next session which, if satisfied of the legality of such election, shall make an order declaring that said village has been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence of such corporation by the name and style aforesaid shall thereafter be judicially taken notice of in all courts in this state without specially pleading or alleging the same. [1893, ch. 129, § 1; R. C. 1895, § 2352.]

§ 2852. **Division of village into districts.** Such inspectors when they shall have returned the statement as aforesaid shall next proceed to divide said village into not less than three nor more than seven districts, having due regard to the equitable apportionment of the population among the same, and the convenience and contiguity of such districts. [R. C. 1895, § 2353.]

§ 2853. **Notice of election.** They shall also give ten days' notice by publication in a newspaper if one is published in such village and by posting such notices in five public places therein, of an election to be held in such village for the purpose of electing officers thereof, naming the place therein and the day upon which the same will be held, but the day named shall be within twenty days from the posting of such notices. Notice of each subsequent election shall be given in like manner by the clerk of said village. [R. C. 1895, § 2354.]

§ 2854. **Annual election, when held.** An election for officers of said village, after the first election, shall be held annually on the third Tuesday of March of each year, and at every such election the preceding board of trustees or any of them shall act as inspectors thereof. [R. C. 1895, § 2355; 1903, ch. 93, § 1.]

Failure to call annual election; mandamus proper remedy. State ex rel McGregor v. Young, 6 S. D. 406, 61 N. W. 165.



§ 2855. **How long polls shall remain open.** At all elections in said village the polls shall be open at nine o'clock in the forenoon and shall not be finally closed until four o'clock in the afternoon of said day. [R. C. 1895, § 2356.]

§ 2856. **Inspectors to be judges of election.** Such inspectors shall preside at such first election and be the inspectors thereof, and in the receiving and canvassing of votes shall be governed by the laws then existing, so far as they are applicable, for the election of county officers. [R. C. 1899, § 2357.]

§ 2857. **What village officers to be elected.** There shall be elected at the first and at each subsequent election one trustee from each district in said village, and also a clerk, assessor, treasurer, marshal and justice of the peace, who shall respectively hold their offices until the third Tuesday in March next following or until their successors are elected and qualified; provided, however, that nothing herein contained shall prevent the respective offices of clerk, treasurer, assessor and marshal from being held by one and the same person. [R. C. 1899, § 2358; 1903, ch. 93, § 2.]

§ 2858. **Highest number of votes elects. Duty of inspectors.** The persons receiving the highest number of votes for the office of trustee shall be declared elected as such trustees, and the persons receiving the highest number of votes respectively for clerk, marshal, assessor, treasurer and justice of the peace, as designated by the ballot for such office, shall be declared elected; and if two or more shall receive an equal and the highest number of votes, and there is no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected; and it shall further be the duty of such inspectors to make a certified statement over their own signatures, of the persons elected to fill the several offices in said village, and file the same with the county auditor of the county within ten days after the date of such election; and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with. [R. C. 1895, § 2359.]

§ 2859. **County auditor to make record of statement.** It shall be the duty of the county auditor of the proper county to make a record of such certified statement, for which services there shall be paid the same fee as is allowed for similar services in other cases. [R. C. 1899, § 2360.]

§ 2860. **Vacancy in board of trustees, how filled.** A vacancy occurring in the board of trustees or in any corporation office shall be filled by appointment at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district if a trustee is appointed, and shall in no case extend beyond the annual election provided for in this chapter. [R. C. 1899, § 2361.]

§ 2861. **Oath of officers.** The board of trustees chosen as aforesaid shall elect a president from its own body, and such president, trustees and all other officers-elect shall within five days after such election take and subscribe before some person authorized to administer the same the usual oath or affirmation for the faithful performance of the duties of their respective offices. [R. C. 1899, § 2362.]

§ 2862. **Board of trustees a body corporate.** The president and trustees of such village and their successors in office shall constitute a body politic and corporate, by the name of the "village of . . . . .," and may prosecute and defend suits to which they are a party. [R. C. 1895, § 2363.]

§ 2863. **Notice of special meetings.** Special meetings of the qualified voters may be called by the clerk by order of the trustees of said village, by giving ten days' notice thereof in a newspaper if any is printed in such village, otherwise by posting such notices in five public places therein, and such notice shall state the object for which such meeting is called. [R. C. 1895, § 2364.]

## ARTICLE 2.—POWERS OF THE BOARD OF TRUSTEES.

§ 2864. **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, inclosures 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, catchbasins, 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 inclose 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.

Either publication or posting is a prerequisite to a binding enactment. *O'Hara v. Town of Park River*, 1 N. D. 279, 47 N. W. 380.

Ordinance passed but not published, except in case of emergency, void. *O'Hara v. Town of Park River*, 1 N. D. 279, 47 N. W. 380.

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. [1897, ch. 148; R. C. 1899, § 2365; 1905, ch. 186.]

§ 2865. **Jurisdiction of trustees over public grounds.** The trustees shall have jurisdiction over any commons or public grounds belonging to said village and shall have power to regulate with the consent of the majority of the owners thereof, the banks, shores and wharves of that portion of any navigable stream within the corporate limits, but no ferries heretofore, or which may hereafter be established by law shall be prejudiced or in any manner affected by the provisions of this section. [R. C. 1895, § 2366.]

§ 2866. **Appropriation of moneys.** All moneys, however derived, belonging to such corporation shall only be appropriated for such objects and defraying such expenses as accrue or necessarily arise in the exercise of powers granted by this chapter. No appropriation shall be made without an order to that effect entered upon a proper book to be kept for that purpose by such board. [R. C. 1899, § 2367.]

§ 2867. **Accounts must be audited.** No account or claim against said village shall be audited or allowed by the board of trustees unless it is made out fully and itemized, and every such account audited shall be numbered from one upwards in the order they were presented and a memorandum of the same entered upon a book to be kept exclusively for that purpose. [R. C. 1895, § 2368.]

§ 2868. **Payment of accounts.** No account or claim shall be paid unless audited and allowed by the board as aforesaid, and no moneys shall be drawn from the treasury except upon a warrant from the treasurer signed by the president of said village and attested by the clerk thereof. [R. C. 1895, § 2369.]

#### ARTICLE 4.—CORPORATE INDEBTEDNESS.

§ 2869. **Contracting loans.** No village incorporated under this chapter shall have power to borrow money or incur any debt or liability unless the citizen owners of five-eighths of the taxable property of such village as evidenced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan, and such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same; and for any debt created thereby the trustees shall add to the tax duplicate of each year successively a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the hundred dollars to create a sinking fund for the liquidation of the principal thereof. [R. C. 1895, § 2370.]

Proper petition gives jurisdiction to issue warrants. *Hubbell v. Custer City*, 15 S. D. 55, 87 N. W. 520.

## ARTICLE 5.—QUALIFICATION OF OFFICERS.

§ 2870. **Certain officers to give bonds.** The clerk, assessor, treasurer, marshal and justice of the peace shall within ten days after their election or appointment each give a bond payable to the village with freehold sureties, to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year. [R. C. 1899, § 2371.]

§ 2871. **Books, etc., to be delivered to successor.** All books, vouchers, moneys or other property belonging to the corporation and in the charge or possession of an officer of the same shall be delivered to his successor when qualified. [R. C. 1899, § 2372.]

## ARTICLE 6.—LEVY AND COLLECTION OF TAXES.

§ 2872. **Board determines amount of tax.** The board of trustees shall before the third Tuesday in May of each year determine the amount of general tax for the current year. [R. C. 1899, § 2373.]

§ 2873. **Duties of assessor.** The assessor shall assess all property liable to taxation in such village under such rules and regulations as the board may prescribe, and shall make return of his assessment roll to such board on or before the second Tuesday of June of each year. [R. C. 1895, § 2374.]

§ 2874. **Notice of opening of assessment roll.** The trustees shall cause the clerk of said corporation to put up notices in three or more public places in said village stating that the assessment roll is returned and open for inspection, and that on a day and at a place to be specified in said notice the trustees will hear and decide all complaints of and appeals from the acts of said assessor. [R. C. 1895, § 2375.]

§ 2875. **Duty of trustees after correction of tax list.** When the assessment roll shall have been corrected and completed the trustees shall levy a tax upon the taxable property of said village to such an amount as they may deem necessary, and shall set opposite the name of each person taxed a description and valuation of the property charged therewith and the amount of tax assessed against such person; and when such tax list shall have been made they shall cause a copy thereof with a warrant annexed to be delivered to the marshal of such village. The assessment roll and tax list shall be deposited with the treasurer of such village, who is hereby charged with the safe custody of the same. [R. C. 1895, § 2376.]

§ 2876. **Warrant to marshal to collect and pay over taxes.** Such warrant shall be under the seal of the corporation, signed by the president and trustees or a majority of them and attested by the clerk, and shall command the marshal to collect the taxes specified in his duplicate within ninety days and pay over the same and make return of said warrant to the treasurer of said village. Such trustees may renew such warrant for any period not exceeding thirty days. [R. C. 1895, § 2377.]

§ 2877. **Powers of marshal to collect tax.** The marshal shall collect the taxes on such duplicate when so required, and shall have the same power to enforce collections and shall be governed by the same rules and regulations as county treasurers and collectors, and shall have authority in like manner to collect by distress and sale of personal property; but if the tax cannot be so made and it becomes necessary to sell real estate such tax shall be certified to the county treasurer, who shall proceed to collect the same as directed by the law governing tax sales; provided, that this shall not apply to incorporated cities, villages or towns for which a different method is provided by their charters. [R. C. 1899, § 2378.]

§ 2878. **Tax duplicate may be delivered to county collector.** The trustees of such village may at their option in the first instance deliver the tax duplicate to the collector of the proper county on or before the first day of

August in each year, instead of the marshal of such village, and said collector shall enter said tax and, if delinquent, the interest and penalty thereon upon his duplicate. [R. C. 1895, § 2379.]

§ 2879. **Compensation of county and town treasurer.** The treasurer of such county shall collect the corporation taxes upon such duplicate as other taxes are collected, and pay the same over to the treasurer of such corporation. The treasurer shall be allowed and paid by the corporation the same compensation as is paid by the county for like services. [R. C. 1899, § 2380.]

§ 2880. **Special taxes assessed to be a lien.** All taxes assessed by the board of trustees of villages incorporated under the provisions of this chapter for the grading, paving or otherwise improving the streets of the village, or for building or repairing sidewalks, shall be a lien on the lots or pieces of ground subject to the same from the time the amount thereof shall have been ascertained; and in case any error or irregularity should occur in levying or collecting any such tax, proceedings may be taken anew so as to obviate any such error or irregularity. [R. C. 1895, § 2381.]

§ 2881. **Special taxes, how collectible. Penalty for delinquency.** Such special tax shall be due and may be collected as the improvements are completed in front of or along or upon any block, lot or piece of ground, or at the time the improvement is completed, as may be provided in the ordinance levying the tax. Such tax if not paid within thirty days after becoming due shall have added thereto a penalty of ten per cent and shall bear interest from the day of sale at the rate of twenty-five per cent per annum, to be computed on the tax, penalty and costs of sale. [R. C. 1899, § 2382.]

§ 2882. **What costs may be included in special tax.** The cost and expenses of grading, filling, paving, macadamizing, culverting, curbing and ditching or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane as may be deemed best by the board of trustees of such village. [R. C. 1895, § 2383.]

Not authorized to make special assessment for laying water mains. *Lee v. Town of Mellette*, 15 S. D. 586, 90 N. W. 855.

§ 2883. **Marshal's duty in relation to special taxes.** When the special tax is levied it shall be the duty of the marshal of such village to calculate the amount of tax on each block, lot or piece of ground, and file a statement thereof with the village clerk, who shall as soon as the tax is due on any block, lot or piece of ground issue a certificate describing it, its number and lot and block, and stating the amount of tax due thereon, and the name of the person entitled to the same, and the purpose for which said tax was levied; and such certificate so given shall be the tax warrant of the collector, and shall be by the clerk placed in the hands of the marshal, and he shall keep a record of all such warrants and enter on the margin of such records all amounts paid and by whom paid. [R. C. 1895, § 2384.]

#### ARTICLE 7.—POWERS AND DUTIES OF OFFICERS.

§ 2884. **Duties of village treasurer.** The treasurer of each incorporated village shall so keep his accounts as to show where and from what sources all moneys paid him have been derived, and to whom and when such moneys or any part thereof have been paid. The treasurer shall grant all licenses authorized by this chapter upon the presentation of the receipt of the marshal that the money therefor has been paid to said marshal. His books, accounts and vouchers shall at all times be subject to the examination of the board of trustees, and it is its duty to examine the same at a regular meeting of such board on some day between the first and last Mondays of April in each year, and have a settlement with said treasurer. [R. C. 1895, § 2385.]

§ 2885. **Board of trustees to publish receipts and expenditures.** It shall be the duty of the board of trustees immediately after the annual settlement

with the treasurer of said corporation to publish in a newspaper if one is published therein, or if there is no newspaper then by posting in three or more public places, an exhibit of the receipts and expenditures specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each. [R. C. 1899, § 2386.]

§ 2886. **Duties of clerk.** The clerk of such village shall have the custody of the records, books and papers of the board of trustees and shall attend all meetings and keep a record of the proceedings of said board, and shall perform all other duties appertaining to his office, as required of him by the by-laws. [R. C. 1895, § 2387.]

§ 2887. **Powers of marshal.** The marshal of such village shall be a peace officer and shall possess the powers and be subject to the liabilities possessed and conferred by law upon sheriffs in executing the orders of the trustees or enforcing the by-laws and ordinances of said village. [R. C. 1895, § 2388.]

Rendition of account and acceptance of allowance for less than prescribed salary is adjudication. *O'Hara v. Park River*, 1 N. D. 279, 47 N. W. 380.

§ 2888. **Trustees to superintend grading, etc.** The board of trustees shall superintend the grading, paving and improving of streets and the building and repairing of sidewalks. [R. C. 1899, § 2389.]

§ 2889. **Firewardens, duties of.** The firewardens shall attend all fires and give their personal superintendence to extinguish the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. Trustees shall by virtue of their office be firewardens. [R. C. 1899, § 2390.]

§ 2890. **Compensation of village officers.** The trustees, clerk, assessor, treasurer, marshal and justice of the peace shall respectively receive for their services such compensation as the board of trustees in their by-laws may decide; and the board shall cause other officers of such village to be paid for their services a just and reasonable compensation. [R. C. 1895, § 2391.]

#### ARTICLE 8.—SIDEWALKS AND STREETS.

§ 2891. **Sidewalks, streets, etc. Petition for building or repairing.** Whenever two-thirds of the resident owners in number or in value of real estate bounding both sides of any street not less than one square, shall petition to have such street graded, paved or otherwise improved or the sidewalk thereof built or repaired, or when two-thirds of the owners of real estate in number or in value on one side of such street shall desire a sidewalk on that side, it shall be the duty of such board to levy and cause to be collected by tax upon the owners of the real estate, on such street or part of street such a sum of money as is necessary for the improvement of said street or sidewalk or the building of said sidewalk in front of each of the respective lots or at the side of any corner lot or lots or real estate; provided, however, that no real estate shall be taxed as aforesaid for sidewalks built or improvements done at a greater distance from the front of said real estate than one-half the distance to the opposite side of said street. [1883, ch. 107, § 1; R. C. 1899, § 2392.]

§ 2892. **No one exempt from highway tax.** Nothing contained in this article shall exempt the inhabitants of any village from the payment of highway taxes legally assessed, nor from the formation of one or more road districts irrespective of the corporate limits of such village. [R. C. 1895, § 2393.]

#### ARTICLE 9.—EXTENSION OF CORPORATE LIMITS.

§ 2893. **Addition to corporation.** When two-thirds of the owners of a tier of out-lots adjoining an incorporated village shall sign a petition asking that the corporate limits of said village be extended so as to include said out-lots, the board of trustees of said village shall cause said petition to

be recorded and make an order that said tier of out-lots shall thereafter be included and constituted a part of said corporation, and the inhabitants residing thereon and owners thereof shall be subject to and entitled to all privileges of said corporation. [R. C. 1895, § 2394.]

§ 2894. **Annexing additional lots.** Whenever there shall be lots laid off and platted adjoining such village, and a record of the same is made in the register of deeds' office of the proper county, the trustees may by a resolution of their board extend the boundary of such village so as to include such lots; and the lots thus annexed shall thereafter form a part of such village and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with a plat and map of survey defining the boundaries of such addition, in the office of the register of deeds. [R. C. 1895, § 2395.]

§ 2895. **Proceedings of trustees to annex additions.** When any village shall desire to annex contiguous territory thereto not platted or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days' notice by publication in a newspaper printed in such village, if any, otherwise in the county, and if there is none in the county then by posting such notice in five or more public places within the village; a copy of such notice shall be served upon the owner of such territory if known and is a resident of the county. [R. C. 1895, § 2396.]

§ 2896. **County commissioners to hear and order annexation.** The board of county commissioners upon the reception of such petition shall consider the same and shall have the testimony offered for or against such annexation, and if after inspection of the map and the testimony being heard such board is of the opinion that the prayer of such petition should be granted it shall cause an entry to be made on the order book specifying the territory annexed, with the boundaries thereof according to the survey, which entry or an attested copy thereof shall be conclusive evidence in all courts of such annexation. [R. C. 1899, § 2397.]

#### ARTICLE 10.—DISSOLUTION OF CORPORATION.

§ 2897. **Petition for election, etc.** When an application signed by one-third of the legal voters of any incorporated village shall be presented to the board of trustees in writing asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for the board if it deems the reasons good to call a meeting of the voters of such village by giving ten days' notice thereof as provided in this chapter, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting and the polls shall be opened as at other elections, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such village, a statement of the vote signed by the president and attested by the clerk shall be filed in the office of the register of deeds of the county, and such village shall at the expiration of six months from the time of holding such meeting cease to be a corporation, and the property belonging to such corporation after the payment of its debts and liabilities shall be disposed of in such manner as a majority of the voters of such village at any special meeting thereof may direct. [R. C. 1895, § 2398.]

§ 2898. **Dissolution not to affect contracts.** No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party. [R. C. 1899, § 2399.]



ARTICLE 11.—VILLAGE SIDEWALKS.

§ 2899. 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.

Table with 5 columns: Name of Owner, if Known; Description of Land (Lot, Block); Amount (Dollars, Cents).

Done at a meeting of the board of trustees, this..... day of .....A. D. 19....

President.

Attest:

Village Clerk.

[1905, ch. 184, § 1.]

§ 2900. 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. [1905, ch. 184, § 2]

ARTICLE 12.—POLICE IN UNORGANIZED TOWNS.

§ 2901. **Village policemen 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. [1905, ch. 185, § 1.]

§ 2902. **Police tax 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 the previous section, 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, 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." [1905, ch. 185, § 2.]

§ 2903. **Tax 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. [1905, ch. 185, § 3.]

§ 2904. **Policemen qualify and give bond as 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. [1905, ch. 185, § 4.]

§ 2905. **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. [1905, ch. 185, § 5.]

§ 2906. **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. [1905, ch. 185, § 6.]

§ 2907. **Tax levy and appointment made before July first. Supervisors 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. [1905, ch. 185, § 7.]

## ARTICLE 13.—MISCELLANEOUS.

§ 2908. **Proof of compliance with law by village.** Whenever any suit shall be instituted by an incorporated village it shall not be required to show its compliance with any of the provisions of this chapter as to its organization or publication of by-laws or ordinances, unless the same is controverted under oath. [R. C. 1895, § 2400.]

§ 2909. **Towns and villages may adopt this chapter.** Any town or village heretofore incorporated may by resolution of the board of trustees or other municipal board thereof entered upon the record book of the corporation become incorporated under this chapter, but the same shall be deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the register of deeds of the proper county and entered by him of record. Trustees and other officers of such incorporated towns or villages by whatever name designated, performing duties of a like nature to those required of officers, created by this chapter shall continue to be the officers of such towns or villages, under the names specified in this chapter, until their successors are elected and qualified. [R. C. 1895, § 2401.]

§ 2910. **When debt not nullified.** No debt or liability due to or from any incorporated town or village shall be unpaid by reason of such town or village being brought within the provisions of this chapter and becoming incorporated under it. [R. C. 1895, § 2402.]

## ARTICLE 14.—PROCEDURE IN VILLAGE JUSTICE'S COURT.

§ 2911. **Village justice, jurisdiction of.** Justices of the peace of any village organized under the provisions of this chapter shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of such village, and concurrent jurisdiction with all other justices in all civil actions and in all criminal actions for offenses against the laws of the state, committed within the county where such village is situated. [R. C. 1895, § 2403.]

§ 2912. **Procedure in, how governed.** Whenever complaint shall be made to the justice of the peace of such village, upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which such justice of the peace has jurisdiction, said justice of the peace shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the marshal of the village, the sheriff or any constable of the county, or any person specially appointed by the justice for that purpose, and in all preliminary examinations before such justice he shall be governed by the code of criminal procedure, and in all trials before such justice for offenses against the state he shall be governed by the justices' code. [R. C. 1899, § 2404.]

§ 2913. **Duty of justice when defendant appears.** When any person shall be brought before such justice of the peace upon a warrant it shall be his duty to hear and determine the complaint alleged against him. [R. C. 1899, § 2405.]

§ 2914. **Proceedings when trial is postponed.** Upon good cause shown such justice may postpone the trial of the cause 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 justice at the time and place appointed, then and there to answer the complaint alleged against him. [R. C. 1899, § 2406.]

§ 2915. **Justice to summon witnesses.** It shall be the duty of such justice to summon all persons whose testimony may be deemed material as witnesses

at the trial, and to enforce their attendance by attachment, if necessary, and when a trial shall be continued by such justice 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 summons. [R. C. 1899, § 2407.]

§ 2916. **Trials, how governed.** All trials before such justice shall be governed by the criminal procedure applicable to justices' courts. [R. C. 1899, § 2408.]

§ 2917. **Judgment when defendant found guilty.** In all trials for offenses under the ordinances of the village, if the defendant is found guilty the justice shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment is satisfied, in no case to exceed one day for every seventy-five cents of the fine and costs assessed against such defendant. [R. C. 1895, § 2409.]

§ 2918. **Justice is peace officer. Court open every day.** Such justice shall be a conservator of the peace and his court shall be opened every day except Sunday to hear and determine any and all cases cognizable before him; and he shall have power to bring persons forthwith before him for trial. No act shall be performed by him on Sunday except to receive complaints, issue process and take bail. [R. C. 1899, § 2410.]

§ 2919. **Appeals.** In all cases before such justice an appeal may be taken by the defendant to the district court of the county in which such village is situated; but no appeal shall be allowed unless such defendant shall within ten days enter into an undertaking with sufficient sureties to be approved by such justice, conditioned for the payment of the fine and costs and costs of appeal, and that he will render himself in execution thereof in case such appeal is determined against him. [R. C. 1895, § 2411.]

§ 2920. **Punishment for violation of ordinances.** Any person convicted before such justice of an offense against the ordinances of the village shall be punished by fine as may be regulated by ordinance. [R. C. 1895, § 2412.]

§ 2921. **Power of justice. Jury. Appeals.** The justice of the peace of the village shall have power to enforce obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding court or to process issued or orders made by him, in the same manner and to the same extent as provided for courts of justices of the peace. From any final conviction, sentence or judgment of said court an appeal may be taken to the district court within the time and in the manner prescribed for taking appeals from justices' courts and the district court shall on such appeals take judicial notice of all the ordinances of such village. Actions before such justices of the peace, arising under village ordinances, shall be tried and determined by such justices of the peace without the intervention of a jury unless the defendant demands a trial by jury; and when a demand shall be so made the trial shall be by jury of twelve citizens of such village having the qualifications of jurors, who shall be summoned by the marshal upon a venire issued by such justice of the peace. The venire for a jury shall contain eighteen names, three of which shall be stricken off the list by the defendant and three by the marshal; the remaining twelve names shall constitute a jury for the trial of an action. If there is any challenge for cause such justice of the peace shall try the question in a summary manner, and he may examine the challenged jurors under oath. [R. C. 1895, § 2413.]

§ 2922. **Fees of jurors.** Such jurors shall each be paid fifty cents for their services in each action. [R. C. 1899, § 2414.]

§ 2923. **Costs of jury taxed to defendant, when.** In case the defendant is found guilty the costs of the jury shall be taxed against him as a part of the costs of the action and the amount thereof shall be a part of the judgment. [R. C. 1899, § 2415.]

§ 2924. **Proceedings, how governed.** In all actions not herein specially provided for, the process and proceedings of the court of such justice of the peace shall be governed by the laws regulating proceedings in justices' courts in criminal actions. [R. C. 1899, § 2416.]

ARTICLE 15.—ORDINANCES.

§ 2925. **How ordinances may be proven.** All ordinances of the village may be proven by the ordinance book or the certificate of the clerk of the village under the seal of the village; and when printed in a newspaper or published in book or pamphlet form and purporting to be published or printed by authority of the village, may be read and received in all courts and places without further proof. [R. C. 1895, § 2417.]

CHAPTER 32.

MISCELLANEOUS PROVISIONS RELATING TO CITIES AND VILLAGES.

ARTICLE 1.—TOWN PLATS.

§ 2926. **Survey and plat to be made.** When any person wishes to lay out a town in this state or an addition or subdivision of out-lots, such person shall cause the same to be surveyed and a plat thereof made which shall particularly describe and set forth all the streets, alleys, commons or public grounds and all in and out-lots or fractional lots within or adjoining said town, giving the names, width, courses, boundaries and extent of all such streets and alleys. [R. C. 1899, § 2418.]

§ 2927. **Lots and squares numbered.** All the in-lots intended for sale shall be numbered in progressive numbers or by squares in which they are situated, and their precise length and width shall be stated on said map or plat; and out-lots shall in like manner be surveyed and numbered and their precise length and width stated on the plat or map, together with any streets, alleys or roads which shall divide or border the same. [1887, ch. 106, § 1; R. C. 1899, § 2419.]

§ 2928. **Base line, how formed.** The proprietor of the town, addition or subdivision of out-lots, by himself or agent, shall at the time of surveying and laying the same out cause to be planted and firmly fixed in the ground on the line of the main streets of said town two good and sufficient stones of such size and dimension as the surveyor shall direct, said stones to be at least two hundred and fifty yards apart; and the line thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found shall be distinguished on the plat or map. [R. C. 1899, § 2420.]

§ 2929. **Plat to be certified and acknowledged.** The plat or map after having been completed shall be certified by the surveyor and the officers, and every person whose duty it shall be to comply with the foregoing requirements shall at or before the time of offering said plat or map for record acknowledge the same before some person authorized to take acknowledgments. A certificate of such acknowledgment shall by the officer taking the same be indorsed on the plat or map, which certificate of the survey and acknowledgment shall also be recorded and form a part of the record. [R. C. 1899, § 2421.]

§ 2930. **Lands donated or granted. Streets.** When the plat or map shall have been made out and certified, acknowledged and recorded as required by this chapter every donation or grant to the public, or to any individual, religious society, or corporation, marked or noted as such on said

plat or map, shall be deemed a sufficient conveyance to vest the fee simple of such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against such donors, their heirs or representatives, to said donees, or grantees, for their use for the uses and purposes therein named, expressed and intended, and no other use and purpose whatever; and the land intended to be used for the streets, alleys, ways, commons or other public uses in any town, city or addition thereto shall be held in the corporate name thereof in trust to and for the use and purposes set forth and expressed or intended. [R. C. 1899, § 2422.]

A proprietor who dedicates by plat does not convey an absolute fee to the public. Only a fee limited for the designated and intended use is conveyed to the public. *Donovan v. Allert*, 11 N. D. 289, 91 N. W. 441.

**§ 2931. Record of plat in unorganized counties.** If the county in which said town or addition is situated shall not be organized, the plat or map shall be recorded in the office of the register of deeds of the county to which such county is at the time attached for judicial purposes. [R. C. 1899, § 2423.]

**§ 2932. Towns already laid out must comply with this chapter.** When any town, addition or subdivision has been heretofore laid out and lots sold in this state by agents or proprietors, and a plat or map of the same has not been acknowledged and recorded in conformity with acts heretofore in force, it shall be the duty and it is hereby required of the county commissioners or majority of them in such county, or proprietor or proprietors who have laid out the same, or his or their legal representatives, to have the same fairly, fully and clearly made out, acknowledged and recorded in the proper county, in the form and manner required by this chapter; noticing and particularly describing the donation of lands or otherwise to individual societies, bodies politic, or for common or public purposes; provided, that if the lots shall have been differently numbered and sales made and they cannot be conveniently changed they shall be returned as originally stated; but in all other respects the plat or map shall conform to the requirements of this chapter. [R. C. 1899, § 2424.]

**§ 2933. Fees of surveyor and register.** The surveyor who shall lay out, survey and plat any town or addition shall be entitled to receive twenty-five cents for each and every in and out-lot the same may contain, unless otherwise agreed, and the register of deeds of the county recording the same shall receive the sum of two cents for each and every lot as aforesaid; the said plat and survey to be by him transcribed or copied into a book to be provided for that purpose. [R. C. 1899, § 2425.]

**§ 2934. Penalty if sale or lease is offered before compliance with this article.** If any person or persons shall dispose of, offer for sale or lease for any time any out or in-lots in any town, village or city or in any addition to any town, village or city or any part thereof, which shall hereafter be laid out, until all the foregoing requirements of this chapter shall have been complied with, every person so offending shall forfeit and pay the sum of ten dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale. [R. C. 1899, § 2426.]

**§ 2935. Penalty if officer or other person neglect to do duty.** If any officer or person whose duty it is to comply with any of the requirements of this article shall neglect or refuse so to do, he shall forfeit and pay a sum not less than ten nor more than one hundred dollars for each month he shall delay a compliance. [R. C. 1899, § 2427.]

**§ 2936. Forfeitures and liabilities.** All forfeitures and liabilities which may be incurred or arise under this chapter shall be prosecuted for and recovered in the name of the county treasurer; and any officer paying over any money to such treasurer, received under any of the provisions of this chapter, shall take his receipt therefor and forthwith file such receipt with

the county auditor, and he shall charge the amount of such receipt against said treasurer on the books of the county. [R. C. 1899, § 2428.]

ARTICLE 2.—VACATION OF PLATS BY DISTRICT COURT.

§ 2937. **District court may alter or vacate towns.** The district court is authorized and empowered on application made by the proprietors of any town within the county to alter or vacate the same or any part thereof. [R. C. 1899, § 2429.]

§ 2938. **Notice of application, how given.** If any proprietor of a town shall be desirous of altering or vacating the same or any part thereof, such proprietor shall give notice in writing of such intended application in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county if there is one, at least forty days prior to the sitting of the court to which he intends to make such application. [R. C. 1899, § 2430.]

§ 2939. **Proceedings for.** If such applicant shall produce to the court satisfactory evidence that the notice required by the preceding section has been given, the court shall proceed to hear and determine such petition, and may alter or vacate such town or any part thereof, and order the proceedings thereon to be recorded by the clerk with the records of the court. [R. C. 1899, § 2431.]

ARTICLE 3.—VACATION OF PLATS BY WRITTEN DECLARATION.

§ 2940. **Plats, how vacated.** Any plat of any town, village or city or addition thereto or any subdivision of land may be vacated by the proprietors thereof at any time before the sale of any lots therein by a written instrument declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat to be vacated; and the executing and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons and public grounds laid out as described in such plat. And in cases where any lots have been sold the plat may be vacated as herein provided by all the owners of lots in such plat joining in the execution of the writing aforesaid; provided, that this article shall not be construed as applying to any of the territory included within the limits of any incorporated city, town or village created and organized under and by virtue of a special act. [1887, ch. 109, § 1; R. C. 1899, § 2432.]

§ 2941. **Part of plat vacated, how.** Any part of a plat may be vacated under the provisions and subject to the conditions of this article; provided, such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat; and provided, further, that nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law. [1887, ch. 109, § 2; R. C. 1899, § 2433.]

§ 2942. **Proprietors' rights when vacated.** When any part of a plat shall be vacated as aforesaid the proprietors of the lots so vacated may inclose the streets, alleys and public grounds adjoining said lots in equal proportion. [1887, ch. 109, § 3; R. C. 1899, § 2434.]

§ 2943. **Register of deeds to mark plat.** The register of deeds in whose office the plats aforesaid are recorded shall write in plain, legible letters across that part of said plat so vacated the word "vacated," and also make a reference on the same to the volume and page in which such instrument of vacation is recorded. [1887, ch. 109, § 4; R. C. 1899, § 2435.]

§ 2944. **Owner may plat again.** The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor, and when such plat is acknowledged by such owner and recorded in the office of the register

of deeds such lots may be conveyed and assessed by the numbers given them on such plat. [1887, ch. 109, § 5; R. C. 1899, § 2436.]

ARTICLE 4.—CHANGING LIMITS OF CITIES, TOWNS AND VILLAGES.

§ 2945. **Limits may be extended.** On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths, in value, of the property in any territory contiguous to any incorporated city or town or village and not embraced within the limits thereof, the city council of the city or the board of trustees of the town or village, as the case may be, may by ordinance annex such territory to such city, town or village upon filing a copy of such ordinance with an accurate map of the territory annexed, duly certified by the mayor of the city or the president of the board of trustees of the town or village in the office of the register of deeds of the county where the annexed territory or the greater portion of it is situated, and having the same recorded therein. [1887, ch. 104, § 1; R. C. 1895, § 2437.]

§ 2946. **Limits may be restricted.** On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths, in value, of the property in any territory within any incorporated city, town or village, and being upon the border and within the limits thereof, the city council of the city or the board of trustees of the town or village, as the case may be, may disconnect and exclude such territory from such city, town or village; provided, that the provisions of this section shall only apply to lands not laid out into city, town or village lots or blocks. [1887, ch. 104, § 2; R. C. 1895, § 2438.]

Where no person residing on property and petition signed by sole owner, held compliance with statute. Applies to cities operating under special charter. Circuit court had jurisdiction. *Coughran v. City of Huron*, 17 S. D. 271; 96 N. W. 92; *Glaspell v. City of Jamestown*, 11 N. D. 86, 88 N. W. 1023.

§ 2947. **Notice of petition to be published.** No final action shall be taken by the city council or the board of trustees, as the case may be, upon any petition presented in pursuance of the provisions of the last two sections until notice of the presentation of such petition has been given by the petitioners by publication at least once in each week for two successive weeks in some newspaper published in the city, town or village where the petition is presented; or if no newspaper is published therein, then in the newspaper published nearest thereto. [1887, ch. 104, § 3; R. C. 1895, § 2439.]

Preliminary steps must be complied with to give court jurisdiction. *Weiland v. City of Ashton*, 17 S. D. 621.

§ 2948. **Petition presented to district court, when.** Upon the failure of the city council, or the board of trustees, as the case may be, to grant the request contained in any petition presented in accordance with the provisions of sections 2945 and 2946, for thirty days after the publication of the notice provided for in the last section, or upon a refusal to grant such request, the petitioners may present their petition to the district court of the county in which such city, town or village or the greater portion of it is situated, by filing such petition with the clerk of said court. Notice of such filing shall be served by the petitioners upon the mayor of the city or the president of the board of trustees, as the case may be, together with a notice of the time and place when and where a hearing will be had upon such petition, at least ten days before the date of such hearing. The hearing on the petition may be had at a regular or special term of the district court or by the court in vacation. [1887, ch. 104, § 4; R. C. 1895, § 2440.]

§ 2949. **Duty of court.** If upon the hearing the court shall find that the request of the petitioners ought to be granted and can be so granted without injustice to the inhabitants or persons interested the court shall so order.



If the court shall find against the petitioners the petition shall be dismissed at the cost of the petitioners. [1887, ch. 104, § 5; R. C. 1899, § 2441.]

Unconstitutional. *Glaspell v. Jamestown*, 11 N. D. 86, 88 N. W. 1023.

Court has jurisdiction to exclude unplatted land. *Pelletier v. City of Ashton*, 12 S. D. 366, 81 N. W. 735.

§ 2950. **Map to be filed.** When any territory is annexed by ordinance or by order of court to any city, town or village as provided in this article, it shall be the duty of the mayor of the city or of the president of the board of trustees of the town or village, as the case may be, to cause an accurate map of such added territory, together with a copy of the ordinance for the annexation or a copy of the order of court therefor, duly certified, to be filed and recorded in the office of the register of deeds of the county in which such added territory or the greater portion of it is situated. If territory is disconnected or excluded from any city, town or village a copy of the ordinance or judgment therefor shall be so filed and recorded, at the expense of the petitioners therefor. [1887, ch. 104, § 6; R. C. 1899, § 2442.]

#### ARTICLE 5.—CHANGING NAMES OF TOWNS OR VILLAGES.

§ 2951. **Petition.** When any number of the inhabitants of any town or village shall desire to change the name thereof, there shall be filed in the office of the county auditor a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said town or village, setting forth the name by which said town or village is known, its location as near as practicable, and giving the name which they desire the town shall thereafter be known by. [1885, ch. 31, § 1; R. C. 1899, § 2443.]

§ 2952. **Notice.** Notice of the filing of such petition and the time and place when the same shall be heard and the objects and purposes thereof shall be given by posting up a written or printed notice in at least five public places in the town or village, the name of which is sought to be changed, at least four weeks before the meeting of the board of county commissioners. [1885, ch. 31, § 2; R. C. 1899, § 2444.]

§ 2953. **Duty of county commissioners.** At the next regular meeting of the board after such notice shall have been posted as aforesaid, the board shall proceed to hear and determine the petition unless the hearing is for good cause continued until the next meeting; and the board shall on the hearing of said petition also hear any remonstrance against the proposed change; and if on hearing it shall appear to the board that two-thirds of the qualified electors of the town or village in good faith signed said petition for change of name and desired the same, then the board shall order said name to be changed as prayed for. [1885, ch. 31, § 3; R. C. 1899, § 2445.]

§ 2954. **Record.** The order of the board shall thereupon be entered of record, giving the name of the town or village as set forth in such petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter, and directing that notice of said change shall be published in at least one newspaper published in the county, if any, and if there is no newspaper published in the county, then such notice shall be published by posting the same for four weeks on the front door of the court house in which the last term of the district court of said county was held. [1885, ch. 31, § 4; R. C. 1899, § 2446.]

§ 2955. **Proof of publication to be filed.** Proof of such publication shall be filed in the office of the county auditor; and on the day fixed by the board as aforesaid the change shall be complete; provided, that whenever the name of any town or village shall be changed under the provisions of this article the county auditor shall immediately notify the register of deeds who shall note the change of name upon the plat of said town or village with the date thereof. [1885, ch. 31, § 5; R. C. 1899, § 2447.]

§ 2956. **Costs.** In all cases arising under the provisions of this article where there is no remonstrance or opposition to said petition, the petitioners shall pay all costs; but in all other cases costs shall abide the result of the proceeding and be taxed to either party in the discretion of the board, or divided equitably between the parties. [1885, ch. 31, § 6; R. C. 1899, § 2448.]

ARTICLE 6.—CHANGING WARDS.

§ 2957. **Petition. Notice.** When a petition shall be presented to the mayor and council of any city or the president and trustees of any town or village, signed by a majority of the legal voters thereof, to be determined by the number of names on the poll list of the last regular election, praying for a change in the name, number or boundary of wards of said city, town or village, the council of such corporation shall at once cause to be published in a weekly newspaper of the city or village, in at least three issues, a notice of the day, hour and place of meeting at which they will consider such petition. [1887, ch. 110, § 1; R. C. 1899, § 2449.]

§ 2958. **Council may order change, when.** If it shall appear to the council or trustees that the change petitioned for is desirable and for the best interests of the city, town or village the council may by a majority vote of all the members elect order the change desired, but no such change shall take effect until the next regular election. [1887, ch. 110, § 2; R. C. 1899, § 2450.]

§ 2959. **Plats and records to be changed.** The council shall direct the corporation attorney to cause such needful changes in papers, plats and matters of record as the change may demand. [1887, ch. 110, § 3; R. C. 1899, § 2451.]

§ 2960. **Duty of clerk.** It shall be the duty of the town, village or city clerk or auditor to make such changes in the assessment lists as the change in wards necessitates. [1887, ch. 110, § 4; R. C. 1899, § 2452.]

§ 2961. **Manner of holding election in new ward.** Ten days before the next regular election the council shall designate the proper polling place or places for the new ward or wards, appoint judges and clerks, and make all necessary provisions for holding the election in the new ward or wards, naming the several officers to be chosen. [1887, ch. 110, § 5; R. C. 1899, § 2453.]

ARTICLE 7.—LOCATING AND VACATING STREETS AND ALLEYS.

§ 2962. **Power to open, improve and vacate streets and alleys.** Any city, town or village is authorized and empowered, through its proper municipal officers, to lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings therein and to vacate the same. When it becomes necessary in order to make any of the improvements herein specified, to take or damage private property, such municipal corporation may exercise the right of eminent domain for any public use authorized by law in the manner provided in chapter 36 of the code of civil procedure. In case private property is taken or damaged for a purpose not of direct benefit to the entire municipal corporation, the damages assessed by the jury shall be paid by the owners of real property who are to be directly benefited by the proposed local improvement, and the jury shall assess the amount to be paid by each owner of real property benefited, but the action shall be conducted by and in the name of the municipal corporation. [1897, ch. 102; R. C. 1899, § 2454.]

Damages how assessed and cost of improvement apportioned as provided by this section. *City of Fargo v. Keeney et al*, 11 N. D. 484, 92 N. W. 836.

ARTICLE 8.—WATERWORKS AND FIRE APPARATUS.

§ 2963. **Authorized to purchase fire apparatus, etc.** All cities, towns and villages in this state having a population of one thousand inhabitants or more are authorized and empowered to purchase, erect, lease, rent, manage and

maintain any system or part of system of waterworks, hydrants and supply of water, telegraph fire signals or fire apparatus that may be of use in the prevention and extinguishment of fires; and to pass such ordinances, penal or otherwise, as may be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected. The city council or board of trustees of such city, or municipal corporation is authorized and empowered to assess, levy and collect taxes for the purposes aforesaid, and to do all acts necessary to carry such lease and contracts of purchase, erection or maintenance into effect, and to pay the stipulated rent or contract prices for the property so leased, purchased, erected or to be maintained; provided, that any such lease or contracts for purchase, erection or maintenance which shall stipulate for an annual payment greater than an annual levy of seven mills upon each dollar of the assessed valuation of such city or municipal corporation shall not be authorized until the contract providing therefor shall first have been submitted to a vote of the people of such city or municipal corporation at a general or special election and ratified by a majority of the voters of said city or municipal corporation voting at such election. [1899, ch. 172; R. C. 1899, § 2459.]

When owner of lateral pipes falls to keep in repair city may sever. *Jackson v. City of Ellendale*, 4 N. D. 478, 61 N. W. 1030.

§ 2964. **How construed.** The last section shall not be construed to modify or affect the power of any city, town or village or the power of the city council or board of trustees thereof as authorized and granted by the charters of such cities, towns or villages or the laws under which they were incorporated, where said charter or law shall have expressly given to such municipality the power to lease, rent or maintain such property. [1887, ch. 105, § 2; R. C. 1895, § 2460.]

§ 2965. **Election to determine sale.** When any city, town or village shall own the waterworks system of such city, town or village, neither the city council nor the authorities of any such city, town or village shall have authority to sell or dispose of such waterworks system, mains, pumping stations or any part thereof, unless the proposition to sell the same shall first have been submitted to the legal voters of such city, town or village at a special election called for that purpose, and such sale shall have been authorized by a majority vote of all the votes cast at such election; provided, that nothing herein shall prevent the city council of any city from selling or disposing of any machinery, material or other property belonging to any such system which may have become inadequate or insufficient for the purpose for which the same was intended to be used. [1893, ch. 134, § 1; R. C. 1899, § 2461.]

#### ARTICLE 9.—INSURANCE TAX FOR FIRE DEPARTMENTS.

§ 2966. **Duty of clerk.** The clerk of each city, town or village in this state having an organized fire department shall on or before the thirty-first day of October in each year make and file with the state auditor his certificate stating the existence of such department, the date of its organization, the number of steam, hand or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, the number of members of each company, and the system of water supply in use in such department, together with such other facts as the auditor may require. [1887, ch. 53, § 1; R. C. 1899, § 2462.]

§ 2967. **State auditor to furnish blanks.** Insurance companies to make statements. The blanks required by law to be furnished by the state auditor to insurance companies shall contain the names of the cities, towns and villages entitled to benefits under this article, and every insurance company doing business in this state shall include in its annual statement the amount of all premiums received by them upon policies issued on property within the corporate limits of such city, town or village during the year ending on the preceding thirty-first day of December. [1887, ch. 53, § 2; R. C. 1899, § 2463.]

§ 2968. **State auditor to issue warrants.** The state auditor on the first day of June thereafter shall issue and deliver to the treasurer of such city, town or village, having an organized fire department entitled to the benefits of this article, his warrant upon the state treasurer for an amount equal to two per cent of the premium received upon policies issued on property in any city, town or village, which warrants shall be numbered consecutively, and shall each specify the date of its issuance and to whom payable, and such warrants shall be paid by the state treasurer to the treasurer of such city, town or village, upon presentation thereof, and when so received by said treasurer the same shall be paid over to the treasurer of each separate organized fire company, or companies, in equal proportion, who are members in good standing in the North Dakota Firemen's association, and having a membership of at least fifteen members for a period of eight months prior to the date of the certificate of the clerk, as provided in section 2966, and having the management of at least one steam, hand or fire engine, hook and ladder truck or hose cart, upon the written order of such company or companies, approved by the city, city council, trustees or other governing body of such city, town or village; provided, that in cities, towns and villages having a paid fire department, the amount so received by the city, town or village treasurer shall be placed in a fund to be disbursed by the city council, trustees, or other governing body of such city, town or village in maintaining such fire department. [R. C. 1899, § 2464; 1901, ch. 208, § 1.]

Is constitutional. *Cutting v. Taylor*, 3 S. D. 11, 51 N. W. 949.

Appropriation of insurance tax for fire department is a valid and constitutional appropriation. *Cutting v. Taylor*, 3 S. D. 11, 51 N. W. 949.

§ 2969. **Qualifications of fire department and companies.** No city, town or village having one or more organized fire companies therein, shall be entitled to any of the benefits arising from this article, unless the fire department or companies shall have been in actual existence eight months prior to the filing of the certificate required by section 2966, and unless such fire department or company shall have had for such period, as a part of its equipment, at least one steam, hand or other fire engine, truck or hose cart, with a membership of at least fifteen persons for said period of eight months. [1887, ch. 53, § 4; R. C. 1899, § 2465; 1901, ch. 208, § 1.]

§ 2970. **Secretary to notify treasurer.** It shall be the duty of the secretary of the North Dakota Firemen's association to notify the treasurer of each city, town or village, entitled to the benefits of this article, on or before the first day of June each year, of the name of the treasurer of each department or separate organized company in good standing in the North Dakota Firemen's association. [1901, ch. 208, § 2.]

§ 2971. **Failure to file certificate a waiver.** If the certificate required by section 2966 is not filed with the auditor on or before the thirty-first day of October in each year, the city, town or village so failing to file such certificate shall be deemed to have waived and relinquished its right for such year to the appropriation herein provided for; provided, however, that in case where any city has filed its certificate for three successive years and drawn money thereunder for such years, the certificate herein provided for may be filed at any time up to and including March first of the succeeding year without waiving the right to the appropriation herein named. [1887, ch. 53, § 5; R. C. 1899, § 2466; 1901, ch. 99.]

#### ARTICLE 10.—FREE LIBRARIES.

§ 2972. **Library fund, how provided.** The city council of each city, not exceeding in population fifty thousand inhabitants, and each village or township board of every village and township containing over five hundred inhabitants, shall have power to establish and maintain a public library and reading

room, and for such purpose may annually levy and cause to be collected, as other taxes are collected, a tax not exceeding four mills on each dollar of the taxable property of such city, village or township, to constitute the library fund, which fund shall be kept separate and apart from the other money of the city, village or township, by the treasurer thereof, and the same shall be used exclusively for such purpose; provided, that no library shall be so established without first receiving the approval of the majority of the electors of such city, village or township, voting on such question at any general election at which it may be submitted to a vote. [1887, ch. 56, § 1; R. C. 1899, § 2467; 1901, ch. 97.]

§ 2973. **Library managed by board of directors.** For the government of such library and reading room there shall be a board of five directors appointed from the citizens of such city, village or township, including both males and females, who shall be appointed by the board of education or school board of such city or village, or where there is no incorporated city or village then by the board of supervisors of such township; and there shall be one member of such board of education or school board or board of supervisors appointed as one of the directors of such library and reading room. Such directors shall hold their office for two years from the first day of July in the year of their appointment and until their successors are appointed, but upon their first appointment they shall divide themselves at their first meeting by lot into two classes, and two of such directors shall hold for one year and the remaining three for two years, and thereafter there shall be appointed in each year the requisite number to fill the vacancies caused by the expiration of the terms of those going out of office in such year. All vacancies shall be immediately reported to and filled by such board of education, school board or board of supervisors, and if for an unexpired term, for the residue of the term only. No compensation whatever shall be paid or allowed any director in such official capacity. [1887, ch. 56, § 2; R. C. 1899, § 2468.]

§ 2974. **Duties and powers of board.** Said directors shall immediately after their appointment meet and organize by electing from their number a president, secretary and librarian. They shall make and adopt such by-laws, rules and regulations relating to the duties of officers and for the management of the library and reading room as may be expedient, not inconsistent with this article. They shall have the exclusive control of the expenditures of all moneys collected for or contributed to the library fund, and the supervision, care and custody of the library property, rooms or buildings constructed, leased or set apart for that purpose; and such money shall be drawn from the treasury by the proper officers upon vouchers of the board of directors without being otherwise audited. They may with the approval of the board of education or school board or board of township supervisors aforesaid, without which no lease, purchase or contract therefor shall be valid, build, lease or purchase an appropriate building and purchase a site therefor, not however employing in such purchase or building more than one-half of the income in any one year. [1887, ch. 56, § 3; R. C. 1899, § 2469.]

§ 2975. **Library free under rules established by board.** Every library and reading room established under this article shall be forever free for the use of the inhabitants of the city, village or township where located, always subject to such reasonable rules and regulations as the board of directors may deem necessary to adopt and publish to render the use of said library and reading room of the greatest benefit, and the board may exclude from the use of said library and reading room any and all persons who shall willfully violate such rules. [1887, ch. 56, § 4; R. C. 1899, § 2470.]

§ 2976. **Board to make annual report.** The board of directors shall make an annual report to the said board of education or school board or board of supervisors stating the condition of the library and property, the various sums

of money received from all sources, and how much money has been expended and for what purpose, the number of books and periodicals on hand, the number added by purchase or gift during the year, the number lost and loaned out, the character and kind of books contained in the library, with such other statistics, information and suggestions as they may deem of general interest. [1887, ch. 56, § 5; R. C. 1899, § 2471.]

§ 2977. **Donations, how and to whom made.** All persons desirous of making donations of money, books, personal property or real estate for the benefit of such library shall have the right to vest the same in the board of directors, to be held and controlled by such board when accepted for the use of such library and reading room, and as to such property said board shall be held and considered to be special trustees. [1887, ch. 56, § 6; R. C. 1899, § 2472.]

§ 2978. **City council or trustees to appropriate funds, when.** To aid and facilitate the organization of a library in any city, village or township as in this article provided, where the same is required by the people thereof, and where in any city the sum of four hundred dollars or more shall have been donated and deposited with the city treasurer for that purpose, and to any village or township where the sum of one hundred and fifty dollars or more shall have been donated and deposited with the village or township treasurer for the benefit of such library, and also where such amount shall prior to the passage of this code have been donated and expended for the purchase of a library existing in any such city, village or township, the city council of such city is authorized and it shall be its duty to appropriate two hundred dollars from the general fund of such city for such library, for which amount a warrant shall be drawn on the city treasurer; and the board of trustees of such village or the board of supervisors of such township are authorized and it shall be their duty to appropriate one hundred dollars from the general fund of such village or township for such library, for which amount a warrant shall be drawn on such village or township treasurer; provided, that in the case of any library association now existing it shall first agree to turn over to the library and reading room thus established all books, periodicals and other property. The treasurer of such city, village or township shall accept such warrant and apply the proceeds from the sale of the same to the library fund, which together with the amount donated shall be held subject to the order of the board of directors for such library; and the payment of such warrants shall be provided for in the next assessment of taxes in such city, village or township, and such library may be organized without submitting the same to a vote as provided in section 2972. [1887, ch. 56, § 7; R. C. 1899, § 2473.]

#### ARTICLE 11.—BONDS OF MUNICIPAL CORPORATIONS.

§ 2979. **Bonded indebtedness, for what incurred. Limit of.** Any city or municipal corporation in this state may incur a bonded indebtedness for the purpose of erecting public school buildings and other buildings for city purposes, purchasing fire apparatus, putting in waterworks, sinking public wells or cisterns and putting in sewers and improving streets, which said indebtedness, together with the indebtedness which then exists shall not, except as otherwise provided, exceed five per cent of the assessed valuation of the taxable property in such city or municipal corporation as shown by the return of the assessor for the year next preceding the time at which such indebtedness shall be incurred. [1887, ch. 16, § 1; 1890, ch. 97, § 1; R. C. 1899, § 2474.]

§ 2980. **Bonds, how issued. Election.** The bonds issued for the purposes mentioned in the last section shall be issued by the city council or board of trustees of any city or municipal corporation only upon a majority vote of the qualified electors of such city or municipal corporation voting thereon at



**an** election regularly called for that purpose and in accordance with the provisions of the charter of such city or municipal corporation governing the issuance and sale of bonds; provided, that in all cities and municipal corporations where the charter does not provide the manner of calling and holding **an** election for the purpose aforesaid, a special election shall be called and held as herein provided, or such question may be submitted at any annual election. The city council or board of trustees at any regular meeting thereof **may** decide to call a special election to vote bonds for any of the purposes stated in section 2979, and they shall give at least fifteen days' public notice of such election by at least two publications thereof in a weekly newspaper published therein, or if there is no such newspaper then by posting such notice in five public places in such city. Such notice shall state the amount and denomination of the bonds to be voted for, the rate of interest thereof, the purpose for which such bonds are to be issued, the form of the ballots to be used and the time and place of holding such election. The judges and clerks shall be appointed and the election shall be conducted as provided by the charter of said city for conducting annual elections, and the returns shall be canvassed and in like manner returned. This article shall not be construed to limit or restrict the powers already conferred by any special charter upon the council of any city or municipal corporation. The bonds voted as provided for in this article shall be sold at not less than par value. [1887, ch. 16, §§ 2, 3; R. C. 1899, § 2475.]

#### ARTICLE 12.—REFUNDING CITY BONDS.

§ 2981. **Refunding authorized.** Each incorporated city in this state is authorized and empowered, by and through its city council, when deemed in the judgment of said council to be to the best interests of the city, to issue its negotiable bonds in the name of the city for the sole purpose of funding the outstanding indebtedness of such city, represented by the city warrants, bonds or orders of such city existing against the city, which is at the time due and payable, or is about to become due and payable, or whenever said indebtedness can be refunded at a lower rate of interest than the then existing rate of interest on said indebtedness. [1893, ch. 32, § 1; R. C. 1895, § 2476.]

§ 2982. **Bonds, denominations, interest.** Each bond issued under the provisions of this article shall recite upon its face that it is so issued. Such bonds shall be in denominations of not less than five hundred dollars nor more than one thousand dollars; shall severally show and bear the date of their issue and the date when payable, and shall be made payable in not less than five years nor more than twenty years from their date; shall be made payable to the purchaser or bearer and made payable anywhere in the United States; shall bear interest not exceeding the rate of six per cent per annum, payable annually or semi-annually as may be agreed upon, and shall have interest coupons attached. Said bonds shall be engraved or lithographed on bond paper, and said bonds, and each of said coupons shall be signed by the mayor and attested by the city clerk or auditor of the city in whose name they are issued, and to each bond, but not to the coupons the seal of such city shall be affixed. [1893, ch. 32, § 2; R. C. 1899, § 2477.]

§ 2983. **Sale of bonds.** Such bonds may be sold by the city council at not less than their par value, and the proceeds thereof shall be applied solely to the payment of the outstanding indebtedness of such city represented by city warrants, bonds or orders which are authorized to be funded under the provisions of section 2981; or said bonds issued as herein provided may be exchanged at not less than par value for not less than an equal amount, at par value, of such outstanding bonds, warrants or orders of said city as are authorized to be funded under the provisions of section 2981, and when such exchange shall be made said outstanding bonds, warrants or orders so paid by the issue of bonds as herein provided, shall be marked respectively,

“paid by bond No. . . . (stating number of such bond),” and shall be retained by the city treasurer until his settlement with the city council, and shall then be compared with the new bond registered, and after such comparison shall be placed in the custody of the city clerk or auditor whose duty it shall be to preserve the same. [1893, ch. 32, § 3; R. C. 1899, § 2478.]

§ 2984. **Record of bonds.** The bonds issued as herein provided shall before delivery thereof to the purchaser be presented by the city clerk or auditor to the city treasurer who shall register them in a book to be kept for that purpose and known as the “bond register,” wherein he shall enter the number of each of said bonds, its date, the date of its maturity, its amount and rate of interest and to whom and where payable. [1893, ch. 32, § 4; R. C. 1899, § 2479.]

§ 2985. **Tax for interest. Sinking fund.** The city council shall, each year, levy upon the taxable property in the city a sufficient tax to pay the interest on such bonds as the same shall accrue and also, within a reasonable time before the maturity of said bonds, a sufficient tax to provide a sinking fund for the payment of such bonds at maturity. [1893, ch. 32 § 5; R. C. 1899, § 2480.]

§ 2986. **Duty of treasurer.** On presentation of such bonds and the several coupons thereto attached at their maturity, respectively, it shall be the duty of the city treasurer to pay the same out of any funds in his hands applicable thereto and to cancel the same by writing or stamping across the face of each bond or coupon so paid, “cancelled by payment this . . . . . day of . . . . . (inserting the date of such payment.)” [1893, ch. 32, § 6; R. C. 1899, § 2481.]

§ 2987. **Bonds negotiable.** All bonds issued in substantial conformity to the provisions of the preceding six sections shall in law be considered negotiable. [1893, ch. 32, § 7; R. C. 1899, § 2482.]

#### ARTICLE 13.—REFUNDING BONDED SCHOOL INDEBTEDNESS.

§ 2988. **Bonds may be refunded.** All bonds heretofore issued by any city or by or under the authority of the board of education of any city in this state for school or school house purposes may be refunded in the discretion of said board in the manner hereinafter provided, whenever there is not sufficient money in the treasury of such city applicable thereto, to pay such bonds. [1887, ch. 12, § 1; R. C. 1899, § 2483.]

§ 2989. **Denomination of bonds.** Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars, shall be numbered consecutively from one upward, shall bear the date of their issue, shall be made payable to the purchaser or bearer, shall be payable ten years from date, and shall bear interest at a rate not exceeding seven per cent per annum payable annually, with interest coupons, attached, and principal and interest shall be made payable at such place as may be designated by the board of education. The bonds and each coupon shall be signed by the mayor and attested by the city clerk or auditor under the seal of the city. Said bonds shall be printed, engraved or lithographed on bond paper, and a duly authenticated copy of this article shall be printed on the back of each bond. [1887, ch. 12, § 2; R. C. 1899, § 2484.]

§ 2990. **Board of education to levy tax.** The board of education shall levy each year upon the taxable property of such city a tax sufficient to pay the interest on said bonds as the same accrues, and after five years from the date of said bonds an annual sinking fund tax sufficient for the payment of said bonds at maturity, which taxes shall become due and be collected the same as other city taxes. [1887, ch. 12, § 3; R. C. 1899, § 2485.]

§ 2991. **Bonds, how executed.** The refunding of indebtedness and the issuance of bonds provided in this article shall be under the control and direction of the board of education, and a resolution of said board directing the execution of such bonds and specifying the number and amount of each



bond shall authorize and require the mayor and city clerk or auditor to execute the same in the manner herein provided, and deliver the bonds so executed to the board of education, who shall provide for the sale and negotiation thereof or for the exchange of said bonds for outstanding bonds authorized to be refunded under this article, as they may deem best; provided, that such refunding bonds shall not be sold or exchanged at less than par value. Both principal and interest of said bonds shall be paid by the city treasurer by warrants drawn upon the funds created therefor and issued under the direction of the board of education. A duly certified copy of the resolution of the board of education authorizing and directing the execution of such bonds by the mayor and city clerk or auditor shall be printed on the back of each bond. A register of all bonds so executed shall be made by the city clerk or auditor and kept in his office as a public record, showing the number, date, amount, interest, name of payee and when and where payable, of each and all bonds executed under the provisions of this article. And after such outstanding bonds shall have been so refunded the same shall be placed in the hands of the city clerk or auditor after having had first marked across the face thereof in red ink the words "refunded bond;" and the city clerk or auditor shall thereupon make a record of each bond in the same manner provided herein for bonds issued under this article and at the next regular meeting of the city council shall cancel and burn said bonds in the presence of the city council and make a record of such action in the proceedings of the council. [1887, ch. 12, § 4; R. C. 1899, § 2486.]

#### ARTICLE 14.—REFUNDING CERTAIN MUNICIPAL BONDS.

§ 2992. **What corporation 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. [1905, ch. 54, § 1.]

§ 2993. **Authority for issue.** The necessity for issuing and negotiating bonds under the provisions of this article 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. [1905, ch. 54, § 2.]

§ 2994. **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 corporation 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 2992, 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 article, and shall be payable to the purchaser or bearer, and shall have interest

coupons attached to each bond representing each interest payment. [1905, ch. 54, § 3.]

§ 2995. **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. [1905, ch. 54, § 4.]

§ 2996. **Bonds to be registered by the treasurer.** A record of each and every bond issued under this article 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. [1905, ch. 54, § 5.]

§ 2997. **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. [1905, ch. 54, § 6.]

§ 2998. **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 2992 of this article, after applying the cash in the treasury available for the payment of the said maturing bonds, and no bonds issued under authority of this article shall be issued or negotiated for less than their par value. [1905, ch. 54, § 7.]

§ 2999. **Bonds negotiable, when.** Bonds issued in substantial conformity with the provisions of this article, shall in law be deemed negotiable. [1905, ch. 54, § 8.]

#### ARTICLE 15.—TAXES IN CERTAIN CORPORATIONS.

§ 3000. **Interest fund.** Any city, town or village in this state having not less than three thousand inhabitants is authorized and empowered through its proper officers to levy and collect taxes not exceeding twelve mills on the dollar of the assessed valuation of said city, town or village, for the purpose of creating an interest fund with which to pay interest upon the existing bonded indebtedness of such municipality, including bonds, if any, issued under the direction of the respective boards of education therein. If any officer of such municipality shall use the moneys collected by virtue of this section for any other purpose than that expressed herein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars or imprisoned in the county jail not less than thirty days nor more than one year. [1887, ch. 139, § 1; R. C. 1899, § 2487.]

§ 3001. **Sinking fund.** They may also levy and collect taxes not exceeding four mills on the dollar for the purpose of creating a sinking fund to pay the bonds of the municipality as the same may mature; and the proper officers of the municipality may invest the money in said fund in interest bearing securities of the state or of any organized county therein or of the municipality, and shall in no other manner dispose of the money in said fund, and if any officer of such municipalities shall use the money in said fund in any other manner than as provided in this section he shall be guilty of a misdemeanor. [1887, ch. 139, § 2; R. C. 1899, 2488.]

§ 3002. **For school purposes.** They may also levy and collect taxes for school purposes not to exceed twenty mills on the dollar, the taxes so levied and collected to be kept in a fund to be called the school fund to be expended under the direction of the board of education. [1887, ch. 139, § 3; R. C. 1899, § 2489.]

§ 3003. **For other municipal purposes.** They may also levy and collect taxes not exceeding twenty mills on the dollar for all other municipal purposes in any one year, on all taxable property within said municipality, and taxes so levied and collected shall be kept in a fund to be called the general fund. [1887, ch. 139, § 4; 1890, ch. 98, § 1; R. C. 1899, § 2490.]

Tax cannot be levied for purely private objects. *Manning v. City of Devils Lake*, 13 N. D. 47, 99 N. W. 51.

§ 3004. **Special assessments for sidewalks.** They may also levy and collect special assessments for sidewalks and street improvements as hereinafter provided, and the money so collected shall be kept in a fund called the special assessment fund. [1887, ch. 139, § 5; R. C. 1899, § 2491.]

§ 3005. **Limitation of indebtedness.** It shall be unlawful for the officers of such municipality to incur any greater indebtedness in any one year than three thousand dollars in excess of the taxes levied for that year, unless authorized and directed so to do by a vote of the electors of such municipality at an election held for that purpose. Any officer or officers contracting the same shall be guilty of a misdemeanor, and if any officer of said municipality shall issue any evidence of such indebtedness he shall be guilty of a misdemeanor. [1887, ch. 139, § 6; R. C. 1899, § 2492.]

#### ARTICLE 16.—COLLECTION OF CITY TAXES.

§ 3006. **City property, how assessed.** The assessors of the several incorporated cities of the state having city assessors, shall make out and deliver to the county auditors of their respective counties the assessment roll of said city or cities at the time and in the manner provided by the general laws of the state for county and township assessors; provided, that in all incorporated cities of this state, whether incorporated under special acts, or otherwise, not having city assessors, the assessment roll of all property subject to taxation in any such city made and equalized for county purposes shall be and constitute the assessment roll for said city and the county auditor of the county in which any such city is situated shall, as soon as said assessment roll is completed, certify to the city council of every such city within his county the aggregate amount of the valuation of the taxable property in any such city as shown by said assessment roll; provided, further, that all taxes in any such city levied before the passage and approval of this code shall be collected as now provided by law or ordinance. [1887, ch. 142, § 1; 1889, ch. 27, § 1; R. C. 1899, § 2493.]

§ 3007. **Tax levy, made when.** The common council of such cities shall, on or before the first Monday in September of each year, or within ten days thereafter, make the tax levy for the current fiscal year, and fix the rate of taxation upon the property in such city, and the auditor of such city shall forthwith transmit the same to the county auditor. [1887, ch. 142, § 2; R. C. 1899, § 2494; 1903, ch. 160.]

§ 3008. **Duty of county auditor.** It shall be the duty of the county auditor in making out the tax list for said year to place the amount of said city taxes in accordance with said levy in separate columns in the lists of both personal property and lands, opposite the respective names and parcels of land on said lists. [1887, ch. 142, § 3; R. C. 1899, § 2495.]

§ 3009. **Duty of county treasurer.** The county treasurer of such county shall thereupon collect such taxes, together with the interest and penalty thereon, if any, in the same manner as the general taxes for that year, and shall pay over to the city treasurer of such city all sums so collected, as fast as collected, and shall take the city treasurer's vouchers therefor. [1887, ch. 142, § 4; 1889, ch. 29, § 1; R. C. 1899, § 2496; 1901, ch. 149.]

The amendment of 1901 to this section does not by implication repeal section 1575. *City of Fargo v. Ross, Co. Treas.* 11 N. D. 369, 92 N. W. 449.

§ 3010. **Salaries of city treasurers.** The city council of all such cities shall have authority to regulate and fix the compensation and salaries of city treasurers within their respective cities, whether such cities have heretofore had such power under their charters or not, and such salaries shall in no case exceed six hundred dollars. [1887, ch. 142, § 5; R. C. 1899, § 2497.]

§ 3011. **Does not apply to taxes for special improvements.** This article shall not apply to taxes levied by such cities for special improvements therein. [1887, ch. 142, § 6; R. C. 1899, § 2498.]

#### ARTICLE 17.—ROAD AND BRIDGE TAXES.

§ 3012. **Road funds to be turned over.** All road taxes collected as personal taxes from residents of any incorporated city, town or village, and all road taxes collected on account of real or personal property situated within any incorporated city, town or village by the treasurer of the county in which such city or town is located, shall be turned over quarterly by such treasurer to the treasurer of such incorporated city, town or village to be expended under the direction of the city council of such city or of the board of trustees of such town or village, as the case may be, in the improvement of the streets or bridges thereof or of the roads approaching thereto. [1887, ch. 147, § 1; R. C. 1899, § 2499.]

§ 3013. **Bridge funds to be turned over to city.** The county treasurer of each county wherein any city or municipal corporation shall have constructed a bridge or shall hereafter construct a bridge over any navigable stream shall pay to the city treasurer of such city or municipality whereby such bridge has been constructed or is about to be constructed, all money in the county treasury or which may come into the county treasury in the bridge fund of such county, which may have been or shall be levied, assessed and collected from persons and property, or either, in said city or municipality. [1890, ch. 39, § 1; R. C. 1899, § 2500.]

#### ARTICLE 18.—LOCAL IMPROVEMENTS IN CERTAIN CITIES.

§ 3014. **Assessments for.** The city council of any city not organized under the general law for the incorporation of cities shall have power to make assessments for local improvements on property adjoining or benefited thereby, including extension of water mains in such cities, owning and operating exclusively a public system of waterworks, to collect the same in the manner hereinafter provided, and to fix and determine and collect penalties for nonpayment of any such special assessment and taxes. [1890, ch. 96, § 1; R. C. 1899, § 2501.]

§ 3015. **Improvements, how made.** When the city council of such city shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, curb, gutter, drain or otherwise improve any street, alley, lane or highway, or other public grounds within the city limits, or extend or improve any public system of waterworks exclusively owned and operated by the said city for which a special assessment is to be levied, as herein provided, the city council shall, by resolution, declare such work or improvement necessary to be done, and such resolution shall be published for three consecutive weeks, at least once a week, in the official newspaper of the city, and unless a majority, in value, of the owners of the property liable to be assessed therefor, shall, within twenty days after the expiration of such publication, file with the city clerk or auditor a written protest against such improvement, then the city council shall have power to cause such improvement to be made and to contract therefor, and to levy and collect the assessment upon the property so benefited in the manner and at the time other taxes are collected, and all work done under this section shall be let by contract to the lowest responsible bidder therefor. [1890, ch. 96, § 2; R. C. 1899, § 2502.]

ARTICLE 19.—PARKS AND PUBLIC GROUNDS.

§ 3016. **Cities may acquire real estate for.** Cities and villages in this state are empowered and authorized to receive by gift or devise, real estate within their corporate limits or within five miles thereof for purposes of parks or public grounds. Such real estate shall be vested in the city or village upon the conditions imposed by the donors, and upon the acceptance thereof by the mayor and city council or the board of trustees, the jurisdiction of the city council or board of trustees shall be extended over such real estate. The city council and board of trustees of villages shall have power to enact by-laws, rules and ordinances for the protection and preservation of any real estate acquired as herein contemplated, and to provide suitable penalties for the violation of any such by-laws, rules or ordinances. The police powers of any city or village that shall acquire any real estate as herein contemplated shall be at once extended over the same by virtue of this article. [1890, ch. 99, § 1; R. C. 1899, § 2503.]

ARTICLE 20.—PARKS AND PARK DISTRICTS.

§ 3017. **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 article. [1905, ch. 143, § 1.]

§ 3018. **Park districts, how created.** Any city desiring to take advantage of this article 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. [1905, ch. 143, § 2.]

§ 3019. **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. [1905, ch. 143, § 3.]

§ 3020. **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 this article, 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. [1905, ch. 143, § 4.]

**§ 3021. 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 benefited 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. [1905, ch. 143, § 5.]

**§ 3022. 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 ye 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 ye 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. [1905, ch. 143, § 6.]

§ 3023. **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. [1905, ch. 143, § 7.]

§ 3024. **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. [1905, ch. 143, § 8.]

ARTICLE 21.—TOWN SITES LOCATED ON PUBLIC LANDS.

§ 3025. **Townsite, who may make entry.** Whenever any portion of the public lands of the United States has been or shall be settled upon and occupied as a townsite, it shall be lawful whenever requested by a majority of the occupants or owners of the lots within the limits of the town or village, for the corporate authorities of the town or village if incorporated, and if not incorporated then for the county judge of the county in which such town may be situated, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupants thereof and those holding by deed or otherwise, according to the respective interests. [1881, ch. 135, § 1; R. C. 1899, § 2504.]

Judge holds legal title in trust for occupants. *Goldburg v. Kidd*, 5 S. D. 169, 58 N. W. 574.

§ 3026. **Entry fee, how raised.** If at the time any petition is presented as provided for in the preceding section there is not in the treasury of the town, money sufficient to pay for the land settled upon and occupied, the corporate authorities or the county judge, as the case may be, may raise by subscription or otherwise sufficient funds to pay for said land and costs of entering the same, and any and all sums so advanced for such purpose shall

be repaid in the manner provided in section 3029. [1881, ch. 35, § 2; R. C. 1899, § 2505.]

§ 3027. **Disposition of property.** When the corporate authorities of any city or town, or the county judge of any county in this state in which any city, town or village may be located, shall have entered at the proper land office the land or any part thereof so settled and occupied as the site of such city or town or village pursuant to and by virtue of the act of congress of the United States, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and acts amendatory thereto, it shall be the duty of such corporate authorities or county judge, his or their successors, to dispose of the trust so created and conferred by said act of congress in the manner hereinafter specified. [1881, ch. 135, § 3; R. C. 1899, § 2506.]

§ 3028. **Person making the entry to transfer to claimants.** Any such corporate authorities or county judge holding the title to any such lands in trust as declared in said act of congress shall, subject to provisions of this article, by a good and sufficient deed of conveyance grant and convey the title to each and every block, lot, share or parcel of the same to the person, persons, associations or corporations who shall occupy or possess or be entitled to the right of possession or occupancy thereof, according to the several rights and interests of the respective claimants in or to the same as they existed in law or equity at the time of the entry of such lands, or to the heirs or assigns of such claimants. Every such deed of conveyance made by such corporate authorities or judge pursuant to the provisions of this article shall be so executed and acknowledged as to admit the same to be recorded. [1881, ch. 135, § 4; R. C. 1899, § 2507.]

§ 3029. **Expenses of entry and claims.** Immediately upon making the entry, and during sixty days thereafter, such corporate authorities or county judge shall proceed to itemize and pass upon the expenses of procuring said entry to be made, including the moneys paid at the land office for such entry, the costs of surveying and platting the townsite, of attorney's fees, witness fees, recording plat and all other expenses necessary and incident to procuring the entry and perfecting the title, and for this purpose shall give notice to all persons having any claims for moneys advanced or services rendered to present and file a certified statement of the same within said sixty days, such notice to be given promptly after making the entry, and to be by publication for three weeks in some newspaper published in the county wherein the townsite is located, or if none is so published then in the newspaper published nearest thereto. Any person having or making any such claim who shall at the expiration of said sixty days have failed to file such verified statement of account shall be thereafter barred from presenting the same or recovering thereon. Upon receipt of such verified statements of accounts they shall be duly filed by the said corporate authorities or county judge, and either allowed, rejected or allowed in part as in the judgment of such corporate authorities or county judge may be just and right, due notice of such allowance, rejection or allowance in part to be at once given to the person who filed such verified statement. Any person filing such statement or any lot owner feeling aggrieved at the decision of such corporate authorities or judge making such allowance, rejection or allowance in part of any claim so filed, may within thirty days after the decision appeal therefrom to the district court of the district wherein such city or town is located, such appeal to be taken upon notice to such corporate authorities or judge in the same manner and subject to the same restrictions as appeals from the board of county commissioners. [1881, ch. 135, § 5; R. C. 1899 § 2508.]

§ 3030. **Publication of notice of entry and claim awarded.** Immediately upon the expiration of sixty days after the first publication of said notice as hereinbefore provided, at the proper land office, the corporate authorities



or county judge entering the same, his or their successors, shall give public notice thereof by publishing such notice in a newspaper published in the county in which such city or town is situated, or in case there is no newspaper published in such county then in the newspaper published nearest such city or town, and in the latter case where there is no newspaper published in said county copies of such notice shall also be posted in not less than ten conspicuous places within the limits of said county; such notice shall be published not less than once a week for six consecutive weeks and shall contain an accurate description of the lands entered as the same is stated in the certificate of entry, and shall also contain a statement of the several amounts awarded and allowed for the expenses of procuring the entry and which will be assessed against the land constituting the townsite in executing the deeds therefor. [1881, ch. 135, § 6; R. C. 1899, § 2509.]

§ 3031. **Same.** The notice provided for in section 3029 shall direct that each and every person, association or corporation claiming to be an occupant or to have, possess or be entitled to the right of possession or occupancy of such lands or any lot, share or parcel thereof, shall within ninety days from the date of the first publication or posting of such notice, in person or by his or its duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular lot or lots, parcel or parcels of land in which he or it claims to have an interest; and the specified right, interest or estate so claimed therein, the character and value of the improvements thereon, and how occupied or possessed by such claimant, and for how long a time, and any other matter or thing illustrating or supporting such claimant's right to a deed of the tract so described, such statement to be verified by the affidavit of the person signing the same. [1881, ch. 135, § 7; R. C. 1899, § 2510.]

§ 3032. **Statements of claimants to be recorded.** The statement of the claimant provided for in the preceding section shall together with the accompanying affidavits, be delivered to the said corporate authorities or county judge within the time specified in said notice, and shall be by him or them filed and an abstract of the contents thereof, with the name of the claimant and date of filing, entered in a book to be kept for that purpose, which shall be known as "The Record of Claimants' Statements;" and all persons failing to furnish such statement as herein required within the time specified in said notice, except minors and insane persons, shall be forever barred of the right of claiming or recovering such lands or any interest or estate therein or any part or parcel thereof. [1881, ch. 135, § 8; R. C. 1899, § 2511.]

§ 3033. **Conflicting claims, how treated.** Should any one or more persons, associations or corporations claim adversely the title to any lot or lots, parcel or parcels of land within the boundaries of such city or town, the person in possession, or if neither person is in actual possession, then the person first filing his application, shall be prima facie entitled to a deed of conveyance, and the person claiming adversely shall within said ninety days after the first publication of the notice provided for in section 3029, file with the corporate authorities or county judge a sworn statement as provided in section 3031, and at the same time a notice that he contests the statement and application for deed hitherto made, and expects at once to begin an action in the district court to determine his right to the property; whereupon the corporate authorities or county judge must suspend action on such disputed lot or parcel of ground until a proper certificate is furnished that the dispute has been decided or abandoned. Such party or parties claiming adversely, and having filed such notice of contest, must within ten days thereafter begin an action in the district court for the purpose of determining the rights of all parties, in which action all persons claiming adversely to the plaintiff may be joined as parties defendant, and if not so joined shall have the right to intervene. For the purposes of this section an action shall be deemed begun when a com-

plaint has been filed in the office of the clerk of the court and a summons placed in the hands of the sheriff for service; provided, that personal service must be made or service by publication begun within sixty days thereafter. Upon the presentation of the clerk's certificate that no complaint has been filed and no action begun in accordance with the provisions of this section, the party aforesaid having the prima facie right shall be entitled to a deed of conveyance; and in case an action is begun the party recovering therein shall be entitled to a deed of conveyance upon presentation of a certified copy of the final judgment of the court in such action to the corporate authorities or county judge. Upon receiving the certificate aforesaid or the certified copy of judgment the same shall be filed and an abstract of the contents entered in the record of claimants' statements; and the corporate authorities or county judge shall thereupon execute deeds of conveyance to the party entitled to the same. All persons except minors and insane persons failing to file their notice of contest and to bring their action within the time herein prescribed shall be thereafter forever barred from setting up or asserting any claim, right or title to such lot or lots, parcel or parcels of lands so adversely claimed. [1881, ch. 135, § 9; R. C. 1899, § 2512.]

**§ 3034. Extent of ground that may be claimed.** The amount of ground which any one claimant shall be entitled to receive a deed for in a single tract under the provisions of this article, unless said claimant or his grantors was in the actual peaceable possession of the same prior to its entry as herein provided for and had improved the same and is still in the occupancy thereof, may equal but not exceed two acres in extent; provided, that such ground is exclusively occupied by or in the possession of such claimant and has improvements thereon of not less than two hundred dollars in value. Such claimant shall also be entitled to a deed for each additional lot not exceeding in area twenty-five hundred square feet on which he may have substantial improvements of not less than one hundred dollars in value. When any claimant shall make application for a deed to more than one tract or parcel he shall file in addition to his own affidavit as above required the affidavits of at least two disinterested witnesses showing the nature, character and actual cash value of the improvements upon such additional lot or lots so claimed. [1881, ch. 135, § 10; R. C. 1899, § 2513.]

**§ 3035. Expenses to be paid by claimant.** Each person shall upon filing an applicant's statement as herein provided be required to pay to the corporate authorities or county judge his proper and due proportion of the money lawfully expended in perfecting the title and procuring the entry of said land, including all streets, alleys, public grounds and parks, and all expenses necessarily incurred in making the survey and plat, for recording plat and publishing notices as required herein, such proportion to be determined by the relation which the value, extent and area of such claimant's land bears to the whole amount of land claimed during the ninety days, and in addition thereto the sum of two dollars for the principal tract claimed and fifty cents for each additional lot of two thousand five hundred square feet claimed by the same person, association or corporation, as a fee for executing the trust, taking affidavits, filing and abstracting statements and affidavits, and executing and acknowledging the deed as required herein, which charges shall be in full payment for all expenses attending the execution of the trust. In case of appeals provided for in section 3029, the sum of one dollar shall be paid for a certified copy of statement of account filed and certificate of decision and award made; and pending such appeal and the review by the district court of any award or allowance of claims for expenses in procuring the entry of land, as provided for in section 3029, the corporate authorities or county judge must in making and apportioning expenses take care that their estimate is sufficient to meet the same and any possible increase made by the appellate tribunal, any surplus resulting from such estimate to be applied as herein pro-

vided. In case of any contest, and deposit of money as in this section provided by both parties, the corporate authorities or county judge shall after final judgment refund to the unsuccessful party all money so advanced by such party, except the sum of one dollar, which shall be retained as fees for taking and filing affidavits, statements, notice of contest, and certified copy of judgment. [1881, ch. 135, § 11; R. C. 1899, § 2514.]

**§ 3036. Deeds to be given.** After the expiration of ninety days from the date of the first publication of the notice required by section 3029 the corporate authorities or county judge shall proceed to award the lot or lots, parcel or parcels of land as provided in this article, and for that purpose shall as soon as practicable and as near as practicable in the order of the time of the filing of claimant's statements examine each claim, read proofs filed and hear additional testimony if deemed advisable, and if the claim is found to comply with the provisions of this article, and no adverse claim and notice of contest shall have been filed, such corporate authorities or judge shall proceed forthwith to make such claimant or claimants a good and sufficient deed of conveyance for such lot or lots or parcels of land so claimed. [1881, ch. 135, § 12; R. C. 1899, § 2515.]

Mutual mistake in deed corrected in equity. *MacVeagh v. Judge Burns*, 2 S. D. 83, 48 N. W. 835.

Judge's duties judicial, not ministerial. *Mandamus will not lie. Territory v. Nowlin*, 3 Dak. 349, 20 N. W. 430.

**§ 3037. Unclaimed lots or parcels of land.** 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. [1881, ch. 135, § 13; 1883, ch. 114, § 1; 1899, ch. 124, § 1; R. C. 1899, § 2516; 1905, ch. 183, § 1.]

**§ 3038. 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 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 appraisement they shall make and return a full and complete report of their proceedings and appraisement 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 appraisement; said appraisement and report shall be subscribed and sworn to by at least two of said appraisers. [1881, ch. 135, § 14; 1883, ch. 114, § 2; 1899, ch. 124, § 2; R. C. 1899, § 2517; 1905, ch. 183, § 2.]

**§ 3039. 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. [1883, ch. 114, § 3; R. C. 1899, § 2518; 1905, ch. 183, § 3.]

§ 3040. **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 and 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 article. [1883, ch. 114, § 4; R. C. 1899, § 2519; 1905, ch. 183, § 4.]

§ 3041. **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 obtain 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. [1883, ch. 114, § 5; R. C. 1899, § 2520; 1905, ch. 183, § 5.]

§ 3042. **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. [1883, ch. 114, § 6; R. C. 1899, § 2521; 1905, ch. 183, § 6.]

§ 3043. **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 3035, 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 corporate limits, to construct and repair roads, to lay down and repair sidewalks, and crossings, to construct sewerage and irrigation canals within their corporate limits, to purchase other lots or parcels of land either within or without their corporate 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. [1883, ch. 114, § 7; R. C. 1899, § 2522; 1905, ch. 183, § 7.]

§ 3044. **How sold or leased.** The lots in any city which have been acquired under the provisions of section 2886 of the revised statutes of the United States, and title to which are held in trust for the several use and benefit of the occupants of such city, as provided in said section 2886 of the revised statutes of the United States, may be sold or leased by the council of such city at any regular or special meeting of the city council of such city, a majority of all the members elected voting therefor; provided, that no lease shall be for a longer period than ninety-nine years, and it shall be the duty of the mayor of the city, on the presentation to him of a certificate from the city treasurer, showing that the purchaser of any lot or lots from the city council has deposited the purchase price with him, to execute to the purchaser a deed in the name of the city for said lot or lots so sold. [1903, ch. 198.]

§ 3045. **Expiration of term of person making entry of townsite.** Whenever the term of office of any corporate authorities or county judge having made entry of a townsite shall expire, or he or any one or more of said corporate authorities shall resign or be removed from office, he or they shall turn over all books and papers relative to such entry to his or their successor or successors in office, with a full report of the condition of the trust and receipts and disbursements thereunder, and thereafter the said trust shall be executed in every particular by such successor or successors. Any willful violation of the provisions of this article by the corporate authorities or county judge shall be a misdemeanor; any such corporate authorities or county judge willfully making out a deed to any person not entitled to receive the same shall be deemed guilty of a misdemeanor; and any such corporate authorities or county judge willfully misappropriating funds received by them in the execution of this trust shall be deemed guilty of embezzlement. [1881, ch. 135, § 14; R. C. 1899, § 2524.]

§ 3046. **Application.** The provisions of this and the preceding chapter shall apply to and govern all towns heretofore incorporated. [R. C. 1895, § 2525.]

## CHAPTER 33.

## TOWNSHIP GOVERNMENT.

## ARTICLE 1.—HOW ORGANIZED AND NAMED.

§ 3047. **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. [1883, ch. 112, sub-ch. 1, § 1; R. C. 1899, § 2526; 1905, ch. 179.]

§ 3048. **Fragment of township attached to adjoining township.** A fraction of a township may be attached by such board to an adjoining township or be divided between two or more townships or organized separately, according to the wishes of a majority of the legal voters to be affected thereby; and when rivers, lakes or creeks so divide a township as to make it inconvenient to do township business, such board may dispose of any fraction so formed by annexing the same to an adjoining township in the same county if it shall seem to it proper. whenever petitioned to do so by not less than two-thirds of the legal voters residing in such fraction, and the fact that any such petition is signed by two-thirds of such voters may be proved by the affidavit of any legal voter residing in such fraction having knowledge of the fact; and townships having two or more villages or cities, each containing two hundred or more inhabitants, may petition the board of county commissioners for division; and whenever the board are so petitioned, it may, if it thinks the interest of such township will be subserved thereby, divide such townships in such manner as will best suit the convenience of the territory. And the board of county commissioners of any county lying west of the Missouri River may unite not less than four congressional townships into one civil township, or may add not more than three congressional townships to any congressional township already organized as a civil township, when petitioned by a majority of the legal voters affected thereby, if in the opinion of the board the best interests of such townships will be subserved thereby; provided, that at least twenty days' notice shall be given by the board of county commissioners to the chairman of the board of supervisors of each township affected by the change, before action is taken thereon; provided, further, that nothing herein contained shall be construed to release any property in or belonging to that part of any township so detached, from any tax levied or assessed prior to such division being made; provided, also, that the portion of any township annexed to any other township and any village or city separated from any township under the provisions of this article, shall not be released from nor in any way discharged from the payment of any bonded or other indebtedness that may exist against the township from which separation has been made. [1883, ch. 112, sub-ch. 1, § 2; 1885, Spl. ch. 50, § 1; R. C. 1899, § 2527.]

§ 3049. **Name of township.** Townships thus formed shall be named in accordance with the expressed wish of a majority of the legal voters residing therein, but if they fail to designate a name the board of county commissioners may select a name. [1883, ch. 112, sub-ch. 1, § 3; R. C. 1899, § 2528.]

§ 3050. **First township meeting.** The board of county commissioners shall thereupon make out notices designating a suitable place for holding the first township meeting in each township, which shall be held within twenty days

after the township is organized; and the county auditor shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in each township not less than ten days before the day set for such meeting. [1883, ch. 112, sub-ch. 1, § 4; R. C. 1899, § 2529.]

§ 3051. **County auditor transmits name to state auditor.** Each county auditor shall, within thirty days after such township is organized, transmit by mail to the state auditor an abstract of such report, giving the bounds of each township and the name designated; and the county auditor shall record in a book kept for that purpose a full description of each township. [1883, ch. 112, sub-ch. 1, § 5; R. C. 1899, § 2530.]

§ 3052. **When similar names are adopted by different townships.** If the state auditor on comparing the abstract of the reports from the several counties finds that any two or more townships have the same name he shall transmit to the county auditor of the proper county the name of the township to be altered; and the board of county commissioners shall at its next meeting thereafter adopt for such township some name different from those theretofore named, so that no two townships organized under this chapter shall have the same name, and when such name is adopted the county auditor shall inform the state auditor as before directed. [1883, ch. 112, sub-ch. 1, § 6; R. C. 1899, § 2531.]

§ 3053. **Present boundaries to remain.** The boundary lines of each organized township shall remain as now established until otherwise provided by the board of county commissioners under authority of law. [1883, ch. 112, sub-ch. 1, § 7; R. C. 1899, § 2532.]

#### ARTICLE 2.—DIVISION OF ORGANIZED TOWNSHIPS.

§ 3054. **Civil townships, how formed.** Any congressional township or fraction thereof, bordering on a lake, containing more than eighteen sections of land, which has residing therein one hundred or more inhabitants, and forming a part of an organized civil township may be set apart and organized as a separate civil township in the manner herein provided and when duly organized shall have the same powers and privileges and be subject to the same liabilities and restrictions as other civil townships except as herein otherwise provided; but no civil township shall be so formed under the provisions of this article, as to leave residing in the township from which it is separated less than one hundred inhabitants; provided, such separation shall be made only upon congressional township lines. [1899, ch. 60; R. C. 1899, § 2533.]

§ 3055. **Petition county commissioners. Notice published.** The legal voters residing in such congressional or fractional township bordering on a lake, may petition the board of county commissioners of the county in which it is situated, at any regular meeting of said board, to be set off as a separate civil township, upon at least thirty days previous notice thereof, and of the time and place of application, which notice shall be published at least three times in the newspaper in which the proceedings of said board are published, or, if there is none such, notice shall be posted in at least three public places in the proposed new township, and as many more elsewhere in the township affected thereby, one of which shall be at the place where the last election was held. [1899, ch. 60; R. C. 1899, § 2534.]

§ 3056. **When boards shall set off townships. Election.** Upon presentation of such petition signed by a majority of the legal voters residing within such proposed township and due proof of notice as herein provided and of the further fact that the territory has the requisite number of inhabitants and the petition the requisite number of competent signers as aforesaid the board shall proceed to set off said congressional or fractional township bordering on a lake as a separate civil township and constitute the same an election precinct, and designate the place of holding elections and the time and place of holding

the first township meeting therein, and the name adopted for such township, and notice thereof shall be given as in other cases. The board of county commissioners, within thirty days after such election, shall meet as a board of arbitrators together with the county auditor and judge of the county court and determine, subject to appeal to the district court, upon a just and fair distribution of the property and apportionment of the debt of said township between the townships so formed from said original township. [1899, ch. 60; R. C. 1899, § 2535.]

§ 3057. **Proportional share of moneys. Liabilities.** The new township shall succeed to a proportional share of the moneys and other property of the former township and to a like share of its debts and liabilities existing at the time of the division, such proportion to be determined by the relative value of the property of the respective parts as shown by the last preceding assessment and the account shall be settled between them by the board of county commissioners at its next regular meeting after the organization of the new township from the best evidence obtainable and for that purpose said board shall have power to bring before it the necessary witnesses, books and papers upon subpoenas to be issued by the clerk of the district court upon request of the chairman, and the statement of such account shall be conclusive as between the respective townships unless appealed from as provided by law, but the enforcement of their respective obligations thereon must be left to the courts; provided, however, that no division of a civil township as herein provided shall operate to prevent the enforcement of obligations existing prior thereto to the same extent as if no division was made. [1895, ch. 30, § 4; R. C. 1899, § 2536.]

#### ARTICLE 3.—CORPORATE POWERS.

§ 3058. **Powers of township.** Each township is a body corporate and has capacity:

1. To sue and be sued.
2. To purchase and hold lands within its limits and for the use of its inhabitants, subject to the powers of the legislative assembly.
3. To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers.
4. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its inhabitants. [1883, ch. 112, sub-ch. 1, § 8; R. C. 1899, § 2537.]

§ 3059. **Powers of, limited.** No township shall possess or exercise any corporate powers except such as are enumerated in this chapter, or specially given by law or necessary to the exercise of the powers so enumerated or granted. [1883, ch. 112, sub-ch. 1, § 9; R. C. 1899, § 2538.]

Supervisors have no implied powers. In case of doubt, doubt prevails and power is denied. Implied powers only such as are necessary to carry out purpose of corporation. Supervisors have no authority to consolidate funds. *Van Antwerp v. Dell Rapids Twp.* 3 S. D. 305, 53 N. W. 82; *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

§ 3060. **Actions to be in corporate name.** All actions or proceedings by or against a township in its corporate capacity shall be in the name of such township; but each conveyance of land within the limits of such township, made in any manner for the use or benefit of its inhabitants, has the same effect as if made to the township by name. [1883, ch. 112, sub-ch. 1, § 10; R. C. 1899, § 2539.]

#### ARTICLE 4.—ANNUAL TOWNSHIP MEETINGS.

§ 3061. **Annual township meeting, when held.** The citizens of the several townships of this state, qualified to vote at general elections, shall annually assemble and hold township meetings in their respective townships, on the



third Tuesday in March at such place in each township as the electors thereof at their annual township meetings from time to time appoint; and notice of the time and place of holding such meetings shall be given by the township clerk, by posting up written or printed notices in three of the most public places in such township at least ten days prior to such meetings; provided, that before any change of place of holding meetings is made, notice of such contemplated change may be given by any member of the township board to the township clerk, who shall in his regularly printed or written notices as above provided, incorporate the special notice of the contemplated change of place of holding such meetings. [1899, ch. 159; R. C. 1899, § 2540; 1901, ch. 203.]

Township election day not legal holiday. *State v. Currie*, 8 N. D. 545, 80 N. W. 475.

**§ 3062. Township officers, when elected. Term of office.** There shall be elected at the annual township meeting in each township 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 taking effect of this article 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. [1883, ch. 112, sub-ch. 1, § 12; R. C. 1899, § 2541; 1905, ch. 182.]

**3063. Powers of electors.** The electors of each township have power at the annual township meeting:

1. To determine the number of pound masters and the location of pounds.
2. To select such township officers as are required to be chosen.
3. To direct the institution or defense of actions in all controversies where such township is interested.
4. To direct such sums to be raised in such township for prosecuting or defending such actions as they may deem necessary.
5. To make all rules and regulations for impounding of animals.
6. To impose such penalties on persons offending against any rule or regulation established by the township, as they think proper, not exceeding ten dollars for each offense except as herein otherwise provided.
7. To apply such penalties, when collected, in such manner as they deem most conducive to the interests of the township. [1883, ch. 112, sub-ch. 1, § 13; R. C. 1899, § 2542.]

**§ 3064. Certain tax levies legalized.** The levy of taxes as made by the various township boards of supervisors in this state for road and general purposes, for the years 1899 and 1900 where said levy did not exceed eight mills and where said levy was not authorized at the regular township meetings, is hereby legalized and made valid in all respects and for all purposes, the same as if it had been authorized in conformity to the laws then in force. [1901, ch. 157.]

#### ARTICLE 5.—PAVING AND OTHER PUBLIC IMPROVEMENTS IN CERTAIN CIVIL TOWNSHIPS.

**§ 3065. What civil townships may pave, grade or macadamize 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 article; provided, that such township shall not so improve any portion of such highways not lying within its boundaries. [1905, ch. 177, § 1.]

§ 3066. **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 article, 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. [1905, ch. 177, § 2.]

§ 3067. **Township board 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. [1905, ch. 177, § 3.]

§ 3068. **Township clerk 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. [1905, ch. 177, § 4.]

§ 3069. **Bids to be accompanied by certified check.** Each bid for such work shall be accompanied by a certified check payable or indorsed 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. [1905, ch. 177, § 5.]

§ 3070. **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. [1905, ch. 177, § 6.]

**§ 3071. 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. [1905, ch. 177, § 7.]

**§ 3072. 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. [1905, ch. 177, § 8.]

**§ 3073. County auditor to assess 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. [1905, ch. 177, § 9.]

§ 3074. **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 article. [1905, ch. 177, § 10.]

§ 3075. **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. [1905, ch. 177, § 11.]

§ 3076. **How contractor paid.** When any work contracted for under this article 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. [1905, ch. 177, § 12.]

§ 3077. **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 article 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. [1905, ch. 177, § 13.]

#### ARTICLE 6.—SPECIAL MEETINGS.

§ 3078. **Special meetings held, when.** Special meetings may be held for the purpose of electing township officers to fill vacancies that occur, also for the purpose of transacting any lawful business, whenever the supervisors, township clerk and justices of the peace, or any two of them, together with at least twelve freeholders of the township file in the office of the township clerk a written statement that a special meeting is necessary. [1883, ch. 112, sub-ch. 1, § 16; R. C. 1899, § 2543.]

§ 3079. **Clerk to give notice of meeting.** Each clerk with whom such statement is filed as required in the preceding section, shall record the same and immediately cause notice to be posted in five of the most public places in the township, giving at least ten days' notice of such special meeting; and if there is a newspaper published in the township he shall cause a copy of such notice to be published therein at least three days before the time appointed for such meeting. [1883, ch. 112, sub-ch. 1, § 17; R. C. 1899, § 2544.]

§ 3080. **What notice must specify.** Each notice given for a special meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. If vacancies in office are to be filled at such meeting the notice shall specify in what office vacancies exist, how they occurred, who was the last incumbent

and when the term of each office expires. [1883, ch. 112, sub-ch. 1, § 18; R. C. 1899, § 2545.]

ARTICLE 7.—MODE OF CONDUCTING TOWNSHIP MEETINGS.

§ 3081. **Organization of meeting.** The electors present at any time between nine and ten o'clock in the forenoon of the day of the annual or special meeting shall be called to order by the township clerk, if present; in case he is not present then the voters may elect by acclamation one of their number chairman and three of their number judges of such meeting, who shall be duly sworn and be judges of the qualifications of township electors. They shall then proceed to choose one of their number to preside as moderator of such meeting. The clerk last before elected shall be clerk of the meeting and keep full minutes of its proceedings, in which he shall enter at length every order or direction and all rules and regulations made by the meeting. If the clerk is absent, then some person shall be elected to act as clerk of the meeting. [1883, ch. 112, sub-ch. 1, § 19; R. C. 1899, § 2546.]

§ 3082. **Duty of moderator. Reconsideration of vote.** At the opening of each meeting the moderator shall state the business to be transacted, and the order in which it shall be entertained, and no proposition to vote a tax shall be acted on out of the order of business as stated by the moderator, and no proposition to reconsider any vote shall be entertained at any meeting unless such proposition to reconsider is made within one hour from the time such vote was passed, or the motion for such reconsideration is sustained by a number of voters equal to a majority of all the names entered upon the poll list at such election up to the time such motion is made; and all questions upon motions made at township meetings shall be determined by a majority of the electors voting; and the moderator shall ascertain and declare the result of the votes on each question. [1883, ch. 112, sub-ch. 1, § 20; R. C. 1899, § 2547.]

§ 3083. **Proclamation of opening and closing polls.** Before the electors proceed to elect any township officer, proclamation shall be made of the opening of the polls by the moderator, and proclamation shall in like manner be made of the adjournment, and of the opening and closing of the polls, until the election is ended. [1883, ch. 112, sub-ch. 1, § 21; R. C. 1899, § 2548.]

§ 3084. **Who are voters.** No person shall vote at any township meeting unless he is qualified to vote at general elections, and has been for the last ninety days an actual resident of the township wherein he offers to vote. [1883, ch. 112, sub-ch. 1, § 22; R. C. 1899, § 2549.]

§ 3085. **Challenge to voter.** If any person offering to vote at any election or upon any question arising at such township meeting is challenged as unqualified, the judges of the meeting shall proceed thereupon in like manner as the judges at the general election are required to proceed, adapting the oath to the circumstances of the township meeting. [1883, ch. 112, sub-ch. 1, § 23; R. C. 1899, § 2550.]

§ 3086. **Certain officers to be elected by ballot.** The supervisors, treasurer, township clerk, assessor, justices of the peace, constables and overseer of highways in each township shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas and nays or by a division, as the electors determine. [1883, ch. 112, sub-ch. 1, § 24; R. C. 1899, § 2551.]

§ 3087. **All candidates on one ballot.** When the electors vote by ballot all the candidates voted for shall be named on one ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for and the offices to which such persons are intended to be chosen, and shall be delivered to one of the judges so folded as to conceal its contents. [1883, ch. 112, sub-ch. 1, § 25; R. C. 1899, § 2552.]

§ 3088. **Poll list.** When the election is by ballot a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote is received. [1883, ch. 112, sub-ch. 1, § 26; R. C. 1899, § 2553.]

§ 3089. **Judges to deposit ballots.** When the election is by ballot one of the judges shall deposit the ballots in a box provided for that purpose. [1883, ch. 112, sub-ch. 1, § 27; R. C. 1899, § 2554.]

§ 3090. **Judges to canvass the votes.** At the close of every election by ballot the judges shall proceed publicly to canvass the votes, which canvass when commenced shall continue without adjournment or interruption until the same is completed. [1883, ch. 112, sub-ch. 1, § 28; R. C. 1899, § 2555.]

§ 3091. **Manner of canvassing.** The canvass shall be conducted by taking one ballot at a time from the ballot box and counting until the number of ballots is equal to the number of names on the poll list, and if there are any left in the box they shall be immediately destroyed; and the person having the greatest number of votes for any office shall be declared duly elected; provided, that if two or more persons have an equal and the highest number of votes for any office, the judges of election shall at once publicly by lot determine who of such persons shall be declared elected. If on opening the ballots two or more ballots are found to be so folded that it is apparent that the same person voted them the board shall immediately destroy the ballots. [1883, ch. 112, sub-ch. 1, § 29; R. C. 1899, § 2556.]

§ 3092. **Result to be announced.** The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of its proceedings to be kept by him as before required, which shall be publicly read by him to the meeting, and such reading shall be deemed notice of the result of the election to every person whose name is entered on the poll list as a voter. [1883, ch. 112, sub-ch. 1, § 30; R. C. 1899, § 2557.]

§ 3093. **Minutes to be filed.** The minutes of the proceedings of each meeting, subscribed by the clerk of said meeting and by the judges, shall be filed in the office of the township clerk within two days after such meeting. [1883, ch. 112, sub-ch. 1, § 31; R. C. 1899, § 2558.]

§ 3094. **Duty of township clerk.** The clerk of each township meeting shall, immediately after the votes are canvassed, transmit to each person elected to any township office, a notice of his election. [1883, ch. 112, sub-ch. 1, § 32; R. C. 1899, § 2559; 1903, ch. 92.]

§ 3095. **Proceedings when meeting fails to elect.** In case any township refuses or neglects to organize and elect township officers at the time fixed by law for holding annual township meetings, twelve freeholders of the township may call a township meeting for the purpose aforesaid, by posting notices in three public places in such township, giving at least ten days' notice of such meeting; which notice shall set forth the time, place and object of such meeting; and the electors when assembled by virtue of such notice shall possess all the powers conferred upon them at the annual township meeting. In case no such notice is given as aforesaid within thirty days after the time for holding the annual meeting, the board of county commissioners of the county shall, on the affidavit of any freeholder of the township, filed in the office of the clerk of the board, setting forth the facts, at any regular or special meeting of the board, appoint the necessary township officers of such township, and the persons so appointed shall hold their respective offices until others are elected and qualified in their places, and shall have the same power and be subject to the same duties as if they had been duly elected. [1883, ch. 112, sub-ch. 1, § 33; R. C. 1899, § 2560.]

## ARTICLE 8.—BY-LAWS.

§ 3096. **By-laws.** No by-law made by any township shall take effect before the same is published by posting copies thereof in three of the most public places in the township; and such by-laws, duly made and so published, are binding upon all persons coming within the limits of the township as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent township meeting. [1883, ch. 112, sub-ch. 1, § 14; R. C. 1899, § 2561.]

§ 3097. **Clerk shall post by-laws.** The township clerk shall post in three of the most public places in his township, copies of all by-laws made by such township, and shall make an entry in the township records of the time when, and the places where such by-laws were posted. [1883, ch. 112, sub-ch. 1, § 15; R. C. 1899, § 2562.]

## ARTICLE 9.—QUALIFICATION OF OFFICERS.

§ 3098. **Voter eligible to office.** Each person qualified to vote at township meetings is eligible to any township office. [1883, ch. 112, sub-ch. 1, § 34; R. C. 1899, § 2563.]

§ 3099. **Officers to take oath.** Each person elected or appointed to the office of supervisor, township clerk, assessor, treasurer, constable or road overseer, shall, within ten days after he is notified of his election or appointment, take and subscribe, before the township clerk or justice of the peace, the oath prescribed in section 211 of the constitution. Such oath shall be administered without fee and certified by the officer by whom it is taken, with the date of taking the same. [1883, ch. 112, sub-ch. 1, § 35; R. C. 1899, § 2564; 1901, ch. 204.]

§ 3100. **Certificate of oath to be filed.** The person taking such oath shall immediately and before entering upon the duties of his office file the certificate of such oath in the office of the township clerk. [1883, ch. 112, sub-ch. 1, § 36; R. C. 1899, § 2565.]

§ 3101. **Justice to take oath and give bond.** Each person elected or appointed to the office of justice of the peace shall within ten days after receiving notice thereof take and subscribe before any officer authorized to administer oaths the oath prescribed in section 211 of the constitution. Such justice shall also execute a bond as provided in chapter 6 of this code and file the same with the clerk of the district court of the proper county for the benefit of any person aggrieved by the acts of such justice, and any person aggrieved may maintain an action on said bond in his own name against such justice and his sureties. [1883, ch. 112, sub-ch. 1, § 37; R. C. 1899, § 2566.]

§ 3102. **Certificate to official acts of justice.** The bond and oath of office of a justice of the peace, filed in the office of the clerk of the district court for the county or judicial subdivision, are sufficient authority for said clerk to certify to the official acts and signature of such justice of the peace. [1879, ch. 59, § 94; R. C. 1899, § 2567.]

§ 3103. **Jurisdiction of township justices.** All justices of the peace of any township in this state shall have the same power and jurisdiction in their respective counties as is now or hereafter may be conferred upon justices of the peace under the provisions of the justices' code, and all amendments made or which may be hereafter made to said code. [1881, ch. 129, § 1; R. C. 1899, § 2568.]

§ 3104. **Proceedings before township justices.** The civil and criminal proceedings before township justices of the peace shall be governed and controlled by the justices' code, and the code of criminal procedure and the amendments made or which may hereafter be made to said codes. [1881, ch. 129, § 2; R. C. 1899, § 2569.]

§ 3105. **Bond of treasurer.** Each person elected or appointed to the office of treasurer, before entering upon the duties of his office, shall execute a bond in double the probable amount of money to be received by him, which amount shall be determined by the board of supervisors of the township. [1883, ch. 112, sub-ch. 1, § 38; R. C. 1899, § 2570.]

§ 3106. **Constable to take oath and give bond.** Each person chosen to the office of constable, before entering upon the duties of his office and within eight days after he is notified of his election or appointment, shall take and subscribe the oath of office and execute a bond as prescribed by law. Such bond shall be approved and filed as provided in chapter 6 of this code. [1883, ch. 112, sub-ch. 1, § 40; R. C. 1895, § 2571.]

§ 3107. **Bond of assessor to be filed.** Each township assessor shall give a bond in the penal sum of five hundred dollars and shall immediately after the approval thereof, deliver the same to the township clerk, whose duty it shall be forthwith to file such bond with the county auditor. [1889, ch. 128, § 1; R. C. 1895, § 2572.]

§ 3108. **Neglect to qualify.** If any person elected or appointed to any township office, of whom an oath or bond is required, neglects to file the same within the time prescribed by law such neglect shall be deemed a refusal to serve in such office. [1883, ch. 112, sub-ch. 1, § 42; R. C. 1899, § 2573.]

§ 3109. **Penalty for neglect to take oath.** If any township officer who is required by law to take an oath of office, enters upon the duties of his office before taking such oath, he forfeits to such township the sum of fifty dollars. [1883, ch. 112, sub-ch. 1, § 43; R. C. 1899, § 2574.]

§ 3110. **Road overseer and pound master to file acceptance.** Each person elected or appointed to the office of overseer of highways or pound master, before he enters upon the duties of his office and within ten days after he is notified of his election or appointment, shall file in the office of the township clerk a notice signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal to serve. [1883, ch. 112, sub-ch. 1, § 44; R. C. 1899, § 2575.]

§ 3111. **Term of office of township officers.** Township officers, except justices of the peace and constables, shall hold their offices for one year and until their successors are elected or appointed and qualified. Justices of the peace and constables shall hold their offices for two years and until their successors are elected and qualified. [1883, ch. 112, sub-ch. 1, § 45; R. C. 1899, § 2576.]

#### ARTICLE 10.—VACANCIES.

§ 3112. **Board may accept resignations.** The board of supervisors of any township may for sufficient cause shown to it accept the resignation of any officer in its township, and whenever it accepts any such resignation it shall forthwith give notice thereof to the township clerk. [1883, ch. 112, sub-ch. 1, § 46; R. C. 1899, § 2577.]

§ 3113. **Vacancies, how filled.** Whenever any township fails to elect the proper number of officers, or whenever any person elected to a township office fails to qualify, or whenever any vacancy happens in any township office from death, resignation, removal from the township or other cause, the justices of the peace of the township, together with the board of supervisors or a majority of them, shall fill the vacancy by appointment by warrant under their hand, and the persons so appointed shall hold their offices until the next annual meeting and until their successors are elected and qualified, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected. [1883, ch. 112, sub-ch. 1, § 47; R. C. 1899, § 2578.]

§ 3114. **Vacancies in appointing board.** Whenever a vacancy occurs from any cause in the office of the justice of the peace or township supervisor, the



remaining officers of such appointing board shall fill any vacancy thus occurring. [1883, ch. 112, sub-ch. 1, § 48; R. C. 1899, § 2579.]

§ 3115. **When county auditor to appoint township assessor.** When any township assessor is elected and fails or refuses to qualify or to discharge the duties of his office, or if the electors of a township fail for any reason to elect an assessor, and the township board of said township fails or refuses to appoint an assessor for the township on or before the fifteenth day of April of the year for which such assessor is to serve, it shall be the duty of the county auditor to appoint an assessor for such township, who shall be a resident of the township for which he is to serve as assessor. [1887, ch. 156, § 1; R. C. 1899, § 2580.]

#### ARTICLE 11.—BOARD OF HEALTH.

§ 3116. **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. [1883, ch. 112, sub-ch. 1, § 50; R. C. 1899, § 2581; 1905, ch. 52.]

§ 3117. **Powers of board of health.** The board of health may examine into all nuisances, sources of filth and causes of sickness, and make such regulations respecting the same as it may judge necessary for the public health and safety of the inhabitants; and each person who violates any order or regulation made by any board of health and duly published is guilty of a misdemeanor and is punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months. [1883, ch. 112, sub-ch. 1, § 51; R. C. 1899, § 2582.]

§ 3118. **Public notice of orders and regulations.** Notice shall be given by the board of health of all orders and regulations made by it, by publishing the same in some newspaper if there is one published in such township or the county; if there is none, then by posting such notice in five public places therein; and such publication of said orders and regulations shall be deemed a legal notice to all persons. [1883, ch. 112, sub-ch. 1, § 52; R. C. 1899, § 2583.]

§ 3119. **Penalty for refusal to obey order.** Whenever any nuisance, source of filth or cause of sickness is found on private property, the board of health shall order the owner or occupant thereof at his own expense to remove the same within twenty-four hours; and if the owner or occupant thereof neglects so to do he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name of and for the use of the township. [1883, ch. 112, sub-ch. 1, § 53; R. C. 1899, § 2584.]

§ 3120. **Proceedings on such refusal.** Whenever such owner or occupant shall fail to comply with such order of the board of health, said board may cause the said nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by such owner or occupant or by the person causing or permitting the same. [1883, ch. 112, sub-ch. 1, § 54; R. C. 1899, § 2585.]

§ 3121. **Board to enter infected premises. Proceedings if opposed.** Whenever the board of health deems it necessary for the preservation of the health of its inhabitants to enter any building or vessel in the township for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his township, stating the facts in the case so far as he has knowledge thereof. [1883, ch. 112, sub-ch. 1, § 55; R. C. 1899, § 2586.]

§ 3122. **Warrant to be issued by justice.** Such justice shall thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more members of the board of health, between the hours of sunrise and sunset, to

repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and destroy, remove or prevent the same under the direction of the members of such board of health. [1883, ch. 112, sub-ch. 1, § 56; R. C. 1899, § 2587.]

§ 3123. **Quarantine of infected person.** When any person coming from abroad or residing in any city, town or village in this state is infected or lately has been infected with the smallpox or other contagious disease dangerous to the public health, the board of health of the city, town or village where such sick or infected person is, may immediately cause such person to be removed to a separate house if it can be done without danger to his health, and shall provide for such person a nurse, medical attendance and other necessaries, which shall be a charge in favor of such city, town or village against the person so provided for, his parents, guardian or master, if able, otherwise against the county to which he belongs, or the state if such person is a nonresident of the state. [1883, ch. 112, sub-ch. 1, § 57; R. C. 1899, § 2588.]

§ 3124. **Same. When person cannot be moved.** If such infected person cannot be removed without danger to his health, the board shall make provision as directed in the preceding section, for such person in the house where he may be, and in such case it may cause the persons in the neighborhood to be removed; and may take such other measures as it deems necessary for the safety of the inhabitants. [1883, ch. 112, sub-ch. 1, § 58; R. C. 1899, § 2589.]

§ 3125. **Board to provide hospital.** When a disease dangerous to the public health breaks out in any township, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not permit such removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and with all its inmates subject to the regulations of the board. [1883, ch. 112, sub-ch. 1, § 59; R. C. 1899, § 2590.]

#### ARTICLE 12.—POWERS AND DUTIES OF SUPERVISORS.

§ 3126. **Regular meetings.** The township board of supervisors shall hold regular meetings on the Tuesday next preceding the annual town meeting (being the second Tuesday of March), and on the Tuesday next succeeding the annual town meeting (being the fourth Tuesday of March), on the second Monday in June and the last Tuesday in October of each year. [1899, ch. 160; R. C. 1899, § 2591; 1901, ch. 205; 1903, ch. 200.]

§ 3127. **Where held.** Such meetings shall be held at the office of the township clerk or at the usual place for holding the annual township meetings if there is one. It shall meet not later than ten o'clock a. m. and shall not adjourn before four o'clock p. m. [1887, ch. 155, § 2; R. C. 1899, § 2592.]

§ 3128. **Business to be transacted.** At its meetings in February and June it shall perform all the duties now required of it by law to be transacted at such meetings, and any other business that may legally come before it. [1887, ch. 155, § 3; R. C. 1899, § 2593.]

§ 3129. **Approve bonds of township officers.** At its meeting in March the chairman shall approve the bonds of township officers, and said officers shall immediately enter upon the duties of their office, and shall assess the highway labor and road tax for the ensuing year and perform all the duties required of them in article 9 of chapter 19. [1887, ch. 155, § 4; R. C. 1899, § 2594.]

§ 3130. **Audit accounts.** At its meeting in October it shall audit accounts, settle with the road overseers and transact any other business that may come before it. [1887, ch. 155, § 5; R. C. 1899, § 2595.]

Road overseer supervises expenditure of road tax. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

§ 3131. **Adjourned and special meetings.** It may adjourn from time to time, and in cases of emergency may hold special meetings on call of the clerk on three days' notice. [1887, ch. 155, § 6; R. C. 1899, § 2596.]

§ 3132. **Business with board. When to appear.** It shall be the duty of all persons having business to transact with the board of supervisors of any township to appear before such board at any regular meeting, or file such business with the clerk to be laid before the board by him at its next meeting. [1887, ch. 155, § 7; R. C. 1899, § 2597.]

§ 3133. **Powers of supervisors.** The supervisors shall have charge of such affairs of the township as are not by law committed to other township officers; and they shall have power to draw orders on the township treasurer for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the township and for all moneys raised by the township to be disbursed for any other purpose. [1883, ch. 112, sub-ch. 1, § 60; R. C. 1899, § 2598.]

§ 3134. **Improving streets.** Whenever any incorporated village or town which is laid out into streets is included in the limits of an organized township, the township supervisors are authorized to cause improvements to be made in any street that may be needed as a highway if the corporate authorities of such village or town neglect to make such improvements. [1883, ch. 112, sub-ch. 1, § 61; R. C. 1899, § 2599.]

§ 3135. **Board to prosecute actions.** The supervisors shall by their name of office prosecute for the benefit of the township, all actions upon bonds given to them or their predecessors in office; and shall also sue for and collect all penalties and forfeitures in respect to which no other provision is made, incurred by any officer or inhabitant of the township; and they shall have power, in like manner, to prosecute for any trespass committed on any public inclosure, highway or property belonging to the township, and shall pay all moneys collected under this section to the township treasurer. [1883, ch. 112, sub-ch. 1, § 62; R. C. 1899, § 2600.]

For distinction between "municipal corporations" and "other corporations," see, *Town of Dell Rapids v. Irving*, 7 S. D. 311, 64 N. W. 140.

§ 3136. **Quorum of the board.** Any two of the supervisors shall constitute a quorum for the performance of any duties required by law of the township supervisors, except when otherwise provided. [1883, ch. 112, sub-ch. 1, § 63; R. C. 1899, § 2601.]

#### ARTICLE 13.—POWERS AND DUTIES OF OFFICERS.

##### TOWNSHIP CLERK.

§ 3137. **Clerks may administer oaths.** The township clerks of the several townships, city clerks or auditors of all cities, and recorders of all towns or villages in this state, are authorized to administer oaths and take acknowledgments of instruments, authorized or required by law. [1883, ch. 112, sub-ch. 1, § 64; R. C. 1899, § 2602.]

§ 3138. **Custody of records.** The township clerk shall have the custody of the record books and papers of the township when no other provision is made by law, and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office. [1883, ch. 112, sub-ch. 1, § 65; R. C. 1899, § 2603.]

§ 3139. **Deputy.** He may at his discretion appoint a deputy, for whose acts he shall be responsible. Before any deputy clerk enters upon the duties

of his office he shall take and subscribe the oath required by law, which oath shall be filed in the office of the clerk of the district court. [1883, ch. 112, sub-ch. 1, § 65; R. C. 1899, § 2603.]

§ 3140. **Shall keep records.** The clerk shall record in the book of records of his township, minutes of the proceedings of each township meeting, and enter therein each order or direction and all rules and regulations of any such meeting; and shall also file and preserve all accounts audited by the township board or allowed at a township meeting, and enter a statement thereof in such book of records. [1883, ch. 112, sub-ch. 1, § 66; R. C. 1899, § 2604.]

§ 3141. **Clerk to give bond and take oath.** Each person elected or appointed to the office of township clerk shall, before entering upon the duties of his office and within the time prescribed by law for filing his oath of office, execute a bond with two or more sureties to be approved by the township treasurer, in such penal sum as the supervisors direct, conditioned for the faithful discharge of his duties. Such bond so approved shall be filed in the office of the clerk of the district court for the benefit of any person aggrieved by the acts or omissions of such clerk, and any person so aggrieved or the township may maintain an action on such bond against said clerk and his sureties. [1883, ch. 112, sub-ch. 1, § 67; R. C. 1899, § 2605.]

§ 3142. **Send name of constable to clerk of district court.** Each township clerk, immediately after the qualification of any constable elected or appointed in his township, shall transmit to the clerk of the district court of the county the name of such constable. [1883, ch. 112, sub-ch. 1, § 68; R. C. 1899, § 2606.]

§ 3143. **Send name of justice to clerk of district court.** Each township clerk shall immediately after the election of any justice of the peace in his township transmit a written notice thereof to the clerk of the district court of the county, stating therein the name of the person elected and the term for which he is elected; and if elected to fill a vacancy, he shall state in such notice who was the last incumbent of the office. [1883, ch. 112, sub-ch. 1, § 69; R. C. 1899, § 2607.]

§ 3144. **Penalty for neglect.** If any township clerk willfully neglects to make such return he shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding ten dollars. [1883, ch. 112, sub-ch. 1, § 70; R. C. 1899, § 2608.]

#### TOWNSHIP TREASURER.

§ 3145. **Duties of treasurer.** The township treasurer shall receive and take charge of all moneys belonging to the township or which are by law required to be paid into the township treasury, and shall pay over and account for the same upon the order of such township or the officers thereof duly authorized in that behalf, made pursuant to law, and shall perform all such duties as may be required of him by law. [1883, ch. 112, sub-ch. 1, § 71; R. C. 1899, § 2609.]

Must keep moneys in separate funds. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

§ 3146. **To keep account of receipts and disbursements.** Each township treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the township for that purpose, and exhibit such account, together with his vouchers, to the township board at its annual meeting, for adjustment; and he shall deliver all books and property belonging to his office and the balance of all moneys in his hands as such treasurer, to his successor in office, on demand after such successor has qualified according to law. [1883, ch. 112, sub-ch. 1, § 72; R. C. 1899, § 2610.]

§ 3147. **Treasurer to draw moneys from the county.** The township treasurer shall, from time to time, draw from the county treasury such moneys as have been received by the county treasurer for the use of his township and on receipt of such moneys shall deliver proper vouchers therefor. Each township treasurer shall be allowed and entitled to retain two per cent of all moneys paid out of the township treasury, for receiving, safely keeping, and paying over the same according to law. [1883, ch. 112, sub-ch. 1, § 73; R. C. 1899, § 2611; 1901, ch. 202.]

§ 3148. **Treasurer to make statement.** Each township treasurer within five days preceding the annual township meeting shall make out a statement in writing of the moneys by him received into the township treasury from the county treasurer and from all other officers and persons, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the township clerk, and shall be by such clerk carefully preserved and recorded in the township book of records, and a duplicate of such statement shall at the same time be filed by the township treasurer with the county auditor of his county. [1883, ch. 112, sub-ch. 1, § 74; 1887, ch. 157, § 1; R. C. 1899, § 2612.]

§ 3149. **Penalty for neglect.** Each township treasurer who refuses or neglects to comply with the provisions of the four preceding sections, shall forfeit not more than two thousand dollars, to be recovered in any court of competent jurisdiction, the amount to be fixed by the jury trying the cause, or by the court, if there is no jury impaneled, and may be recovered by a civil action in the name of the person who prosecutes the same, with costs of the suit; one-half shall go to the person so prosecuting, and the remainder to the township of which such delinquent is or has been treasurer. [1883, ch. 112, sub-ch. 1, § 75; R. C. 1899, § 2613.]

§ 3150. **Warrant record. Indorsement of warrants not paid.** Each township treasurer shall keep a suitable book to be provided at the expense of the township in which he shall enter the township orders that he cannot pay for want of funds when presented to him for payment, which orders when presented shall be indorsed by such treasurer by putting upon the back of the same the words "not paid for want of funds," giving the date of such indorsement, signing his name as township treasurer, which order when so indorsed shall bear interest from that date until paid. All township orders shall be paid in the order that they are registered, out of the first moneys that come into the treasurer's hands for such purposes. [1883, ch. 112, sub-ch. 1, § 76; R. C. 1899, § 2614.]

Township warrants non-negotiable. *Gilman v. Township of Gilby*, 8 N. D. 627, 80 N. W. 889.

#### ASSESSORS.

§ 3151. **Assessors, how governed.** The township assessor shall be governed by and make assessments and returns as provided in the chapter on revenue and taxation of this code, and shall be paid for his service out of the township treasury. [1879, ch. 59, § 55; R. C. 1899, § 2615.]

#### ARTICLE 14.—BOARD OF AUDITORS.

§ 3152. **Supervisors to audit accounts.** The supervisors constitute a board of audit for the purpose of auditing all accounts payable by the township; and if for any cause there are not three supervisors present to constitute such board the chairman, and in his absence either of the supervisors, may

notify any one or as many of the justices of the peace of the township as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the township board. [1883, ch. 112, sub-ch. 1, § 77; R. C. 1899, § 2616.]

§ 3153. **Meetings of board.** The board shall meet on the Tuesday next preceding the annual township meeting, and on the last Tuesday of October in each year, and at such other times as it deems necessary and expedient for the purpose of auditing and settling all charges against the township; and it shall state on each account the amount allowed by it; but no allowance shall be made for any account which does not specifically state each item of the same and the nature thereof. [1883, ch. 112, sub-ch. 1, § 78; 1887, ch. 155, § 5; R. C. 1899, § 2617.]

§ 3154. **Board to audit accounts of treasurer at annual meeting.** The board shall also, at its annual meeting on the last Tuesday of February in each year, examine and audit the accounts of the township treasurer for all moneys received and disbursed by him as such officer; and it shall audit the accounts of all other township officers who are authorized by law to receive or disburse any money of the township by virtue of their offices. [1883, ch. 112, sub-ch. 1, § 79; R. C. 1899, § 2618.]

Need not present claim for audit before suit. *Short v. White Lake Twp.* 8 S. D. 148, 65 N. W. 432.

§ 3155. **Board to report accounts audited and allowed.** Such board shall make a report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed, including a statement of the fiscal concerns of the township, and an estimate of the sum necessary for the current expenses thereof, the support of the poor and other incidental expenses for the ensuing year. [1883, ch. 112, sub-ch. 1, § 80; R. C. 1899, § 2619.]

§ 3156. **Report to be read at township meeting.** Such report shall be produced and publicly read by the township clerk at the next ensuing township meeting, and the whole or any portion of such report may be referred by order of the meeting to a committee, whose duty it shall be to examine the same and report thereon to such meeting. [1883, ch. 112, sub-ch. 1, § 81; R. C. 1899, § 2620.]

§ 3157. **Treasurer shall pay all orders.** The amount of any account audited and allowed by the board and the amount of any account voted to be allowed at any township meeting shall be paid by the township treasurer on the order of the board signed by the chairman and countersigned by the clerk; and all orders issued to any person by the board for any sum due from such township shall be receivable in payment of township taxes of such township. [1883, ch. 112, sub-ch. 1, § 82; R. C. 1899, § 2621.]

§ 3158. **Clerk of the board of supervisors.** The township clerk shall be clerk of the township board, and shall keep in his office a true record of all its proceedings. [1883, ch. 112, sub-ch. 1, § 83; R. C. 1899, § 2622.]

#### ARTICLE 15.—FEES OF OFFICERS.

§ 3159. **Compensation of assessor.** The township assessor shall receive for his services three dollars per day for each day necessarily devoted by him to the service of the township while engaged in his duties as such assessor; provided, that such compensation shall not exceed the sum of sixty dollars in any one congressional township. [1883, ch. 112, sub-ch. 1, § 86; 1889, ch. 126, § 1; R. C. 1895, § 2623.]

§ 3160. **Compensation of clerk and supervisors.** The township clerk and supervisors shall receive for their services one dollar and fifty cents per day for each day necessarily devoted by them to the service of the township when attending to business in their township, and two dollars when attending to business out of the township; no township supervisor shall receive more

than thirty-five dollars compensation in any one year; provided, that the township clerk shall be paid fees for the following, and not a per diem: For serving notices of election upon township officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting notices required by law, twenty-five cents each; for recording any order or any instrument or writing authorized by law, ten cents for each one hundred words; for copying any record or instrument on file in his office and certifying the same, ten cents for each one hundred words, to be paid for by the person applying for the same. [1883, ch. 112, sub-ch. 1, § 86; R. C. 1899, § 2624.]

§ 3161. **Compensation, increasing or reducing.** At any township meeting before the electors commence balloting for officers they may by resolution reduce or increase the compensation of officers, but no such increase shall exceed one hundred per cent. [1883, ch. 112, sub-ch. 1, § 86; R. C. 1899, § 2625.]

ARTICLE 16.—CLAIMS AGAINST TOWNSHIPS OR COUNTIES.

§ 3162. **Claims against townships. Accounts stated, how.** Before any account, claim or demand against any township or county of this state for any property or services for which such township or county shall be liable shall be audited or allowed by the board or officers authorized by law to audit and allow the same, the person in whose favor such account, claim or demand shall be, or his agent, shall reduce the same to writing in items and shall verify the same to the effect that such account, claim or demand is just and true, that the money therein charged was actually paid for the purposes therein stated, or that the property therein charged for was actually delivered or used for the purposes therein stated and was of the value therein charged, or that the services therein charged were actually rendered and of the value therein charged, or in case such services were official for which fees are prescribed by law then that the fees or amounts charged therefor are such as are allowed by law; and that no part of such account, claim or demand has been paid; provided, that the provisions of this article shall not apply to any claim or demand for an annual salary or per diem of jurors or witnesses fixed by or in pursuance of any statute. [1883, ch. 112, sub-ch. 1, § 87; R. C. 1899, § 2626.]

§ 3163. **Accounts must be verified.** The verification required by the preceding section may be made before any officer authorized by law to administer oaths, or before any member of the board to which the account, claim or demand shall be presented to be audited, and each member of such board is hereby authorized to administer the proper oath in such cases; and each person who willfully or knowingly swears falsely on any such claim shall be deemed guilty of perjury and be punished accordingly. [1883, ch. 112, sub-ch. 1, § 88; R. C. 1899, § 2627.]

§ 3164. **What accounts need not be verified.** In case any such account, claim or demand shall be made or presented by any administrator or executor on behalf of the estate of a deceased person he shall not be required to verify the same, but may prove the same otherwise to the satisfaction of the board. [1883, ch. 112, sub-ch. 1, § 88; R. C. 1899, § 2628.]

§ 3165. **Consideration of account and action thereon.** Whenever an account, claim or demand against any township or county shall have been verified in the manner prescribed in this article, the board to whom the same is presented may receive and consider the same and may allow or disallow the same in whole or in part, as to such board or officers shall appear just or lawful, saving to such claimants the right of appeal. [1883, ch. 112, sub-ch. 1, § 89; R. C. 1899, § 2629.]

§ 3166. **Penalty for auditing an account not verified.** Any member of such board who shall audit and allow any account, claim or demand required

by this article to be itemized and verified, without the same having been first duly itemized and verified, shall be deemed guilty of a misdemeanor and be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both. [1883, ch. 112, sub-ch. 1, § 90; R. C. 1899, § 2630.]

§ 3167. **Claims against counties offset by taxes due.** It shall be the duty of the board of county commissioners of any county in this state, when any bill or claim is presented to them to be audited in favor of any person, corporation or society to ascertain from the tax records of such county if the person, corporation or society to whom said credit originally accrued or presenting same is indebted to any school district, municipal corporation, county or state for personal taxes due or delinquent, and if such indebtedness shall be found to exist, to deduct the same from the bill so presented. Or if the taxes shall exceed the demands so presented, then to have the claim entered as a credit on the tax books of such county in favor of the person, corporation or society to whom said credit originally accrued, if found to be indebted for taxes due or delinquent as above provided. If no such indebtedness exists against such party, then to deduct any part due or delinquent taxes owing by the person, corporation or society presenting same and the right to offset such taxes shall be deemed to have accrued from the day the county became indebted to any person, corporation or society. Any sale, transfer or assignment thereof shall not defeat the right of the county to make such credit or offset. [1901, ch. 162.]

#### ARTICLE 17.—SUITS BY AND AGAINST TOWNSHIPS.

§ 3168. **Proceedings in.** Whenever any controversy or cause of action exists between townships or between a township and an individual or corporation, a civil action may be commenced and prosecuted for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment therein shall have the like effect, as in other actions or proceedings of a similar kind between individuals and corporations. [1883, ch. 112, sub-ch. 1, § 91; R. C. 1899, § 2631.]

§ 3169. **Township to sue in its name.** In all such actions and proceedings the township shall sue and be sued in its name, except where township officers are authorized by law to sue in their name of office for the benefit of the township. [1883, ch. 112, sub-ch. 1, § 92; R. C. 1899, § 2632.]

§ 3170. **Service, on whom.** In legal proceedings against a township by name all papers shall be served on the chairman of the board of supervisors, and in case of his absence on the township clerk, and whenever any action or proceeding is commenced the chairman shall attend to the defense thereof, and lay before the electors of the township at the first township meeting a full statement of such proceedings, for their election in regard to the defense thereof. [1883, ch. 112, sub-ch. 1, § 94; R. C. 1899, § 2633.]

§ 3171. **Jurisdiction.** No action in favor of any township shall be brought before any justice of the peace residing in such township. [1883, ch. 112, sub-ch. 1, § 95; R. C. 1899, § 2634.]

§ 3172. **Recovery in cases of trespass.** Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the township, if it appears on the trial thereof that the actual amount of injury to such township lands in consequence of such trespass exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage with costs of suit shall be recovered in such action, instead of any penalty for such trespass imposed by the township meeting, and such recovery shall be a bar to all other actions for the same trespass. [1883, ch. 112, sub-ch. 1, § 96; R. C. 1899, § 2635.]

§ 3173. **Court may partition lands, when.** Whenever by judgment or decision in any action or proceeding brought to settle any controversy in



relation to township commons or other lands, the common property of a township, or for the partition thereof, the rights of any township are settled and confirmed, the court in which such proceedings are had may partition such lands according to the rights of the parties. [1883, ch. 112, sub-ch. 1, § 97; R. C. 1899, § 2636.]

§ 3174. **Payment of judgment.** When a judgment is recovered against any township or against any township officers in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed or stayed on appeal, shall be paid by the township treasurer upon demand and the delivery to him of a certified copy of the docket of the judgment, if there is sufficient money of such township in his hands not otherwise appropriated. If he fails to do so he shall be personally liable for the amount, unless the collection thereof is afterwards stayed upon appeal. If payment is not made within thirty days after the time fixed by law for the county treasurer to pay over to the township treasurer the money in his hands belonging to such township levied for the purpose of paying such judgment, next after the rendition of such judgment, execution may be issued, but only township property shall be liable thereon. [1883, ch. 112, sub-ch. 1, § 98; R. C. 1899, § 2637.]

§ 3175. **When judgment is not satisfied.** If judgment for the recovery of money is rendered against any township, and the judgment is not satisfied or proceedings thereon stayed by appeal or otherwise before the next annual meeting of the township, a certified copy of the docket of the judgment may be presented to such township, at said annual meeting. The supervisors of the township shall thereupon cause the amount due on the judgment, with interest from the date of its recovery, to be added to the tax of such township and the same certified to the county auditor and collected as other township taxes are collected. [1883, ch. 112, sub-ch. 1, § 99; R. C. 1899, § 2638.]

#### ARTICLE 18.—TOWNSHIP CHARGES AND LEVIES.

§ 3176. **Township charges, what are.** The following shall be deemed township charges:

1. The compensation of township officers for services rendered their respective townships.
2. Contingent expenses necessarily incurred for the use and benefit of the township.
3. The moneys authorized to be raised by the vote of the township meeting for any township purpose.
4. Each sum directed by law to be raised for any township purpose; provided, that no tax for township purposes shall exceed the amount voted to be raised at the annual meeting as provided in section 1540. [1883, ch 112, sub-ch. 1, § 100; R. C. 1899, § 2639; 1903, ch. 172.]

§ 3177. **Clerk to notify county auditor of levy.** It is the duty of the township clerk immediately after the board of supervisors have made the levy of taxes, or within three days thereafter, to notify the county auditor of the amount levied, who shall enter the same on the county tax list, to be collected by the county treasurer as county taxes are collected. [1879, ch. 59, § 33; R. C. 1899, § 2641.]

#### ARTICLE 19.—BOOKS AND PAPERS OF OUTGOING OFFICERS.

§ 3178. **Successor in office to demand records.** Whenever the term of any supervisor, township clerk or assessor expires, and another person is appointed or elected to such office, such successor immediately after he enters upon the duties of his office shall demand of his predecessor all books and papers under his control belonging to such office. [1883, ch. 112, sub-ch. 1, § 102; R. C. 1899, § 2642.]

§ 3179. **Same, vacancy.** Whenever either of the officers above named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the person so elected shall make such demand of his predecessors or of any person having charge of such books and papers. [1883, ch. 112, sub-ch. 1, § 103; R. C. 1899, § 2643.]

§ 3180. **Records to be delivered.** Each person so going out of office, whenever thereto required pursuant to the foregoing provisions, shall deliver upon oath all records, books and papers in his possession or under his control, belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made. [1883, ch. 112, sub-ch. 1, § 104; R. C. 1899, § 2644.]

§ 3181. **Demand for records in case of death.** Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided of the executor or administrator of such deceased officer, and such executor or administrator shall deliver upon like oath all records, books, papers or moneys in his possession or under his control, belonging to the office held by his testator or intestate. [1883, ch. 112, sub-ch. 1 § 105; R. C. 1899, § 2645.]

#### ARTICLE 20.—SECTION CORNERS.

§ 3182. **Township supervisors to employ surveyors to run lines and erect monuments on corners.** Whenever it appears advisable 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. [1905, ch. 180, § 1.]

§ 3183. **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 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 3182. [1905, ch. 180, § 2.]

§ 3184. **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 monument, 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. [1905, ch. 180, § 3.]

§ 3185. **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. [1905, ch. 180, § 4.]

§ 3186. **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 article, and also for the establishment of lost corners. [1905, ch. 180, § 5.]

#### ARTICLE 21.—GUIDEPOSTS.

§ 3187. **Townships to erect guideposts.** Each township shall in the manner provided herein erect and maintain guideposts on the highways and other ways within the township, at such places as are necessary or convenient for the direction of travelers. [1883, ch. 112, sub-ch. 1, § 106; R. C. 1899, § 2646.]

§ 3188. **Report at annual meeting.** The supervisors shall submit to the electors at each annual meeting a report of all the places at which guideposts are erected and maintained within the township, and of all places at which in their opinion they ought to be erected and maintained. For each neglect or refusal to make such report they shall severally forfeit the sum of ten dollars. [1883, ch. 112, sub-ch. 1, § 107; R. C. 1899, § 2647.]

§ 3189. **Penalty for neglect to designate places for guideposts.** Upon the report of the supervisors the township shall determine the several places at which guideposts shall be erected and maintained, which shall be recorded in the township records. Any township which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit the sum of five dollars for each month during which it neglects or refuses so to do; and in such case upon any trial for not erecting or maintaining guideposts reported to be necessary or convenient by the supervisors, the township shall be estopped from alleging that such guideposts were not necessary or convenient. [1883, ch. 112, sub-ch. 1, § 108; R. C. 1899, § 2648.]

§ 3190. **Character of guideposts.** At each of the places determined by the township there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board, and upon such board shall be plainly and legibly painted or otherwise marked the name of the next township or place, and such other town or place of note as the supervisors think proper, to which each of such roads lead, together with the distance or number of miles to the same; and also the figure of a hand the forefinger thereof pointed towards the towns or places to which such roads lead; provided, that the inhabitants of any township may at their annual meeting agree upon some suitable substitute for such guideposts. [1883, ch. 112, sub-ch. 1, § 109; R. C. 1899, § 2649.]

§ 3191. **Forfeit for neglect to furnish guideposts.** Each township which neglects or refuses to erect and maintain such guideposts or some suitable substitute therefor shall forfeit annually the sum of five dollars for each guidepost which it so neglects or refuses to maintain, which sum may be sued for and collected by any person before any justice of the peace of the proper county, and the moneys so collected shall be paid into the township treasury for the benefit of the roads and bridges of the township. [1883, ch. 112, sub-ch. 1, § 110; R. C. 1899, § 2650.]

#### ARTICLE 22.—PUBLIC PLACES.

§ 3192. **Voters shall designate.** At the annual township meeting in each year the legal voters present at each meeting shall determine and designate three places in the township as public or the most public places of such township, and that all legal notices required to be posted in three public or the most public places of a township shall be posted at such places at least, and they shall make provision for the erection and maintenance of posts on which to post notices as aforesaid in all places so designated, in which there is no sufficient natural convenience for that purpose. [1883, ch. 112, sub-ch. 1, § 111; R. C. 1899, § 2651.]

## ARTICLE 23.—POUNDS AND POUND MASTERS.

§ 3193. **Pounds located.** Whenever the electors of any township determine at their annual township meeting to erect one or more pounds therein, the same shall be under the care and direction of such pound masters as are chosen or appointed for that purpose. [1883, ch. 112, sub-ch. 1, § 112; R. C. 1899, § 2652.]

§ 3194. **Discontinuing pounds.** The electors of any township may at any annual township meeting discontinue any pounds therein. [1883, ch. 112, sub-ch. 1, § 113; R. C. 1899, § 2653.]

§ 3195. **Fees of pound master. Sales.** The pound master is allowed to charge and collect the following fees: For taking into pound or discharging therefrom any horse, ass or mule, and all neat cattle, twenty cents each; for every sheep or lamb, ten cents each; and for every hog large or small, ten cents; and twenty-five cents for keeping each twenty-four hours in pound. And the pound master has a lien on all such animals for the full amount of his legal charges and expenses, and shall be entitled to the possession of such animals until the same are paid; and if the same are not paid and said animals removed within four days after they are impounded, the pound master shall give notice by posting the same in three of the most public places in the township that said animals, describing them, are impounded, and that unless the same are taken away and fees paid within fifteen days after the date of such notice, he will sell the same at public vendue at the place where the township meetings of such township are usually held; and on the day designated in such notice the pound master shall expose such animals for sale and sell the same to the highest bidder for cash, for which service he shall receive two per cent of the purchase money for each animal. [1883, ch. 112, sub-ch. 1, § 114; R. C. 1899, § 2654.]

§ 3196. **Proceeds, disposition of.** Out of the money realized from such sale the pound master shall deduct all his legal fees and charges and pay the balance if any, to the chariman of the township supervisors, at the same time giving to the supervisors an accurate description of the animals sold and the amount received by him for each animal, and shall take a receipt and duplicate therefor and file one of them with the township clerk; provided, the supervisors shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to such owner the balance due as received from said pound master; but if said money is not claimed within that time then the sum so received shall be retained for the use of the township; provided, that in unorganized townships and in townships which have been dissolved as civil townships, the county commissioners are hereby authorized on the petition of a majority of the legal voters of such townships to do and perform any and all acts that the electors might do of a civil township as prescribed in sections 3193, 3194 and 3195. [1899, ch. 121; R. C. 1899, § 2655.]

## ARTICLE 24.—DEBTS AND BONDS.

§ 3197. **Limit of debt of townships.** No township has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year without having been authorized by a majority of the voters of such township, and no township shall assess for township purposes more than ten mills on the dollar of taxable property for any one year. [1883, ch. 112, sub-ch. 1, § 115; R. C. 1899, § 2656.]

§ 3198. **Bonds of townships issued, how and when.** The board of supervisors of the organized townships of this state, or those that may hereafter be organized, are authorized and empowered to issue the bonds or orders of their respective townships, with coupons attached, and in such amounts and at such periods as they may be directed by two-thirds of the legal voters present and voting at any legally called township meeting held for that pur-

pose; such bonds or orders to be payable in such amounts and at such times, not exceeding six years from date, as two-thirds of the legal voters present and voting at such meeting shall determine, with interest thereon not to exceed eight per cent per annum payable annually, which bonds or orders and coupons shall be signed by the chairman of the board of supervisors and countersigned by the clerk of the township; provided, that nothing herein contained shall be construed to authorize the issuing of such bonds or orders unless the same shall have first been voted for by ballot by two-thirds of all the legal voters present and voting at any annual or special township meeting called for that purpose, notices of which, particularly specifying the object for which such meeting was called, have been posted in at least three public places in the township for not less than ten days previous to the time of calling the same. [1883, ch. 112, sub-ch. 1, § 116; R. C. 1899, § 2657.]

§ 3199. **Bonds must be sold at par.** No bonds or orders issued under the authority of this article shall be issued or negotiated for less than par value; nor shall such bonds or orders or the proceeds thereof be used or appropriated for any purpose whatever other than as specified in this article. [1883, ch. 112, sub-ch. 1, § 117; R. C. 1899, § 2658.]

§ 3200. **Levying bond tax.** The board of supervisors and its successors are authorized and it is their duty on or before the first day of September next after the date of such bonds or orders, and in each and every year thereafter on or before the first day of September, until the payment of such bonds or orders and interest is fully provided for, to levy and in due form to certify to the county auditor of the county in which said township is situated, a tax upon the taxable property of the township equal to the amount of principal and interest maturing next after such levy, and in the discretion of the board, such further sums as it shall deem expedient, not exceeding twenty per cent of such maturing bonds or orders and interest, which taxes shall be payable in money and shall constitute a fund for the payment of said bonds or orders and the interest thereon. [1883, ch. 112, sub-ch. 1, § 118; R. C. 1899, § 2659.]

#### ARTICLE 25.—REFUNDING BONDS.

§ 3201. **To be issued when.** Each organized township in this state is authorized and empowered by and through its board of supervisors, when in the judgment of such board it is deemed for the best interests of the township, to issue its negotiable bonds in the name of such township for the sole purpose of refunding any outstanding bonded indebtedness of such township. [R. C. 1895, § 2660.]

§ 3202. **Issuance, how determined. Denomination. Form.** The necessity of issuing and negotiating bonds under the provisions of this article shall be determined by the board of supervisors of such township. Such bonds shall be in denominations of not more than one thousand dollars nor less than one hundred dollars, shall bear the date of their issue and shall be made payable to the purchaser or bearer, and be payable in not less than five nor more than fifteen years from their date; and shall bear interest at a rate not higher than the bonds refunded and shall have coupons attached for each interest payment; such bonds and coupons shall be signed by the chairman of the board of supervisors and shall be attested by the township clerk. Each bond shall state on its face that it is issued in accordance with this article. Such bonds may be made payable at such place as may be agreed upon. [R. C. 1895, § 2661.]

§ 3203. **Record to be kept.** A record of each bond so issued shall be kept by the township clerk, showing the number of each bond, its date, amount, rate of interest, when and where payable, the amount received therefor, to whom sold and how the proceeds were disposed of. [R. C. 1895, § 2662.]

§ 3204. **Annual tax to pay principal and interest.** At or before the time of issuing any bonds pursuant to the provisions of this article, it shall be the

duty of the board of supervisors to provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due. [R. C. 1895, § 2663.]

§ 3205. **Payment of at maturity. Cancellation.** When such bonds and the coupons thereto attached mature it shall be the duty of the township treasurer to pay the same on presentation out of any funds in his hands applicable thereto; and he shall then properly cancel the same. [R. C. 1895, § 2664.]

#### ARTICLE 26.—IRRIGATION.

§ 3206. **Petition. Election.** Whenever ten legal voters of any organized township petition the township board fifteen days previous to any annual township meeting to submit the question of irrigation by building dams to create ponds or reservoirs on any of the creeks or coulees in the township, it shall be the duty of the board to submit the question to the voters at the next annual township meeting and the township clerk shall cause three notices to be posted specifying the place and nature of such proposed improvements. [1890, ch. 43, § 1; R. C. 1895, § 2665.]

§ 3207. **Tax.** Whenever two-thirds of the legal voters of any organized township in this state, at their annual township meeting agree that it is advisable and for the public good that certain specified creeks or coulees should be improved to increase the water supply and for the purpose of irrigation, it shall be lawful for such voters to levy a tax upon said township, to be expended in building dams to create ponds and reservoirs, by and under the direction of the board of supervisors of the township; provided, such improvements shall be wholly in said township; and no lands shall be flooded without the consent of the owner or without just compensation therefor, which compensation shall be determined as provided in the chapter on eminent domain in the code of civil procedure. [1890, ch. 43, § 2; R. C. 1895, § 2666.]

§ 3208. **Maximum levy.** The tax authorized to be levied by the last section shall not exceed two mills on the dollar of the assessed valuation of the township. [1890, ch. 43, § 3; R. C. 1899, § 2667.]

#### ARTICLE 27.—CONTRACT SYSTEM OF HIGHWAY LABOR.

§ 3209. **Township boards have supervision over.** The several township boards of organized townships in the state shall have general supervision over the roads, highways and bridges throughout their several townships. [1895, ch. 91, § 1; R. C. 1899, § 2668.]

Township immune from liability for the acts or negligence of its officers as to repairs of roads and defective bridges. Township acts merely as the instrumentality of the state. *Vail v. Town of Amenia*, 4 N. D. 239, 59 N. W. 1092.

Township not liable for loss suffered by land owner from increased flow of surface water, resulting solely from improvement of a highway, without negligence. *Carroll v. Township of Rye*, 13 N. D. 458, 101 N. W. 894.

§ 3210. **Plans and specifications.** The several township boards whenever in their judgment it is for the best interest of the township may at the next annual meeting cause a vote to be taken by a ballot on which shall be written or printed the words "for contract system," "against contract system," and if a majority of the votes cast are in favor of the contract system then the township board shall at the next meeting succeeding the annual meeting advertise in one of the county papers for bids for two successive weeks for the improvement and repairing of highways and bridges in its township in the following manner:

1. The board shall furnish plans and specifications for all work and improvements to be done and performed in the several townships which shall be filed in the office of the township clerk.

2. It shall at the time of advertising for bids give at least ten days notice, to be posted in conspicuous places in said township, that bids will be received at a time and place mentioned in said notice, and said contracts shall be let

to the lowest bidder in accordance with such plans and specifications as are furnished by said board, and the said board shall require upon the letting of such contract or contracts a good and sufficient bond for the faithful performance of the work to be done and performed in said contract, and said board shall have authority to reject any and all bids. Whenever the "contract system" has been adopted, as provided herein, township road taxes shall be paid in money only. [1899, ch. 141; R. C. 1899, § 2669.]

§ 3211. **Special fund.** All moneys raised in pursuance of the provisions hereof shall constitute a special fund for the improvement of highways and shall be collected, paid out and expended in the manner provided for warrants drawn on the treasurer of each township for general expenses thereof, and such fund shall be kept separate and shall not be used for any other purpose whatsoever. [1895, ch. 91, § 4; R. C. 1899, § 2671.]

§ 3212. **Assessments, how collected.** Upon failure to pay any tax assessed for the purposes herein named the same shall become delinquent and shall be collected in the same manner as other taxes. [1895, ch. 91, § 5; R. C. 1899, § 2672.]

§ 3213. **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. [1895, ch. 91, § 6; R. C. 1899, § 2673; 1905, ch. 181.]

#### ARTICLE 28.—MISCELLANEOUS.

§ 3214. **Officers not to be interested in contracts.** No township officer shall become a party to or be interested directly or indirectly in any contract made by the board of which he may be a member; and every contract or payment voted for or made contrary to the provisions of this section is void; and any violation of this section shall constitute malfeasance in office which will subject the officer so offending to be removed from office. [1883, ch. 112, sub-ch. 1, § 119; R. C. 1899, § 2674.]

§ 3215. **Election districts.** Each township organized under this chapter, or any law heretofore in force, constitutes an election district. [1883, ch. 112, sub-ch. 1, § 120; R. C. 1899, § 2675.]

§ 3216. **City to have same powers as township.** Nothing in this chapter contained shall in any way apply to any portion of the state which is embraced within the limits of any incorporated city; but each incorporated city shall have and exercise within its limits, in addition to its powers the same powers conferred by this chapter upon townships in the manner prescribed by law. [1883, ch. 112, sub-ch. 1, § 121; R. C. 1899, § 2676.]

§ 3217. **Constable, powers of.** Any constable in any organized township containing any village not incorporated, shall be a proper officer for arresting and detaining any person for disorderly conduct within the village arising from drunkenness or otherwise, without process first issuing, and any person deemed guilty of such disorderly conduct shall be taken before any justice of the peace of such township, and upon conviction thereof be fined in the sum of not less than five nor more than ten dollars and all costs arising from such complaint and trial. [1879, ch. 59, § 95; R. C. 1899, § 2677.]

§ 3218. **To provide for confinement of prisoners.** Any township with any such village not incorporated, shall at the annual township meeting have power to vote any appropriations necessary for providing a place of confinement,

and may adopt such regulations as may be necessary in relation thereto. [R. C. 1899, § 2678.]

§ 3219. **Notice to be given.** Any township providing such place of confinement, shall cause notice thereof to be published in the newspaper having the largest circulation in such township, if there is any, or cause the township clerk to post notice thereof in three of the most public places in such township. [R. C. 1899, § 2679.]

§ 3220. **Convicted person confined.** Any person convicted under the preceding sections shall be confined in the calaboose until all fines and costs are paid, not less than one day nor more than ten days. [R. C. 1899, § 2680.]

#### ARTICLE 29.—DISSOLUTION OF TOWNSHIPS.

§ 3221. **Petition for dissolution. Notice of elections. What notice shall specify.** When an application signed by one-third of the legal voters of any organized civil township within this state shall be presented to the board of supervisors of such civil township, in writing, at least ten days prior to the fourth Monday of June in any year, asking for a dissolution of the civil township, setting forth the reasons therefor, such petition shall be considered by such board of supervisors at its regular meeting on the fourth Monday in June in such year, and it shall be competent for the board, if it deems the reasons good, to call a meeting of the voters of such civil township, by giving at least ten days notice thereof, to determine whether such civil township shall be dissolved. Said notice shall be signed by the town clerk of such civil township, and shall be by him posted in five of the most public places in such civil township, at least ten days prior to such meeting of said voters, and also, if there is a newspaper published in such civil township, he shall cause a copy of such notice to be published once therein, at least five days before the time appointed for such meeting. Each notice given for such a meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. [1897, ch. 139, §§ 1, 2, 3; R. C. 1899, § 2680a.]

§ 3222. **Shall vote by ballot.** The board of supervisors of such civil township shall preside at such meeting, and the polls shall be opened and closed as at other township meetings, and the voters shall vote by ballot, "yes" or "no," and the result of the vote shall be publicly announced after the polls close and as soon as ascertained by the officers of such meeting, and if a majority of all the votes shall be "yes" and shall have been given by a majority of all the legal voters in such civil township, a statement of the vote signed by the chairman of the board of supervisors of such civil township, and attested by the clerk thereof, shall be filed in the office of the county auditor of the county within which such civil township lies, and such civil township shall on the first day of January next succeeding the time of holding such meeting cease to be a corporation; provided, the property belonging to such civil township, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such civil township at any special meeting may have directed. And all of the records of such civil township shall be turned over by the officers of said civil township to the county auditor of the county wherein said district lies, for preservation and safe keeping. [1897, ch. 139, § 4; R. C. 1899, § 2680b; 1903, ch. 199, § 1.]

§ 3223. **Personal rights not affected.** No such dissolution shall affect the right of any person in any contract or agreement to which such corporation is a party. [1897, ch. 139, § 5; R. C. 1899, § 2680c.]

§ 3224. **Assessment and levy.** Upon the dissolution of any civil township, it shall be the duty of the board of county commissioners of the county within which such civil township lies, to attach the territory embraced within such township for the purpose of assessment and taxation to such assessment district of such county as such board may deem advisable or practicable, and to



levy on the taxable property, in such township, in addition to the other levies provided by law, a sum sufficient to discharge all debts and liabilities existing against said township at the time of its dissolution, and the county auditor shall enter the same on the county tax list, to be collected by the county treasurer as other county taxes are collected, and it shall be the duty of said treasurer to credit the money derived from such levy to a special fund to be used in the payment of said debts and liabilities, and any balance remaining in said fund after the payment of said debts and liabilities, shall be transferred to the credit of such district, to be used in the construction of roads and bridges therein. [1897, ch. 139, § 6; R. C. 1899, § 2680d; 1903, ch. 199, § 2.]

§ 3225. **Duty of county auditor.** It shall be the duty of the county auditor of such county, upon the dissolution of any civil township therein, to immediately notify the state auditor thereof, and, further, to enter upon the proper record book in his office the fact of such dissolution. [1897, ch. 139, § 7; R. C. 1899, § 2680e.]

#### ARTICLE 30.—CONSOLIDATION OF TOWNSHIPS.

§ 3226. **Supervisors and clerks of townships 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. [1905, ch. 178, § 1.]

§ 3227. **To determine value of property belonging to township.** At such meeting, such board 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. [1905, ch. 178, § 2.]

§ 3228. **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 to the assessed valuation of one to the other. All questions herein shall be determined by a majority vote of the board hereinbefore provided. [1905, ch. 178, § 3.]

§ 3229. **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. [1905, ch. 178, § 4.]

### CHAPTER 34.

#### PARTITION FENCES.

§ 3230. **Legal fences defined.** All fences four and a half feet high and in good repair, consisting of rails, timber, boards, or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things, which shall be equivalent thereto, in the judgment of the

fence viewers within whose jurisdiction the same may be, or any such fences as the parties interested may agree upon, shall be deemed legal and sufficient fences. [1903, ch. 100, § 1.]

§ 3231. **Wire fence legal.** In all cases where any law of this state requires to be erected or maintained any fence or fences for any purpose whatever, it shall be sufficient and a compliance with such law, if there shall be erected and maintained a barbed wire fence, consisting of two barbed wires and one smooth wire, with at least forty barbs to the rod, the wire to be firmly fastened to the posts not more than two rods apart, with one stay between the posts, the top wire to be not more than fifty-two inches high or less than forty-eight, and the bottom wire not less than sixteen inches from the ground; or four smooth wires with posts not more than two rods apart, and with good stays not to exceed eight feet apart, the top wire to be not more than fifty-six inches high nor less than forty-eight, and the bottom wire not less than sixteen inches nor more than twenty inches from the ground; provided, that five smooth wires shall be required to constitute a legal partition fence; provided, that any other fence authorized by law shall also be held a legal fence, [1903, ch. 100, § 2.]

§ 3232. **Partition fences, maintained how.** The respective occupants of land inclosed with fences shall keep up and maintain partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same. [1903, ch. 100, § 3.]

§ 3233. **Penalty for neglect.** In case any party neglects to repair or rebuild any partition fence which of right he ought to maintain, the aggrieved party may complain to the civil township supervisors or a majority of them, who, after due notice to each party, shall proceed to examine the same and if they determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they deem reasonable; and if such fence is not repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same. [1903, ch. 100, § 4.]

§ 3234. **Same. Value of repairs, etc., recoverable.** When any deficient fence, built or repaired by any complainant as provided in the preceding section, is adjudged sufficient by two or more of said supervisors, and the value of such repairing or building up, together with their fees, is ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the owner or occupant of the land where the fence was deficient, the sum so ascertained; and in case of neglect or refusal to pay the sum so due for one month after demand thereof is made, the complainant may recover the same, with interest at one per cent a month, in civil action. [1903, ch. 100, § 5.]

§ 3235. **Controversy, how settled.** When any controversy arises about the rights of respective occupants in partition fences, or their obligation to maintain same, either party may apply to a majority of the supervisors of the civil township where the lands lie, who, after due notice to each party, may, in writing, assign to each his share thereof and direct the time within which each party shall erect or repair his share of the fence, in the manner before provided; which assignment, being recorded in the registry of deeds, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence. [1903, ch. 100, § 6.]

§ 3236. **Party neglecting to maintain fence. How liable.** In case any party refuses to erect or maintain the part of any fence assigned to him as aforesaid, the same may be erected and maintained by the aggrieved party, in the manner before provided, and he shall be entitled to the value thereof, ascertained in the manner aforesaid, and be recovered in like manner. [1903, ch. 100, § 7.]

§ 3237. **Division of fences valid.** All divisions of fences made by supervisors according to the provisions of this chapter, or which shall be made by the owners of adjoining lands, in writing, witnessed by two witnesses, signed, sealed and acknowledged by the parties making the same, being recorded in the registry of deeds, shall be good and valid against the parties thereto, and their heirs and assigns. [1903, ch. 100, § 8.]

§ 3238. **Party voluntarily erecting whole fence may recover, when.** When any controversy that may arise between the occupants of adjoining lands, as to their respective rights in any partition fence, it shall appear to the supervisors that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for as much as shall be assigned to him to repair and maintain, the value of which shall be ascertained and recorded in the manner provided in this chapter. [1903, ch. 100, § 9.]

§ 3239. **Fences to be kept in repair throughout the year.** All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides otherwise mutually agree. [1903, ch. 100, § 10.]

§ 3240. **Proceedings when land is bounded by rivers.** When lands of different persons which are required to be fenced are bounded upon or divided by any river, brook, pond or creek, which of itself, in the judgment of the supervisors, is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is, if in such case the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side, in making a partition fence on the one side or the other, or if such person disagrees respecting the same, then two or more supervisors of the civil township in which such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond or creek. [1903, ch. 100, § 11.]

§ 3241. **Supervisors to give notice and render decision.** If such supervisors determine that such river, brook, pond or creek will not answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line they shall, after giving notice to the parties, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on one side and partly on the other side, and shall reduce such determination to writing and sign the same; and if either party refuses or neglects to make or maintain his part of the fence, according to the determination of said supervisors, the same may be made and maintained by the other party as before provided in this chapter, and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner. [1903, ch. 100, § 12.]

§ 3242. **Lands occupied in common. How fenced.** When any lands belonging to different persons in severalty have been occupied in common without a partition fence between them, and one of the occupants is desirous to occupy his part in severalty, and the occupant refuses or neglects, on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the lines when divided, the party desiring it may have the same divided and assigned by a majority of the supervisors of the same civil township, in the manner provided in this chapter. [1903, ch. 100, § 13.]

§ 3243. **Supervisors to assign time for making fence.** Upon the division and assignment as provided in the preceding section, the supervisors may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year; and, if either party shall not make his part of the fence within the time assigned, the other party may, after having completed his part of the fence, make the part of the other, and

recover therefor the ascertained expense thereof, together with the fees of the supervisors, in the manner provided in this chapter. [1903, ch. 100, § 14.]

§ 3244. **Partition fence, when removable.** When one party ceases to improve his land, or opens his enclosure, he shall not take away any part of the partition fence belonging to him, and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will, within two months after the same is ascertained, pay therefor such sum as a majority of the supervisors shall, in writing under their hands, determine to be the value of such partition fence belonging to such parties. [1903, ch. 100, § 15.]

§ 3245. **Rule in case of uninclosed lands afterwards fenced.** When any uninclosed grounds are afterwards inclosed, the owner or occupant thereof shall pay one-half of each partition fence, standing upon the line between his land and the inclosure of any other owner or occupant, and the value thereof shall be ascertained by a majority of the supervisors of the civil township, in writing under their hands, in case the parties do not agree; and if such owner or occupant neglects or refuses for sixty days after the value has been ascertained and demand made to pay for one-half of such partition fence, the proprietor of each fence may maintain a civil action for such value and the cost of ascertaining the same. [1903, ch. 100, § 16.]

§ 3246. **Supervisors, how selected in certain cases.** In all cases where the line upon which the partition fence is to be made, or to be divided is the boundary line between civil townships, or partly in one civil township and partly in another, a supervisor shall be taken from each civil township. [1903, ch. 100, § 17.]

§ 3247. **Rule when partition fence runs into water.** When a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share belonging to him, similar proceedings shall be had as in case of the other fences, and with like effect. [1903, ch. 100, § 18.]

§ 3248. **Effect of record of division.** In all cases where the line upon which a partition fence, to be built between unimproved lands, has been divided by the supervisors, or by agreement in writing between the owners of such lands, recorded in the office of the register of deeds of the county where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fence agreeably to such divisions. [1903, ch. 100, § 19.]

§ 3249. **Notice of determination not to improve lands.** If any person determines not to improve any of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and gives six months' notice of such determination to all the adjoining occupants of the lands, he shall not be required to keep up or support any part of such fence during the time his lands are open and unimproved, and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining inclosure will not pay therefor, as provided in section 3243. [1903, ch. 100, § 20.]

§ 3250. **Supervisor neglecting to perform duty. Penalty.** Any supervisor who shall, when requested, unreasonably neglect to view any fence, or to perform any other duty required of him in this chapter, shall forfeit the sum of five dollars, and shall be liable to the party injured for all damages consequent upon such neglect. [1903, ch. 100, § 21.]

§ 3251. **Fees of supervisors.** Each supervisor shall be paid by the person employing him, at the rate of one dollar per day for the time he is so employed; and if such person neglects to pay the same within thirty days after the service is performed, each supervisor having performed any such service may recover in civil action the amount of such fees. [1903, ch. 100, § 22.]

§ 3252. **Fence viewers.** In all counties not divided into civil townships, the county commissioners shall act as fence viewers, and be governed by the provisions of this chapter; provided, the provisions of this chapter shall apply to the respective occupants of the land inclosed with fences for the purpose of pasturage or grazing. [1903, ch. 100, § 23.]

§ 3253. **Civil action for failure to build. Recovery.** In case any person neglects or refuses to erect or maintain the part of any such fence assigned to him to erect or maintain, the same may be erected and maintained by the party aggrieved thereby in a good and substantial manner, and he may recover of the party so neglecting or refusing, in a civil action in any court having jurisdiction of the amount involved, the value of that part of said fence so erected or maintained which was assigned to the party so neglecting or refusing, together with all the costs and expenses of such action, and all the costs and expenses of the assignment provided in section 3230. [1903, ch. 100, § 24.]

## CHAPTER 35.

### MISCELLANEOUS PROVISIONS.

§ 3254. **Code not retroactive unless so declared.** No part of this code is retroactive unless expressly so declared. [R. C. 1895, § 2681.]

§ 3255. **Rule of construction of code.** The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice. [R. C. 1895, § 2582.]

§ 3256. **Same.** The provisions of this code, so far as they are substantially the same as existing statutes must be construed as continuations thereof, and not as new enactments. [R. C. 1895, § 2683.]

§ 3257. **Offices under acts repealed by code are continued, when.** All persons who, at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by one of the codes adopted at this session of the legislative assembly, and excepting offices filled by appointment. [R. C. 1895, § 2684.]

§ 3258. **Same.** When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in either of the codes, such office ceases at the time the codes take effect. [R. C. 1895, § 2685.]

§ 3259. **Pending actions or proceedings not affected by code.** No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as practicable. [R. C. 1895, § 2686.]

§ 3260. **Limitations, how reckoned.** When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation of time is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code. [R. C. 1895, § 2687.]

§ 3261. **This act, how referred to.** This act, whenever cited, enumerated, referred to or amended may be designated simply as the political code, adding when necessary, the number of the section. [R. C. 1895, § 2688.]