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Chapter 91.

General Provisions Relating to Towns.

Town Meetings. Officers.

Cross Reference.—See c. 96, § 25, re appointment of foresters.

Sec. 1. Towns, corporations.—The inhabitants of each town are a body corporate, capable of suing and being sued, and of appointing attorneys and agents. (R. S. c. 80, § 1.)

Towns and cities act in dual capacity.—In the absence of any special rights conferred or liabilities imposed by legislative charter, towns and cities act in a dual capacity, the one corporate, the other governmental. The Revised Statutes recognize this twofold character, by this section, making the inhabitants of each town a body corporate, and by c. 1, § 3, making towns a subdivision of the state. Libby v. Portland, 105 Me. 370, 74 A. 805.

Their whole powers are derived from legislative enactment.—The inhabitants of every town in this state are declared to be a body politic and corporate by this section, but these corporations derive none of their powers from, nor are any duties imposed upon them by, the common law. They have been denominated quasi corporations, and their whole capacities, powers, and duties are derived from legislative enactments. Hooper v. Emery, 14 Me. 375.

A town becomes an institution of the state, established for certain public purposes, and for effecting those purposes, it is invested with certain corporate powers, and is charged with corresponding duties—all either expressly or impliedly provided for in the statutes, and adapted to their peculiar nature. Within the proper scope of these purposes, powers and duties, its corporate acts bind the corporation; while all others, being foreign thereto, are without law and of no binding effect. Westbrook v. Deering, 63 Me. 231.

A municipal corporation may sue in its own name on a contract made to an agent for its benefit; and when that contract is not negotiable, it would seem according to the later cases, that the suit cannot be maintained in the name of an agent, who has no interest in the contract. Garland v. Reynolds, 20 Me. 45.

A statute empowering the treasurers of towns to maintain suits in their own names upon the securities therein mentioned, does not take away the right of the towns to sue, as before. Newcastle v. Bellard, 3 Me. 369.

The right of a municipality to bring suit upon the bonds of its tax collectors comes from the general power conferred on cities and towns to sue and be sued as bodies corporate. Biddeford v. Cleary, 132 Me. 116, 167 A. 694.

Style of suit.—See Biddeford v. Benoit, 128 Me. 240, 147 A. 151.

Town may employ agents or attorneys

to advance or protect rights.—Undoubtedly all corporations, and towns, as quasi corporations, may use all lawful means to advance or protect their rights before any legally constituted tribunal, and for that purpose may employ agents or attorneys, but are restricted to a reasonable number. Frankfort v. Winterport, 54 Me. 250. See Westbrook v. Deering, 63 Me. 231.

But may not employ lobbyist or attorney to oppose division before legislature.—A town, in its corporate capacity, cannot legally raise and expend money for the purpose of sending lobby members to oppose before the legislature a division of the town. Frankfort v. Winterport, 54 Me. 250.

A town may not raise money to pay even an attorney for appearing before a committee of the legislature to oppose a division of the town. Westbrook v. Deering, 63 Me. 231.

A town has authority to appoint an attorney or an agent for a limited time or for a special purpose without thereby establishing an office which must always be kept filled. An attorney does not by reason of his employment become a subordinate officer or an agent entitled to continue in office beyond the time when the services which he was employed to carry on have been concluded. Dale v. Bath, 135 Me. 504, 1 A. (2d) 181.

Capacity to own and manage property.—See Libby v. Portland, 105 Me. 370, 74 A. 805.

Liability for negligence.—See Libby v. Portland, 105 Me. 370, 74 A. 805.

Sec. 2. Meetings called by warrant.—Every town meeting, except in the cases mentioned in the 2 following sections, shall be called by a warrant signed by the selectmen. (R. S. c. 80, § 2.)

Statutes inapplicable to cities. — The usual and regular town meeting procedure provided by §§ 2 to 46 of this chapter has no application to cities. Norway Water District v. Norway Water Co., 139 Me. 311, 30 A. (2d) 601. See § 8.

Without a warrant, an election would not be a legal one. Portland v. Sivovlos, 136 Me. 4, 1 A. (2d) 179.

Time and place of meeting are in discretion of selectmen.—The fixing of the time and place of holding town meetings is left to the discretion of the selectmen. Allen v. Hackett, 123 Me. 106, 121 A. 906.

And a majority of the selectmen may lawfully change the place of holding the annual town meeting. Allen v. Hackett, 123 Me. 106, 121 A. 906.

Sec. 3. First meeting; when no officers, called on application to justice of the peace.—The 1st town meeting shall be called and notified in the manner prescribed in the act of incorporation; and if no mode is therein prescribed, by any justice of the peace in the same county. When a town, once organized, is destitute of officers, a meeting may be called on application to any such justice for his warrant for the purpose, made in writing by any 3 inhabitants thereof. When, by reason of death, removal or resignation, a majority of the selectmen do not remain in office, a majority of those remaining in office may call a town meeting. (R. S. c. 80, § 3.)

Sec. 4. Selectmen refusing, meeting how called; articles inserted in warrant.—If the selectmen unreasonably refuse to call a town meeting, any number of legal voters therein, not less than 10% of the voters registered in the biennial state election then last past but in no case less than 10 so registered voters, may apply in writing to a justice of the peace in the county, who may issue his warrant for calling such meeting. When any number of legal voters, not less than 10% of the voters registered in the biennial state election then last past but in no case less than 10 so registered voters, request the selectmen in writing to insert a particular article in a warrant, they shall insert it in the next warrant issued or shall call a special meeting for the consideration thereof. (R. S. c. 80, § 4.)

Purpose of section.—The whole theory of a New England town meeting has been that upon all necessary occasions, the inhabitants, upon short notice, could come together. Upon this idea is based the provision of this section that where the selectmen unreasonably refuse to call a town meeting, a justice of the peace may call one upon the application of any ten or more voters. Jones v. Sanford, 66 Me. 585.

This section requires certain conditions precedent to give the magistrate jurisdiction. Whether those conditions existed may be a matter of controversy. The

magistrate is not finally and in the last resort to determine the question of their existence. He is not to notify parties and hear witnesses. His action in the premises is ministerial, not judicial. He is not constituted a tribunal, whose decision is binding upon the parties. It obviously follows that the existence or non-existence of the conditions essential to give him jurisdiction may be controverted in subsequent proceedings. Southard v. Bradford, 53 Me. 389.

There must be unreasonable refusal by selectmen to call meeting.—A town meeting, called by a justice of the peace, without an unreasonable refusal by the selectmen to call a meeting, is illegal. And there cannot be an unreasonable refusal without a request. Allen v. Hackett, 123 Me. 106, 121 A. 906.

Section not "adequate remedy" to recover sum converted by tax collector.—See Burkett v. Blaisdell, 137 Me. 200, 17 A. (2d) 460.

Applied in Googins v. Gilpatrick, 131 Me. 23, 158 A. 699.

Sec. 5. Form of warrant.—In either case, the warrant described in section 2 shall specify the time and place at which the meeting shall be held; and in distinct articles shall state the business to be acted upon at such meeting; and no other business shall be there acted upon. (R. S. c. 80, § 5.)

The object of this section is to give previous intelligible notice of the subjects to be acted upon at the town meeting, and when this is substantially done, the requirement of the section is complied with. Austin v. York, 57 Me. 304.

An article is sufficient if it gives notice with reasonable certainty of the subject matter to be acted upon. Belfast & Moosehead Lake R. R. v. Brooks, 60 Me. 568.

And technical precision is not required.—It is undoubtedly true that the warrant for a town-meeting must specify, in distinct articles, the business to be acted upon; and that no other business can properly be acted upon at such meeting; but technical precision in the wording of the articles is not required. Belfast & Moosehead Lake R. R. v. Brooks, 60 Me. 586.

Section leaves large discretion in voters as to action on subject named in warrant.—This section leaves a large discretion to be exercised by the voters, when assembled, as to the disposition they may make of the matter submitted for their action. The section requires that the articles in the warrant shall distinctly apprise the voters of the subject to be considered, without prescribing any rule for their action upon it. It is in general competent for the town to adopt or reject the proposition submitted, wholly or in part, or to adopt it with specific limitations or conditions. Bucksport & Bangor R. R. v. Buck, 68 Me. 81.

And they may pass upon matters incidental to or connected with it.—Where the article in the warrant is general in its description of the subject to be acted upon, giving the heads of the topics to be considered by the town, without calling for its action, yea or nay, upon a single distinct proposition, it is undoubtedly competent for the town to take into consideration and pass upon matters incidental to, or connected with, the main subject stated in the warrant. Austin v. York, 57 Me. 304.

Vote upon matter not mentioned in warrant.—When an offer to purchase bank stock from the town was made in town meeting, and was accepted by vote of the town, but there was no article in the warrant calling the meeting by which the town was authorized to make such a contract, the contract was void. Cornish v. Pease, 19 Me. 184.

Sufficiency of warrant to authorize raising of money for particular purpose.—It has been held sufficient to authorize a town to raise money for a particular purpose, when the subject to be acted upon was distinctly stated in the warrant, and was one which would be likely to require a grant of money. Austin v. York, 57 Me. 304.

An article in the warrant, to see if the town will raise $200 for a particular purpose, in general gives no authority to raise a larger, though it might a smaller, sum. Austin v. York, 57 Me. 304.

Meeting must be originally held at time and place appointed.—There cannot be a legal town meeting, unless it be originally held at the time and in the place appointed in the warrant for calling the meeting. Chamberlain v. Dover, 13 Me. 466.

Though once fairly organized it possesses power of adjournment.—When a meeting is fairly organized, it doubtless possesses the incidental power of adjournment to a future time. We do not say that they may not have the right to adjourn to another place. But there should be limitations to the exercise of such discretion. It could not be tolerated that a few persons, by concert or otherwise, should be permitted to attend at the precise time appointed, and forth-

with adjourn to an extreme part of the town. Chamberlain v. Dover, 13 Me. 466.

Omission to state place of meeting in warrant.—If the place designated is the only place of that name in the town, the omission to state that the place is in the town is not fatal. Allen v. Hackett, 123 Me. 106, 121 A. 906.

Applied in Davenport v. Hallowell, 10 Me. 317; Deane v. Washburn, 17 Me. 100; Bessey v. Unity, 65 Me. 342; Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Sec. 6. Warrant, how directed. — The warrant described in section 2 may be directed to any constable of the town or any person by name, directing him to warn and notify all persons qualified to vote at such meeting, to assemble at the time and place appointed. (R. S. c. 80, § 6.)

Posting of warrant by constable de facto is valid.—The acts of a constable de facto in posting an attested copy of the warrant are as valid so far as the public is concerned as though he were an officer de jure. Allen v. Hackett, 123 Me. 106, 121 A. 906.

Applied in Bessey v. Unity, 65 Me. 342; Portland v. Sivovlos, 136 Me. 4, 1 A. (2d) 179.

Sec. 7. Notice; return.—The meeting provided for in section 2 shall be notified by the person to whom the warrant is directed by posting an attested copy thereof in some public and conspicuous place in said town 7 days before the meeting, unless the town has appointed by vote in legal meeting a different mode, which any town may do. In either case, the person who notifies the meeting shall make return on the warrant, stating the manner of notice and the time when it was given. (R. S. c. 80, § 7.)

Cross reference.—See § 10, re amending return.

History of section.—See Jones v. Sanford, 66 Me. 585.

Noncompliance renders meeting illegal.—It has been repeatedly held that a failure to comply with this section, in any particular, renders the doings of the meeting void. Clark v. Wardwell, 55 Me. 61.

A warrant for a town meeting, duly issued by the competent authorities, and a return showing that the inhabitants have been notified in conformity with the provisions of law, by one duly authorized, are essential preliminaries to a legal town meeting. Bearce v. Fossett, 34 Me. 575.

At a meeting insufficiently called, no officer can be legally chosen, and a person elected at such a meeting, though sworn into his office, can draw, from such an election, no justification for acts done under color of the office. Bearce v. Fossett, 34 Me. 575.

Unless town has prescribed different mode of giving notice.—See Jones v. Sanford, 66 Me. 585.

"Mode" includes kind of notice and time of notifying.—"The mode" of calling a meeting, as the term is used in this section, authorizing a town to appoint a different "mode" of notifying a meeting, embraces both the kind of the notice and the time it should be given. Jones v. Sanford, 66 Me. 585.

Mode prescribed by the town must be reasonable.—The legislature, by this statutory provision, conferred on the town merely a right to pass an ordinance or by-law. And it is well settled, that ordinances and by-laws of municipal corporations, to be valid, must be reasonable, and not oppressive in their character. Any unreasonable ordinance or by-law is void. Jones v. Sanford, 66 Me. 585.

And vote requiring three months' notice of meeting is void.—A vote requiring three months' notice for an ordinary town meeting, was unreasonable; it was an abuse, rather than a fair use, of the power entrusted to the town, and was thus unauthorized and void. Jones v. Sanford, 66 Me. 585.

The return is essential to the validity of the meeting and the only proper evidence of its legality. Tozier v. Woodworth, 136 Me. 364, 10 A. (2d) 454. See Chapman v. Limerick, 56 Me. 390; Portland v. Sivovlos, 136 Me. 4, 1 A. (2d) 179.

What return must show.—The person warning a town meeting, when the town has prescribed no mode of calling meetings therein, must state in his return on his warrant, that he has warned and notified the inhabitants of the town, qualified by law to vote at such meeting, to assemble at the time and place and for the purposes therein mentioned, by posting up an attested copy of the warrant at some particular place, and that the same was a public and conspicuous place in said town, and it must appear in the return, that the same had been done at least seven days before the meeting; or the meeting will be illegal. State v. Williams, 25 Me. 561. See Fossett

v. Bearce, 29 Me. 523; Blaisdell v. York, 110 Me. 500, 87 A. 361.

The person who notifies the meeting must state what he did and when he did it. Christ's Church v. Woodward, 26 Me. 172.

The omission of the return to certify that an attested copy of the warrant was posted up is a fatal defect. Clar v. Wardwell, 55 Me. 61. See Fossett v. Bearce, 29 Me. 523.

This section does not make the posting of the notice a personal duty, and it is sufficient, if the return of the officer shows the notices to have been seasonably and properly posted, although not by his own hand. He could not have truthfully made return that he caused the notices to be posted, unless they had been posted under his own eye. Parker v. Titcomb, 82 Me. 180, 19 A. 162.

But it requires a personal return to be made on the warrant, stating the manner of notice and the time when it was given. This duty is a personal duty, and cannot be delegated to or performed by another and, for the truthfulness of a return, so made upon the warrant, the officer or person making it is held to strict account. Parker v. Titcomb, 82 Me. 180, 19 A. 162.

And return must be signed by officer's own hand.—The return must be made by "the person who notifies the meeting," under his own hand, so that he may be held for any neglect or false return. It would be neither safe nor legal to admit the doctrine, that the signature may be made by a third party, on verbal directions by the officer. Chapman v. Limerick, 56 Me. 390.

A return is indispensable. Without a return, under the official signature of a constable—his sign manual—the only competent evidence upon the question of calling the meeting would be lacking. It is the signature of the officer which authenticates a return and endows it with controlling character. Portland v. Sivovlos, 136 Me. 4, 1 A. (2d) 179.

Return need not be made to town clerk.—There is no statute requiring a constable to make a return to the town clerk. It is a custom generally observed so to do, but a failure to conform to that custom is not vital, and could not be harmful in the instant case, as the warrant with the officer's return thereon was at the meeting, and appears of record, and no public interest was defeated by its retention by the constable. Allen v. Hackett, 123 Me. 106, 121 A. 906.

There is no legal requirement that an attested copy of the warrant should be posted at the town house. The statute requirement is met when the attested copy of the warrant is posted in a public and conspicuous place in the town. Allen v. Hackett, 123 Me. 106, 121 A. 906.

But place of posting must be both "public" and "conspicuous."—Generally, the notice for calling a town meeting is to be given by posting a copy of the selectmen's warrant "in some public and conspicuous place" in the town. An officer's return showing that he posted the notice in a "public" place, without saying in a "public and conspicuous" place, is insufficient. Bearce v. Fossett, 34 Me. 575.

And return must so state.—A constable's return upon warrants for ward meetings is fatally defective, and cannot be made the basis of a legal town or city meeting, where it fails to state that they were posted in public and conspicuous places. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376. See Allen v. Archer, 49 Me. 346; Brown v. Witham, 51 Me. 29; Hamilton v. Phipsburg, 55 Me. 193.

Purpose of requirement that place be "conspicuous."—By the use of the word "conspicuous," it was intended to prevent the possibility of calling a town meeting in a secret manner by posting a notice in a public place, and yet in such a position that but few, if any, persons would be likely to notice it. Christ's Church v. Woodward, 26 Me. 172.

This section does not require that the return shall recite the words "public and conspicuous"; it does require that the copies shall in fact be posted in public and conspicuous places. This cannot be proved by evidence aliunde. The return of the officer is the only competent evidence upon the question. But if that return recites the places of posting, and those places are of such a character that as a matter of common knowledge they are public and conspicuous, that is sufficient. Blaisdell v. York, 110 Me. 500, 87 A. 361.

But precise places of posting should be specified.—It has often been held that a return which recites that the copies have been posted in a "public" place, or in a "public and conspicuous place," without specifying the places themselves, was defective. The characterization by the officer is not conclusive and that it is for the court to determine whether the places selected are of the required kind, and it can determine that fact only when the precise places are specified. Blaisdell v. York, 110 Me. 500, 87 A. 361.

Return is admissible to show illegality of election.—Where one, justifying as a town officer, has read the record of his election at a meeting of the town, it is competent

for the other party to show the illegality of the election, by reading from the record a copy of the officer's return upon the selectmen's warrant ordering the meeting to be called. Bearce v. Fossett, 34 Me. 575.

And defect therein cannot be supplied by parol evidence.—The return of the constable or collector on the back of the warrant for calling a town or parish meeting, is the only proper evidence that the meeting was legally warned. And such return must show the manner in which the meeting was warned, or it will be bad. Nor can a defect in this particular be supplied by parol evidence. Tuttle v. Cary, 7 Me. 426.

Applied in Kellar v. Savage, 17 Me. 444; Larry v. Lunt, 37 Me. 69; Bessey v. Unity, 65 Me. 342.

Stated in Chamberlain v. Dover, 13 Me. 466.

Sec. 8. Sections 4, 5, 6 and 7 applicable to cities and towns.—Sections 4, 5, 6 and 7 apply to cities and the municipal officers of cities the same as to towns and the selectmen of towns, and when any meeting thus provided for in cities, and in towns with more than 1 voting precinct, it shall be by warrants posted in each ward in cities and in each voting precinct in towns. (R. S. c. 80, § 8.)

Sec. 9. Village corporation meetings. — The meetings of any village corporation may be notified by the person to whom the warrant is directed, by posting attested copies in 2 or more public and conspicuous places within the corporation limits 7 days before the meeting, instead of in the manner provided by the act creating such corporation; provided that such corporation shall first, at a legal meeting, designate at what and how many places such notices shall be posted. (R. S. c. 80, § 9.)

Corporation not required to use method provided in section.—Warrants for calling corporation meetings may be signed and directed either in accordance with the charter requirements or as provided by this section, if the corporation has designated at what and how many places the notices shall be posted. The corporation is not required to use the statutory method alone. Paul v. Huse, 112 Me. 449, 92 A. 520.

Sec. 10. Errors in records, tax lists and returns.—When omissions or errors exist in the records or tax lists of a town or school district, or in returns of warrants for meetings thereof, they shall be amended on oath according to the fact, while in or after he ceases to be in office, by the officer whose duty it was to make them correctly. If the original warrant is lost or destroyed, the return or an amendment of it may be made upon a copy thereof. (R. S. c. 80, § 10.)

Cross references.—See c. 92, § 30, re supplementary assessments; c. 92, § 116, re assessments not void if sums raised for illegal object included.

A constable may amend his return on a warrant for calling a town meeting, by stating the time and manner of calling it. Kellar v. Savage, 17 Me. 444.

And town clerk may amend his records. —It was the duty of the town clerk to record the doings and proceedings of the town. And if through inadvertency or misapprehension, the record has been defectively made, it is competent for him while in office to complete it, by amending it according to the truth. He acts at his peril, and will be liable if he falsifies or mistakes what it is his duty to record. Chamberlain v. Dover, 13 Me. 466.

Assessors of taxes are authorized to correct any omissions or errors in their assessment by amendment, while in office or after they cease to hold office, on oath, according to the fact, and such amendment or correction does not constitute an abatement within the meaning of the statute relating to abatements. Belfast v. Hayford Block Co., 120 Me. 517, 115 A. 282.

"Assessors" may be substituted for "selectmen" under signatures. — Under this section, the records of an assessment may be amended in accordance with the fact, when made under oath, and the selectmen who also acted as assessors in any year may amend their records of tax assessment by substituting the word "assessors" for "selectmen" after their signatures. Athens v. Whittier, 122 Me. 86, 118 A. 897.

But before one proceeds to amend errors or supply omissions in a tax list, there must be a tax list in existence, such as the law requires, "under the hands of assessors." Norridgewock v. Walker, 71 Me. 181; Topsham v. Purinton, 94 Me. 354, 47 A. 919; Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

It is true that the record is not required to be under the hands of the assessors; a copy will answer; but the original must appear to have been under the hands of the

assessors. Topsham v. Purinton, 94 Me. 354, 47 A. 919.

And a failure of the majority of the assessors to sign the tax list is fatal neglect to comply with the express provision of the statute, and such a tax list cannot be cured by amendment under this section. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665. See note to c. 92, § 48.

Amendment of returns by addition of signature of officer. — See Chapman v. Limerick, 56 Me. 390.

Amendment must be under oath.—A certificate of a former clerk which was not made under the sanction of an oath cannot be deemed an amendment of the record under the provisions of this section. Baker v. Webber, 102 Me. 414, 67 A. 144. See Blaisdell v. York, 110 Me. 500, 87 A. 361; Tozier v. Woodworth, 136 Me. 364, 10 A. (2d) 454.

Second return written on warrant held original return and not amendment.—See Tozier v. Woodworth, 136 Me. 364, 10 A. (2d) 454.

Amendment of return of officer warning meeting under earlier statute.—See Fossett v. Bearce, 29 Me. 523.

Applied in Jay v. Carthage, 48 Me. 353; Allen v. Archer, 49 Me. 346; Whiting v. Ellsworth, 85 Me. 301, 27 A. 177; Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

Cited in Farnsworth Co. v. Rand, 65 Me. 19; Bucksport v. Buck, 89 Me. 320, 36 A. 456.

Sec. 11. Who are legal voters.—Every person qualified to vote for governor, senators and representatives in the town in which he resides may vote in the election of all town officers and in all the affairs thereof. (R. S. c. 80, § 11.)

Sec. 12. Annual meetings; treasurers and collectors not to be selectmen or assessors but may be same person. — Annual town meetings shall be held in March and the voters shall then choose by a majority vote a clerk, 3, 5 or 7 inhabitants of the town to be selectmen and overseers of the poor, when other overseers are not chosen, 3 or more assessors, 2 or more fence-viewers, a treasurer, surveyors of lumber, sealers of leather, measurers of wood and bark, constables, collectors of taxes and other usual town officers, all of whom shall be sworn. Before entering upon the discharge of their official duties, selectmen, assessors and overseers of the poor elected in any town, and assessors elected in any plantation, shall organize by electing by ballot one of their members to be chairman. In the event that no one of the members receives a majority of the votes cast for chairman, the town or plantation clerk shall determine by lot the member who shall be chairman. Provided, however, that towns and plantations may, in electing any such officials, designate them as first, second and so on to the number to be elected, and in such towns and plantations the person or persons elected as 1st selectman, 1st assessor and 1st overseer of the poor shall be chairman of said respective boards.

In towns of over 4,000 inhabitants, the candidates receiving the greatest number of votes for any of the above-mentioned offices shall be deemed elected to such offices.

Treasurers and collectors of towns shall not be selectmen or assessors until they have completed their duties as treasurers and collectors and had a final settlement with the town. The treasurer and collector of taxes of cities and towns may be one and the same person. (R. S. c. 80, § 12.)

Cross references.—See § 13, re compensation of selectmen, assessors, and overseers of the poor; § 20, re election of road commissioners; § 41, re vacancies in town offices; c. 3, §§ 46-49, and c. 5, §§ 16, 18, 20, re duties of selectmen in elections; c. 41, § 45, re election of superintending school committee; c. 92, §§ 54, 55, 139, re procedure when town fails to choose officers; c. 94, § 11, re election of overseers of the poor; c. 96, § 2, re election of park commissioners; c. 96, § 15, re tree wardens; c. 96, §§ 152-198, re duties of fence-viewers; c. 97, § 1, re election of fire wards.

Provision that meeting be held in March is directory only.—The provisions of this section that annual town meetings shall be held in March and that the assessors shall be then chosen are directory, not mandatory. The failure to have a legal meeting in March is not a fatal error on the part of the town. If a later meeting is regularly called and there is no design or fraud in holding the same, the later meeting is a

legal meeting. The action taken thereat is de jure and assessors then chosen are de jure, not de facto officers of the town. Perry v. Lincolnville, 149 Me. 173, 99 A. (2d) 294.

"Annual meeting" as used in statute means meeting held in March.—See Webber v. Stover, 62 Me. 512.

Section does not fix terms of officers.—While this section directs that the "other usual town officers" shall be chosen at the annual town meeting in March, it does not say that the term of office shall be one year from that meeting, nor one year from date of election, or appointment. Bunker v. Gouldsboro, 81 Me. 188, 16 A. 543.

The choice of the officers must be by giving to each respectively a majority of all the votes cast. Crowell v. Whittier, 39 Me. 530.

Vote to give office of constable to lowest bidder is ineffectual.—It was necessary to constitute an election under this section, that the person claiming to be chosen should at the time he was voted for be presented distinctly to the mind of each elector who voted, so that he should know for whom he voted.

The general vote of the town, that whoever should make the lowest bid for collecting the taxes should be the constable, cannot be regarded as the choice of such person for that office, by a majority vote. Crowell v. Whittier, 39 Me. 530.

A town may properly elect a board of four assessors if it desires. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Warrant calling meeting "to choose three assessors."—A warrant for the town meeting which read, "To choose three assessors," did not deprive the voters of their full legal rights. The selectmen who issued the warrant could not thus circumscribe the action of the voters; the latter were free to elect as many assessors as they saw fit, and by electing three they indicated the number of their choice. The assessors were legally elected. Brownville v. United States Pegwood & Shank Co., 123 Me. 379, 123 A. 170.

Number of selectmen. — While a town may legally elect as many as seven selectmen, the well known practice is to elect only three. Opinion of the Justices, 70 Me. 560.

Number of overseers of poor.—This section and c. 94, § 11, which provides that towns may at their annual meeting choose not exceeding seven legal voters therein to be overseers of the poor, are not to be construed together so as to hold that the requirement in this section to choose three, five, or seven is at the same time to be a special designation of the number of overseers of the poor to be chosen under chapter 94. The limitation as to numbers in this section refers primarily to selectmen who shall, however, be ex officio overseers of the poor in case the privilege of choosing any number of separate overseers has not been exercised. Towns have discretionary power to choose any number of overseers not exceeding seven; but if they deem the election of separate overseers unnecessary the duties pertaining to those officers are to be discharged by the selectmen, of whom there must be three, five, or seven. Lyman v. Kennebunkport, 83 Me. 219, 22 A. 102.

Selectmen acting as overseers. — When it does not appear that a town has elected any overseers of the poor, the presumption is they had not, and the selectmen act in that capacity. Jay v. Carthage, 48 Me. 353.

Selectmen are not authorized to act as fence-viewers in any event; this office must either be filled by election at the annual town meeting or by appointment by the selectmen as provided in § 15. Bradford v. Hawkins, 96 Me. 484, 52 A. 1019.

Assessment by board including tax collector who has not made settlement is void.—By the provisions of this section a collector of taxes who has not had a final settlement with the town is ineligible to the office of selectmen or assessor of taxes; and although he may have been formally elected as assessor, and may have been regularly sworn, and may have acted, he is merely an assessor de facto. A tax assessed by a de facto board of assessors, or by a board, one of whose members is a de facto assessor, is void and uncollectible. Springfield v. Butterfield, 98 Me. 155, 56 A. 581. See Otisfield v. Scribner, 129 Me. 311, 151 A. 670.

And act attempting to validate such assessment is unconstitutional. — An act of the legislature attempting to validate the assessment and commitment of taxes by a board of assessors one of whose members was a former tax collector who had not settled with the town transcended the constitutional power of the legislature and was invalid. Otisfield v. Scribner, 129 Me. 311, 151 A. 670.

Oath of assessors. — See Bennett v. Treat, 41 Me. 226; Patterson v. Creighton, 42 Me. 367.

Office of field-driver.—See Varney v. Bowker, 63 Me. 154.

Applied in Kellar v. Savage, 17 Me. 444.

Cited in State v. Walton, 62 Me. 106; Carlton v. Newman, 77 Me. 408; Wellington v. Corinna, 104 Me. 252, 71 A. 889; Kelley v. Brunswick School District, 134 Me. 414, 187 A. 703; Fort Fairfield v. Millinocket, 136 Me. 426, 12 A. (2d) 173; Cushing v. Babcock, 141 Me. 14, 38 A. (2d) 137.

Sec. 13. Compensation of town officers.—Any town may, by majority vote at its annual town meeting, fix the compensation of its selectmen, assessors and overseers of the poor, allowing such sums as may be commensurate with the duties of the offices. In the event a town fails to fix the compensation of its selectmen, assessors or overseers of the poor at its annual meeting, then such officers shall be paid on a per diem basis, and in such an event such officers shall be paid the sum of $5 for every day actually and necessarily employed in the service of the town. (R. S. c. 80, § 13.)

Cross references.—See § 41, re vacancies in town offices; c. 92, § 53, re selectmen to act as assessors.

Payment of weekly salary to selectman performing full-time duty.—The payment, under a vote of the town, of a weekly salary to a selectman who performs full-time duty, is a payment for a purpose authorized by law. Milliken v. Gilpatrick, 130 Me. 498, 157 A. 714.

One who has accepted a town office to which neither the legislature nor the town has annexed any compensation, cannot maintain an action to recover compensation for his official services. White v. Levant, 78 Me. 568, 7 A. 539.

Sec. 14. Elections for 3 years.—Any town electing 3 selectmen, 3 overseers of the poor and 3 assessors may, if the electors present vote to do so, elect 1 member of each board to hold office for 1 year, one for 2 years and one for 3 years, and at each annual meeting thereafter 1 member of each of the said boards shall be elected for a term of 3 years; towns electing more than 3 selectmen, 3 overseers of the poor and 3 assessors may by vote determine how many of each of said boards shall be elected annually and the tenure of their office. (R. S. c. 80, § 14.)

See § 86, sub-§ XII, re election of board of assessors and selectmen.

Sec. 15. Officers chosen by ballot.—Moderator, town clerk, selectmen, assessors, overseers of the poor, treasurer and school committee shall be elected by ballot; and the other said officers may be elected by ballot or, if not so elected, they shall be appointed by the selectmen. (R. S. c. 80, § 15. 1947, c. 308.)

This section makes it mandatory upon the selectmen to appoint certain officers, including fence-viewers, if they were not elected by ballot at the annual town meeting. Bradford v. Hawkins, 96 Me. 484, 52 A. 1019.

Stated in Crowell v. Whittier, 39 Me. 530.

Cited in Wellington v. Corinna, 104 Me. 252, 71 A. 889; Cushing v. Babcock, 141 Me. 14, 38 A. (2d) 137.

Sec. 16. Town manager form of government.—Any town at the annual town meeting or at a special town meeting, provided an appropriate article has been inserted in the warrant for such meeting, may vote to employ a town manager or to form a union with one or more other towns in the employment of a town manager, and may delegate to the selectmen the right to fix the compensation of such town manager. In every case where a union is formed for the purpose of employing a town manager, the compensation for said town manager shall be paid by the several towns in said union in such proportions as may be decided by the selectmen of such towns, and each of said towns is authorized to raise by taxation the necessary money therefor. A vote of a town to employ a town manager for itself and not in union with one or more other towns shall persist in full force until revoked at any legal special town meeting held at least 60 days before any annual town meeting. (R. S. c. 80, § 16. 1945, c. 44, § 1.)

Sec. 17. Unions organized.—The manager elected by any such town or union of towns shall be manager of the municipal and prudential affairs of said

town or of each of the several towns comprising such union, and as such manager shall perform, for each of said towns, the duties hereinafter specified. Any town entering into such a union may withdraw therefrom by vote at any legal special town meeting held at least 90 days before any annual town meeting. Said withdrawal shall not become effective until 60 days after written notice of such intention to withdraw shall have been given to the selectmen of each of the other towns comprising such union. (R. S. c. 80, § 17. 1945, c. 44, § 2.)

Sec. 18. Powers and duties of town manager.—Town managers shall be chosen on the basis of their executive and administrative qualifications by the selectmen of a town voting to employ a town manager, or by a joint board composed of the selectmen of the several towns comprising a union for the purposes of sections 16 to 19, inclusive, in which joint board the selectmen of each town shall cast collectively a single vote. A town manager shall be the administrative head of the government of the town, or of each of the several towns comprising a town union, and shall be responsible to the selectmen of each town for the administration of all departments of each said town over which the selectmen of towns have control, and his powers and duties, where not otherwise provided, shall be generally as follows:

I. To see that the laws and ordinances are enforced;

II. To act as purchasing agent for all town departments, except school departments, and to submit to bids any purchases involving more than $100 if the selectmen or the joint board shall so order;

III. To attend the meetings of the selectmen, except when his removal is being considered, and recommend for adoption such measures as he may deem expedient;

IV. To keep the selectmen and the citizens of said town or towns fully advised as to the financial conditions of said town or towns;

V. To perform in each town or towns such other duties as may be prescribed for him by the selectmen, including the duties or any part of the duties of the town treasurer, the road commissioner or commissioners, the tax collector and the overseers of the poor; any other provisions of statute to the contrary notwithstanding. (R. S. c. 80, § 18.)

Sec. 19. Removal.—Any town manager elected under the provisions of sections 16 to 19, inclusive, may be removed from his said office for cause by the selectmen of any town by which he is employed or by the joint board aforesaid in case his employment is by a town union. (R. S. c. 80, § 19.)

Sec. 20. Road commissioner; removal; exception.—Each town shall hereafter, at its annual meeting, elect by majority vote a road commissioner, who shall hold his office for the term of 1 year from the date of his election; except that any town may, at its option, by vote at such meeting pursuant to an appropriate article in the warrant calling the same, instruct the selectmen to appoint such road commissioner, in which case the selectmen shall appoint as heretofore; and except further, that any town may, at its option, by vote at such meeting pursuant to an appropriate article in the warrant calling the same, fix the term of office of said road commissioner at a longer period, not to exceed 3 years. Any town may, at its option, elect not more than 3 road commissioners, or require their appointment as aforesaid, whose powers and duties shall be the same as prescribed for a single commissioner. Any road commissioner appointed by the selectmen may be removed from office by the selectmen for inefficiency or other cause. Upon written complaint made against any road commissioner by 10 taxable inhabitants of the town, the county commissioners, after notice to such road commissioner, shall hold a public hearing thereon within 10 days from the filing of the complaint, and if the charges are sustained remove said road commis-

sioner forthwith. Selectmen may act as road commissioners. This section shall not apply to cities and towns which choose road commissioners under special acts of the legislature. (R. S. c. 80, § 20.)

The commissioner is responsible to the board of each year for the acts of that year alone. Thus the board of selectmen in office in 1917 could not remove the road commissioner for alleged acts of misfeasance or nonfeasance in 1916. State v. McLellan, 117 Me. 73, 102 A. 778.

Proceedings for removal must be according to the "law of the land."—The proceedings for removal are not regulated by statute, and therefore must be according to the common law which is the "law of the land." They necessitate the specification of charges, reasonable notice, impartial hearing, separate adjudication on each charge, and adjudication on the order of removal. In the case at bar every one of these elements was disregarded; thus the attempted removal was invalid. State v. McLellan, 117 Me. 73, 102 A. 778.

And selectmen sit as a judicial tribunal.—Upon removal of a road commissioner under this section, the tribunal which hears the cause is judicial in its nature. The selectmen do not sit as municipal officers but for the time being, as judges. They should therefore hear the evidence and pass upon the facts, deliberately, without bias or prejudice and with no preconceived opinion or judgment. State v. McLellan, 117 Me. 73, 102 A. 778.

Sec. 21. Vacancies in office of road commissioner. — If a person elected or appointed as road commissioner fails to qualify within 7 days after appointment, the office shall be deemed vacant and shall be filled by the selectmen by appointment; and in the event of a vacancy caused by death or otherwise, the selectmen shall appoint some competent person to fill out the unexpired term, who shall qualify and perform the duties of said office. (R. S. c. 80, § 21.)

Quoted in Grindle v. Bunker, 115 Me. 108, 98 A. 69; Googins v. Gilpatrick, 131 Me. 23, 158 A. 699.

Sec. 22. Vacancies in offices.—If, after the choice of any officer not required to be chosen by ballot, there is a vacancy in any such office, the municipal officers may fill such vacancies by the written appointment of proper persons, who shall be summoned by the constable to appear and take the oath of office provided in section 37, subject to the penalties provided in section 38. Such appointment and oath shall be recorded as in case of a choice by the town. No person shall be so appointed without his consent. (R. S. c. 80, § 22.)

Refusal to find sureties as creating vacancy.—See Morrell v. Sylvester, 1 Me. 248.

Applied in Getchell v. Wells, 55 Me. 433.

Cited in Bradford v. Hawkins, 96 Me. 484, 52 A. 1019.

Sec. 23. Presiding officer in meeting. — During the election of moderator at a town meeting, the clerk shall preside; when he is absent from any such meeting, either of the selectmen or of the assessors, and if neither of those is present, any constable may do all the duties of clerk in receiving and counting the votes for moderator. The moderator may call on the voters to give in their ballots for a clerk pro tempore, who shall be sworn by the moderator or by a justice of the peace. (R. S. c. 80, § 23.)

When there is no clerk, town may choose clerk pro tem.—When there is no town clerk, as well as when the clerk of the town cannot be present at the meeting, towns have authority under this section to choose a clerk pro tempore, to record the proceedings of that meeting. Kellar v. Savage, 17 Me. 444.

Sec. 24. Clerk sworn.—The town clerk, before entering on the duties of his office, shall be sworn before the moderator or a justice of the peace, truly to record all votes passed in that and other town meetings during the ensuing year and until another clerk is chosen and sworn in his stead, and faithfully to discharge all the other duties of his office. (R. S. c. 80, § 24.)

Special act requiring that all officers be sworn by clerk.—Though a special act says that all officers of a municipality must be sworn by the town clerk, there

must be excluded from such category the town clerk himself who is expected to qualify in the usual manner as provided by this section. Ashland v. Wright, 139 Me. 283, 29 A. (2d) 747.

Record held sufficient evidence of compliance with section.—See Greene v. Lunt, 58 Me. 518.

Cited in Farris v. Libby, 141 Me. 362, 44 A. (2d) 216.

Sec. 25. Discharges of soldiers and sailors.—The discharge or release papers of soldiers and sailors, who served in the armed forces of the United States in time of war or insurrection and have been honorably discharged therefrom or released from active duty therein, may be recorded with the clerk of the town of the holder's residence in books kept for the purpose, upon payment of a fee of 25c for each discharge or release so recorded. The clerk shall prepare and keep an index of the papers so recorded, and copies of such papers, if attested by him, shall be admitted as sufficient evidence thereof whenever they are otherwise competent. (1945, c. 28.)

Sec. 26. Deputy town clerks; duties; tenure.—The clerk of any town may appoint a citizen thereof his deputy, who may in the clerk's absence perform all the duties of said office with the same effect as if done by the clerk; the appointment may be made in writing as follows:

"I hereby appoint .... to perform the duties of town clerk as set forth in section 26, of chapter 91, of the revised statutes, in the town of ...., during my absence from the clerk's office.

...., clerk of the town of ....."

In case of the clerk's absence, death, resignation or removal from office without having made such appointment, the municipal officers may appoint a citizen to fill said office, who shall perform all the duties of the clerk during his absence, or in case of his death, resignation or removal from office, until a clerk is elected. The appointment may be made in writing, as follows:

"I (or we,) hereby appoint .... to perform the duties of town clerk, in the town of ...., during the clerk's absence from his office, or until a clerk is elected. ...., clerk, or municipal officers, of the town of ....."

Said deputy, or person appointed by the municipal officers, shall be sworn faithfully to perform the duties of his office before he enters thereon.

The clerk may also appoint a citizen thereof who in his absence may so far act as deputy clerk as to receive and record chattel mortgages and other papers, and make certified copies of the records in the clerk's office. (R. S. c. 80, § 25.)

Cross references.—See c. 178, § 2, re mortgages of personal property; c. 168, § 38, re pews and rights in houses of worship.

Election returns of a deputy clerk are to have the same force and effect as if signed by the clerk. Opinion of the Justices, 70 Me. 560.

Sec. 27. Clerk to give bond.—Any town may by vote require that the clerk shall, within 30 days after his election, give a bond to the inhabitants of his town in such sum as the municipal officers shall determine, conditioned for the faithful performance of the duties of his office. Such bond shall be furnished in the same form and manner as the treasurer's bond required by section 30, and the provisions of that section regarding failure to furnish the bond on request shall apply to clerks. When a corporate surety bond for the clerk is furnished, the cost shall be paid by the town. The clerk shall be liable under his bond for the acts of his deputies. (R. S. c. 80, § 26.)

Sec. 28. Fees of town clerks.—Clerks of cities and towns shall receive:

For recording the assignment or release of a mortgage or other document given as security for the payment of money or the performance of an obligation, or certificate of discharge of an attachment, 50c; provided, however, that any assignment of an instrument which is attached thereto or made a part thereof and executed before record and received with such instrument shall not be subject to this provision.

For entering in the margin of a record a discharge of the mortgage or other document given as security for the payment of money or the performance of an obligation, or attachment, to be signed by the person discharging it, 25c.

For entering and recording intentions of marriage, giving certificate of same, $2.

For recording certificates of partners, withdrawal of a partner and of persons engaging in trade under a name, style or designation other than his own, 50c.

For a certificate of birth, marriage or death, 50c.

For receiving, recording and returning the facts required by sections 378 to 403, inclusive, of chapter 25 and sections 83 to 86, inclusive, of chapter 1 of the public laws of 1933, to be recorded, 25c for each birth, marriage or death, to be paid by the city or town.

For every birth, marriage or death collected and recorded under the provisions of section 402 of chapter 25, 25c, to be paid by the city or town.

For each oath recorded by him, 20c, to be paid by the city or town.

For receiving and recording affidavit correcting record of birth, marriage or death, and forwarding copy under the provisions of section 400 of chapter 25, 50c, to be paid by the city or town.

For each record transcribed, certified and transmitted to the registrar of vital statistics, as required by sections 84 and 85 of chapter 1 of the public laws of 1933, not exceeding 5c as may be agreed upon between the clerk and the municipal officers.

For reporting to treasurer of state names of persons dying and names of next of kin, 25c, to be paid by the state.

For recording license for cultivation of clams and any assignment thereof, 50c.

For recording petition for enforcement of lien on monumental works, 50c.

The clerks shall receive for receiving and recording any instrument by law entitled to be recorded, including any assignment attached thereto or made a part thereof and executed before record and received with such instrument, the sum of $1 for the first 500 words and the sum of 25c for each 100 words or fraction thereof in excess of 500 words; provided, however, if the instrument to be recorded does not exceed in length 250 words, the fee for recording the same shall be 50c.

For preparing and issuing burial permits, undertakers' vouchers and memoranda necessary for the office and for filing such memoranda, 25c, to be paid on issuing the burial permit.

The above fees shall be paid when the instrument is offered for record. (R. S. c. 80, § 27. 1953, c. 308, § 93.)

Sec. 29. Expenses of town clerks.—The reasonable and necessary traveling expenses of clerks of cities and towns and of their employees while attending the annual meeting of the Maine municipal association and the Maine town and city clerks association, certified upon vouchers approved by the municipal officers, shall be paid by the treasurer of the city or town. (1947, c. 218.)

Sec. 30. Treasurer to give corporate bond; vacancy; approval; personal bond; premium.—The treasurer of a town, before entering upon his official duties, shall give a corporate surety bond to the inhabitants of his town with such sureties and for such sum as shall be designated by the municipal officers, not exceeding, however, twice the amount of the taxes to be collected during the year for which he is treasurer, conditioned for the faithful discharge of all the duties and obligations of his office. If such bond is not furnished and delivered to the municipal officers within 10 days after written demand by the municipal officers on the treasurer therefor, the office of treasurer shall be deemed vacant, and the town or plantation, at any meeting of its inhabitants legally called, may elect a treasurer to fill the vacancy, or the municipal officers may fill the vacancy by written appointment which shall be recorded by the clerk in the town records; provided, however, that the treasurer may furnish a bond signed by individuals

if such individuals submit to the municipal officers a detailed sworn statement as to their personal financial ability which shall be found acceptable by the municipal officers. The municipal officers shall be the sole judges of the sufficiency of such bond and sureties. Such bond, after its approval and acceptance by the municipal officers, shall be recorded by the clerk, and such record shall be prima facie evidence of the contents of such bond, but a failure to so record shall be no defense in any action upon such bond. Any town or plantation may lawfully vote, at its annual meeting, to raise money to be expended by its treasurer, under the direction of its municipal officers, for the purpose of purchasing from any surety company authorized to do business as aforesaid, the bond required by this section. (R. S. c. 80, § 28.)

Neglect or refusal to give bond is equivalent to refusal to accept the office. Scarborough v. Parker, 53 Me. 252.

Cited in Cumberland County v. Pennell, 69 Me. 357.

Sec. 31. Deputy town treasurers.—The treasurer of any town or plantation may appoint a citizen thereof as his deputy during his temporary absence or other temporary disability. The appointment shall be in writing and be recorded. It may be in the form following:

"I, ..., hereby appoint .... to perform the duties of town treasurer of the town of ...., during the treasurer's temporary absence from his office.

.... Treasurer." (R. S. c. 80, § 29.)

Sec. 32. Treasurer responsible. — The treasurer of any town and the sureties upon his official bond are responsible for all acts and omissions of his deputy in such office. (R. S. c. 80, § 30.)

Sec. 33. Treasurer to deposit receipts.—The treasurer of every town shall maintain in the name of the town a bank account in which cash receipts shall be deposited. Deposits shall be made by the treasurer at least twice each month. The provisions of the preceding sentence shall not apply to cash balances until such balances shall exceed $100. (1947, c. 225.)

Sec. 34. Treasurer to render account quarterly.—The treasurer of a city or town shall disburse money only on the authority of warrants drawn therefor by the municipal officers. Provided, however, that when a special act of the legislature provides a different method of authorizing expenditures in any city or town, the treasurer of such city or town shall disburse money in accordance with the provisions of such special act. Every treasurer shall render an account of the finances of his town and exhibit all books and accounts pertaining to his office to the municipal officers thereof or to any committee appointed by it to examine said accounts, when required; and such officers shall examine such treasurer's accounts as often as once in 3 months. (R. S. c. 80, § 31.)

The treasurer of a town is a public officer and his records are public records. He is not, however, the town's financial agent. Rumford v. Upton, 113 Me. 543, 95 A. 226.

And his accounts are evidence of facts contained therein.—The records or accounts of a town treasurer are required to be kept by law and are evidence of the facts contained therein which it is made his duty by law to enter. Rumford v. Upton, 113 Me. 543, 95 A. 226.

Sureties not released by failure of selectmen to examine accounts.—The failure of the selectmen to examine the accounts of a town treasurer, as directed by this section, will not affect the liability of the sureties upon his bond. Farmington v. Stanley, 60 Me. 472.

Nor by selectmen's certifying incorrect account.—A surety will not be released if the selectmen, failing to detect an error in addition, certify the treasurer's account to be correct, when, in fact, there is a deficit. Farmington v. Stanley, 60 Me. 472.

Failure of treasurer to render financial report as breach of official bond.—See Monticello v. Lowell, 70 Me. 437.

Sec. 35. In case of vacancy, municipal officers may appoint treasurer.—In case of death, resignation, removal or other permanent disability of a

treasurer of a town or plantation, the municipal officers may appoint a citizen thereof to be treasurer until his successor is elected and qualified. Such appointment shall be in writing and be recorded. It may be in the form following:

"We, the municipal officers of the town of ...., hereby appoint .... treasurer of said town until his successor is elected and qualified." (R. S. c. 80, § 32.)

History of section.—See Googins v. Gilpatrick, 131 Me. 23, 158 A. 699.

Vacancy need not wait upon calling of town meeting.—It seems to have been the clear intent of the legislature, in this section, to provide that a vacancy in the important office of treasurer need not wait upon the calling of a meeting of the inhabitants, need not stand for even a day. Googins v. Gilpatrick, 131 Me. 23, 158 A. 699.

And treasurer appointed under this section serves until next annual town meeting. Googins v. Gilpatrick, 131 Me. 23, 158 A. 699.

Sec. 36. Treasurer so appointed sworn and to give bond.—Before such appointee provided for in the preceding section enters upon his official duties, he shall be sworn and give bond to the town for the faithful performance thereof in such sum and with such sureties as the municipal officers order. (R. S. c. 80, § 33.)

Sec. 37. Officers chosen to take oath.—The town clerk or any 2 selectmen shall forthwith make a list of the names of all persons chosen into office, of whom an oath is required, and deliver it to a constable with a warrant to him directed; and he shall, within 3 days thereafter, summon each person therein named to appear before the town clerk, within 7 days from the time of notice, to take such oath of office; and at the end of 10 days after receiving his warrant, the constable shall return it or forfeit $6 to the town; and the town shall allow him a reasonable compensation for his services. (R. S. c. 80, § 34.)

Sec. 38. Refusing to take oath.—Every person so notified as provided in section 37, neglecting to take such oath within said 7 days, except officers for whose neglect a different penalty is provided, forfeits $5, 2/3 to the town and 1/3 to the prosecutor. (R. S. c. 80, § 36. 1949, c. 349, § 116.)

See c. 92, § 63, re penalty on assessors for refusing to be sworn; c. 97, § 1, re penalty on fire wards for omitting to notify acceptance.

Sec. 39. Records of oaths in office of town clerks.—A record by the town clerk that a town officer was duly sworn by the moderator in open town meeting in the presence of the clerk for a stated municipal office shall be sufficient evidence that such officer was legally sworn for said office and the recording of the entire oath shall not be required. (R. S. c. 80, § 35.)

Sec. 40. Town or parish officer; record; clerk may record his own election.—Any town or parish officer may be sworn by the moderator in open town meeting, town or parish clerk or by any person authorized by law, who shall give to the officer sworn, except when sworn in presence of such clerk, a certificate of the oath administered, which he shall return to such clerk to be filed. In either case the clerk shall record the name of the officer and of his office, by whom sworn and the time of taking the oath and returning the certificate. Any town, school district, parish or corporation clerk elected to any office and sworn may record his own election, the fact that he was sworn and when and by whom. The record herein required shall be sufficient evidence that such officer was sworn. If any officer fails to return such certificate or any clerk to record such oath within 10 days, he forfeits $5. (R. S. c. 80, § 37.)

Provision requiring record of oath is directory.—The provision of this section requiring a record to be made of the persons sworn as town officers is directory, and does not prevent the fact of their having been sworn from being otherwise proved, when there is no record thereof made. Kellar v. Savage, 17 Me. 444. See Sandy River Plantation v. Lewis, 109 Me. 172, 84 A. 995.

And fact of swearing may be proved by parol testimony.—In the absence of any record evidence that the officers of the town were duly sworn, the fact may be proved by parol testimony. Hathaway v. Addison, 48 Me. 440.

Words of oath or allegation that officer was "sworn" should appear in record.—It seems essential either that the words of the oath be recorded, or that it should be expressly alleged in the record that the officer was "sworn." The administration of the qualifying oath is matter of substance, and should appear in the record as a substantive transaction, and not as a mere note to some other transaction. Bowler v. Brown, 84 Me. 376, 24 A. 879.

Use of ditto marks in record.—See Bowler v. Brown, 84 Me. 376, 24 A. 874.

Record held sufficient evidence of compliance with section.—See Greene v. Lunt, 58 Me. 518.

Applied in Orneville v. Palmer, 79 Me. 472, 10 A. 451.

Sec. 41. Vacancies in town offices.—When by reason of non-acceptance, resignation, death, removal, insanity or other incompetency of a person chosen to a town office, except as provided in sections 21, 22 and 35, there is a vacancy or want of officers, the town may choose new officers; and they shall be sworn, if an oath is required, and have the same powers as if elected at the annual meeting. The meeting for choice of such new officers may be called by the person or persons legally elected and qualified as selectman or selectmen although less than a full board. (R. S. c. 80, § 38.)

Refusal to find sureties as non-acceptance of office.—See Morrell v. Sylvester, 1 Me. 248.

Quoted in Grindle v. Bunker, 115 Me. 108, 98 A. 69; Googins v. Gilpatrick, 131 Me. 23, 158 A. 699.

Cited in Bradford v. Hawkins, 96 Me. 484, 52 A. 1019.

Sec. 42. Reports by sworn officers not verified.—Town or municipal officers, who have been duly sworn to the faithful performance of their duty, shall not be required to make oath or affirm to any report, account or statement to be filed with any of the state departments. (R. S. c. 80, § 39.)

Assessors. Duties: See c. 3, § 5, et seq., re registration of voters in cities; c. 3, § 35, re list of voters in towns; c. 25, § 395, re return of births; c. 92, § 37, re inventory of sheep, swine, neat cattle, colts, fowl and goats; c. 100, § 109, re stock of itinerant vendors; c. 100, § 153, re enforcement of dairy products laws.

Blind. See c. 25, § 298, et seq., re aid to.

Collector. See c. 100, § 108, re duty as to itinerant vendors.

Elections. See c. 41, § 45, re school committee; c. 41, § 79, re superintendent of schools; c. 97, § 1, re fire wards.

Municipal officers. Duties: See c. 3, § 36, et seq., re lists of voters; c. 4, § 52, et seq., re elections; c. 14, § 18, re armories, drill rooms and target ranges; c. 23, § 79, re snow removal; c. 25, § 45, re appointment of local health officers; c. 30, § 86, re licenses for engineers of steam plants; c. 32, § 159, re removal of worthless trees along highways; c. 38, § 39, re license for cultivation of shell fish; c. 45, § 67, re railroad bridges and crossings; c. 50, § 16, re permits for opening streets for pipes and wires; c. 50, § 30, re appointment of inspectors of meters; c. 50, § 37, re permits for erection of poles and wires in streets; c. 58, § 9, re enlarging burying grounds; c. 89, § 45, re highway monuments; c. 96, § 15, re appointment of tree wardens; c. 96, § 104, re maintaining guide-posts; c. 97, § 10, et seq., re inspection of buildings; c. 97, § 21, et seq., re fire hazards and prevention; c. 100, re various local appointments; c. 116, re jurors; c. 136, § 9, re unlawful assemblies; c. 137, § 19, re firearms; c. 139, re gambling; c. 141, re nuisances.

Town clerk. Duties: See § 85, re notification of name of town treasurer; c. 25, § 378, et seq., re vital statistics: c. 42, § 15, re town reports for state library; c. 89, § 226, re not to draft instruments which by law he must record.

Towns. See c. 41, § 89, re truants; c. 95, re workhouses and houses of correction; c. 119, § 11, re accounts against towns to be verified by oath.

Sec. 43. Neglect of official duty.—Every town officer who neglects any duty lawfully required of him forfeits not exceeding $20 for every such neglect, when no other penalty is provided, to be recovered in an action of debt in the name and to the use of the town, by the treasurer thereof. (R. S. c. 80, § 40.)

Cross references.—Auctioneers: See c. 100, § 84, et seq.

Clerks: See § 40, and c. 3, § 49, re misconduct and neglect.

Collectors of taxes: See c. 92, § 81, re receipts for taxes; c. 92, § 120, re monthly settlements; c. 92, § 121, re paying over money collected.

Fence viewers: See c. 96, §§ 152, 197.

Fire wards: See c. 97, § 1, et seq.

Moderators: See c. 3, § 49, re misconduct.

Municipal officers: See § 38, re refusing to take oath; § 83, re refusal to allow access to town books or reports; § 121, re misuse of sinking fund; § 175, re neglect of perambulation of town lines; c. 3, § 30, re registration of voters; c. 5, re elections, ballot boxes, list of voters, etc.; c. 14, § 18, re providing use of drill rooms, armories, etc.; c. 32, § 159, re removal of worthless trees along highways; c. 61, § 76, re sale of intoxicating liquors; c. 92, re taxation; c. 97, re hazards and prevention; c. 100, re miscellaneous town provisions; c. 136, § 9, re suppression of mobs.

Road commissioners: See c. 96, § 74, re neglect of duty.

Sealer of weights and measures: See c. 100, § 202, et seq.

Town treasurers: See c. 92, § 16, re withholding deeds of lands sold for taxes.

Selectmen not liable where neglect was not unreasonable, corrupt, or wilfully oppressive. — Where the selectmen omit to perform an official duty, and from the facts presented their motives in the omission are so explained as to show that it was neither unreasonable, corrupt, nor wilfully oppressive, no penalty will be incurred. Harlow v. Young, 37 Me. 88. See c. 5, § 97 and note thereto.

Section does not provide "adequate remedy" for conversion of funds by tax collector. — Burkett v. Blaisdell, 137 Me. 200, 17 A. (2d) 460.

Sec. 44. Moderator first chosen; duties. — At every town meeting a moderator shall be first chosen and sworn by a justice of the peace or by the person presiding at the meeting when he is chosen. Said moderator shall regulate the business of the meeting; and when a vote declared by him is, immediately after such declaration, questioned by 7 or more, he shall make it certain by polling the voters or in such other way as the meeting directs. (R. S. c. 80, § 41.)

The office of moderator is to preside at and control a meeting or assembly where the citizens gather to discuss, deliberate and decide the prudential, administrative and political affairs of the town and to elect town officers. He regulates the business, declares the votes and when such declaration is questioned, makes certain by polling the voters. No person can speak until leave is obtained of the moderator, and all must keep silent at his command. He may remove a person guilty of disorderly conduct. Norway Water District v. Norway Water Co., 139 Me. 311, 30 A. (2d) 601.

In elections there is no need for a presiding officer with such duties and responsibilities as those of a moderator. Norway Water District v. Norway Water Co., 139 Me. 311, 30 A. (2d) 601.

Applied in Chapman v. Limerick, 56 Me. 390.

Cited in O'Roak v. Gilliland, 129 Me. 492, 151 A. 904.

Sec. 45. Moderator obeyed.—No person shall speak in town meeting before leave is obtained of the moderator nor when any other person is speaking; and all shall be silent at the command of the moderator or forfeit to the town $1 for every breach of such order. (R. S. c. 80, § 42.)

Cited in O'Roak v. Gilliland, 129 Me. 492, 151 A. 904.

Sec. 46. Powers of moderator.—If any person, after notice from the moderator, persists in disorderly conduct during a town meeting, the moderator may direct him to withdraw from the meeting; and by his refusal he forfeits $3 to the town; and the moderator may cause him to be removed from the meeting by a constable and detained in confinement for 3 hours, unless the meeting is sooner dissolved or adjourned. (R. S. c. 80, § 43.)

Cited in O'Roak v. Gilliland, 129 Me. 492, 151 A. 904.

Sec. 47. Sections 1-46 inapplicable to state elections.—Town meetings for the choice of governor, senators and representatives shall be as the con-

stitution directs; and the foregoing sections are not applicable to them. (R. S. c. 80, § 44.)

Stated in Norway Water District v. Norway Water Co., 139 Me. 311, 30 A. (2d) 601.

Sec. 48. Folded votes not received; votes not examined.—The person presiding at a meeting for the choice of town officers shall not receive any folded vote or permit any person before the poll is closed, without consent of the voter, to examine his ballot, on penalty of $20. (R. S. c. 80, § 45.)

Secret Ballot.

Cross Reference.—See §§ 64-70, re inspections and recounts.

Sec. 49. Provisions accepted by town at legal meeting.—Any town may, at any legal meeting called by a warrant containing an article for the purpose, accept the provisions of sections 49 to 63, inclusive, and when so accepted, all elections for town officers now required by law to be chosen by ballot shall thereafter, except as provided in section 55, be in accordance with the provisions herein provided, except the moderator, who shall be chosen as now provided by law. (R. S. c. 80, § 46.)

Sec. 50. Voters to determine what officers elected by ballot; changes.—When any town so accepts the provisions of said sections 49 to 63, inclusive, it shall at the same time or meeting determine what officers, if any, not now required by law to be chosen by ballot shall be chosen in the manner herein provided. All such matters shall be stated in the warrant calling such meeting. No change shall be thereafter made in the officers to be chosen by ballot or in the number or terms thereof except at a meeting held at least 30 days before any annual town election. (R. S. c. 80, § 47.)

Sec. 51. Opening and closing of polls.—All warrants for town meetings for the election of officers as herein provided shall specify the time of opening the polls and the time when the same may be closed; but the polls shall be kept open at least 4 hours and the method of voting shall be as in gubernatorial elections. (R. S. c. 80, § 48.)

Sec. 52. Nomination of candidates. — Nominations for candidates may be made at a caucus or by nomination papers signed in the aggregate for each candidate by qualified voters of said town not less in number than one for every 50 voters, who have registered for the last preceding state election in said town; but the voters so signing shall in no case be less than 25 in number. Each voter signing such nomination paper shall add to his signature his place of residence with the street and number thereof, if any; and each voter may subscribe to as many nomination papers for each office as there are members to be elected thereto and no more. (R. S. c. 80, § 49.)

Sec. 53. Certificates of caucus nominations.—All certificates of caucus nominations shall be signed by the chairman and secretary of the caucus. Such certificates and nomination papers shall, besides containing the names of candidates, specify as to each candidate the office for which he is nominated. (R. S. c. 80, § 50.)

Sec. 54. Filing of certificates of nomination and nomination papers.—Certificates of nomination shall be filed with the town clerk of said town at least 8 days previous to the day of election and nomination papers shall be so filed at least 6 days previous to the day of election. The certificates of nomination and nomination papers being so filed and being in conformity with the provisions of said sections 49 to 63, inclusive, shall be deemed to be valid unless objection

thereto is duly made in writing. Such objections or questions arising in the case of nominations shall be considered by the selectmen of said town and the decision of a majority of the selectmen shall be final. In case such objection is made, notice shall forthwith be delivered to the candidates affected thereby. All certificates of nomination and nomination papers when filed shall be open under proper regulations to public inspection and the town clerk shall preserve the same in his office for not less than 1 year. (R. S. c. 80, § 51.)

Sec. 55. Ballots; number elected determined by voters; names on ballot; questions submitted.—All ballots for use in elections under the provisions of sections 49 to 63, inclusive, shall be prepared by the town clerk. Every general ballot or ballot intended for the use of all voters, which shall be printed in accordance with the provisions of said sections 49 to 63, inclusive, shall contain the names of all candidates whose nominations for any offices specified in the ballot have been duly made, and shall contain no other names. The names of candidates for each office shall be arranged under the designation of the office in alphabetical order according to surnames, but candidates for selectmen, assessors and overseers of the poor respectively shall be named and designated in the ballot in as many groups as the town shall by vote have determined there are to be individuals on any such board. At a meeting held at least 30 days before any annual town election, the voters may determine by majority vote whether to elect 3, 5 or 7 selectmen, assessors or overseers of the poor, respectively, and may designate them as 1st, 2nd and so on to the number to be elected and the one elected as 1st selectman shall be chairman. No change shall be made thereafter except at a meeting held at least 30 days before any annual town election. Provided that if the town shall have fixed the number and term of such officers under the provisions of section 14, the ballot shall conform thereto. Without such determination 3 shall be elected. The candidate or candidates having the largest number of votes shall be declared elected. There shall be left at the end of the list of candidates for each different office as many blank spaces as there are persons to be elected to such office, in which the voter may insert the name of any person not printed on the ballot for whom he desires to vote as candidate to such office. Whenever any question is submitted to the vote of the people of the town, in accordance with a statute providing for such submission, such question shall be printed upon the ballot after the list of candidates. The ballots shall be so printed as to give each voter a clear opportunity to designate by a cross mark (×) or a check mark (√) in a square at the right of the name and designation of each candidate, his choice of candidates and his answer to the question submitted, and in the ballot may be printed such words as will aid the voter to do this, as "vote for 1," "vote for 3," "yes," "no" and the like. Before distribution the ballots shall be so folded in marked creases as to measure when folded not less than 4½ nor more than 5 inches in width and not less than 6 nor more than 13½ inches in length. On the back and outside, when folded, shall be printed "Official Ballot for the Town of ....," and the date of election and the signature or facsimile of the signature of the town clerk. (R. S. c. 80, § 52. 1947, c. 82, § 6. 1949, c. 163.)

Sec. 56. Record of number of ballots preserved.—All ballots required by sections 49 to 63, inclusive, when printed shall be folded as therein provided and fastened together in convenient numbers in packages, books or blocks in such manner that each ballot may be detached and removed separately. A record of the number of ballots printed and furnished shall be kept and preserved by the town clerk. (R. S. c. 80, § 53.)

Sec. 57. Number of ballots prepared. — There shall be provided for every election held under the provisions of sections 49 to 63, inclusive, such general ballots of not less than 75 for each 50 and fraction of 50 registered voters therein. (R. S. c. 80, § 54.)

Sec. 58. Town clerk to prepare cards of instruction and specimen

ballots. — The town clerk shall provide full instructions for the guidance of voters at elections held under the provisions of sections 49 to 63, inclusive, as to obtaining ballots, as to the manner of marking them and the method of obtaining assistance and as to obtaining new ballots in place of those accidentally spoiled; and shall cause the same, together with copies of sections 22, 40, 93 and 107 of chapter 5, to be printed in clear type on separate cards, to be called cards of instruction. He shall also cause to be printed on tinted paper and without the indorsements, 10 or more copies of the form of the ballot provided for such election, which shall be called specimen ballots and shall be furnished with the other ballots provided therefor. (R. S. c. 80, § 55.)

Sec. 59. Town clerk to post list of candidates 4 days prior to election.—At least 4 days prior to an election held under the provisions of sections 49 to 63, inclusive, the town clerk shall cause to be conspicuously posted in one or more public places a printed list containing the names and residences of all candidates to be voted for in such town and any designation as provided in section 53, substantially in the form of a general ballot to be so used therein. (R. S. c. 80, § 56.)

Sec. 60. Ballots, cards of instruction, etc., put up in sealed packages.—The ballots, together with the specimen ballots and cards of instruction printed by the town clerk as provided in sections 49 to 63, inclusive, shall be packed by him in sealed packages with marks on the outside designating the number of ballots of each kind enclosed. (R. S. c. 80, § 57.)

Sec. 61. Ballot clerks.—Before the opening of the polls as required under the provisions of sections 49 to 63, inclusive, the selectmen shall appoint the necessary number of ballot clerks, and in case of vacancies after the opening of the polls the moderator shall fill the same. The ballot clerks shall be sworn and have charge of the ballots and shall furnish them to the voters in the manner hereinafter provided. (R. S. c. 80, § 58.)

Sec. 62. Delivery of ballots at voting places; not delivered until moderator chosen; ballot clerks furnished with duplicate check list.—The town clerk shall, before the opening of the polls on the day of an election as provided for in sections 49 to 63, inclusive, deliver the ballots to the ballot clerks, who shall receipt therefor, which receipt shall be kept in the clerk's office. Before the opening of the polls, the town clerk shall cause the cards of instructions to be posted at or in each voting shelf or compartment provided for the marking of the ballots, and not less than 3 such cards and not less than 5 specimen ballots to be posted in or about the voting room, outside the guardrails. No ballots prepared under said sections 49 to 63, inclusive, shall be delivered to voters until the moderator shall have been chosen in the manner now provided by law. A duplicate list of the qualified voters shall be prepared for the use of the ballot clerks and all provisions of law relative to the preparation, furnishing, use and preservation of check lists shall apply to such duplicate lists. (R. S. c. 80, § 59.)

Sec. 63. Officers elected by plurality vote; procedure in case of a tie; ballots preserved.—Except as provided in sections 49 to 63, inclusive, the election shall be conducted as provided by law. All officers voted for in the manner as provided in sections 49 to 63, inclusive, shall be elected by a plurality vote. In case of failure to elect any officer or officers so voted for by reason of a tie vote, the meeting shall be adjourned to a day certain, when such officer or officers shall be chosen as herein provided. The person presiding at a meeting for the choice of town officers and the submission of questions, in pursuance of sections 49 to 63, inclusive, shall, after counting and tabulation of the votes cast, deliver all ballots cast to the clerk who shall seal them in a suitable package or packages and preserve them safely for 6 months for the purposes of the following section. (R. S. c. 80, § 60. 1949, c. 137, § 1.)

Inspections and Recounts.

Sec. 64. Inspection of ballots.—Upon written application by any candidate for any municipal office within 3 days after the result of a city election is declared, or the result of a town election under the provisions of sections 49 to 63, inclusive, is declared, the clerk of such city or town shall permit any candidate or his agent to inspect the ballots cast at any such municipal election after the same have been returned to him, under such reasonable regulations or restrictions consistent with the right of inspection as will secure every ballot from loss, injury or change in any respect. Such inspection shall be permitted only after written notice in a city by said clerk to the ward officers who signed the returns of said election and in a town to the person who presided at the meeting, and in all instances after written notice by said clerk to the other contesting candidates, sufficient to enable them to be present in person or by agent at said inspection. After each inspection the packages shall be again sealed and the fact and date of inspection noted on the package. No such examination of the ballots shall be made without reasonable notice to all candidates upon the ballot for the offices specified in the application as to which such errors are alleged to have occurred, stating when and where such examination will be made and affording such candidates a reasonable opportunity to be present in person or by counsel at such examination and be heard in relation thereto. Said inspection of ballots shall be held not later than 5 days after written application for an inspection of said ballots has been received by the said city or town clerk. (R. S. c. 80, § 61. 1949, c. 137, § 2.)

Sec. 65. Recount proceedings. — Whenever any candidate for any municipal office shall desire a recount of the votes cast for the particular office for which he was a candidate, he shall within 3 days from the date of said inspection file a sworn petition with the clerk of said municipality setting forth the particular office for which he was a candidate, and state on his own knowledge or on information and belief, that because of the closeness of the vote, or a mistake in counting of the ballots or in the return of the ward officers, or fraud committed before or during said election, or any other cause, he would like a recount of all the ballots cast in said municipality for the office for which he was a candidate. (R. S. c. 80, § 62. 1949, c. 137, § 3. 1951, c. 266, § 97.)

Sec. 66. Date of recount.—Upon the filing of said petition said clerk shall fix a date forthwith, not more than 5 days after date of filing, for said recount; and shall call a meeting of the municipal officers to consider said recount, and shall notify the petitioner and all opposing candidates of the date of hearing. At said hearing the said clerk shall sort and count the ballots under the supervision of the municipal officers. In the examination of ballots upon application as provided in the preceding section, the municipal officers upon making corrected returns may in their discretion accept such facts as the candidates involved shall agree upon. (R. S. c. 80, § 63.)

Sec. 67. Displaying of ballots.—At said hearing the petitioner or his opponents may have all ballots in any way involved in the election displayed for counting or inspection, including absentee and physical incapacity ballots, and all applications, certifications and envelopes and other papers required by law to be kept in connection with absentee or incapacity ballots. Upon request absentee or incapacity ballots may be segregated from other ballots. (R. S. c. 80, § 64.)

Sec. 68. Witnesses and evidence; fees.—Witnesses may be called by the parties and may be sworn by any municipal officer. A record shall be kept if requested by any party in interest. The fees of witnesses shall be paid by the city if authorized by the municipal officers. (R. S. c. 80, § 65.)

Sec. 69. Certification of elected candidate. — Within 24 hours after the determination of the results of a contested election, the municipal officers

shall certify the results of their count to the respective candidates involved; and shall issue a certificate of election to the candidate whom they find to have been elected; this certificate of election will supersede and nullify any previous certificate that may have been issued in this particular contest. For the purposes of this section, if any candidate or candidates shall concede the election to the remaining candidate by signed statement or statements addressed to the municipal officers during the course of the recount, the municipal officers shall issue a certificate of election to the party whose election is conceded. Nothing contained in sections 64 to 70, inclusive, shall affect the jurisdiction of the superior court or any justice thereof to entertain proceedings under the provisions of sections 84 to 88, inclusive, of chapter 5. (R. S. c. 80, § 66.)

Sec. 70. Application of sections 64-70.—The provisions of sections 64 to 70, inclusive, shall so far as is applicable apply to elections conducted pursuant to the provisions of sections 49 to 63, inclusive. (R. S. c. 80, § 67.)

Police Officers.

Sec. 71. Police officers.—The selectmen of towns may appoint and shall control and fix the compensation of police officers. Such appointment shall be in writing, signed by a majority of the selectmen and recorded by the town clerk, and shall be for such time not exceeding 1 year as the selectmen shall determine. (R. S. c. 80, § 68.)

Stated in State v. Swan's Island, 148 Me. 268, 92 A. (2d) 324.

Sec. 72. Powers; removal.—Police officers appointed under the provisions of section 71 shall severally have all the powers of a constable in criminal matters within the limits of the town and may be removed by the selectmen when they shall deem that the interests of the town require such removal. (R. S. c. 80, § 69.)

See c. 37, § 26, re police officers vested with powers of inland fish and game wardens; ch. 89, § 211, re power of police.

Sec. 73. Special constables.—Mayors and selectmen shall appoint special constables to arrest and prosecute all tramps in their respective municipalities. (R. S. c. 80, § 70.)

Wards of Cities. City Officers.

Sec. 74. Wards in cities, change or alteration in limits of. — No change made by the city government in the limits of any city ward shall be valid unless it is approved by a majority of the legal votes cast at the election of city officers, held next after such action of said council; and warrants for such ward meetings shall contain an article for that purpose. (R. S. c. 80, § 71.)

Sec. 75. Assessors and subordinate officers; term. — The assessors and subordinate officers of cities, when their charters do not otherwise provide, shall be chosen on the 2nd Monday of March, annually, or as soon after as practicable, and hold their offices 1 year therefrom and until others are chosen and qualified in their places. (R. S. c. 80, § 72.)

Officer holds over until successor is chosen and qualified.—Under this section an officer elected for one year would hold over until the election and qualification of someone in his stead. Bath v. Reed, 78 Me. 276, 4 A. 688.

Notwithstanding charter provision that he shall be appointed annually.—Where it was provided by the city charter that the assessors were to be appointed annually, although there was no express provision in the charter for the continuance beyond the year, yet, there being no restrictive provision, this general statute applied. Bath v. Reed, 78 Me. 276, 4 A. 688.

An agent for the sale of intoxicating liquors is not a city or town officer. His situation is not an office but an employ-

ment, which ceases if not renewed at the end of the year. He does not hold over until his successor is chosen, by virtue of this section. State v. Weeks, 67 Me. 60.

Sec. 76. Additional assistant assessors in cities.—In addition to the number of assistant assessors elected or appointed under provisions of any city charter, the municipal officers of cities may authorize assessors of their respective cities to appoint such number of assistant assessors as public exigency requires. The employment of such assistant assessors shall not extend beyond the period of the municipal year during which they are appointed. (R. S. c. 80, § 73.)

Sec. 77. Vacancies in office of constable in cities.—If in any city a vacancy occurs in the office of constable, either through the failure of a duly elected or appointed constable to qualify by filing his bond within 30 days after his election or appointment, or through the death, resignation or removal of a qualified constable, or through the failure of any ward or precinct to elect its alotted number of constables, the municipal officers may fill such vacancy by appointing a constable whose term of office shall expire at the same time as it would if he had been elected at the preceding annual city election. (R. S. c. 80, § 74.)

Sec. 78. Wardens and clerks in cities; term.—At the annual election for the choice of mayor and aldermen in cities, the electors in each ward shall by written ballot elect a warden and clerk, who shall enter on their duties on the Monday following their election and hold their offices 1 year therefrom and until others are chosen and qualified in their places. (R. S. c. 80, § 75.)

Cross references.—See c. 4, § 3, re record enrollment of voters; c. 5, re elections and official ballots; c. 5, § 42, re transmit votes to secretary of state.

Ward clerks hold office until others are chosen and qualified.—The objection was taken that ward clerks of the preceding year continued to act without a new election. But this was in strict accordance with this section, which provides that a warden and clerk duly elected "shall hold their offices one year therefrom, and until others are chosen and qualified in their places." Rounds v. Smart, 71 Me. 380.

Sec. 79. Mayor has deciding vote in choice of officers; appointees of mayor and aldermen.—In the election of any city officers by ballot in the board of aldermen or in convention of the aldermen and common council, in which the mayor has a right to give a deciding vote, if 2 candidates have each half of the ballots cast, he shall determine and declare which of them is elected. Whenever appointments to office are directed or authorized to be made by the mayor and aldermen of cities, they may be made by the mayor with the consent of the aldermen, and such officers may be removed by the mayor. (R. S. c. 80, § 76.)

An agent for the sale of intoxicating liquors is not a city or town officer. His situation is not an office but an employment, which ceases if not renewed at the end of the year. The mode of his appointment is not governed by this section. State v. Weeks, 67 Me. 60.

Mayor may dispense with formality of casting ballot.—Where the mayor, after ascertaining the fact that an equal number of ballots had been cast for each of two candidates, without going through the formality of casting a ballot, determined and declared that one was elected, his act was sufficiently formal to bring it within the provisions of this section. Small v. Orne, 79 Me. 78, 8 A. 152.

Section held not to repeal charter provision as to removal of officers.—See State v. Donovan, 89 Me. 448, 36 A. 982.

Certain Duties of Municipal Officers.

Sec. 80. Town officers not to act when pecuniarily interested.—No member of a city government or selectmen of a town shall, in either board of such government or in any board of selectmen, vote on any question in which he is pecuniarily interested directly or indirectly and in which his vote may be decisive;

and no action of such government or board taken by means of such vote is legal. (R. S. c. 80, § 77.)

History of section. — See Tuscan v. Smith, 130 Me. 36, 153 A. 289.

Sections 80 to 82 are not exclusive.— Sections 80 to 82 did not in any sense purport to enumerate those acts of cities and towns which were illegal and void to the exclusion of all others, but merely extended a remedy in equity for the acts therein prohibited. What had theretofore been unlawful at common law was still unlawful. Tuscan v. Smith, 130 Me. 36, 153 A. 289.

And contract may be illegal although not coming within this section.—Town officials are in a position of trustees for the public. A contract in which such an official is pecuniarily interested and which places him in a situation of temptation to serve his own personal interests to the prejudice of the interests of the town is illegal and will be enjoined, although such contract may not come within this section. Tuscan v. Smith, 130 Me. 36, 153 A. 289.

This section relates entirely to municipal matters and prohibits certain municipal officers from voting upon any question in which such officer has a pecuniary interest. Lyon v. Hamor, 73 Me. 56, overruled on another point in Blaisdell v. Inhab. of York, 110 Me. 500, 87 A. 361.

It does not govern locating of private way by selectmen.—The locating of a private way by the selectmen of a town is a judicial act requiring disinterestedness on their part in making the location, and such disinterestedness is to be determined under c. 10, § 22, rule XXV, and not under this section, which disqualifies for pecuniary interest only. Lyon v. Hamor, 73 Me. 56, overruled on another point in Blaisdell v. Inhab. of York, 110 Me. 500, 87 A. 361.

Section applies only where vote of interested officer was decisive.—This section does not apply where the action taken by the board of selectmen was not taken by means of the vote of the interested selectman, the vote being unanimous and he being but one of three. Tuscan v. Smith, 130 Me. 36, 153 A. 289; Moores v. Springfield, 144 Me. 54, 64 A. (2d) 569.

Selectman may acquire negotiable town order an endorsee. — In the absence of special circumstances, the law does not prevent a selectman, who was one of those issuing a town order negotiable in form, from acquiring the same as an endorsee thereof, and enforcing the same against the town to the same extent that the original payee thereof could have enforced the same. Moores v. Springfield, 144 Me. 54, 64 A. (2d) 569.

Sec. 81. Interests in municipal contracts prohibited.—No member of a city government shall be interested, directly or indirectly, in any contract entered into by such government while he is a member thereof; and contracts made in violation hereof are void. (R. S. c. 80, § 78.)

History of section.—See Tuscan v. Smith, 130 Me. 36, 153 A. 289.

Section not exclusive.—See note to § 80.

This section makes no distinction with regard to the character of the contract. It may be to build a city hall or open a street or construct a bridge or take charge of a sick pauper. All are alike illegal and void. Goodrich v. Waterville, 88 Me. 39, 33 A. 659.

It embraces every contract, express or implied.—The meaning of this section is as broad as language can make it. "Any contract" in violation of the section is void. "Any contract" embraces every kind of contract, express or implied. No action can be maintained on a void contract. Bangor v. Ridley, 117 Me. 297, 104 A. 230.

And it should be applied to all contracts without evasion.—This provision is a wise one, and tends to honest dealing, and exclusion of motive for improper practices harmful to the community. It should be applied without evasion to all contracts falling within its provisions. O'Neil v. Flannagan, 98 Me. 426, 57 A. 591.

This section applies in its terms solely to cities, and the term "municipality" or "municipal" as here used should be regarded as limited in its application to cities only. Bangor v. Ridley, 117 Me. 297, 104 A. 230. See Tuscan v. Smith, 130 Me. 36, 153 A. 289; Moores v. Springfield, 144 Me. 54, 64 A. (2d) 569.

But its principles are applicable to contracts of board of health.—Assuming that this statutory prohibition does not directly apply to a member of a local board of health, yet the principles on which it is founded are quite as applicable to a contract made by a board of health with one of its own members, as to the contracts expressly inhibited in this section. It also clearly indicates that it is the policy of the state that persons whom the law has placed in positions where they may make, or be instrumental in making, or in superintending the performance of, contracts in which

others are interested, should not themselves be personally interested in such contracts. Lesieur v. Rumford, 113 Me. 317, 93 A. 838.

Contract in violation of section is void on both sides.—This section was not enacted to prohibit the contractor alone; with equal force it can be invoked to prohibit the city government from making "any contract" with one of its members. The language of the statute—"any contract entered into"—makes such a contract as void on the part of the city government as on the part of the contracting member. It makes no distinction. The contract is void on both sides. Bangor v. Ridley, 117 Me. 297, 104 A. 230.

Member of city government cannot maintain action on contract.—A member of a city government could not maintain an action for the services rendered to the city in violation of this section. Bangor v. Ridley, 117 Me. 297, 104 A. 230.

And city may recover money paid thereunder.—A city may maintain an action for money had and received to recover back from a member of the city government the amount it had paid him under contracts entered into in violation of this section, upon the ground that the services were rendered in contravention of statute, and the payments therefor were illegal. Bangor v. Ridley, 117 Me. 297, 104 A. 230.

Member of council cannot recover for medical services rendered to pauper.—Where a physician is a member of the city council, no action can be maintained to recover for medical services rendered by his firm to a pauper of his city. Goodrich v. Waterville, 88 Me. 39, 33 A. 659.

Contract and attempted assignment thereof held void.—See O'Neil v. Flannagan, 98 Me. 426, 57 A. 591.

Workmen employed in executing contract not engaged in breach of peace.—So long as the city authorities recognized a contract made in violation of this section as valid and subsisting, and were disputing with the contractor only as to the manner in which he proposed to perform it, it could not be regarded as an absolute nullity, nor the workmen employed in executing it as engaged in a breach of the peace, or in the violation of any law of the state or by-law of the city, so as to subject them to an arrest and imprisonment without a warrant. Moore v. Durgin, 68 Me. 148.

Applied in Deering v. Saco, 68 Me. 322.

Quoted in Opinion of the Justices, 108 Me. 545, 82 A. 90.

Sec. 82. Enforcement of §§ 80 and 81.—The supreme judicial court in equity or the superior court in equity, by writ of injunction or otherwise, may restrain proceedings in any town in violation of the provisions of the 2 preceding sections, upon application of 10 or more taxable citizens. (R. S. c. 80, § 79.)

Cross reference.—See c. 107, § 4, sub-§ XIII, re equity powers.

History of section. — See Tuscan v. Smith, 130 Me. 36, 153 A. 289.

Section not exclusive.—See note to § 80.

Word "town" includes both cities and towns.—The use of the word "town" in this section relative to the remedy is general and is intended to include both cities and towns. Tuscan v. Smith, 130 Me. 36, 153 A. 289.

Sec. 83. Town reports; distribution; pauper assistance; contents.—Persons charged with the expenditure of the money of a town shall, at least 3 days before the day of the annual meeting, make a full and detailed written or printed report, written in ink or printed on paper of not less than 50 pound basis with ink and bound in the size measuring 6 inches wide by 9 inches long, of all their financial transactions in behalf of the town during the municipal year immediately preceding, with a full account of the receipts and disbursements during that period, and to whom and for what purpose each item of the same was paid, with a statement in detail of the indebtedness and resources of the town; including a list of all unpaid taxes which have been committed to the treasurer or collector for collection, giving the names of all delinquent taxpayers and the amount due from each; except that the names of those persons receiving pauper assistance shall not be printed, unless any town at its annual town meeting shall vote to include such names in its next annual report. Provided a town may at a regular annual town meeting vote to waive the printing in its annual printed town report an itemized list of receipts and disbursements, said vote to stand effective until revoked at a regular annual town meeting. Such town reports,

if printed in sufficient number, shall be deposited in the office of the selectmen for distribution to the legally qualified voters of such town at least 3 days before such annual meeting; if the selectmen have no such office, then such reports in like manner shall be deposited in a convenient place of business in such town for distribution; copies of such reports shall be kept deposited in the office of the said selectmen, or if they have no such office or usual place of business, with the town clerk, with proper vouchers for the disbursements reported, where such reports and vouchers, and all the books of the town shall be open during the usual hours of business, to the inspection of voters; and if any town officer refuses or neglects to perform any requirement of this section, or refuses to allow any voter to examine such reports, vouchers and town books, he shall be punished by a fine of $50 for each refusal or neglect.

Such town report shall include the following excerpts from the last audit report:

I. Letter of transmittal,

II. Comments,

III. Comparative balance sheet,

IV. Statement that complete audit report is on file in town office.

The complete report of the audit made as provided by section 145 shall be deposited in the office of the selectmen. (R. S. c. 80, § 80. 1945, c. 84, § 1. 1947, c. 361, § 2. 1951, c. 351.)

Cross reference.—See c. 42, § 15, re municipal reports filed with librarian.

Report containing libel.—A report published within the requirements and spirit of this section would doubtless be regarded as privileged. When, however, the selectmen went further and in another part of their report published the libellous charge "Arthur Stanley, larceny, culvert $50." they transcended their duty, stepped outside the protection of privileged communication and became amenable to the law in an action for libel. Stanley v. Prince, 118 Me. 360, 108 A. 328.

Cited in Topsham v. Blondell, 82 Me. 152, 19 A. 93.

Sec. 84. Record of persons moving into and from towns and plantations.—Towns and plantations may at any regular meeting, by a vote thereof, require their assessors of taxes to keep a record, with the date thereof as near as practicable, of all persons moving into and from their respective towns and plantations during each year, and on the 1st day of May make a return of the same to the clerk thereof, who shall record the same in a book to be kept for such purpose, and shall furnish copies of such records upon payment of a reasonable fee. (R. S. c. 80, § 81.)

Sec. 85. Notice of election of town treasurer.—When a town treasurer is elected and qualified, the clerk shall communicate his name to the treasurer of state; and no city, town or plantation shall receive any money from the treasurer of state until the name of its treasurer has been so communicated. (R. S. c. 80, § 82. 1945, c. 46.)

By-laws and Ordinances.

Sec. 86. By-laws and ordinances.—Towns, cities and village corporations may make by-laws or ordinances, not inconsistent with law, and enforce them by suitable penalties, for the purposes and with the limitations following:

Power of legislation limited to cases and objects specified.—It is an accepted rule that when a municipal corporation is empowered by express grant to make by-laws or ordinances in certain cases and for certain purposes its power of legislation is limited to the cases and objects specified. If a by-law or ordinance as drawn is outside the scope of the grant and exceeds the powers to legislate conferred upon the municipality, it is invalid. State v. Brown, 135 Me. 36, 188 A. 713.

When ordinance may be declared invalid.—An ordinance may be invalid, first, when

it is unconstitutional, whether authorized in express or general terms; second, when it conflicts with an existing statute, if authorized in general terms, but not if authorized in express terms, as in the latter case the special authorizing act takes precedence of the general law; and third, if authorized in general terms, it may be declared void as being unreasonable or discriminatory even though it contravenes neither constitution nor statute. State v. Maheu, 115 Me. 316, 98 A. 819.

The question of the reasonableness of a bylaw is for the determination of the court. Certain facts are to be passed upon by the jury, but the standard upon the question of the reasonableness or otherwise of the bylaw is established by the court. State v. Boardman, 93 Me. 73, 44 A. 118.

Ordinance held inconsistent with general law.—See Burke v. Bell, 36 Me. 317.

Applied in State v. Barbelais, 101 Me. 512, 64 A. 881.

Quoted in State v. Thompson, 135 Me. 114, 190 A. 255.

Cited in State v. Bornstein, 107 Me. 260, 78 A. 281; Wilde v. Madison, 145 Me. 83, 72 A. (2d) 635.

I. For managing their prudential affairs, with penalties of not more than $5 for 1 offense, subject to the approval of the county commissioners or a judge of the superior court.

Cross references.—See c. 41, § 89, et seq., re compulsory education; c. 58, § 18, re money held in trust for cemetery purposes; c. 97, §§ 3, 43, re fire department; c. 141, §§ 7, 10, 25-29, re nuisances.

The words "prudential affairs" are certainly very indefinite and unsatisfactory, and it might be a very difficult matter in many cases to determine just what is or is not included within the meaning of the expression. This term was taken from the Massachusetts statute, where the same difficulty has been appreciated. State v. Boardman, 93 Me. 73, 44 A. 118.

But however indefinite the term "prudential affairs" may be, that it was not intended to cover the matters enumerated in the other paragraphs of the section is shown both by the language of the original enactments and the text and arrangement of paragraphs in the section of the revision. State v. Boardman, 93 Me. 73, 44 A. 118.

II. For establishing police regulations, for the prevention of crime, protection of property and preservation of good order, and to regulate the use and manner of the use of bicycles in the streets.

See c. 97, § 43, re explosives and illuminating substances.

III. Respecting infectious diseases and health.

Cross references.—See c. 25, § 45, et seq., re local health officers; c. 25, § 107, re venereal diseases; c. 25, § 173, re plumbing regulations.

Police power of state.—Under this statutory authority a city has the power to enact reasonable rules and regulations for the government of persons and property within its limits so far as necessary to promote health and prevent disease. This right is generally based upon what is called the police power of the state. State v. Robb, 100 Me. 180, 60 A. 874.

Regulations not void as unconstitutional taking of private property. — Reasonable municipal health regulations, under the authority of the state, are not void as taking private property without due process of law, or as a taking of private property without just compensation. State v. Robb, 100 Me. 180, 60 A. 874.

Ordinance regulating collection of garbage held valid.—See State v. Robb, 100 Me. 180, 60 A. 874.

Meat-inspection ordinance held valid.—See State v. Maheu, 115 Me. 316, 98 A. 819.

Applied in State v. Starkey, 112 Me. 8, 90 A. 431.

IV. For regulating the going at large of dogs.

See c. 100, § 9, et seq., re registration and licensing of dogs.

V. Respecting the measure and sale of wood, bark and coal brought to market, and teams coming therewith.

See c. 100, § 165, re dimensions of a cord of wood; c. 100, § 171, re sale of wood by the load.

VI. Providing for the establishment of street crossings and safety zones for

pedestrians, and restricting or prohibiting the crossing of streets by pedestrians except within the limits of crossings or zones so established.

VII. For setting off portions of their streets for sidewalks and for regulating the use thereof, and for providing for the removal of snow and ice from such sidewalks within the limits of highways and town ways to such extent as they deem expedient; the penalty for violation of such by-laws shall apply to the owner or occupant of abutting property or the agent having charge thereof, and for planting and preserving trees by the side thereof, and for the proper protection and care of public parks and squares within the same and all monuments, statues and erections thereon.

Cross reference.—See c. 96, § 21, re planting of trees.

Provisions of paragraph are not mandatory or restrictive.—The provisions of this paragraph, that "towns may make by-laws or ordinances for setting off portions of their streets for sidewalks," were designed to confer a power or capacity to do the acts mentioned. They are not mandatory or restrictive. Bowers v. Barrett, 85 Me. 382, 27 A. 260.

And omission to pass general ordinance does not impair town's control of streets.—The control which a town has over its streets under the paramount authority of the legislature is not lost or impaired by an omission to pass a general ordinance respecting sidewalks. Bowers v. Barrett, 85 Me. 382, 27 A. 260.

Applied in Northpost Wesleyan Grove Campmeeting Ass'n v. Andrews, 104 Me. 342, 71 A. 1027.

Stated in Ouelette v. Miller, 134 Me. 162, 183 A. 341.

Cited in State v. Merrill, 37 Me. 329; Wellman v. Dickey, 78 Me. 29, 2 A. 133.

VIII. Respecting the location and protection of monuments, boundary stones, curbstones, steppingstones or horse blocks, trees, lampposts, posts and hydrants, the maintenance and operation of sidewalk tanks and pumps for the sale or distribution of petroleum products for fuel, power and lubrication, supporting posts for any awning, marquee or other temporary or permanent structure over the street or sidewalk, and all other things placed within the limits of their roads, ways and streets, by municipal authority, and for legitimate municipal purposes; and no such objects placed as aforesaid, if located in accordance with such by-laws and ordinances, shall be deemed defects in such road, way or street.

See c. 96, § 87, re public drinking troughs and fountains.

IX. Relating to the design, materials of construction, construction, alteration, demolition, maintenance, repair, use and change of use of buildings and structures or parts thereof; the provision of features for the safety of occupants of existing buildings; the provision for the installation of insulating materials, with authority to establish standards of materials used, and to govern the flameproof and fireproof qualities of the same; the provision of light, ventilation and toilet facilities in new buildings and in connection with alterations of and additions to existing buildings; the installation, alteration, maintenance, repair and use of all equipment in or on or in connection with buildings or structures and relating to camps or parking facilities for trailers or house trailers and sanitary regulations pertaining to such camps or parking facilities, including license taxes of said camps or parking facilities; duties of the inspector of buildings and other city, town and village officers, and defining particularly such duties and the rules and regulations by which they shall be governed, not inconsistent with the provisions of chapter 97 and issuance of permits or licenses in connection with all of the above operations; all to promote the health, safety and general welfare of the occupants and users of such buildings or structures and of the public, and for protection against catching and spreading of fires and prevention of accidents; and any building or structure or part thereof constructed, altered, maintained, repaired or used, and any equipment therein, thereon or in connection therewith installed, altered,

maintained, repaired or used contrary to a by-law or ordinance adopted under this authorization is a nuisance; provided it shall be the duty of the inspector of buildings to withhold permit for any of the above operations in violation of any by-law or ordinance enacted hereunder, and appeal shall lie from the decision of the inspector of buildings to the municipal officers and from said municipal officers to the superior court according to the provisions of section 34 of chapter 96; and provided further, that said municipal officers shall have the power to hear and determine appeals from the refusal of such permits and to permit exceptions to or variations from the terms of such by-law or ordinance in the class of cases or situations and in accordance with the principles, conditions and procedure specified in such by-law or ordinance. (1945, c. 51. 1947, c. 267)

Cross references.—See c. 97, §§ 10-21, re municipal inspection of buildings; c. 100, § 29, re licensing innkeepers and victualers; c. 100, § 47, re licensing lodginghouses, etc.; c. 100, § 76, re moving pictures, etc.

This paragraph is a valid exercise of the police power. Opinion of the Justices, 124 Me. 501, 507, 128 A. 181.

Nature and purpose of authority conferred.—The provisions of this paragraph were plainly intended by the legislature to provide, among other things, for safety against conflagrations, and while, under the paragraph, the authority of municipal corporations to make a by-law or ordinance is to a certain extent general, yet, on the other hand, its spirit is quite specific. Lewiston v. Grant, 120 Me. 194, 113 A. 181.

Building erected contrary to ordinance will be enjoined.—This state has declared that buildings erected contrary to the ordinances for which this paragraph provides, are nuisances. The court in equity at common law has jurisdiction to restrain nuisances, and has specific jurisdiction in this state in cases of nuisance and waste. Therefore, it is clear that equity will take jurisdiction for the threatened violation of a municipal ordinance when such violation contemplates an act which amounts to a nuisance in law, not because the act is a violation of the ordinance but because it is a nuisance. Houlton v. Titcomb, 102 Me. 272, 66 A. 733.

And court has no discretion in determining whether or not building is nuisance.—Since an ordinance adopted pursuant to this paragraph was adopted by virtue of statutory authority, and this paragraph has distinctly declared that a building erected in violation of such ordinance is a nuisance, the court has no discretionary power in determining whether or not the building is a nuisance. Lewiston v. Grant, 120 Me. 194, 113 A. 181.

Ordinance held valid. — An ordinance which forbids the repairing or alteration of a wooden building standing on land within the fire district so as to increase its height and size, is not void because of constitutional provisions. Lewiston v. Grant, 120 Me. 194, 113 A. 181.

X. For the regulation of all vehicles used therein; and establishing the rates of fare, routes, and places of standing, and by requiring proof of financial responsibility of owners or operators of vehicles for hire, except those under the jurisdiction of the public utilities commission, which proof shall be a liability insurance policy in such amounts and form as shall be satisfactory to the licensing authorities of the town, city or village corporation, as a condition precedent to the granting of licenses to operate such vehicles, and in any other respect; but by-laws and ordinances for this purpose shall be published 1 week at least before they take effect, in some newspaper printed therein, or if there is no newspaper printed therein, such by-laws and ordinances shall be posted at least 1 week before they take effect, in 2 public and conspicuous places therein, and published once in some newspaper printed in the county in which said town is situated; and penalties for their breach shall not exceed $20 for 1 offense, to be recovered by complaint to the use of such city, town or corporation. (1951, c. 190)

Cross reference.—See c. 22, § 130, re may not alter speed limitations.

Constitutionality.—The validity of this general delegation of the police power and the exercise of it by the municipality, within proper limits, cannot be questioned. The citizen has a constitutional and common-law right to travel and transport his property by motor vehicles over the public highways, including the streets of a

city, and, subject to statutory or municipal regulations, has the right to make a reasonable use of such vehicles in the business of carrying passengers or freight for hire. This right to conduct a private business on the public highway, however, is not inherent or vested, but is in the nature of a special privilege which the state, or municipality under its delegated power, may either condition, restrain, extend or prohibit. Chapman v. Portland, 131 Me. 242, 160 A. 913.

Effect of failure to publish ordinance.—See Rush v. Buckley, 100 Me. 322, 61 A. 774.

Ordinances limiting number of public vehicle stands and fixing their location held valid.—See Chapman v. Portland, 131 Me. 242, 160 A. 913; Central Cab Co. v. Portland, 137 Me. 169, 16 A. (2d) 129.

Ordinance setting aside portion of street for heavily loaded vehicles held valid.—See State v. Boardman, 93 Me. 73, 44 A. 118.

XI. For protection of persons against injury from the sliding of snow and ice from roofs of buildings; but the municipal authorities shall notify the owners of the buildings of by-laws or ordinances adopted under this specification, and if such owners do not comply with them in 30 days after notice, they shall be liable for all injury sustained by any person in consequence thereof; and said authorities, at the expense of their cities, towns or corporations, may place the required guards or other obstructions on the roofs of such buildings, and the reasonable charges therefor may be recovered of such owners.

XII. Providing for the election of a board of assessors and selectmen to serve for the term of 3 years, 1 member of such board being elected annually in the manner now prescribed for the election of members of the superintending school committee in towns when the board of assessors or selectmen consists of not more than 3 members.

See § 14, re election of selectmen, overseers of the poor and assessors; c. 41, § 46, re superintending school committees.

XIII. Establishing localities for, and regulating the sale of fresh meat and fish therein, and fixing penalties for breach thereof; provided that this subsection shall only apply to cities.

Meat-inspection ordinance held valid.—See State v. Maheu, 115 Me. 316, 98 A. 819.

XIV. Establishing and adopting by-laws and ordinances regulating the purchase and sale of articles usually bought by dealers in old junk and second-hand articles, and the pawning of articles with pawnbrokers, and prescribing conditions to be observed by buyers and sellers, pawners and pawnbrokers, to prevent or detect the sale or purchase of stolen goods; and prescribing suitable penalties in such by-laws and ordinances; provided that this subsection shall only apply to cities and towns of more than 1,000 inhabitants.

Cross reference.—See c. 100, §§ 131-136, re pawnbrokers.

Ordinance requiring license to "keep or store" junk, etc.—See State v. Brown, 119 Me. 455, 111 A. 700.

XV. For regulating and controlling the business of hawking and peddling of goods, wares and merchandise at retail within their limits, for the issuing by their municipal officers of municipal licenses and the imposing of license fees therefor.

This subsection shall not apply to commercial agents or other persons selling by lists, catalogues or otherwise, goods, wares or merchandise for future delivery, to persons selling fish, or to persons selling farm, dairy or orchard products of their own production, and to persons selling bark, wood or forest products, and to persons selling newspapers or religious literature. (1949, c. 434, § 1)

Cross references.—See c. 100, §§ 103-119, re itinerant vendors; c. 100, §§ 120-130, re itinerant photographers.

History of paragraph. — See State v. Brown, 135 Me. 36, 188 A. 713.

The power to regulate the business of

hawking and peddling is limited to retail transactions. State v. Brown, 135 Me. 36, 188 A. 713.

Nor does this paragraph authorize the regulation of the business of "vending" goods, wares and merchandise as distinct from hawking and peddling the same. The term "vend," although it may include hawking and peddling, has a broader meaning. It may be properly applied to any sale. State v. Brown, 135 Me. 36, 188 A. 713.

And the legislative grant of authority is limited to the regulation of the "business" of hawking and peddling at retail, not single or isolated transactions. Business, in a legislative sense, is that which occupies the time, attention and labor of men for the purposes of livelihood or for profit, and constitutes a considerable part of their occupation, business or vocation. State v. Brown, 135 Me. 36, 188 A. 713.

Ordinance must state time of duration of license.—An ordinance imposing a license fee under this paragraph, to be valid and operative, must state the time of the duration and validity of the license to be issued. State v. Thompson, 135 Me. 114, 190 A. 255.

The amount of the fee imposed in the exercise of the delegated police power under this paragraph for the purposes of regulation must be limited and reasonably measured by the necessary or probable expenses of issuing the license and of such inspection, regulation and supervision as may be lawful and necessary. If a license fee is so high as to be virtually confiscatory or prohibitive of a useful and legitimate occupation or privilege, the ordinance imposing it is invalid; so, too, if under the guise of police regulation a tax for revenue purposes is levied. State v. Brown, 135 Me. 36, 188 A. 713.

Ordinance held invalid.—See State v. Brown, 135 Me. 36, 188 A. 713.

XVI. For the licensing and conducting of dance halls, and to provide suitable penalties for violations thereof.

XVII. For the purposes of establishing and maintaining a general system of contributory pensions and retirements for the benefit of their officers, agents, servants and employees, with necessary classifications and terms of admission; establishing boards to administer such systems; and contributing funds toward the maintenance of such systems and appropriating and raising moneys therefor; provided that moneys appropriated by any city or town for the operation of such pension or retirement system together with any moneys contributed by any person eligible to participate in such system shall be administered by the board created for such purpose and shall be kept in a separate fund to be invested and disbursed by said board; and provided that cities and towns which establish such systems in accordance with the provisions of this subsection may contract with any insurance company licensed to do business in the state for the payment of said pensions or retirement benefits; and provided that any funds held by a city or town or by a board established thereby shall be exempt from attachment or trustee process.

XVIII. For promoting the safety and general welfare of the public and of the occupants and users of certain existing buildings and parts thereof:

To establish adequate standards for all features of means of egress, fire protection, fire prevention, accident prevention and structural safety in, on and in connection with existing buildings or parts thereof in use, habitually or occasionally, for public assemblage, including parts of buildings used for other occupancies but effecting the parts used for public assemblage as to said features of public safety.

To make mandatory alterations and improvements to bring such existing buildings or parts thereof up to said standards of safety where such buildings or parts thereof are or are to be rented out for use, or used either habitually or occasionally for public assemblage with intent of financial gain to an individual, partnership or corporation; to provide that owners of buildings used in any parts thereof for public assemblage where financial gain to an individual, partnership or corporation is not involved, or the lessee of any such parts, or both parties, may be advised by way of warning in writing, as to said features of public safety in connection with such place of public assemblage which appear dangerously deficient in comparison with said standards of safety.

To license all parts of buildings used or to be used for public assemblage thus regulated as to safety by by-law or ordinance authorized hereunder, where buildings or parts thereof are or are to be rented out for use, or used either habitually or occasionally for public assemblage with intent of financial gain to an individual, partnership or corporation; and to assign and collect fees for said licenses commensurate with the size, capacity or other rational feature of the establishment as related to safety.

To make provision for enforcement of such by-law or ordinance, including requirements that owner or tenant of such a licensed establishment shall file plans of such establishment adequate to show all of said safety features, failure to furnish such adequate plans to be sufficient cause for denying or revoking such a license; provided that all enforcement officers designated in said ordinance shall be given free access at all reasonable hours to all parts of buildings used in any parts thereof for public assemblage; that any buildings or parts thereof used in violation of or without a license required by said by-law or ordinance is a nuisance; that appeal from any order issued under said ordinance shall lie to the municipal officers and from said municipal officers to the superior court according to the same procedure provided elsewhere by statute; that any person, firm or corporation, being the owner, agent in principal charge of, or tenant of any part of such building used for public assemblage as controlled by said by-law or ordinance, who shall violate any terms thereof, or refuse to obey any order issued thereunder, shall be guilty of a misdemeanor under the jurisdiction of the municipal court.

"Place of public assemblage" as used in this subsection shall mean a room or space which is used for the congregating or gathering of 100 or more persons for religious, recreational, educational, political, social or amusement purposes, or for the consumption of food or drink, except as herein otherwise specifically provided. For the purpose of this definition, such room or space shall include any occupied connecting room or space in the same story or stories above or below where entrance is common to the rooms or spaces.

XIX. For a system of rules for the appointment, service, training, promotion, demotion, layoff, reinstatement, suspension and removal of the members of the police and fire departments and for a civil service commission to administer the same. Chiefs of the fire departments and police departments may be made subject to such rules if the municipality so votes but only as members of such departments. Nothing herein contained shall be construed to prevent the removal of chiefs of police and fire departments in accordance with the terms of their appointment and in addition to other causes herein stated. (1945, c. 235. 1947, c. 91)

XX. For establishing a service charge from time to time upon improved lots of land, with buildings thereon, connected with a municipal sewer system or disposal plant, and against the owner thereof, for the actual use of said system or plant, and said charge shall be no more than the proportionate expense of operating and maintaining said system or plant, and shall be applied thereto. (1951, c. 163)

XXI. To entertain applications for the establishment of junk yards, give notice thereof, hold hearings thereon, issue licenses or permits therefor, subject to such reasonable restrictions, conditions and limitations as may seem desirable; to fix the costs and fees that shall be paid by applicants for notice, hearing and license; to provide suitable penalties for violations; and the fees, charges and penalties prescribed in sections 139, 141 and 143 of chapter 100 shall be permissible and shall be deemed reasonable. (1951, c. 236. 1953, c. 308, § 94)

XXII. Authorizing their respective fire departments to go to aid another city, town or village corporation within or without this state in extinguishing fires

therein; and while in the performance of their duties in extending such aid, the members of such departments shall have the same immunities and privileges as if performing the same within their respective cities, towns and village corporations. The words "fire departments" shall mean lawfully organized fire fighting forces, however constituted.

Any such city, town or village corporation aided hereunder may compensate any city, town or village corporation rendering such aid for the whole or any part of any damage to its property sustained in the course of rendering such aid and may reimburse it in whole or in part for any payments lawfully made to any member of its fire department or to his widow or other dependents on account of injuries or death suffered by him in the course of rendering such aid or of death resulting from such injuries. [1953, c. 192]. (R. S. c. 80, § 83. 1945, cc. 51, 235. 1947, cc. 91, 267. 1949, c. 434, § 1. 1951, cc. 163, 190, 236. 1953, c. 192; c. 308, § 94.)

Sec. 87. Parking meters and charges; use of revenue.—The legislative body of any city and the inhabitants of any town may install parking meters on any street, public way or parking area and establish reasonable charges for parking to be paid through such meters.

The revenue from the use of such meters shall be expended to finance the purchase, maintenance and policing of such meters or to maintain and improve streets and highways, or to acquire, construct, improve, maintain and manage public parking areas, or for any combination of the foregoing purposes, but for no purpose not expressly authorized herein.

The provisions of this section shall apply to parking meters already installed and to those which may be installed hereafter. (1949, c. 210.)

Code of Ordinances.

Sec. 88. Grant of power.—Any city or town is empowered to revise, codify and compile from time to time and to publish in book or pamphlet form all ordinances of such city or town of a general and permanent character and to make such changes, alterations, modifications, additions and substitutions therein as it may deem best to the end that a complete simplified code of such ordinances then in force shall be presented, but with errors, inconsistencies, repetitions and ambiguities therein eliminated. (1951, c. 282.)

Sec. 89. Arrangement of ordinances.—The ordinances in such revision, codification and compilation shall be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signatures, attestations and other formal parts. (1951, c. 282.)

Sec. 90. Repeal of conflicting provisions; title. — Such revision shall be by one ordinance embracing all ordinances of a general and permanent character preserved as changed or added to and perfected by such revision, codification and compilation and shall be a repeal of all ordinances in conflict with such revision, codification and compilation, but all ordinances then in force shall continue in force after such revision, codification and compilation for the purpose of all rights acquired, fines, penalties and forfeitures and liabilities incurred and actions therefor. The only title necessary for such ordinance shall be "An ordinance for revising, codifying and compiling the general ordinances of the city or town of ." (1951, c. 282.)

Sec. 91. Publication in book or pamphlet form. — Such ordinances when so revised, codified, compiled and published in book or pamphlet form by authority of the city or town need not be printed or published in any other manner. (1951, c. 282.)

Sec. 92. Effect of code.—Said code when adopted shall have the force

and effect of an ordinance regularly enacted with the usual prerequisites of law; shall be admitted in evidence without further proof and shall be prima facie evidence in all courts of the existence and regularity of the enactments of the particular ordinance and of said code. (1951, c. 282.)

Municipal Planning and Zoning.

Sec. 93. Planning and zoning powers of municipalities. — The legislative body of any city and the inhabitants of any town may provide for a planning board, for the preparation by it of coordinated plans for the development of such municipality and for their enforcement. For this purpose they may, in such measure as is deemed reasonably necessary in the interest of health, safety or the general welfare, regulate and restrict the location and use of buildings, structures and land for trade, industry, residence or other purposes; the height, number of stories, area, bulk and construction of buildings and other structures; the size and width of lots and of yards and other open spaces thereon; the density of population; the setback of buildings along streets, parks or public waters; the subdivision and development of land; and the erection of buildings within the lines of streets, ways or parks shown on an official map or not abutting on approved streets. For the purpose of any such regulation they may adopt a zoning plan dividing the municipality into zones of such number, shape and extent, and may establish an official map or maps and development plans of the whole or any portion of the area of such municipality, as may be deemed best suited to carry out the purpose of this section. Such regulations may include requirements as to the extent to which and the manner in which streets shall be improved and drainage and utilities shall be installed or assured as a condition precedent to the approval of a plat or subdivision. No zoning regulation or amendment thereof shall be adopted until after a public hearing has been held thereon nor except by a 2/3 vote in a city of its legislative body or in a town of a town meeting.

All such regulations shall be worked out as parts of a comprehensive plan for the development of such municipality and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality; to lessen traffic accidents and congestion; to secure safety from fire and other dangers; to provide adequate light and air; to prevent overcrowding of land and population; to promote a wholesome and agreeable home environment; to prevent the development of unsanitary areas for housing purposes; to secure a well-articulated and adequate street system; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve natural resources; or to facilitate the adequate provision of transportation, water, sewerage and other public utilities, services and requisites.

A building or land used or to be used by a public service corporation may be exempted in part or whole from regulations enacted under the provisions of this section provided that upon petition, the public utilities commission, after due notice and a public hearing, adjudge such exemption to be reasonably necessary for the convenience or welfare of the public.

Regulations enacted under the provisions of this section shall not apply to structures and the use thereof existing at the time they are enacted but shall apply to alterations in structure or use made thereafter. (R. S. c. 80, § 84. 1945, c. 24, § 1; c. 293, § 15.)

Zoning defined.—Zoning is the division of a municipality into districts and the prescription and application of different regulations in each district. Toulouse v. Board of Zoning Adjustment, 147 Me. 387, 87 A. (2d) 670.

Zoning regulation does not transcend police power.—Zoning regulation, deriving

vitality from enabling statutes, and having substantial relation to public health, public safety, and the general welfare, would not transcend police power. Portland v. Sivovlos, 136 Me. 4, 1 A. (2d) 179.

Nor infringe state or federal constitution.—Neither the fifth amendment to the constitution of the United States nor the constitution of this state contains any provision infringed by zoning legislation. Nor does the fourteenth amendment to the constitution of the United States prohibit zoning legislation in the states. Bolduc v. Pinkham, 148 Me. 17, 88 A. (2d) 817.

The justification for the restrictions imposed by zoning statutes and ordinances is given in this section and §§ 94-96 as "in the interest of health, safety, or the general welfare." Toulouse v. Board of Zoning Adjustment, 147 Me. 387, 87 A. (2d) 670.

Ordinances strictly construed.—Before the adoption of modern zoning laws, the owners of property were restricted in the use of their property only by prohibitions of use recognized by the common law, or statute, as detrimental to the rights of the public. The restrictions of zoning statutes and zoning ordinances authorized by statute are in derogation to the common law and should be strictly construed. Where exemptions appear in favor of the property owner, the exemptions should be construed in favor of the owner. Ordinances cannot be enlarged by implication. Toulouse v. Board of Zoning Adjustment, 147 Me. 387, 87 A. (2d) 670.

Ordinance held valid.—See York Harbor Village Corp. v. Libby, 126 Me. 537, 140 A. 382.

Cited in Boothby v. Westbrook, 138 Me. 117, 23 A. (2d) 316.

Sec. 94. Platting approval.—No register of deeds shall hereafter file or record any plat of a subdivision of land lying within any municipality until it shall have been approved by the municipal officers and such approval entered on the plat by the city or town clerk. If the legislative body of a city or the inhabitants of a town so ordain and certify such action to the appropriate register of deeds, no subdivision of land in such a manner as to require a street or way for access to a lot shall thereafter be filed or recorded until a plat of the same shall have been approved by the municipal officers. If the legislative body of a city or the inhabitants of a town having a planning board so ordain and certify such action to the appropriate register of deeds, such board shall in their stead pass upon plats under the provisions of this section and access ways under the provisions of section 95. The filing or recording of a plat without the approval required by this section shall be void. Whoever transfers or sells or agrees or negotiates to sell any land by reference to or exhibition of or by other use of a plat of subdivision of land into 5 or more lots before such plat has been approved as provided herein and recorded by the appropriate register of deeds shall be punished by a fine of not more than $200 for each lot so transferred or sold or agreed or negotiated to be sold. Any municipality may enjoin such transfer or sale or agreement of sale of land within the municipality. (R. S. c. 80, § 85.)

Cited in Bolduc v. Pinkham, 148 Me. 17, 88 A. (2d) 817.

Sec. 95. Official maps.—The legislative body of a city or the inhabitants of a town may establish an official map thereof showing the location of the public streets and parks and of ways used in common by more than 2 owners, and the boundaries of zones, theretofore established. The city or town clerk shall certify the fact of the adoption of the official map to the register of deeds of the county in which such city or town is situated, who shall receive and record the same. The lines of public streets and parks and the boundaries of zones thereafter established and the lines of streets, ways and parks thereafter approved under the provisions of section 94 or this section shall by such actions become parts of the official map.

After the planning board of a municipality shall have adopted a master plan under the provisions of section 96, in a city the legislative body and in a town the inhabitants thereof may place on the official map the lines of planned new streets, parks and street and park extensions and widenings. The placing of any street, park or line upon the official map shall not be deemed to constitute

the opening or establishment of any street or park or the taking or acceptance of any land for street or park purposes. No permit shall be issued for any building or structure, except as authorized under the provisions of sections 11 and 17 of chapter 50, or part thereof on any land located between the mapped lines of any street, way or park as shown on the official map except on appeal under the provisions of section 98.

In any municipality having an official map under the provisions of this section, no pavement, public water facility, sewer or other public utility or improvement shall be constructed along any street not on such map, and the legislative body of a city or the inhabitants of a town may ordain that no permit for the erection of any dwelling, or of any other building requiring access from a street, shall be issued unless a street or way giving access thereto appears on such map or is approved for such purpose by the municipal officers. (R. S. c. 80, § 86. 1951, c. 266, § 98.)

Cited in Bolduc v. Pinkham, 148 Me. 17, 88 A. (2d) 817.

Sec. 96. Duties of planning boards. — Any planning board established under the provisions of section 93 shall consist of 5 members no one of whom shall be a salaried official of the municipality. The terms of members shall be such that one term expires each year.

The planning board of any municipality may prepare and adopt and thereafter amend by a majority vote of the board, after public hearing in each case on its tentative proposals, a comprehensive master plan showing its recommendations for the development of the municipality, which may include, among other things, the proposed general location, extent, type of use, layout and character: of streets, bridges, viaducts, tunnels, grade separations of streets and railroads, parks, parkways, playgrounds, waterway and waterfront developments, airports, public buildings and other public ways, grounds, places, spaces and property; of utilities and terminals, whether publicly or privately owned, for water, light, power, heat, sanitation, transportation, communication and other purposes; and of community centers, neighborhood units and rehabilitated blighted districts and slum areas; and may include a proposed zoning plan for regulating the location, use, size, construction and open spaces of buildings, the use of land and population density. The master plan, upon adoption and as thereafter amended, shall be a public record.

In a municipality having a planning board hereafter established, after the planning board has adopted a master plan as provided in this section, no regulation, official map or zoning or other plan shall be enacted, established or amended under the provisions of sections 93 to 95, inclusive, and no plat, street or way shall be approved, under such provisions, until the planning board shall have reported its recommendations in regard thereto, and no public building, structure, except as authorized under the provisions of sections 11 and 17 of chapter 50, utility or roadway, or street, way, park or other public land shall be authorized, established, or modified in location or extent until the planning board shall have reported its recommendations in regard to the location and extent thereof. This report shall be made only after the board has made a careful investigation and is convinced that the plans or regulations recommended by it will fit in with the comprehensive master plan adopted by it for the development of the municipality. In a city, if the board disapproves any enactment, establishment, amendment, approval or authorization, such action shall not become effective except by the favorable vote of 4/5 of the legislative body. If the board fails to report within 45 days after submission to it of a proposed action, it shall be deemed to have approved such action.

In a municipality having a city or town engineer, no plat shall be approved under the provisions of section 94 until the engineer has had opportunity to report

thereon in regard to grades, feasibility of drainage and sewering, and character of road surfacing.

In a city not having a planning board the legislative body, and in a town not having a planning board the inhabitants thereof, may provide for a zoning committee and authorize it to act in lieu of a planning board in recommending enactment of a zoning plan as authorized under the provisions of section 93. (R. S. c. 80, § 87. 1945, c. 24, § 2.)

Cited in Bolduc v. Pinkham, 148 Me. 17, 88 A. (2d) 817.

Sec. 97. Board of appeals. — The legislative body of any city and the inhabitants of any town regulating building or use of buildings or land under the provisions of sections 93 to 95, inclusive, shall by ordinance create a board of appeals. Such ordinance shall specify the number and terms of members, mode of appointment and other details relating to the organization and procedure of such board, and shall provide for one or more associate members to act thereon in place of any member unable to act, due to interest, absence from the state or physical incapacity. Such ordinance may authorize such board, by vote of not less than a majority of the full membership of its members after a public hearing in each case, to interpret the details of the application of ordinances and regulations enacted under such sections in accordance with general rules set forth in such ordinances or regulations, including the power to determine appeals from the alleged erroneous refusal of building permits and to permit exceptions to or variations from regulations in the classes of cases or situations and in accordance with the principles, conditions and procedure specified therein and so as to grant reasonable use of property where necessary to avoid confiscation and without substantially departing from the intent of plans and regulations made under such sections. (R. S. c. 80, § 88. 1945, c. 24, § 3. 1947, c. 109.)

Section no longer mandatory.—The mandatory provision of this section with reference to exceptions and variances, as originally enacted, was made directory by the amendment of the section carried in P. L. 1947, Chap. 109. Bolduc v. Pinkham, 148 Me. 17, 88 A. (2d) 817.

Sec. 98. Appeals. — Any person aggrieved or taxpayer affected by any decision of a board of appeals or any governing body of a political subdivision which is of the opinion that a decision of a board of appeals is illegal may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board.

Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court shall have exclusive jurisdiction to affirm, modify or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board or, if it was not so urged, unless there were reasonable grounds for failure to do so.

Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from. (1945, c. 24, § 4.)

Procedure on certiorari.—Certiorari is a writ issued by a superior to an inferior court of record, or to some other tribunal or officer exercising a judicial function, requiring the certification and return of the record and proceedings, that the record may be revised and corrected in matters of law. It does not lie to enable the superior court to revise a decision upon matters of fact. Upon hearing of a petition for writ of certiorari, the question for the court to decide is whether it will issue the writ. If the writ is ordered to issue, the court at nisi prius has the jurisdiction to decide what should be done. These time-honored rules regarding certiorari are recognized by the terms of this section, providing for certiorari in zoning cases. Toulouse v. Board of Zoning Adjustment, 147 Me. 387, 87 A. (2d) 670.

Sec. 99. Relation to other laws.—In a municipality not having a planning board, ordinances and regulations previously enacted under the repealed sections 137 to 144, inclusive, of chapter 5 of the revised statutes of 1930, as amended, and sections 31 and 32 of chapter 27 of the revised statutes of 1930, as amended, shall continue in full force and effect and may be amended in accordance with the provisions of such sections until said ordinances and regulations are repealed or superseded by ordinances or regulations under the provisions of sections 93 to 98, inclusive. Upon establishment of a planning board in such a municipality and in any municipality heretofore having a planning board all provisions of ordinances or regulations enacted under such repealed sections not inconsistent with the provisions of sections 93 to 98, inclusive, shall continue in full force and effect as though enacted thereunder and any provisions inconsistent with sections 93 to 98, inclusive, shall be void. If the legislative body of a city or the inhabitants of a town heretofore having a planning board so ordain, such board shall hereafter act as a planning board under the provisions of sections 93 to 96, inclusive. (R. S. c. 80, § 89. 1951, c. 266, § 99.)

Money Raised. Money in Trust.

Sec. 100. Money raised for certain purposes.—The voters at a legal town meeting may raise the necessary sums for the support of schools and the poor; making and repairing highways, town ways and bridges; and sprinkling streets; acquiring, improving and repairing land for use as public parking places for motor and other vehicles; acquiring by purchase or otherwise suitable sites, or suitable sites and buildings, or erecting buildings for free public libraries; repairing and constructing buildings for academies, seminaries or institutes with which the town has a contract as provided in section 105 of chapter 41; purchasing and fencing burying grounds; maintaining private burying grounds established before 1880; purchasing or building and repairing a hearse and hearsehouse for the exclusive use of its citizens; for the acquisition and maintenance of public town dumps and for the providing of public dump facilities, whether said dump facilities be located within or outside of the geographic limits of said town; and for other necessary town charges. (R. S. c. 80, § 90. 1949, c. 158. 1953, c. 17.)

Cross references.—See § 120, re refunding indebtedness; §§ 124-129, re recreational purposes; §§ 134, 135 re armories drill rooms, etc.; §§ 136-141, re harbor or river improvements; § 163, re protected reserves; c. 11, § 12, re national arbor day; c. 14, §§ 17, 18, re providing armories, drill rooms, and target ranges; c. 23, § 44, re ways and bridges; c. 24, § 11, re municipal airports; c. 41, §§ 28, 37-39, 104, 107, re schools; c. 41, § 101, re conveyance or board of pupils attending secondary schools; c. 41, §§ 112-121, re community school districts; c. 42, § 31, re municipalities to raise money to secure free use of library; c. 45, §§ 42-47, re power to aid in construction of railroads; c. 60, §§ 163-167, re group insurance; c. 94, § 11, re paupers; c. 94, § 18, re union town farms; c. 94, § 19, re employment of social welfare worker; c. 96, § 10, re clearing of land for public ways and preser-

vation of trees; c. 96, § 17, re compensation of tree wardens; c. 96, § 87, re public drinking troughs, etc.

Section gives town no control over assessment and collection of taxes.—This section empowers a town to raise money for specified purposes—that is, to fix an order by vote the amount to be assessed and collected for proper town charges—, but there the discretionary power of the town seems to end. The section gives it no control over the assessment or collection of any taxes. Thorndike v. Camden, 82 Me. 39, 19 A. 95; Dolloff v. Gardiner, 118 Me. 176, 91 A. (2d) 320.

Money once collected cannot be appropriated to different purposes.—The intention of this limitation was to prevent money from being assessed and collected for other objects, than those named in the laws; and this intention cannot be defeated by a misapplication of the money by way of appropriation. If money can be appropriated to different purposes after it has been collected, then the limitation upon the assessment and collection of it becomes ineffectual and void. Hooper v. Emery, 14 Me. 375.

Words, "other necessary town charges," extend to expenses incident to corporate powers and duties.—Without enumerating the objects which this term, "other necessary town charges," may be understood to embrace, it may in general be considered as extending to such expenses as are clearly incident to the execution of the power granted, or which necessarily arise in the fulfilment of the duties imposed by law. Bussey v. Gilmore, 3 Me. 191; Westbrook v. Deering, 63 Me. 231.

The power given by statute to towns to raise money for "necessary town charges" extends only to those which are incident to the discharge of corporate duties. Gale v. South Berwick, 51 Me. 174.

And do not constitute new and distinct grant of power.—The words, "other necessary town charges," do not constitute a new and distinct grant of indefinite and unlimited power to raise money at the will and pleasure of a majority. They embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the powers conferred upon towns. Gale v. South Berwick, 51 Me. 174; Opinion of the Justices, 52 Me. 595; Westbrook v. Deering, 63 Me. 231.

They have been liberally construed.—The words, "other necessary town charges," have ever received a liberal construction. Gale v. South Berwick, 51 Me. 174.

But charges must arise directly or indirectly in performance of municipal duties.—While towns may undoubtedly contract any and all liabilities, arising in the performance of their municipal duties, whether directly or impliedly imposed, they cannot transcend their legal obligations and incur liabilities neither directly nor indirectly arising in the course of their performance. Gale v. South Berwick, 51 Me. 174; Opinion of the Justices, 52 Me. 595; Westbrook v. Deering, 63 Me. 231.

Section does not authorize town to raise money to send lobbyists to legislature.—The words "and for other necessary town charges," as used in this section, authorize towns to employ a reasonable number of agents or attorneys to advance or protect the rights of the former, before any legally constituted tribunal; they do not authorize a town to raise and expend money to send lobbyists to the legislature. Frankfort v. Winterport, 54 Me. 250.

Or to oppose division before legislative committee.—A town cannot under the provision of this section authorizing a town to raise money for "other necessary town charges," incur expenses in opposing, before a legislative committee, a division of its territorial limits. Westbrook v. Deering, 63 Me. 231.

Or to offer reward for apprehension of murderer. — The inhabitants of a town cannot be legally assessed to pay a reward offered by the vote of a town for the apprehension and conviction of a person who has committed a murder therein. Gale v. South Berwick, 51 Me. 174.

Or to divide money by donation among families by numbers. — Towns cannot legally grant, assess, and collect money, and when it has been received, divide it by donation among the families according to numbers. Hooper v. Emery, 14 Me. 375.

Town may raise money to satisfy distress warrant.—The inhabitants of a town against whom a warrant of distress has issued are authorized to raise money with which to satisfy the same, either by loan or assessment; and if by assessment either at once or, if less burdensome, by installments. Baileyville v. Lowell, 20 Me. 178.

Maintenance of dump. — The statutes have not imposed a duty to provide a dump, nor directly authorized a dump, but it has been considered, in certain towns and cities, that under modern conditions and in many instances it is a service which should be rendered to the inhabitants by the municipality. Some towns have therefore assumed the right, through long custom and usage, to raise money.

for the maintenance of a dump. Wilde v. Madison, 145 Me. 83, 72 A. (2d) 635.

One who lends money upon the representations of town officers that it is required for municipal purposes, in order to recover against the town therefor, must prove the appropriation of the money lent to the discharge of legal municipal debts, unless such officers were authorized by a legal vote of the town to effect the loan. Belfast Nat. Bank v. Stockton, 72 Me. 522.

Cited in Farmington v. Miner, 133 Me. 162, 175 A. 219.

Sec. 101. Money for qualified appraisers.—Cities and towns are authorized to raise and appropriate money to be expended for the hiring of qualified appraisers of real estate, personal property and any other taxable property located in said city or town; provided, however, that such appraisal shall be subject to the control and jurisdiction of the duly qualified assessors of said city or town and that the assessors' judgment as to the value of any property appraised shall be final on all assessments. (1951, c. 244, § 1.)

Sec. 102. Other purposes.—Cities and towns may raise money to procure the writing and publication of their histories, to assist a local historical society, to celebrate any centennial or other anniversary of the settlement or incorporation of such city or town and to publish the proceedings of any such celebration; to defray the expenses of the observance of memorial day, armistice day or any other day set apart for patriotic commemoration, firemen's memorial Sunday and of old home week; to hire a public nurse; to hire a dental hygienist; to subsidize a physician to induce him or her to settle in said town; to aid in the maintenance of a hospital serving the inhabitants of the town; to provide for a local program or one based on coordination with the state having to do with the rehabilitation and employment of persons honorably discharged from the armed forces of the United States in World War II or the Korean Campaign; to provide for physical fitness programs in the schools; to erect suitable monuments or memorials in memory of the soldiers and sailors who sacrificed their lives in defense of their country in the war of 1861, or in World Wars I and II or the Korean Campaign, and a reasonable sum to secure, grade and care for a lot appropriate for such a monument or memorial. They may also raise money to be expended for exterminating or controlling brown tail and gypsy moths and other insect pests. Cities and towns may appropriate, and individuals and private organizations may raise sums of money to be deposited with and expended under the direction of the department of health and welfare for dental hygienist service, provided said sums are expended in the city or town where appropriated or raised. They may also raise money to be expended for the support and maintenance of the chamber of commerce or board of trade. Cities and towns may also raise money for insurance of their officers, agents, servants, fire department or association officers and members, including call or volunteer firemen, against public liability and property damage resulting from the negligent acts of commission or omission of any such personnel while operating motor vehicles owned or rented by any such municipality and in use upon city or town business be it governmental, corporate or proprietary. They may also raise money for the support and maintenance of a duly incorporated volunteer fire department. When a town has appropriated a sum not in excess of $500 for the use of a duly incorporated volunteer fire department within said town, the selectmen may issue their warrant to the town treasurer authorizing him to pay over the amount so appropriated to the treasurer of said volunteer fire department. (R. S. c. 80, § 91. 1945, c. 40. 1949, cc. 119, 193. 1951, c. 5; c. 157, § 12; c. 228. 1953, c. 308, § 95.)

Applied in Gilman v. Waterville, 59 Me. 491.

Sec. 103. General public health nursing service; qualifications of nurses.—Two or more adjoining towns may unite in employing the same public health nurse whose duty shall be to carry on a general public health nursing serv-

ice. Any program established under the provisions of this section and section 123 shall be carried on according to accepted standards for such service, and shall include bedside care of the sick under plans approved by the director of health in accordance with regulations which may be adopted by the department of health and welfare under the provisions of section 13 of chapter 25.

Nothing in this section nor section 123 shall be construed to prevent contiguous towns, or single towns or cities, from employing qualified public health nurses on their own account or in conjunction with private agencies who are contributing to the salaries of such nurses in whole or in part, provided the services of such nurses include a program equivalent to an acceptable generalized public health program and so organized that there is no duplication of work or travel. (R. S. c. 80, § 92.)

See § 123, re appropriation.

Sec. 104. Public and private cemeteries.—Any town at its annual town meeting may vote and appropriate money to carry on the functions of any public or private cemetery corporation which has ceased to operate as such a corporation. (1949, c. 159.)

Sec. 105. Bands.—Cities and towns may raise money for the maintenance or employment of a band of music for municipal purposes and public celebrations. The provisions of this section shall not be in force in any city or town unless approved by a majority vote of the qualified voters of such city or town at an annual election. (R. S. c. 80, § 93.)

Sec. 106. School bands and organized activities.—Cities and towns are authorized to raise and appropriate money to be expended to support and maintain bands and other forms of organized activities conducted under the supervision of the superintending school committee. (1953, c. 41.)

Sec. 107. Graves of soldiers and sailors decorated.—Each and every city, town and plantation by its town or plantation officers is required to decorate the graves of veterans with an American flag and such other floral decorations as in the opinion of said city, town or plantation officers shall be deemed advisable, on Decoration Day, May 30th of each year. Each and every said city, town and plantation is empowered to raise by taxation a sufficient amount of money to pay for said American flags and other floral decorations above mentioned. (R. S. c. 80, § 94.)

Sec. 108. Advertising.—Any city or town may appropriate any sum, not exceeding 1 mill on a dollar, based on the valuation of the preceding year, to be expended and used for advertising the natural resources, advantages and attractions of the state or such city or town. (R. S. c. 80, § 95.)

Sec. 109. Indebtedness refunded; temporary loan; securities. — Cities and towns may issue and negotiate their notes, bonds or scrip for any purpose for which the city or town can raise money or incur debt, and also for the purpose of refunding or paying in whole or in part any indebtedness thereof, which has or may hereafter become due, including money borrowed in anticipation of taxes whether overdue or not yet due. No note, bond or scrip duly authorized at a legal town meeting and issued for the purpose of refunding notes, bonds or scrip or other purported indebtedness theretofore outstanding shall be invalid by reason of any invalidity in the original borrowing.

Provided, however, that nothing herein contained shall be construed to validate the borrowings of a city or town beyond its constitutional debt limit.

Cities and towns may issue and negotiate their notes, to an amount which shall not exceed in the aggregate the total tax levy of the preceding municipal year, for temporary loans to be paid during the year in which they were made, out of the money raised during such current year by taxes, provided that the vote authorizing such notes states that they are to be paid out of money so raised.

If a city or town votes to issue bonds, notes or certificates of indebtedness in accordance with the provisions of law, the officers authorized to issue the same may, in the name of such city or town, make a temporary loan for a period of not more than 1 year in anticipation of the money to be derived from the sale of such bonds, notes or certificates of indebtedness and may issue notes therefor; but the time within which such securities shall become due and payable shall not be extended by reason of the making of such temporary loan beyond the time fixed in the vote authorizing the issue of such bonds, notes or certificates of indebtedness; and notes issued under the provisions of this section for a shorter period than 1 year may be refunded by the issue of other notes maturing within the required period; provided, however, that the period from the date of issue of the original loan and the date of maturity of the refunding loan shall be not more than 1 year; and provided further, that no notes shall be refunded under the provisions of this section except under the authority of such votes as is required for the original borrowing. (R. S. c. 80, § 96.)

See c. 53, § 136, re property of inhabitants may be taken to pay debts; c. 53, § 137, re issue of bonds payable in installments.

Sec. 110. Municipal corporations may contract for water, gas and electric light.—Municipal corporations may contract for a supply of water, gas and electric light for municipal uses for a term of years upon such terms as may be mutually agreed, from time to time renew the same and may raise money therefor. All such contracts made prior to the 28th day of April, 1903 are confirmed and made valid. (R. S. c. 80, § 97.)

Contracts entered into subject to state's right to regulate service and charges.—All contracts by municipalities or by individuals with a utility company for any service are presumed to be entered into with the understanding that the state may at any time regulate the service and the rates to be charged therefor. No clear and unmistakable intent to surrender this important function of government is found in this section. In re Searsport Water Co., 118 Me. 382, 108 A. 452.

And public utilities commission may regulate or change rates.—The public utilities commission has authority to regulate or change the rates for service by any public utility that have previously been fixed in a contract between such utility and a municipality, if such rates are or have become unjust or unreasonable. In re Searsport Water Co., 118 Me. 382, 108 A. 452.

Subsequently enacted charter of light and power company controls.—The charter of a light and power company, being the later and more specific expression of the legislative will, controls if this section is inconsistent with it. Van Buren Light & Power Co. v. Van Buren, 118 Me. 458, 109 A. 3.

Towns not authorized to contract to indemnify individuals against fire losses.—It was obviously not the design of this section to authorize cities and towns to make contracts to indemnify individual owners for the loss of property by fire resulting from the neglect of its officials to furnish an adequate supply of water to extinguish it. Hone v. Presque Isle Water Co., 104 Me. 217, 71 A. 769.

And individual owners of property destroyed by fire cannot maintain an action against a water company for a loss resulting from the negligent failure of the company to furnish a supply of water, either in a case where the duty of the company to furnish water arises solely from an accepted service for general fire purposes or from a general contract on the part of the water company with the municipality to furnish water for such purposes without a specification of any particular thing to be done to that end and without any stipulation respecting liability for losses by fire. Hone v. Presque Isle Water Co., 104 Me. 217, 71 A. 769.

Cited in In re Guilford Water Co., 118 Me. 367, 108 A. 446.

Sec. 111. Fuel yards.—Any city or town may establish and maintain within its limits a permanent wood, coal and fuel yard for the purpose of selling at cost wood, coal and fuel to its inhabitants. The term "at cost," as used herein, shall be construed as meaning without financial profit. (R. S. c. 80, § 98.)

Section is constitutional.—The maintenance of what, in general terms, may be called a municipal fuel yard is a public use for which taxation is permissible. The

legislature did not transcend its constitutional powers when it authorized municipalities to make provision for supplying heat to its citizens, and this section is constitutional. Laughlin v. Portland, 111 Me. 486, 90 A. 318.

This section is valid, and not in violation of the fourteenth amendment to the constitution of the United States. Jones v. Portland, 113 Me. 123, 93 A. 41.

Sec. 112. Propagation of fish.—Towns may raise by a 2/3 vote at their annual meeting, a sum not exceeding $500, to be expended by the municipal officers thereof or by a commissioner elected by the towns for the propagation and protection of fish in public waters located wholly or partially within their respective limits. A report of the expenditure thereof shall be made at the next annual meeting by the officer or officers authorized to expend such appropriation. (R. S. c. 80, § 99.)

See c. 10, § 22, sub-§ XIX, re construction of word "town".

Sec. 113. Doings of towns in suppression of rebellion made valid.—The past acts of towns, in offering, contracting to pay and paying, and in raising and providing means to pay expenses for recruiting for their several quotas, or bounties to or for volunteers, drafted men or substitutes of drafted men, or enrolled men, mustered into or enlisted for the military or naval service of the United States, are valid, provided that such acts have been done at meetings legally called and held in pursuance of warrants therefor, setting forth the purposes upon which such acts were based. All taxes assessed, contracts made and notes and orders given by municipal officers in pursuance of votes passed at such meetings are valid. (R. S. c. 80, § 100.)

Constitutionality. — See Thompson v. Pittston, 59 Me. 545.

Applied in Barbour v. Camden, 51 Me. 608; Alley v. Edgecomb, 53 Me. 446; Ferrin v. Portland, 53 Me. 458; Barker v. Dixmont, 53 Me. 575; French v. Sangerville, 55 Me. 69; Hart v. Holden, 55 Me. 572; Concord v. Delany, 56 Me. 201; Mahoney v. Lincolnville, 56 Me. 450; Perkins v. Milford, 59 Me. 315; Chapman v. Limerick, 69 Me. 53.

Cited in Drisko v. Columbia, 75 Me. 73.

Sec. 114. War contracts valid.—Contracts made in pursuance of votes passed at such meetings as provided for in section 113 by such municipal officers or their agents, with any volunteer, drafted man or substitute, or with third persons or associations, for providing means to pay bounties to volunteers, drafted men or substitutes are valid. (R. S. c. 80, § 101.)

Constitutionality. — See Thompson v. Pittston, 59 Me. 545.

Applied in Perkins v. Milford, 59 Me. 315; Bessey v. Unity, 65 Me. 342.

Cited in Chapman v. Limerick, 69 Me. 53.

Sec. 115. Unauthorized war contracts ratified. — Contracts heretofore made by such municipal officers or by third persons for any town, without previous authority, to pay bounties to or for volunteers, drafted men or substitutes, in or enlisted for the military or naval service of the United States may be ratified by any town at a legal meeting, called and notified as provided in section 113. (R. S. c. 80, § 102.)

Applied in Winchester v. Corrinna, 55 Me. 9; Hamilton v. Phipsburg, 55 Me. 193.

Cited in Chapman v. Limerick, 69 Me. 53; Drisko v. Columbia, 75 Me. 73.

Sec. 116. Meetings to accept legacies and gifts; notice.—Whenever the municipal officers of any city or town are notified in writing by the executors of any will, or by the trustees created by virtue of the terms thereof, that a devise or bequest in behalf of said city or town has been made upon conditions contained in said will; or by any individual, that he intends to make a conditional gift in behalf of said city or town; the municipal officers of said city or town shall, within 60 days after said notice to them, call a legal meeting of the inhabitants of said

city or town qualified to vote upon city or town affairs; provided, however, that in cities the acceptance of such devise, bequest or conditional gift may be by vote of the city government, instead of by the inhabitants at a special election, if the municipal officers so direct. The municipal officers shall give public notice in their warrants of the objects of said meeting of the inhabitants and such other notice as they may deem proper. At such meeting, the said inhabitants or the city government at a regular meeting or at a special meeting called for that purpose shall vote upon the acceptance of said devise, bequest or conditional gift, and if a majority of the legal voters or of the members of the city government present, then and there vote to accept said devise, bequest or conditional gift, in accordance with the terms contained in said will and upon the conditions made by the testator or by said individual, said municipal officers of said city or town shall forthwith notify said executors, trustees or individual, in writing, of said acceptance by said city or town aforesaid, or the nonacceptance thereof. (R. S. c. 80, § 103.)

Cities and towns are expressly authorized to receive and carry out the terms of conditional gifts by this section and § 117. The necessity of express action on the part of the municipality in fulfilling the conditions of such gifts rendered necessary the passage of an enabling statute. But in the absence of any prohibiting statute, a municipality in its corporate capacity may receive and hold gifts of either real or personal estate. Libby v. Portland, 105 Me. 370, 74 A. 805.

As to effect of separate votes at separate town meetings, first to accept a trust, and secondly to reconsider a vote of acceptance and reject a trust, see Manufacturers Nat. Bank v. Woodward, 138 Me. 70, 21 A. (2d) 705.

Cited in York v. Stewart, 110 Me. 523, 87 A. 372.

Sec. 117. Terms of wills or gifts carried out.—Whenever the executors or trustees under any will have fully discharged their duties respecting the payment, delivery or otherwise of any devise or bequest to said city or town under the provisions of section 116; or any such individual has made such contemplated conditional gift to said city or town; and said city or town has accepted said devise, bequest or conditional gift, in accordance with the conditions thereto attached, as set forth in the preceding section, then said city or town shall perpetually comply with, and strictly maintain and keep all the conditions and terms upon which said devise, bequest or conditional gift was made; and any city or town so accepting said devise, bequest or conditional gift and receiving the same, or enjoying the benefits therefrom, may raise money to carry into effect the requirements and terms upon which said devise, bequest or conditional gift was so accepted and received. The provisions of this and the preceding section shall apply only to devises, bequests and gifts devised and bequeathed or given to cities and towns for educational, benevolent and charitable purposes and objects, or for the care, protection, repair and improvement of cemeteries owned by said cities or towns or of cemetery lots owned by individuals. (R. S. c. 80, § 104. 1945, c. 378, § 67.)

Cross reference.—See c. 58, § 19, re trusts relating to burial lots.

Cited in Libby v. Portland, 105 Me. 370, 74 A. 805; York v. Stewart, 110 Me. 523, 87 A. 372.

Sec. 118. Money in trust.—Any city or town may receive money by donation or legacy in trust for benevolent, religious or educational purposes, for the erection and maintenance of monuments and for the benefit of public cemeteries and lots therein; provided that the city or town lawfully consents. (R. S. c. 80, § 105.)

Cross reference.—See c. 58, §§ 14-19, re burying grounds.

Cities and towns are expressly authorized to receive and carry out the terms of trusts by this section and § 122. The necessity of express action on the part of the municipality in fulfilling the conditions of trusts rendered necessary the passage of an enabling statute. But in the absence of any prohibiting statute, a municipality

in its corporate capacity may receive and hold gifts of either real or personal estate. Libby v. Portland, 105 Me. 370, 74 A. 805.

Disposition of trust fund.—Under the regulations specified in §§ 116 to 118, the town, speaking in general terms, may invest the trust fund in interest-bearing securities and use the income for the purposes of the trust, or may use the principal for ordinary municipal purposes, devoting a fair rate of interest thereon to the same trust purposes. The town is absolutely responsible for the fund, whatever disposition is made of it. York v. Stewart, 110 Me. 523, 87 A. 372. See § 120.

Applied in Bangor v. Beal, 85 Me. 129, 26 A. 1112; Ayer v. Bangor, 85 Me. 511, 27 A. 523.

Sec. 119. Grants from federal government.—The respective cities and towns of the state of Maine are given full authority, power and legal capacity to accept title to lands and buildings from the United States of America or any agency thereof and are authorized and empowered to pay to the United States of America or any of its agents a sum equal to the cost of acquisition of said lands and buildings of the United States of America. (1951, c. 258.)

Sec. 120. Taxation for refunding indebtedness and investment of trust funds.—Any city or town which has a funded indebtedness may create a sinking fund for the payment and redemption of such indebtedness and may raise money by taxation for such purpose. City and town officers and officers of quasi-municipal corporations shall hereafter invest all permanent funds including sinking funds, permanent school funds and money or credits deposited with them for perpetual care of lots in cemeteries, in the legal obligations of the United States of America; the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York and Pennsylvania, and the bonds of the several counties, cities and towns in the several states above named which are the direct obligation of said counties, cities and towns, and the bonds of water districts located in the state of Maine, and chartered and organized as quasi-municipal corporations under the laws thereof, which are the direct obligation of said water districts, and, except sinking funds, may invest any of said funds in accordance with the laws of the state governing the investment of the funds of savings banks as enumerated in subsections I to IX and subsection XIX of section 42 of chapter 59, or may deposit the same, including sinking funds, on time deposit in banks or trust companies, organized under the laws of this state or of the United States, and not otherwise; and unless otherwise specifically provided by the terms of the grant or bequest the annual income, only, shall be expended in performance of the requirements of the trust. Provided that this section shall not be construed to require any change of investments made prior to July 7, 1923, or the sale of any securities specifically bequeathed as a corpus of a trust fund if their retention be approved by the judge of probate for the county in which said city or town is located or if the terms creating the trust provide for their retention; but when the indebtedness for payment of which a sinking fund is created is refunded or paid by such city or town by a new loan, any stocks, bonds or securities in said sinking fund, other than its own bonds, may be withdrawn therefrom and shall not be regarded as pledged for payment of the new loan unless afterward returned to the sinking fund. The provisions hereof shall apply to the investment of funds, as provided for in section 15 of chapter 58. (R. S. c. 80, § 106. 1951, c. 76.)

Cross reference.—See c. 58, § 17, re trusts for cemetery purposes.

Use of trust fund for municipal purposes under former law.—See Ayer v. Bangor, 85 Me. 511, 27 A. 523.

Sec. 121. Use of sinking fund.—Any sinking fund described in section 120 shall be used for no other purposes than those provided for in the preceding section, and any town officer who shall use or appropriate the moneys or securities which compose such sinking fund in any other manner or for any other pur-

pose shall be punished by a fine of not more than $2,000 or by imprisonment for not more than 2 years. (R. S. c. 80, § 107.)

Sec. 122. Fund applied according to directions of donor.—The city or town, by its officers or agents, shall apply the sinking fund described in section 120 or its income in accordance with the written directions of the donor or testator, made known at the time when the fund was accepted. If the city or town fails to apply the fund or its income at the times and for the purposes prescribed in said directions, it reverts to the donor, if living; otherwise, to his heirs. (R. S. c. 80, § 108.)

Cited in Libby v. Portland, 105 Me. 370, 74 A. 805.

Sec. 123. General public health nursing service.—Towns desiring to take advantage of the provisions of this section and section 103 are empowered to appropriate or raise money for the said purposes at any annual town meeting, or during the war emergency, at any special town meeting called for the purpose.

The state may contribute not exceeding 50% per year on account of the salary and travel of any such public health nurse whose qualifications meet the requirements of the department of health and welfare, provided that no contribution may be made by the state for services provided for in this section and section 103 where the total population of any town exceeds 6,000 as shown by the most recent U. S. census. The amount to be paid by the towns for such salary and travel shall be paid to the treasurer of state to be credited to the public health nursing account of said department. The salary and necessary travel of such nurses shall be paid by the department of health and welfare, whenever the state contributes to their salary and travel.

The state's share of the above contributions may be paid from the state appropriation for public health nursing, or from federal grants to the state when plans are approved by the granting agency. (R. S. c. 80, § 109. 1949, c. 205.)

Recreational Facilities.

Sec. 124. Recreational purposes. — Any municipality may dedicate and set apart for use as a recreation center or centers as playgrounds, or for any other recreational purpose, any land or buildings or both owned or leased by such municipality and not dedicated or devoted to another public use, and such municipality is authorized to acquire lands or buildings or both for said recreational purposes by gift, purchase or lease; or to construct a building or buildings for said recreational purposes on land dedicated, devoted or acquired as above provided. (1945, c. 204.)

Sec. 125. When provisions effective. — The provisions of sections 124 to 129, inclusive, become effective in any municipality where they have been adopted by the governing body empowered to enact ordinances or by-laws, through the legal procedures provided by the laws of this state for the enactment of ordinances or by-laws, without, however, necessitating preliminary public hearings. (1945, c. 204.)

Sec. 126. Money raised for recreational purposes.—Any municipality adopting the provisions of sections 124 to 129, inclusive, as provided in section 125, is authorized to raise and appropriate money by assessment of taxes pursuant to law, and to do any and all acts necessary and convenient for the purpose of acquiring lands and buildings, or erecting buildings, for playgrounds, recreation centers and for other recreational purposes, for the equipment thereof, and for the conducting and administering of a recreational program including the appointment of the necessary personnel; the powers herein granted shall be construed as governmental rather than corporate or proprietary. (1945, c. 204.)

Sec. 127. Property accepted.—Any municipality which has adopted the provisions of sections 124 to 129, inclusive, is authorized to accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use for recreational purposes authorized in section 124. (1945, c. 204.)

Sec. 128. Union formed.—Two or more municipalities, by vote of the governing bodies of each, may form a union for the purpose of jointly establishing and conducting a recreational program as set forth in sections 124 to 129, inclusive. The municipal governing bodies may by contract or agreement provide for the sharing of costs and for the distribution among the municipalities of the exercise of powers granted by said sections. (1945, c. 204.)

Sec. 129. Limitation of repeal.—The provisions of sections 124 to 129, inclusive, do not repeal or impair any power now vested by public or private law in any municipality, or park, or recreation board or commission. (1945, c. 204.)

Armories.

Sec. 130. Armories provided; places for parade; rent allowed by state.—Municipal officers shall provide for each company of authorized state military or naval forces within their towns a suitable armory or place of deposit for the arms, equipment and equipage furnished by the state. They shall also provide a suitable room for the safekeeping of books, transaction of business and instruction of officers for each regiment, battalion or other unit of authorized state military or naval forces located within their towns; and suitable places for their parade, target practice and drill. A reasonable compensation for rent of such armory, headquarters or place of deposit may be allowed from funds appropriated for such purposes to the town or city furnishing such armory, headquarters or place of deposit. (R. S. c. 80, § 110.)

Sec. 131. Armory construction and repair; powers of military defense commission. — The state military defense commission is authorized to order and supervise the construction of buildings to be used as armories for the purpose of the use of the national guard of the state of Maine, and to repair and improve buildings donated for that purpose. Whenever a town or any person shall deed to the state of Maine any lot or lots, or lot or lots and buildings thereon to be used by the state for the purpose of constructing an armory, the state military defense commission is authorized to accept such gift provided sufficient funds are available to carry out the project. (R. S. c. 80, § 111.)

Sec. 132. Reimbursement by state.—Any city or town constructing an armory in compliance with terms of the preceding section shall be reimbursed by the state, out of any moneys in the treasury not otherwise appropriated, to an amount equal to ½ of the cost of constructing such armory building. The reimbursement aforesaid is not to exceed a total of $50,000 to any one city or town and shall be made in installments in the following manner and amounts: when and as each payment falls due and is payable from the city or town for work performed and material furnished in accordance with the contract provided for in the preceding section, such city or town shall be entitled to receive from the state treasury a sum equal to ½ of such installment then due and payable from the city or town to the contractor; provided, however, that the state military defense commission shall have certified in writing to the treasurer of state that such installment is justly due and payable from the city or town for work performed and material furnished in conformity to the aforesaid contract; provided also that the city or town shall have deposited with the treasurer of state a recorded deed conveying to the state a good and sufficient title to the armory lot and building; and provided further, that not more than 3 such armories shall be erected during the 2-year term of any legislature. (R. S. c. 80, § 112.)

Sec. 133. Armories for exclusive use of national guard.—All armories erected under the provisions of the 2 preceding sections shall be subject to the provisions of section 18 of chapter 14; but nothing herein contained shall be construed to prevent the use of any armory erected under the provisions of said 2 preceding sections for such other purposes, not interfering with its use for military purposes, as the municipal officers may authorize. (R. S. c. 80, § 113.)

Sec. 134. Municipalities, power to build or acquire and raise money by taxation.—All municipalities in this state are given power and authority to build or acquire by purchase, lease, gift or otherwise suitable armories, drill rooms, stables, headquarters offices and the land necessary therefor and for target ranges for such organizations of the national guard or other authorized state military or naval forces as may be stationed or located therein, and to provide for the maintenance and repair of the same; and all municipalities are authorized and it shall be the duty of the officers thereof to raise money by taxation or otherwise for the purpose of providing suitable armories, drill rooms, stables, headquarters offices and target ranges for such organizations of the national guard or other authorized state military or naval forces as may be stationed and located therein, in such manner as is by law provided for the erection and maintenance of all municipal public buildings and improvements. (R. S. c. 80, § 114.)

Sec. 135. Exemption from taxation.—All armories, drill rooms, offices, stables, headquarters offices and target ranges owned by the state or by any municipality, or by any organization of the national guard or other authorized state military or naval forces, and such portion of buildings and lands leased by the state or by any municipality, or by an officer or organization of the national guard or other authorized state military or naval forces, to be used as an armory, drill room, stable, headquarters office, target range or for other military purposes shall be exempt from taxation for all purposes during the period of such ownership or lease and use. (R. S. c. 80, § 115.)

Harbor or River Improvements.

Sec. 136. Harbor or river improvements. — Any municipality in the state, by action of its legislative body, is authorized to negotiate, cooperate and enter into agreements with the United States and this state in order to satisfy the conditions imposed by the United States in authorizing any project for the improvement of navigation of any harbor or river and for protection of property against damage by floods or by erosion, provided such project shall have been approved by the governor. (1949, c. 207.)

Sec. 137. Joint action by municipalities. — When any such improvement or protection project is located within 2 or more municipalities, such municipalities are authorized to undertake jointly any such action as is authorized by section 136. (1949, c. 207.)

Sec. 138. Condemnation; appropriations; bonds. — In order to carry out the intent of sections 136 to 141, inclusive, any municipality is authorized to acquire by condemnation any land, easements or right of ways required for any such improvement or protection project, and any municipality is authorized to make appropriations and to expend funds, in the manner provided by law, for any such improvement or protection project, and to issue bonds or other evidences of debt, subject to statutory limitations, for any such improvement or protection project. (1949, c. 207.)

Sec. 139. Federal government not liable for claims or damages.—The governor, with the advice and consent of the council, is authorized to give assurances that the state will hold and save harmless the United States free from claims or damages resulting from such improvement or protection project and to

enter into an agreement with the federal government for such purpose. (1949, c. 207.)

Sec. 140. State's share of expense.—When an appropriation has been made by the legislature for such purpose, the governor with the advice and consent of the council is authorized to provide for the payment by the state of not more than ½ of the cash contribution required by the federal government for any such improvement or protection project. (1949, c. 207.)

Sec. 141. Investigations.—The governor, with the advice and consent of the council, is authorized to designate any state agency to make such investigation as is deemed necessary in connection with any such improvement or protection project. (1949, c. 207.)

Accounting System.

Cross Reference.—See c. 19, § 3, re audit.

Sec. 142. Annual audit.—Every city, town, plantation, village corporation, sewer district and school district in the state shall have an audit made of its accounts annually covering the last complete fiscal year by either the state department of audit or by qualified public accountants or others, recognized as competent auditors by their training and experience. Choice of such auditor may be made in accordance with the provisions of section 15.

In case of dissatisfaction with the audit made by others than the state department of audit, upon petition of 10% of the legally qualified voters of any city, town, plantation or village corporation, the state department of audit shall make another audit, and the parties making such audits shall have access to all necessary papers, books and records. (R. S. c. 80, § 116. 1947, c. 361, § 1. 1949, c. 172, § 1.)

Sec. 143. Accounting system approved by state department of audit.—Cities, towns, plantations and village corporations shall adopt and have installed an adequate accounting system approved by the state department of audit; provided that accounting systems now in use and approved by the state department of audit may be continued. (R. S. c. 80, § 117. 1945, c. 8.)

Sec. 144. Uniformity; books, forms, etc., supplied.—The accounting systems installed in accordance with the provisions of this chapter shall be such as will, in the judgment of the state auditor, be most effective in securing uniformity of classification in the accounts of such cities, towns or village corporations. The state auditor may supply approximately at cost to cities, towns and village corporations where such accounting systems have been installed such books, forms or other supplies as may be required from time to time after the original installation of such systems. (R. S. c. 80, § 118.)

Sec. 145. Audit report.—Upon the completion of an audit under the provisions of sections 142 and 143, the auditor shall render a report to the municipal officers, trustees, school boards or any other appropriate administrative official, and a certified copy thereof to the state auditor, embodying the results of his findings, with such suggestions as he may deem advisable for the proper administration of the city, town, plantation, village corporation, sewer district or school district. (R. S. c. 80, § 119. 1945, c. 84, § 2; c. 293, § 16; c. 378, § 68. 1949, c. 172, § 2.)

Sec. 146. Expenses.—The expenses incurred under the provisions of sections 142 to 145, inclusive, shall be paid in the first instance by the state; and the treasurer of state shall issue his warrant requiring the assessors of the cities, town and village corporations concerned to assess a tax to the amount of said expense, and such amounts shall be collected and paid to the treasurer of state in the same manner and subject to the same penalties as state taxes. Any balance

due shall be assessed in the succeeding year in the same manner as other state taxes.

The state shall be reimbursed for the expenses incurred under the provisions of section 142, for school and sewer districts by such districts. (R. S. c. 80, § 120. 1949, c. 172, § 3.)

Sec. 147. Schedules for uniform reports. — The state department of audit may furnish to the qualified public accountant auditing the accounts of any city, town, plantation or village corporation in accordance with the provisions of section 142, forms so arranged as to provide for uniform reports and said department of audit may prescribe standard forms intended to promote the systematic accounting of financial transactions and the publication of same in the report of the city, town, plantation or village corporation and it shall be the duty of the officers of all cities, towns, plantations and village corporations to keep and render to the state department of audit in the manner and form prescribed by said department accounts of all business transacted. It shall collect from the proper local authorities such other information pertaining to municipal affairs as in its judgment may be of public interest. All accounting and other officials and custodians of public money of cities, towns, plantations or village corporations shall fill out properly and return promptly to the state department of audit all schedules transmitted by it to them. (R. S. c. 80, § 121. 1945, c. 84, § 3.)

Sec. 148. Systems of municipal accounting investigated.—The state auditor shall inquire into the systems of accounting of public funds in all cities, towns and village corporations and it shall be the duty of all municipal officers to furnish information relative thereto on such forms as he may prescribe. (R. S. c. 80, § 122.)

Sec. 149. Statistics of financial affairs of municipalities published. —The state auditor shall publish biennially statistics relative to the financial affairs of cities, towns and village corporations and other information of public interest pertaining to municipal affairs, said part of his report to be printed and distributed as a separate document, if he believes it to be advisable. (R. S. c. 80, § 123.)

Sec. 150. Clerical assistants and examiners.—The state auditor shall employ, subject to the provisions of the personnel law, necessary clerical assistants and one or more examiners as may be necessary to carry on the work provided for in sections 142 to 151, inclusive. (R. S. c. 80, § 124.)

Sec. 151. Attendance of witnesses and production of books and documents.—The state auditor may require the attendance of witnesses and the production of books and documents and may examine witnesses under oath in all matters arising under the provisions of sections 142 to 151, inclusive. (R. S. c. 80, § 125.)

Sec. 152. Violation of §§ 142-151.—Any public official who violates any of the provisions of sections 142 to 151, inclusive, or neglects or refuses to perform any duty therein imposed shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $100, and such conviction shall be deemed cause for his removal from office. (R. S. c. 80, § 126.)

Revenue Bonds.

Sec. 153. Power to issue revenue bonds.—Any city or town shall have the power to issue and sell revenue bonds for the purchase, acquisition, construction, improvement, extension or repair of any revenue producing public improvement. (1953, c. 421.)

Sec. 154. Definitions.—As used in sections 153 to 161, inclusive, the term

"revenue producing public improvement" shall mean any water supply or distribution system, any sewerage system or sewage disposal facility, or any facility for the parking of automobiles, from which revenues are received by the city or town in connection with the operation or use thereof.

The term "revenue bonds" shall mean bonds secured solely by the pledge of the whole or part of the revenue from any rent, toll or charge for the use or services of such revenue producing public improvement. (1953, c. 421.)

Sec. 155. Effect of bonds.—Revenue bonds issued under the authority of sections 153 to 161, inclusive, shall not pledge the credit nor be a lien against any real property of the city or town nor be a charge against the general revenues of the city or town, but shall be a lien upon and be payable solely from the rentals, tolls or charges imposed for the use or services of such revenue producing public improvement. (1953, c. 421.)

Sec. 156. Use of money.—All money received from the issue and sale of revenue bonds shall be used solely for the purchase, acquisition, construction, improvement, extension or repair of a revenue producing public improvement as defined in section 154. (1953, c. 421.)

Sec. 157. Bonds negotiable and tax free.—Revenue bonds issued under the authority of sections 153 to 161, inclusive, shall be negotiable and tax free in the same manner and to the same extent as any other bonds issued by any city or town in accordance with the provisions of the statutes of the state. (1953, c. 421.)

Sec. 158. Procedure.—Any city or town providing for the issue and sale of revenue bonds shall follow the same procedure as required by law for the issue and sale of other bonds except that the order, ordinance or resolve authorizing the issue and sale of revenue bonds shall state:

I. The purpose for which the revenue bonds are to be issued;

II. The maximum amount of bonds to be issued;

III. The rate or rates of interest or the maximum rate or rates of interest the bond shall bear;

IV. The maximum period within which the bonds shall mature;

V. The amount of annual rentals, tolls or charges which are pledged for the payment of interest and the retirement of principal on the revenue bonds to be issued, and shall pledge such annual revenues for the payment of the principal and interest of such bonds;

VI. That the bonds are not general obligations of the city or town and that no property or revenues of the city or town shall be pledged to the payment thereof or the interest thereon, except the rents, tolls or charges for the use or services of the revenue producing public improvement to be purchased, acquired, constructed, improved, extended or repaired from the proceeds of the revenue bonds to be issued, and that no tax shall in any event be levied for the payment of the interest or principal of such bonds;

VII. That the bonds shall constitute a lien against the rents, tolls or charges for the use or services of the revenue producing public improvement which are specifically pledged under the order, ordinance or resolve authorizing the issuance of the bonds;

VIII. The form and wording of the bonds to be issued;

IX. The conditions under which additional revenue bonds may be issued in connection with the same public improvement. (1953, c. 421.)

Sec. 159. Redemption.—The order, ordinance or resolve may provide that

any or all of the bonds to be issued may be called for redemption prior to maturity under conditions to be fixed in the terms of the order, ordinance or resolve. (1953, c. 421.)

Sec. 160. New revenue bonds.—Any city or town may issue new revenue bonds to provide funds for the payment of any outstanding bonds which were issued for the purposes for which the issuance of revenue bonds is authorized by sections 153 to 161, inclusive. (1953, c. 421.)

Sec. 161. Default.—If there be any default in the payment of the principal of or the interest upon any of said revenue bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the public improvement on behalf of the city or town, under the direction of said court and by and with the approval of said court, to fix and charge rates and collect revenues sufficient to provide for the payment of any bonds or other obligations outstanding against said public improvement, and for the payment of operating expenses and to apply the revenues of said public improvement in conformity with the provisions of sections 153 to 161, inclusive, and the order, ordinance or resolve providing for the issuance of said such bonds. (1953, c. 421.)

Sec. 162. Referendum.—No bonds shall be issued and sold in any city under the provisions of sections 153 to 161, inclusive, until a majority of the legal voters present and voting at any regular or special election so vote, or in any town until an article in such town warrant so providing shall have been adopted at an annual or special town meeting; provided that the total number of votes cast for and against the issuance of such bonds at such meeting equals or exceeds 20% of the total vote for all candidates for governor in said city or town at the next previous gubernatorial election. (1953, c. 421.)

Protected Reserves.

Sec. 163. Annual town appropriations; limitation; credit reserve account.—Any town may annually appropriate money for the purpose of providing a reserve of borrowing power which can be applied, in periods of financial stringency or depression, to assist in carrying forward normal expenditures of the town without increase in the tax rate thereof. Such appropriations shall be made in the same manner as other appropriations, but no such annual appropriation shall in any case exceed 5% of the total amount to be raised by tax levy for the municipal financial year exclusive of state and county taxes and overlay. Such appropriation shall be covered by the tax rate of the town for the year, and shall be carried upon the books of the town as a separate item, to be known as the credit reserve account. (R. S. c. 80, § 127.)

Sec. 164. Investment of funds.—The funds credited to the credit reserve account shall be invested by the treasurer of the town in securities which are legal investments for savings banks or in bonds or other evidences of indebtedness of the federal government, or bonds of any federal agency, the interest and principal of which have been guaranteed by the federal government. The total of the funds invested in the aforementioned issues of the federal government or its agencies shall be at no time less than 10% nor more than 30% of the municipal credit reserve fund. (R. S. c. 80, § 128.)

Sec. 165. Treasurer of town to develop formula; duties.—Annually at the beginning of the fiscal year, the treasurer of the town which has established such a credit reserve account shall develop the following formula according to the financial records of the town:

I. Assessed values. Assessed values in the previous year less the average

assessed values of the 2 preceding years prior thereto times the tax rate of the previous year.
(Plus or minus) ..... $

II. Per cent taxes collected. Per cent of the previous year's taxes commitment actually collected in the previous year, less the average per cent of taxes committed in the 2 preceding years prior thereto which were actually collected within each of the respective years, times the assessed taxes of the previous year. (Taxes as used herein shall not include excise taxes.)
(Plus or minus) ..... $

III. Welfare expenditures. The welfare expenditures of the previous year subtracted from the average welfare expenditures of the 2 preceding years prior thereto. Welfare expenditures as used herein shall be held to mean the total expenditures for the relief, support, maintenance and employment of the poor for the year referred to, including administration expenses, but deducting the reimbursements received during the year from individuals, from towns and from the state, and excluding expenditures of federal funds, and expenditures of local funds in connection with grants in aid for public works and work relief projects.
(Plus or minus) ..... $
Total (Plus or minus) $

If the result of the formula above stated is a plus amount, there shall be no withdrawal from the credit reserve account. If the result of the formula is a minus amount, the treasurer of the town may withdraw from the fund a sum not exceeding the minus amount produced by the formula and credit the current budget with such item. (R. S. c. 80, § 129.)

Sec. 166. Capital reserve funds. — Any town or county may establish capital reserve funds for the financing of all or part of the cost of:

I. The construction, reconstruction or acquisition of a specific capital improvement, or the acquisition of a specific item or specific items of equipment; or

II. The construction, reconstruction or acquisition of a type of capital improvement, or the acquisition of a type of equipment. (R. S. c. 80, § 130.)

Sec. 167. Money paid into or transferred to capital reserve fund. — Any town or county may appropriate money to be paid into such capital reserve fund or may authorize the transfer thereto of any part or all of the unencumbered surplus funds remaining on hand at the end of any fiscal year. (R. S. c. 80, § 131.)

Sec. 168. Trustees of capital reserve fund; deposit of moneys.—The municipal officers or county commissioners as the case may be are constituted trustees of such capital reserve fund and shall be subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by action commenced by the town or county as the case may be or by any officer or taxpayer thereof. All moneys in said fund shall be either deposited in savings banks, trust companies or national banks in this state, the deposit in any one bank in no case to exceed $5,000, or shall be invested in whole or in part in the bonds of this state, in bonds of municipalities of this state which are purchasable by the treasurer of state, or in bonds or other evidences of indebtedness of the federal government or in bonds of any federal agency, the interest and principal of which have been guaranteed by the federal government. Any interest earned or capital gains realized on the moneys so deposited in any such fund shall accrue to and become part thereof. The separate identity of each such fund shall be maintained whether its assets consist of cash or investments, or both. (R. S. c. 80, § 132.)

Sec. 169. Expenditures.—Expenditures from each such fund shall be only

for or in connection with a capital improvement of the specific nature and within the specific purpose for which the particular fund was established. (R. S. c. 80, § 133.)

Sec. 170. Unexpended balances.—Any town or county may transfer to another capital reserve fund all or part of:

I. The unexpended balance remaining in any capital reserve fund after the completion of the work to be financed therefrom and the payment of all costs incurred therefor; or

II. The unexpended balance remaining in any capital reserve fund established for a project which the town or county has decided to abandon in whole or in part. (R. S. c. 80, § 134.)

Records.

Sec. 171. Safes and vaults provided.—Cities and towns of more than 1,300 inhabitants shall provide fireproof safes or vaults of ample size for the reception and preservation of all completed books of record and registry belonging thereto. Upon the completion of any such book of record and registry, the clerk of the city or town shall deposit the same in such safe or vault, and such books shall be kept in such safe or vault, except when required for use. (R. S. c. 80, § 135.)

Sec. 172. Return of books of record and registry.—The clerks of all cities and towns shall, in the month of December in each year, make a return to the clerks of the judicial courts in the several counties, showing the number and nature of such books of record and registry as are in their custody, and where they are kept and deposited; said return shall also show where the books of the municipal officers and treasurer are kept and deposited. (R. S. c. 80, § 136.)

Sec. 173. Violation of § 171.—Any city or town which neglects to perform the duties prescribed by section 171 shall forfeit for each month so neglecting the sum of $10, ½ to the complainant and ½ to the county in which such city or town is located. (R. S. c. 80, § 137. 1945, c. 378, § 69.)

Sec. 174. Attesting of records of city and town clerks by volume.—The records of the city and town clerks in the several cities and towns of 15,000 inhabitants and over may be attested by volume, and it shall be a sufficient attestation of each document recorded therein when each volume thereof bears the attest with the written signature of the clerk or other person authorized by law to attest such records. (R. S. c. 80, § 138.)

See c. 113, §§ 144, 145, 146, re copies of records by various processes and admissibility in evidence.

Town Lines.

Sec. 175. Perambulation of town lines every 5 years.—Lines between towns shall be run once every 5 years, except as mentioned in the 2 following sections. The municipal officers of the oldest town shall give 10 days' notice in writing to such officers of the adjoining towns of the time and place of meeting for perambulation; and each officer who neglects to notify or attend in person, or by substitute, forfeits $10, 2/3 to the town which complies with his duty, and 1/3 to any 2 or more of said officers of the town complying, to be recovered within 2 years after the forfeiture is incurred; and the proceedings of such officers, after every such renewal of boundaries, shall be recorded in their town books. In cases where a town adjoins an unincorporated township, the county wherein lies such unincorporated township shall stand in the same relation as a town for the purposes of perambulating lines between the town and the unincorporated

township; the county commissioners of such county shall assume and perform the same duties as are required of municipal officers for similar purposes; also, for said purposes of perambulating such lines, said county shall be deemed in the same relation as the oldest town and shall give the notices hereinbefore referred to; ½ of the expenses of such perambulation shall be borne by the county; the same rights of appeal are granted such county as is given to towns for similar purposes. (R. S. c. 80, § 139.)

The assessors of organized plantations are subject to the performance of the duties devolving on the municipal officers of towns in relation to perambulation. Small v. Lufkin, 56 Me. 30.

Cited in Ham v. Sawyer, 38 Me. 37.

Sec. 176. Monuments erected at angles; perambulation every 10 years.—Towns which have perambulated or shall perambulate their lines as by law prescribed, and set up stone monuments at least 2 feet high, at all the angles, and where the lines cross highways or on or near the banks of all rivers, bays, lakes or ponds, which said lines cross, or which bound said lines, are exempt from the duty of perambulating said lines, except once every 10 years, commencing 10 years from the time that the stone monuments were so erected. (R. S. c. 80, § 140.)

Sec. 177. Disputed town lines; compensation of commissioners.—When a town petitions the superior court, stating that a controversy exists between it and an adjoining town respecting a town line and praying that it may be run, the court, after due notice to all parties concerned, may appoint 3 commissioners who shall, after giving notice of the time and place of meeting to all persons interested, ascertain and determine the lines in dispute and describe them by courses and distances and make, set and mention in their return suitable monuments and marks for the permanent establishment thereof, and make duplicate returns of their proceedings, one of which shall be returned to the court and the other to the office of the secretary of state; and such lines shall be deemed in every court and for every purpose the dividing lines between such towns. The court may allow the commissioners a proper compensation for their services, and issue a warrant of distress for its collection from said towns in equal proportions. (R. S. c. 80, § 141.)

The legislature alone has authority to establish and change the boundaries of towns. Fayette v. Readfield, 132 Me. 328, 170 A. 513. See Lisbon v. Bowdoin, 53 Me. 324; Bethel v. Albany, 65 Me. 200.

And authority of commissioners is limited to fixing line designated by legislature.—The authority of the commissioners appointed under this section is limited to fixing the line which the legislature has designated. They have no power to establish a new one. Fayette v. Readfield, 132 Me. 328, 170 A. 513.

Commissioners, appointed by the court, cannot alter or depart from the boundaries established by the legislature. Their duty is to determine, in case of a dispute, where and how the line in question is to be run and established on the face of the earth. Libson v. Bowdoin, 53 Me. 324. See Bethel v. Albany, 65 Me. 200.

The power of the commissioners is analogous to that of referees under an unrestricted rule of reference, who are judges of the law as well as of the facts involved, and whose conclusion, as shown by their direct and unconditional award, in the absence of any improper motive, will not be inquired into. Winthrop v. Readfield, 90 Me. 235, 38 A. 93.

And their conclusions are final both as to law and fact.—The conclusions of the commissioners both as to fact and law are final and even though incorrect cannot be set aside by the court. Fayette v. Readfield, 132 Me. 328, 170 A. 513.

Though they may have erred in judgment in ascertaining line.—When the report shows that the commissioners have really tried to perform their duty as defined in this section, there would seem to be no power to reject it simply because it may be possible that they may have erred in judgment in ascertaining the true line. Bethel v. Albany, 65 Me. 200.

Thus their construction of statute fixing boundary is conclusive.—The construction of an act of the legislature whereby that portion of the line in controversy was established was one of the matters necessarily committed to the commissioners; and, even though the court should differ with them as to the meaning of this act, their determination would be conclusive.

Winthrop v. Readfield, 90 Me. 235, 38 A. 93.

This section does not require any judgment or action by the court on the report. It does not even require an acceptance. Libson v. Bowdoin, 53 Me. 324.

The report of the commissioners, if in accordance with the law, is the final action. It neither requires, nor does this section authorize an acceptance by the Court. It may undoubtedly be recommitted or perhaps the commissioners be discharged for sufficient reasons, but its acceptance adds nothing to its force. There is no judgment of the court upon its validity, but the line ascertained and determined by the report itself is, by express provision of this section, to be deemed the true dividing line. Monmouth v. Leeds, 76 Me. 28. See Bethel v. Albany, 65 Me. 200.

However, court may prevent report being final under certain circumstances.— The court has control of such proceedings so far as to prevent a report being final, unless satisfied of its freedom from fraud, and of its legal correctness. Monmouth v. Leeds, 79 Me. 171, 8 A. 828.

Although the power of the court has not been exhausted when the commissioners have been appointed, but continues until their report is offered and passed upon, the court has not the power to review the conclusions of the commissioners upon questions of law or fact involved, but only to inquire into the conduct and motives of the commissioners, if anything improper in that respect is alleged, and as to whether the proceedings have been in accordance with this section and their report legally correct as to form. Winthrop v. Readfield, 90 Me. 235, 38 A. 93.

Where it is clear that the commissioners went beyond the authority given them by this section, and instead of trying to determine the line as called for by the legislature, established one obviously at variance with it, it is the duty of the court to sustain objections duly made to their action. Fayette v. Readfield, 132 Me. 328, 170 A. 513.

Proceedings are final and controversy is ended.—This is a statute process, and if the proceedings are in accordance with the statute provisions they are final and conclusive, and the controversy is ended. But if otherwise they are a nullity and the dispute still exists. Monmouth v. Leeds, 76 Me. 28.

Unless report does not follow requirements of section.—The validity and efficacy of the proceedings must be determined upon the facts as they appear on the reports filed in the court and in the secretary's office. There is no judgment of the court which requires a writ of error or certiorari to set it aside. If the report does not follow the requirements of this section, and does not ascertain and determine the line, then the "controversy" is not terminated, but still exists. The prior proceedings may be deemed invalid and ineffectual, and the whole matter is open for the appointment of commissioners. Libson v. Bowdoin, 53 Me. 324.

But adjudication is not conclusive in controversies between individuals. — This section makes the determination of the commissioners conclusive upon the towns as to the location of the town line for all purposes; but a proceeding under it was never contemplated for the purpose of passing upon and determining private controversies. The adjudication and determination of the commissioners can in no way affect the ownership of private property, or determine controversies between individuals. Whitcomb v. Dutton, 89 Me. 212, 36 A. 67.

While proceedings of commissioners appointed under this section in 1877 to ascertain and determine the town line may be competent evidence to show the location of monuments, etc., indicating the location of that line, they are not conclusive upon adjoining owners, holding under deeds running back to 1827, and it appearing that the parties had no notice of the proceedings nor opportunity to be heard. Magoon v. Davis, 84 Me. 178, 24 A. 809.

Report should show that commissioners did not establish new line.—It should appear by the report that the commissioners kept themselves within the power given, and simply undertook to ascertain and determine where the line given by the legislature was in fact; at least nothing should there appear which leaves in doubt, whether the line established by them is the old line or a new and arbitrary one. Lisbon v. Bowdoin, 53 Me. 324.

A report declaring that the commissioners do "award and determine" that a certain defined line "shall be the true boundary" does not make it certain that they did not establish a new line, instead of ascertaining and renewing the old one, and hence is insufficient. Lisbon v. Bowdoin, 53 Me. 324.

And that everything required to ascertain line was done under commission.— The law requires that everything required to "ascertain" as well as determine the line shall be done under the commission and shall so appear in the report. Monmouth v. Leeds, 76 Me. 28.

Line run under agreement by selectmen before commission issued.—Where the report showed that the line was run under an agreement by the selectmen before the commission was issued, and so far as appeared while they were not under oath, and it failed to show that anything was done after the commission issued to ascertain the line or that any notice was given of their meeting, but showed only that they "determined" the line under oath and described it, all that was done before the commission issued and the proper oath was administered, was a mere nullity, and the proceedings did not terminate the controversy. Monmouth v. Leeds, 76 Me. 28.

This section requires three commissioners. The provision is, the "court may appoint three commissioners." This is clearly a case where the intention of the legislature can be accomplished only by the use of "may" in the sense of "shall." Monmouth v. Leeds, 76 Me. 28.

And towns cannot waive this requirement.—Towns cannot waive the duty imposed upon the court to appoint three commissioners, for they are not alone interested. Town lines are public matters to be fixed by the legislature alone, either directly or in that way which it provides. In this respect the towns through their selectmen act as trustees, not for their own inhabitants only, but for the public as well. Monmouth v. Leeds, 76 Me. 28.

Commissioner not disqualified by having previously run line as surveyor.—The fact that one of the commissioners had previously been employed by one of the towns to run the line as a surveyor in no way disqualified him from acting as one of the commissioners appointed under this section. Winthrop v. Readfield, 90 Me. 235, 38 A. 93.

It is not necessary that the commissioners should have been sworn. This section does not require it and there is no general rule or requirement which makes it necessary. But even if it were otherwise, the objection comes too late where a party, having knowledge of this purely technical objection, takes the chance of a decision in his favor, and first raises the objection after the decision is rendered against him. Winthrop v. Readfield, 90 Me. 235, 38 A. 93. See Monmouth v. Leeds, 76 Me. 28.

The proceeding under this section is not an action, nor of the nature of one. The towns do not come into court as parties to a litigation. No pleadings bring them to an issue in court. A line becomes obscured or lost, and the petition seeks its discovery. Monmouth v. Leeds, 79 Me. 171, 8 A. 828.

And costs are not allowable to either side in a statutory proceeding to discover and establish boundary lines between towns. Monmouth v. Leeds, 79 Me. 171, 8 A. 828.

The compensation of the commissioners is to be apportioned "in equal proportion," upon the petitioners and respondents as parties, irrespective of the number of towns in either party. Bethel v. Albany, 65 Me. 200.

Applied in Bremen v. Bristol, 66 Me. 354; Norridgewock v. Madison, 70 Me. 174.

Cited in Shawmut Mfg. Co. v. Benton, 123 Me. 121, 122 A. 49.