

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1963 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 3

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**Discard Previous Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1963

### Fees in Waldo County.

**Sec. 256. Fees in Waldo county.**—All fees for copies of any public or official documents or records, of whatever nature, which may be payable to any county officer of Waldo county, shall be payable to the treasurer of Waldo county for the use and benefit of the county. (1953, c. 216, § 7. 1955, c. 231.)

**Effect of amendment.**—The 1955 amendment deleted the words “and charges for the publication of notices required by law” after the word “nature” in line two.

### Fees in Penobscot County.

**Sec. 258. Fees in Penobscot county.**—All fees and charges of whatever nature provided for by state law, except charges for the publication of notices required by law, which may be payable to any county officer of Penobscot county, shall be payable to the treasurer of Penobscot county for the use and benefit of the county. The provisions of this section shall apply only to county officers who are receiving salaries or per diem pay, but shall not apply to the sheriff and deputy sheriffs engaged in the service of civil process. (1955, c. 394, § 5.)

### Fees in Kennebec County.

**Sec. 259. Fees in Kennebec county.**—All fees and charges of whatever nature, except charges for the publication of notices required by law, which may be payable to any county officer of Kennebec county, shall be payable to the treasurer of Kennebec county for the use and benefit of the county. The provisions of this section shall apply only to county officers who are receiving salaries or per diem pay, but shall not apply to the sheriff and deputy sheriffs engaged in the service of civil process. (1955, c. 394, § 5.)

### Salary Increases.

**Sec. 260. Salary increases.**—Increases in the salaries of county officers, authorized by the legislature, shall not become effective until January 1st of the next year succeeding the recess of the session of the legislature passing such salary increases. (1963, c. 353, § 1.)

**Effective date.**—Section 2 of c. 353, P. L. 1963, which added this section, makes the act effective January 1, 1965.

## Chapter 90-A.

### General Provisions Relating to Municipalities.

**Editor's note.**—P. L. 1957, c. 405, which inserted this chapter, provided in § 20 thereof as follows:

“Sec. 20. State tax assessor may print and distribute copies of chapter 90-A. The state tax assessor is specifically authorized, upon receipt of payment therefor by the Maine municipal association, to reproduce and distribute printed copies of chapter 90-A of the Revised Statutes

as part of the laws printed and distributed by the state bureau of taxation.”

**Effect of revision of general laws relating to municipalities.**—The revision of the general laws relating to municipalities enacted in 1957, did no more than to consolidate and codify the powers and duties of municipalities. *Squires v. Inhabitants of Augusta*, 155 Me. 151, 153 A. (2d) 80.

Section 1. Definitions.

Sections 2-11. Creation, General Powers and Duties of Municipalities.

Sections 12-23. Municipal Finance.

Sections 24-29. Accounting System and Postaudit.

Sections 30-36. Town Meeting.

Sections 37-39-B. Secret Ballot, Inspection, Recount.  
 Section 40. Annual Report.  
 Sections 41-56. Municipal Officials.  
 Sections 57 to 57-A. Correction and Disposition of Municipal Records.  
 Sections 58-60-E. City Officials, Warrant, Ward Limits.  
 Sections 61-63-A. Municipal Development.  
 Sections 64-65. Regional Development.

### Definitions.

**Sec. 1. Definitions.**—The listed terms as used in this chapter are defined as follows, unless a different meaning is plainly required by the context:

- I. "Municipality" includes only cities and towns.
- II. "Municipal officers" means the mayor and aldermen of a city, and the selectmen of a town.
- III. "Municipal official" means any elected or appointed member of a municipal government.
- IV. "Clerk" means the clerk of a municipality.
- V. "Resident" and "residence" refer to place of domicile.
- VI. "Voter" means a person registered to vote.
- VII. "Real estate" means land and structures attached to it.
- VIII. "General obligation security" means a note, bond or other certificate of indebtedness to the payment of which is pledged the full faith and credit of the issuing body.
- IX. "Funded debt" means an obligation for the payment of which some fund is set aside.
- X. "Sinking fund" means a fund created for the purpose of paying a debt.
- XI. "Revenue-producing municipal facility" means any water supply or distribution system, any sewage disposal or sewerage system, and any automobile parking facility, for the use or services of which money is received by a municipality. (1957, c. 405, § 1.)

### Creation, General Powers and Duties of Municipalities.

**Sec. 2. Municipality, body corporate.**—The residents of a municipality are a body corporate which may sue and be sued, appoint attorneys, and adopt a seal. (1957, c. 405, § 1.)

Applied in *State v. Westbrook*, 156 Me. 542, 167 A. (2d) 242. *Inhabitants of Town of Boothbay Harbor*, 158 Me. 32, 177 A. (2d) 659.

Cited in *East Boothbay Water Dist. v.*

**Sec. 3. Police power ordinances.**—A municipality may enact police power ordinances for the following purposes:

#### I. General.

A. Promoting the general welfare; preventing disease and promoting health; providing for the public safety.

#### II. Public ways and other public property.

A. Providing for the protection and maintenance of public ways and other public property.

B. Providing for the location, protection, maintenance and use of trees, structures and other things placed on, above or beneath public ways and other public property.

1. Trees, structures and other things which exist in accordance with municipal ordinances are not defects in a public way.

C. Setting off portions of its public ways for sidewalks and regulating their use; providing for the removal of snow and ice from the sidewalks by the

owner, occupant or agent having charge of the abutting property; establishing crosswalks and safety zones for pedestrians; regulating pedestrian traffic in the public ways.

1. The municipal officers may by resolution establish a method by which pedestrians charged with the violation of regulations for their protection on the public ways may waive all court action by payment of specified fees within stated periods of time. (1963, c. 48)

**D.** Providing for the installation, maintenance and policing of parking meters on any public way or public parking area; providing that the fact that a vehicle is in a metered parking space when the time signal on the parking meter for such space indicates no parking permitted without the deposit of a coin or coins shall be prima facie evidence that said vehicle has been parked in said parking space longer than the lawfully permitted period; providing the fact that a vehicle is unlawfully parked shall be prima facie evidence of the unlawful parking of such vehicle by the person in whose name such vehicle is registered; establishing reasonable charges for metered parking.

1. The revenue collected from parking meters shall be used to purchase, maintain and police the meters; to construct and maintain public ways; to acquire, construct, maintain and operate public parking areas; and for no other purpose. (1959, c. 337, § 1)

**E.** Entering by municipal officers or their agents on private grounds, with or without owner permission, to determine presence of the Dutch elm disease and carry out preventive or control measures therefor.

1. Municipalities or their agents exercising authority under this paragraph shall be liable for no damages except those occasioned by negligence. (1959, c. 267, § 1)

**F.** To authorize its municipal officers to contract on such terms and conditions as are in the best interests of the municipality for the placing and maintenance of public pedestal telephones along the public ways within the compact or built-up section of the municipality as defined in chapter 23.

1. Such contracts may be made for terms not exceeding 3 years.

2. Pedestal telephones shall be located in accordance with applicable municipal ordinances and within areas covered by municipal parking ordinances.

3. Telephones located in accordance with the provisions of such ordinances and contracts are not defects in public ways.

4. Telephone booths may be located in the manner provided for pedestal phones provided that they be placed on sidewalks at least 4 feet from any curb.

5. Revenues received from telephone contracts shall be credited to general funds. (1961, c. 258)

### III. Vehicles.

**A.** Regulating the operation of all vehicles in the public ways; providing that the fact that a vehicle is unlawfully parked shall be prima facie evidence of the unlawful parking of such vehicle by the person in whose name such vehicle is registered.

1. The municipal officers may by resolution establish a method by which persons charged with the violation of parking regulations may waive all court action by payment of specified fees within stated periods of time. (1959, c. 337, § 2)

**B.** Regulating, or establishing a licensing authority which may regulate, rates of fare, routes and standing places of vehicles for hire, except where jurisdiction rests with the public utilities commission; requiring an owner or operator of a vehicle for hire to carry a liability insurance policy in amount and form satisfactory to the licensing authority as a condition precedent to the granting of a license to operate.

**C.** The municipal officers of towns may enact all ordinances authorized by this subsection. Seven days' notice of the meeting at which said ordinances are to be proposed shall be given in the manner provided for town meetings, and such ordinances shall be effective immediately. A village corporation shall have the same powers and duties as a municipality under this section. (1961, c. 192.)

**IV. Buildings, structures, trailers and equipment.**

**A.** Regulating the design, construction materials and construction of new buildings and additions to and alterations of existing buildings; regulating the alteration, demolition, maintenance, repair, use, change of use, safety features, light, ventilation and sanitation facilities of all buildings; regulating sanitation and parking facilities for trailers; regulating the installation, alteration, maintenance, repair and use of all equipment in or connected to all buildings; requiring permits and establishing reasonable permit fees for all of the above operations.

**B.** Establishing adequate standards for all features of means of egress, fire protection, fire prevention, accident prevention and structural safety of buildings which are used occasionally or regularly for public assembly; compelling the owners to make improvements to bring such buildings up to the established standards; requiring the owner or lessee of a building used for public assembly which is regulated by an ordinance authorized by this paragraph and operated with intent of financial gain to obtain a permit for which a fee may be imposed commensurate with its size or capacity; requiring the owner or lessee of such a building to file a plan of it showing all safety features as a condition precedent to the issue of a permit or the further use of one already issued.

1. The building inspector shall send a written order to the owner or lessee of a building used for public assembly requiring any conditions which exist in violation of an ordinance to be corrected within 30 days after the order is sent.

2. After the expiration of the 30-day period, the owner or lessee is liable for all injury caused by his failure to do so, and the building inspector shall order the building vacated.

3. "Building used for public assembly" means a room or space in or on any structure which is used for the gathering of 100 or more persons for any purpose, and includes any connecting room or space on the same level, above or below, which has a common entrance.

**C.** The following provisions apply to paragraphs A and B of this subsection:

1. The provisions pertaining to buildings apply equally to all structures and parts of them.

2. The building inspector is the licensing authority unless otherwise provided by the municipality.

3. Ordinances defining the duties of the building inspector and other enforcement officers, not contrary to sections 10 to 20 of chapter 97 may be enacted. All enforcement officers designated by ordinance shall be given free access at reasonable hours to all parts of buildings regulated by ordinance.

4. An application for a permit shall be in writing and shall be signed by the applicant and directed to the building inspector. The failure of the building inspector to issue a written notice of his decision, directed to the applicant, within 30 days from the date of filing of the application constitutes a refusal of the permit.

5. An appeal may be taken from any order issued by the building inspector, or from his refusal to grant a permit, to the municipal officers and from the municipal officers to the superior court.

(a). On an appeal in writing to the municipal officers, they shall at their next meeting affirm, modify or set aside the decision of the building inspector according to the terms of the pertinent ordinance. They may permit a variation from the terms of an ordinance where necessary to avoid undue hardship, provided there is no substantial departure from the intent of the ordinance. They may permit an exception to an ordinance only when the terms of the exception have been specifically set forth by the municipality. The failure of the municipal officers to issue a written notice of their decision, directed to the appellant, within 30 days from the date of filing of the appeal constitutes a denial of the appeal. (1957, c. 429, § 78-A)

(b). The appeal to the superior court shall be filed not less than 30 days after the order or decision from which the appeal is taken. Notice of the appeal shall be ordered by the court, and the appeal shall be tried and determined by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. Costs may be awarded to the prevailing party by the court as justice requires. (1959, c. 317, § 52. 1961, c. 317, § 242.)

**D.** Protecting persons and property from injury by requiring building owners or lessees to install roof guards to prevent the fall of snow and ice from the roofs of their buildings.

1. The municipal officers shall send a written notice to the owner or lessee who fails to comply with an ordinance authorized by this paragraph.

2. If the owner or lessee does not install effective roof guards within 14 days after notice is sent, he is liable for all injury caused by his failure to do so.

3. After the expiration of the 14-day period, the municipal officers may have proper roof guards installed at the expense of the municipality, the reasonable charges for which may be recovered from the owner or lessee by special assessment as provided by section 23 of chapter 97.

**E.** The purpose of this subsection is to promote the health, safety and general welfare of the public and of the occupants and users of buildings and other structures.

1. Any building, structure, trailer parking facility or equipment existing in violation of an ordinance authorized by this subsection is a nuisance.

## **V. Commercial.**

**A.** Regulating the purchase and sale of articles by secondhand dealers; regulating the pawning of articles with pawnbrokers; prescribing conditions to be observed by buyers and sellers, pawners and pawnbrokers, to prevent or detect the purchase or sale of stolen property.

**B.** Regulating the purchase and sale of junk; regulating the establishment and operation of any type of junk yard.

1. With respect to automobile junk yards, the provisions of sections 138 to 144 of chapter 100 apply to any ordinance authorized by this paragraph.

2. With respect to all other types of junk yard, the fees, charges and penalties provided in sections 139, 141 and 143 of chapter 100 are reasonable.

**C.** Regulating the business of hawking and peddling of merchandise at retail.

1. This paragraph does not apply to persons selling merchandise by sample, list or catalogue for future delivery; farm, dairy, orchard, fish and forest products of their own production; newspapers and religious literature.

**D.** Regulating the operation of dance halls.

**E.** Ordinances authorized by this subsection may require the person regulated by them to obtain a license for which a reasonable fee may be imposed.

**F.** Regulating the business of itinerant vending of merchandise at retail. (1959, c. 260)

**G.** Regulating the operation of mechanical rides as defined by chapter 100, section 69-A. (1691, c. 327, § 3.)

The municipality shall provide a penalty of not more than \$100 plus costs for the violation of any ordinance authorized by this section. All fines shall be recovered on complaint to the use of the municipality.

The municipal officers are the licensing authority of a municipality, unless otherwise provided by its legislative body or by statute. (1957, c. 405, § 1; c. 429, § 78-A. 1959, c. 260; c. 267, § 1; c. 317, § 52; c. 337, §§ 1, 2. 1961, cc. 192, 258; c. 317, § 242; c. 327, § 3. 1963, c. 48.)

**Effect of amendments.**—Chapter 429, P. L. 1957, effective October 31, 1957, substituted “undue hardship” for “confiscation” in the second sentence of division (a), subparagraph 5, paragraph C, subsection IV.

Chapter 260, P. L. 1959, added paragraph F to subsection V.

Chapter 267, P. L. 1959, added paragraph E to subsection II.

Chapter 317, P. L. 1959, deleted the third sentence of division (b), subparagraph 5, paragraph C, subsection IV, which provided that the appeal should be tried at the term to which the notice was returnable unless otherwise ordered by the court.

Prior to section 1, c. 337, P. L. 1959, paragraph D of subsection II read as follows: “Providing for the installation, maintenance and policing of parking meters on any public parking area; establishing reasonable charges for metered parking.”

Prior to section 2, c. 337, P. L. 1959, paragraph A of subsection III read as follows: “Regulating the operation of all vehicles in the public ways.”

Chapter 192, P. L. 1961, added paragraph C to subsection III. Chapter 258, P. L. 1961, added paragraph F to subsection II. Chapter 317, P. L. 1961, substituted “filed” for “entered at the term first occurring in the county” in the first sentence of division (b), subparagraph 5, paragraph C, subsection IV of this section and deleted “in term time or by a justice in vacation” following “court” and substituted

“actions” for “cases” in the second sentence thereof. Chapter 327, P. L. 1961, added paragraph G to subsection V.

The 1963 amendment added subparagraph 1 in paragraph C of subsection II.

**Effective date and applicability of Public Laws 1959, c. 317.** — Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

**Use of the police power by city council to provide for transportation of pupils to private schools,** when not authorized by charter or by any enabling act of the legislature, is repugnant to and in derogation of the established policy of the state in its general scheme or plan for the promotion of education. *Squires v. Inhabitants of Augusta*, 155 Me. 151, 153 A. (2d) 80.

**Test of enactment founded on police power.**—When an enactment is founded on police power, the resultant legislation must stand the test as to whether it is a proper exercise of such power or not. *Squires v. Inhabitants of Augusta*, 155 Me. 151, 153 A. (2d) 80.

**Sec. 4. Administrative ordinances.**—A municipality may enact administrative ordinances for the following purposes:

**I.** Establishing and maintaining a general system of contributory pensions for the benefit of its officials and employees with necessary classifications and terms of admission; establishing a board to administer the system; providing for complete or partial contribution by the municipality.

**A.** Money appropriated by any municipality for the operation of a pension system together with money contributed by any person eligible to partici-

pate in the system shall be administered by a board created for that purpose and shall be kept in a separate fund to be invested and disbursed by the board.

**B.** A municipality which establishes such a system 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 pension benefits.

**C.** Any pension funds held by a municipality or by a board established by it are exempt from attachment or trustee process.

**II.** Establishing regulations for the appointment, training, service, promotion, demotion, layoff, suspension, reinstatement and removal of members of the police and fire departments, and establishing a civil service commission to administer these regulations.

**A.** Chiefs of fire and police departments may be made subject to such regulations as are other members of their departments.

**III.** Authorizing its municipal or incorporated volunteer fire department to aid in extinguishing fires of other municipalities within or outside the state.

**A.** Members of such departments have the same privileges and immunities as if acting in their own municipalities.

**B.** Any municipality so aided may compensate the aiding municipality, or incorporated volunteer fire department, for damage to its property and for payments made to any member of its fire department or to his widow or other dependents on account of injuries or death sustained in the course of rendering such aid. (1957, c. 405, § 1.)

**Sec. 4-A. Ordinance enactment procedure.**—A municipality may enact ordinances by the following procedure:

**I. Posted.** The proposed ordinance shall be attested and posted in the manner provided for town meetings.

**II. Certification.** One copy of the proposed ordinance shall be certified by the municipal officer to the municipal clerk at least 7 days next prior to the day of election to be preserved as a public record and copies shall be available at that time for distribution to the voters by the municipal clerk as well as at the time of the town meeting.

**III. Question.** The subject matter of the proposed ordinance shall be reduced to the question: "Shall an ordinance entitled ' ' be enacted?", and shall be submitted to the town meeting for action either as an article in the warrant or a question on a secret ballot.

**IV. Application.** This section shall not apply to ordinances which may be enacted by the municipal officers. (1961, c. 322, § 1.)

**Sec. 5. Ordinance revision, codification and publication.**—A municipality may revise, codify and publish from time to time in book or pamphlet form all or part of its ordinances arranged in appropriate classifications excluding the titles, signatures and other formal parts of the enacting legislation for the purpose of producing a complete, accurate code of the ordinances in force.

**I.** The revised code shall be enacted by one ordinance entitled, "An ordinance to revise and codify ordinances of the City (or Town) of ."

**II.** The revised code is a repeal of all ordinances in conflict with it, but all ordinances in force prior to its adoption continue in force thereafter for the sole purpose of preserving vested rights acquired under the former provisions.

**III.** When adopted, the revised code becomes law and is admissible in all courts without further proof as prima facie evidence of its existence and validity.

**A.** The revision of any ordinance may be adopted only in the manner provided for the original enactment of the ordinance. (1957, c. 405, § 1.)

**Sec. 5-A. Proof of municipal ordinances.**—The submission to any court or administrative tribunal of a municipal ordinance, bylaw, order or resolve of the legislative body or municipal officers of a municipality, when such ordinance, bylaw, order or resolve has been certified over the signature of the municipal clerk, shall be prima facie proof of the validity thereof. (1963, c. 175.)

**Sec. 6. Employment of nurses; state contribution.** — A municipality may employ, by itself or in conjunction with other contributing municipalities or private agencies, a qualified public health nurse to conduct a program acceptable to the department of health and welfare.

**I.** When a public health nursing program meets the requirements of the department of health and welfare, the state may contribute not more than 50% annually for paying the salary and travel expenses of the public health nurse.

**II.** A state contribution may not be made where the population of any municipality exceeds 6,000 according to the last decennial census of the United States.

**III.** The contribution of the municipality shall be paid to the state treasurer and credited to the department of health and welfare. Whenever the state contributes, the department of health and welfare shall pay the salary and travel expenses of the public health nurse.

**IV.** The state's share may be paid from the state appropriation to the department of health and welfare, or from federal grants to the state when plans are approved by the granting agency. (1957, c. 405, § 1.)

**Sec. 6-A. Employment of historian.**—A municipality may appoint an historian with such duties and compensation as said municipality may determine. (1963, c. 153.)

**Sec. 7. Property for recreation; recreational program.** — A municipality may acquire and maintain real estate and personal property for recreational purposes, and may establish and conduct a recreational program.

**I.** Two or more municipalities may act jointly in establishing and conducting a recreational program and may contract with each other for its operation.

**II.** All powers exercised under the authority of this section are governmental and not proprietary.

**III.** The provisions of this section do not impair any power now vested by special act in any municipality, recreational board or park commission. (1957, c. 405, § 1.)

**Sec. 8. Projects for improving navigation and preventing erosion.** —A municipality may acquire real estate or easements by the condemnation procedure for town ways as provided in chapter 96, and may contract with the state and federal governments to comply with requirements imposed by the federal government in authorizing any project which has been approved by the governor for improving harbor and river navigation or preventing property damage by erosion or flood.

**I.** Two or more municipalities may act jointly in performing the operations authorized by this section.

**II.** The governor, with the advice and consent of the council, may do the following with regard to such a project:

**A.** Designate a state agency to make any investigation considered necessary.

**B.** Provide for the payment by the state of not more than one-half of the contribution required by the federal government, when an appropriation has been made for it by the legislature.

**C.** Make an agreement with the federal government to hold and save it harmless from resulting claims. (1957, c. 405, § 1.)

**Sec. 8-A.** Repealed by Public Laws 1963, c. 191, § 1.

**Editor's note.**—The repealed section was enacted by P. L. 1957, c. 405, and related to union highway districts.

**Sec. 8-B. Interlocal cooperation, purpose.** — It is the purpose of this section to permit municipalities to make the most efficient use of their powers by enabling them to cooperate with other municipalities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

**I. Public agency defined.** For the purposes of this section, the term “public agency” shall mean any political subdivision of this state; any quasi-municipal corporation, including but not limited to school administrative districts, urban renewal authority, sewer districts; or any agency of state government or of the United States.

**II. Joint exercise of powers.** Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised jointly with any other public agency of this state, or of the United States to the extent that the laws of the United States permit such joint exercise. Any agency of state government when acting jointly with any public agency may exercise all of the powers, privileges and authority conferred by this section upon a public agency.

**A.** Any 2 or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to this section. Appropriate action by ordinance, resolution or other action pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

**B.** Any such agreement shall specify the following:

1. Its duration;
2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created;
3. Its purpose;
4. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;
5. The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such termination;
6. Any other necessary and proper matters.

**C.** In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in paragraph B, contain the following:

1. Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board all public agencies party to the agreement shall be represented.
2. The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

**D.** No agreement made pursuant to this section shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder. Said performance may be offered in satisfaction of the obligation or responsibility.

**E.** Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the

laws of this state. The attorney general shall approve any agreement submitted to him hereunder unless he shall find that it does not in substance meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement substantially fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 30 days of its submission shall constitute approval thereof.

**III. Agreement filed.** Prior to its entry into force, an agreement made pursuant to this section shall be filed with the clerk of each municipality and with the secretary of state. An action shall be maintainable against any public agency whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the other public agencies jointly.

**IV. Approval of certain state officers.** In the event that an agreement made pursuant to this section shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to subsection II, paragraph E. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general.

**V. Funds, personnel and services.** Any public agency entering into an agreement pursuant to this section may appropriate funds and may sell, lease, give or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its power to furnish.

**VI. Severability.** If any portion of this section shall be held to be invalid, such decision shall not affect the validity of the remaining portions of this section.

**VII. Former districts formed remain effective.** In municipalities which acted under the repealed section 8-A of chapter 90-A of the Revised Statutes of 1954, the district formed remains effective so far as it conforms with this section and may be continued accordingly. (1963, c. 191, § 2.)

**Sec. 9. Perambulation of boundary lines.** — Boundary lines between municipalities shall be run once every 5 years in accordance with the following provisions:

**I.** The municipal officers shall give a 10-day written notice to the officers of the adjoining municipalities advising them the time and place of meeting for perambulation.

**II.** If the officers of any municipality fail to appear in person, or by representative, at the time and place appointed for the required perambulation, the municipality which complies with its duty may perambulate the line and charge the other municipality for one-half the expenses incurred.

**III.** After renewal of the boundary lines, the proceedings of the municipal officers shall be recorded in the books of their municipalities.

**IV.** The expense of perambulation shall be borne equally by each municipality.

**V.** Where a municipality adjoins an unorganized area, the county in which this area is located stands in the same relation as a municipality for the purpose of perambulating its boundary lines and paying its share of the expense of the perambulation. The county commissioners shall perform the duties required of municipal officers.

**VI.** Municipalities which have perambulated their boundary lines and erected stone monuments, which protrude at least 2 feet above the ground, at all the angles, and on the edges of highways or bodies of water which the boundary line crosses, or which serve as boundary lines, are exempt from the duty of perambulating the lines, except once every 10 years from the time that the monuments were first erected. This perambulation is for the purpose of inspecting the monuments and replacing those which have been misplaced or destroyed. (1957, c. 405, § 1.)

**Sec. 10. Disputed boundary lines.** — When a controversy respecting a boundary line exists between adjoining municipalities, either may file a complaint with the superior court stating the facts and requesting that the line be run.

**I.** The court, after due notice to all parties, shall appoint 3 commissioners.

**II.** The commissioners, after giving the interested municipal officers a 10-day written notice of the time and place of meeting, shall ascertain the line and describe it by courses and distances.

**III.** The commissioners shall set temporary markers to indicate the established line.

**IV.** The commissioners shall make a duplicate report of their proceedings and return one copy to the court and the other to the office of the secretary of state.

**V.** When the report has been accepted by the court, the line established by the commissioners becomes the true line for every municipal purpose, and the court shall order the interested municipalities to replace the temporary markers with stone monuments as provided in subsection VI of section 9.

**VI.** The expense of erecting stone monuments shall be borne equally by each municipality.

**VII.** The court shall allow the commissioners a proper compensation for their services, and issue a warrant for its collection from the interested municipalities in equal proportions. (1957, c. 405, § 1. 1961, c. 317, § 243.)

**Effect of amendment.**—The 1961 amendment for “petition” in the first sentence of this section substituted “file a complaint with” section.

**Sec. 11. Decoration of veterans’ graves on Memorial Day; erection of flag poles.**—Each municipality, by direction of its municipal officers, shall decorate annually, on May 30th, the graves of veterans of the armed forces of the United States of America with an American flag and appropriate floral decorations.

Any group of citizens or any veterans’ organization of a municipality, when authorized by its municipal officers, may erect a flag pole of durable material in any cemetery within the municipality in which there are interred at least 25 veterans of the armed forces of the United States, from which the American flag may be flown for a period not to exceed 10 days from May 30th each year, or on any other day officially designated to commemorate such veterans. Compliance with this paragraph shall satisfy the requirements of this section. This paragraph shall in no way affect the right of any friend or relative of any veteran to decorate his grave. (1957, c. 405, § 1. 1961, c. 214.)

**Effect of amendment.**—The 1961 amendment added the second paragraph.

### **Municipal Finance.**

**Sec. 12. Purposes for which money may be raised or appropriated.** —A municipality may raise or appropriate money for the following purposes:

**I. Administrative.**

**A.** Providing for the operation of its municipal government.

**B.** Establishing a contributory pension system for its officials and employees, or participating in an existing system.

**C.** Providing for fire and police protection.

**D.** Supporting an incorporated volunteer fire department.

1. When a sum not in excess of \$500 has been appropriated for the use of the department, the municipal officers may issue their warrant to the municipal treasurer requiring him to pay the amount of the appropriation to the treasurer of the volunteer fire department.

**E.** Insuring its officials, employees and volunteer workers against public liability and property damage resulting from their negligent operation of any vehicle owned or leased by the municipality while being used for municipal business.

**F.** Providing for the revaluation of taxable property.

1. Any revaluation is under the jurisdiction of the municipal assessors whose judgment, as opposed to that of any hired appraiser, is final.

**G.** Providing for a supply of water, gas and electricity for municipal use for a period of years.

**H.** Obtaining the services of municipal advisory organizations.

## **II. Public works.**

**A.** Providing for public buildings, ways, bridges, parks, parking places, sewers and drains.

**B.** Providing for public dumps either within or outside its boundaries.

**C.** Providing for public cemeteries; maintaining private cemeteries established before 1880; caring for graves of veterans and maintaining fences around cemeteries in which veterans are buried. (1963, c. 318, § 4)

**D.** Providing for projects which have been approved by the governor for improving navigation or preventing property damage by erosion or flood.

**E.** Providing a fuel yard for the purpose of selling fuel to its residents without financial profit to itself.

## **III. Schools and libraries.**

**A.** Providing for public schools and libraries.

**B.** Providing for school bands and other organized activities conducted under the supervision of the superintending school committee.

**C.** Providing for physical fitness programs in the schools.

**D.** Providing for the construction, repairs and maintenance of buildings and equipment for educational institutions with which a municipality has a contract as provided in chapter 41, section 105. (1959, c. 20. 1961, c. 176, § 2)

**E.** Providing for the transportation of school children to and from schools other than public schools, except such schools as are operated for profit in whole or in part, subject to the following conditions:

1. Such sums shall not be considered in computing the net foundation program allowance on which state subsidy is computed under chapter 41, section 237-D. This subparagraph shall not apply to an administrative unit which transports children to a school pursuant to chapter 41, sections 105 and 107.

2. The superintendent of schools in each municipality that conveys such school children shall annually on or before April 1st make a return to the commissioner of education, showing the number of school children conveyed to and from schools other than public schools in such manner as the commissioner may require. Any municipality which fails to make the return shall be subject to chapter 41, section 31. The commissioner shall compute the school children transportation costs in the net foundation program by deducting from the total school children transportation cost that percentage that the number of school children

being transported to schools other than public schools bears to the total number of school children being transported by the municipality.

3. Paragraph E shall not be effective in any city until a majority of the legal voters, present and voting, at any regular election so vote, and shall not be effective in any town until an article in a town warrant so providing shall have been adopted at an annual town meeting. The question in appropriate terms may be submitted to the voters at any regular city election by the municipal officers thereof and shall be so submitted upon petition of at least 20% of the number of voters voting for the gubernatorial candidates at the last state-wide election in that municipality. Such petition shall be filed with the municipal officers at least 30 days before such regular election. When a municipality voted in favor of adopting paragraph E, said paragraph shall remain in effect until repealed in the same manner as provided for its adoption. (1961, c. 302)

#### **IV. Health and welfare.**

- A.** Supporting the poor.
- B.** Supporting a hospital serving its residents.
- C.** Employing a public health nurse and conducting a public health program.
- D.** Employing a dental hygienist.
- E.** Subsidizing a physician to induce him to settle in the municipality.
- F.** Providing for the extermination and control of insect pests.
- G.** Providing for a public ambulance and garage for it.
- H.** Providing for a local program with or without state coordination for rehabilitating veterans honorably discharged from the armed forces of the United States of America.
- I.** Determining presence of the Dutch elm disease and carrying out preventive or control measures therefor on public or private grounds. (1959, c. 267, § 2)
- J.** Providing for a local youth commission. (1961, c. 176, § 1)

#### **V. Municipal development.**

- A.** Supporting a chamber of commerce or board of trade.
- B.** Advertising its resources and attractions or those of the state.
  - 1. For this purpose, a sum not exceeding 2 mills on a dollar based on the local municipal valuation of the preceding year may be appropriated.
- C.** Purchasing real estate and personal property from the federal government for municipal purposes.
- D.** Providing real estate and personal property for recreational purposes and supporting a recreational program.
- E.** Propagating and protecting fish in public waters located wholly or partially within its boundaries.
  - 1. For this purpose, not more than \$500 may be appropriated annually.
  - 2. The money appropriated shall be spent by the municipal officers or a person appointed by them.
  - 3. A written report of the expenditure shall be submitted to the legislative body within one year of the date of appropriation by the person authorized to spend the money.
- F.** Assisting a local historical society.
- G.** Writing and publishing its history.
- H.** Assisting conventions.
  - 1. For this purpose a sum not exceeding one half mill on a dollar based on the local municipal valuation of the preceding year may be appropriated. (1959, c. 238)

#### **VI. Municipal celebration and commemoration.**

- A.** Celebrating any anniversary of its settlement or incorporation and publishing the proceedings of the celebration.

**B.** Observing Memorial Day, Veterans Day, and any other day set apart for commemoration.

**C.** Decorating for Christmas.

**D.** Supporting an organization to provide music for municipal functions and public celebrations.

**E.** Providing for monuments and memorials, and real estate suitable for their erection, to honor the veterans of the armed forces who sacrificed their lives in defense of the United States of America.

## **VII. General.**

**A.** Performing any of the duties required of it by law.

**B.** Providing for any operations authorized by law which, by their nature, require the expenditure of money. (1957, c. 405, § 1. 1959, cc. 20, 238; c. 267, § 2. 1961, c. 176, §§ 1, 2; c. 302. 1963, c. 318, § 4.)

**Effect of amendments.**—This section was amended three times by Public Laws of 1959. Chapter 20 added paragraph D to subsection III, c. 238 added paragraph H to subsection V and c. 267 added paragraph I to subsection IV.

Chapter 176, P. L. 1961, inserted “and equipment” in paragraph D of subsection

III and added paragraph J to subsection IV. Chapter 302, P. L. 1961, added paragraph E to subsection III.

The 1963 amendment added “caring for graves of veterans and maintaining fences around cemeteries in which veterans are buried” in paragraph C of subsection II.

**Sec. 13. Borrowing in anticipation of taxes, temporary loans.**—A municipality by vote of its municipal officers may in any municipal year borrow money temporarily and issue notes in anticipation of taxes.

**I.** The amount borrowed shall not exceed the total tax levy of the preceding municipal year.

**II.** The notes shall be paid out of money raised by taxation, during the municipal year in which they are made.

**III.** The municipal year shall be the calendar year or such other fiscal year as the municipal officers shall determine. (1957, c. 405, § 1. 1959, c. 19, § 1.)

**Effect of amendment.**—The 1959 amendment, effective February 26, 1959, rewrote the first paragraph and subsection II, sub-

stituted “municipal” for “taxable” in subsection I and added subsection III.

**Sec. 14. General obligation securities.**—A municipality may issue general obligation securities for funding or refunding all or part of its debt, and for any purpose for which it may raise money.

**I.** The municipal officers authorized to issue securities may borrow money in anticipation of their sale by issuing temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding, the authorized amount of the securities, but the period of such anticipatory borrowing shall not exceed one year and the time within which such securities are to become due shall not be extended by such anticipatory borrowing beyond the time fixed in the vote authorizing their issue or, if no term is there specified, beyond the term permitted by law.

**II.** A security authorized and issued for the purpose of funding or refunding a debt is not invalid because of any invalidity in the original borrowing.

**III.** Securities may be in serial form payable in annual installments, which need not be equal, the total amount of which shall extinguish the entire issue at maturity, the first such installment shall be payable not later than 5 years, and the last such installment shall be payable not later than 30 years, after the date of issue of such securities.

**IV.** In the absence of a contrary provision in the vote authorizing the issuance of securities, discretion to fix the date, maturities, denomination, interest rate, place of payment, form and other details of the securities and of providing for the sale thereof shall be deemed to have been delegated to the municipal officers.

**V.** Term securities may be issued for a period not to exceed 10 years.

**VI.** Securities may be issued which are subject to call for redemption with or without premium at the election of the municipality before the date fixed for final payment of such securities provided specific authority to issue callable securities is contained in the vote authorizing their issue, and provided the securities when issued contain provisions setting forth the method by which the option to call may be exercised, the procedure for payment in the event of call, and the legal effect of making the call.

**VII.** Securities issued by a municipality shall, in the absence of a contrary provision in a special act or in the vote authorizing such securities, be signed by the treasurer and countersigned by a majority at least of the municipal officers.

**VIII.** Securities issued by a municipality and coupons, if any, attached thereto shall be executed in the name of the municipality by the manual or facsimile signatures of such official or officials as may be authorized to execute such securities but at least one signature on each such bond or note shall be a manual signature, and such securities and coupons, if properly executed by the officers of a municipality in office on the date such securities are actually executed, shall be valid and binding according to their terms notwithstanding that before the delivery of such securities and payment therefor any or all such officers shall have for any reason ceased to hold office. (1957, c. 405, § 1. 1959, c. 19, § 2.)

**Effect of amendment.**—The 1959 amendment, effective February 26, 1959, rewrote the section, leaving unchanged only the first paragraph and what is now subsection

II (formerly subsection III). The section originally contained only the first paragraph and four subsections.

**Sec. 15. Revenue bonds.**—A municipality with 2,500 or more population may issue revenue bonds for acquiring, improving, extending or repairing a revenue-producing municipal facility or for funding or refunding outstanding revenue bonds under the following conditions:

**I. Approved by voters.** When the purpose has been approved by ballot by a majority of the voters and the number of votes cast is at least 20% of the total vote for all candidates for governor cast in the municipality at the last gubernatorial election.

**A.** The ballot submitted to the voters to authorize the issue of revenue bonds shall state the following:

1. The purpose for which the bonds are to be issued.
2. The principal amount of the bond issue.

**B.** Upon approval by the voters the municipal officers may issue revenue bonds in accordance with the following:

1. The municipal officers authorized to issue securities may borrow money in anticipation of their sale by issuing temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding, the authorized amount of the revenue bonds, but the period of such anticipatory borrowing shall not exceed one year and the time within which such revenue bonds are to become due shall not be extended by such anticipatory borrowing beyond the time fixed in the vote authorizing their issue or, if no term is there specified, beyond the term permitted by law.
2. A revenue bond authorized and issued for the purpose of funding or refunding is not invalid because of any invalidity in the original borrowing.
3. Revenue bonds may be in serial form payable in annual installments, which need not be equal, the total amount of which shall extinguish the entire issue at maturity, the first such installment shall be payable not later than 5 years, and the last such installment shall be payable not later than 30 years, after the date of issue of such revenue bonds.

4. In the absence of a contrary provision in the vote authorizing the issuance of revenue bonds, discretion to fix the date, maturities, denomination, interest rate, place of payment, form and other details of the revenue bonds and of providing for the sale thereof shall be deemed to have been delegated to the municipal officers.

5. Revenue bonds may be issued which are subject to call for redemption with or without premium at the election of the municipality before the date fixed for final payment of such revenue bonds, provided specific authority to issue callable revenue bonds is contained in the vote authorizing their issue, and provided the revenue bonds when issued contain provisions setting forth the method by which the option to call may be exercised, the procedure for payment in the event of call and the legal effect of making the call.

6. Revenue bonds issued by a municipality shall, in the absence of a contrary provision in a special act or in the vote authorizing such revenue bonds, be signed by the treasurer and countersigned by a majority at least of the municipal officers.

7. Revenue bonds issued by a municipality and coupons, if any, attached thereto shall be executed in the name of the municipality by the manual or facsimile signatures of such official or officials as may be authorized to execute such revenue bonds but at least one signature on each such bond shall be a manual signature, and such revenue bonds and coupons, if properly executed by the officers of a municipality in office on the date such revenue bonds are actually executed, shall be valid and binding according to their terms notwithstanding that before the delivery of such revenue bonds and payment therefor any or all such officers shall have for any reason ceased to hold office. (1957, c. 405, § 1. 1963, c. 69.)

**Effect of amendment.**—The 1963 amendment rewrote the section.

**Sec. 16. Characteristics of revenue bond.**—A revenue bond has the following characteristics:

**I. Negotiable instruments law.** It is governed by the negotiable instruments law of the state and may be negotiable or non-negotiable.

**II. Lien.** It creates a lien upon and is payable from money received for the use or services of a revenue-producing municipal facility. It does not pledge the credit of nor create a lien against any other property of the municipality.

**III. Application of money.** All money received from the sale of revenue bonds shall be applied to the revenue-producing municipal facility, its outstanding capital obligations or be placed in the reserve fund herein authorized.

**IV. Tax moneys for installment.** A municipality may appropriate tax moneys to the payment of any annual installment and interest in order to prevent default, provided that no municipality shall pledge such appropriations as part of the bond indenture nor shall any civil action lie to require such payment. The intent of this provision is to make such appropriation solely dependent on the discretion of the municipality.

**V. Receiver.** If there is any default in the payment of interest or amortization of principal, any court having jurisdiction may, in a proper action, appoint a receiver to do the following under its direction:

**A.** Operate the facility for the municipality.

**B.** Fix rates and collect money sufficient to provide for the payment of operating expenses and outstanding obligations of the facility.

**C.** Apply the money received, after payment of operating expenses, to outstanding obligations with any surplus placed in the reserve fund.

**VI. Reserve fund.** The municipal officers may establish a reserve fund with a capital improvement account and a sinking fund account for the revenue-producing facility.

**A.** Total funds in the capital improvement account may not exceed  $\frac{1}{2}$  the actual cost of the revenue-producing municipal facility or  $\frac{1}{2}$  of the estimated construction or reconstruction cost, whichever is greater.

**B.** Annual contributions to the capital improvement account may not exceed  $2\frac{1}{2}\%$  of the actual costs or estimated costs under paragraph A.

**C.** Sinking fund account balances shall be transferred to the capital improvement account. (1957, c. 405, § 1. 1963, c. 69.)

**Effect of amendment.**—The 1963 amendment rewrote the section.

**Sec. 17. Reserve fund.** — A municipality may establish a reserve fund, consisting of one or more accounts, by appropriating money or by authorizing the transfer of unencumbered surplus funds at the end of any fiscal year, for the following purposes:

**I. Capital improvement account.**

**A.** Financing the acquisition or reconstruction of a specific, or a type of, capital improvement.

**II. Capital equipment account.**

**A.** Financing the acquisition of a specific item, or type, of capital equipment.

**III. Credit reserve account.**

**A.** Providing a reserve which may be applied in periods of financial emergency to assist in continuing its normal operation without increasing the tax rate.

1. The annual appropriation for this purpose may not exceed 5% of the current tax commitment.

2. When it has been determined by the legislative body that a time of financial emergency exists, it may order withdrawal from the account of the necessary amount.

**IV. Sinking fund account.**

**A.** Paying a funded debt.

1. Any assets remaining in a sinking fund account, other than its own bonds, shall be withdrawn from the account when the debt for the payment of which it was established has been refunded. The legislative body may pledge the assets for payment of the new debt or may order them transferred to another account. (1957, c. 405, § 1.)

**Sec. 18. Trustees of the reserve fund.**—The municipal officers are trustees of the reserve fund.

**I.** They shall deposit or invest the fund according to section 21.

**A.** Any interest earned or capital gains realized shall accrue to and become part of the fund. Unless otherwise ordered by the legislative body, interest and capital gains shall be prorated among the various accounts.

**II.** An expenditure from any account of the fund may be made only for the specific purpose for which the account was established.

**III.** The balance of any account of a reserve fund may be transferred to another reserve account or to surplus, when the purpose for which it was established has been accomplished or abandoned.

**IV.** Any municipal official who uses the assets of any account of the reserve fund in any manner or for any purpose other than that provided by the municipality shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 2 years. (1957, c. 405, § 1.)

**Sec. 19. Money or property in trust.**—A municipality may receive money or other property in trust for any specified municipal, benevolent, religious or educational purpose.

**I.** When the municipal officers receive written notice from a prospective donor or his representative of a proposed trust, they shall submit the matter at the next meeting of the legislative body and shall within 10 days after the meeting send written notice of its acceptance or rejection.

**II.** The municipal officers shall either deposit or invest trust funds according to section 21.

**A.** Unless the instrument or order creating the trust prohibits, a municipality may treat any 2 or more trust funds as a single fund solely for the purpose of investment.

**B.** After deduction of management expenses, any interest earned or capital gains realized shall be prorated among the various trust funds.

**C.** Any property or securities included in the corpus of a trust fund shall be retained where the trust instrument so provides.

**D.** Unless otherwise specified in the trust instrument, only the annual income from the trust fund may be spent.

**III.** If the municipality fails to comply with the terms of the trust instrument, the trust fund reverts to the donor or his heirs. (1957, c. 405, § 1.)

**Sec. 20. Conditional gift.**—A municipality may accept a conditional gift for any specified municipal, benevolent, religious or educational purpose.

**I.** Within 60 days after the municipal officers receive written notice from a prospective donor or his representative of the proposed gift, they shall call a meeting of the legislative body, and shall within 10 days after the meeting send written notice of its acceptance or rejection.

**II.** When the donor or his representative has completed his part of the agreement respecting the execution of a conditional gift, the municipality shall perpetually comply with, and may raise money to carry into effect, the conditions upon which it was made.

**III.** Unless otherwise specified by its terms, a conditional gift of money may be deposited or invested according to section 21. (1957, c. 405, § 1.)

**Sec. 21. Deposit or investment of funds.**—Reserve funds, trust funds and all permanent funds shall be deposited or invested by the treasurer, by direction of the municipal officers, as follows:

**I.** Deposited in savings banks, trust companies and national banks in the state.

**II.** Invested in shares of building and loan or savings and loan associations organized under state law.

**III.** Invested according to the law governing the investment of the funds of savings banks in section 19-I of chapter 59.

**A.** For the purpose of this section, the words "deposits of a bank" or their equivalent as used in section 19-I of chapter 59 mean the total assets of the reserve fund, trust fund or other permanent fund being invested, but the limitation concerning the maximum amount which may be invested in a security or type of security under section 19-I applies only to an investment in that security or type of security which exceeds \$2,000.

**IV.** The municipal officers are authorized and may, where the terms of the instrument, order or article creating the fund does not prohibit, designate in writing a trust company or national bank having its principal office within the state, for the purpose of investment, and consent to the investment of such funds in a common trust fund maintained by said trust company or bank for investment under the rule of prudence set out in chapter 160, section 18. (1957, c. 405, § 1. 1959, c. 9. 1963, c. 68.)

**Effect of amendments.** — The 1959 amendment deleted former paragraph A of subsection I, limiting the balance in any bank to the amount insured by the FDIC. The 1963 amendment added subsection IV.

**Sec. 22. Donation of money.**—The municipal officers may accept a donation of money to the municipality to supplement a specific appropriation already made, to reduce the tax assessment, or to reduce the permanent debt.

I. If the assessors receive written notice from the municipal officers that a sum has been paid to the municipality for the purpose of reducing the tax assessment, they shall reduce it in that amount before establishing the tax rate. If the tax rate has already been established, the treasurer shall deposit the money in a bank, trust company or national bank in the state, and withdraw it at the proper time to reduce the tax assessment for the following taxable year. (1957, c. 405, § 1.)

**Sec. 23. Debt liability.**—The personal property of the residents and the real estate within the boundaries of a municipality, village corporation or other quasi-municipal corporation may be taken to pay any debt due from the body corporate. The owner of property so taken may recover from the municipality or quasi-municipal corporation under section 32 of chapter 118. (1957, c. 405, § 1.)

**Stated** in School Administrative Dist.  
No. 3 v. Maine School Dist. Comm., 158  
Me. 420, 185 A. (2d) 744.

### Accounting System and Postaudit.

**Sec. 24. Uniform accounting system.**—Each municipality and each quasi-municipal corporation, including but not limited to various types of districts or corporations embracing a portion of a municipality, a single municipality or several municipalities, not under the jurisdiction of the public utilities commission shall keep its accounting records in conformity with generally accepted principles of municipal accounting and that a uniform classification be used for revenue, expenditures and balance sheet accounts. (1957, c. 405, § 1. 1963, c. 163, § 1.)

**Effect of amendment.**—The 1963 amendment rewrote the section.

**Sec. 25. Investigation of accounting and auditing system.**—The state auditor may inquire into the accounting and auditing system of any municipality or any quasi-municipal corporation not under the jurisdiction of the public utilities commission, and the officers shall furnish information pertaining to the system in such form as he may prescribe. (1957, c. 405, § 1.)

**Sec. 26. Annual postaudit.**—Each municipality and quasi-municipal corporation shall have an annual postaudit made of its accounts covering the last complete fiscal year by the state department of audit or by a qualified public accountant elected by ballot or, if not so elected, engaged by its officers. The postaudit shall be conducted on the basis of auditing standards and procedures prescribed by the state auditor.

I. When there is dissatisfaction with a postaudit made by a public accountant as shown by a petition signed by at least 10% of the voters of a municipality or village corporation, but in no case more than 1,000, and filed with the state auditor, he shall order a new postaudit to be made by his department, the expense of which shall be paid by the municipality or village corporation.

II. Whenever a postaudit is being made, all necessary records shall be made available to the auditor.

III. After the postaudit has been completed, the auditor shall submit a report to the officers of the municipality or quasi-municipal corporation.

A. The report shall contain the following items:

1. Letter of transmittal.

2. Auditor's comments and suggestions for improving the financial administration.

3. Comparative balance sheet.
  4. Analysis of surplus.
  5. Statement of departmental operations.
  6. Statement of cash receipts and disbursements, and bank reconciliation of cash balance.
  7. Statement of property valuation, assessment and collection of taxes.
  8. Statement of public debt.
- B.** Within 30 days after completion of the postaudit, the auditor shall send to the state auditor a certified copy of the postaudit report and a certified copy of the audit procedural form prescribed by the state auditor for governmental audits.
- IV.** Each municipality and quasi-municipal corporation shall pay the expense of its postaudit.
- A.** The state auditor shall certify to the treasurer of state for collection any unpaid balance due the state department of audit after a 90-day period from the date of billing has elapsed.
- V.** The complete report of the postaudit shall be kept in the municipal office. (1957, c. 405, § 1.)

**Sec. 27. Witnesses and records.**—The state auditor may subpoena witnesses and records, and may examine witnesses under oath in all matters arising under sections 24 to 26. (1957, c. 405, § 1.)

**Sec. 28. Penalty.** — A public official who neglects or refuses to perform any duty imposed by sections 24 to 26 shall be punished by a fine of not more than \$100 and shall forfeit his office. (1957, c. 405, § 1.)

**Sec. 29. State auditor's report on financial affairs.** — The state auditor shall publish annually statistics and other information pertaining to the financial affairs of municipalities and quasi-municipal corporations which may be printed and distributed as a document separate from his annual fiscal report. (1957, c. 405, § 1.)

### Town Meeting.

**Sec. 30. Calling a town meeting.**—Each town meeting shall be called by a warrant. The warrant shall be signed by a majority of the selectmen, except as follows:

- I.** The first town meeting shall be called in the manner provided in the act of incorporation.
- II.** If, for any reason, a majority of the selectmen do not remain in office, a majority of those remaining may call a town meeting.
- III.** When a town, once organized, is without selectmen, a meeting may be called by a justice of the peace in the county on the written petition of any 3 voters.
- IV.** If the selectmen unreasonably refuse to call a town meeting, it may be called by a justice of the peace in the county on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10. (1957, c. 405, § 1.)

**Sec. 31. Town meeting warrant.** — The warrant for calling any town meeting shall meet the following requirements:

- I.** It shall specify the time and place of the meeting.
- II.** It shall state in distinct articles the business to be acted upon at the meeting, and no other business may be acted upon.
- III.** It shall be directed to a town constable, or to any resident by name, ordering him to notify all voters to assemble at the time and place appointed.

**IV.** An attested copy shall be posted by the person to whom it is directed in some conspicuous, public place in the town at least 7 days before the meeting, unless the town has adopted a different method of notification.

**V.** The person who notifies the meeting shall make his return on the warrant stating the manner of notice and the time when it was given. (1957, c. 405, § 1.)

**Sec. 32. Article inserted by petition.**—On the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the selectmen shall insert a particular article in the next warrant issued or shall call a special meeting for its consideration. (1957, c. 405, § 1.)

**Sec. 33. Village corporation meetings.**—Where its legislative body has so provided, the meetings of a village corporation may be notified by having an attested copy of the warrant posted in a conspicuous, public place within the corporate limits at least 7 days before the meeting, instead of in the manner provided by its charter. (1957, c. 405, § 1.)

**Sec. 34. General town meeting provisions.**—The following provisions apply to all town meetings:

**I.** Each person qualified to vote for governor in the town in which he resides may vote in the election of all town officials and in all town affairs.

**II.** The clerk, or in his absence a selectman or constable, shall open the meeting by calling for the election of a moderator, receiving and counting the votes for moderator, and swearing in the moderator.

**III.** As soon as he has been elected and sworn, the moderator shall preside at the meeting.

**A.** A person may not speak before he is recognized by the moderator, and all shall be silent at his command.

**1.** If any person, after a command for order by the moderator, persists in conducting himself in a disorderly manner, the moderator may direct him to leave the meeting. If he refuses to leave, the moderator may have him removed by a constable and confined until the meeting is adjourned.

**B.** The moderator shall not receive any folded vote nor permit any person before the poll is closed to examine the ballot of another without the consent of the voter.

**C.** When a vote declared by the moderator is immediately questioned by at least 7 voters, he shall make it certain by polling the voters or by a method directed by the legislative body.

**IV.** The clerk shall record accurately the votes of the meeting.

**A.** In the absence of the clerk, the moderator shall appoint and swear in a temporary clerk. (1957, c. 405, § 1.)

**Sec. 35. Annual meeting.**—Each town shall hold an annual meeting in March, at which time the following town officials shall be elected by ballot: Moderator, clerk, selectmen, assessors, overseers of the poor, treasurer and school committee. Other town officials may be elected by ballot or, if not so elected, they shall be appointed by the selectmen. A town official may not be elected on a motion to cast one ballot. (1957, c. 405, § 1.)

**Sec. 35-A. Time schedule for registration.** — The registrar shall accept the registration and enrollment of voters prior to a municipal election according to the time schedule prescribed by chapter 3-A, section 57, for a special election. (1961, c. 360, § 6.)

**Sec. 35-B. Change of time schedule.**—The time schedule established by section 35-A may be changed by the municipal officers according to the needs of the municipality. (1961, c. 360, § 6.)

**Sec. 35-C. Notice of time schedule.**—The registrar shall publish his time schedule established by section 35-A, or as changed by the municipal officers, in a newspaper having general circulation in the municipality a reasonable time before it becomes effective. (1961, c. 360, § 6.)

**Sec. 35-D. Delivery of voting list.**—The registrar shall deliver the necessary number of certified copies of the voting list to the clerk by 5 P. M. on the business day next prior to a municipal election day. The clerk shall give him a receipt for them. (1961, c. 360, § 6.)

**Sec. 36. Choice and qualifications of town officials.**—The following provisions apply to the choice and qualifications of town officials:

**I.** In a town of more than 4,000 population, according to the last decennial census of the United States, election shall be by plurality. In a town of less than 4,000 population, election shall be by majority.

**II.** The appointment of any town official or deputy shall be in writing and shall be signed by the appointing party.

**III.** In order to hold a municipal office, a person must be a citizen of the United States, a resident of the state and at least 21 years of age.

**A.** In order to hold the office of selectman, a person must be a voter in the town in which he is elected.

**IV.** The following provisions apply to selectmen and overseers:

**A.** A town may determine at a meeting held at least 30 days before the annual meeting whether 3, 5 or 7 shall be elected to each board and their terms of office.

1. Once the determination has been made, it shall stand until revoked at a meeting held at least 30 days before the annual meeting.

2. If a town fails to fix the number, 3 shall be elected. If a town fails to fix the term, it shall be for one year.

**B.** When others have not been elected, the selectmen shall serve as overseers of the poor.

**C.** A town may, in electing these officials, designate one of them as chairman of the board.

1. If no person is so designated, the board shall elect by ballot a chairman from its own membership, before assuming the duties of office. Where no member receives a majority vote, the clerk shall determine the chairman by lot.

**D.** If the town fails to fix the compensation of these officials at its annual meeting, they shall be paid \$10 each per day for every day actually and necessarily employed in the service of the town. (1963, c. 299, §§ 1, 2)

**IV-A. Assessors.** The following provisions apply to assessors:

**A.** A town may determine at a meeting of its legislative body held at least 30 days before the annual meeting whether a single assessor, or a board of 3, 5 or 7, shall be elected and the term of office of the assessor or assessors. In towns where the legislative body is the town meeting, the determination shall be effective only if the total number of votes cast for and against the determination equals or exceeds 10% of the total vote for all candidates for governor in the town at the next previous gubernatorial election.

1. Once a determination has been made, it shall stand until revoked at a meeting held at least 30 days before the annual meeting.

2. If a town fails to fix the number, 3 shall be elected. If a town fails to fix the term, it shall be for one year.

**B.** When others have not been elected, the selectmen shall serve as assessors; except that when a town has chosen a single assessor under paragraph A, and fails to elect the assessor, the selectmen shall appoint the assessor.

**C.** A town may, if it elects a board of assessors, designate one member as chairman of the board.

1. If no person is so designated, the board shall elect by ballot a chairman from its own membership, before assuming the duties of office. Where no member receives a majority vote, the clerk shall determine the chairman by lot.

**D.** If the town fails to fix the compensation of assessors at its annual meeting, they shall be paid \$10 each per day for every day actually and necessarily employed in the service of the town. (1963, c. 299, § 3)

**IV-B. Board of assessment review.**

**A.** Any town choosing a single assessor may adopt a board of assessment review at a meeting of its legislative body held at least 30 days before the annual meeting.

**B.** The board of assessment review shall consist of 3 members to be appointed by the selectmen. The town, when adopting such board, may fix the compensation of the members. One member shall be appointed for one year, one member for 2 years and one member for 3 years, and thereafter the term of each new member shall be 3 years.

**C.** Any town adopting a board of assessment review may discontinue such board by vote, in the same manner and under the same conditions as in adopting such board. (1963, c. 299, § 3)

**V. The following provisions apply to road commissioners:**

**A.** A town may determine at a meeting held at least 30 days before the annual meeting whether one or more shall be chosen and the term of office, which may not exceed 3 years.

1. Once the determination has been made, it shall stand until revoked at a meeting held at least 30 days before the annual meeting.

2. If a town fails to fix the number, one shall be chosen. If a town fails to fix the term, it shall be for one year.

**B.** A road commissioner appointed by the selectmen may be removed from office for cause by the selectmen.

**C.** Selectmen may act as road commissioners.

**VI. Treasurers and tax collectors of towns may not be selectmen or assessors until they have completed their duties and had a final settlement with the town.**

**A.** The treasurer and tax collector of a municipality may be the same person.

**VII. Before assuming the duties of office, a town official or deputy shall be sworn by the moderator in open town meeting, by the clerk, or by any other person authorized by law to administer an oath.**

**A.** Unless the oath is administered in the presence of the clerk, the person who administers it shall give the official or deputy sworn a certificate which he shall return to the clerk for filing. The certificate shall state the name of the official or deputy sworn, his office, the name of the person who administered the oath, and the date when the oath was taken.

**B.** The clerk shall be sworn to record accurately the votes of town meetings, and to discharge faithfully all the other duties of his office, until another clerk is elected and sworn in his stead.

**C.** After town meeting, the clerk shall issue forthwith a warrant directed to a constable containing the names of persons chosen for office who have not been sworn.

1. The constable shall summon forthwith the named persons to appear before the clerk within 7 days from the time of notice, to take the oath of office.

2. The constable shall make his return forthwith to the clerk.

3. The town shall pay the constable a reasonable compensation for his services.

**D.** The clerk shall record the election or appointment of each official or deputy, including his own, and the other information specified in paragraph A.

**E.** A record by the clerk that a person was sworn for a stated town office is sufficient evidence that he was legally sworn for the office. The entire oath need not be recorded. (1957, c. 405, § 1. 1963, c. 299, §§ 1-3.)

**Effect of amendment.**—The 1963 amendment deleted “assessors” in the first sentence of subsection IV, deleted “assessors and” in paragraph B of that subsection and added subsections IV-A and IV-B.

**Existing boards of assessment review.**—Chapter 299, P. L. 1963, provided in § 8 thereof as follows: “Boards of assessment review presently existing pursuant to special municipal charters may be continued in office provided the legislative

body of the town or city council, as the case may be, votes to adopt a board of assessment review under the Revised Statutes, chapter 90-A, section 36, subsection IV-B, or section 58, subsection I-A. Upon completion of existing terms in such cases, the boards shall be thereafter constituted and chosen under this act. If no such vote is taken, boards of assessment review existing under special charters shall cease to exist on and after January 1, 1965.

### Secret Ballot, Inspection, Recount.

**Sec. 37. Secret ballot.**—When any town accepts this section at a meeting held at least 30 days before the annual meeting, the following provisions apply to the election of all town officials required by section 35 to be elected by ballot, except the moderator, who shall be elected as provided in subsection II of section 34.

The provisions of this section relating to nomination of town officials by political caucus shall apply only when any town accepts such provisions at a meeting held at least 30 days before the annual meeting. If any town accepts such provisions, they shall remain effective until the town shall vote otherwise.

**I.** At the time of acceptance, the town shall determine, by a separate article in the warrant, which other officials are to be elected according to this section, and may determine the number and terms of selectmen, assessors and overseers according to subsection IV of section 36.

**A.** No change may be made thereafter in the designation, number or terms of town officials, except at a meeting held at least 30 days before the annual meeting.

**II.** The warrant for a town meeting for the election of officials shall specify the voting place, which shall be in the same building or nearby building where the meeting is to be held. It shall also specify the time of opening and closing the polls, which shall be kept open at least 4 consecutive hours. (1957, c. 429, § 79)

**A.** The municipal officers in the warrant for a town meeting under this section may designate the date of the election and designate the next succeeding secular day as the time for considering the other articles of business in the warrant. (1959, c. 2)

**III.** The nomination for any office shall be made by nomination papers signed by the following number of voters based on the population of the town according to the last decennial census of the United States: not less than 25 nor more than 75 in towns of 4,000 or less population; not less than 75 nor more than 125 in towns of 4,001 to 10,000; and not less than 100 nor more than 150 in towns of more than 10,000. (1963, c. 131)

**A.** Each voter who signs a nomination paper shall add his place of residence with the street and number, if any. He may subscribe only to as many nomination papers for each office as there are vacancies to be filled.

**B.** All certificates of political caucus nominations shall be signed by the chairman and secretary of the caucus. Such certificates and nomination papers shall specify the name of the candidate and the office for which he is nomi-

nated. They shall be filed with the clerk on or before the 14th day next prior to the day of election. With such nomination papers and certificates there shall also be filed the consent in writing of the persons proposed therein as candidates, agreeing to accept the nomination if nominated, not to withdraw, and, if elected at the municipal election, to qualify as such municipal officer. When filed, they shall be made available by the clerk to public inspection under proper protective regulations. The clerk shall keep them in his office for 6 months. (1959, c. 109, § 2)

**C.** A certificate of political caucus nomination and a nomination paper which conforms with this section is valid unless a written objection to it is made to the selectmen on or before the 12th day next prior to the day of election. (1959, c. 109, § 3)

1. When an objection is made, notice shall be delivered immediately by the clerk to the candidate affected by it.

2. Objections arising in the case of nominations shall be determined by the selectmen, and their decision is final.

**IV.** On the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the selectmen shall require that a particular article be placed in the next ballot printed, or shall call a special meeting for its consideration. If such particular article be placed in the next ballot printed, a public hearing shall be held by the municipal officers on the subject of such article at least 10 days before the day for voting thereon. Notice of such public hearing shall be given by the municipal officers by causing a copy of said proposed article together with the time and place of hearing, to be posted in the same manner required for posting a warrant for a town meeting, at least 7 days before the date set for such hearing, and a return shall be made on the original notice by the municipal officers stating the manner of notice and the time when it was given. The requirement for public hearing shall not be a prerequisite to the valid issuance of any bond, note or other obligation of a municipality authorized to borrow money by vote under any such particular article. The petition for placing an article on the ballot is subject to the same filing provisions as are nomination papers under this section. A vote by secret ballot takes precedence over a vote by any other means at the same meeting. (1961, c. 309.)

**V.** Ballots, specimen ballots and instruction cards shall be prepared by the clerk according to the following provisions:

**A.** The ballot shall contain the names of properly nominated candidates arranged under the proper office designation in alphabetical order by surname. It shall contain no other names.

**B.** At the end of the list of candidates for each office, there shall be left as many blank spaces as there are vacancies to be filled, in which a voter may insert the name of any person for whom he desires to vote.

**C.** Any question required by statute to be submitted to a vote shall be printed below the list of candidates.

**D.** A square shall be printed at the right of the name of each candidate, and 2 squares shall be printed at the right of any question submitted with "yes" above one and "no" above the other, so that a voter may designate his choice clearly by a cross mark (X) or a check mark (✓).

**E.** Words of explanation such as, "Vote for one," and "Vote yes or no," may be printed on the ballot.

**F.** Before distribution, the ballot shall be folded in marked creases to measure, when folded, from 4½ to 5 inches wide and from 6 to 13½ inches long. On the back and outside, when folded, shall be printed "Official Ballot for the Town of . . . .," the date of election, and a facsimile of the signature of the clerk.

**G.** At least 55 ballots for each 50 registered voters shall be printed and furnished, and a record of the number shall be kept by the clerk. The printed ballots shall be packaged in convenient blocks so that they may be removed separately.

**H.** Ten or more specimen ballots printed on paper of a distinctive color without the endorsement of the clerk shall be provided.

**I.** Instruction cards containing the substance of chapter 3-A, sections 84, 86, 87, 89, 90, 91, 92 and section 201, subsections IV, VII, VIII, XIII, XIV, XV and XVII to XXII, to guide voters in obtaining and marking ballots and to inform them of penalties for improper conduct must be printed. (1961, c. 360, § 7.)

**J.** The ballots and specimen ballots shall be packed in sealed packages with marks on the outside specifying the number of each enclosed.

**K.** When voting machines are used, the clerk shall prepare and furnish ballot labels as nearly as practicable in conformance with the provisions of this section which apply to ballots. (1961, c. 360, § 8.)

**VI.** At least 4 days prior to the election, the clerk shall have posted in one or more conspicuous, public places a specimen ballot or a list, substantially in the form of a ballot, containing the name and office designation of each candidate.

**VII.** Before the opening of the polls, the selectmen shall appoint the necessary number of ballot clerks. When there are vacancies after the opening of the polls, the moderator shall appoint replacements. The ballot clerks shall be sworn before assuming their duties.

**A.** On election day, before the opening of the polls, the clerk shall deliver the ballots to the ballot clerks and shall post an instruction card at each voting compartment and at least 3 instruction cards and 5 specimen ballots in the voting room outside the guard rails.

**B.** The ballot clerks shall give a receipt to the clerk for the ballots received by them. The clerk shall keep the receipt in his office for 6 months.

**C.** Ballots may not be delivered to the voters until the moderator has been elected. The moderator may appoint a qualified person to act as temporary moderator during his temporary absence from the polling place.

**D.** A duplicate check list of the qualified voters shall be prepared by the selectmen for the use of the ballot clerks. The provisions of law pertaining to check lists apply equally to duplicate check lists.

**VIII.** After the ballot clerks have counted and tabulated the votes cast, the moderator shall deliver the ballots to the clerk who shall seal them in a suitable package and keep them in his office for 6 months.

**IX.** Election shall be by plurality vote. In case of a tie vote, the meeting shall be adjourned to a day certain, when ballots shall again be cast for the candidates tied for the office in question.

**X.** Repealed by Public Laws 1961, c. 360, § 9. (1957, c. 405, § 1; c. 429, § 79. 1959, c. 2; c. 109, §§ 1, 2, 3. 1961, c. 309; c. 360, §§ 7, 8, 9. 1963, c. 131.)

**Effect of amendments.**—Chapter 429, P. L. 1957, effective October 31, 1957, added "or nearby building" in the first sentence of subsection II.

Chapter 2, P. L. 1959, added paragraph A to subsection II.

Section 1, c. 109, P. L. 1959, added the present second paragraph in the section. Section 2, c. 109 added the present first sentence in paragraph B of subsection III, added "Such certificates and" at the be-

ginning of the present second sentence and added the present fourth sentence in such paragraph. Section 3, c. 109, added "certificate of political caucus nomination and a" in the first sentence of paragraph C of subsection III.

Chapter 309, P. L. 1961, inserted the present second, third and fourth sentences in subsection IV. Chapter 360, P. L. 1961, rewrote paragraph I of subsection V, which formerly provided for putting §§ 40, 93

and 107 of former c. 5 on each instruction card, added paragraph K to subsection V and deleted subsection X, providing that the laws as to gubernatorial elections should govern the conduct of elections except as otherwise provided in this section.

The 1963 amendment rewrote the first sentence of subsection III.

**Applied** in *Limestone Water & Sewer District v. Limestone Water & Sewer Co.*, 156 Me. 207, 163 A. (2d) 374.

**Sec. 37-A. Voting by absentee ballot.**—When any town which has accepted section 37 accepts this section at a meeting held at least 30 days before the annual meeting, absentee ballots may be cast at all regular elections of town officials, including town meeting members where the representative town meeting form of government is used. Section 37 and this section may be accepted at the same meeting.

**I. Procedure.** The absentee voting procedure outlined in chapter 3-A shall be used, except the duties of the secretary of state shall be performed by the clerk. (1961, c. 360, § 10.)

**Sec. 38. Ballot inspection.**—Upon written application of any candidate for a municipal office within 3 days after the result of a city election or an election under section 37 has been declared, the clerk shall permit him or his agent to inspect the ballots under proper protective regulations.

**I.** The inspection shall be permitted only after written notice by the clerk to the ward officers who signed the election returns in a city, or to the moderator in a town, and to all candidates for the office specified in the application, stating the time and place of the inspection and affording them a reasonable opportunity to be present and heard in person or by counsel.

**II.** The inspection shall be held not later than 5 days after the written application is received by the clerk.

**III.** After each inspection the packages shall be sealed again by the clerk and the fact and date of inspection noted on them. (1957, c. 405, § 1.)

**Sec. 39. Recount hearing.**—A candidate for any municipal office who has first inspected the ballots according to section 38 may obtain a recount of the votes cast for that office.

**I.** He shall file a sworn petition with the clerk within 3 days from the date of the ballot inspection.

**A.** The petition shall state the office for which he was a candidate, and the reason for the recount based on his own knowledge or on information and belief.

**II.** When the petition has been filed, the clerk shall set forthwith a date not more than 5 days after the filing date for the recount hearing. He shall notify the municipal officers, the petitioner and the opposing candidates of the hearing date.

**III.** At the hearing the clerk shall sort and count the votes under the supervision of the municipal officers.

**A.** The municipal officers in making corrected returns may, in their discretion, accept such facts as the candidates agreed upon at the ballot inspection.

**B.** The petitioner or his opponents may have all ballots in any way involved in the election and all records required by law to be kept in connection with absentee ballots displayed for counting or inspection. Upon request, absentee ballots may be segregated from other ballots. (1961, c. 360, § 11.)

**C.** Witnesses may be called by the candidates and may be sworn by any municipal officer. Witness fees shall be paid by the municipality if authorized by the municipal officers. A record shall be kept if requested by any candidate.

**D.** If, during the recount, the election is conceded to a candidate by a statement signed by the other interested candidates and addressed to the municipal officers, they shall issue a certificate of election to the candidate whose election is conceded.

**IV.** 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 supersedes any certificate issued previously. (1957, c. 405, § 1. 1961, c. 360, § 11.)

**Effect of amendment.**—The 1961 amendment deleted “or incapacity” following “ab-sentee” at two places in paragraph B of subsection III.

**Sec. 39-A. Referendum ballot inspection and recount procedure.** — Upon written application of 10% of the persons whose names were checked on the voting list at any municipal referendum or ballot question under section 37, a ballot inspection or a recount hearing shall be granted. The time limits, rules and all other matters applying to candidates shall apply equally to applicants for either the inspection or recount. (1963, c. 196, § 2.)

**Sec. 39-B. Application of chapter 3-A.**—Except as otherwise provided by this chapter or by charter, the qualification of voters, the method of voting and the conduct of a municipal election are governed by chapter 3-A. (1961, c. 360, § 12. 1963, c. 196, § 1.)

**Editor's Note.**—Chapter 196, P. L. 1963, reallocated this section, which was formerly § 39-A.

### Annual Report.

**Sec. 40. Annual report.**—The officers of each municipality shall publish annually a complete report subject to the following provisions:

**I.** It shall be printed on paper of at least 50 pound basis weight and bound not less than 6 inches wide by 9 inches long nor more than 8½ inches wide by 11 inches long.

**II.** It shall contain a record of all financial transactions of the municipality during the last municipal year, including an itemized list of receipts and disbursements indicating to whom and for what purpose each amount was paid.

**A.** A municipality may waive the printing in its annual report of the itemized list of receipts and disbursements which is effective until revoked.

**III.** It shall contain a detailed statement of the assets and liabilities of the municipality including a list of all delinquent taxpayers and the amount due from each.

**IV. Postaudit report.** It shall contain the statement that the complete post-audit report for the latest municipal year is on file at the municipal office and the following excerpts from that report:

**A.** Name and address of the auditor.

**B.** Auditor's comments and suggestions for improving the financial administration.

**C.** Comparative balance sheet.

**D.** Statement of departmental operations. (1963, c. 163, § 2)

**V.** The names of persons receiving pauper assistance may not be printed unless a municipality at its annual meeting votes to include them in its next annual report.

**VI.** Copies of the report shall be deposited in the municipal office, or a convenient place of business, for distribution to the voters at least 3 days before the annual meeting.

**VII.** Copies of the report and all municipal records shall be kept in the munic-

ipal office, or in the office of the clerk, and shall be open to the inspection of voters during usual business hours.

If any municipal official refuses or neglects to perform any duty required by this section, he shall be punished by a fine of \$50 for each offense. (1957, c. 405, § 1. 1963, c. 163, § 2.)

**Effect of amendment.**—The 1963 amendment added “for the latest municipal year” in the first paragraph of subsection IV.

### **Municipal Officials.**

**Sec. 41. Town manager form of government.**—A town may adopt the town manager form of government at a meeting held at least 60 days before the annual meeting.

**I. Offices manager to hold.** The selectmen shall determine which offices the manager is to hold.

**A.** A manager may not be a moderator, selectman, assessor or member of the school committee.

**B.** The selectmen shall appoint the manager annually to each office.

**II. Duration of form of government.** Once adopted, the town manager form of government remains in effect until revoked at a meeting held at least 60 days before the annual meeting.

**III. Compensation of manager.** The selectmen shall fix the compensation of the manager.

**IV. Removal of manager.** The manager may be removed for cause by the selectmen.

**A.** The selectmen shall file with the town clerk a written preliminary resolution setting forth the specific reasons for the proposed removal, a copy of which shall be delivered to the manager within 10 days of filing.

**B.** The manager may within 20 days of receiving the resolution reply in writing and may request a public hearing.

**C.** Upon request for a public hearing the selectmen shall hold one not earlier than 10 days after the request is filed nor later than 30 days.

**D.** After the public hearing, or at the expiration of the time permitted the manager to request the public hearing, if no such request is made, the selectmen may adopt or reject the resolution of removal.

**E.** The selectmen may suspend the manager from duty in the preliminary resolution, but in no event shall the manager's salary be affected until the final resolution of removal has been adopted. (1957, c. 405, § 1. 1963, c. 202.)

**Effect of amendment.**—The 1963 amendment rewrote the section.

**Sec. 42. Manager's powers and duties.**—The manager, as administrative head of the town government, is responsible to the selectmen for the administration of all departments over which selectmen have control.

**I. Powers and duties.** Where not otherwise provided, his powers and duties are as follows:

**A.** To see that the law is enforced.

**B.** To exercise control over all departments and divisions in the town except the board of selectmen, assessors, school committee and election officials.

**C.** The selectmen shall designate the offices for which the manager is responsible. The manager shall appoint qualified persons to such offices who shall be responsible to the manager and serve at his pleasure.

**D.** To act as purchasing agent for all departments except the school department.

**1.** The selectmen may require purchases involving more than \$100 to be submitted to bid.

**E.** To attend the meetings of the selectmen, except when his removal is being considered, and to make recommendations for the more efficient operation of the town government.

**F.** To keep the selectmen and residents of the town informed as to its financial condition. (1957, c. 405, § 1. 1963, c. 202.)

**Effect of amendment.**—The 1963 amendment—“provided” in subsection I and added present deleted “by the town” following present paragraphs B and C in that subsection.

**Sec. 43. Union of towns.**—A town may join a union of other contributing towns for the purpose of employing a manager.

**I.** In a town union, the joint board of selectmen from each town may select the manager and may remove him for cause.

**A.** In a joint board, the selectmen of each town shall cast collectively a single vote.

**II.** The selectmen of each town shall determine the amount to be paid to the manager by their town.

**III.** A town may vote to withdraw from the union at a meeting held at least 90 days before the annual meeting.

**A.** After the meeting, the clerk shall send forthwith a written notice to the selectmen of the other towns in the union advising them of the vote to withdraw.

**B.** The withdrawal becomes effective at the end of the municipal year in which the action is taken. (1957, c. 405, § 1.)

**Sec. 44. Treasurer's bond.**—The treasurer shall give a surety bond to the municipality subject to the following provisions, before assuming the duties of office:

**I.** It shall be conditioned on his faithful discharge of all the duties of office.

**II.** It may be a corporate surety bond or an individual surety bond.

**A.** If it is an individual surety bond, the surety shall provide the municipal officers with a detailed sworn statement of his personal financial ability.

**III.** It need not be for more than twice the amount of taxes to be collected during the municipal year.

**IV.** The bond shall be paid for by the municipality.

**V.** The municipal officers are the sole judges of the sufficiency of the bond and sureties.

**VI.** After its approval by the municipal officers, the bond shall be recorded by the clerk.

**A.** The record is prima facie evidence of the contents of the bond.

**B.** Failure to record the bond is no defense to an action on it. (1957, c. 405, § 1.)

**Sec. 45. Treasurer's powers and duties.**—The treasurer has the following powers and duties:

**I.** He shall disburse money only on the authority of a warrant drawn for the purpose by the municipal officers.

**II.** Upon request, he shall render an account of the finances of the municipality and exhibit his official records to the municipal officers or to any committee appointed by them to examine the accounts. The municipal officers shall examine the treasurer's accounts at least once every 3 months.

**III.** He shall maintain a bank account in the name of the municipality for the deposit of cash receipts. When the cash balance in his possession exceeds \$100, he shall deposit it in the bank within 10 days.

**IV.** He may make deductions from the salary of a municipal employee and pay the money deducted to the proper payee, when the employee gives him the written authority to do so. The authority of the treasurer to make a deduction continues until it is revoked in writing by the employee, or until the reason

for the deduction is known by the treasurer to no longer exist. (1957, c. 405, § 1.)

**Sec. 46. Notice of choice of treasurer.**—When a treasurer is chosen and qualified, the clerk shall send his name to the treasurer of state. The treasurer of state shall not send money to any municipality until the name of its treasurer has been received by him. (1957, c. 405, § 1.)

**Sec. 47. Clerk may be bonded.**—A municipality may require its clerk to be bonded according to section 44, before assuming the duties of office. (1957, c. 405, § 1.)

**Sec. 48. Clerk's fee schedule.**—Except as provided in chapter 190, the clerk shall charge for his services according to the following fee schedule:

**I. Recording the following:**

**A.** Administration of an oath, 50¢.

1. This shall be paid by the municipality.

**B.** A birth, marriage or death as required by sections 378-A, 380, 391, and 393 of chapter 25, 25¢.

1. This shall be paid by the municipality.

**C.** An out-of-state marriage as provided by section 7 of chapter 166, \$1.

1. This shall be paid by the municipality.

**D.** Affidavit establishing or correcting a record of birth, marriage or death as provided by sections 393-A and 400 of chapter 25, \$1.

1. The clerk shall issue a copy of the record to the applicant.

**E.** Affidavit legitimating a birth as provided by section 392 of chapter 25, \$1.

1. The clerk shall issue a copy of the amended birth record to the applicant.

**F.** Repealed by Public Laws 1963, c. 362, § 23.

**G.** Release of an attachment, 50¢.

**H.** Certificate of partnership, \$1.

**I.** Certificate of withdrawal of a partner, \$1.

**J.** Certificate of a person engaging in trade under a name, style or designation other than his own, \$1.

**K.** Honorable discharge or release papers of veterans of the armed forces of the United States of America, 25¢.

1. A copy of such a document attested by the clerk is prima facie evidence of its existence and validity.

**L.** Petition for enforcement of a lien on monumental works, 50¢.

**M.** License for clam cultivation or an assignment of it, 50¢.

**N.** Any other instrument entitled to be recorded, including an executed assignment attached to or made a part of it before it is received for recording, \$1.50 for the first 500 words, and 50¢ for each additional 100 words or part thereof. In a municipality which records by photostat or microfilm the fee is \$1 each for the first 5 pages and 50¢ each for each succeeding page.

1. If the clerk is furnished a true copy of the original instrument suitable for filing in a municipality which does not photostat or microfilm, the fee is \$1.

2. The acts of any municipality in recording any instrument by microfilm prior to September 21, 1963, are hereby ratified, confirmed and made effective. (1961, c. 37. 1963, c. 173, § 1.)

**II. Recording marriage intentions and issuing a marriage license, \$2.**

**III. Issuing the following:**

**A.** Certificate of birth, marriage or death, \$1.

**B.** Burial permit, 50¢.

**IV. Marginal release.** Entering in the margin of a record the release of an attachment, 25¢.

**A.** The marginal release shall be signed by the person making it. (1963, c. 362, § 24)

A municipality may provide for a salary to be paid to the clerk as full compensation, in which case the fees accrue to the municipality. (1957, c. 405, § 1. 1961, c. 37. 1963, c. 173, § 1; c. 362, §§ 22-24.)

**Effect of amendments.** — The 1961 amendment added the second sentence in paragraph N, substituted “in a municipality which does not photostat” for “or photostating for the municipal records” in subparagraph 1, paragraph N, and eliminated the former second sentence of that subparagraph, providing for destruction of the copy after photostating and indexing.

Chapter 362, P. L. 1963, effective December 31, 1964, added “Except as provided in chapter 190” at the beginning of the section, deleted former paragraph F of subsection I, concerning the assignment or discharge of a mortgage, deleted “or the discharge of a mortgage or other in-

strument given as security” in the first paragraph of subsection IV and deleted “or discharge” in paragraph A of subsection IV. Chapter 173, P. L. 1963, added subparagraph 2 in paragraph N of subsection I and added “or microfilm” in two places in the other portions of paragraph N.

**Appropriation by town of statutory fees.** —Until the enactment of this section, an attempted vote of a town seeking to appropriate to itself the statutory fees of its clerk was in contravention of state law and, therefore, null and void (see c. 91, § 28). *State v. Huff*, 157 Me. 269, 171 A. (2d) 210.

**Sec. 49. Clerk's expenses.**—Each municipality shall pay the reasonable expenses of its clerk and deputy clerk incurred in attending the annual meetings of the Maine municipal association and the Maine town and city clerks' association. (1957, c. 405, § 1.)

**Sec. 50. Deputy officials.**—The treasurer, clerk and collector of a municipality may each appoint in writing a qualified person as his deputy.

**I.** Before assuming the duties of office, the deputy shall be sworn and the fact of his oath recorded as provided in subsection VII of section 36.

**II.** The deputy shall serve at the will of the appointing official. He may perform any of the duties of office prescribed by the appointing official.

**III.** The appointing official and the surety on his bond are liable for all acts and omissions of his deputy.

**IV.** If the clerk fails to do so, the municipal officers may appoint a deputy clerk to act during his absence. (1957, c. 405, § 1.)

**Sec. 51. Assistant clerk.**—The clerk may appoint in writing one or more assistants who may act as clerk only for the purpose of recording documents and issuing certified copies of the records in his office.

**I.** Before assuming the duties of office, an assistant clerk shall be sworn and the fact of his oath recorded as provided in subsection VII of section 36.

**II.** The assistant clerk shall serve at the will of the clerk.

**III.** The clerk and the surety on his bond are liable for all acts and omissions of his assistant. (1957, c. 405, § 1.)

**Sec. 52. Police officers.**—The municipal officers may appoint for not more than one year, remove, control and fix the compensation of police officers, when the municipality has not provided otherwise under subsection II of section 4.

**I.** A police officer has all the power of a constable in criminal matters within the limits of the municipality. (1957, c. 405, § 1.)

**Sec. 53. Vacancy in municipal office.**—A vacancy in a municipal office may occur by the following means: Nonacceptance, resignation, death, removal, permanent disability or incompetency, failure to qualify for the office within 10 days after written demand by the municipal officers, or failure of the municipality to elect a person to office.

**I.** Where there is a vacancy in a town office other than that of selectman, assessor or school committee, the selectmen may appoint a qualified person to fill the vacancy.

**II.** When there is a vacancy in the office of selectman or assessor, the selectmen may call a town meeting to elect a qualified person to fill the vacancy.

**III.** The person appointed to fill a vacant office must qualify in the same manner as one chosen in the regular course of municipal activity. (1957, c. 405, § 1.)

**Sec. 54. Reports by sworn officials.**—A municipal official who has been sworn to the faithful performance of his duty need not swear to any report, account or statement to be filed with any of the state departments. (1957, c. 405, § 1.)

**Sec. 55. Neglect of official duty.**—A municipal official who neglects or refuses to perform a duty of office shall be punished by a fine of not more than \$100 for each offense, when no other penalty is provided. The fine shall be recovered on complaint to the use of the municipality. (1957, c. 405, § 1.)

**Sec. 56. Pecuniary interest prohibited.** — Certain proceedings of municipalities and municipal officials are void and actionable according to the following provisions:

**I.** Where it would be decisive, the vote by any official of a municipality in his official position on any question in which he has a direct or an indirect pecuniary interest is void.

**II. Contracts.** A contract, other than a contract obtained through properly advertised bid procedures, made by a city during the term of a city official who has a direct or an indirect pecuniary interest in it is void.

**III. Restrain proceedings.** The superior court may restrain proceedings in a municipality in violation of this section on the application of at least 10 taxable residents. (1957, c. 405, § 1. 1961, c. 317, § 244. 1963, c. 185.)

**Effect of amendments.** — The 1961 amendment substituted "superior court" for "supreme judicial court in equity or the superior court in equity" in subsection III of this section. The 1963 amendment added "other than a contract obtained through properly advertised bid procedures" in subsection II.

### Correction and Disposition of Municipal Records.

**Sec. 57. Municipal records.**—The following provisions apply to municipal records:

**I.** When omissions or errors exist in municipal or school district records, they shall be corrected under oath by the person whose duty it was to make them correctly, whether or not he remains in office.

**A.** If an original town meeting warrant is lost or destroyed, the return may be made or amended on a copy of it.

**II.** Each municipality shall provide a fireproof safe or vault for the preservation of all completed record books.

**A.** When a record book is completed, the clerk shall deposit it in the safe or vault where it shall be kept, except when required for use.

**III.** The records of the clerk may be attested by volume. Each document is sufficiently attested when the volume in which it is recorded bears the attestation with the written signature of the clerk. (1957, c. 405, § 1.)

**Sec. 57-A. Preservation of municipal records.**—The old records of any municipality which in the opinion of the municipal officers are in danger of being rendered valueless because of the ravages of time or which have no permanent value to the municipality may be disposed of subject to the following conditions:

**I.** The municipal officers may dispose of old records as herein provided when

so authorized by the legislative body. Authority once given shall be deemed continuing.

**II.** The municipal officers together with the clerk and treasurer shall constitute a committee to review such municipal records as may be disposed of, shall carry out such disposition and shall file due certificate thereof which shall be recorded by the municipal clerk. The certificate shall state the type of record, the number of records, the method of disposition and the date of each such disposition.

**III.** The following municipal records may be disposed of as herein provided:

	Statutory Period of Retention	Disposition
<b>A. Municipal officers' and treasurer's records</b>		
1. Ledger and journal entry record	7 yrs.	Microfilm
2. Checks and bills	6 yrs.	Destroy
3. Vouchers and treasurer's receipts	6 yrs.	Destroy
4. Treasurer's warrants	6 yrs.	Destroy
5. Distribution record	20 yrs.	Microfilm
6. Payrolls	6 yrs.	Destroy
7. Tax lien records of treasurer	10 yrs.	Destroy
8. Minutes of selectmen's meetings	20 yrs.	Microfilm
<b>B. Tax collector's records</b>		
1. Commitment, regular and supplemental	20 yrs.	Microfilm
2. Cash sheets	6 yrs.	Destroy
3. Excise tax records	3 yrs.	Destroy
4. Tax collector's settlement	20 yrs.	Microfilm
<b>C. Assessors' records</b>		
1. Valuation book	20 yrs.	Microfilm
2. Tax exemption records	20 yrs.	Microfilm
3. Abatement records	20 yrs.	Microfilm
<b>D. Town clerk's records</b>		
1. Town meeting and council records	20 yrs.	Microfilm
2. Security titles for personal property (chattel mortgages, conditional sales, etc.)	10 years or 5 years after the maturity of the instrument, whichever is greater	Destroy
3. Dog licenses	3 yrs.	Destroy
4. Oath books		
(a) If oath books are not kept "forms of oaths given or taken" shall be preserved or microfilmed after 20 years.	20 yrs.	Microfilm
(b) If oath books are kept "forms of oaths given or taken" may be destroyed after 20 years.	20 yrs.	Destroy

**IV.** Records disposed of by microfilming shall be accomplished by the production of 2 positive films, one to be retained by the municipality in a fireproof container and properly labeled to show the contents, the other to be certified to the county for permanent storage. Records that have been microfilmed may be retained, destroyed or otherwise disposed of as the municipal officers shall determine.

**V.** Valuation books prior to the year 1900 need not be microfilmed or retained.

**VI.** Town meeting records and city council records prior to the year 1900 need

not be microfilmed unless legible, but such records shall be carefully preserved. (1959, c. 228. 1963, c. 203.)

**Effect of amendment.**—The 1963 amendment made changes in subparagraph 2 of paragraph D, subsection III.

**Sec. 58. City officials.**—The following miscellaneous provisions apply to the choice and terms of various city officials:

**I. Assessors and assistant assessors.**

**A.** Assessors and their assistants shall be chosen annually on the 2nd Monday of March to serve for one year and until others are chosen and qualified in their stead, unless the city charter provides otherwise.

**B.** In addition to the assistant assessors chosen under a city charter, the municipal officers may authorize the assessors to appoint such assistants as public necessity requires, to serve during the municipal year in which they are appointed.

**I-A. Board of assessment review.**

**A.** Any city choosing a single assessor may adopt a board of assessment review by vote of the city council at least 30 days before the annual city election.

**B.** The board of assessment review shall consist of 3 members to be appointed by the city council.

**C.** The city council, when adopting such board, may fix the compensation of the members of such board. One member shall be appointed for one year, one member for 2 years and one member for 3 years, and thereafter the term of each new member shall be 3 years.

**D.** Any city adopting a board of assessment review may discontinue such board by vote of the city council at least 30 days before the annual city election, in which case the board shall cease to exist at the end of the municipal year. (1963, c. 299, § 4)

**II. Constable.**

**A.** When a vacancy occurs in the office of constable, the municipal officers may appoint a qualified person to fill the vacancy for the remainder of the term.

**III. Warden and clerk.**

**A.** A warden and clerk for each ward shall be elected by secret ballot at the regular election of municipal officers.

1. They shall assume the duties of office on the Monday following election.

2. They shall hold office for one year and until others are chosen and qualified in their stead.

**IV. Officials elected by aldermen and common council.**

**A.** In the election of any official by the board of aldermen or jointly by the aldermen and common council in which the mayor has a right to give a deciding vote, if the candidates have an equal number of votes, he shall determine which of them is elected.

**V. Officials appointed by the municipal officers.**

**A.** Whenever appointments to office may be made by the municipal officers, they shall be made by the mayor with the consent of the aldermen, and may be removed by the mayor. (1957, c. 405, § 1. 1963, c. 299, § 4.)

**Effect of amendment.**—The 1963 amendment added subsection I-A.

**Existing boards of assessment review.**—Chapter 299, P. L. 1963, provided in § 8 thereof as follows: "Boards of assessment

review presently existing pursuant to special municipal charters may be continued in office provided the legislative body of the town or city council, as the case may be, votes to adopt a board of

assessment review under the Revised Statutes, chapter 90-A, section 36, subsection IV-B, or section 58, subsection I-A. Upon completion of existing terms in such cases, the boards shall be thereafter constituted

and chosen under this act. If no such vote is taken, boards of assessment review existing under special charters shall cease to exist on and after January 1, 1965."

**Sec. 59. Warrant for city election; conduct of election.**—Each city election shall be called by a warrant. The warrant shall meet the requirements listed in section 31. An attested copy shall be posted in a conspicuous, public place in each ward. The election shall be conducted in each ward in the same manner as a general election under chapter 3-A, as nearly as practicable. (1957, c. 405, § 1. 1961, c. 360, § 13.)

**Effect of amendment.**—The 1961 amendment added the last sentence.

**Sec. 60. Change in ward limits.**—When a change has been made by a city government in the limits of a ward, it becomes valid as soon as it is approved at the next city election. (1957, c. 405, § 1.)

**Sec. 60-A. Nomination to city office by petition.**—A person may be nominated to any city office by nomination petition following the procedure prescribed by chapter 3-A, sections 47 to 50, using a political designation only if permitted by the city charter. The petition and consent must be filed with the clerk at least 14 days prior to election day. (1961, c. 360, § 14.)

**Sec. 60-B. Ballots, specimen ballots and instruction posters for use in city elections.**—Except as otherwise provided by its charter, the ballots, specimen ballots and instruction posters for use in a city election are governed by the following provisions:

**I. Prepared by clerk.** They shall be prepared by the clerk at the expense of the city a reasonable time before each election as nearly as practicable in accordance with section 37, subsection V.

**II. Specimen ballots and instruction posters.** At least 4 days prior to election day, the clerk shall post a specimen ballot in one or more conspicuous, public places in each ward. Before the election he shall also publish a composite specimen ballot containing the names of all the nominees, in a newspaper having general circulation in the city. On election day, at the opening of the polls, the clerk shall post an instruction poster in each voting booth, and 3 instruction posters and 5 specimen ballots in the voting room outside the guard-rail. (1961, c. 360, § 14.)

**Sec. 60-C. Campaign reports in municipal election.**—A candidate for municipal office of a city of 10,000 or more population is governed by chapter 3-A, sections 168 to 173, except that notices of appointment of a treasurer and campaign reports must be filed with the clerk instead of the secretary of state.

**I. Penalty.** A candidate who fails to file a notice or report as required by this section shall be punished by a fine of \$5 for every day he is in default or by imprisonment for not more than 30 days, or by both. (1960, c. 360, § 14.)

**Sec. 60-D. Election by plurality.**—In a city election, the person who receives a plurality of the votes cast for election to any office is elected to that office. (1961, c. 360, § 14.)

**Sec. 60-E. Title to municipal office.**—A person who claims to have been elected to any municipal office may proceed against another who claims title to the office within 15 days after election day by following the procedure outlined in chapter 3-A, section 138. (1961, c. 360, § 14.)

**Municipal Development.**

**Sec. 61. Municipal development.**—A municipality may act for the purpose of municipal development according to the following provisions:

**I. Planning board.**

**A.** A municipality may establish a planning board.

1. Appointments to the board shall be made by the municipal officers.

2. The board shall consist of 5 members and 2 associate members.

3. The term of office of a member is 5 years, but initial appointments shall be made for 1, 2, 3, 4 and 5 years, respectively. The term of office of an associate member is 5 years.

4. A municipal officer may not be a member or associate member of the board.

5. When a member is unable to act because of interest, physical incapacity, absence from the state or any other reason satisfactory to the chairman, the chairman of the planning board shall designate an associate member to act in his stead. When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term. (1961, c. 395, § 32)

6. An associate member may attend all meetings of the board and participate in its proceedings, but may vote only when he has been designated by the chairman to act for a member.

7. The board shall elect a chairman and secretary from its own membership.

**B.** The board shall prepare, adopt and may amend a comprehensive plan containing its recommendations for the development of the municipality.

1. Among other things, the plan may include the proposed general character, location, use, construction, layout, extent, size, open spaces and population density of all real estate, and the proposed method for rehabilitating blighted districts and eliminating slum areas.

2. The board shall hold a public hearing on its tentative proposals, before it adopts the plan or an amendment of it.

3. Once adopted by the board, the plan becomes a public record. It shall be filed in the office of the clerk.

4. After the board has adopted the plan, an ordinance or official map authorized by this section may not be enacted, adopted or amended, and public property may not be established or modified in location or extent, until the board has made a careful investigation and reported its pertinent recommendations which are consistent with the plan. The board shall make its official report at the next meeting of the legislative body which is held not less than 30 days after the proposal has been submitted to the board. The failure of the board to issue its report constitutes approval of the proposal. A proposal which has been disapproved by the board may be enacted only by a  $\frac{2}{3}$  vote of the legislative body.

**C.** A municipality which has a planning board may raise or appropriate money and may contract with the state and federal governments for the purpose of the comprehensive planning authorized by this section.

**D.** The board may hire personnel and obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

**II. Zoning regulation.**

**A.** A municipality which has a planning board may enact a zoning ordinance dividing it into zones consistent with the proper development of the municipality. The zoning ordinance may regulate the following:

1. Location and use of real estate for industrial, commercial, residential and other purposes.

2. Construction, height, number of stories, area and bulk of all structures.
  3. Size and open spaces of real estate.
  4. Population density.
  5. Setback of structures along ways of public property.
- B.** A zoning ordinance shall be drafted as an integral part of a comprehensive plan for municipal development, and promotion of the health, safety and general welfare of the residents of the municipality.
1. Among other things, it shall be designed to encourage the most appropriate use of land throughout the municipality; to promote traffic safety; to provide safety from fire and other elements; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an adequate street system; to promote the coordinated development of unbuilt areas; to encourage the formation of community units; to provide an allotment of land area in new developments sufficient for all the requirements of community life; to conserve natural resources; and to provide for adequate public services.
- C.** A zoning ordinance or amendment may be enacted only after a public hearing has been held by the planning board for its consideration at least 10 days before it is submitted to the legislative body. (1963, c. 193)
- D.** The planning board shall prepare a zoning map outlining each zone established or modified by the municipality. The map shall be filed in the office of the clerk.
- E.** A zoning ordinance does not apply to structures and uses existing at the time it is enacted, but applies to new structures and uses, and changes in structures and uses made afterward.
1. The changes in structure and use to which a zoning ordinance applies may be defined in the ordinance.
- F.** Real estate used or to be used by a public service corporation may be wholly or partially exempted from an ordinance authorized by this section, when on petition, notice and public hearing, the public utilities commission judges the exemption to be reasonably necessary for public welfare or convenience.
- G.** County and municipal governments shall abide by a zoning ordinance enacted by a municipality. A zoning ordinance is advisory with respect to the state government.
- H.** Any real estate or personal property existing in violation of an ordinance authorized by this section is a nuisance.
- I.** The building inspector is the authority for the issue of a building or use permit, unless otherwise provided by the municipality.
1. An application for a building or use permit shall be in writing and shall be signed by the applicant and directed to the building inspector. The failure of the building inspector to issue a written notice of his decision, directed to the applicant, within 30 days from the date of filing of the application constitutes a refusal of the permit.
  2. The building inspector shall be given free access at reasonable hours to all parts of structures regulated by a zoning ordinance.

### **III. Board of appeals.**

- A.** The municipal officers of a municipality which enacts a zoning ordinance shall appoint a board of appeals.
1. The board shall consist of 3 members and one associate member.
  2. The term of office of a member is 3 years, but initial appointments shall be made for 1, 2 and 3 years, respectively. The term of office of an associate member is 3 years.

3. A municipal officer may not be a member or associate member of a board of appeals.

4. When a member is unable to act because of interest, physical incapacity or absence from the state, the associate member shall act in his stead. When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term.

5. The board shall elect a chairman and secretary from its own membership.

6. Municipalities of 5,000 or more residents may by ordinance provide for a board of appeals consisting of 5 or 7 members and one associate member. The terms of office of members shall not exceed 5 years and initial appointments shall be such that the terms of office of no more than 2 members shall expire in any single year. (1957, c. 432. 1959, c. 363, § 44; c. 378, § 63)

**B.** An appeal may be taken from any decision of the building inspector to the board of appeals, and from the board of appeals to the superior court.

1. On an appeal in writing to the board of appeals, it shall affirm, modify or set aside the decision appealed from according to the terms of the pertinent ordinance. The board may grant a variance from the terms of an ordinance where necessary to avoid undue hardship, provided there is no substantial departure from the intent of the ordinance. It may permit an exception to an ordinance only when the terms of the exception have been specifically set forth by the municipality. The failure of the board to issue a written notice of its decision, directed to the appellant, within 30 days from the date of filing of the appeal constitutes a denial of the appeal. (1957, c. 429, § 79-A)

2. The appeal to the superior court shall be taken within 30 days after the decision. Notice of the appeal shall be ordered by the court, and the appeal shall be tried and determined by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. Costs may be awarded to the prevailing party by the court as justice requires. (1959, c. 317, § 53. 1961, c. 317, § 245)

#### **IV. Official map.**

**A.** A municipality may adopt and amend an official map showing the location of public ways and other public property, ways used in common by more than 2 owners of abutting property, and approved subdivisions. The map may include all or part of the municipality, and the following provisions apply only to that area outlined on the adopted map.

1. When the official map has been adopted or amended, the clerk shall certify that fact to the proper register of deeds who shall record it. The map shall be filed in the office of the clerk.

2. The lines of ways, public property and subdivisions established or modified after adoption of the official map shall be added to the map and become part of it. The municipal officers shall prepare the map and keep it current.

3. After the planning board has adopted a comprehensive plan, the municipality may require that the lines of planned new or modified ways and public property be placed on the official map.

4. The placing of a line on the official map does not constitute the establishment or modification of any way or public property, nor the taking or acceptance of land for any purpose.

5. A permit for the erection of any structure to be located within the boundaries of an existing or proposed way or public property shown on the official map may not be issued, except as provided by sections 11 and 17 of chapter 50. A permit for the erection of any structure or the use

of land which requires access from a way may not be issued, unless a way which provides the required access appears on the map or has been approved for the purpose by the municipal officers. A public water supply, sewer or other public utility, pavement or other improvement may not be constructed along a way not shown on the map.

## V. Subdivision of land.

**A.** A municipality may regulate the subdivision of land.

1. Subdivision means the division into 3 or more lots in urban areas or 4 or more lots in rural areas, except this provision shall not apply to any divisions for agricultural uses, including associated sales, service, processing and storage.

a. Urban areas shall mean areas so designated in the local zoning ordinance, or if there is no local zoning ordinance, the areas designated as urban compact by the state highway commission. (1961, c. 206.)

2. A register of deeds shall not record any plat of a proposed subdivision until it has been approved by the planning board and the approval noted on the plat. In a municipality which does not have a planning board, the municipal officers shall act in its stead for the purposes of this subsection.

3. Approval of a subdivision is based on its compliance with municipal ordinances and its general reasonableness.

4. In a municipality which has an engineer, he shall make a report to the planning board with respect to the grades, drainage, sewerage and road surfacing of a proposed subdivision, before it may be approved.

5. The failure of the planning board to issue a written notice of its decision, directed to the applicant, within 30 days after a proposed subdivision has been submitted constitutes its disapproval. An appeal may be taken from the decision of the planning board to the superior court as provided in subparagraph 2 of paragraph B of subsection III.

6. The recording of a plat without the approval required by this subsection is void.

7. A person who conveys or agrees to convey any land by reference to a plat which has not been approved as required by this subsection, and recorded by the proper register of deeds, may be enjoined by any municipality from the conveyance or agreement to convey. (1963, c. 31)

8. A copy of each subdivision plot approved under this section shall be filed with the municipal clerk. [1963, c. 123] (1957, c. 405, § 1; c. 429, § 79-A; c. 432. 1959, c. 317, § 53; c. 363, § 44; c. 378, § 63. 1961, c. 206; c. 317, § 245; c. 395, § 32. 1963, cc. 31, 123, 193.)

**Effect of amendments.**—Chapter 429, P. L. 1957, effective October 31, 1957, substituted “grant a variance” for “permit a variation” and “undue hardship” for “confiscation” in the second sentence of subparagraph 1, paragraph B, subsection III.

Chapter 432, P. L. 1957, added the last paragraph of paragraph A, subsection III, and c. 363, P. L. 1959, substituted “residents” for “inhabitants” in the first sentence therein.

Chapter 317, P. L. 1959, substituted “taken within 30 days after the decision” for “entered at the term first occurring in the county not less than 30 days after the decision from which the appeal is taken” in the first sentence of subparagraph 2, paragraph B, subsection III.

Chapter 378, P. L. 1959, effective on its approval, January 29, 1960, re-enacted subparagraph 6, paragraph A, subsection III, without change, except to designate it as “6”.

Prior to c. 206, P. L. 1961, subparagraph 1 of paragraph A of subsection V read: “Subdivision means the division into five or more lots”. Chapter 317, P. L. 1961, deleted “in term time or by a justice in vacation” following “court” and substituted “actions” for “cases” in the second sentence of subparagraph 2 of paragraph B of subsection III of this section. It also deleted the former third sentence of such subparagraph, which read “The appeal shall be tried at the term to which the notice is returnable unless otherwise ordered

by the court." Chapter 395, P. L. 1961, effective on its approval, June 17, 1961, deleted "or" following "incapacity" near the beginning of subparagraph 5, paragraph A, subsection I, and inserted "or any other reason satisfactory to the chairman" in that subparagraph.

Chapter 193, P. L. 1963, substituted "planning board" for "municipal officers" in paragraph C of subsection II. Chapter 31, P. L. 1963, deleted a provision for punishment by a fine of not more than \$200 formerly appearing in subparagraph 7 of paragraph A, subsection V. Chapter 123, P. L. 1963, added subparagraph 8 in paragraph A of subsection V.

**Effective date and applicability of Public Laws 1959, c. 317.**—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

This section is mandatory in nature, requiring a municipality, in enacting a zoning ordinance, to provide for a board of appeals. *Whiting v. Seavey*, 159 Me. 61, 188 A. (2d) 276.

A zoning ordinance constitutes the regulation of land use through the exercise of the police power in accordance with a comprehensive plan for the entire community. *Whiting v. Seavey*, 159 Me. 61, 188 A. (2d) 276.

Contractual restrictions in a deed are not abrogated or enlarged by zoning restrictions. *Whiting v. Seavey*, 159 Me. 61, 188 A. (2d) 276.

Restrictive covenants in a deed as to use of property are distinct and separate from the provisions of a zoning law and have no influence or part in the administration of a zoning law. *Whiting v. Seavey*, 159 Me. 61, 188 A. (2d) 276.

The validity of a zoning ordinance, the right to use of property in accordance

with its restrictions, the right to relief therefrom through grant of a variance, and the right to a special exception use provided for therein, should be considered independently of the existence of restrictions upon the land involved arising out of covenants in deeds or restrictions imposed therein or through agreements between private parties. *Whiting v. Seavey*, 159 Me. 61, 188 A. (2d) 276.

**Remedy where zoning law conflicts with restrictive covenants.**—When the conditions or terms of a zoning law are repugnant to those contained in the restrictive covenants in a deed of title, the remedy for a breach is not through the prescribed procedure of the zoning law, but rather by an action based on a breach of covenant. *Whiting v. Seavey*, 159 Me. 61, 188 A. (2d) 276.

**Right of review.**—The legislature in its wisdom intended that, irrespective of whether a zoning ordinance contained an appeal provision or not, a citizen believing himself aggrieved by a decision of a board of appeals should have a statutory right of a review. *Whiting v. Seavey*, 159 Me. 61, 188 A. (2d) 276.

**Failure of ordinance enacted under former law to provide for an appeal.**—An appeal did not lie from board of zoning adjustment to the superior court where 1933 ordinance, enacted under provisions of R. S. 1930, ch. 5, §§ 137-144, did not provide for an appeal, since § 140 of the 1930 act providing for an appeal was repealed by ch. 199, § 6 of P. L. 1943. *Casino Motor Co. v. Needham*, 151 Me. 333, 118 A. (2d) 781, decided under former section 98 of chapter 91.

**Does not authorize issuance of mandamus.**—The fact that no appeal was provided from an adjusting board due to the repeal of R. S. 1930, ch. 5, §§ 137-144 did not authorize the issuance of a writ of mandamus for failure of the adjusting board to issue a permit for a variance where the adjusting board under the ordinance only passed on the "fitness and unfitness of various uses." *Casino Motor Co. v. Needham*, 151 Me. 333, 118 A. (2d) 781, decided under former section 98 of chapter 91.

**Sec. 62. Saving provisions.**—In a municipality which does not have a planning board, an ordinance enacted under repealed sections 137 to 144 of chapter 5 of the Revised Statutes of 1930 as amended, and repealed sections 93 to 97 of chapter 91 of the Revised Statutes of 1954, remains effective, and may be amended in accordance with those sections until it is repealed or superseded by an ordinance authorized by section 61. In a municipality which has a planning board, an ordinance enacted under the repealed sections which is consistent with

section 61 remains effective; an ordinance which is inconsistent with section 61 is void. (1957, c. 405, § 1.)

**Former section 99 of chapter 91 held not to affect repeal of former statute.**—The provisions of former section 99 of chapter 91 (which were similar to the provisions of this section) were held not to affect the repeal of sections 137 to 144, inclusive, of chapter 5 of R. S. 1930, excepting that such section permitted a municipality to continue with its zoning ordinance which was unaffected by repeal of the mother statute. Such section was held to be a saving clause and did not disturb the repealing act in so far as the appeal section of the former law was concerned. *Casino Motor Co. v. Needham*, 151 Me. 333, 118 A. (2d) 781.

**Sec. 63. Village development.**—A village corporation has the same powers and duties as a municipality under section 61. When there is a conflict between the zoning provisions of a village corporation and those of the municipality of which it is a part, the zoning provisions of the municipality prevail. (1957, c. 405, § 1.)

**Sec. 63-A. Powers and duties of village corporations.** — A village corporation or its municipal officers, as the case may be, shall have the same powers and duties which a town or its municipal officers, as the case may be, have under section 3, subsection III, and section 4-A. (1961, c. 322, § 2.)

### Regional Development.

**Sec. 64. Regional development.**—A municipality which has a planning board may join a regional planning commission for the purpose of regional development.

#### I. Membership.

**A.** The commission may be composed of 2 or more member municipalities.

**B.** The commission shall prepare an annual budget and shall determine on an equitable basis the amount to be paid by each member. The amount to be paid by each member shall be certified to its municipal officers by the commission in sufficient time to allow an appropriation to be made.

1. The failure of a member to appropriate and pay the amount determined by the commission terminates its membership.

**C.** A member may raise or appropriate money and furnish necessary services for the use of the commission. A member may contract with the commission for the furnishing of funds or services in the preparation of a comprehensive regional plan, and for special planning work to be done by the commission for the member.

#### II. Representation.

**A.** Appointments to the commission shall be made by the municipal officers from nominations of residents submitted by the planning board as follows:

1. Where the population of the municipality according to the last decennial census of the United States is less than 20,000, it is entitled to 2 representatives; 20,000 to 100,000, 3; and more than 100,000, 4.

2. Each member is entitled to one associate representative.

**B.** The term of office of a representative is 4 years, but initial appointments shall be made for 2 and 4 years where a member is entitled to 2 representatives; 2, 3 and 4 years where a member is entitled to more than 2 representatives. The term of office of an associate representative is 4 years.

**C.** When a regular representative is unable to act because of interest, physical incapacity or absence, the associate representative shall act in his stead. A permanent vacancy shall be filled for the unexpired term in the same manner in which a regular appointment is made.

**III. Powers and duties.****A. Jurisdiction.**

1. The jurisdiction of a regional planning commission includes the area of its members.
2. The power of the commission is advisory, and pertains generally to the development of the whole region, or to the solution of a problem which involves more than one member.

**B. Organization.**

1. The commission shall elect annually a chairman, vice-chairman, secretary, treasurer and other necessary officers from its own representatives.
2. Meetings shall be held at the call of the chairman, and at other times determined by the commission.
3. The commission may adopt by-laws necessary to the conduct of its business. It may accept contributions of any type from any source for its work. It may hire personnel, rent offices and obtain goods and services necessary to its proper function. It may contract with the state and federal governments for carrying out the purposes authorized by this section.
4. The secretary shall keep minutes of the proceedings of the commission which shall be filed in the office of the commission. The minutes are a public record.

**C. Comprehensive regional plan.**

1. The commission shall prepare a comprehensive regional plan containing its recommendations for the development of the area within its jurisdiction.
2. The purpose of the plan is to promote the health, safety and general welfare of the residents of the region.
3. Among other things, it shall be designed to encourage the most appropriate use of land for agriculture, forestry, industry, commerce and residence; to provide adequate transportation and communication; to provide for the proper location of public utilities and services; to encourage the development of adequate recreational areas; to promote good civic design; and to encourage the judicious expenditure of public funds.
4. Among other things, the commission may make recommendations for the use of land; the general location, extent, type of use, character, and development of public ways, public property, public utilities and services; and for the improvement, redevelopment, rehabilitation and conservation of industrial, commercial, residential and other areas.
5. When all or part of the plan is completed, the commission may file certified copies of it with the planning board of any member.
6. The commission may assist a member in carrying out any regional plan developed by the commission.

**D. Local assistance.**

1. The commission may make recommendations on the basis of its plans and studies to any planning board, to the municipal officers of any member, and to any county, state or federal authorities.
2. A municipal planning board may adopt all or part of the regional plan which pertains to the area within its jurisdiction as its own comprehensive plan, subject to section 61.
3. The commission may assist any of its members in solving a local planning problem. It shall keep an accurate account of the cost of the assistance, and shall provide the member with an itemized statement. The assistance shall be paid for entirely by the member to which the service is rendered.

(a) Where there has been a contribution to the commission for the

purpose, part of the cost of local assistance may be paid from it. (1957, c. 405, § 1.)

**Sec. 65. Member county.**—A county in which a regional planning commission has been formed may become a member of the commission by resolution of the county commissioners. A county has the same powers and duties as a municipality with respect to the provisions of section 64, and the county commissioners have the powers and duties of municipal officers. A county is entitled to 2 representatives and one associate representative. They shall be appointed by the county commissioners. The term of office of a representative is 4 years, but initial appointments shall be made for 2 and 4 years, respectively. The term of office of an associate representative is 4 years. The jurisdiction of a regional planning commission may include all or part of a member county as determined by the commission. (1957, c. 405, § 1.)

## Chapter 90-B.

### Urban Renewal Authorities.

**Editor's note.**—P. L. 1959, c. 359, adding this chapter, provided in sections 3, 4 and 5 thereof as follows:

"Sec. 3. Purpose. The purpose of this act is to provide for the rehabilitation, clearance and redevelopment of slums and blighted areas in cities and towns in this state in accordance with urban renewal plans approved by the governing bodies thereof; to define the duties, liabilities, exemptions and powers of such cities and towns in undertaking such activities, including the power to acquire property through the exercise of the power of eminent domain or otherwise, to dispose of property subject to any restrictions deemed necessary to prevent the development or spread of future slums or blighted areas, to issue bonds and other obligations and give security therefor, to levy taxes and assessments and to enter into agreements to secure federal aid and comply with conditions imposed in connection therewith; to provide for an urban renewal agency or a housing authority to exercise powers hereunder if a city or town determines it to be in the public interest; to authorize public bodies to furnish funds, services, facilities and property in aid of urban renewal projects hereunder; to authorize cities and towns to obtain funds therefor by the issuance of obligations, by taxation or otherwise; to provide that securities issued, and properties while held, by a public agency hereunder shall be exempt from taxation; and to declare an emergency.

Sec. 4. Findings and declarations of necessity. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

Sec. 5. Appropriation. There is appropriated from any moneys in the General Fund not otherwise appropriated the sum of \$25,000 for the fiscal year ending June 30, 1960 and the sum of \$25,000 for the fiscal year ending June 30, 1961 to carry out the provisions of section 2 of this act."

**Sec. 1. Creation of urban renewal authority.**—A municipality may create an urban renewal authority under this chapter as follows:

I. No municipality shall exercise the authority conferred upon municipalities