INDEX DIGEST
TO
OPINIONS
of the
ATTORNEY GENERAL OF THE
STATE OF WISCONSIN
1973 continuing

COMPILED AND EDITED
BY
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LIBRARIAN

WISCONSIN DEPARTMENT OF JUSTICE

MADISON, WISCONSIN
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EXPLANATORY NOTE

This volume provides quick, easy reference to all published and unpublished opinions of the Wisconsin Attorney General's Office from 1973 on. Informal opinions and correspondence are not indexed. Following is a brief discussion of the material in this volume and suggestions on how to use it.

Although many opinions indexed in this volume are thoroughly summarized, the opinion itself must be read to avoid misleading, incomplete, or incorrect conclusions. Identification of subject matter rather than complete analysis is the purpose of the Index Digest. The complete list of main subject headings together with cross references appears in the front part of the volume and provides quick reference to the headings under which opinions are listed. Wherever a cross reference indicates that a subject may be found under another main subject heading, the user should check under it to be sure of finding all opinions relating to his search.

Opinions having volume and page numbers are published and are found in volumes of the Opinions of the Attorney General; opinions having an opinion number and a year are not published, but are available from the Attorney General's office.

Researchers familiar with the original Index Digest need to know that some subject headings have been eliminated, some have different cross references, there are new subject headings, and some subject headings have been consolidated under one heading in this index-digest.

Suggestions as to the use of this index-digest follow in checklist form:

I. Check every cross reference to find all opinions on a given topic.

II. Any subheading may be a main subject heading, e.g., "Automobiles and motor vehicles" under LICENSES AND PERMITS is also the main subject heading AUTOMOBILES AND MOTOR VEHICLES.

III. Most offices and departments of State are listed under their subjects, e.g. AGRICULTURE, STATE DEPARTMENT OF.

IV. Try to look up every subject heading related to a topic, e.g. "Police cars" is found under AUTOMOBILES AND MOTOR VEHICLES and LAW ENFORCEMENT.

V. Such words as "County," "State," "City," and "Public" may modify a great many headings, e.g. ORDINANCES has listings under "County zoning" and "Zoning."

VI. Sometimes it is important to check different forms of a word to be sure of finding all the opinions under a main heading, e.g. under MUNICIPALITIES both "Tax" and "Taxation" are used, under OPEN MEETING both "School" and "Schools" are used.

VII. Synonyms should be checked, e.g. "juveniles," "children," "minors."

VIII. If a topic is specific, it is useful to remember that broad subject headings such as COUNTIES, LICENSES AND PERMITS, TAXATION, and WORDS AND PHRASES list a great many unrelated specific topics.
The suggestions above are not meant to be exhaustive. As the user becomes familiar with the subject headings and subheadings on a topic and with the format of the index, he will be able to find all opinions on a topic with speed and accuracy.

Indexing of subsequent published and unpublished opinions will conform to subject headings in this volume, and supplements to this index-digest will be issued annually. Volumes indexed in this volume include those from *Opinions of the Attorney General*, volume 62 (for 1973) on. For more information concerning opinions of the Office of the Attorney General of Wisconsin contact the Wisconsin Department of Justice Law Library at (608) 266-0325 or write to: Wisconsin Department of Justice Law Library, P. O. Box 7857, Madison, WI 53707-7857.
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See also MUNICIPALITIES

TRADE PRACTICES
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WORDS AND PHRASES

WORKER'S COMPENSATION

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ACCIDENTS

Coroner
Where accident occurs in one county and victim is transported to another county, and death occurs there, coroner where death occurs has duty to immediately report death to coroner of county where crime, injury or event occurred, and coroner of latter county has authority to investigate and duty to hold inquest if he deems it necessary or if directed by district attorney of his county ................................................................. 62-127

Liability
County would be liable to injured veteran in an automobile accident while being transported by the veterans' service officer if the officer were authorized and performing within the scope of his employment, sec. 895.43(3) limits recovery to $25,000 ......................................................... 67-207

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County Board
County board can only grant powers of indirect supervision to finance director with respect to accounting or bookkeeping duties of county clerk required by statute or board resolution to be performed by such officer ...... 65-132

ACQUIRED IMMUNE DEFICIENCY SYNDROME

Licensing boards
Licensing boards do not have the authority to enact general regulations which would allow them to suspend, deny or revoke the license of a person who has a communicable disease. However, licensing boards do have the authority on a case-by-case basis to suspend, deny or revoke the license of a person who poses a direct threat to the health and safety of other persons or who, by reason of the communicable disease, is unable to perform the duties of the licensed activity ................................................................. 77-223

Marriage license fees
A county board has no statutory authority to charge a higher marriage license fee to certain nonresidents who would be required to submit to AIDS testing in their home state or, in the alternative, require AIDS testing as a condition of obtaining a Wisconsin marriage license ....................... 77-154

Testing
A county board has no statutory authority to charge a higher marriage license fee to certain nonresidents who would be required to submit to AIDS testing in their home state or, in the alternative, require AIDS testing as a condition of obtaining a Wisconsin marriage license ....................... 77-154

A police and fire commission is an employer under section 103.15, Stats., and may not test paramedic candidates for the HIV virus. Civil liability of the commission and the city it serves for claims brought by individuals who can prove that they contracted the HIV virus through employment-related contacts with paramedics discussed ......................................................... 77-181

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Collective bargaining
Matters within the scope of sec. 111.91, Stats., agreed to by Department of Administration not effective until approved by the Joint Committee on Employment Relations ................................................................. 67-38

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Validity of appointment of DOA employe as Deputy Secretary discussed. (Unpub) .................................................................................. 8-1978

Protective services

May be provided by DOA in leased buildings. (Unpub) ....................... 84-1976

Public records

Department of Administration probably has authority to provide private corporation with camera-ready copy of computer stored public records if costs are minimal ................................................................. 63-302

Purchase of all goods and services used by State

Enactment of secs. 58 and 59 of ch. 418, Laws of 1977, placed the responsibility for the purchase of all goods and services used by state government with the Department of Administration. The purchase of all goods and services by the Department of Administration is made pursuant to subch. IV of ch. 16, Stats. 64 OAG 4 (1975) is no longer applicable. (Unpub) ............... 83-1979

State contracts

State contracts for the purchase of professional architectural and engineering consulting services must comply with the bidding requirements of sec. 16.75(1), Stats., unless waived by the Governor ....................... 65-251

ADMINISTRATIVE CODE

Indian reservation

State does not have jurisdiction to enforce Wisconsin Administrative Code with respect to construction of buildings on Oneida Indian Reservation trust land. 58 OAG 91 (1969) withdrawn ................................. 65-276

Industry, Labor and Human Relations, Department of

Cannot enact a rule which would alter the common law rights and duties of adjoining landowners with respect to lateral support ........................................................................... 62-287

Wis. Admin. Code § ILHR 83.08(1)(b), authorizing delegation by DILHR of one of its powers requiring the exercise of judgment to a county, was unlawful, there being no statutory authorization for such delegation .......................... 76-282

On-premise signs

Discussed .......................................................................................... 66-295

Public defender access to prisoners

The state public defender may be denied access to jail inmates who have not requested counsel, and jail authorities need only provide over the telephone that information necessary for the public defender to assess the need to make an indigency determination in person under section 977.07(1), Stats., for an inmate who has requested counsel and claims indigency .................. 78-133

Revisor of Statutes

It is within the discretionary power of the Revisor of Statutes whether to purchase and utilize the Federal Standards found in the Federal Register and attach state printed covers thereto in lieu of completely reprinting them in the standard format of the Wisconsin Administrative Code as authorized by secs. 227.024(7) and 35.93(1), Stats. .............................................................. 63-78

Rules

Wis. Admin. Code § ILHR 83.08(1)(b), authorizing delegation by DILHR of one of its powers requiring the exercise of judgment to a county, was unlawful, there being no statutory authorization for such delegation .......................... 76-282
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University

Campuses have no present authority to regulate political canvassing in university-owned dormitories which does not involve the solicitation of monetary contributions .......................................................... 65–261

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Architects and Engineers

The Designer Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors does not have rulemaking authority .......................................................... 74–200

County Board

Can only grant powers of indirect supervision to finance director with respect to accounting or bookkeeping duties of county clerk required by statute or board resolution to be performed by such officer .......................................................... 65–132

Without power to hire and fire employees of county welfare department, such power belongs to county board of public welfare .......................................................... 65–163

Establishment of religion clauses

The administrative rule of the Department of Transportation granting an exemption on religious grounds from the photograph-taking requirement of sections 343.17(2) and 343.14(3), Stats., is violative of the first amendment, United States Constitution, and of Wis. Const. art. I, § 18 .......................... 75–115

Joint Committee for Review of Administrative Rules

The one-man vote principle is inapplicable to legislative committees since that principle applies only to the exercise of legislative powers and such powers cannot constitutionally be delegated to these committees. There has been no such unconstitutional delegation as to the Joint Committee on Finance, the Board on Government Operations, the Joint Legislative Council or the Committee to Visit State Properties. As to the Joint Committee for Review of Administrative Rules, however, the Legislature has unconstitutionally delegated to it the power to suspend a law .......................................................... 63–173

The vote of an absent member of the Joint Committee for Review of Administrative Rules cannot be counted. No time need be allowed for a roll call vote before the Committee votes. Notwithstanding sec. 13.56(2), Stats., to the contrary, the Committee cannot constitutionally suspend an otherwise valid administrative rule .......................................................... 63–168

Rules

Since there is no difference between an otherwise valid administrative rule and a law, such a rule cannot be suspended or revoked by joint resolution of the Legislature and no statute can grant the Legislature the power to do so. The Legislature could, however, by law empower itself or a committee of its members to function as an administrative review agency, provided that the delegation of power restricted such review to a determination whether the administrative rule was a correct application or interpretation of the relevant enabling legislation and provided that such determination is subject to judicial review. There is no material distinction between an otherwise valid administrative rule and an otherwise valid policy pronouncement by an agency inasmuch as they both have the force of law, but the policy pronouncements of administrators do not have the force of law. Judicial review of a policy pronouncement cannot be defeated merely by the failure of the administrative agency to properly adopt the same as a rule . .. 63–159

Search and seizure

Authorized agents of the Department of Agriculture, Trade and Consumer Protection have the authority to stop and search vehicles transporting livestock in Wisconsin so long as they comply with certain constitutional safeguards .......................................................... 77–172
Service of process

Service of process discussed within the meaning of sec. 262.06(3), Stats. (1973) ................................................................. 63-467

Voting

The one-man vote principle is inapplicable to legislative committees since that principle applies only to the exercise of legislative powers and such powers cannot constitutionally be delegated to these committees. There has been no such unconstitutional delegation as to the Joint Committee on Finance, the Board on Government Operations, the Joint Legislative Council or the Committee to Visit State Properties. As to the Joint Committee for Review of Administrative Rules, however, the Legislature has unconstitutionally delegated to it the power to suspend a law ......................................................... 63-173

The vote of an absent member of the Joint Committee for Review of Administrative Rules cannot be counted. No time need be allowed for a roll call vote before the committee votes. Notwithstanding sec. 13.56(2), Stats., to the contrary, the Committee cannot constitutionally suspend an otherwise valid administrative rule ......................................................... 63-168

Witnesses

In administrative hearings, a subpoenaed witness has a duty to attend pursuant to the subpoena and to remain in attendance until excused .......... 68-251

ADOLESCENT PREGNANCY PREVENTION SERVICES BOARD

Grant monies

Constitutionality of the administration of grant monies by the Adolescent Pregnancy Prevention Services Board pursuant to section 46.93, Stats., discussed ................................................................. 76-233

ADOPTION

See also CHILDREN

Discrimination

A contract between the Department of Health and Social Services and an association of private adoption agencies does not result in legally prohibited religious discrimination where any religious preferences are limited to the statutory religious matching requirement. (Unpub) 32-1983

ADVERTISING

Constitutionality

Section 84.30, Stats., is presumed constitutional, and the Attorney General is governed by such legal doctrine in considering this act of the Legislature .. 63-285

Engineers

Where use of terms "engineer" or "engineering" in a business title violates ch. 443, Stats., depends on a case-by-case analysis of the circumstances to determine whether these terms tend to convey the impression that a person or business is offering professional engineering services when it is not certified to do so ........................................................................................................ 70-131

Lobbying

Certain provisions of Substitute Amendment 1 to 1977 Senate Bill 286, revising subch. III of ch. 13, Stats., the state's lobbying law, are incompatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures and are therefore probably unconstitutional. The major portion of the bill is constitutional. (Unpub) ................................................................. 15-1978

Section 13.72, Stats., which prohibits anonymous paid advertising favoring or opposing pending legislation, is unconstitutional 77-90
ADVERTISING (continued)

Lottery ticket coupons
A plan whereby a soft drink company would include a coupon for a Wisconsin lottery ticket with specified purchases and the customer could redeem the coupon for a lottery ticket at a retail lottery outlet would violate section 100.16 ................................................................. 77-303

On-premise signs
Are subject to the licensing requirement ........................................... 66-295

Optometry
The prohibition against advertising the price of lenses, frames and complete glasses contained in sec. 449.10, Stats., violates the first amendment to the U.S. Constitution and therefore is invalid. Further, price advertising of lenses, frames and complete glasses by optometrists is not unprofessional conduct under sec. 449.08, Stats. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 96 S. Ct. 1817 (1976). 60 OAG 335 (1971) and 48 OAG 223 (1959) are withdrawn ........ 66-190

Political
The prohibition against corporate political contributions and disbursements in sec. 11.38, Stats., is broad and probably would bar, in most cases, purchases of advertising by a corporation in a political party publication. But the bar is not absolute and violations must be determined on a case-by-case basis ................................................................. 65-10

Public contracts
Towns must let "public contracts" pursuant to the competitive bidding procedures of secs. 60.29(1m) and 66.29, Stats. Contracts which are not "public contracts" are not subject to either advertising or competitive bidding procedures. The definition of public contract includes "supplies" and "materials," but does not include "equipment." Police cars need not be purchased by competitive bid under secs. 60.29 and 66.29, since they are "equipment" and not "supplies [or] material" ................................. 66-284

Soft drink company promotional plan
A plan whereby a soft drink company would include a coupon for a Wisconsin lottery ticket with specified purchases and the customer could redeem the coupon for a lottery ticket at a retail lottery outlet would violate section 100.16 ................................................................. 77-303

AGRICULTURE

Conservation
An ordinance formulated and proposed by the supervisors of a county soil and water conservation district, created pursuant to sec. 92.05, Stats., is not necessarily invalid simply because its effect is limited to the regulation of agricultural practices and uses on land currently utilized for agricultural purposes. All resident electors of the "area to be affected" by such an ordinance may vote in a referendum election on the ordinance whether or not they reside on the specific kind of property which may be the subject of such regulations ................................................................. 68-126

Farmers
A proposal for a state guarantee of loans to young farmers would violate Wis. Const. art. VIII, sec. 3, and a proposal to utilize the state's bonding power to provide low interest loans to young farmers is not authorized by Wis. Const. art. VIII, sec. 7(1) and (2)(a) ............................................. 66-9

Homestead property
Proposals for tax exemptions of "homestead property" from local property taxation probably are unconstitutional under the equal protection clause of
AGRICULTURE (continued)
Homestead property (continued)

the state and federal constitutions and the tax uniformity clause of the state constitution

Lime pit

Pursuant to secs. 59.07(1)(a) and 59.873, Stats., a county can own and operate a lime pit in another county, within reasonable distance, if such operation is necessary to obtain sufficient supply to furnish lime at cost to farmers within the county operating such pit. However, absent a cooperation agreement pursuant to sec. 66.30, Stats., lime cannot be sold or distributed to farmers in such other county.

Zoning ordinance

The extent to which sec. 91.73(4), Stats., as created by ch. 29, Laws of 1977, and amended by ch. 169, Laws of 1977, alters the procedures applicable for the amendment of county comprehensive zoning ordinances under sec. 59.97(5)(e), Stats., is discussed.

AGRICULTURE, TRADE AND CONSUMER PROTECTION, DEPARTMENT OF

Animal diseases

Authorized agents of the Department of Agriculture, Trade and Consumer Protection have the authority to stop and search vehicles transporting livestock in Wisconsin so long as they comply with certain constitutional safeguards.

Milk

When the Department of Agriculture is presented with a petition for the adoption of a proposed milk marketing order under sec. 96.21, Stats., it is required to submit the proposed order to a public hearing under secs. 96.04 and 96.05, Stats. Marketing orders adopted under sec. 96.21, Stats., are subject to referendum or assent approval by milk producers. The Secretary of the Department, rather than the board, has the authority and responsibility to administer marketing orders pursuant to ch. 96 and sec. 96.21(3), Stats. Administration of ch. 96, Stats., discussed.

Vehicle searches

Authorized agents of the Department of Agriculture, Trade and Consumer Protection have the authority to stop and search vehicles transporting livestock in Wisconsin so long as they comply with certain constitutional safeguards.

AID

See FEDERAL AID; MEDICAL AID; STATE AID

AIDS

See ACQUIRED IMMUNE DEFICIENCY SYNDROME

AIRPORTS

Private

A private and not open to the public airport that has not acquired protection privileges from adjacent affected property owners has no legal right to remove obstructions from adjacent affected properties. (Unpub)

ALCOHOL AND DRUG ABUSE

See 51.42/51.437 BOARD; INEBRIATES AND DRUG ADDICTS
ALCOHOLICS
See 51.42/51.437 BOARD; INEBRIATES AND DRUG ADDICTS

ALDERMAN
See CITIES

ALIENS
See CITIZENSHIP AND NATURALIZATION

ALL-TERRAIN VEHICLES
See AUTOMOBILES AND MOTOR VEHICLES

AMBULANCES
Confidential reports
Under present law, ambulance records relating to medical history, condition or treatment are confidential while other ambulance call records are subject to disclosure under the public records law ........................................ 78–71

County services
A county does not possess the statutory authority to designate the level of ambulance services provided by the towns within that county. Absent a cooperative agreement between a county electing to provide ambulance services pursuant to section 59.07(41), Stats., and a town electing to provide ambulance services pursuant to section 60.565, a county dispatcher possesses considerable discretion to request assistance from the most appropriate and readily available statutorily authorized ambulance provider ........ 77–210

Privately owned
A private ambulance that is an authorized emergency vehicle usually kept in a given county pursuant to section 340.01(3)(i), Stats., may not avail itself of the special provisions of section 346.03(2) so as to proceed unsolicited to the scene of an accident or medical emergency in an adjacent county ...... 77–214

Public records
Under present law, ambulance records relating to medical history, condition or treatment are confidential while other ambulance call records are subject to disclosure under the public records law ........................................ 78–71

Town services
A county does not possess the statutory authority to designate the level of ambulance services provided by the towns within that county. Absent a cooperative agreement between a county electing to provide ambulance services pursuant to section 59.07(41), Stats., and a town electing to provide ambulance services pursuant to section 60.565, a county dispatcher possesses considerable discretion to request assistance from the most appropriate and readily available statutorily authorized ambulance provider ........ 77–210

AMENDMENTS
See LEGISLATION

AMUSEMENT TAX
Historical tax
Admission fees collected by Circus World Museum in Baraboo are subject to sales tax under sec. 77.52(2)(a)2., Stats......................................................... 57–200
ANIMALS
Diseases
Authorized agents of the Department of Agriculture, Trade and Consumer Protection have the authority to stop and search vehicles transporting livestock in Wisconsin so long as they comply with certain constitutional safeguards. 77-172

Veterinarian
The termination of the life of animal by injection is not the practice of veterinary medicine. 65-231

ANNUITY
Constitutionality
If sec. 356 of 1977 Senate Bill 720 or the amendment to sec. 356 contained in Senate Amendment 3 to Senate Bill 720 were enacted into law, either would be constitutionally invalid. 67-134

Employee Trust Funds Board
Discussion of authority of Board to change form of payment to members of retirement benefits resulting from additional deposits in the Wisconsin Retirement Fund, State Teachers Retirement System and Milwaukee Retirement Fund. (Unpub) 80-1977

ANTITRUST
See MARKETING AND TRADE PRACTICES

ANTI-SECRECY
See CONFIDENTIAL REPORTS; OPEN MEETING; PUBLIC RECORDS and articles found in Introduction to 49 OAG (1960), 54 OAG (1965), and 65 OAG (1976)

Coroner's inquest
The Open Meeting Law does not apply to a coroner's inquest. 67-250

Public Record Law
Records kept by the Assembly Chief Clerk of telephone credit card numbers and of long-distance telephone calls of representatives are subject to the Public Record Law. Custodian may make determination whether to disclose or divulge records in specific instances. 66-202

APPEALS
See COURTS

APPORTIONMENT
See REAPPORTIONMENT

APPRENTICES
Tuition
Apprentices indentured under ch. 106, Stats., may lawfully be charged tuition at schools in the state vocational, technical and adult education system for related instruction that apprentices must receive as a condition of their apprenticeship. 65-37

A vocational, technical and adult education district which provides apprenticeship training may contract with other districts for payment of the costs of training persons who are residents of the other districts. Such district may not refuse, however, to admit nonresident Wisconsin students to an approved apprenticeship program, because the district of the student's residence fails to reimburse the district providing the instruction, unless the
APPRENTICES (continued)
Tuition (continued)
state board of vocational, technical and adult education adopts rules sanctioning such refusal............................................................. 69-257

APPROPRIATIONS AND EXPENDITURES
Administration, Department of
Enactment of secs. 58 and 59 of ch. 418, Laws of 1977, placed the responsibility of the purchase of goods and services used by state government with the Department of Administration. The purchase of all goods and services by the Department of Administration is made pursuant to subch. IV of ch. 16, Stats. 64 OAG 4 (1975) is no longer applicable. (Unpub) ...................... 83-1979

County
A county may, through its boards and commissions, purchase services from various nonprofit organizations within the scope of such board or commission’s authority ................................................................. 67-297

County board
Heavy movable diesel engine utilized in county lime quarry is equipment rather than materials or supplies and may be purchased by county board or committee to which board has delegated power if funds have been appropriated without resort to competitive bidding if county has not otherwise required by resolution or ordinance. Secs. 59.08(1), 66.29(1)(c), Stats....... 66-198

Court settlement
Section 70.62(4)(em)1., Stats., only permits county board to increase tax levy over maximum to pay increased costs which relate to payment of a court judgment or court confirmed award, or out-of-court settlement after a civil action or special proceeding has been commenced in a court........................................ 70-209

Disaster relief
The Wisconsin Constitution does not preclude grants (including those made retroactively) of state money to individuals and families, or to private corporations, for the purpose of affording disaster relief under the Disaster Relief Act of 1974 (P.L. 93-288) .................................................. 64-39

Dual enrollment
Funds made available through the Elementary Secondary Education Act may be used in dual enrollment programs to transport children from parochial schools to public schools and return ................................................................. 65-126

Federal aid
Previous opinions on the distribution of payments in lieu of taxes discussed. (Unpub) ........................................................................ 16-1982
Section 59.20(13), Stats., does not control the distribution of monies received from the federal government under 31 U.S.C. sec. 1601, et seq., 45 OAG 78 withdrawn ................................................................. 67-277

Governor
Legal limitations on the use of the Governor’s contingency fund appropriated by sec. 20.525(1)(c), Stats., discussed ................................................................. 66-43

Governor’s veto
Appropriation bills are subject to partial veto but in order for legislation to constitute an appropriation there must be found within the bill authority to
APPROPRIATIONS AND EXPENDITURES (continued)

Governor's veto (continued)

expend funds and a stipulation as to amount, manner and purpose of such expenditure. (Unpub) .......................................................... 24-1976

Certain of the Governor's partial vetoes to ch. 107, Laws of 1977, were invalid. The entire bill should be returned to the originating house for reconsideration .......................................................... 66-310

Governor's veto of one digit of a separable part of an appropriation bill constitutes an objection within the meaning of Wis. Const. art. V, sec. 10, and the entire part is returned to the Legislature for reconsideration ...... 62-238

Internal improvement

Dredging a navigable waterway to alleviate periodic flooding is not a prohibited "work of internal improvement" within the meaning of Wis. Const. art. VIII, sec. 10. .......................................................... 69-176

Joint Sewerage Commission

Is empowered within the territorial limits of its district to enact and enforce regulations which would be required of it under the mandates of the Clean Water Act of 1977, but it cannot make appropriations of issue bonds without the approval of the governing bodies which established it.............. 68-83

Mining Investment and Local Impact Fund Board

The Mining Investment and Local Impact Fund Board is authorized to make grants to municipalities under sec. 70.395(2), Stats., to drill wells and fence cave-ins on private lands to remedy public health and safety problems occasioned by mine closings. Such grants would not violate the Public Purpose Doctrine and the Internal Improvements Clause of the Wisconsin Constitution .......................................................... 70-48

National forest income

Section 59.20(13), Stats., controls the distribution of national forest income by county treasurers derived from 16 U.S.C. sec. 471, et seq., and 31 U.S.C. sec. 1601, et seq. This opinion withdrawn, see 67 OAG 277. (Unpub) ...... 45-1978

Nonprofit corporations

Where county board has created community relations-social development commission pursuant to sec. 66.433, Stats., it cannot, through such commission, fund community-wide nonprofit corporations it deems worthy, by setting forth in the commission's budget, the amount of money to go to a specific nonprofit agency. Where a county board creates a sec. 66.433 commission, it cannot by reason of sec. 59.025(c), Stats., transfer all the duties and functions of such commission to another board or commission or committee of the county board............................................. 67-297

ORAP

ORAP may be used to restore deteriorated milldams provided a public use is evident .......................................................... 63-245

Reimbursement

Under ch. 333, Laws of 1973, counties may not expect reimbursement for care and services when sum certain appropriations are exhausted. Counties do have authority to provide the funding of such services on their own but are not required to do so when reimbursement is unavailable............. 63-584

Religion

Wisconsin Constitution art. I, sec. 18, prohibiting the drawing of money from the treasury for the benefit of religious societies, or religious or theological seminaries is a proscription against using public monies for such purpose. Section 3 of 1977 Assembly Bill 500 which purports to establish a separate fund outside of the state treasury if enacted would not avoid this prohibition since the public nature of the money is not changed.......................... 67-71
APPROPRIATIONS AND EXPENDITURES  (continued)

Senior citizen center

Revenue sharing monies may be expended by a town board to operate a senior citizen center under state law. (Unpub) 23–1980

Unemployment Compensation “interest and penalties” Fund

The Department of Industry, Labor and Human Relations lost discretionary authority to make expenditures from the Unemployment Compensation “interest and penalties” Fund when the Legislature reenacted sec. 20.445(1)(v), Stats., in 1977, but the Department remains responsible for collection of credit extended under the old law. (Unpub) 49–1978

Waste management system

Towns, villages and cities in counties establishing a county solid waste management system under sec. 59.07(135), Stats., may be taxed for the capital costs of the county-wide system, but not for the operating costs 67–77

Wisconsin Higher Education Corporation

The Wisconsin Higher Education Corporation may provide administrative services to lenders, charge a reasonable fee, and may transfer any excess funds it receives from such fees to the appropriations of the Higher Education Aids Board, or the state. (Unpub) 3–1977

ARCHITECTS AND ENGINEERS

Business title

Whether use of terms “engineer” or “engineering” in business title violates ch. 443, Stats., depends on a case-by-case analysis of the circumstances to determine whether these terms tend to convey the impression that a person or business is offering professional engineering services when it is not certified to do so 70–131

Certification of out-of-state surveyors

The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors may not promulgate a rule requiring out-of-state applicants for certification as land surveyors to pass an examination concerning Wisconsin practices and procedures if they possess a valid certification in another state 76–49

Designer Section

The Designer Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors does not have rulemaking authority 74–200

Engineer

Whether use of terms “engineer” or “engineering” in business title violates ch. 443, Stats., depends on a case-by-case analysis of the circumstances to determine whether these terms tend to convey the impression that a person or business is offering professional engineering services when it is not certified to do so 70–131

Examining Board

The examining Board is empowered to adopt a rule requiring an applicant for registration as a professional engineer to have practiced engineering in Wisconsin or have had contacts with the state such that the applicant is familiar with Wisconsin law and practice. It is not unconstitutional to register without a diploma applicants who have twelve or more years of experience in engineering work, nor is it unconstitutional to register without examination applicants who are not less than age thirty-five and who have twelve years of experience. Further, it would not be unconstitutional to impose a ten-day residence requirement prior to application 70–156
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Registration of land surveyors
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Anonymous telephone tip
An anonymous telephone tip to the police that a specified vehicle is being driven by an unlicensed person does not create an articulable and reasonable suspicion of illegality justifying an investigatory stop of the auto and driver. Under certain very limited circumstances, however, information from an anonymous informant may authorize a stop-and-frisk or an investigatory vehicle stop............................ 68–347
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Section 349.03(2m), Stats., prohibits both prejudgment and postjudgment arrest for failure to pay a parking forfeiture................................. 70–285

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A warrantless arrest and detention for bail jumping, section 946.49, Stats., is authorized if probable cause exists that the arrestee violated the contact prohibition in section 968.075(5)(a)1. after being released under chapter 969. 78–177

ARSON BUREAU, STATE

Search and seizure

State Arson Bureau and local fire and police departments are subject to the Fourth Amendment warrant requirements of the U.S. Constitution in conducting searches for evidence of arson. If consent to search is sought, very general guidelines are that a tenant or co-tenant may consent to search of area under his control, while consent to search a common area may be given by landlord or, if objector could not reasonably expect privacy, by a tenant ................................................................. 68–225

ARTICLES OF INCORPORATION

See also CORPORATIONS

Nonprofit corporation

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The drafting of Articles of Incorporation and other corporate documents to be filed with the Secretary of State constitutes the practice of law within the meaning of sec. 256.30(2), Stats. Any relaxation of this restriction is a question for the Wisconsin Supreme Court ......................................................... 65–173

Quorum

Articles of Incorporation which purport to allow informal corporate action by written consent of less than all parties entitled to vote are clearly inconsistent with the provisions of sec. 180.91, Stats., and are prohibited by ch. 180, Stats......................... 62–240

Statutory conditions of

Section 180.47, Stats., cannot accurately be viewed as correcting, waiving or curing non-compliance with the statutory conditions governing the initial incorporation of a business, which are required to precede the issuance of a certificate of incorporation under sec. 180.46, Stats., since sec. 180.47, Stats., clearly authorizes the State to assert such non-compliance for the purpose of cancelling or revoking the certificate of incorporation. The Attorney General should be advised of any instances where certificates of incorporation are erroneously issued so that the State may assert such non-compliance for the purpose of cancelling or revoking such certificates. Although sec. 180.47, Stats., does not apply to erroneously issued certificates of amendment, appropriate action should be taken to cancel or revoke any such certificates ................................................................. 62–160

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An ad valorem tax upon automobiles where the assessment would be based on the manufacturer's suggested retail price and the age of the vehicle, and where the rate would be unrelated to the tax rate upon other taxable
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property would violate the uniformity requirement of Wis. Const. art. VIII, sec. 1. (Unpub) ........................................................... 99-1977

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Section 70.11(24), Stats., is unconstitutional as violative of the uniformity clause in Wis. Const. art. VIII, sec. 1 .......................................................... 66--326

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Indians residing on nontaxable land are electors of the town of residence. Where new towns are created by division, each such town must be 36 sections in area, unless each such town, after division, has 75 electors and taxable real estate of $200,000 or more .................................................. 66-256

Mall; Stevens Point

Expenses incurred by city in converting street to mall may be assessed against state and assessment paid if approved by Board of Commissioners of Public Lands. (Unpub) ................................................................ 45-1975

State Street Mall-Capitol Concourse

State property not subject to assessment of special charges under sec. 66.60(16), Stats., for maintenance of State Street Mall-Capitol Concourse project as proposed by the City of Madison. Section 66.64, Stats., is limited to special assessments for improvements .................................................. 69-269

Tax Increment Law

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ASSESSOR'S PLATS

Paper requirement

1. Section 236.20(1)(a), Stats., requires that plats be submitted on the paper described therein. Plats submitted on other paper are objectionable. 2. Only the original ink-drawn plat on the required paper can be recorded with the Register of Deeds .................................................. 67-8

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Credit union membership

Organizations and associations eligible for credit union membership under sec. 186.05(1)(b), Stats., defined and discussed .................................................. 65-77

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Wisconsin Administrative Code section E1Bd 1.06, and the forms developed to effectuate that rule, EB-11 and EB-12, which require corporations and associations to register and twice yearly report their expenditures for the establishment and administration of a political fund and for solicitation of political contributions to such fund, improperly impose substantive requirements in addition to those reasonably within the intendment of sec. 11.38(1)(a)2., Stats., and are therefore unenforceable .................................................. 67-193
ATTORNEY GENERAL

Collective bargaining

Attorney General declines to render an opinion on what is subject to collective bargaining in view of a preferred legislative intent that such questions be resolved through the declaratory judgment procedure before the Wisconsin Employment Relations Commission subject to judicial review. 63–590

Local Emergency Planning Committee

A local emergency planning committee created by the county board pursuant to section 59.07(146), Stats., is in many respects treated as other county committees. The county board has the authority to appropriate funds for the committee and the county’s relationship to the committee is the same as the county’s relationship to the other county bodies created under section 59.07, with the exception that the county must be consistent with the authority exercised by the state emergency response commission. The county corporation counsel should provide legal advice and assistance to the LEPC. If the LEPC or its members are sued, the attorney general represents them; and the state would pay the judgment if the requirements of section 895.46 have been satisfied. 78–27

Opinions

Except in extraordinary circumstances, the attorney general will not issue opinions concerning the meaning or intent of municipal ordinances. OAG 26–88 discussed and adhered to. (Unpub) 58–1988

The Milwaukee County board may not delegate the exclusive authority to approve contracts for budgeted public works projects to the museum board or to the zoological board. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the meaning or intent of municipal ordinances. 77–120

Payment of judgments

Pursuant to sec. 20.865, Stats., both segregated revenues and general purpose revenues of the general fund are available for the payment of judgments arising out of segregated fund activities in the same proportion in which they were, or would have been, used to finance a program appropriation for the payment of such judgments; sec. 20.865(1)(a), Stats., includes authority for payment of settlements made by the Attorney General pursuant to sec. 165.25(6), Stats. (Unpub) 18–1975

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Discussed within the meaning of sec. 262.06(3), Stats. (1973) 63–467

ATTORNEYS

See also DISTRICT ATTORNEY

Board of Attorneys Professional Responsibility

Entitlement to indemnity and immunity from suit of prosecuting counsel retained by the Board of Attorneys Professional Responsibility discussed. 75–49

The members of the Board of Attorneys Professional Responsibility and the members of the Professional Responsibility Committees are officers within the meaning of secs. 895.45 and 895.46, Stats., and are protected by civil immunity when acting within the scope of their office in the absence of malicious, willful and intentional misconduct. (Unpub) 48–1978

Civil immunity

Entitlement to indemnity and immunity from suit of prosecuting counsel retained by the Board of Attorneys Professional Responsibility discussed. 75–49

The members of the Board of Attorneys Professional Responsibility and the members of the Professional Responsibility Committees are officers within the meaning of secs. 895.45 and 895.46, Stats., and are protected by civil immunity when acting within the scope of their office in the absence of malicious, willful and intentional misconduct. (Unpub) 48–1978
ATTORNEYS (continued)

Conflict of interest

1. Corporation counsel employed on part-time basis cannot accept employment as defense counsel for those whose interests are directly adverse to the state or county. 2. Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in prosecuting a state case. 3. County board cannot change status of office of district attorney from one in which he is permitted to practice law privately to one in which he is not, so as to be effective during the term for which such officer was elected ................................. 67-31

Family Court Commissioner’s law partner is prohibited from serving as counsel in any divorce action in county which Commissioner holds office but may serve as counsel in divorce actions in other counties. This prohibition may not be waived by the parties to the divorce action ....................... 67-64

Section 196.675(1), Stats., would be violated where a partner of a district attorney compensated on a part-time basis was retained by a public utility, if the partner-district attorney were to financially benefit directly or indirectly ........................................................................ 75-111

Corporation counsel

1. Corporation counsel employed on part-time basis cannot accept employment as defense counsel for those whose interests are directly adverse to the state or county. 2. Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in prosecuting a state case. 3. County board cannot change status of office of district attorney from one in which he is permitted to practice law privately to one in which he is not, so as to be effective during the term for which such officer was elected ........................................... 67-31

Corporations

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District attorney

1. Corporation counsel employed on part-time basis cannot accept employment as defense counsel for those whose interests are directly adverse to the state or county. 2. Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in prosecuting a state case. 3. County board cannot change status of office of district attorney from one in which he is permitted to practice law privately to one in which he is not, so as to be effective during the term for which such officer was elected ........................................... 67-31

Family Court Commissioner

Family Court Commissioner’s law partner is prohibited from serving as counsel in any divorce action in county which Commissioner holds office but may serve as counsel in divorce actions in other counties. This prohibition may not be waived by the parties to the divorce action ....................... 67-64

Fees

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Section 2 of 1977 Senate Resolution 14 which, if adopted, would create Senate Rule 73(1)(b), prohibiting members who are attorneys from voting
ATTORNEYS (continued)
Legislation (continued)
on bills creating additional judgeships or pay raises or retirement benefits for judges, would unconstitutionally deny equal protection of the laws to those citizens represented in the Senate by members who are also attorneys. 67-310

Open meeting
If there is no conflict between the Rules of the Board of Attorneys Professional Responsibility and Open Meeting Law, there lies within the discretion of the court to defer to legislative policy. If there is a conflict, the court probably would conclude that the Open Meeting Law is inapplicable. (Unpub) 67-1979

Practice of law
Drafting of Articles of Incorporation and other corporate documents to be filed with the Secretary of State constitutes the practice of law within the meaning of sec. 256.30(2), Stats. 65-173

The State Bar of Wisconsin is a state agency created by the constitutional authority of the Supreme Court. The authorized functions of the State Bar may come under the “State Action” exemption to the antitrust laws and the procedures employed by the Unauthorized Practice Committee and the Ethics Committee appear to provide due process but specific opinions in this regard must be given on a case-by-case basis. Volunteer lawyers giving free legal advice in the “Lawyer Hotline” program are agents of the State Bar and are entitled to common law immunity and indemnification under section 895.46(1)(a), Stats. 75-153

Professional Responsibility Committees
The members of the Board of Attorneys Professional Responsibility and the members of the Professional Responsibility Committees are officers within the meaning of secs. 895.45 and 895.46, Stats., and are protected by civil immunity when acting within the scope of their office in the absence of malicious, willful and intentional misconduct. (Unpub) 48-1978

Wisconsin Arts Board
Wisconsin Arts Board lacks authority to establish a lawyer referral service for benefit of artists in Wisconsin with arts-related legal problems. (Unpub) 52-1977

AUDITOR
Counties
The civil service provisions of sections 63.01 to 63.17, Stats., are not applicable to appointments of a county auditor or deputy auditor pursuant to section 59.72(3) and (4) unless such a civil service system is mandated for such county because it contains 500,000 inhabitants or more, or such system is applicable because the county involved has exercised its option under section 63.01 to enact such a system. 78-91

Fee structure
Classified audit fee structure may be established by University regents using age for classification purposes. 62-1

Student records
Section 13.94, Stats., contains authority for the State Auditor to secure certain information from student records for the purpose of auditing full-time equivalency reports submitted by the University of Wisconsin. (Unpub) 84-1978

University
Section 13.94, Stats., contains authority for the State Auditor to secure certain information from student records for the purpose of auditing full-time equivalency reports submitted by the University of Wisconsin. (Unpub) 84-1978
AUTOMOBILES AND MOTOR VEHICLES

See also AMBULANCES; TRAFFIC; TRANSPORTATION

Ad valorem tax

An ad valorem tax upon automobiles, where the assessment would be based on the manufacturer's suggested retail price and the age of the vehicle, and where the rate would be unrelated to the tax rate upon other taxable property, would violate the uniformity requirement of Wis. Const. art VIII, sec. 1. (Unpub) ................................................................. 99-1977

All-terrain vehicles

County forest roads which are open to vehicular traffic are highways which can be designated as all-terrain vehicle routes under section 23.33(8)(b), Stats., and minors under sixteen years of age holding valid all-terrain vehicle safety certificates can operate all-terrain vehicles on highways which have been designated as all-terrain vehicle routes under the limited conditions set forth in section 23.33(4) ...................................................... 77-52

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Proof that a driver knew or should have known that he collided with an unattended vehicle is not necessary for a conviction for violation of sec. 346.68, Stats., requiring that the driver of the colliding vehicle stop and locate the owner of the unattended vehicle or leave a note on the unattended vehicle containing the name and address of the colliding driver .......... 68-274

Dealers

Financial statements required by law to be filed with Department of Transportation in connection with applications for motor vehicle dealers' and motor vehicles salvage dealers' licenses are public records and are subject to inspection and copying under sec. 19.21(2), Stats., subject to limitations contained in court cases cited .................................................. 66-302

The Wisconsin Fair Dealership Law, ch. 135, Wis. Stats., is a public policy declaration concerning the unwarranted termination of dealerships and is designed to protect dealers from overreaching by the grantors of those dealerships. It would therefore be improper for parties to waive, directly or indirectly, the effect of ch. 135 and, in cases where the “dealer” is also a “franchisee” under ch. 553, Wis. Stats., the Commissioner of Securities has the right to deny, suspend or revoke a franchisor’s registration or revoke his exemption if the franchisor has contracted to violate or avoid the provisions of ch. 135 ................................................................. 66-10

Driver education

Public school districts may not charge students for the cost of providing driver education programs if the programs are credits towards graduation. 71-209

Drunk driving

Counties can enter into reciprocal mutual assistance agreements whereby they can agree in advance to cooperate in the arrest of persons suspected of violating drunken driving laws who are involved in an accident in one county and transported to a hospital in another county ........................................ 72-85

Section 345.24, Stats., does not require the release of a person twelve hours after his arrest for one of the alcohol-related driving offenses specified in that statute if the person's blood-alcohol content still exceeds .05 percent, as long as the person is brought before a court without unreasonable delay . . 76-95

Upon a second or subsequent conviction of drunken driving within five years within five years of a previous conviction for the same offense, the court may not waive, under sec. 345.60, Stats., the revocation of operating privi-
AUTOMOBILES AND MOTOR VEHICLES (continued)

Drunk driving (continued)

Leges by the Division of Motor Vehicles as required by sec. 343.31(1)(b), Stats. ................................................................. 62–31

Where a person is charged under sec. 346.63(1), Stats. (operating a vehicle while under the influence of an intoxicant or controlled substance), as a second offense, the charge may not be reduced to a violation as a first offense and the court does not have discretion to sentence under sec. 346.65(2)(a)1., Stats., sentencing for first offense. At trial the burden and verdict requirements of a criminal proceeding apply. It is mandatory that the Department treat this as a second offense for purposes of revocation under sec. 343.31(1)(b), Stats. ................................................................. 69–47

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Section 351.08, Stats., authorizes enhancements to the section 343.44 penalties; it does not create a separate substantive offense .............. 75–106

Implied consent law

See also IMPLIED CONSENT LAW

A driver of a motor vehicle cannot be asked to take a test to determine alcoholic intoxication pursuant to sec. 343.305(2)(am), Stats., unless there has been a lawful arrest ................................................................. 67–314

Indians

The state has jurisdiction over members of the Menominee Tribe on public roads and highways within the Menominee Reservation in respect to the enforcement of state traffic laws that are necessary to protect the highways against depredation or that would impair their use as a public right-of-way. State law enforcement officers can arrest any person who commits a federal offense in their presence .................................................................................................................. 66–115

International driving permits

The requirement of sec. 343.05(2)(d), Stats., that holders of international driving permits speak and read the English language is preempted by international treaties governing driving permits and therefore is invalid under the Supremacy Clause, U.S. Const. art. VI, cl. 2 ................................................................. 68–282

Intoxicating liquor

Section 346.93, Stats., contains two prohibitions: first, an absolute ban on a minor’s possession of intoxicating liquor in a motor vehicle; second, a ban on a minor’s possession of any malt beverage in a motor vehicle while any person under 18 years of age is a passenger or present in such motor vehicle. In order for a violation of that second prohibition to occur, a person under the age of 18 years, in addition to the violator of the statute, must be present in the vehicle .................................................................................................................. 66–215

Licenses and permits

Imprisonment or suspension of license under section 345.47(1)(a) and (b), Stats., does not eliminate the liability of a defendant for payment of the $150 surcharge provided for in section 346.655. The county does not become liable for the surcharge if not paid. An application for an occupational license is not a special proceeding requiring the payment of clerk’s fees under section 814.61(1) .................................................................................................................. 73–24

Suspension or revocation of operating privilege under secs. 343.30(1) and (1m), Stats., applies to both the regular driver’s license and to the chauffeur’s license .................................................................................................................. 63–240

Minors

Section 346.93, Stats., contains two prohibitions: first, an absolute ban on a minor’s possession of intoxicating liquor in a motor vehicle; second, a ban on a minor’s possession of any malt beverage in a motor vehicle while any person under 18 years of age is a passenger or present in such motor vehicle. In order for a violation of that second prohibition to occur, a
AUTOMOBILES AND MOTOR VEHICLES (continued)

Minors (continued)

person under the age of 18 years, in addition to the violator of the statute, must be present in the vehicle ................................................................. 66-215

Motorcycles

Under sec. 343.05(1), Stats., a driver's license, indorsed for motor-driven cycle operation, is not required for operation of a motor-driven cycle on private property ................................................................. 64-79

Nonmoving traffic violations

As used in sec. 165.87(2), Stats., the words "nonmoving traffic violations" apply only to violations of ordinances adopted under secs. 349.13 and 349.14, Stats., and violations of secs. 346.50 through 346.55, Stats....................... 66-308

Ordinance

The ordinance adopted by the Village of West Milwaukee which authorizes the placement of an immobilization device on an automobile of an individual who has ten or more outstanding or otherwise unsettled traffic violations does not constitute a valid exercise of a municipality's authority under Wisconsin law ................................................................. 77-73

Section 349.06(1), Stats., authorizes local authorities to enact and enforce any ordinance which is in strict conformity with traffic regulation provisions of ch. 350 for which the penalty for violation is a forfeiture ....................... 66-161

Permit fees

Motor carrier permit fees required by sec. 194.04(4)(a), (b), and (c), Stats., are not in conflict with Interstate Commerce Commission regulations and may be collected. The permit fee required by sec. 194.04(4)(d), Stats., is in conflict with such regulations and may not be collected ........................................ 63-206

Police

A person who flees or attempts to elude an unmarked police car, with flashing red lights and/or siren operating, does not violate sec. 346.04(3), Stats., unless the person knows that the signal from the unmarked vehicle was given by a traffic officer ................................................................. 65-27

Police cars

Flashimg blue lights on police vehicles are prohibited by sec. 347.07(2)(c), Stats. ................................................................. 63-80

An unmarked police vehicle displaying flashing red and blue lights is not a marked vehicle for purposes of section 346.04(3), Stats. ................................................................. 76-214

Police powers

Counties are restricted to controlling truck traffic under secs. 349.15 and 349.16, Stats. Exercise of the police power under sec. 349.15 need not be based on condition of roadbed, but may be exercised to promote the general welfare of the public................................................................. 66-110

Public records

Financial statements required by law to be filed with Department of Transportation in connection with applications for motor vehicle dealers' and motor vehicle salvage dealers' licenses are public records and are subject to inspection and copying under sec. 19.21(2), Stats., subject to limitations contained in court cases cited................................................................. 66-302

Racetracks

A county board has power under section 59.07(18) and (64), Stats., to enact a reasonable licensing ordinance regulating the operation of motor vehicle racetracks outside the limits of cities and villages ................................................................. 74-129

Revocation of operating privileges

Upon a second or subsequent conviction of drunk driving within five years of a previous conviction for the same offense, the court may not waive, under
AUTOMOBILES AND MOTOR VEHICLES (continued)

Revocation of operating privileges (continued)

sec. 345.60, Stats., the revocation of operating privileges by the Division of Motor Vehicles as required by sec. 343.31(1)(b), Stats. .............................. 62-31

Revocation or suspension of licenses

Local governments can prohibit first acts of operating after revocation or suspension but second offense will not be a crime.................................................. 71-132

Suspension or revocation of operating privilege under secs. 343.30(1) and (1m), Stats., applies to both the regular driver's license and to the chauffeur's license .......................................................... 63-240

Roadblocks

Authorized agents of the Department of Agriculture, Trade and Consumer Protection have the authority to stop and search vehicles transporting livestock in Wisconsin so long as they comply with certain constitutional safeguards........................................ 77-172

Speed limits

Section 343.30(ln), Stats., does not apply to violations of sec. 346.57(4)(hm), Stats., created by ch. 157, Laws of 1973 .......................................................... 63-20

Stop-and-frisk

An anonymous telephone tip to the police that a specified vehicle is being driven by an unlicensed person does not create an articulable and reasonable suspicion of illegality justifying an investigatory stop of the auto and driver. Under certain very limited circumstances, however, information from an anonymous informant may authorize a stop-and-frisk or an investigatory vehicle stop............................................................ 68-347

Stop and search

Authorized agents of the Department of Agriculture, Trade and Consumer Protection have the authority to stop and search vehicles transporting livestock in Wisconsin so long as they comply with certain constitutional safeguards........................................ 77-172

Suspension or revocation of license

Local governments can prohibit first acts of operating after revocation or suspension but second offense will not be a crime.................................................. 71-132

Suspension or revocation of operating privilege under secs. 343.30(1) and (1m), Stats., applies to both the regular driver's license and to the chauffeur's license .......................................................... 63-240

Traffic offenses

Imprisonment or suspension of license under section 345.47(1)(a) and (b), Stats., does not eliminate the liability of a defendant for payment of the $150 surcharge provided for in section 346.655. The county does not become liable for the surcharge if not paid. An application for an occupational license is not a special proceeding requiring the payment of clerk's fees under section 814.61(1) .................................................. 73-24

The ordinance adopted by the Village of West Milwaukee which authorizes the placement of an immobilization device on an automobile of an individual who has ten or more outstanding or otherwise unsettled traffic violations does not constitute a valid exercise of a municipality's authority under Wisconsin law .......................................................... 77-73

Trucks, weight limitations

Transportation of forest products; sec. 348.15(3)(b)2. and (5r), Stats., discussed .......................................................... 62-100
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BAIL

See also CRIMINAL LAW

Felony

Judges and court commissioners have power, prior to the filing of a criminal complaint, to release on bail persons arrested for commission of a felony. 65-102

Forfeiture of

The entire amount of bail forfeited under sec. 969.13(4), Stats., is to be retained by the county treasurer and no part thereof is to be paid to the state treasurer. 62-247

Release on bail denied discussed

Acting under the authority of section 969.07, Stats., local law enforcement officials may deny release from custody to a person arrested for a misdemeanor if in the officials' opinion the person is not in a fit condition to care for his or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others. 75-209

Restitution

A forfeited cash bond cannot be used to pay restitution to the victim of a crime. 68-71

Revocation

Chapter 112, section 10, Laws of 1979 which allows courts to revoke bail for violating judicially imposed conditions of bail does not violate Wis. Const. art. I, sec. 8. 69-164

Surety bond

Law enforcement officers may be authorized by court rule to accept surety bonds for, or, under specified circumstances, 10 percent cash deposits of, the amount listed in a misdemeanor bail schedule when an accused cannot be promptly taken before a judge for bail determination. However, such rules may not afford officers discretion as to the amount or form of bail an individual accused must post. 63-241

BALLOTS

See ELECTIONS; VOTES AND VOTING

BANKS AND BANKING

See also SAVINGS AND LOAN ASSOCIATIONS

Banking Review Board

Banking Review Board members are not authorized to act in cases involving banks in which they or their spouses own stock. 75-197

Copying vital statistics

A bank, its employees and agents violate section 69.24(1)(a), Stats., when copying a certified copy of a vital record for use by the Federal Reserve Bank. 78-232

Death certificates, copying of

A bank, its employees and agents violate section 69.24(1)(a), Stats., when copying a certified copy of a vital record for use by the Federal Reserve Bank. 78-232

Interest

Loan fees which relate to the amount borrowed rather than to identifiable expenses incurred as a result of the particular transaction must be considered as interest for purposes of ch. 138, Stats. 65-67
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Junior Achievement Bank

Would be a banking business within the meaning of sec. 224.02, Stats., and violates sec. 224.03, Stats. .............................. 62-254

Legislation

Constitutionality of ch. 45, Laws of 1981, delegating authority to commissioners of various financial institutions, discussed ...................... 71-195

Loans

The recent amendments to sec. 45.80(2)(c), Stats., exempts a weatherization improvement loan supplement from the “maximum primary financing” requirement only in the case of a home purchase loan. Home improvement loans made under sec. 45.76(2)(a), Stats., are therefore not exempt from such requirements. (Unpub) .................. 52-1980

“Past consideration”

“Past consideration” as that term is used in sec. 943.24(3), Stats., is present in a situation in which one party belatedly delivers to another a check in consideration for goods transferred at an earlier date from the payee to the driver, although said check is later determined to have been worthless at the time of issuance. “Past consideration” as that term is used in sec. 943.24(3), Stats., is also present in a situation in which an employe pays back his employer by way of a worthless check for money discovered missing from a restaurant cash register for which the employe was responsible ........... 66-168

Stock options

Buying and selling stock options by trust company banks and state chartered banks with trust powers does not constitute a crime under sec. 112.05, Stats., but the writing of most “puts” and all uncovered “calls” is prohibited ........................................ 68-277

Trust Companies

A chapter 180 corporation cannot offer general trust services to the public, notwithstanding compliance with section 223.105, Stats. .......... 78-153

Buying and selling federal agency obligations by trust company banks and state chartered banks with trust powers does not constitute a crime under sec. 112.05, Stats. ......................................................... 68-372

Buying and selling stock options by trust company banks and state chartered banks with trust powers does not constitute a crime under sec. 112.05, Stats., but the writing of most “puts” and all uncovered “calls” are prohibited .................. 68-277

Twenty-five-mile limitation

The twenty-five-mile limitation upon the location of branch banks pursuant to sec. 221.04(1)(j), Stats., is to be measured on a straight-line distance basis. 64-10

BARBERS

See COSMETIC ART

BARS

See INTOXICATING LIQUORS; MALT BEVERAGES

BEER

See INTOXICATING LIQUORS; MALT BEVERAGES

BENEFITS

CETA employe

The City of Milwaukee cannot terminate a CETA employe's membership in the Retirement System on grounds not in effect by the time membership
BENEFITS

CETA employe (continued)

was attained, except as otherwise expressly provided by the Legislature.

(Unpub) .............................................................. 41-1978

County Board

Does not have power to establish number of days elected officials may utilize for vacation or sick leave or to grant longevity pay to elected officials, but can pay premiums for individual or group hospital, surgical and life insurance for them .......................................................... 66-329

Empoyee Trust Funds Board

Discussion of authority of Employe Trust Funds Board to change the form of payment to members of retirement benefits resulting from additional deposits in the Wisconsin Retirement Fund, State Teachers Retirement System and Milwaukee Teachers Retirement Fund. (Unpub) .................. 80-1977

BENCH WARRANT

Circuit court

Has neither statutory nor inherent authority to issue a bench warrant for the arrest of a violator of a county ordinance who has received a citation pursuant to sec. 66.119, Stats., and who neither posts a cash deposit nor appears at the citation return date ................................................. 70-280

County ordinance

Bench warrant issued under sec. 968.09, Stats., may be directed to all law enforcement officers in the state without regard to whether the defendant is charged with violation of a state statute or county ordinance. The form of the warrant should be tailored to meet the form suggested by sec. 968.04(3)(a)7., Stats. ......................................................... 62-208

Fines and forfeitures

Section 968.09, Stats., does not authorize the issuance of a bench warrant upon the failure to pay a fine or forfeiture. (Unpub) ......................... 27-1982

State statute

Bench warrant issued under sec. 968.09, Stats., may be directed to all law enforcement officers in the state without regard to whether the defendant is charged with violation of a state statute or county ordinance. The form of the warrant should be tailored to meet the form suggested by sec. 968.04(3)(a)7., Stats. ......................................................... 62-208

BETTING

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BICYCLES

Licensing

Licensing of bicycles, the creation of bicycle courts and the impoundment of bicycles is a matter of statewide concern. Cities and villages cannot exercise such regulation in the absence of express legislative authorization .......................... 66-99

BIDS AND BIDDERS

Architectural services

Section 59.08(1), Stats., does not apply to architectural services .................. 76-182

Auctions

Land acquired in name of a county by its county highway committee for use as gravel pit can be sold by the county board, when no longer required for highway purposes, at public sale pursuant to sec. 83.08(4), Stats. Public sale .... 1990
BIDS AND BIDDERS (continued)

Auctions (continued)

must be held on notice, by auction or written bids, with sale to highest qualified bidder ................................................. 66-208

County board supervisor and law firm employe

A county board supervisor who is an employe of a law firm which has been hired by a third party to represent it in negotiations with the county board does not violate either section 946.13(1)(a) or (b), Stats., if a supervisor has absolutely nothing to do with the contract either as an attorney or as a supervisor ................................................................. 75-172

County land

Land acquired in name of a county by its county highway committee for use as gravel pit can be sold by the county board, when no longer required for highway purposes, at public sale pursuant to sec. 83.08(4), Stats. Public sale must be held on notice, by auction or written bids, with sale to highest qualified bidder ................................................. 66-208

Diesel engines

Heavy movable diesel engine utilized in county lime quarry is equipment rather than materials or supplies and may be purchased by county board or committee to which board has delegated power if funds have been appropriated without resort to competitive bidding if county has not otherwise required by resolution or ordinance. Secs. 59.08(1), 66.29(1)(c), Stats. ............................................. 66-198

Erroneous bid

Where a governmental entity determines that an apparent low bidder is entitled to relief from an erroneous bid under sec. 66.29(5), Stats., the bidder should be allowed to correct his bid. Normally, if the bid is otherwise in order and still remains the low bid after the adjustment necessary to correct the mistake, the bid should be accepted. It is questionable whether any actionable claim for damages would survive a determination that a bidder was entitled to relief from his erroneous bid under the provisions of sec. 66.29(5), Stats. ............................................. 62-144

Housing

County housing authority, in providing housing for the elderly, can, by reason of sec. 59.075(4), Stats., utilize “turnkey” construction method without bids ............................................. 66-31

Police cars

Towns must let “public contracts” pursuant to the competitive bidding procedures of secs. 60.29(lm) and 66.29, Stats. Contracts which are not “public contracts” are not subject to either advertising or competitive bidding procedures. The definition of public contract includes “supplies” and “materials,” but does not include “equipment.” Police cars need not be purchased by competitive bid under secs. 60.29 and 66.29, since they are “equipment” and not “supplies [or] material” ............................................. 66-284

Preference for Wisconsin businesses

The preference for Wisconsin businesses included in sections 16.75 and 16.855, Stats., applies only when a Wisconsin business and an out-of-state business submit identical, low bids ............................................. 74-47

Reevaluation of a bidder

The Department of Transportation may make a reevaluation of a bidder’s prior qualification or reject the lowest bid on the ground of irresponsibility of the successful bidder, but, in both instances, notice and an opportunity for hearing on such reevaluation must be given to the contractor ............................................. 63-60

Requirements

Municipalities may require bidders to include a list of subcontractors. Counties may reject a proposal for failure to include a complete list, except when
BIDS AND BIDDERS  (continued)

Requirements  (continued)
omitted subcontractors themselves submitted timely, written bids to the
general contractor ............................................................. 76-29

State contracts
State contracts for the purchase of professional architectural and engineering
consulting services must comply with the bidding requirements of sec.
16.75(1), Stats., unless waived by the Governor ............................. 65-251

State office building
Subject to certain limitations, the lease of state office building space to a
restaurant or other commercial enterprise serving both state employees and
the general public is constitutionally permissible. Such leases do not require
competitive bidding ............................................................. 69-121

Subcontractors
Municipalities may require bidders to include a list of subcontractors. Coun­
ties may reject a proposal for failure to include a complete list, except when
omitted subcontractors themselves submitted timely, written bids to the
general contractors ............................................................. 76-29

University employe
Section 946.13, Stats., prohibiting private interest in public contracts may
impose criminal liability upon the University of Wisconsin employe who in
their private capacities deal contractually with the State of Wisconsin to
provide services and equipment. (Unpub) ..................................... 64-1977

BINGO

See also CRIMINAL LAW; GAMBLING; LOTTERIES

Bingo Control Board
The Bingo Control Board has authority to initiate disciplinary actions
against bingo licensees who have violated or have been a party to the
violation of ch. 945, Stats., Wisconsin's gambling law, during the conduct
of a bingo occasion. (Unpub) ............................................................. 23-1982
To be eligible to obtain a raffle license from the State of Wisconsin, an
organization, whether it is tax exempt or not, must qualify as a local
organization. If a licensed organization no longer meets the eligibility re­
quirements for licensure during the effective period of the license, such
license is subject to revocation or suspension by the Bingo Control Board. 76-115

Cable television facilities
Bingo games sponsored by church organizations using local cable television
facilities to broadcast the program where viewers participate in their homes
are in violation of ch. 163. While bingo games conducted pursuant to ch.
163 enjoy exemption from the constitutional definition of lottery, bingo
games which contravene the provisions of ch. 163 constitute lotteries in this
state. Such lotteries are prosecutable under sec. 163.54 or secs. 945.02(3)
and 945.03(4). The fact that community antenna television is regulated by
the Federal Communications Commission does not preclude a prosecution
on the grounds of federal preemption. The state criminal standard does not
conflict with federal regulation .................................................... 65-80

Charitable organization, membership policies
The loss of tax exempt status for income tax purposes does not necessarily
imply that an organization is no longer nonprofit. The Bingo Control
Board does not have statutory authority to revoke the bingo license of an
otherwise eligible organization because of its membership policies regarding
race ............................................................. 67-255

Disciplinary actions
The Bingo Control Board has authority to initiate disciplinary actions
against bingo licensees who have violated or have been a party to the
BINGO (continued)
Disciplinary actions (continued)
violation of ch. 945, Stats., Wisconsin's gambling law, during the conduct of a bingo occasion. (Unpub) .......................................................... 23-1982

Indian Reservations
Bingo conducted on Indian reservations by Indian tribes or Indian persons must comply with the Bingo Control Act ........................................ 69-22
The state may not constitutionally impose the general sales tax, section 77.52, Stats., on reservation sales of cigarettes and bingo admissions by Indian retailers to non-members of the governing tribe. The state may impose the use tax, section 77.53, Stats., on such cigarette sales and, arguably, on sales of bingo admissions. Section 77.53 requires Indian retailers to precollect the use tax. Whether the chapter 77 use tax may be imposed on reservation sales of other types of services to non-Indians depends on the facts of the particular case. Impediments to effective enforcement when the retailer is an Indian tribe or tribal corporation discussed ........................................ 74-134

BIRTH CONTROL
Contraceptives
Under recent U.S. Supreme Court decisions, subsecs. (2), (3), (4) and (5) of sec. 450.11, Stats., relating to the sale and advertising of contraceptives, are constitutionally infirm .......................................................... 68-20
Professional nurse may sell contraceptive articles, including oral contraceptive drugs, under sec. 450.11(5), Stats. ........................................ 66-158

BLOOD TESTS
Confidentiality requirements
The taking of a blood sample pursuant to the Wisconsin Implied Consent Law is not a procedure in connection with the performance of a drug or alcohol abuse prevention function nor is the acquired blood sample itself a patient record. The confidentiality requirements set out in 42 U.S.C. § 290dd-3 and 21 U.S.C. § 1175 have no application to such a procedure.................................................. 73-45
Implied consent law
Section 343.305, Stats., as repealed and recreated by ch. 193, Laws of 1977, does not vest in municipal courts the power to conduct hearings to determine the reasonableness of a refusal to submit to chemical tests to determine blood alcohol levels, since a municipal court has only those powers expressly conferred on it by statute, and such statute contains no express language conferring the hearing power above-mentioned on a municipal court. The power of a municipal court to preside over ordinance matters would not include such hearings, since local government lacks authority to enact the provisions of sec. 343.305 as an ordinance ........................................ 67-185
The taking of a blood sample pursuant to the Wisconsin Implied Consent Law is not a procedure in connection with the performance of a drug or alcohol abuse prevention function nor is the acquired blood sample itself a patient record. The confidentiality requirements set out in 42 U.S.C. § 290dd-3 and 21 U.S.C. § 1175 have no application to such a procedure.................................................. 73-45
Public records
Sheriff's radio log, intradepartmental documents kept by sheriff and blood test records of deceased automobile drivers in hands of sheriff are public records subject to inspection and copying under sec. 19.21(2), Stats., and subject to limitations contained in court cases cited which place duty on custodian to withhold disclosure where substantial harmful effect upon the public interest would result. Specific reason for withholding must be given which may be tested by mandamus in the courts. Such records do not appear to be records required by law to be kept by sheriff. Where records are required by law to be kept by sheriff, right of inspection exists under sec. 19.21(2), Stats. 66-158
BLOOD TESTS (continued)

Public records (continued)

59.14(1), Stats. That portion of 41 OAG 237 (1952) inconsistent with this opinion is repudiated................................................................. 67-12

Sheriff’s department; breathalyzer or blood tests

A sheriff’s department may require an officer to take a breathalyzer or blood test if the officer appears to be under the influence of intoxicants or drugs when the officer reports for duty or is on duty........................................ 73-104

State Laboratory of Hygiene

The State Laboratory of Hygiene may charge fees for tests not conducted for local units of government, but it is not required to do so. Sec. 36.25(11)(f), Stats. (Unpub).......................................................... 49-1981

BOATS

Anchoring watercraft

Public rights in navigable streams permit reasonable use of the bottom for purposes of anchoring various types of watercraft while and only so long as a public right is being enjoyed. Anchored watercraft may not be left unattended except by a riparian owner .................................................. 63-601

Law enforcement

Water safety patrol officers in county patrol, created as a separate agency, do not have to be deputized by sheriff to enforce secs. 30.50-30.80, Stats., Wisconsin’s regulation of boating law........................................... 65-169

BONDS

Building trust funds

The authority to utilize building trust funds and general obligation bond revenues is not limited to improvements only upon state-owned lands. However, the expenditures must be for improvement for public purposes of a state-wide concern, and meet other necessary criteria to qualify for such funding. (Unpub).......................................................... 38-1977

Clinic

Discussion of what constitutes a “clinic” under sec. 66.521(2)(b)7., Stats. .... 64-133

General obligation bond revenues

The authority to utilize building trust funds and general obligation bond revenues is not limited to improvements only upon state-owned lands. However, the expenditures must be for improvements for public purposes of a state-wide concern, and meet other necessary criteria to qualify for such funding. (Unpub).......................................................... 38-1977

Honesty bonds

Blanket honesty bonds for officers and employees under sec. 59.07(2)(d), Stats., must be for definite period and liability for renewals is cumulative for each period and cannot be limited by policy. (Unpub) .................. 24-1975

Hotels, motels and marinas

Hotels, motels and marinas are not permissible “projects” under the definition provided in sec. 66.521(2)(b), Stats. There is no authority under sec. 66.521, Stats., to establish a reserve fund from bond proceeds for payment of principal of and interest on the bonds, except as may be contemplated under the limited circumstances of sec. 66.521(7)(h), Stats. ................. 66-162

Milwaukee Metropolitan Sewerage District

Legislation is necessary to allow the Milwaukee Metropolitan Sewerage District to borrow up to the limits of its separate indebtedness authorized under Wis. Const. art. XI, sec. 3. (Unpub) .................. 27-1979
Municipality

As a general rule a municipality may not, without specific authorization, guarantee the financial obligations of a private landfill operator. (Unpub) 47-1982

Oath, filing of

Municipal justice files oath and bond with clerk of circuit court who files certified copy of bond with clerk of municipality for which justice was elected. Town boards, including those authorized to exercise village powers, cannot prohibit conduct the same or similar to that prohibited by chs. 941 to 947, except as provided in sec. 66.051(1), (2) and (3), or other express statutes 66-58

Old age assistance

The general concept of allowing elderly homeowners (age sixty-five or seventy) of low and moderate income to defer repayment of money advanced to them by the state for payment of their property taxes, with such loan being secured by some type of priority lien on the property involved, is constitutional. However, funds for such a program cannot be obtained through general obligation bonding, within the meaning and intent of Wis. Const. art. VIII, sec. 7. The financing of such a program with revenue bonds probably would be constitutional under Wis. Const. art. VIII, secs. 3, 4, 7. (Unpub) 13-1981

Performance bonds

Section 66.521(11), Stats., as created by ch. 265, Laws of 1973, does not require a municipality to obtain performance bonds for typical industrial revenue bond projects constructed by private industry 64-169

Referenda

City may avoid the referendum procedures normally attendant to the issuance of general obligation bonds, by using alternative methods of financing which do not require referenda, such as borrowing on promissory notes under sec. 67.12(12) 69-158

Retail automobile dealership

Industrial development revenue bonding under sec. 66.521, Stats., is not available for a project for a new automobile showroom, warehouse, and repair facility of a retail automobile dealership 62-141

Sewerage commission

A joint sewerage commission is empowered within the territorial limits of its district to enact and enforce regulations which would be required of it under the mandates of the Clean Water Act of 1977, but it cannot make appropriations or issue bonds without the approval of the governing bodies which established it 68-83

State Fair

Issuance of general obligation bonds to finance State Fair Park Coliseum is authorized by statute and is not violative of the state constitution 62-236

Student loan program

Anticipated sale of $75,000,000 of revenue bonds in accordance with subch. II of ch. 18, Stats., and related statutes, for the Guaranteed Student Loan Program will not result in additional public debt to the State of Wisconsin. 67-202

Guaranteed Student Loan Program, Higher Education Aids Board; the legal relationship between the Higher Education Aids Board and the Wisconsin Higher Education Corporation, as affected by various revenue bond agreements, discussed 72-135

Surety bonds

Law enforcement officers may be authorized by court rule to accept surety bonds for, or, under specified circumstances, 10 percent cash deposits of, the amount listed in a misdemeanor bail schedule when an accused cannot
BONDS (continued)
Surety bonds (continued)
be promptly taken before a judge for bail determination. However, such rules may not afford officers discretion as to the amount of form of bail an individual accused must post ................................................................. 63-241

Trust funds
The State is not required to pay claims on bonds and coupons evidencing public debt issued pursuant to subch. 1 of ch. 18, Stats., once those obligations are six years overdue. Funds which cannot be paid out because of the extinguishment of the debt by reason of the passage of time remain in the building trust fund for the use of long-range building program .......................... 68-320

Vocational and adult education
Section 67.04(2)(a), (b), and (8), Stats., does not authorize the City of Marshfield to utilize its bonding authority to construct a building wholly for use by the Mid-State Vocational Technical and Adult Education District on a leased basis ................................................................. 71-165

Wisconsin Farmers Fund Program
The Farmers Fund Program, as set out in section 92.32, Stats., does not violate article VIII, sections 3 or 10 of the Wisconsin Constitution, nor are its terms contrary to the Public Purpose Doctrine ......................................................... 74-25

Wisconsin Health Facilities Authority
The Wisconsin Health Facilities Authority may consent to an amendment of a financing agreement relating to the issuance of bonds, to permit the lease of the facility financed to a for-profit corporation. (Unpub) ......................... 4-1983
The Wisconsin Health Facilities Authority may not issue revenue bonds pursuant to section 231.03(6)(b), Stats., to refinance all of the outstanding indebtedness of a participating health care institution which, in part, is regulated by the Department of Health and Social Services upon proper certification of that Department. (Unpub) ........................................ 47-1985

BOUNDARIES
Lot size
For the purpose of determining lot area under the provisions of sec. 236.02(8), Stats.: (1) If a lot abuts a public or private road or street, the total lot size (area) does not include the land extended to the middle of the road or street. (2) An easement of access to a parcel is not to be included in determining the total lot area. (3) A body of navigable water separates a parcel of land as effectively as does a public highway ......................................................... 66-1

Meandered lake
Methods discussed for establishing or reestablishing an E-W 1/4 line and the center 1/4 corner when the E 1/4 corner falls in a meandered lake .......... 66-261

Town supervisors
The responsibility of town supervisors, under ch. 90, Stats., is limited to assigning to the occupants of the adjoining lands, the respective share of a division fence which each occupant shall erect and repair, and does not authorize town supervisors to settle boundary disputes ......................................................... 70-187

Zoning
1. An extraterritorial zoning ordinance may utilize interior section lines. 2. Interim extraterritorial zoning ordinances need not be based on a land use survey. 3. Amendment of interim extraterritorial zoning ordinances discussed. 4. Appeals under an interim extraterritorial zoning ordinance are handled by the city or village. 5. Administration of extraterritorial zoning is by the city or village. 6. The joint extraterritorial zoning committee continues to exist after adoption of the comprehensive extraterritorial zoning ordinance ......................................................... 67-238

B 9 1990
BOUNTIES

County board

Has no power to pay bounty on any fauna, including rattlesnakes, not described in sec. 29.61(1), Stats., as amended by ch. 91, sec. 3, Laws of 1975. (Unpub) ................................................................. 75-1977

BRIDGES

County aid for bridge projects

County aid available for construction of bridges under sec. 81.38, Stats., may be provided only to towns, and not to cities or villages, and may not be provided once a town commences a bridge project. County aid for bridge projects may be provided to cities and villages under sec. 83.03(1), Stats. Such aid may be provided once a municipality has begun work on a bridge project but not after the project has been completed. (Unpub) .......... 56-1982

Railroad bridge repair

The Department of Natural Resources is not governed by section 190.08, Stats., relating to the duty of corporations to maintain bridges and other structures, where the Department of Natural Resources has acquired abandoned railroad property for the purpose of developing hiking and biking trails ............................................................................. 77-106

BUILDING COMMISSION, STATE

Bond revenues

The authority to utilize building trust funds and general obligation bond revenues is not limited to improvements only upon state-owned lands. However, the expenditures must be for improvements for public purposes of a state-wide concern, and meet other necessary criteria to qualify for such funding. (Unpub) ................................................................. 38-1977

The Farmers Fund Program, as set out in section 92.32, Stats., does not violate article VIII, section 3 or 10 of the Wisconsin Constitution, nor are its terms contrary to the Public Purpose Doctrine ................................................................. 74-25

Bonds

The anticipated sale of $75,000,000 of revenue bonds in accordance with subch. II of ch. 18, Stats., and related statutes, for the Guaranteed Student Loan Program will not result in additional public debt to the State of Wisconsin ................................................................. 67-202

Building trust funds

The authority to utilize building trust funds and general obligation bond revenues is not limited to improvements only upon state-owned lands. However, the expenditures must be for improvements for public purposes of a state-wide concern, and meet other necessary criteria to qualify for such funding. (Unpub) ................................................................. 38-1977

Condemnation

The Building Commission has the power of condemnation under sec. 13.48(16), Stats., for the acquisitions authorized by sec. 13.48(17), as created by ch. 90, Laws of 1973. Such power also exists for acquisitions under sec. 13.48(18), as created by ch. 90, Laws of 1973, provided the acquisitions fall within the criteria of sec. 13.48(16). The Commission must file the plan called for in sec. 32.25, Stats., whenever it contemplates engaging in land acquisition activities for which the power of condemnation exists under law. 63-290

BURIAL

Personal property, use of

A manufacturer's plan, involving the utilization of funeral directors on a fee basis in the sale of movable concrete burial vaults to consumers for future
BURIAL (continued)
Personal property, use of (continued)
use and for delivery to a cemetery to be later designated, constitutes use of personal property under a prearranged funeral plan. Accordingly, provision for deposit of funds in account in seller's name would be contrary to sec. 445.125, Stats., which requires trust account ................................. 71-141

BUS AND BUS DRIVERS
See also SCHOOLS AND SCHOOL DISTRICTS, School Buses;
TRANSPORTATION
Schools and school districts
Under secs. 121.54(7), 343.12 and 340.01(56), Stats., a school bus and school bus operator need only be provided for the transportation of those students engaged in the extracurricular activity of the school. Exceptions to the requirements of providing a school bus and school bus operator for the transportation of students discussed........................................... 65-298
The requirements of section 121.555(2)(a), (c)1., 2., 3. and 5. and (d), Stats., apply to all drivers transporting pupils other than only their own children to and from curricular and extracurricular activities, if such transportation has been provided by the school board. The requirements of section 121.555(2)(b) and (c)4. only apply if the vehicle used is owned or leased by a school or a school bus contractor or is operated by a school district employee .......................................................................................... 75-146

BUSINESS
See MARKETING AND TRADE PRACTICES

BUSINESS DEVELOPMENT, DEPARTMENT OF
Bonds
Industrial development revenue bonding under sec. 66.521, Stats., is not available for a project for a new automobile showroom, warehouse, and repair facility of a retail automobile dealership ................................. 62-141

Public funds
Chapter 108, Laws of 1973, contemplates the appropriation of public funds for a valid public purpose, not for works of internal improvement, and is constitutional ................................................................. 62-212
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CAMPAIGN EXPENSES
See ELECTIONS

CANDIDATES
See ELECTIONS

CAPITOL

Christmas pageant

The described Christmas pageant, presented by the Madison Civic Music Association, Inc., in the Capitol building does not involve governmental advancement or inhibition of religion or governmental entanglement with religion as contemplated and prohibited by Wis. Const. art. I, sec. 18……. 67-180

Churches

A group of churches is entitled to a permit under sec. 16.845, Stats., to use the Capitol grounds for a planned civic or social activity even if the content of the program is partly religious in nature…………………………………… 68-217

CATEGORICAL AIDS
See PUBLIC WELFARE

CEMETERIES

Owners

Cemetery association voters must be lot owners under sec. 157.03(4), Stats. The ownership interest of a deceased lot owner passes to his or her heirs, who as owners, are entitled to vote in cemetery association elections……. 69-132

Funeral directors

Stock ownership of a subsidiary corporation by a parent corporation, considered alone, does not destroy the legal separate identities of the parent and subsidiary corporation. But the separateness of corporate identity will be disregarded if the subsidiary’s policies, functions and actions are so controlled by the parent as to make the subsidiary a mere agent or instrument of the parent. Whether parent and subsidiary corporations violate section 445.12(6), Stats., which prohibits an operator of a funeral establishment from being connected with a cemetery, depends upon facts relating to the legal separateness of the parent and subsidiary corporations. The facts related are insufficient to conclude whether section 445.12(6) is violated…. 78-5

CENSUS

Reapportionment

Wisconsin Constitution art. IV, sec. 3 requiring legislative reapportionment “after each enumeration made by the authority of the United States” does not require reapportionment after the new federal mid-decade census……. 67-81

CESA
See COOPERATIVE EDUCATIONAL SERVICES AGENCIES

CHARITABLE ORGANIZATIONS AND INSTITUTIONS

Bingo Control Board

The loss of tax exempt status for income tax purposes does not necessarily imply that an organization is no longer nonprofit. The Bingo Control
CHARITABLE ORGANIZATIONS AND INSTITUTIONS (continued)

Bingo Control Board (continued)

Board does not have statutory authority to revoke the bingo license of an otherwise eligible organization because of its membership policies regarding race................................................................. 67-255

County board

A county may, through its boards and commissions, purchase services from various nonprofit organizations within the scope of such board or commission's authority. Where county board has created community relations-social development commission pursuant to sec. 66.433, Stats., it cannot, through such commission, fund community-wide nonprofit corporations it deems worthy, by setting forth in the commission's budget, the amount of money to go to a specific nonprofit agency. Where a county board creates a sec. 66.433 commission, it cannot by reason of sec. 59.025(3)(c), Stats., transfer all the duties and functions of such commission to another board or commission or committee of the county board................................. 67-297

Membership policies

The loss of tax exempt status for income tax purposes does not necessarily imply that an organization is no longer nonprofit. The Bingo Control Board does not have statutory authority to revoke the bingo license of an otherwise eligible organization because of its membership policies regarding race.............................................................................. 67-255

Northern Center for the Developmentally Disabled

The nonagricultural lands at the Northern Center for the Developmentally Disabled and other similar institutions are not subject to taxation for school purposes under sec. 70.114, Stats. (Unpub)............................................. 110-1977

Tax exempt status

Standards for determining whether a nonprofit corporation qualifies for tax exempt status as a retirement home under sec. 70.11(4) discussed.......... 66-232

The loss of tax exempt status for income tax purposes does not necessarily imply that an organization is no longer nonprofit. The Bingo Control Board does not have statutory authority to revoke the bingo license of an otherwise eligible organization because of its membership policies regarding race.............................................................................. 67-255

The nonagricultural lands at the Northern Center for the Developmentally Disabled and other similar institutions are not subject to taxation for school purposes under sec. 70.114, Stats. (Unpub)............................................. 110-1977

"Tied-house" prohibitions

A gift of intoxicating liquors, made by a liquor manufacturer, rectifier or wholesaler to a liquor retailer, does not violate the "tied-house" prohibitions of ch. 176, Stats., when the liquor is dispensed by the licensed retailer, free of charge, at a wine-tasting party or similar event held for the sole benefit of a charitable organization or institution ..................................... 66-276

CHILD ABUSE

See CHILDREN; CRIMINAL LAW

CHILDREN

See also ADOPTION; COURTS; JUVENILE COURT; LABOR; MINORS

Abuse or neglect

A county department of social services has no discretion to refuse to disclose reports and records of child abuse or neglect to the subject of the report or the subject's attorney under section 48.981(7)(a)1. and (c), Stats. .............. 77-84

A county department of social services or county department of human services may not contract with other agencies to obtain section 48.981, Stats., reporting or investigatory services in situations other than the per-
CHILDREN (continued)
Abuse or neglect (continued)
formance of independent investigations required by section 48.981(3)(d). A cooperative contract might be possible under section 66.30(2) in order to effectuate this purpose but the services must be furnished by the county department as defined in section 48.02(2g) and not by any other public or private agency ............................................................... 76-286

The duty to report suspected cases of child abuse or neglect under sec. 48.981(3)(a), Stats., prevails over any inconsistent terms in sec. 51.30, Stats. 68-342
A medical or mental health professional may report suspected child abuse under the permissive provisions of section 48.981(3), Stats., when the abuser, rather than the victim, is seen in the course of professional duties. Section 51.30 does not act as a bar to such reports made in good faith .... 76-39

Adoption agencies
A contract between the Department of Health and Social Services and an association of private adoption agencies does not result in legally prohibited religious discrimination where any religious preferences are limited to the statutory religious matching requirement. (Unpub) .... 32-1983

AFDC
Recoupment of improperly paid payments by HSS discussed ..................... 65-128
Section 49.50(10), Stats., sanctions the use of a self-declaration application system for the AFDC program as to economic eligibility. Other factors of eligibility must be verified through a home visit, investigation and report as required by sec. 49.19(2), (3), Stats., before assistance may be granted .... 63-32

Confidential reports
The duty to report suspected cases of child abuse or neglect under sec. 48.981(3)(a), Stats., prevails over any inconsistent terms in sec. 51.30, Stats. 68-342

Consensual sexual conduct
Consensual sexual conduct involving sixteen-and seventeen-year-old children does not constitute child abuse under sec. 48.981(2), Stats. 72-93

Contempt of court
Courts of record in the State of Wisconsin have the authority to hold juveniles in contempt of court: limited circumstances under which sanction of imprisonment may be imposed discussed ............................................................... 70-98

Exceptional educational needs
The Department of Health and Social Services must treat a parent’s failure to respond as a denial of permission for evaluation and placement for exceptional educational needs. The Department of Health and Social Services has no authority to appoint a surrogate parent when a child’s parent cannot be located, and must utilize alternative procedures under state law ................. 71-28

Foster children
The potential liability of placement agencies and foster parents for the torts of foster children is the same as natural parents’ liability. They are only liable for property damage or physical injury which results from a failure to provide reasonable supervision. The greater exposure falls on the foster parent. Section 895.035, Stats., does not apply to placement agencies or foster parents ................................................................. 66-164

Indian Child Welfare Act
Jurisdictional questions relating to the implementation of the Indian Child Welfare Act (25 U.S.C. sec. 1901 et seq.) discussed .......................................................... 70-237

Interstate Compact on the Placement of Children
The Interstate Compact on the Placement of Children applies to children who enter Wisconsin to live at a child-caring institution and to attend school in local public and private schools. (Unpub) ................................................. 53-1983
The Interstate Compact on the Placement of Children does not apply to the Appleton ABC Program, Inc. OAG 53-1983 is withdrawn. (Unpub) ...... 18-1984

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Maintenance orders

The family court commissioner represents the public interest and does not act as an advocate for the party benefited when he brings a remedial contempt proceeding to enforce an existing order or judgment under section 767.29(1), Stats................................................................. 76-21

Mentally handicapped

St. Coletta School cannot receive public funds because its governing body is chosen by a religious organization and part of its teachings are sectarian. (Unpub)................................. 10-1977

Parental rights

The potential liability of placement agencies and foster parents for the torts of foster children is the same as natural parents' liability. They are only liable for property damage or physical injury which results from a failure to provide reasonable supervision. The greater exposure falls on the foster parent. Section 895.035, Stats., does not apply to placement agencies or foster parents........................................................................................................ 66-164

Paternity

Duties of corporation counsel in county over 500,000 concerning paternity matters under secs. 52.21-52.45, Stats., cannot be transferred to legal counsel employed in a separate department created pursuant to powers in sec. 59.025, Stats. (Unpub) ......................................................... 22-1978

Paternity actions

Litigation and discovery costs for those indigent respondents in paternity actions for whom counsel has been appointed in accordance with sec. 767.52, Stats., must be paid by the state through the Public Defender Board appropriations, except as otherwise specifically provided by statute. (Unpub)..................................................................................... 33-1982

Probation and parole

The Department of Health and Social Services has exclusive authority to detain and release a child who has violated the conditions of probation imposed by a court of criminal jurisdiction. The child need not be brought before a juvenile court intake worker if he or she is not also detained as a delinquent. The child can be held in the adult section of the county jail ... 72-104

Records of child-placing agencies

If the Department of Health and Social Services does not wish to designate a child-placing agency licensed under section 48.60, Stats., to conduct searches under sections 48.432(4)(b) and 48.433(6)(b), the child-placing agency has no enforceable right to be so designated. Whether or not there is such a designation, the Department of Health and Social Services has an absolute right of access to the case records of the licensed child-placing agency for purposes of the search program under sections 48.432 and 48.433. (Unpub) ................................................................. 22-1984

Records of child support

The Department of Health and Social Services should be granted access to otherwise confidential records because that access is necessary to complete a legislatively mandated study. (Unpub) ................................................................. 23-1984

Surnames

Mother of child born out of wedlock may cause any surname to be entered on the child's birth certificate................................................................. 63-501

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The potential liability of placement agencies and foster parents for the torts of foster children is the same as natural parents' liability. They are only liable for property damage or physical injury which results from a failure to provide reasonable supervision. The greater exposure falls on the foster
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parent. Section 895.035, Stats., does not apply to placement agencies or foster parents ................................................. 66-164

CHIROPPODISTS

Medical Practice Act

Podiatrists may administer injections, perform and interpret laboratory work such as blood counts, and write prescriptions in connection with treatment of the feet without violating the Medical Practice Act .......................... 62-156

CHIROPRACTORS

Clarification of 68 OAG 319 (1979)

The conclusion in 68 Op. Att'y Gen. 316 (1979), that a physician has authority under the Medical Practices Act to advise a patient whether or not continued chiropractic care is necessary deals solely with physician-patient relationships, and is not to be construed as providing guidance or direction in situations where such a relationship does not exist. (Unpub) .................. 12-1984

Crime victims compensation

Under ch. 949, Stats., DILHR is not authorized to direct payment of expenses incurred by victims of crime for dental, chiropractic, podiatric, or optometric services. (Unpub) .................................................. 84-1977

Medical Assistance Program, State

Chapter 147, Laws of 1973, amended by the State Medical Assistance Program to provide for payment for chiropractic services, including necessary x-rays. Such payment is authorized regardless of whether there are matching federal funds. (Unpub) ........................................... 2-1975

Nursing homes

Residents' freedom to choose health care providers discussed .................. 66-178

Physician

The Medical Practices Act, ch. 448, Stats., permits a physician subject to certain limitations, to advise a patient whether or not continued chiropractic care is necessary, and the giving of such advice while it may technically fall within the definition of chiropractic practice does not constitute the unauthorized practice of chiropractic .............................. 68-316

Wisconsin Industrial Development Law

A chiropractic clinic may qualify for financing under the Wisconsin Industrial Development Law .................................................. 70-133

CIGARETTES

See MARKETING AND TRADE PRACTICES; POLLUTION, Smoking

CIRCUIT COURT

See also CLERK OF COURTS

Bench warrant

The circuit court has neither statutory nor inherent authority to issue a bench warrant for the arrest of a violator of a county ordinance who has received a citation pursuant to sec. 66.119, Stats., and who neither posts a cash deposit nor appears at the citation return date ........................................ 70-280

Clerk

County Board cannot require clerk to search records and sign certificates ... 66-358

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Contempt actions

Circuit courts of this state may *sua sponte* appoint a special prosecutor in contempt actions pursuant to ch. 785, Stats., without the need to resort to the provisions of sec. 59.44, Stats............. 72-1

Court Reporter

Salary questions discussed with respect to county Court Reporter who resigned effective July 31, 1978, and was appointed by Judge of same court as circuit Court Reporter on August 2, 1978. Ch. 449, Laws of 1977. (Unpub). 19-1979

Expunction of criminal records

Circuit courts do not possess inherent powers, in the absence of statute, to order the expunction or destruction of criminal conviction records ........ 70-115

Filing fees for support or maintenance petition

Discussion of circumstances under which additional filing fees for support or maintenance petition under section 814.61(13), Stats., are to be paid ...... 75-1

Garnishment actions

In garnishment actions, a clerk of circuit court is not authorized to collect the deposit and disbursement fees set forth in section 814.61(12)(a), Stats., unless the garnishee has paid money into court and obtained a court order directing the clerk of courts to deposit the money in a safe depository. State agencies are not required to pay the fees outlined in section 814.61 (except for the filing fee in section 814.61(1)), nor are they required to pay the fee for filing a garnishment action under section 814.62(1)..................... 73-3

John Doe proceeding

Limits of a judge's authority in presiding over or conducting a John Doe proceeding discussed. Section 968.26, Stats., is not unconstitutional as a violation of the separation of powers doctrine ............. 76-217

Official seal

A circuit or county court may use as its official seal on documents an ink seal printed by a rubber stamp ........................................ 66-275

Qualifications for office of judge

Under Wis. Const. art. VII, sec. 24(1), as amended April, 1977, a person must have been licensed to practice law in Wisconsin for five years immediately prior to the date of the election, rather than the date the term begins, to be eligible to the office of circuit judge. (Unpub) ......................... 1-1979

Records

Sections 59.07(97), 59.39(9m), 59.395(7) and 767.29(1), Stats., require a clerk of circuit court to keep a record of payments and arrearages in payments ordered by a court for child support and maintenance. Such clerk is required to compute and enter amounts of arrearage on the basis of court orders and judgments on file with such clerk and payments received and receipted by such clerk. (Unpub) ......................... 20-1982

Special prosecutor

Circuit courts of this state may *sua sponte* appoint a special prosecutor in contempt actions pursuant to ch. 785, Stats., without the need to resort to the provisions of sec. 59.44, Stats.................. 72-1

CIRCUIT JUDGE

Firearms

Although judges are conservators of the peace, they are not peace officers who are allowed to carry concealed weapons................. 69-66
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Retirement

Milwaukee County Board is not authorized by ch. 405, Laws of 1965, to change the provisions of the Milwaukee County Employees' Retirement System so as to provide a pension payable to circuit court judges based on the salary paid by the State. 62-149

Salaries

Chapter 114, Laws of 1977, provided for a 5.5% increase to the dollar value of the salary range minimum and maximum for the salary schedule applicable to circuit judges as of July 1, 1978; however, as sec. 20.923(2), Stats., provides that the salary of a circuit judge is set at the midpoint of the salary group in effect "at the time of taking the oath of office" subject to Wis. Const. art. IV, sec. 26, such increase is not applicable to circuit judges during current terms until some person, on or after July 1, 1978, who was elected or appointed, qualifies as judge and takes an oath for a new term. (Unpub) 74-1978

Salaries-county supplements

Sections 20.923(3m) and 753.071, Stats., constitutionally empower counties to reduce the county supplements to the state-paid salaries of circuit judges between August 1, 1978, and June 30, 1980, provided that there is compliance with the minimum and maximum salary perimeter established in those sections. 68-118

CIRCUS WORLD MUSEUM

See HISTORICAL SOCIETY, STATE

CITIES

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Alderman

Where, as a result of the alteration of the county board supervisory districts, a supervisor's residence is left outside the district he or she represents, the supervisor may continue to represent that district until the expiration of his term. When a city has combined the offices of alderman and county board supervisor where the aldermanic and supervisory boundaries are coterminous, the county board retains its discretion to decide whether to alter the supervisory districts after the city has annexed territory 76-10

Common Council

Common Council may not vote to fill vacancy of alderman by secret ballot. Sec. 19.88(1), Stats. 65-131

Compatibility

Compatibility of the office of alderperson with positions of city employe, teacher in city school district and firefighter discussed in general terms. 67-177

County board member cannot serve on joint county-city hospital board created under sec. 66.47, Stats., by reason of secs. 59.03(4), 66.11(2), Stats., but city council member could, and whether such member can receive additional remuneration for such service depends on whether he was appointed by the county board chairman, mayor, or mayor and county board chairman 66-145

Fire protection

A city probably can contract with a county to provide fire protection to a county institution located outside of boundaries of said city 62-84

Fort Atkinson

Where city created tax incremental finance district by resolution adopted May 1, 1977, date of creation for purposes of calculating extended six year cut-off period within which expenditures must be made under sec. 1990
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Fort Atkinson (continued)

66.46(6)(a)2., Stats., was January 1, 1977, and six year period expired on December 31, 1982. (Unpub) .................................................. 23-1983

Incorporation referendum

An incorporation referendum held pursuant to sec. 66.018, Stats., is effective immediately if a majority of the votes cast are for incorporation ............ 70-128

Insurance

A city council of a city other than the first class does not have legal authority to obligate the city and authorize the use of city funds for payment of health insurance premiums on policies for the benefit of alderpersons and other elected officials, irrespective of their years of service, who have left office .............................................................. 70-77

Lands sold for taxes

An ordinance enacted by a city council to purchase lands sold for taxes under sec. 74.43(3), Stats., only becomes operative where the county board has not acted to purchase such lands under sec. 74.44(1), Stats. Advertising and bidding requirements of sec. 75.69(1), Stats., are not applicable to a sale to a city under sec. 75.69(2), Stats., but are applicable to a subsequent sale by a city, unless the transfer still falls within the exemptions in sec. 75.69(2). .. 67-150

Libraries

Municipal libraries are a matter of paramount local concern as opposed to a statewide concern and are subject to otherwise constitutionally legal local legislative enactments under the home-rule provisions of the State Constitution. Acting pursuant to Wis. Const. art. XI, sec. 66.01, Stats., a city or village governing body can change the composition of its municipal library board and can limit powers of such board granted by ch. 43, Stats., where the municipal library is not part of a library system.................. 70-54

Malt beverages

An alderman holding a Class “B” Fermented Malt Beverage and Intoxicating Liquor License is ineligible to vote on the granting, renewal or revocation of such a license .................................................. 63-545

Milwaukee Retirement System

The City of Milwaukee cannot terminate a CETA employe’s membership in the Retirement System on grounds not in effect by the time membership was attained, except as otherwise expressly provided by the Legislature. (Unpub) .................................................. 41-1978

Open meeting

Public notice under sec. 19.84(2), Stats., for meeting of governmental body should be as specific as possible but a governmental body can discuss matters not specifically set forth in the notice and not known to chief presiding officer when the notice was given if the notice contains item similar to “such other matters as are authorized by law.” Such procedure should be utilized with restraint ........................................... 66-143

Pedestrian mall

The expenses incurred by a city in converting a vehicular traffic street to a pedestrian mall may be assessed against the state as an abutter under sec. 66.64, Stats., and the assessment paid if approved by the Board of Commissioners of Public Lands. (Unpub) .................................................. 45-1975

Property

Subject to approval of the fiscal board or the city council, a city school district has the authority to sell real and personal property no longer used for school purposes. Under sec. 120.56(2), Stats., money received from such sales must be placed in a sinking fund under the control of the fiscal board to be used for educational purposes. Municipalities may enter into an
CITIES (continued)

Property (continued)

agreement with a joint school district to provide for the sale or transfer of
property being used by the school district for educational purposes. Such
agreement may provide for the payment of the purchase price in services,
materials or property provided that the value of such purchase price consti-
tutes the fair market value ......................................................... 66-272

Real estate taxes

Section 74.80(2), Stats., permits counties and cities to impose by ordinance a
flat six percent or less penalty on overdue real estate taxes and special
assessments, regardless of when they became or become overdue .............. 71-189

Reimbursement

Pursuant to sec. 895.35, Stats., a city council can, in limited circumstances,
reimburse a council member for reasonable attorneys’ fees incurred in
defending an alleged violation of the Open Meeting Law, but cannot reim-
burse such member for any forfeiture imposed. Section 895.46(1), Stats., is
not applicable to forfeiture actions. Such member could not be reimbursed,
indirectly, under liability insurance policy procured by a municipality, for
any forfeiture imposed .......................................................... 66-226

A city may reimburse a commissioner of the city redevelopment authority for
his legal expenses incurred where charges are filed against him in his official
capacity seeking his removal from office for cause and such charges are
found by the common council to be unsupported. Such reimbursement is
discretionary. The city redevelopment authority lacks statutory authority to
authorize reimbursement for such legal expenses ................................ 63-421

Special assessments

Section 74.80(2), Stats., permits counties and cities to impose by ordinance a
flat six percent or less penalty on overdue real estate taxes and special
assessments, regardless of when they became or become overdue .............. 71-189

Taxation

Where city created tax incremental finance district by resolution adopted
May 1, 1977, date of creation for purposes of calculating extended six year
cut-off period within which expenditures must be made under section
66.46(6)(a)2., Stats., was January 1, 1977, and six year period expired on
December 31, 1982. (Unpub) .................................................. 23-1983

Zoning

1. An extraterritorial zoning ordinance may utilize interior section lines. 2.
Interim extraterritorial zoning ordinances need not be based on a land use
survey. 3. Amendment of interim extraterritorial zoning ordinances dis-
cussed. 4. Appeals under an interim extraterritorial zoning ordinance are
handled by the city or village. 5. Administration of extraterritorial zoning is
by the city or village. 6. The joint extraterritorial zoning committee contin-
ues to exist after adoption of the comprehensive extraterritorial zoning
ordinance .......................................................... 67-238

CITIZENS UTILITY BOARD

Creation of

The creation of a corporation, the Citizens Utility Board, under ch. 199,
Stats., is constitutional ......................................................... 69-153

Dissolution and reorganization as non-profit corporation

The Citizens Utility Board, a body corporate and politic, legally dissolved
and reorganized as a non-stock, non-profit corporation ................................ 75-168

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CITIZENSHIP AND NATURALIZATION

Law enforcement officer
Sections 62.13(4)(d) and 66.11(1), Stats., making citizenship a prerequisite to becoming a police officer or deputy sheriff violates the Fourteenth Amendment of the U.S. Constitution when applied to resident aliens 65-273

CITY CLERK
Authority
Under sec. 9.20(3), Stats., a city clerk’s authority to examine the “sufficiency” and “form” of an initiative petition is at least as extensive as the city council’s under sec. 9.20(4), Stats. This judicially established authority should only be exercised where a substantive insufficiency clearly exists 69-41

CIVIL ACTIONS
Commitments
State may require proof beyond a reasonable doubt in civil commitments although a lesser burden would be sufficient under the U.S. Constitution 68-406

CIVIL DEFENSE
Worker’s compensation
A disaster training exercise is covered employment for worker’s compensation purposes under sec. 22.16(9)(d), Stats. Pursuant to that provision, a person remains the employee of his or her initial emergency government unit for the duration of an emergency government activity. Section 22.16(9)(f), Stats., also construed 62-217

CIVIL RIGHTS
See also DISCRIMINATION
Bartenders’ licenses
Section 66.054(11), Stats., which permits the issuance of bartenders’ licenses to persons of “good moral character” does not automatically preclude issuance to a former offender, especially in light of sec. 111.32(5)(h), Stats., which prohibits discrimination in employment or occupational licensing based upon a criminal conviction (with certain exceptions) 68-202

Sex discrimination
The provisions of sec. 53.41, Stats., which require that at least one jailer on duty be of the same sex as those persons in custody does not conflict with the anti-sex discrimination provisions of the Wisconsin Fair Employment Act. Concept of “bona fide occupational qualification” under federal Title VII of the 1964 Civil Rights Act discussed. Counties must comply with sec. 53.41, Stats., when they can do so without conflict with Title VII 70-202

Section 942.04, Stats., potentially applies to service clubs; constitutionality of state regulation of such clubs is to be analyzed according to Board of Dirs. of Rotary Intern. v. Rotary Club, 481 U.S. 537, 107 S. Ct. 1940 (1987) 76-251

CIVIL SERVICE
See also PUBLIC OFFICIALS
Classified service
Staff positions in the Milwaukee District Attorney’s office, which are mandated by statute as unclassified positions must be created in the unclassified service, unless the county’s Civil Service Commission determines that transferring these positions to the classified service is necessary to secure the best service for the county. (Unpub.) 17-1989

When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means
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Classified service  (continued)

that the person is treated for seniority purposes as though he or she never
left the position in classified service........................................... 78-11

Collective bargaining

Matters within the scope of bargaining as set forth in sec. 111.91, Stats.,
agreed to by the Department of Administration and a state employe union
are not effective until submitted as tentative agreements to and approved by
the Joint Committee on Employment Relations. Action of the Secretary of
the Department of Administration in agreeing to so-called non-recrimina-
tion clause was within his discretion but the clause itself is unenforceable
until approved by the Joint Committee on Employment Relations ........ 67-38

"Raised hiring rate" and "hiring above the minimum" practices utilized by
administrator of Division of Personnel pursuant to Wis. Adm. Code section
Pers. 5.02(1) and (2) are primarily matters of compensation and wage rates
related to salary-schedule adjustments and are subject to collective bargain-
ing in some degree under sec. 111.91(1), Stats. (Unpub) .............. 65-1978

County auditor

The civil service provisions of sections 63.01 to 63.17, Stats., are not applica-
table to appointments of a county auditor or deputy auditor pursuant to
section 59.72(3) and (4) unless such a civil service system is mandated for
such county because it contains 500,000 inhabitants or more, or such sys-

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tem is applicable because the county involved has exercised its option under
section 63.01 to enact such a system........................................... 78-91

County board

Where a county board has established a civil service ordinance applicable to
all county personnel other than the exceptions provided in sec. 59.07(20),
Stats., the director of the 51.42 Board does not have authority to grant
vacation with pay to a 51.42 Board employe which is not authorized under
the county civil service ordinance ............................................ 67-143

Deputy sheriff

Deputy sheriff, appointed under sec. 59.21(2) and (8)(a), Stats., must be a
resident of the state and must, before qualifying and serving, be a resident
of the county and must continue to maintain residency therein ............ 66-315

Section 63.065, Stats., applies to county having a population of less than
500,000 which has adopted a civil service program for deputy sheriffs pursu-
ant to sec. 59.21(8)(a), Stats., and which operates under a civil service
commission. Where an application for leave is applied for by a deputy who
has been elected to a county or state office, leave without pay must be
granted............................................................. 68-124

The county board may require the appointment of regularly employed deput-
ties to be in accordance with the pertinent civil service ordinance. The
county board may fix the number and the compensation, if any, of all
deputy sheriffs, whether regularly employed or honorary deputies. Notwith-
standing the number fixed by ordinance, the sheriff retains the power to call
a Posse Comitatus pursuant to sec. 59.24(1), Stats. .................... 68-334

Discharge of a classified employe

Provisions of a county civil service ordinance enacted under sec. 59.07(20),
Stats., or collective bargaining agreement entered into pursuant to sec.
111.70, Stats., establishing a procedure to be followed prior to discharge of
a classified employe, supersede and modify provisions of sec. 59.38(1),
Stats., which authorize a clerk of court to discharge a deputy clerk of court
at pleasure ...................................................... 63-147

Drug testing; pre-employment

A municipality's decision to require pre-employment drug testing for pro-
spective employes must balance the need for testing in particular positions
against the invasion of personal rights that the search entails, considering
all relevant factors.................................................. 76-257
Drug testing; pre-employment (continued)

Hatch Act

See Political activities

Leave of absence

When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service ................................................................. 78–11

Personnel Board

The Personnel Board may not approve the assignment of a classification in the clerical occupational group to a lower pay range than the pay range to which a classification in a different occupational group is assigned if the classifications include positions involving "work of equivalent skills and responsibilities." The phrase "the principle of equal pay for work of equivalent skills and responsibilities" contained in sec. 230.09(2)(b), Stats., requires equal pay only for substantially similar or equal work. The Board may not give retroactive effect to the establishment of classifications and grade levels or the assignment of classifications to the appropriate pay rates or ranges ........................................................................................................... 68–190

Personnel, Bureau of

"Raised hiring rate" and "hiring above the minimum" practices utilized by administrator of Division of Personnel pursuant to Wis. Adm. Code section Pers. 5.02(1) and (2) and primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub) ......................... 65–1978

Political activities

Classified state employes whose positions are federally funded in whole or in part, and who are not covered by a collective bargaining agreement, are entitled to leaves of absence in order to run for partisan political office and cannot be compelled to resign. Leaves of absence for such employes are governed generally by the terms of applicable collective bargaining agreements ................................................................. 73–131

Discussion of restrictions on political activities of state employes under federal and state law .......................................................................................................................... 67–315

State employes covered by the Hatch Act cannot be discharged for partisan political participation while on leaves of absence pursuant to sec. 16.35(2) and (4) ..................................................................................................................... 63–217

Statutes and rules which restrict the partisan activities of some employes and officeholders do not offend the First Amendment even if they result in the employes or officeholders being prohibited from participating in the party caucuses which choose delegates to the National Convention ............................................................................................................................................. 73–51

Relatives

Within limits, county board may prospectively prohibit department heads from appointing close relatives to county offices but cannot totally prohibit relatives from any employment by the county. (Unpub) ...................... 88–1977

Residency requirement

The residency requirement for classified civil service positions when no similar requirement exists for positions in the unclassified service constitutes a violation of the equal protection clause of the fourteenth amendment to the United States Constitution ............................................................................................................ 76–45

Secretary of the Department of Veterans Affairs

The Secretary of the Department of Veterans Affairs may only be removed from office by the governor for cause. The Board has no authority to discharge, suspend, or take disciplinary action that would prevent the Secretary from fulfilling the statutory duties of his office ..................................................................................................................... 65–229

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CIVIL SERVICE (continued)

Seniority
When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service ........................................... 78-11

Unclassified service
See Classified service

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Public Employee
The specific appeal procedures provided for the Public Employee Trust Funds do not take precedence over the general grant of authority to the Claims Board to hear claims against state agencies, but the Claims Board lacks authority to order payment of the claim from the trust funds.............. 74-193

CLERK OF CIRCUIT COURT
See CIRCUIT COURT

CLERK OF COURTS

Annual fee for maintenance or support payments
If the court fails to order the annual fee paid under section 814.61(12)(b), Stats., for receiving and disbursing money deposited as payment for maintenance payments, child support or family support, the clerk of court can bill the payor and then collect the fee with the same remedies available as in any other case of a debt created by law. Although the clerk cannot seek a remedial sanction under chapter 785 in these situations, the clerk does have the authority to increase the fee after providing the payor with written notice of this obligation and a reasonable opportunity to pay ................. 76-265

In the appropriate case, a court may enforce the collection of the receiving and disbursing fee under section 814.61(12)(b), Stats., for maintenance payments, child support or family support payments by entering an income withholding order as one of the remedial sanctions available under section 785.04(1). The power of the clerk of court is limited to moving the court for a specific remedial sanction under chapter 785 after which the specific remedy is to be imposed by the court under section 785.04(1) ............... 76-100

Bail money
Section 59.42(14), Stats., would not permit clerk of courts to temporarily invest money being held pending court appearance and trial in connection with traffic and municipal ordinance violations........................................ 63-56

Certified copy of record
The alphabetical index which the Register in Probate must maintain pursuant to section 851.72(5) is not a court record and thus is open to public access under sections 59.14(1) and 19.31. The index may not, however, contain results of proceedings under chapters 55 and 880. The $4.00 search fee of section 814.66(1)(j) applies only when a person fails to furnish the docket or file number or when a search is conducted to ascertain the existence or non-existence of a record. The charge for a one page certified copy from the Register in Probate or Clerk of Court is comprised of an initial $3.00 certifying fee and a $1.00 per page fee and is thus $4.00 ....................... 73-16

County treasurer
A county board of supervisors may not require a clerk of court to turn over funds held by him or her to the county treasurer on Friday of each week . 78-143
CLERK OF COURTS (continued)

Criminal cases

Clerks of court are not authorized to send the original records of criminal cases to the public defender prior to the time an appeal has been taken unless an order signed by a judge of the court authorizes such release 69–63

Discharge of a classified employee

Provisions of a county civil service ordinance enacted under sec. 59.07(20), Stats., or collective bargaining agreement entered into pursuant to sec. 111.70, Stats., establishing a procedure to be followed prior to discharge of a classified employee, supersede and modify provisions of sec. 59.38(1), Stats., which authorize a clerk of court to discharge a deputy clerk of court at pleasure 63–147

Fees

The only fee authorized to be paid any clerk of courts under section 102.26(1), Stats., in worker's compensation matters is a $3 fee imposed under section 814.61(5) when applicable 76–148

Filing fees for support or maintenance petition

Discussion of circumstances under which additional filing fees for support or maintenance petition under section 814.61(13), Stats., are to be paid 75–1

Public records

After a transcript of court proceedings is filed with the clerk of court, any person may, pursuant to secs. 19.21(2) and 59.14(1), Stats., examine or copy such transcript 68–313

CLINICAL PRACTICE PLAN, UNIVERSITY OF WISCONSIN SCHOOL OF MEDICINE

Open meetings

The Clinical Practice Plan Committee, Departmental Practice Plan Committees and University of Wisconsin Clinical Practice Association, which are components of the University of Wisconsin School of Medicine Clinical Practice Plan, are "governmental bodies" as defined in sec. 19.82(1), Stats., and subject to the Open Meetings Law 70–140

CLINICS

See PRIVATE CLINICS

COLLECTION AGENCIES

Commerce clause

Section 218.04, Stats., requirement that a foreign collection agency maintain a Wisconsin office with records may not violate the commerce clause. U.S. Const. art. I, sec. 8 69–113

Counties

County is a necessary party to an action on a claim where it has received an assignment under sec. 49.65, Stats. The county may take steps necessary to enforce its claim. Compromise and attorney fees discussed 65–119

COLLECTION OF ACCOUNTS

Department of Industry, Labor and Human Relations

District attorneys may exercise discretion in collecting wages referred by the Department of Industry, Labor and Human Relations, but such discretion must be exercised reasonably. Specific questions concerning collection of
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Department of Industry, Labor and Human Relations (continued)
wages are discussed including methods of collection, settlements, payment of costs and fees, and enforcement of the statutory lien .......................... 78-171
The Department of Industry, Labor and Human Relations lost discretionary authority to make expenditures from the unemployment compensation "interest and penalties" fund when the Legislature reenacted sec. 20.445(1)(v), Stats., in 1977, but the Department remains responsible for collection of credit extended under the old law. A decision by the Department to discontinue collection efforts is subject to review by the Department of Administration, since it has been entrusted with authority under ch. 16, Stats., to superintend collection of amounts owed the state. (Unpub) .................. 49-1978

District Attorney
District attorneys may exercise discretion in collecting wages referred by the Department of Industry, Labor and Human Relations, but such discretion must be exercised reasonably. Specific questions concerning collection of wages are discussed including methods of collection, settlements, payment of costs and fees, and enforcement of the statutory lien ..................... 78-171

“Past consideration”
“Past consideration,” as that term is used in sec. 943.24(3), Stats., is present in a situation in which one party belatedly delivers to another a check in consideration for goods transferred at an earlier date from the payee to the drawer, although said check is later determined to have been worthless at the time of issuance. “Past consideration” as that term is used in sec. 943.24(3), Stats., is also present in a situation in which an employe pays back his employer by way of a worthless check for money discovered missing from a restaurant cash register for which the employe was responsible ................................................................. 66-168

COLLECTIVE BARGAINING
Attorney General
Attorney General declines to render an opinion on what is subject to collective bargaining in view of a preferred legislative intent that such questions be resolved through the declaratory judgment procedure before the Wisconsin Employment Relations Commission subject to judicial review .................. 63-590

Closed session
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Discrimination
County collective bargaining agreement providing for payment of employe contribution to Wisconsin Retirement System only for those deputy sheriffs under age fifty-five violates the federal Age Discrimination in Employment Act ................................................................. 72-91

Grievance procedures
Where Common Council hears a grievance under a procedure established under a signed contract, the Council is engaged in collective bargaining within the meaning of sec. 111.70(1)(d), Stats., and is therefore, for that purpose, not a "governmental body" within the meaning of sec. 19.82(1), Stats., of the Open Meeting Law ................................................................. 67-276

“Hiring above the minimum”
“Raised hiring rate” and “hiring above the minimum” practices utilized by administrator of Division of Personnel pursuant to Wis. Adm. Code section
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"Hiring above the minimum" (continued)

Pers 5.02(1) and (2) are primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub) 65-1978

Joint Committee on Employment Relations

Matters within the scope of bargaining as set forth in sec. 111.91, Stats., agreed to by the Department of Administration and a state employee union are not effective until submitted as tentative agreements to and approved by the Joint Committee on Employment Relations. Action of the Secretary of the Department of Administration in agreeing to so-called non-recrimination clause was within his discretion but the clause itself is unenforceable until approved by the Joint Committee on Employment Relations 67-38

Open meeting

University subunit may discuss promotions not relating to tenure, merit increases and property purchase recommendations in closed session 66-60

Pensions

The Legislature would not commit an unfair labor practice if it unilaterally increased state employee pension benefits and costs. Such increases would not apply to employees in collective bargaining units, however, unless the Legislature so provided expressly or by necessary implication. The Group Insurance Board, however, being a part of the executive branch of government, would commit an unfair labor practice if it unilaterally increased benefits and costs to state employees in collective bargaining units. The removal of state employees from the State Retirement System, the cessation of all contributions thereto, and the removal of a bargaining unit from the provisions of ch. 40 are subjects of collective bargaining under the State Employment Labor Relations Act 64-18

"Raised hiring rate"

"Raised hiring rate" and "hiring above the minimum" practices utilized by administrator of Division of Personnel pursuant to Wis. Adm. Code section Pers 5.02(1) and (2) are primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub) 65-1978

Retirement fund

The Department of Employee Trust Funds is not authorized to administer supplemental retirement funds established by collective bargaining under sec. 111.70, Stats. (Unpub) 59-1979

COLLEGES

See UNIVERSITY

COMMUNITY DEVELOPMENTAL DISABILITIES SERVICE BOARD

See 51.42/51.437 BOARD; MINORS

COMPATIBILITY

Administrative services co-ordinator

County board may create position of administrative services co-ordinator and county clerk; transfer of duties currently performed by the county clerk would be permissible only where some other specific statute permits transfer. County officer cannot be paid separate salary for performing services which are incidental to his office 67-1
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Alderman and police officer husband could continue to hold offices as long as alderman does not violate sec. 946.13(1), Stats., with respect to police officer's contract ................................................................. 63-43

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Compatibility of the office of alderperson with positions of city employe, teacher in city school district and firefighter discussed in general terms..... 67-177

Assistant medical examiner

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Attorney

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CETA official

Office of Commissioner on Policy Board of Consortium of counties under federal Comprehensive Employment and Training Act and office of President of District Vocational Technical and Adult Educational School Board which would be applicant and competitor for funds allocated are incompatible; however, counties under present statutes do not have power to form Consortium for purposes of federal Act where Governor has not designated them as participating units of government under sec. 16.54(6), Stats. ...... 63-453

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Compatibility of the office of alderperson with positions of city employe, teacher in city school district and firefighter discussed in general terms..... 67-177

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Community mental health board member

Incompatible with county hospital trustee when services offered are the same. 65-138

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The positions of county coroner and tribal police officer are incompatible governmental positions but the positions of deputy county coroner and tribal conservation warden are not incompatible ........................................ 77-293

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County assessor

Offices of county assessor and town supervisor are compatible.................. 63-599
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County board member

County board member cannot serve on joint county-city hospital board created under sec. 66.47, Stats., by reason of secs. 59.03(4), 66.11(2), Stats., but city council member could, and whether such member can receive additional remuneration for such service depends on whether he was appointed by the county board chairman, mayor, or mayor and county board chairman ................................................................. 66-145

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Incompatible with member of community mental health board when services offered are same ................................................................. 65-138

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County board in county over 500,000 can provide that members of transit board be appointed by county board chairman and confirmed by county board. However, the supervisor would be ineligible to serve on such transit board .................................................................................. 67-231

Office of county supervisor and position of assistant state public defender are compatible ........................................................................... 75-178

Deputy coroner

The positions of county coroner and tribal police officer are incompatible governmental positions but the positions of deputy county coroner and tribal conservation warden are not incompatible ................................................................. 77-293

Family Court Commissioner’s law partner

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Farmers Home Administration, State Director of

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Judge

Criteria for appointment to district VTAE boards discussed, including changes in status of "employer," "employe" and "elected official" representatives and incompatibility between board membership and the offices of sheriff and circuit judge. Discussion of meeting notice requirements of sections 38.10(2)(d)3. and 19.84(3), Stats. Definition of "public officer" for purposes of section 38.10(1m) relating to participation on board appointment committee 77–256

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Appointment of assistants to the medical examiner who are not able to be qualified as expert witnesses in the field of pathology is not permissible under Dunn County local ordinance. Appointment of law enforcement officers as assistant medical examiners creates an impermissible conflict between the offices 75–28

Licensing board member

A member of a licensing board, as a matter of law, is precluded from holding membership in or acting as an officer of a private professional society or association 62–58

Medical examiner

Appointment of assistants to the medical examiner who are not able to be qualified as expert witnesses in the field of pathology is not permissible under Dunn County local ordinance. Appointments of law enforcement officers as assistant medical examiners creates an impermissible conflict between the offices 75–28

Medical Examining Board

By reason of sec. 15.08(1), Stats., as amended by ch. 221, Laws of 1979, a person is ineligible to continue to serve on the Medical Examining Board while also serving as an officer of the Wisconsin Psychiatric Association, Inc., because such association promotes or furthers the profession of medicine. "Substantial interest" under sec. 19.46(1)(e)2., Stats., also discussed (Unpub) 58–1980

Medical school instructor serving without compensation is ineligible to serve on Medical Examining Board 62–193

Medical School instructor

Medical school instructor serving without compensation is ineligible to serve on Medical Examining Board 62–193

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Natural Resources Board member

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Office of county supervisor and position of assistant state public defender are compatible ................................................................. 75-178

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A probate registrar is an official of the county court, and secs. 256.22 and 59.40, Stats., would prohibit an attorney who serves as probate registrar from practicing law in county court ................................................. 63-55

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Supervisor of the town board

Offices of commissioner of town sanitary district having territory within three towns, and supervisor of town board of town having largest assessed valuation of taxable property of such district, are incompatible where the town board also serves as the appointing authority for commissioners of the town sanitary district .......................................................... 69-108

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Town clerk

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Town supervisor

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Town treasurer

60 OAG 276 (1971) discussed. The conclusion in that opinion is questionable. Until the law is changed offices of town clerk and town treasurer are probably incompatible .......................................................... 68-393

Transit board

County board in county over 500,000 can provide that members of transit board be appointed by county board chairman and confirmed by county board. However, the supervisor would be ineligible to serve on such transit board .......................................................... 67-231

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Wisconsin Psychiatric Association
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Vocational Technical and Adult Educational School Board
Office of Commissioner on Policy Board of Consortium of counties under
federal Comprehensive Employment and Training Act and office of Presi-
dent of District Vocational Technical and Adult Educational School Board
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Consortium for purposes of federal Act where Governor has not designated
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Volunteer fire department
Member of a volunteer fire department organized as nonprofit corporation
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board of directors of such corporation if duly elected. (Unpub) ............ 21-1983

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Building Commission, State
The Building Commission has the power of condemnation under sec.
13.48(16), Stats., for the acquisitions authorized by sec. 13.48(17), as cre-
ated by ch. 90, Laws of 1973. Such power also exists for acquisitions under
sec. 13.48(18), as created by ch. 90, Laws of 1973, provided the acquisitions
fall within the criteria of sec. 13.48(16). The Commission must file the plan
called for in sec. 32.25, Stats., whenever it contemplates engaging in land
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County lands are not subject to condemnation by a town absent express
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Highways

Tenants operating a business or farm are entitled to business or farm replacement costs payable pursuant to sec. 32.19(4m), Stats. 68-114

Local Affairs and Development, Department of

The Department of Local Affairs and Development may enact such rules pursuant to sec. 227.014, Stats., as are necessary to carry out its responsibilities under secs. 32.19 and 32.25 through 32.27, Stats. (Unpub) 96-1977

Madison Redevelopment Authority

The Madison Redevelopment Authority proceeding under sec. 66.431, Stats., to eliminate blight or slums, may include in its plan the ultimate sale of acquired property to the Vocational, Technical and Adult Education District for a campus. (Unpub) 95-1976

Public funds

The question of whether benefits and assistance provided by ch. 409, Laws of 1969, as amended by ch. 103, Laws of 1971, must be afforded an owner of property or his tenant where there is no threat of condemnation, but the property owner, aware that a public agency wants the property, voluntarily sells the property to the public agency requires an exercise of discretion based upon the facts of each transaction, however, the property owner or his tenant to qualify must be displaced by the project and the expenditure of public funds must be for a public purpose 62-168

Redevelopment Authority

Assuming a Redevelopment Authority properly proceeds under sec. 66.431, Stats., to satisfy all statutory and other legal requirements necessary to establish a project area and implement a redevelopment plan therefore, it may proceed to condemn any property within the project area even though some portions of the urban renewal area are not in fact blighted 65-116

Wisconsin Relocation Assistance Act

Condemnors may not offer displaced persons a loan or alternative assistance in lieu of payments authorized in sec. 32.19, Stats. Also, Condemnors do not have the authority to obtain written waivers of relocation assistance benefits as a condition for participation in a particular acquisition program. 70-94

CONDOMINIUM

Condominium Ownership Act (1977) and Chap. 236, Stats. (1983-84) discussed

The legal description of condominium units must conform to the requirements of chapter 703, Stats., the Condominium Law. The requirements of chapter 236, dealing with platting and subdividing, may not be used to legally describe condominium units 75-94

Unit Ownership Act (1963) and Chap. 236, Stats. (1975) discussed

Unless a condominium under ch. 703, Stats., actually involves a division of land, or successive divisions of land, it is not subject to the land platting and subdivision approval requirements of ch. 236, Stats. The extent to which local governments may vary the terms of secs. 236.16(1) and (2) and 236.20(4)(d), Stats., by ordinance discussed 64-175

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Alcohol and drug abuse

Except for those services for which parental consent is necessary under section 51.47(2), Stats., a physician or health care facility may release outpatient or detoxification services information only with the consent of the minor patient provided that the minor is twelve years of age or over. Wis. Admin. Code § HSS 92.06(2) (1986) and 42 C.F.R. § 2.14(b) (1987) 77-187
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Ambulance calls

Under present law, ambulance records relating to medical history, condition or treatment are confidential while other ambulance call records are subject to disclosure under the public records law ........................................ 78-71

Child abuse

A county department of social services has no discretion to refuse to disclose reports and records of child abuse or neglect to the subject of the report or the subject's attorney under section 48.981(7)(a)1. and (c), Stats. ............ 77-84

The duty to report suspected cases of child abuse or neglect under sec. 48.981(3)(a), Stats., prevails over any inconsistent terms in sec. 51.30, Stats.. 68-342

A medical or mental health professional may report suspected child abuse under the permissive provisions of section 48.981(3), Stats., when the abuser, rather than the victim, is seen in the course of professional duties. Section 51.30 does not act as a bar to such reports made in good faith .... 76-39

Child support records

The Department of Health and Social Services should be granted access to otherwise confidential records because that access is necessary to complete a legislatively mandated study. (Unpub) ........................................ 23-1984

County department of social services

A county department of social services has no discretion to refuse to disclose reports and records of child abuse or neglect to the subject of the report or the subject's attorney under section 48.981(7)(a)1. and (c), Stats. . . . . . . . . . . . 77-84

Identification records

Identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody pursuant to sec. 165.83(2), Stats., for confidential reporting to the Department of Justice ........................................ 62-45

Investment Board nominees

Section 19.43(3), Stats., requires that the Ethics Board forward copies of Investment Board nominees' statement of economic interests to members of the Senate committee to which the nomination is referred. The extent of confidentiality of such statements rests in the sound discretion of the Senate committee ........................................ 68-378

Juveniles

A school cannot use confidential information obtained from law enforcement authorities to require students, under threat of expulsion, to participate in group or individual counseling, nor can the school use such information to suspend or expel students. The school can use such confidential information to refer a student to county social welfare agencies or nongovernmental self-help groups, but only if the student consents to such referral ............ 76-134

Except for those services for which parental consent is necessary under section 51.47(2), Stats., a physician or health care facility may release outpatient or detoxification services information only with the consent of the minor patient provided that the minor is twelve years of age or over. Wis. Admin. Code § HSS 92.06(2) (1986) and 42 C.F.R. § 2.14(b) (1987) ............ 77-187

Identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody pursuant to sec. 165.83(2), Stats., for confidential reporting to the Department of Justice ........................................ 62-45

Juvenile officers are not required to provide information in their possession concerning a juvenile to officials of the school attended by the juvenile when requested to do so. The school does not violate the confidential exchange provisions of sec. 48.396(1), Stats., by using the information obtained from a police officer to take disciplinary action against a student as long as the school does not reveal the reason for the disciplinary action to parties not authorized to receive such information. To the extent that 56 Op. Att'y Gen. 211 (1967) is in conflict with this opinion, it is modified ............ 69-179

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Motor vehicle dealers

Financial statements required by law to be filed with Department of Transportation in connection with applications for motor vehicle dealers and motor vehicle salvage dealers' licenses are public records and are subject to inspection and copying under sec. 19.21(2), Stats., subject to limitations contained in court cases cited................................. 66-302

Public records

Information on sex, ethnic background and handicapped status obtained through state employment applications for affirmative action purposes is exempt from disclosure under the Public Records Law, but birth date information is not........................................... 73-26

Settlement agreements

Relationship between the Public Records Law and pledges of confidentiality in settlement agreements discussed ................................................................. 74-14

Snowmobiles

Snowmobile accident reports filed with the Department of Natural Resources pursuant to section 350.15(3), Stats., are not confidential documents ...... 76-56

Veterans

Under current law the authority of the Department of Veterans Affairs to release veterans loan status information to lenders and credit reporting agencies is very limited......................................................... 77-49

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See also COMPATIBILITY; CONTRACTS; PUBLIC OFFICIALS

Banking Review Board

Banking Review Board members are not authorized to act in cases involving banks in which they or their spouses own stock.............................. 75-197

Bids and bidders

A county board supervisor who is an employe of a law firm which has been hired by a third party to represent it in negotiations with the county board does not violate either section 946.13(1)(a) or (b), Stats., if a supervisor has absolutely nothing to do with the contract either as an attorney or as a supervisor................................................................. 75-172

Drug treatment facility

Prior to releasing patient records in response to a warrant or subpoena, a federally funded or federally assisted drug treatment facility must first ascertain that the issuing court has made a finding of "good cause" within the meaning of 21 U.S.C. § 1175(b)(2)(C) in order to avoid the possibility of a fine under 21 U.S.C. § 1175(f). If there is no evidence that a finding of good cause has been made, no state criminal law is violated by refusing to release drug treatment records ................................................................. 72-12

Human services records

Before client information is released to another division within a county community human services department, a written and informed consent is necessary. The community human services board and the director may view client information without a written and informed consent for any purpose related to their powers and duties................................................................. 69-273

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The State of Wisconsin Investment Board lacks the statutory authority to place one of its board members or an employe on the board of directors of a private corporation................................................................. 75-213
CONFLICT OF INTEREST (continued)

Partial disclosure

A state public official who requests and receives confidential advice from State Ethics Board under sec. 19.46(2), Stats., does not waive confidentiality by partial disclosure of advice. (Unpub) .................................................. 17-1975

Private interest in public contracts

Section 946.13, Stats., which prohibits private interests in public contracts, applies to county board or department purchases aggregating more than $5,000 from a county supervisor-owned business. 76-178

Section 946.13, Stats., prohibiting private interest in public contracts may impose criminal liability upon the University of Wisconsin employees who in their private capacities deal contractually with the State of Wisconsin to provide services and equipment. (Unpub) ........................................... 64-1977

Where the village board administers a community development block grant program, a member of the village board would violate section 946.13(1)(a), Stats., if he or she obtained a loan in excess of $5,000 under the program. Acting in his private capacity as a contractor, the board member would violate section 946.13(1) if he contracted to perform the construction work for a third person who obtained a loan under the program ......................... 76-278

Public officials

The office of superintendent or administrator of a county health care center providing mental health related services, appointed under section 46.19(1), Stats., and the office of member of the county community programs board, appointed under section 51.42(4), are incompatible ........................................... 77-150

School

Juvenile officers are not required to provide information in their possession concerning a juvenile to officials of the school attended by the juvenile when requested to do so. The school does not violate the confidential exchange provisions of sec. 48.396(1), Stats., by using the information obtained from a police officer to take disciplinary action against a student so long as the school does not reveal the reason for the disciplinary action to parties not authorized to receive such information. To the extent that 56 OAG 211 (1967) is in conflict with this opinion, it is modified.......................... 69-179

School Board member

The enactment of the marital property law does not change the applicability of section 946.13, Stats., to the member of a governmental body when that body employs the member's spouse. As was the case before the marital property law, the member of the governmental body avoids violation of section 946.13 if in his private capacity he does not negotiate, bid on or enter into the employment contract and in his public capacity he does not participate in the making of the contract and does not exercise discretion in the performance of the contract .................................................. 76-15

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The enactment of the marital property law does not change the applicability of section 946.13, Stats., to the member of a governmental body when that body employs the member's spouse. As was the case before the marital property law, the member of the governmental body avoids violation of section 946.13 if in his private capacity he does not negotiate, bid on or enter into the employment contract and in his public capacity he does not participate in the making of the contract and does not exercise discretion in the performance of the contract .................................................. 76-15

University employe

Where University has obtained ethnic or racial information about its employees under a necessary pledge of confidentiality, it need not divulge such information to a Senate committee where the committee has refused to issue a subpoena requested by the chairman and the needs of the committee can apparently be satisfied without such disclosure. (Unpub) ....................... 79-1977
CONSERVATION

See also FISH AND GAME

Fees

Assembly Bill 894 as drafted is constitutional and allows the State to contribute $1 of the $3 fee collected from a state waterfowl hunting stamp to private nonprofit organizations for development of waterfowl propagation areas in Canada .......................................................... 67-56

Ordinances, applicability of

A county ordinance passed under section 92.11, Stats., may be applicable to incorporated as well as unincorporated areas of the county, whereas a county ordinance passed under section 92.16 is applicable only in the unincorporated areas of the county .......................................................... 77-87

Taxation

Section 70.11(24), Stats., is unconstitutional as violative of the Uniformity Clause in Wis. Const. art. VIII, sec. 1 .................................................. 66-326

Wardens, fresh pursuit onto reservation

State and county conservation wardens and Sheriff's officers have authority under state law to arrest a Menominee Indian suspect on the reservation following fresh pursuit for an off-reservation violation of state law, if the arrest is one the officer is otherwise authorized to make. Although the State is generally obliged to comply with Menominee tribal extradition procedures, the State's personal jurisdiction over an Indian arrested under the circumstances described is probably not pre-empted by federal law........... 74-245

Wardens, powers of arrest

A conservation warden, acting pursuant to the arrest power conferred upon him by sec. 29.05(1), Stats., may arrest with or without a warrant, any person detected in the actual violation, or any person whom such officer has reasonable cause to believe guilty of a violation of ch. 350, except where applicable to highways. A conservation warden has the power under sec. 29.05(1), Stats., to stop any snowmobile and to make necessary inquiries, if he has reasonable cause to believe there is a violation of ch. 350, and to conduct a limited weapons search where he reasonably suspects that he or another is in danger of physical injury........................................ 64-166

The power of arrest of DNR wardens is limited by statute; they do not have general law enforcement authority except on state-owned lands, and property under DNR's supervision, management and control including the power to arrest violators of state law on all bodies of water which lie exclusively within such area, as determined by facility boundaries .......... 68-326

CONSTABLES

See POLICE

CONSTITUTIONAL LAW

Amendment to the constitution voided by court order

The Legislature has the duty to resubmit a proposed constitutional amendment to the people when the previous election at which the amendment was submitted has been voided by court order, notwithstanding the fact that an appeal has been taken from the order voiding the election ...................... 65-42

Article XIII, section 11 of the Wisconsin Constitution discussed ................. 77-237

Constitutional amendment voided by court order

The Legislature has the duty to resubmit a proposed constitutional amendment to the people when the previous election at which the amendment was submitted has been voided by court order, notwithstanding the fact that an appeal has been taken from the order voiding the election ...................... 65-42
Due process; summary suspension of license

The Department of Regulation and Licensing has the authority to promulgate rules for procedures for the summary suspension of occupational licenses. Summary suspension of occupational licenses may constitutionally be invoked only in emergency situations and then only if the licensee is afforded a prompt hearing on whether the summary suspension should continue until a decision is made after a full hearing on the merits of the license deprivation.

Equal protection

Representation provisions of sec. 66.945(3), Stats., do not violate the equal protection clause.

First Amendment

Section 13.72, Stats., which prohibits anonymous paid advertising favoring or opposing pending legislation, is unconstitutional.

The administrative rule of the Department of Transportation granting an exemption on religious grounds from the photograph-taking requirement of sections 343.17(2) and 343.14(3), Stats., is violative of the First Amendment, United States Constitution, and of Wis. Const. art. I, § 18.

Privileges and Immunities Clause of the U.S. Constitution

Section 452.11(1), Stats., requiring nonresident real estate brokers to maintain an active place of business and prohibiting them from employing brokers or salespersons in this state, is unconstitutional since it violates the privileges and immunities clause of the United States Constitution.

Rent control ordinances

State statutory enabling legislation is required to authorize enactment of typical rent control ordinances. Assembly Substitute Amendment 1 to 1973 Assembly Bill 95 deemed incomplete and constitutionally infirm.

Supremacy Clause of U.S. Constitution

State regulation prohibiting single-hulled barges and requiring double-hulled barges on the Mississippi River adjacent to Wisconsin would violate the Supremacy Clause of the United States Constitution.

Uniformity clause

Section 70.325, Stats., violates article VIII, section 1 of the Wisconsin Constitution.

CONSTITUTIONALITY

Annuity

If sec. 356 of 1977 Senate Bill 720 or the amendment to sec. 356 contained in Senate Amendment 3 to Senate Bill 720 were enacted, either would be constitutionally invalid.

Bail revocation

Chapter 112, sec. 10, Laws of 1979, which allows courts to revoke bail for violating judicially imposed conditions of bail does not violate Wis. Const. art. I, sec. 8.

Budget requests and employee lobbying

Section 19.45(12), Stats., is constitutional.

Contract clauses and the 1987 Budget Bill

Section 684r of the 1987 budget bill, which limits the distribution from the special performance dividend to only those annuitants receiving a supplemental benefit, does not violate the United States or Wisconsin Constitutions.
CONSTITUTIONALITY (continued)

Delayed refund claims

1977 amendment to sec. 70.511(2), Stats., which allows municipalities to pass on part of delayed refund claims to other taxing districts for which taxes were collected, does not violate the uniformity provision of Wis. Const. art. VIII, sec. 1. For purposes of the amendment, "taxing districts" includes school and VTAE districts .................................................. 69-220

Due process requirements

Proposed legislation to create sec. 347.483 of the statutes, which would prohibit the use and sale of radar detectors meets due process requirements and is constitutionally sound. Moreover, such a law would not violate the Commerce or Supremacy Clauses of the U.S. Constitution .................... 68-256

Executive service exemptions

Section 3017(2) of 1985 Wisconsin Act 29 (the 1985 State Budget Bill) violates article IV, section 18 of the Wisconsin Constitution ....................... 75-192

Governor's partial vetoes

Certain of the Governor's partial vetoes to ch. 107, Laws of 1977, were invalid. The entire Bill should be returned to the originating house for reconsideration .......................................................... 66-310

Homestead property

Proposals for exemptions of "homestead property" from local property taxation probably are unconstitutional under the Equal Protection Clause of the state and federal constitutions and the Tax Uniformity Clause of the state constitution .................................................. 66-337

Income tax laws

Discussion of constitutional and policy considerations associated with federalization of state income tax laws ............................................ 66-331

Legislators

1979 AB 353, requiring candidates for the Legislature to declare whether they will receive a lower salary, conflicts with election bribery laws, sec. 12.11, Stats. Further, if enacted, it would violate the constitutional principle that the Legislature cannot impose additional qualifications to office. Finally, its constitutionality under the Fourteenth Amendment to the U.S. Constitution is subject to question ...................................................... 68-214

Lobbying law

Certain provisions of Substitute Amendment 1 to 1977 Senate Bill 286, revising subch. III of ch. 13, Stats., the State's Lobbying Law, are incompatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures and are therefore probably unconstitutional. The major portion of the bill is constitutional. (Unpub) .......................................................... 15-1978

In principle, the purposes sought to be accomplished by Assembly Substitute Amendment 3 to 1977 Assembly Bill 93, revising subch. III of ch. 13, Stats., the State's Lobbying Law are compatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures. Some of the means selected to accomplish those purposes may, on their face or as applied violate citizens' First Amendment right of petition .......................................................... 67-85

Moraine Park District

That part of sec. 67.12(12)(e)5., Stats., requiring the petition requesting that a referendum be held on a vocational, technical and adult education district board's resolution to incur indebtedness to contain the signatures of electors from each county in the district equal to at least 2.5% of the population of the county is unconstitutional as applied to the Moraine Park District. Equal protection of the laws is denied to electors in certain counties of the district in that their signatures on the petition, because of the
CONSTITUTIONALITY (continued)
Moraine Park District (continued)

wide disparity in population among the counties, are accorded greatly disproportionate weight as compared to the signatures of electors in other counties ................................................................. 66-349

Public lands

Proposed statutory language to ch. 24, Stats., does not meet constitutional and other standards. Alternate proposal offered. (Unpub) .................. 14-1981

Radar detectors

Proposed legislation to create sec. 347.483 of the statutes, which would prohibit the use and sale of radar detectors meets due process requirements and is constitutionally sound. Moreover, such a law would not violate the Commerce or Supremacy Clauses of the U.S. Constitution ................. 68-256

Tax Increment Law

Tax Increment Law appears constitutional on its face and the Department of Revenue should carry out its duties and responsibilities under the Law as directed by the Legislature ........................................... 65-194

Textbook loans to school students ........................................ 77-66

Unemployment Compensation Fund

Borrowing money from the federal government to replenish Wisconsin's unemployment compensation funds under the arrangements prescribed by federal law, does not contravene either Wis. Const. art. VIII, sec. 3 or 4 .......................... 71-95

Uniformity clause

Section 70.325, Stats., violates article VIII, section 1 of the Wisconsin Constitution ......................................................................... 77-128

Work of internal improvement

Dredging a navigable waterway to alleviate periodic flooding is not a prohibited "work of internal improvement" within the meaning of Wis. Const. art. VIII, sec. 10 ................................................................. 69-176

CONTEMPT OF COURT

See also COURTS

"Good time" credit

A person confined in the county jail for civil (remedial) contempt of court is not eligible for "good time" credit under section 53.43, Stats. .......... 74-96

Juvenile

Courts of record in the State of Wisconsin have the authority to hold juveniles in contempt of court; limited circumstances under which sanction of imprisonment may be imposed discussed ........................................ 70-98

CONTRACTS

Bids and bidders

The Department of Transportation may make a reevaluation of a bidder's prior qualification or reject the lowest bid on the ground of irresponsibility of the successful bidder, but, in both instances, notice and an opportunity for hearing on such reevaluation must be given to the contractor............. 63-60

The preference for Wisconsin businesses included in sections 16.75 and 16.855, Stats., applies only when a Wisconsin business and an out-of-state business submit identical, low bids ........................................ 74-47

CESA service

1971 Assembly Bill 1577 would violate the Establishment Clause of the First Amendment to the U.S. Constitution and sec. 18 of art. I of the Wisconsin
CONTRACTS (continued)

CESA service (continued)

Constitution. Guidelines to possibly avoid constitutional objection to CESA service contracts with private schools discussed ........................................ 62-75

Erroneous bid

Where a governmental entity determines that an apparent low bidder is entitled to relief from an erroneous bid, under sec. 66.29(5), Stats., the bidder should be allowed to correct his bid. Normally, if the bid is otherwise in order and still remains the low bid after the adjustment necessary to correct the mistake, the bid should be accepted. It is questionable whether any actionable claim for damages would survive a determination that a bidder was entitled to relief from his erroneous bid under the provisions of sec. 66.29(5), Stats. .................................................................................. 62-144

Fire protection

A city probably can contract with a county to provide fire protection to a county institution located outside of boundaries of said city .................. 62-84

Franchises

Wisconsin Fair Dealership Law, ch. 135, Stats., discussed ...................... 66-10

Milwaukee County zoo and museum

The Milwaukee County board may not delegate the exclusive authority to approve contracts for budgeted public works projects to the museum board or to the zoological board. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the meaning or intent of municipal ordinances ................................................................. 77-120

Private interest in public contracts

A county board supervisor risks violations of sec. 946.13, Stats., where he is appointed counsel for indigent defendants and fees exceed $2,000 per annum ......................................................... 62-62

Alderman and police officer husband could continue to hold offices as long as alderman does not violate sec. 946.13(1), Stats., with respect to police officer's contract .................................................................................. 63-45

1. Corporation counsel employed on part-time basis cannot accept employment as defense counsel for those whose interests are directly adverse to the state or county. 2. Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in prosecuting a state case. 3. County Board cannot change status of office of district attorney from one in which he is permitted to practice law privately to one in which he is not, so as to be effective during the term for which such officer was elected ....................................................... 67-31

Appointment of counsel for indigent involves a public contract ............... 62-118

County supervisor who is pharmacist is probably not in violation of sec. 946.13, Stats., when he furnishes prescription services to medicaid patients where state is solely liable for payment ................................................................. 64-108

Land conservation committee responsibilities and prohibition of private interest in public contracts discussed ................................................................. 76-184

Office of Commissioner on Policy Board of Consortium of counties under federal Comprehensive Employment and Training Act and office of President of District Vocational Technical and Adult Educational School Board which would be applicant and competitor for funds allocated are incompatible; however, counties under present statutes do not have power to form Consortium for purposes of federal acts where Governor has not designated them as participating units of government under sec. 16.54(6), Stats. .................................................................................. 63-453

Section 946.13, Stats., prohibiting private interest in public contracts may impose criminal liability upon the University of Wisconsin employees who in their private capacities deal contractually with the State of Wisconsin to provide services and equipment. (Unpub) ....................................................... 64-1977
CONTRACTS (continued)

Public works

Towns must let “public contracts” pursuant to the competitive bidding procedures of secs. 60.29(1m) and 66.29, Stats. Contracts which are not “public contracts” are not subject to either advertising or competitive bidding procedures. The definition of public contract includes “supplies” and “materials,” but does not include “equipment.” Police cars need not be purchased by competitive bid under secs. 60.29 and 66.29, Stats., since they are “equipment” and not “supplies [or] material” 66-284

Section 946.13, Stats., which prohibits private interests in public contracts, applies to county board or department purchases aggregating more than $5,000 from a county supervisor-owned business 76-178

Snow removal

Section 86.105, Stats., does not authorize counties to contract to plow private parking lots. Because of increased availability of private sector alternatives any activity engaged in pursuant to said statute should meet the stringent restrictions set forth in 50 OAG 98 (1961), in an analogous context 67-304

State contracts

State contracts for the purchase of professional architectural and engineering consulting services must comply with the bidding requirements of sec. 16.75(1), Stats., unless waived by the Governor 65-251

State highways

Contracts providing for the maintenance of state highways by the counties may be executed by the county highway committees without the approval of the county boards 65-140

Termination of joint tenancy

A certificate of termination of joint tenancy is not an instrument of conveyance which requires a real estate transfer return under sec. 77.22(1), Stats. (Unpub) 19-1982

“Turnkey” construction method

County housing authority, in providing housing for the low income and elderly, can, by reason of sec. 59.075(4), Stats., utilize “Turnkey” construction method without bids 66-31

Where the village board administers a community development block grant program, a member of the village board would violate section 946.13(1)(a), Stats., if he or she obtained a loan in excess of $5,000 under the program. Acting in his private capacity as a contractor, the board member would violate section 946.13(1) if he contracted to perform the construction work for a third person who obtained a loan under the program 76-278

COOPERATIVE EDUCATIONAL SERVICES AGENCIES

Contracts, constitutional consideration

1971 Assembly Bill 1577 would violate the Establishment Clause of the First Amendment to the U.S. Constitution and sec. 18 of art. I of the Wisconsin Constitution. Guidelines to possibly avoid constitutional objection to CESA service contracts with private schools discussed 62-75

Driver education programs in schools

A school district and a cooperative educational service agency may not, without legislative authority, contract with a private driving school and receive state aid for pupil driving instruction services performed by such driving school 76-26

Real estate

Legislative grant of power to CESA districts to “acquire space” includes power to purchase real estate 68-139
COPYRIGHT

Computerized records

Computerized compilation of bibliographic records discussed in relation to copyright law; under public records law requester is entitled to copy of computer tape or a printout of information contained on the tape ........... 75-133

Natural Resources, Department of

The Department of Natural Resources may seek to obtain copyrights for publications entitled "Walleye Waters," "Trout Waters," "Musky Waters" and "Canoe Waters" which were written and compiled by state employees on state time provided the copyrights have not been invalidated due to the omission of the copyright notice ................................................. 76-162

Online Computer Library Center (OCLC) compilations

Computerized compilation of bibliographic records discussed in relation to copyright law; under public records law requester is entitled to copy of computer tape or a printout of information contained on the tape ........... 75-133

CORONER

See also COUNTY MEDICAL EXAMINER

Abolishing elective office

County Board in county under 500,000 can abolish elective office of coroner and implement medical examiner system to be effective at end of incumbent coroner's term.

Language in 61 OAG 355 (1972) inconsistent herewith is withdrawn ........ 63-361

Accidents

Where accident occurs in one county and victim is transported to another county, and death occurs there, coroner where death occurs has duty to immediately report death to coroner of county where crime, injury or event occurred, and coroner of latter county has authority to investigate and duty to hold inquest if he deems it necessary or if directed by district attorney of his county ................................................................. 62-127

Authority

With one exception, sec. 979.125, Stats., does not operate as a limitation on the authority of the coroner to order the conducting of autopsies under secs. 979.01 and 979.121, Stats................................................. 68-55

Cremation permits

Chapters 69 and 157, Stats., are not alternatives to the requirement in section 979.10 that anyone cremating a corpse first obtain a cremation permit from the coroner. University medical schools or anyone else qualified to receive a corpse can, however, receive a corpse for research without first obtaining the cremation permit. Section 979.10 only requires that the permit be obtained before the corpse is cremated ......................................................... 77-218

Deputy, appointment of

A county coroner can legally appoint a deputy coroner after the time limit for such appointment set forth in section 59.365(1), Stats....................... 74-198

Fire department assistant chief

The offices of coroner and deputy coroner are incompatible with that of city police officer; and the office of coroner is incompatible with that of assistant chief of a volunteer fire department ............................................. 78-49

Menominee

The positions of county coroner and tribal police officer are incompatible governmental positions but the positions of deputy county coroner and tribal conservation warden are not incompatible ........................................ 77-293

Open Meeting Law

Open Meeting Law does not apply to a coroner's inquest ....................... 67-250

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CORONER (continued)

Police officer

The offices of coroner and deputy coroner are incompatible with that of city police officer; and the office of coroner is incompatible with that of assistant chief of a volunteer fire department .......................................................... 78–49

Powers

The County Board of a county with a population less than 500,000 may abolish the position of undersheriff and transfer all statutory duties and powers of an undersheriff, including those set forth in sec. 59.21(8)(b)1., Stats., to the civil service position of chief deputy sheriff, created under sec. 59.21(8), Stats. The coroner does not exercise the powers and duties of the sheriff, under the authority of sec. 59.34(2), Stats., when there is no sheriff, if the functions, duties, responsibilities and privileges of undersheriff have been properly transferred, pursuant to sec. 59.025(3)(b), (c), Stats., to the position of chief deputy sheriff, which is created and filled, pursuant to sec. 59.21(8), Stats. (Unpub) ........................................................ 25–1982

CORPORATION COUNSEL

See also COUNTY CORPORATION COUNSEL; DISTRICT ATTORNEY

Conflict of interest

1. Cannot accept employment as defense counsel for those whose interests are directly adverse to the state or county if employed part-time as corporation counsel. 2. Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in prosecuting a state case. 3. County Board cannot change status of office of district attorney from one in which he is permitted to practice law privately to one in which he is not, so as to be effective during the term for which such officer was elected.......................................................... 67–31

County Board

Although a county board in a county with a population of under 500,000 has no permanent or continuing authority to retain special counsel, it may obtain special counsel with the approval of the circuit court under sec. 59.44 on a case-by-case basis in those situations where the district attorney or corporation counsel is unable to continue to perform his or her duties without potentially violating the rules of professional conduct established by the Wisconsin Supreme Court. Unless otherwise provided by statute, in those situations where legal services are required in civil matters and the provisions of sec. 59.44 cannot be utilized, the district attorney or corporation counsel has the exclusive authority to perform or supervise the provision of those services .......................................................... 72–113

County Board may not by resolution require either a full time district attorney or the corporation counsel to advise town officers on matters of strictly town business, and may not engage special counsel for such purpose...... 72–179

County Department of Social Services

The duty to represent the county Department of Social Services rests solely with the district attorney or corporation counsel and county boards lack the authority to engage and compensate any other person or entity for such work .......................................................... 70–136

District attorney

District attorneys, whether compensated on a full-time or part-time basis, have a duty to represent the interests of the county and state in child support and paternity matters under sec. 46.25, Stats., petitions for a child alleged to be in need of protection or services under sec. 48.13, Stats., mental commitments, pursuant to sec. 51.20, Stats., alcohol commitments under sec. 51.45, Stats., and petitions for appointment of a guardian under
CORPORATION COUNSEL (continued)

District attorney (continued)

sec. 880.295(1), Stats., where the County Board has not assigned such
duties to a county corporation counsel ........................................... 70-148

Duties of D.A. cannot be diminished or enlarged by County Board except
where certain duties are transferred to corporation counsel. (Unpub) .... 76-1977

51.42/51.437 Boards

Corporation counsel should provide legal advice and representation to 51.42
and 51.437 Boards, as well as to the County Board .................................. 63-468

Section 51.42(5)(h)7. permits multicounty 51.42/51.437 Board to retain pri­

vate legal counsel only where the Corporation Counsel of each county, or
District Attorney of each county not having a Corporation Counsel, noti­
ifies the Board that he or she is unable to provide specific services in a timely
manner. Litigation, as used in section 59.44(3), applies only to civil court
proceedings and does not include grievance proceedings or proceedings
before an administrative agency .......................................................... 73-8

Paternity matters

Duties of corporation counsel in county over 500,000 concerning paternity
matters, under secs. 52.21-52.45, Stats., cannot be transferred to legal
counsel employed in a separate department created pursuant to powers in
sec. 59.025, Stats. (Unpub) .......................................................... 22-1978

Police legal advisor

County Board has no power to authorize sheriff to employ a police legal
advisor to give day-to-day advice to the sheriff unless such person is an
assistant district attorney or assistant county corporation counsel ........... 65-245

Special counsel

Although a county board in a county with a population of under 500,000 has
no permanent or continuing authority to retain special counsel, it may
obtain special counsel with the approval of the circuit court under sec.
59.44 on a case-by-case basis in those situations where the district attorney
or corporation counsel is unable to continue to perform his or her duties
without potentially violating the rules of professional conduct established
by the Wisconsin Supreme Court. Unless otherwise provided by statute, in
those situations where legal services are required in civil matters and the
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County Board may not by resolution require either a full time district attor­
ney or the corporation counsel to advise town officers on matters of strictly
town business, and may not engage special counsel for such purpose........ 72-179

CORPORATIONS

Apartment leases

A corporation not licensed as a real estate broker does not violate a ch. 452,
Stats., if it allows its nonlicensed employees to negotiate for and sign apart­
ment leases of property owned by the corporation. Permitted limits of
nonlicensed independent contractor agents discussed ................................ 70-23

Attorneys

Restrictions on business corporations providing medical, legal and dental
services discussed ............................................................................. 75-200

Bonds

Industrial development revenue bonding under sec. 66.521, Stats., is not
available for a project for a new automobile showroom, warehouse, and
repair facility of a retail automobile dealership .................................. 62-141
CORPORATIONS (continued)

Certificate of incorporation

Section 180.47, Stats., cannot accurately be viewed as correcting, waiving or curing non-compliance with the statutory conditions governing the initial incorporations of a business, which are required to precede the issuance of a certificate of incorporation under sec. 180.46, Stats., since sec. 180.47, Stats., clearly authorizes the State to assert such non-compliance for the purpose of cancelling or revoking the certificate of incorporation. The Attorney General should be advised of any instances where certificates of incorporation are erroneously issued so that the State may assert such non-compliance for the purpose of cancelling or revoking such certificates. Although sec. 180.47, Stats., does not apply to erroneously issued certificates of amendment, appropriate action should be taken to cancel or revoke any such certificates ................................................................. 62-160

Chapter 180

A chapter 180 corporation cannot offer general trust services to the public, notwithstanding compliance with section 223.105, Stats. .................. 78-153

Citizens Utility Board

The creation of a corporation, the Citizens Utility Board, under ch. 199, Stats., is constitutional ............................................................. 69-153

The Citizens Utility Board, a body corporate and politic, legally dissolved and reorganized as a non-stock, non-profit corporation .................. 75-168

Credit unions

Organizations and associations eligible for credit union membership under sec. 186.05(1)(b), Stats., defined and discussed ......................... 65-77

Dentistry

Restrictions on business corporations providing medical, legal and dental services discussed .................................................. 75-200

Drafting of Articles of Incorporation

The drafting of Articles of Incorporation, and other corporate documents to be filed with the Secretary of State constitutes the practice of law within the meaning of sec. 256.30(2), Stats. Any relaxation of this restriction is a question for the Wisconsin Supreme Court ........................................ 65-173

Filing fee

A foreign corporation filing application for a certificate of authority to transact business in this State is not entitled to any credit against the filing fee due under sec. 180.87(1)(i), Stats., even though some part or all of the capital of the newly applying corporation had generated the payment of fees by some other corporation which had previously employed such capital in this State .................................................. 63-535

Foreign corporations

Under sec. 180.833(1)(k), Stats., the Secretary of State may require that foreign corporations file appropriate information and statements, for the purpose of assisting him in determining the accuracy of their reports indicating the proportion of their capital employed in the State. However, the Secretary of State may not treat such information and statements as a public record .................................................. 62-261

Informal corporate action

Articles of Incorporation which purport to allow informal corporate action by written consent of less than all parties entitled to vote are clearly inconsistent with the provisions of sec. 180.91, Stats., and are prohibited by ch. 180, Stats. .................................................. 62-240
CORPORATIONS (continued)
Investment Board, Wisconsin

The State of Wisconsin Investment Board lacks the statutory authority to place one of its board members or an employe on the board of directors of a private corporation ............................................................... 75-213

Leases
Wis. Const. art. VIII, sec. 7(2)(d), does not preclude the state from entering into a lease with a nonprofit corporation or other entity furnishing facilities for governmental functions unless there is an attempt to use the lease as part of a scheme for the State to acquire title to or the use of a facility without utilizing state general obligation bonding ........................................................................ 62-296

Non-profit
An organization qualifies as a medical education and research organization under section 448.08(5), Stats., if its dominant purpose and primary function is to provide medical education and conduct medical research and if it is otherwise a nonprofit organization. A parent and wholly-owned subsidiary corporation, together, may qualify as an organization. (Unpub) .......... 31-1986

Optometry
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Bridges

County aid available for construction of bridges under sec. 81.38, Stats., may be provided only to towns, and not to cities or villages, and may not be provided once a town commences a bridge project. County aid for bridge projects may be provided to cities and villages under sec. 83.03(1), Stats. Such aid may be provided once a municipality has begun work on a bridge project but not after the project has been completed. (Unpub) .............. 56-1982

Bus company subsidy

Section 59.968(3), Stats., authorizes a county subsidy when a bus company operates a route which is principally located within the county .......... 65-191

Citations for ordinance violations

Without statutory authority to do so, a county cannot use citations for violations of ordinances that have certain statutory counterparts. Section 66.119(3)(b), Stats., only authorizes the use of citations for violations of ordinances other than those for which a statutory counterpart exists ...... 76-211

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Corporation counsel

Duties of corporation counsel in county over 500,000 concerning paternity matters under secs. 52.21-52.45, Stats., cannot be transferred to legal counsel employed in a separate department created pursuant to powers in sec. 59.025, Stats. (Unpub) ........................................ 22-1978

Criminal law

The authority of county officials to offer rewards for the arrest or conviction of persons violating the criminal law is limited to the circumstances set forth in sec. 59.25(2), Stats......................... 63-555

Deer shining

County boards do not have authority to legally proscribe deer shining since the Legislature has delegated such authority to the Department of Natural Resources ........................................ 68-81
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District Attorney

Statutorily prescribed duties of the District Attorney cannot be diminished or enlarged by the County Board except where certain duties are transferred to the County Corporation Counsel by Board resolution. (Unpub) 76-1977

Dog license fund

Where a county board has designated the County Humane Society or other organization to provide a dog pound, section 174.09(2), Stats., requires any surplus in excess of $1,000 must be paid over annually by the County Treasurer to such society and no consent of the respective collecting towns, villages and cities is needed 74-65

Elections

Failure to publish notices of an election on the last Tuesday in May, the first Tuesday in June, and the second Monday preceding an election on the question of removal of a county seat and failure by the County Clerk to distribute the ballots will not invalidate the election where it appears that the voters were well informed of the time, place, and manner of the election and the issue involved, and a majority of the qualified voters who went to the polls, excluding those who had an opportunity to vote on the question of removal but chose not to, voted in favor of removal 66-219

Employment Trust Funds, Department of

The Department of Employe Trust Funds is not authorized to administer supplemental retirement funds established by collective bargaining under sec. 111.70, Stats. (Unpub) 59-1979

Entitlement lands

Previous opinions on the distribution of payments in lieu of taxes discussed. (Unpub) 16-1982

Federal aid

Section 59.20(13), Stats., does not control the distribution of monies received from the federal government under 31 U.S.C. sec. 1601. OAG 45-78, issued June 9, 1978, is withdrawn 67-277

51.42/51.437 Boards

Although a multi-county combined 51.42/51.437 board may make cuts in non-emergency services to the residents of a county that does not provide its proportionate share of funding to that Board, an individual county may not escape its statutory obligation to provide non-emergency services to its residents under sections 51.42(1)(b) and 51.437(4), Stats., by refusing to make such funding available to the combined board 73-96

Liability, reimbursement and collection for services provided under secs. 51.42 and 51.437, Stats., discussed 65-49

Section 51.42(5)(h)7. permits multicounty 51.42/51.437 Board to retain private legal counsel only where the Corporation Counsel of each county, or District Attorney of each county not having a Corporation Counsel, notifies the Board that he or she is unable to provide specific services in a timely manner. Litigation, as used in section 59.44(3), applies only to civil court proceedings and does not include grievance proceedings or proceedings before an administrative agency 73-8

Fire department

Town having fire department must provide protection for county-owned property such as a landfill site, and in case of failure to do so shall be liable for services of any fire department responding to request to fight fire in such town. County in its discretion can reimburse town for reasonable costs of services provided to landfill site within town 67-6

Foster home

County agencies do not have authority to directly operate. (Unpub) 39-1976
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Funds of residents in county infirmary

Administrator or trustees of county infirmary cannot deposit funds of residents in interest bearing account and use interest to purchase items for common use of residents. (Unpub) ............................................ 42-1975

Groundwater pollution

To accomplish public health protection as well as prevention of groundwater pollution, a county health commission, where such activity is undertaken with the consent of the property owner, can authorize its staff to enter private property for the purpose of determining the location of an existing private sewage disposal system. If consent of the property owner to such activity on his premises is not obtained, it can only be undertaken by county health commission staff pursuant to special inspection warrant obtained under sec. 66.122, Stats. ........................................ 63-337

Housing

A county cannot use county funds and county employees to improve, reconstruct or repair homes of private citizens who do not qualify for aid under ch. 49, Stats., without utilizing a housing authority pursuant to secs. 59.075, 66.40–66.404, Stats. Employees of housing authority are not county employees ........................................ 64-106

Section 59.07(1), Stats., is not sufficiently broad to permit county to furnish housing for elderly and low-income persons where specific statutes provide for furnishing of such housing. ........................................ 63-297

Human services board

A county human services board may not delegate the duties described in section 51.437(9)(am), (b), (e) and (g), Stats., to the long-term support planning committee created by section 46.27(4) ........................................ 78-158

Human services department

A county department of social services or county department of human services may not contract with other agencies to obtain section 48.981, Stats., reporting or investigatory services in situations other than the performance of independent investigations required by section 48.981(3)(d). A cooperative contract might be possible under section 66.30(2) in order to effectuate this purpose but the services must be furnished by the county department as defined in section 48.02(2g) and not by any other public or private agency ........................................ 76-286

Institutions board members; appointment of

Persons appointed by County Executive and confirmed by County Board to County Veterans Service Commission, single county 51.42 Board or County Institutions Board serve for statutory term as stated in years and until their successors are appointed, confirmed and qualified. Persons appointed to vacancies in such positions also serve until their successors are appointed, confirmed and qualified. Difference between personal term of officer and statutory term which pertains to office discussed ............... 73-99

Insurance

Liability of self-insured county performing state highway maintenance is not increased by virtue of maintenance contract with State ........................................ 69-137

Investment of county funds

The County Treasurer does not have power to manage and administer the investment of county funds, such powers by reason of sec. 59.75(1), Stats., being for the County Board or of a committee thereof, and since they involve the exercise of discretion on a continuing basis, cannot be delegated to the Treasurer. The County Board may authorize the Treasurer to deposit certain funds in inactive deposits at interest in county depositories under strict standards established by the Board ........................................ 68-133
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Jail

A county cannot meet the requirements of sec. 59.68(1), Stats., by constructing a jail outside the county seat and maintaining a facility at the county seat to be used only for securing defendants on the day of trial. A facility housing county jail functions other than rehabilitation may not be located outside the county seat. (Unpub) .................................................. 32-1975

Lands sold for taxes

An ordinance enacted by a city council to purchase lands sold for taxes under sec. 74.43(3), Stats., only becomes operative where the County Board has not acted to purchase such lands under sec. 74.44(1), Stats. Advertising and bidding requirements of sec. 75.69(1), Stats., are not applicable to a sale to a city under sec. 75.69(2), Stats., but are applicable to a subsequent sale by a city, unless the transfer still falls within the exemptions in sec. 75.69(2), Stats. ................................................................. 67-150

Section 75.36, Stats., provides that a county need not assume and pay all unpaid or delinquent municipal taxes, assessments and charges due on a parcel of property at the time the county acquires such property by tax deed. The statute also provides that the county is not required to assume and pay any such taxes which remain unrecovered upon the sale of such property because the sum realized was insufficient to pay all such outstanding municipal tax obligations. (Unpub.) .................................................. 31-1987

Subsections (5), (6) and (7) of section 75.35, Stats., created by 1987 Wisconsin Act 27 first apply to sales of property the county acquired at a section 74.39 tax sale on or after the effective date of section 3203(47)(c) of 1987 Wisconsin Act 27 ............................................................ 77-133

Law enforcement contracts with municipalities

Under section 66.30, Stats., and subject to some limitation, a county may furnish certain supplemental law enforcement services to villages and towns within the county. The County Sheriff's consent to provide such supplemental services and the Sheriff's approval of such a contract is required ....... 75-119

Library funds

County Board cannot authorize single-county federated library system board to maintain special bank account into which are deposited system revenues and from which are paid system expenses. (Unpub) .................................................. 81-1977

Library tax

A municipality, otherwise qualified, is entitled to an exemption under sec. 43.64(2), Stats., where the county has not acted to levy a tax specifically designated as a county library tax but does finance "money expended for public library services to its inhabitants" by a general tax levy. ................. 72-190

To qualify for exemption from county library tax under sec. 43.64(2), Stats., municipality or school district must have expended for its own "library fund" during the year in which the county tax levy is made a sum at least equal to the sum it would have to pay for the county tax levy made during that year to fund the county budget for the ensuing year ................. 72-49

Lime pit

Pursuant to secs. 59.07(1)(a) and 59.873, Stats., a county can own and operate a lime pit in another county, within reasonable distance, if such operation is necessary to obtain sufficient supply to furnish lime at cost to farmers within the county operating such pit. However, absent a cooperation agreement pursuant to sec. 66.30, Stats., lime cannot be sold or distributed to farmers in such other county .......................................................... 66-72

Marijuana ordinance

Counties may not enact ordinances in conformity with state statutes prohibiting the possession and sale of marijuana .................................................. 77-205

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Medicaid

A county may not, in a manner consistent with federal and state statutes and regulations prohibiting supplementation, contractually obligate itself to pay a visiting nurse association funds in addition to those received by such a home health care provider through the Medicaid program. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the applicability of federal statutes and regulations administered exclusively by federal authorities ................................................................. 77-287

Medical aid

Counties are liable to reimburse emergency medical relief claims upon satisfaction of the prerequisites in sec. 49.02(5), Stats., and medical facilities are not foreclosed from submitting such claims nor are counties empowered to deny such claims because of assurances made by the facility in exchange for benefits received under the Hill-Burton Act................................. 70-24

Medical examination

The State, its political subdivisions, and counties are not employers under sec. 103.37, Stats., and, therefore, are not subject to this statute which prohibits employers from requiring any employe or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment ................................................................. 69-103

Menominee Tribe

Property held in trust by the federal government for the Menominee Tribe and tribal members pursuant to the Menominee Restoration Act (25 U.S.C. sec. 903, et seq.) is not subject to state taxation. Tribal members residing and working in Menominee County and the Menominee Tribe are not subject to state income tax. Government services to be provided by Menominee County and the Town of Menominee discussed ........................................... 66-290

Public Law 280 (67 Stat. 588, 28 U.S.C. sec. 1360 and 18 U.S.C. sec. 1162) is not applicable to the Menominee Tribe but state general jurisdiction will continue until the federal and tribal governments assume jurisdiction pursuant to the Menominee Restoration Act. Menominee County, or portions thereof, could be merged with an adjoining county or counties by procedures set forth in sec. 59.997, Wis. Stats., but any division of the county could require prior majority vote of the county’s legal voters ................. 64-184

Mineral rights

Counties may not transfer county owned mineral rights, acquired through nonpayment of taxes, to private persons without following the appraisal and public sale provisions of sec. 75.69, Stats. Under sec. 59.07(1)(c), Stats., counties may make gifts of land or interests in lands only to enumerated public entities .................................................................. 67-236

Multi-county prosecutorial system

A multi-county prosecutorial system could be established, consistent with article VI, section 4, of the Wisconsin Constitution, by reorganizing certain counties and joining them solely for prosecutorial purposes, while allowing them to remain separate for the purpose of exercising all other functions of county government. The electors of each county sharing the services of a particular district attorney, however, would have to participate in the selection of their joint prosecutor ................................................................. 72-4

Municipal extraterritorial zoning

County shoreland zoning of unincorporated areas adopted pursuant to sec. 59.971, Stats., is not superseded by municipal extraterritorial zoning under sec. 62.23(7a), Stats. Sections 59.971, 62.23(7a) and 144.26, Stats., discussed. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations ................................................................. 63-69
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National forest lands

County which has received payments from the federal government in lieu of taxes under sec. 1 of P. L. No. 94-565, 90 Stat. 2662, cannot distribute such payments to the towns in which the national forest lands are located ....... 68-23

Nonprofit corporations

A county may, through its boards and commissions, purchase services from various nonprofit organizations within the scope of such board or commission's authority. Where County Board has created community relations-social development commission pursuant to sec. 66.433, Stats., it cannot, through such commission, fund community-wide nonprofit corporations it deems worthy, by setting forth in the commission's budget, the amount of money to go to a specific nonprofit agency. Where a county board creates a sec. 66.433 Commission, it cannot by reason of sec. 59.025(3)(c), Stats., transfer all the duties and functions of such Commission to another board or commission or committee of the County Board ........................................... 67-297

Ordinances, applicability of

A county ordinance passed under section 92.11, Stats., may be applicable to incorporated as well as unincorporated areas of the county, whereas a county ordinance passed under section 92.16 is applicable only in the unincorporated areas of the county ................................................. 77-87

Ordinances, authority to enact

Counties possess the statutory authority to enact and enforce ordinances prohibiting the issuance of bad checks and trespassing but do not have the authority to enact and enforce ordinances prohibiting battery and theft .... 78-38

Park land

An agreement to purchase park land whereby a county is to make deferred payments from an existing nonlapsing account (sufficient to cover the entire obligation) secured by mortgaging the property to the grantor, would not create an obligation within the ambit of ch. 67, Stats., nor constitute a debt in the context of art. XI, sec. 3, Wis. Const. .............................................. 63-309
Town sanitary district organized under secs. 60.30-60.309, Stats., has power to levy special assessments for improvements against county-owned park lands located within the district ................................................. 64-206

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Rights and responsibilities of counties in prisoner transfers to the Wisconsin Resource Center discussed ................................................. 71-170

Protective placements

The responsibility for providing and funding facilities for protective placements under ch. 55, Stats., is primarily on the County. The statute does not require a county nursing home to accept such a placement ................................................. 66-249

Public Purpose Doctrine

Section 86.105, Stats., does not authorize counties to contract to plow private parking lots. Because of increased availability of private sector alternatives any activity engaged in pursuant to said statute should meet the stringent restrictions set forth in 50 OAG 98 (1961), in an analogous context .... 67-304
Under appropriate circumstances, a county may appropriate county funds reasonably necessary for improvement, maintenance and operation of county property which is not deemed to be surplus, even though such property may no longer be required for the public purpose for which it was
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Public Purpose Doctrine (continued)
originally acquired and is not currently required for some other specific public use ................................................................. 76-169

Public records
A county with a population under 500,000 may, by ordinance enacted pursuant to sec. 19.21(6), Stats., provide for the destruction of obsolete case records maintained by the county social services agency pursuant to sec. 48.59(1), Stats. ................................................................. 70-196

Real estate
A county may acquire real estate owned by a private fair association without referendum where it does not intend to conduct county fairs or exhibitions on such property itself. (Unpub) ................................................................. 4-1975

Real estate, old-age-assistance lien foreclosures
Under sec. 49.26, Stats., a county department of social services, by its director, may make valid conveyances of real estate acquired by the department as a result of old-age-assistance lien foreclosures or transfers in lieu thereof, or as the result of assignments to the department made by the county court in probate or administration proceedings in the estates of old-age-assistance recipients; or of out-of-state real property voluntarily transferred to the department ................................................................. 63-488

Reapportionment
Under sec. 59.03(3)(c), Stats., alteration of county supervisory district boundaries between decennial censuses is authorized only where ward boundaries originally relied upon in reapportioning the county have been subsequently altered by incorporation, annexation, detachment or consolidation ............................. 63-544

Regional Planning Commission
Methods of withdrawal from a Regional Planning Commission differentiated; authority and role of Commission as regional clearinghouse explained. (Unpub) ................................................................. 34-1982

Residence, domicile and legal settlement
Liability, reimbursement and collection for services provided under secs. 51.42 and 51.437, Stats., discussed ................................................................. 65-49

Social services department
A county department of social services has no discretion to refuse to disclose reports and records of child abuse or neglect to the subject of the report or the subject's attorney under section 48.981(7)(a)1., and (c), Stats. ................................................................. 77-84
A county department of social services or county department of human services may not contract with other agencies to obtain section 48.981, Stats., reporting or investigatory services in situations other than the performance of independent investigations required by section 48.981(3)(d). A cooperative contract might be possible under section 66.30(2) in order to effectuate this purpose but the services must be furnished by the county department as defined in section 48.02(2g) and not by any other public or private agency ................................................................. 76-286
A county human services board may not delegate the duties described in section 51.437(9)(am), (b), (e) and (g), Stats., to the long-term support planning committee created by section 46.27(4) ................................................................. 78-158

Solid waste disposal
Under sec. 59.07(135), Stats., a county may contract with another municipal- ity or private company to pay the costs of operating a solid waste disposal site, including one owned by a private collector, as long as the necessary approvals have been secured under ch. 144, Stats. Costs of operation of such sites are to be borne by the users while capital costs are to be borne by the general county property tax ................................................................. 72-27
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State trunk highways

Where county has contract to maintain state trunk highways, county high­
way commissioner can temporarily close state trunk highway in case of
emergency. Sec. 86.06(1), Stats. Sheriff has power to temporarily close any
highway in county in case of emergency and to divert traffic. Secs. 59.24(1)
and 349.02, Stats. .................. 67-335

Tax delinquency proceedings

In tax delinquency proceedings, a county acquires fee simple title to land,
including mineral interests therein, whether severed or not. 25 Op. Att’y
However, further legislative action is necessary to insure that assessment
and tax delinquency proceedings are consistent with the provisions of 1983
Wisconsin Act 455 and are adequate to satisfy the due process rights of the
owner of mineral interests to notice of the taking through delinquent tax
proceedings. .................. 74-59

Where a county proceeds under sec. 75.69(1), Stats., to advertise and sell tax
delinquent property, it must reject all bids less than the appraised value,
but, if it determines to accept any bid, it can accept the bid it deems in good
faith to be most advantageous to the county in view of the criteria set forth
in the bid notice. Such bid need not be the highest bid in dollars ............ 70-1

Tax delinquent property, selling of

Section 75.36, Stats., provides that a county need not assume and pay all
unpaid or delinquent municipal taxes, assessments and charges due on a
parcel of property at the time the county acquires such property by tax
deed. The statute also provides that the county is not required to assume
and pay any such taxes which remain unrecovered upon the sale of such
property because the sum realized was insufficient to pay all such outstanding
municipal tax obligations. (Unpub.) ........................ 31-1987

Subsections (5), (6) and (7) of section 75.35, Stats., created by 1987 Wisconsin
Act 27 first apply to sales of property the county acquired at a section 74.39
tax sale on or after the effective date of section 3203(47)(c) of 1987 Wisconsin
Act 27 .................................. 77-133

Telephone

If all the municipalities in Milwaukee County establish their own system or
combine with several other municipalities to establish a system with a
central location, Milwaukee County would be required to establish a system
which connects with all central locations of the emergency telephone sys-
tems established in the County. It is possible that a mandamus proceeding
could be instituted against public officials to obtain compliance with the
provisions of the statute .................. 68-165

Town sanitary district

Town sanitary district organized under secs. 60.30–60.309, Stats., has power
to levy special assessments for improvements against county-owned park
lands located within the district .................. 64-206

Tract index system

In a county maintaining a tract index system, the Register of Deeds must
enter into the index any deed, mortgage or other instrument recorded in his
office which affects title to or mentions an indexed tract or any part thereof. 63-254

Traffic ordinance

County under sec. 349.06, Stats., can enact and enforce a traffic ordinance in
strict conformity with state statutes which is applicable to town roads. 30
OAG 431 (1941) and 38 OAG 184 (1949) no longer state the law in this
respect because of subsequent statutory changes .................. 64-172
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Trial costs

Under sec. 977.08(5)(f), Stats., trial representation costs are incurred whenever services which give rise to a legal obligation to pay compensation are rendered between January 1 and June 30, 1981 ................................. 70-74

University Police

The University of Wisconsin has no authority to agree to hold harmless a county that incurs liability because of a university officer's torts, but the common law of indemnification would require such officer to indemnify that county and statutory indemnification would require the state to indemnify the officer when acting in the scope of his/her employment. A county sheriff may deputize university campus police officers and restrict that deputation to particular times, places and crimes. An otherwise valid arrest would not be rendered invalid, however, solely because the officer exceeded the scope of that deputation. .............................................. . 78-1

Venue changes not allowed for cost savings

Section 48.185, Stats., does not authorize a change of venue, upon motion of a party or upon stipulation of the parties, after adjudication but before the first dispositional hearing, in a juvenile delinquency proceeding............ 75-100

Veterans' service office

A county veterans' service office does not have the duty under ch. 45, Stats., to transport disabled veterans to a veterans' hospital when such transportation is not readily available unless authorized by his county. The county would be liable to the injured veteran in an automobile accident while being transported by the veterans' service officer if the officer were authorized and performing within the scope of his employment. If he were authorized and an accident occurred, sec. 895.43(3), Stats., limits the recovery to $25,000 . 67-207

Visiting Nurse Association

A county may not, in a manner consistent with federal and state statutes and regulations prohibiting supplementation, contractually obligate itself to pay a visiting nurse association funds in addition to those received by such a home health care provider through the Medicaid program. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the applicability of federal statutes and regulations administered exclusively by federal authorities .......................................................... 77-287

Waste management system

Towns, villages and cities in counties establishing a county solid waste management system under sec. 59.07(135), Stats., may be taxed for the capital costs of the county-wide system, but not for the operating costs............. 67-77

Wisconsin Conservation Congress; expenses of attendees

Counties lack statutory authority to pay the expenses of private citizens or County Board members who attend meetings of the Wisconsin Conservation Congress; 61 Op. Att'y Gen. 327 (1972) discussed and adhered to. (Unpub)................................................. 29-1984

Zoning

A county which has enacted a county-wide comprehensive zoning ordinance under sec. 59.97, Stats., may not enact any zoning provision authorizing withdrawal of town approval of such ordinance or otherwise specifically excluding or exempting any town from the operation of such ordinance ... 67-197

A town with village powers that is subject to a county zoning ordinance is not prohibited by statute from any and all regulation of driveway installation. A town which is subject to a county zoning ordinance that contains no limitation on the issuance of county zoning permits may not set a quota on the number of residential building permits that the town will issue each year. 76-60

County shoreland zoning of unincorporated areas adopted pursuant to sec. 59.971, Stats., is not superseded by municipal extraterritorial zoning under
COUNTIES (continued)
Zoning (continued)
sec. 62.23(7a), Stats. Sections 59.971, 62.23(7), 62.23(7a) and 144.26, Stats., discussed. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations ................................................................. 63-69
The extent to which sec. 91.73(4), Stats., as created by ch. 29, Laws of 1977, and amended by ch. 169, Laws of 1977, alters the procedures applicable for the amendment of county comprehensive zoning ordinances under sec. 59.97(5)(e), Stats., is discussed ...................................................... 67-290
Section 59.971, Stats., authorizes counties to zone lands located within 300 feet of an artificial ditch that is navigable in fact ........................................... 63-57

COUNTY BOARD
See also COUNTIES
Administrative Services Co-ordinator
Creation of such an office, transference of duties from County Clerk and salary of co-ordinator discussed ................................................................. 67-1

Ambulance service
Power of county to provide limited rescue functions in connection with ambulance service and to make reasonable charges therefor discussed in view of secs. 59.07(41), 146.35 and 146.50, Stats. ................................................................. 65-87

Architectural services, contracts for
Section 59.08(1), Stats., does not apply to architectural services ............... 76-182

Bills and claims
Under sec. 59.07(3), Stats., the County Board has power to require that all bills and claims be examined by it, or with respect to current accounts, its standing committee before payment, but prior audit by the whole Board or its standing committee is not required by statute in every case ............................................................................ 68-38

Bounties
County Board cannot pay bounty on any fauna not described in sec. 29.61(1), Stats., as amended by ch. 91, sec. 3, Laws of 1975. (Unpub) ...................... 75-1977

Charitable organizations
A county may, through its boards and commissions, purchase services from various nonprofit organizations within the scope of such board or commission's authority. Where County Board has created community relations-social development commission pursuant to sec. 66.433, Stats., it cannot, through such commission, fund community-wide nonprofit corporations it deems worthy, by setting forth in the commission's budget, the amount of money to go to a specific nonprofit agency. Where a county board creates a sec. 66.433 Commission, it cannot by reason of sec. 59.025(3)(c), Stats., transfer all the duties and functions of such Commission to another board or commission or committee of the County Board ........................................... 67-297

Chief Deputy Sheriff
The County Board of a county with a population less than 300,000 may abolish the position of undersheriff and transfer all statutory duties and powers of an undersheriff, including those set forth in sec. 59.21(8)(b)1., Stats., to the civil service position of Chief Deputy Sheriff, created under sec. 59.21(8), Stats. The Coroner does not exercise the powers and duties of the Sheriff, under the authority of sec. 59.34(2), Stats., when there is no sheriff, if the functions, duties, responsibilities and privileges of undersheriff have been properly transferred, pursuant to sec. 59.025(3)(b), (c), Stats., to the position of Chief Deputy Sheriff, which is created and filled, pursuant to sec. 59.21(8), Stats. (Unpub) ................................................................. 25-1982
COUNTY BOARD (continued)

Circuit judge

Sections 20.923(3m) and 753.071, Stats., constitutionally empower counties to reduce the county supplements to the state-paid salaries of circuit judges between August 1, 1978, and June 30, 1980, provided that there is compliance with the minimum and maximum salary perimeter established in those sections. 68-118

Classified positions

The power to classify positions in a county department of social services resides in the state Department of Health and Social Services and not in a county board or in a committee of such county board. 65-123

Code of ethics ordinance

County Board may provide for a penalty in the nature of a forfeiture for violation of a code of ethics ordinance, but may not bar violators from running for office. Violation is not a neglect of duties required by law under sec. 59.10, Stats., or ipso facto cause for removal from office under sec. 17.09(1), Stats. 66-148

Questions concerning proposed county code of ethics ordinance answered. 1. A county board may provide for a forfeiture but not a fine for violations of an ordinance. 66 OAG 148 (1977). 2. A county board lacks the authority to prohibit county clerk (Election Commission in Milwaukee County) from placing on ballot candidates who have not complied with code of ethics ordinance. 3. A county board lacks the authority to order the withholding of salary of elected officials who fail to comply with a code of ethics ordinance. 4. The County Board lacks authority to prohibit county officers from acting as agent or attorney for an entity other than the county in connection with any transaction involving the county in which such officers participate during the course of their service for a period of 12 months after leaving county service. 5. A board created by the County Board, unless it is a committee of the County Board, lacks authority to issue subpoenas or administer oaths. 6. A county ordinance cannot provide for blanket nondisclosure of county ethics board opinions contrary to the Public Records Law. 67-164

Committees

A county board chairperson and a county board committee are not authorized by section 19.85(1)(c), Stats., to meet in closed session to discuss appointments to county board committees; however, in appropriate circumstances section 19.85(1)(f) would authorize closed sessions. Only supervisors can serve on committees, and persons who are not supervisors cannot serve or be compensated for expenses. 76-276

Contingency fund

Under section 65.90(5), Stats., a vote of two-thirds of the entire membership of the county board is needed to transfer funds from the contingency fund to use for a purpose not anticipated in the budget. 76-145

Coroner

County Board in county under 500,000 can abolish elective office of coroner and implement medical examiner system to be effective at end of incumbent Coroner's term. Language in 61 OAG 355 (1972) inconsistent herewith is withdrawn. 63-361

Corporation counsel

In a county with a population of under 500,000 which does not have a civil service ordinance, the Corporation Counsel is appointed by the County Executive and confirmed by the County Board. The County Executive possesses administrative and managerial authority over the Corporation Counsel; supervisory authority of a legislative or policy-making nature may be exercised by the County Board or one of its committees. The Corporation Counsel serves at the pleasure of the County Board and may only be removed by a majority of the members of that body. 72-161
COUNCIL BOARD (continued)

Counsel

Neither the soil and water district board nor the County Board has the power to retain private counsel except as provided by sec. 59.44(3), Stats. The district is primarily liable for legal fees incurred to date ................................................................. 70-234

Counsel for indigent

A county board supervisor risks violations of sec. 946.13, Stats., where he is appointed counsel for indigent defendants and fees exceed $2,000 per annum .................................................................................................................. 62-62

Appointment of counsel for indigent involves a public contract ................................................................. 62-118

County Clerk

Section 59.72, Stats., as amended by ch. 265, Laws of 1977, does not authorize the County Board to transfer powers to keep books and accounts from the County Clerk to the County Auditor where express statute provides that the Clerk perform such duties or where they have been performed on an immemorial basis, but does provide that the power of supervision as to the manner in which books and accounts are kept by the County Clerk or other officer shall lie with the County Auditor .................................................................. 67-248

County Executive

In a county with a population of under 500,000 which does not have a civil service ordinance, the Corporation Counsel is appointed by the County Executive and confirmed by the County Board. The County Executive possesses administrative and managerial authority over the Corporation Counsel; supervisory authority of a legislative or policy-making nature may be exercised by the County Board or one of its committees. The Corporation Counsel serves at the pleasure of the County Board and may only be removed by a majority of the members of that body ................................................................. 72-161

County Executive, creation of office

A county board may adopt an ordinance creating the office of county executive and make the ordinance contingent upon approval in a countywide referendum. The office of county executive is created at the time the results of the referendum become final. The first election for the office occurs at least 120 days after the creation of the office becomes effective. The county executive takes office on the third Tuesday in April of the year of the election ................................................................................................................................. 78-227

County Executive, veto powers

A county board does not have power to amend a resolution, ordinance or part thereof, vetoed by the County Executive, but can pass a separate substitute for submission to the Executive. A county board has a duty to promptly reconsider vetoed resolutions, ordinances or parts thereof ................................................................. 74-73

County Highway Committee

Section 83.015, Stats., does not preclude county boards auditing County Highway Committee vouchers prior to payment thereof from county funds. However, the board's audit authority is limited to determining whether the expenditure is within the scope of the Committee's statutory or delegated authority ................................................................................................................................. 63-136

Delegation of authority discussed

A county human services board may not delegate the duties described in section 51.437(9)(am), (b), (e) and (g), Stats., to the long-term support planning committee created by section 46.27(4) ................................................................................................................................. 78-158

County Board's power to delegate authority concerning property transactions to its committees discussed ................................................................................................................................. 74-227

Director for planning and zoning

Committee of the County Board acting as county planning and zoning agency pursuant to secs. 59.025(3)(c), 59.06 and 59.97(2)(a), Stats., rather
COUNTY BOARD (continued)

Director for planning and zoning (continued)

than County Executive, has power to appoint director for planning and zoning. (Unpub) ................................................................. 14-1983

Discrimination

A county may enact an ordinance requiring its contractors to agree to a policy of non-discrimination in employment, even though such an ordinance provides broader protection than that afforded by state and federal equal employment opportunity laws, as long as such ordinance does not conflict with such laws ............................................................ 70-64

Cities, counties, and other local governmental entities, not being a part of the executive or legislative branches of state government are neither "contracting agencies" of the State within the meaning of sec. 16.765(1), Stats., which requires a nondiscrimination clause in contracts, nor are such entities "subdivisions" of the State within the meaning of sec. 16.755(1), Stats., which empowers the Council on Small and Minority Business to review the extent of small business participation in purchasing by the State and its subdivisions .................................................. 68-306

District Attorney

Board cannot diminish or enlarge duties of District Attorney except where certain duties are transferred to the County Corporation Counsel. (Unpub). 76-1977

Elections

A county which is self-organized pursuant to sec. 59.03, Stats., is empowered by sec. 59.03(1)(d), Stats., to adopt an ordinance providing a procedure for filling a vacancy in the office of county supervisor allowing for an interim appointment subject to the holding of a subsequent special election in which a person other than the appointee may be selected for the balance of the original term ................................................................. 65-16

Equipment purchases approval.

County Board's power to delegate authority concerning property transactions to its committees discussed ............................................. 74-227

Ethics ordinance

Board may provide penalty for violators of such ordinance but may not bar them from running for office ............................................. 66-148

Family Court Commissioner

Either the County Board as employer or the judges of the County as appointing authority has the authority under sec. 41.11(1), Stats., to extend the employment of a family court commissioner beyond normal retirement date ................................................................. 67-120

51.42/51.437 Board

A county board has the power to reduce membership on a sec. 51.42 Board from fifteen to nine, but must do so by abolishing the offices of specific members as their current terms expire ........................................... 65-40

Although a county board of supervisors can require that a certain number of persons be supervisors at the time of their appointment to a 51.42, 51.437 or 115.86 Board, members are entitled to serve the term for which they were appointed, unless removed, without reference to the termination of their office as County Board supervisors. (Unpub) .................................................. 12-1983

The County Board of Supervisors may require its approval of contracts for purchase of services by the Community Services Board if so specified in its Coordinated Plan and Budget. Otherwise it may not ..................... 69-128

Members of a county board appointed to a unified board, created pursuant to sec. 51.42(4)(b), Stats., serve for the full term for which appointed, without reference to the termination of their office as County Board members ........................ 63-203

Where a county board has established a civil service ordinance applicable to all county personnel other than the exceptions provided in sec. 59.07(20),
COUNTY BOARD (continued)
51.42/51.437 Board (continued)

Stats., the Director of the 51.42 Board does not have authority to grant vacation with pay to a 51.42 Board employe which is not authorized under the county civil service ordinance ................................................................. 67-143

Fire alarm system

A county has power under sec. 59.07(64), Stats., to enact an ordinance, applicable countywide, prohibiting the giving of false alarms on security or fire alarm systems connected to the Sheriff's department. Provisions amounting to a building code would not be applicable in cities, villages or towns having ordinances or codes covering the same subject. Authority of the Sheriff to act as licensing authority or to collect license fees discussed ........................................ 72-153

Forest lands

County Boards cannot sell or exchange county forest lands without first withdrawing them from the county forest program under sec. 28.11(11), Stats. The term “exchange” does not include a sale for valuable consideration .................................................................................................................. 66-108

Where large sums had accumulated from sale of leases of county forest land and were credited to the Forestry and Parks Department, county board resolution which would authorize transfer of funds for specific use of construction of a waterslide on county forest park lands failed passage where it did not receive two-thirds vote of the entire membership. Sec. 65.90(5), Stats.......................................................... 75-56

Forfeitures

Before payment of a settlement is made in resolution of an action against the county, the County Board as a whole must approve it; if an action against the county results in assessment for a forfeiture, the Board may not refuse to pay it but the authorization for payment may be direct or, depending upon the amount, through the delegation permitted under sec. 59.07(3), Stats.......................................................... 70-15

Handicapped Children's Education Board

In counties with a county executive, the county Handicapped Children's Education Board exercises advisory and policy-making functions associated with the special education programs and services authorized by the county board under section 115.83, Stats., and the county executive supervises the administrative functions. While the county Handicapped Children's Education Board and the county executive share budgetary responsibilities, the county executive makes the annual budget recommendation to the county board. County personnel and procurement ordinances, and other similar ordinances which regulate administration of county government generally, apply to the operation of such county special education programs and services to the extent such ordinances are otherwise authorized and do not conflict with the state laws regulating such special education programs and services .......................................................................................................................... 77-196

Health

Since matters affecting health and welfare are of statewide concern, sec. 59.025(2)(3), Stats., created by ch. 118, Laws of 1973, does not authorize county boards to abolish county departments, boards or committees pertaining to health and welfare, and required by existing state statutes nor does it authorize the transfer of their functions and duties or consolidation of them into a single “Community Human Services Board” .................................................. 63-580

Health care facility

County Board acting pursuant to secs. 59.025(3)(b) and (c), and 59.15(2)(a), Stats., can authorize the county administrator to appoint personnel at county health care facility .......................................................................................................................... 63-256
COUNTY BOARD (continued)

Health Department

Section 140.09(5), (6), Stats., authorizes the County Board of Supervisors to determine compensation to be paid members of a city-county board of health and employees of a city-county health department ................................. 72-33

Highway Commissioner

County Board may not utilize unidentified paper ballot in voting to appoint County Highway Commissioner, but may vote by ayes and nays or show of hands at open session if some member does not require vote to be taken in such manner that the vote of each member may be ascertained and recorded. Sec. 66.77(6), Stats. .......................................................... 63-569

Highways

Section 83.025(1), Stats., as amended by ch. 160, Laws of 1973, does not require counties to develop a functional and jurisdictional classification of highways. Nor is a properly approved classification plan a prerequisite to a county board's exercise of its authority pursuant to sec. 83.025(1), Stats., as amended, to incorporate town roads into the county trunk highway system without prior approval of town boards ....................................... 63-125

Housing authority

Section 59.025, Stats., does not authorize a county board of supervisors to alter the number of commissioners of the county housing authority or the terms of office of such commissioners, as established by sec. 66.40(5)(a), Stats. .............................................................. 68-35

Indian Child Welfare Act

Jurisdictional questions relating to the implementation of the Indian Child Welfare Act (25 U.S.C. sec. 1901 et seq.) discussed ........................................ 70-237

Judges bar dues

A county board of supervisors does not have authority to pay the bar dues of elected circuit judges serving the county. Such dues are professional responsibilities of the person serving as judge and are not costs of operation of the Circuit Court. The Legislature could enact legislation to empower the county to pay such dues as a part of compensation or reimbursement for expense connected with duties, or could provide that the State pay such dues ............................................................................. 31-1985

Kenosha County

A county board has no statutory authority to charge a higher marriage license fee to certain nonresidents who would be required to submit to AIDS testing in their home state or, in the alternative, require AIDS testing as a condition of obtaining a Wisconsin marriage license............... 77-154

Land Conservation Committee appointments

Appointments to a county land conservation committee, created by the county board pursuant to section 92.06, Stats., are made by the county board, not by the county executive ........................................ 76-173

Legal notices

A county board may direct supplemental publication of legal notices in a newspaper other than the official newspaper, provided that the supplemental publication is a newspaper meeting the requirements of sec. 985.03, Stats. However, only the publication in the official newspaper constitutes official publication of a legal notice. (Unpub) ........................................... 15-1976

Liability claims against the county

County Highway Committee does not have power to examine, settle and pay liability claims against the county without final action by the County Board. 67-47
COUNTY BOARD (continued)

Libraries
County Board, in county having a single-county federated public library system, cannot abolish system Board appointed under sec. 43.19(1)(a), Stats., and transfer functions and duties to committee of County Board ... 63-317

Library funds
County Board cannot authorize single-county federal library system board to maintain special bank account into which are deposited system revenues and from which are paid system expenses. (Unpub) ......................... 81-1977

Local Emergency Planning Committee
A local emergency planning committee created by the county board pursuant to section 59.07(146), Stats., is in many respects treated as other county committees. The county board has the authority to appropriate funds for the committee and the county’s relationship to the committee is the same as the county’s relationship to the other county bodies created under section 59.07, with the exception that the county must be consistent with the authority exercised by the state emergency response commission. The county corporation counsel should provide legal advice and assistance to the LEPC. If the LEPC or its members are sued, the attorney general represents them; and the state would pay the judgment if the requirements of section 895.46 have been satisfied .................. 78-27

Marriage license fees
A county board has no statutory authority to charge a higher marriage license fee to certain nonresidents who would be required to submit to AIDS testing in their home state or, in the alternative, require AIDS testing as a condition of obtaining a Wisconsin marriage license .................... 77-154

Milwaukee County
The Milwaukee County board may not delegate the exclusive authority to approve contracts for budgeted public works projects to the museum board or to the zoological board. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the meaning or intent of municipal ordinances .................................................. 77-120

Milwaukee County does not have authority to enact and enforce an ordinance which would establish certain rights of residents of nursing homes, group foster homes, residential care facilities and hospitals which contract for the care of residents. The State has given the Department of Health and Social Services preemptive authority over community-based residential facilities and nursing homes .................................................. 68-45

Multi-county sec. 51.42/51.437 Board
A multi-county sec. 51.42/51.437 Board is not an independent agency or body corporate, but is an agency of the contracting counties. The district attorneys or corporation counsel of the contracting counties are required to furnish legal advice and representation to such Board. The sec. 51.42/51.437 Board, however, has limited power to contract with private attorneys for the furnishing of certain legal services to clients pursuant to secs. 46.03(17), 46.036, 51.42(5), 51.437(5) and 55.04(1)(a)8., Stats. Counties could jointly employ a county corporation counsel to furnish legal services of a civil nature to the Human Services Board by reason of secs. 59.025(3), 59.07(44), 66.30, Stats. (Unpub) .................. 38-1982

Nepotism
Within limits, County Board may prospectively prohibit department heads from appointing close relatives to county offices and positions but cannot totally prohibit relatives of a county board supervisor from any employment by the county. (Unpub) .................. 88-1977
Nursing home bequest

The County Board, not the Board of Trustees, determines the disposition of a bequest made to a county institution operated pursuant to section 46.18, Stats. The County Board, acting pursuant to sections 59.07(101) and 59.75, may authorize the County Treasurer to place such a bequest in long-term investments, with the income from such investments to be expended at the institution.

Ordinance concerning Register of Deeds

A county board lacks statutory authority to enact ordinances directing the register of deeds to refuse to record documents containing restrictive covenants or requiring the register of deeds to place notices on liber volumes and copies of real estate documents, directing the public's attention to the possibility that such covenants may be legally unenforceable.

Ordinance concerning residence of county employees

County Board has power to adopt ordinance requiring all county employes, including those employed by the Handicapped Childrens Education Board (HCEB) pursuant to section 115.86(5), Stats., to maintain residence within the county. However, HCEB rather than County Board has power to appoint such personnel and to remove them. Exercise of such power may be limited by civil service ordinance or labor contract.

Paternity matters

Duties of Corporation Counsel in county over 500,000 concerning paternity matters under secs. 52.21-52.45, Stats., cannot be transferred to legal counsel employed in a separate department created pursuant to powers in sec. 59.025, Stats. (Unpub).

Powers

A county board in a county having a county executive could, by ordinance, require that four of seven sec. 46.18(1), Stats., trustees be county supervisors. The County Board could also abolish the Board of Trustees and transfer all of its powers to a board, commission or committee created pursuant to sec. 59.025(3), Stats. Trustees, board members and commissioners are appointed by the County Executive, subject to confirmation by the County Board. The County Board chairperson appoints members of committees established pursuant to sec. 59.06, Stats.

Assuming individual is entitled to attorney at public expense in mental hearings required by sec. 51.02, Stats., or alcohol or drug abuse hearings required by sec. 51.09(1), Stats., power to appoint, to determine indigency and to fix compensation are judicial and must be exercised by the Court or under its direction and cannot be limited by the County Board or delegated to private nonprofit corporation. Any power of the County Board to contract for such services is limited to administrative details.

Counties under 500,000 do not have authority to create a county department of administration by resolution.

County Board does not have power to establish number of days elected officials may utilize for vacation or sick leave or to grant longevity pay to elected officials, but can pay premiums for individual or group hospital, surgical and life insurance for them.

County Board is without power to provide for compensation for members of County Board of Health where express statute, sec. 140.09(5), Stats., provides that they will serve without compensation, but may be reimbursed for expenses. Statutory powers of County Clerk with respect to budgeting and record keeping cannot be transferred by County Board to new position of Finance Officer.
COUNTY BOARD (continued)

Privatization of county jail

Neither the sheriff nor the county board may "privatize" the jailer function of the office of sheriff under section 59.23(1), Stats., by contracting with a private firm to take charge and custody of county prisoners held in the county jail .............................................. 77–94

Public defenders

A county, acting through its county board, has the implied power to create a public defender's office to function as a county agency .................. 65–168

Racetracks

A county board has power under section 59.07(18) and (64), Stats., to enact a reasonable licensing ordinance regulating the operation of motor vehicle race tracks outside the limits of cities and villages .......................... 74–129

Real estate taxes

Section 74.80(2), Stats., permits counties and cities to impose by ordinance a flat six percent or less penalty on overdue real estate taxes and special assessments, regardless of when they became or become overdue ........ 71–189

Referendum

Chapter 220, Laws of 1977, effective April 7, 1978, expressly authorizes a county board to conduct a county referendum for advisory purposes or as a conditional element which would determine whether an enactment becomes effective ......................... 68–130

Regional planning commissions

Appointments to regional planning commissions on behalf of a county, under sec. 66.945(3)(b), Stats., are made by the County Board, unless the county has a County Executive or a County Administrator in which event such appointments are made by that county officer, under the authority set forth in either sec. 59.032(2)(c) or sec. 59.033(2)(c), Stats. .................. 62–197

Register of Deeds

A county board lacks statutory authority to enact ordinances directing the register of deeds to refuse to record documents containing restrictive covenants or requiring the register of deeds to place notices on liber volumes and copies of real estate documents, directing the public's attention to the possibility that such covenants may be legally unenforceable .................. 77–262

Residence of supervisor

Where, as a result of the alteration of the County Board supervisory districts, a Supervisor's residence is left outside the district he or she represents, the Supervisor may continue to represent that district until the expiration of his term. When a city has combined the offices of Alderman and County Board Supervisor where the aldermanic and supervisory boundaries are coterminal, the County Board retains its discretion to decide whether to alter the supervisory districts after the city has annexed territory .......... 76–10

Resolutions

Resolutions of County Board creating special or standing committees under sec. 59.06, Stats., or creating rules of procedure relative to executive matters or the administration of law must be submitted to County Executive in counties under 500,000 ........................................... 68–182

Salaries and wages

A county board does not have power to deny salary to a county treasurer during a period of sickness where such official has not resigned or has not been removed for cause. Under present statutes County Board does not have power to establish sick leave and vacation benefits for elected county officials. Remedies discussed .................. 65–62
COUNTY BOARD (continued)

Secret ballot
Utilization of a secret ballot by County Board to appoint zoning administrator constitutes violation of sec. 66.77(6), Stats., and is voidable .................. 64-73

Special assessments
Section 74.80(2), Stats., permits counties and cities to impose by ordinance a flat six percent or less penalty on overdue real estate taxes and special assessments, regardless of when they became or become overdue .................. 71-189

Special counsel
Although a county board in a county with a population of under 500,000 has not permanent or continuing authority to retain special counsel, it may obtain special counsel with the approval of the circuit court under sec. 59.44 on a case-by-case basis in those situations where the district attorney or corporation counsel is unable to continue to perform his or her duties without potentially violating the rules of professional conduct established by the Wisconsin Supreme Court. Unless otherwise provided by statute, in those situations where legal services are required in civil matters and the provisions of sec. 59.44, Stats., cannot be utilized, the district attorney or corporation counsel has the exclusive authority to perform or supervise the provision of those services .......................................................... 72-113

Supervisor, residency requirements
A county board supervisor elected at the 1984 Spring election who moved from such district in the Fall of 1984 vacated his office even though he continued to reside in the same county because 1983 Wisconsin Act 484 amended section 59.125, Stats., to require that "[n]o person is eligible to hold the office of county supervisor who is not a resident of the supervisory district from which he or she was chosen." .......................................................... 74-160

Supervisor doing business with county
Section 946.13, Stats., which prohibits private interests in public contracts, applies to county board or department purchases aggregating more than $5,000 from a county supervisor-owned business .................. 76-178

Supervisor selling real estate to county
Where the county board as a whole must decide whether to purchase land, a county board supervisor would violate section 946.13(1)(a), Stats., if land owned by his partnership was sold to the county for a purchase price in excess of $5,000 .......................................................... 76-90

Surveys
A resurvey of the public lands under sec. 59.635(8), Stats., requires reestablishing all corner posts by government surveyors in the original survey of the public lands. If a county board approves a resurvey program under sec. 59.635(8), Stats., the resurvey must be completed in 20 years or less and at least 5 percent of the resurvey must be completed each calendar year ..... 66-134

Requirements for relocating, establishing and perpetuation of the corners of the survey of the public lands discussed. Section 60.38, Stats., requires that resurveys of the public lands be recorded with the Register of Deeds in the county where the resurveyed land is located and kept as the County Board directs by resolution as long as a separate index is maintained .......................................................... 66-126

Tax levy
Section 70.62(4)(em)1., Stats., only permits County Board to increase tax levy over maximum to pay increased costs which relate to payment of a court judgment or court confirmed award, or out-of-court settlement after a civil action or special proceeding has been commenced in a court ................. 70-209

Town business
County Board may not by resolution require either a full time District Attorney or the Corporation Counsel to advise town officers on matters of

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COUNTY BOARD (continued)

Town business (continued)

strictly town business, and may not engage in special counsel for such purpose .......................................................... 72-179

Tract index

When in its judgment the existing tract index, for any reason, is unfit, unreliable or unserviceable, the County Board of any county may contract with a competent person for the compilation of a new and corrected tract index. A performance bond may be required ........................................... 65-258

Traffic department

County Board in county under 500,000 not having civil services system for deputy sheriffs can abolish traffic department organized under sec. 83.016, Stats., and with the cooperation of the Sheriff, such traffic patrolmen can be appointed deputies in the Sheriff's Department without providing for civil service selection under sec. 59.21(8)(cm), Stats. Language in 36 OAG 174 (1947) and 38 OAG 245 (1959) distinguished in view of sec. 59.025, Stats., which was enacted after issuance of those opinions ............................................. 71-199

Transit board

County Board in county over 500,000 can provide that members of transit board be appointed by County Board Chairman and confirmed by County Board. However, Supervisor would be ineligible to serve on such transit board .......................................................... 67-231

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County Board has authority under sec. 59.07(64), Stats., to enact a county ordinance prohibiting trespass to land that is similar to and consistent with sec. 943.13, Stats. 21 OAG 80 .......................................................... 69-92

Waste management

Board which creates solid waste management system and board may withhold or take away functions specified in sec. 59.07(135), Stats. .......................................................... 65-233

Welfare

Board has no power to hire and fire employees of County Welfare Department. Powers of County Board and County Board of Public Welfare as to establishment of and appointment to positions in the Public Welfare Department, concerned with administration of aid to dependent children, discussed .......................................................... 68-262

Since matters affecting health and welfare are of statewide concern, sec. 59.025(2)(3), Stats., created by ch. 118, Laws of 1973, does not authorize county boards to abolish county departments, boards or committees pertaining to the health and welfare and required by existing state statutes nor does it authorize the transfer of their functions and duties or consolidation of them into a single "Community Human Services Board" ............................................. 63-580

The County Board of Public Welfare rather than the County Board of Supervisors has the authority to appoint a County Welfare Director ....... 62-114

Zoning

A town board, granted village powers under sec. 60.18(12), Stats., is not required to petition its County Board prior to adopting a town zoning ordinance. Sec. 60.74(1)(am) and (7), Stats. However, where the county has adopted a zoning ordinance under sec. 59.97, Stats., such town zoning ordinance will not become effective and cannot be enforced unless and until the county takes positive action approving such town ordinance ............................................. 62-139

County zoning under sec. 59.97(9), Stats., is only effective during the period of county ownership and such zoning terminates on transfer of ownership. (Unpub) .............................................................................. 71-1976

Towns exercising village powers can zone shorelands concurrently with counties, provided that the town ordinance is in conformance with or more restrictive than the county ordinance ............................................. 65-108
COUNTY BOARD OF ADJUSTMENT
Zoning
The extent to which sec. 59.99, Stats., authorizes the County Board of Adjustment to grant zoning variances and review decisions of the County Planning and Zoning Committee, discussed 69-146

COUNTY CHILDREN'S HOME
Establishment and maintenance of
Section 48.31, Stats., provides counties with express authority to establish and operate juvenile detention homes and shelter care facilities. Detention homes and shelter care facilities established and operated pursuant to sec. 48.31, Stats., do not require a ch. 48 license from the Department of Health and Social Services. Counties may lease property for detention home or shelter care use 66-50

COUNTY CLERK
Accounting and bookkeeping
County Board can only grant powers of indirect supervision to Finance Director with respect to accounting or bookkeeping duties of County Clerk required by statute or Board resolution to be performed by such officer 65-132
Section 59.72, Stats., as amended by ch. 265, Laws of 1977, does not authorize the County Board to transfer powers to keep books and accounts from the County Clerk to the County Auditor where express statute provides that the Clerk perform such duties or where they have been performed on an immemorial basis, but does provide that the power of supervision as to the manner in which books and accounts are kept by the County Clerk or other officer shall lie with the County Auditor 67-248
Transfer of duties currently performed by the County Clerk to newly-created position of Administrative Services Co-ordinator discussed. County officer cannot be paid separate salary for performing services which are incidental to his office 67-1

Elections
Failure to publish notices of an election on the last Tuesday in May, the first Tuesday in June, and the second Monday preceding an election on the question of removal of a county seat and failure by the County Clerk to distribute the ballots will not invalidate the election where it appears that the voters were well informed of the time, place, and manner of the election and the issue involved, and a majority of the qualified voters who went to the polls, excluding those who had an opportunity to vote on the question of removal but chose not to, voted in favor of removal 66-219

Fees
Changes made to section 29.09(7m), Stats., by 1987 Wisconsin Act 27 did not alter the county board's authority to permit the county clerk to keep the issuing fees prescribed by sections 29.09(10) and 29.092(15) as part of his or her compensation 77-267

Jail keys
As custodian of the jail and its prisoners, the Sheriff has the exclusive right to determine where duplicate sets of jail keys will be kept; the County Clerk is not authorized to retain a duplicate set of jail keys if the Sheriff does not agree to such possession 68-330

Ordinances
Section 59.09(1), Stats., discussed in reference to requirements that county clerks must publish county ordinances and distribute copies to town clerks 62-81
COUNTY CLERK (continued)

Powers

County Board is without power to provide for compensation for members of County Board of Health where express statute, sec. 140.09(5), Stats., provides that they will serve without compensation but may be reimbursed for expenses. Statutory powers of County Clerk with respect to budgeting and record keeping cannot be transferred by County Board to new position of Finance Officer ................................. 63–196

Salaries and wages

The salaries of elected county officials may be increased during their terms. But any increase put into effect after the earliest time for filing nomination papers does not carry forward to the new term unless the County Board again votes the increase ....................................................... 69–1

COUNTY CORPORATION COUNSEL

See also CORPORATION COUNSEL; DISTRICT ATTORNEY

Auditor

The civil service provisions of sections 63.01 to 63.17, Stats., are not applicable to appointments of a county auditor or deputy auditor pursuant to section 59.72(3) and (4) unless such a civil service system is mandated for such county because it contains 500,000 inhabitants or more, or such system is applicable because the county involved has exercised its option under section 63.01 to enact such a system ......................................................... 78–91

County Board

In a county with a population of under 500,000 which does not have a civil service ordinance, the Corporation Counsel is appointed by the County Executive and confirmed by the County Board. The County Executive possesses administrative and managerial authority over the Corporation Counsel; supervisory authority of a legislative or policy-making nature may be exercised by the County Board or one of its committees. The Corporation Counsel serves at the pleasure of the County Board and may only be removed by a majority of the members of that body ......................................................... 72–161

County Executive

In a county with a population of under 500,000 which does not have a civil service ordinance, the Corporation Counsel is appointed by the County Executive and confirmed by the County Board. The County Executive possesses administrative and managerial authority over the Corporation Counsel; supervisory authority of a legislative or policy-making nature may be exercised by the County Board or one of its committees. The Corporation Counsel serves at the pleasure of the County Board and may only be removed by a majority of the members of that body ......................................................... 72–161

District Attorney

County Board cannot diminish or enlarge duties of District Attorney except where certain duties are transferred to Corporation Counsel. (Unpub) .... 76–1977

Duties

Duties of corporation counsel in county over 500,000 concerning paternity matters under secs. 52.21–52.45, Stats., cannot be transferred to legal counsel employed in a separate department created pursuant to powers in sec. 59.025, Stats. (Unpub) ......................................................... 22–1978

Duties of corporation counsels of different counties discussed where county Department of Social Services, on behalf of persons over whom it has legal custody, requests the Department of Social Services of another county, within which such person resides, to institute a chapter 55 proceeding for protective placement in the court of the county of residence. (Unpub) .... 35–1984

The duty to represent the county Department of Social Services rests solely with the District Attorney or Corporation Counsel and County Boards lack

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COUNTY CORPORATION COUNSEL  

Duties (continued)

the authority to engage and compensate any other person or entity for such work ................................................................. 70–136

Oath of office

An official oath is required by section 59.13(1), Stats., for a county corporation counsel but is not required for an assistant district attorney .......... 77–228

COUNTY COURT

Court Reporter

Salary questions discussed with respect to county Court Reporter who resigned effective July 31, 1978, and was appointed by Judge of same court as circuit Court Reporter on August 2, 1978. Ch. 449, Laws of 1977. (Unpub). 19–1979

Inheritance tax

There is authority for the county court to appoint an additional appraiser for inheritance tax purposes in an estate where death occurred prior to May 14, 1972, and to pay for such an appraiser on the certificate of the County Judge out of inheritance tax funds in possession of the Department of Revenue. (Unpub) .............................................................. 21–1976

Official seal

Circuit or county court may use as its official seal on documents an ink seal printed by a rubber stamp ........................................... 66–275

Traffic regulation cases

In traffic regulation cases, sec. 345.315, Stats., controls over sec. 300.05, Stats., insofar as request for substitution of a justice is concerned but not over sec. 300.055, Stats., which grants defendant right to secure transfer to county court upon request, accompanied by $1 fee, at any time prior to trial. 66–64

COUNTY EXECUTIVE

Committees

Resolutions of County Board creating special or standing committees under sec. 59.06, Stats., or creating rules of procedure relative to executive matters or the administration of law must be submitted to County Executive in counties under 500,000 ................................................................. 68–182

County Board powers

A county board in a county having a county executive could, by ordinance, require that four of seven sec. 46.18(1), Stats., trustees be county supervisors. The County Board could also abolish the Board of Trustees and transfer all of its powers to a board, commission or committee created pursuant to sec. 59.025(3), Stats. Trustees, board members, and commissioners are appointed by the County Executive, subject to confirmation by the County Board. The County Board chairperson appoints members of committees established pursuant to sec. 59.06, Stats. ................................. 70–181

Handicapped Children's Education Board

In counties with a county executive, the county Handicapped Children's Education Board exercises advisory and policy-making functions associated with the special education programs and services authorized by the county board under section 115.83, Stats., and the county executive supervises the administrative functions. While the county Handicapped Children’s Education Board and the county executive share budgetary responsibilities, the county executive makes the annual budget recommendation to the county board. County personnel and procurement ordinances, and other similar ordinances which regulate administration of county government generally, apply to the operation of such county special education programs and services to the extent such ordinances are otherwise authorized and do not
COUNTY EXECUTIVE (continued)

Handicapped Children's Education Board (continued)
conflict with the state laws regulating such special education programs and services

77-196

Land Conservation Committee appointments
Appointments to a county land conservation committee, created by the county board pursuant to section 92.06, Stats., are made by the county board, not by the county executive

76-173

Powers
An elected county executive does not have authority to reorganize another elected county official's office so as to remove functions or responsibilities mandated by statute. An elected county executive does have authority, along with the county board, to impose reasonable organizational and budgetary constraints upon such officials, which neither narrow nor frustrate the proper exercise of the constitutionally or statutorily mandated official duties of such elected county offices

77-113

In counties with a population of less than 500,000 having a county executive, a solid waste management board established by the county board pursuant to section 59.07(135), Stats., is restricted to performing advisory, policy-making or legislative functions, and the county executive is responsible for the administrative functions set forth in the statute

77-98

Ordinarily, where a county has a county executive, "operating" or "servicing" committees of the county do not have authority to exercise day-to-day administrative supervision and direction of county departments or functions

68-92

Purchasing officer and county auditor
Where County Board has designated the County Executive as Purchasing Officer and County Auditor, neither County Clerk nor County Board Chairman has authority to issue a directive to department heads requiring purchase vouchers to be referred to the committees of jurisdiction rather than to the County Executive. Salary of County Executive cannot be increased so as to be effective during current term of such officer

63-220

Referendum
A county board may adopt an ordinance creating the office of county executive and make the ordinance contingent upon approval in a countywide referendum. The office of county executive is created at the time the results of the referendum become final. The first election for the office occurs at least 120 days after the creation of the office becomes effective. The county executive takes office on the third Tuesday in April of the year of the election

78-227

The County Board may create office of county executive and make resolution contingent upon referendum of electorate

62-14

Rules of procedure
Resolutions of County Board creating special or standing committees under sec. 59.06, Stats., or creating rules of procedure relative to executive matters or the administration of law must be submitted to county executive in counties under 500,000

68-182

Solid Waste Management Board
In counties with a population of less than 500,000 having a county executive, a solid waste management board established by the county board pursuant to section 59.07(135), Stats., is restricted to performing advisory, policy-making or legislative functions, and the county executive is responsible for the administrative functions set forth in the statute

77-98

Veto powers
County Executive's power of partial approval under Wisconsin Constitution article IV, section 23a, extends to any part of a county board resolution or ordinance containing an appropriation. Status of veto power of executives
COUNTY EXECUTIVE (continued)
Veto powers (continued)

in populous counties discussed in view of court determination in 1959 that section 59.031(6) was unconstitutional and subsequent amendment of the Wisconsin Constitution ................................................................. 73-92

A county board does not have power to amend a resolution, ordinance or part thereof, vetoed by the County Executive, but can pass a separate substitute for submission to the executive. A county board has a duty to promptly reconsider vetoed resolutions, ordinances or parts thereof......... 74-73

Waukesha County Board

A county board may adopt an ordinance creating the office of county executive and make the ordinance contingent upon approval in a countywide referendum. The office of county executive is created at the time the results of the referendum become final. The first election for the office occurs at least 120 days after the creation of the office becomes effective. The county executive takes office on the third Tuesday in April of the year of the election................................................................. 78-227

COUNTY HIGHWAY COMMISSIONER

Salary

Highway commissioners are appointed by the County Board. Their salary is to be fixed, and may be changed during their term, pursuant to sec. 59.15(2), Stats................................................................. 63-286

State trunk highways

Where county has contract to maintain state trunk highways, County Highway Commissioner can temporarily close state trunk highway in case of emergency. Sec. 86.06(1), Stats. Sheriff has power to temporarily close any highway in county in case of emergency and to divert traffic. Secs. 59.24(1) and 349.02, Stats................................................................. 67-335

COUNTY HIGHWAY COMMITTEE

Criminal charge against

Claim for expense reimbursement by a public officer, under specific fact situation, is both an action taken in such officer's official capacity and an action growing out of performance of official duties thereby permitting municipal government to pay expenses associated with criminal charge against such officer based upon such claim pursuant to sec. 895.35, Stats . 71-4

Liability claims

County Highway Committee does not have power to examine, settle and pay liability claims against the county without final action by the County Board. 67-47

Maintenance of state highways

Contracts providing for the maintenance of state highways by the counties may be executed by the county highway committees without the approval of the county boards ................................. 65-140

Public sale

Land acquired in name of a county by its county highway committee for use as gravel pit can be sold by the County Board, when no longer required for highway purposes, at public sale pursuant to sec. 83.08(4), Stats. Public sale must be held on notice, by auction or written bids, with sale to highest qualified bidder................................. 66-208

Truck traffic

Counties do not have any general police power authority to control truck traffic, but are restricted to controlling truck traffic under secs. 349.15 and 349.16, Stats. The exercise of the police power under sec. 349.15, Stats.,
COUNTY HIGHWAY COMMITTEE (continued)

Truck traffic (continued)
need not be based on the condition of the roadbed, but may be exercised to promote the general welfare of the public ........................................... 66-110

Vouchers
Section 83.015, Stats., does not preclude county boards from auditing County Highway Committee vouchers prior to payment thereof from county funds. However, the board's audit authority is limited to determining whether the expenditure is within the scope of the Committee's statutory or delegated authority ........................................... 63-136

COUNTY HUMAN SERVICES BOARD

Delegation of powers
A county human services board may not delegate the duties described in section 51.437(9)(am), (b), (e) and (g), Stats., to the long-term support planning committee created by section 46.27(4) ........................................... 78-158

COUNTY DITCHING AND CULVERT WORK ON PRIVATE LANDS

The county highway department may perform ditching and culvert work on private lands to promote a public purpose such as soil conservation. However, activity in this area should respect available private sector alternatives, and ensure that accounting procedures will protect all taxpayers equally... 76-69

COUNTY JUDGE

Assignment of cases
Judges of the branches of County Court, rather than County Board of Judges, which is made up of both Circuit Court and County Court judges, have power to assign specific types of cases to specific branches of the County Court, pursuant to sec. 253.18, Stats. Likewise, judges of the branches of Circuit Court have power to assign specific types of cases to specific branches of the Circuit Court, pursuant to sec. 252, Stats. .... 63-92

Judicial Code
A county judge's resignation is effective when successor qualifies. Judicial Code's only sanction is censure................................................ 62-35

Legislative appointment
Sections 489m, 490m and 561(8), ch. 90, Laws of 1973, may provide for and implement a legislative appointment to the office of county judge contrary to the provisions of Art. VII, sec. 2 and Art. XIII, sec. 10, Wis. Const... 63-24

Resignation
A county judge's resignation is effective when successor qualifies. Judicial Code's only sanction is censure................................................ 62-35

Salaries and wages
County Board can reduce additional salary payable to county judge under sec. 253.07(2), Stats., during term only to extent necessary to keep total salary of county judge, state, county and county addition, within the limits set forth in sec. 20.923(3), Stats., created by ch. 90, Laws of 1973 ............. 62-269
If Senator Keppler assumes judicial office to which he was elected during his term as legislator, his compensation during his entire judicial term would be that which was applicable to the office of county judge of Sheboygan County which was in effect prior to the effective date of any increase which occurred within the term for which he was elected as legislator, which began in January, 1977.......................... 68-1
COUNTY MEDICAL EXAMINER

Assistants, qualifications for

Appointment of assistants to the Medical Examiner who are not able to be qualified as expert witnesses in the field of pathology is not permissible under Dunn County local ordinance. Appointment of law enforcement officers as assistant medical examiners creates an impermissible conflict between the offices

Qualifications

County Board or County Civil Service Commission, when establishing qualifications for the position of Medical Examiner should consider the statutorily prescribed duties of the Medical Examiner in sec. 59.34 and ch. 979, Stats. Legislature intends office to be occupied by an expert

COUNTY PARK COMMISSION

Complimentary season golf passes

The practice of a county park commission, in granting free or complimentary season golf passes for the use of the county-owned and operated golf course to elected county officials and certain appointed county officials, is deemed to be in excess of the authority of such commission where such practice cannot be shown to serve any identifiable public purpose

Milwaukee County

Total prohibition of all use of all Milwaukee County park buildings for political purposes is unconstitutional. Validity of regulations restricting political assemblies to certain areas of certain parks depends on whether the restrictions may be considered reasonable “time, place and manner” regulations. Current sec. 47.02, Milwaukee County Ordinances, vests unbridled discretion in permit-granting authority. To withstand constitutional attack explicit, objective standards ensuring even-handed application of the ordinance must be provided

COUNTY PLANNING AND ZONING COMMITTEE

Board of Adjustment

The extent to which sec. 59.99, Stats., authorizes the County Board of Adjustment to grant zoning variances and review decisions of the County Planning and Zoning Committee, discussed

COUNTY SURVEYOR

Duties

Duties of county and other land surveyors and minimum standards for property surveys discussed

Engineer

A city or village engineer is not required to be registered as a land surveyor when acting pursuant to sec. 59.635(2), Stats. (1977)

Records of

Counts that employ rather than elect a county surveyor pursuant to sec. 59.12, Stats., are required to maintain the survey record system described in sec. 59.60(2), Stats. Further, all counties are required to maintain the survey record system to enable registered land surveyors to comply with statutory filing requirements
COUNTY TREASURER

Bail forfeited

The entire amount of bail forfeited under sec. 969.13(4) is to be retained by the County Treasurer and no part thereof is to be paid to the State Treasurer .......................................................... 62-247

Clerk of court funds

A county board of supervisors may not require a clerk of court to turn over funds held by him or her to the county treasurer on Friday of each week . 78-143

County Board

A county board lacks the requisite statutory power to require Treasurer to search records and sign certificates .................................................. 66-358

Investment of county funds

The County Treasurer does not have power to manage and administer the investment of county funds; such powers by reason of sec. 59.75(1), Stats., being for the County Board or of a committee thereof, and since they involve the exercise of discretion on a continuing basis, cannot be delegated to the Treasurer. The County Board may authorize the Treasurer to deposit certain funds in inactive deposits at interest in county depositories under strict standards established by the Board ........................................ 68-133

National forest income

Section 59.20(13), Stats., controls the distribution of national forest income by county treasurers derived from 16 U.S.C. sec. 471, et seq., and 31 U.S.C. sec. 1601, et seq. (Unpub) ...................................................... 45-1978 Withdrawn, see 67-277

Personal property tax

County Treasurer has duty to collect personal property tax, returned delinquent by the town, but may charge tax back to the town after one year. Collection methods discussed .................................................. 63-204

Redemption notice

In publishing redemption notices for tax delinquent lands under sec. 75.07(1), Stats., County Treasurer is not authorized to omit the names of persons to whom such property was last assessed ........................................... 63-118
Section 75.07(1), Stats., requiring publication of redemption notice prior to expiration of time to redeem lands sold for taxes, is directory only; and failure to include in such publication the name of the person to whom such taxes were assessed does not invalidate a subsequent tax deed .................... 63-116

Register in Probate

Section 851.74(3), Stats. (1977), which requires Registers in Probate to make payments to the County Treasurer on the first Monday of each month, does not preclude more frequent payments ........................................ 68-117

Salaries and wages

A county board does not have power to deny salary to a county treasurer during a period of sickness where such official has not resigned or has not been removed for cause. Under present statutes county board does not have power to establish sick leave and vacation benefits for elected county officials. Remedies discussed .................................................. 65-62

Sick leave and vacation benefits

A county board does not have power to deny salary to a county treasurer during a period of sickness where such official has not resigned or has not been removed for cause. Under present statutes county board does not have power to establish sick leave and vacation benefits for elected county officials. Remedies discussed .................................................. 65-62
COUNTY TREASURER (continued)

Supervision of

County board can only grant powers of indirect supervision to Finance Director with respect to accounting or bookkeeping duties of County Clerk required by statute or board resolution to be performed by such officer. 65–132

Welfare checks

The conclusion of 52 OAG 439 (1963), that welfare payment checks must not only be prepared but actually mailed by the County Treasurer, is still valid. 70–201

COURT COMMISSIONER

Bail

Judges and court commissioners have power, prior to the filing of a criminal complaint, to release on bail persons arrested for commission of a felony. 65–102

Buffalo County

Family Court Commissioners must be appointed in Pepin and Buffalo counties; each must be a resident of the county he serves and each county is obligated to pay an annual salary to each officer and each part-time officer is entitled to the state salary supplement at the rate of $2,000 per year. (Unpub) 21–1975

Criminal warrants

Non-lawyer court reporters cannot be delegated power to issue criminal warrants and conduct initial appearances pursuant to sec. 757.69(1)(b), Stats. 72–39

Extend the employment of

Either the County Board as employer or the judges of the county as appointing authority has the authority under sec. 41.11(1), Stats., to extend the employment of a family court commissioner beyond normal retirement date. 67–120

Legislation

If sec. 356 of 1977 Senate Bill 720 or the amendment to sec. 356 contained in Senate Amendment 3 to Senate Bill 720 were enacted into law, either would be constitutionally invalid. 67–134

Marriages

Court commissioners do not have the power to officiate at marriages outside the county for which they were appointed. 78–16

Pepin County

Family Court Commissioners must be appointed in Pepin and Buffalo counties; each must be a resident of the county he serves and each county is obligated to pay an annual salary to each officer and each part-time officer is entitled to the state salary supplement at the rate of $2,000 per year. (Unpub) 21–1975

Salary

Part-time Family Court Commissioner also serves as District Attorney not entitled to practice law privately is entitled to minimum salary of $16,500 as District Attorney by reason of sec. 59.471(3), Stats., separate salary from county as Family Court Commissioner under sec. 247.17, Stats., and to the state supplement at the annual rate of $2,000 provided by sec. 59.495(2), Stats., created by ch. 331, Laws of 1973. 63–433

Traffic cases

A court commissioner lacks authority in traffic cases to accept pleas of no contest from defendants who do not appear but make a deposit, to accept pleas of no contest and guilty from defendants who appear, and to assess penalties against these defendants, since a court commissioner has only
COURT COMMISSIONER (continued)

Traffic cases (continued)
those powers conferred by statute and since the statutes do not authorize
court commissioners to conduct such activities. (Unpub) ....................... 21–1978

COURTS

See also BENCH WARRANT; CONTEMPT OF COURT; COUNTY COURT;
COURT COMMISSIONER; JUDGES; JUVENILE COURT

Annual fee for maintenance or support payments
If the court fails to order the annual fee paid under section 814.61(12)(b),
Stats., for receiving and disbursing money deposited as payment for main­
tenance payments, child support or family support, the clerk of court can
bill the payor and then collect the fee with the same remedies available as in
any other case of a debt created by law. Although the clerk cannot seek a
remedial sanction under chapter 785 in these situations, the clerk does have
the authority to increase the fee after providing the payor with written
notice of this obligation and a reasonable opportunity to pay .................... 76–265
In the appropriate case, a court may enforce the collection of the receiving
and disbursing fee under section 814.61(12)(b), Stats., for maintenance
payments, child support or family support payments by entering an income
withholding order as one of the remedial sanctions available under section
785.04(1). The power of the clerk of court is limited to moving the court for
a remedial sanction under chapter 785 after which the specific remedy is to
be imposed by the court under section 785.04(1) ........................................... 76–100

Appeals
Judgments of commitment under the Youthful Offenders Act must be ap­pealed within 90 days ................................................................. 66–242

Contempt of court
Courts of record in the State of Wisconsin have the authority to hold
juveniles in contempt of court; limited circumstances under which sanction
of imprisonment may be imposed discussed ............................................. 70–98

“Costs of prosecution”
Courts lack authority to impose and enforce payment of “costs of prosecu­tion” as a condition of probation in absence of statutory authority; courts
may dismiss a criminal charge upon payment of agreed “costs of prosecu­tion” as part of plea bargain which court accepts. (Unpub) ....................... 42–1982

Family Court Commissioner
The family court commissioner represents the public interest and does not act
as an advocate for the party benefited when he brings a remedial contempt
proceeding to enforce an existing order or judgment under section
767.29(1), Stats ................................................................. 76–21
Partner of Commissioner is prohibited from serving as counsel in any divorce
action in county which Commissioner holds office but may serve as counsel
in divorce actions in other counties. This prohibition may not be waived by
the parties to the divorce action ................................................................. 67–64

Fees
The only fee authorized to be paid any clerk of courts under section
102.26(1), Stats., in worker’s compensation matters is a $3 fee imposed
under section 814.61(5) when applicable ............................................. 76–148

Jail sentence, staying execution of
A trial court does not have the authority to stay the execution of a sentence
of imprisonment to the county jail for more than sixty days except for legal
cause or when placing a person on probation; overcrowding does not
constitute legal cause under section 973.15(8)(a), Stats .......................... 76–165

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COURTS (continued)

Juvenile court

A pre-petition investigation provided for by sec. 48.19, Stats., is authorized whenever any human being directs information to the juvenile court tending to show that a child is delinquent, in need of supervision, dependent or neglected .................................................. 63-279

Lobbying

Director of State Courts is required by sec. 13.695, Stats., to file a statement with respect to lobbying since the office is an agency within the definition of agency in sec. 13.62, Stats. (Unpub) .................................................. 107-1979

Minors

When a municipal court adjudges a child to have violated a municipal ordinance, that court must impose court costs and should add the ten percent penalty assessment provided in sec. 165.87(2), Stats., to any forfeiture imposed for such violation .................................................. 69-26

Powers

Assuming individual is entitled to attorney at public expense in mental hearings required by sec. 51.02, Stats., or alcohol or drug abuse hearings required by sec. 51.09(1), Stats., power to appoint, to determine indigency and to fix compensation are judicial and must be exercised by the court or under its direction and cannot be limited by the County Board or delegated to private nonprofit corporation. Any power of the County Board to contract for such services is limited to administrative details .................................................. 63-323

Probation and parole

Consecutive terms. Under sec. 973.09(1), Stats., a court may not impose consecutive probation terms .................................................. 69-173

Neither sec. 973.09(3)(a), Stats., nor any of the other probation statutes authorizes the trial court to shorten the period of probation once probation has been imposed. (Unpub) .................................................. 39-1982

Public records

After a transcript of court proceedings is filed with the Clerk of Court, any person may, pursuant to secs. 19.21(2) and 59.14(1), Stats., examine or copy such transcript .................................................. 68-313

Refusal hearing

An individual's fifth amendment privilege against self-incrimination need not be compromised by his or her testimony elicited at the evidentiary refusal hearing afforded to individuals who have requested the opportunity to litigate the lawfulness of their refusal to submit to chemical testing under the implied consent law. Consequently, absent any statutory guidelines, the scheduling of a refusal hearing is within the discretion and calendaring possibilities of the court to which it is assigned .................................................. 77-4

Sentencing

A trial court does not have the authority to stay the execution of a sentence of imprisonment to the county jail for more than sixty days except for legal cause or when placing a person on probation; overcrowding does not constitute legal cause under section 973.15(8)(a), Stats. .................................................. 76-165

Court cannot place conditions on a sentence of incarceration. Pursuant to statutes, a court may order a defendant to perform community service work in lieu of part or all of a fine imposed by the court or as a condition of probation. A court cannot impose probation or order a defendant to perform community service work in lieu of imposing a statutorily required minimum jail sentence .................................................. 71-41

Traffic

Courts may not dismiss traffic complaints on payment of penalty costs, or costs alone .................................................. 63-328
COURTS (continued)

Transfers

In traffic regulation cases, sec. 345.315, Stats., controls over sec. 300.05, Stats., insofar as request for substitution of a justice is concerned but not over sec. 300.055, Stats., which grants defendant right to secure transfers to county court upon request, accompanied by $1 fee, at any time prior to trial. 66–64

CREDIT UNIONS

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Constitutionality of ch. 45, Laws of 1981, delegating authority to commissioners of various financial institutions, discussed ................................. 71–195

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Grant making powers

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A Wisconsin credit union may invest in a credit union service corporation which sells insurance to the general public so long as the corporation was organized to primarily serve credit unions and their members ................................. 78–96

Credit unions’ authority to engage in the sale of insurance is limited to credit life and credit accident and sickness insurance ................................ 73–58

Insurance of accounts

The individual accounts of organizations and associations which have been admitted to credit union membership under sec. 186.05, Stats., are insured by the Wisconsin Credit Union Savings Insurance Corporation as provided by sec. 186.35(2)(a), Stats. (Unpub) ........................................... 26–1976

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A Wisconsin credit union may invest in a credit union service corporation which sells insurance to the general public so long as the corporation was organized to primarily serve credit unions and their members ................................. 78–96

Wisconsin Credit Union Savings Insurance Corporation

The Wisconsin Credit Union Savings Insurance Corporation can make grants to member credit unions as necessary to meet federal insurance eligibility requirements, and the Office of the Commissioner of Credit Unions may require such grants on a case-by-case basis ................................ 74–241

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Chapters 69 and 157, Stats., are not alternatives to the requirement in section 979.10 that anyone cremating a corpse first obtain a cremation permit from
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the coroner. University medical schools or anyone else qualified to receive a corpse can, however, receive a corpse for research without first obtaining the cremation permit. Section 979.10 only requires that the permit be obtained before the corpse is cremated .................................................. 77-218

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Not authorized for dental, chiropractic, podiatric or optometric services.
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Anonymous telephone tip
An anonymous telephone tip to the police that a specified vehicle is being driven by an unlicensed person does not create an articulable and reasonable suspicion of illegality justifying an investigatory stop of the auto and driver. Under certain very limited circumstances, however, information from an anonymous informant may authorize a stop-and-frisk or an investigatory vehicle stop............................................................ 68-347

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Bail
Judges and court commissioners have power, prior to the filing of a criminal complaint, to release on bail persons arrested for commission of a felony. 65-102
Law enforcement officers may be authorized by court rule to accept surety bonds for, or, under specified circumstances, 10 percent cash deposits of, the amount listed in a misdemeanor bail schedule when an accused cannot be promptly taken before a judge for bail determination. However, such rules may not afford officers discretion as to the amount or form of bail an individual accused must post .................................................. 63-241
Law enforcement officials may require a person appearing pursuant to a summons to be fingerprinted and photographed. A court may condition a person's release from custody on bail upon the taking of fingerprints and photographs .................................................. 69-254
Bail forfeited
The entire amount of bail forfeited under sec. 969.13(4), Stats., is to be retained by the County Treasurer and no part thereof is to be paid to the State Treasurer .................................................. 62-247

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Bail revocation

Chapter 112, sec. 10, Laws of 1979 which allows courts to revoke bail for violating judicially imposed conditions of bail does not violate Wis. Const. art. I, sec. 8 ................................................................. 69-164

Bench warrant

A bench warrant issued under sec. 968.09, Stats., may be directed to all law enforcement officers in the state without regard to whether the defendant is charged with violation of a state statute or county ordinance. The form of the warrant should be tailored to meet the form suggested by sec. 968.04(3)(a)7., Stats............................................................... 62-208

Bingo

Bingo games sponsored by church organizations using local cable television facilities to broadcast the program where viewers participate in their homes are in violation of ch. 163. While bingo games conducted pursuant to ch. 163 enjoy exemption from the constitutional definition of lottery, bingo games which contravene the provisions of ch. 163 constitute lotteries in this state. Such lotteries are prosecutable under sec. 163.54 or secs. 945.02(3) and 945.03(4), Stats. The fact that community antenna television is regulated by the Federal Communications Commission does not preclude a prosecution on the grounds of federal preemption. The state criminal standard does not conflict with the federal regulation ........................................ 65-80

Bingo conducted on Indian reservations by Indian tribes or Indian persons must comply with the Bingo Control Act..................................... 69-22

Child abuse

Consensual sexual conduct involving sixteen- and seventeen-year old children does not constitute child abuse under sec. 48.981(2), Stats. (1981-82). (Unpub) ......................................................... 26-1983

A medical or mental health professional may report suspected child abuse under the permissive provisions of section 48.981(3), Stats., when the abuser, rather than the victim, is seen in the course of professional duties. Section 51.30 does not act as a bar to such reports made in good faith .... 76-39

Consecutive sentences

A criminal defendant who receives consecutive sentences that in the aggregate exceed one year, but individually are all less than one year, should be incarcerated in a county jail rather than the Wisconsin prison system ...... 78-44

"Costs of prosecution"

Courts lack authority to impose and enforce payment of “costs of prosecution” as a condition of probation in absence of statutory authority; courts may dismiss a criminal charge upon payment of agreed “costs of prosecution” as part of plea bargain which court accepts. (Unpub) .................. 42-1982

Crime Victims Compensation

Not authorized for dental, chiropractic, podiatric or optometric services. (Unpub)........................................................................... 84-1977

Debt collection

Police agencies and District Attorneys are not prohibited by sec. 427.104(1)(b), Stats., from sending letters threatening criminal prosecution to persons who have issued worthless checks ........................................... 63-340

Drunk driving

Where a person is charged under sec. 346.63(1), Stats. (operating a vehicle while under the influence of intoxicant or controlled substance), as a second offense, the charge may not be reduced to a violation as a first offense and the Court does not have discretion to sentence under sec. 346.65(2)(a)1., Stats., sentencing for first offense. At trial the burden and verdict requirements of a criminal proceeding apply. It is mandatory that the Department

C 73 1990
An individual's fifth amendment privilege against self-incrimination need not be compromised by his or her testimony elicited at the evidentiary refusal hearing afforded to individuals who have requested the opportunity to litigate the lawfulness of their refusal to submit to chemical testing under the implied consent law. Consequently, absent any statutory guidelines, the scheduling of a refusal hearing is within the discretion and calendaring possibilities of the court to which it is assigned.

Physician-patient privilege expressed in sec. 905.04, Stats., Wisconsin Rules of Evidence, is a testimonial privilege only, and has no existence outside of judicial proceedings. Under sec. 448.18(1)(d), Stats., a physician is ethically precluded from disclosing confidential communications unless otherwise provided in law or disclosure is required to prevent danger to the patient or the community.

Under new Evidence Rule, sec. 906.09, Stats., defendant may not be cross-examined about prior convictions until the Court has ruled in proceedings under Rule 901.04 that such convictions are admissible. Nature of former convictions may now be proved under the new rule. Defendant has burden of proof to establish that a former conviction is inadmissible to impeach him because obtained in violation of his right to counsel, under Loper v. Beto, 405 U.S. 473. Rule of Loper v. Beto, 405 U.S. 473, does not apply to claimed denial of constitutional rights other than the right to counsel, although the conviction would be inadmissible for impeachment if it had been reversed on appeal, whether on constitutional or other grounds, or vacated on collateral attack.

Circuit courts do not possess inherent powers, in the absence of statute, to order the expunction or destruction of criminal conviction records. Section 973.015, Stats., requires, in cases where ordered by the Court, that the Clerk of Court upon receipt of the certificate of discharge strike or obliterate from the record all references to the name and identity of the defendant.

An individual's fifth amendment privilege against self-incrimination need not be compromised by his or her testimony elicited at the evidentiary refusal hearing afforded to individuals who have requested the opportunity to litigate the lawfulness of their refusal to submit to chemical testing under the implied consent law. Consequently, absent any statutory guidelines, the scheduling of a refusal hearing is within the discretion and calendaring possibilities of the court to which it is assigned.

Section 941.29(5)(a), Stats., has been invalidated by congressional action. Pardons granted after November 15, 1986, will give recipients the right to receive, possess or transport in commerce firearms unless the pardon expressly provides otherwise.

A criminal prosecution pursuant to sec. 29.995, Stats., for a repeated violation of fish and game laws must be commenced by complaint as provided in sec. 968.02, Stats. Such a prosecution must be conducted in accordance with the same statutory and constitutional requirements applicable to other criminal prosecutions.
CRIMINAL LAW (continued)

Former conviction

Under new Evidence Rule, sec. 906.09, Stats., defendant may not be cross-examined about prior convictions until the Court has ruled in proceedings under Rule 901.04 that such convictions are admissible. Nature of former convictions may now be proved under the new rule. Defendant has burden of proof to establish that a former conviction is inadmissible to impeach him because obtained in violation of his right to counsel, under Loper v. Beto, 405 U.S. 473. Rule of Loper v. Beto, 405 U.S. 473, does not apply to claimed denial of constitutional rights other than the right to counsel, although the conviction would be inadmissible for impeachment if it had been reversed on appeal, whether on constitutional or other grounds, or vacated on collateral attack ................................. 63–424

Forms

Forms similar to the Uniform Traffic Citation which are used as complaints to initiate criminal prosecutions in certain misdemeanor cases are sufficient to confer subject matter jurisdiction on the Court but any conviction which results from their use in the manner described in the opinion is null and void ................................................................. 63–540

Fourth Amendment warrant requirements

State Arson Bureau and local fire and police departments are subject to the Fourth Amendment warrant requirements of the United States Constitution in conducting searches for evidence of arson. If consent to search is sought, very general guidelines are that a tenant or co-tenant may consent to search of area under his control, while consent to search a common area may be given by landlord or, if objector could not reasonably expect privacy, by a tenant ................................................................. 68–225

Gambling

Games such as "Las Vegas nights" wherein participants must make a payment or donation in order to gamble with play money and then use the play money at the end of the evening to bid on private prizes constitute illegal lotteries under Wisconsin law. The law does not exempt benevolent and nonprofit organizations ................................................................. 70–59

The State's anti-gambling laws are enforceable against Indians on Indian reservations under the authority of P. L. 280 ................................................................. 72–182

Indians

Bingo conducted on Indian reservations by Indian tribes or Indian persons must comply with the Bingo Control Act ................................................................. 69–22

The State has jurisdiction over members of the Menominee Tribe on public roads and highways within the Menominee Reservation in respect to the enforcement of state traffic laws that are necessary to protect the highways against depredation or that would impair their use as a public right-of-way. State law enforcement officers can arrest any person who commits a federal offense in their presence ................................................................. 66–115

The State's anti-gambling laws are enforceable against Indian reservations under the authority of P. L. 280 ................................................................. 72–182

Intrusive searches

Intrusive searches of the mouth, nose or ears are not covered by sec. 968.255(3), Stats. However, searches of those body orifices should be conducted by medical personnel to comply with the Fourth and Fifth Amendments ................................................................. 71–12

Investigatory vehicle stop

An anonymous telephone tip to the police that a specified vehicle is being driven by an unlicensed person does not create an articulable and reasonable suspicion of illegality justifying an investigation stop of the auto and driver. Under certain very limited circumstances, however, information
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from an anonymous informant may authorize a stop-and-frisk or an inves-
tigatory vehicle stop............................................................ 68-347

Juveniles
Under the provisions of sec. 48.12, Stats., the Iron County juvenile court has
jurisdiction of delinquency petitions based on violation of the Michigan
criminal law by children who are residents of and present in Iron County. 62-229
Wisconsin courts have jurisdiction under ch. 48, Stats., over state resident
juveniles alleged to be delinquent because they violated another state’s
criminal laws............................................................ 70-143

Lottery
Illegality of Michigan lottery activities in Wisconsin discussed. Ch. 945, Stats..
“Silent auction” is not a lottery because the element of “prize” is not present. 62-186
62-122

Mental disease or defect
The Department of Health and Social Services has authority to supervise
defendants conditionally released under section 971.17(2), Stats., if the
Court orders such supervision as a condition of release. The period of
supervision, when added to the time defendant has spent in the treatment
institutions, cannot exceed the maximum term of imprisonment as defined in
section 971.17(4). Such maximum term must be calculated as if consecutive
sentences had been imposed. The Department lacks authority to supervise
defendants released under section 971.17(4).................................. 73-76

Navigable stream
In order to obtain a conviction for violating sec. 30.195, Stats., the State must
show that the defendant changed the course of a navigable stream and that
no permit to change the stream’s course had been granted to the defendant.
The State need not show that the changed portion of the stream was
navigable, nor a specific intent to change the stream’s course............... 67-265

Notary Public
A convicted felon who has been restored to his civil rights, pursuant to sec.
57.078, Stats., is barred from the office of Notary Public, by art. XIII, sec.
3, Wis. Const., unless he has been pardoned. The certificate provided for by
sec. 57.078, Stats., may be issued by other than the Department of Health
and Social Services. The serving of the sentence is what restores the per­
son’s civil rights, and the certificate merely evinces the serving of the
sentence ............................................................ 63-74

“Past consideration” as that term is used in sec. 943.24(3), Stats., is present in
a situation in which one party belatedly delivers to another a check in
consideration for goods transferred at an earlier date from the payee to the
drawer, although said check is later determined to have been worthless at
the time of issuance. “Past consideration” as that term is used in sec.
943.24(3), Stats., is also present in a situation in which an employee pays
back his employer by way of a worthless check for money discovered
missing from a restaurant cash register for which the employee was
responsible ............................................................ 66-168

Prisons and Prisoners
See PRISONS AND PRISONERS

Public official
Claim for expense reimbursement by a public officer, under specific fact
situation, is both an action taken in such officer’s official capacity and an
action growing out of performance of official duties thereby permitting
municipal government to pay expenses associated with criminal charge
against such officer based upon such claim pursuant to sec. 895.35, Stats. . 71-4
CRIMINAL LAW  (continued)

Real estate

Section 77.27, Stats., is violated when value is intentionally falsified on a Wisconsin Real Estate Transfer Return. False declaring a transfer as a sale when it is in fact a gift does not constitute a violation of sec. 77.27, Stats., nor will it support the issuance of a false swearing complaint under sec. 946.32, Stats., but it may constitute a gift tax avoidance in violation of sec. 72.86(6), Stats. 62-251

Restitution

A forfeited cash bond may not be used to pay restitution to the victim of the crime 68-71

Rewards

The authority of county officials to offer rewards for the arrest or conviction of persons violating the criminal law is limited to the circumstances set forth in sec. 59.25(2), Stats. 63-555

Search and seizure

A municipality's decision to require pre-employment drug testing for prospective employees must balance the need for testing in particular positions against the invasion of personal rights that the search entails, considering all relevant factors. 76-257

Authorized agents of the Department of Agriculture, Trade and Consumer Protection have the authority to stop and search vehicles transporting livestock in Wisconsin so long as they comply with certain constitutional safeguards. 77-172

Certain provisions of Substitute Amendment to 1977 Senate Bill 286 revising portions of State's Lobbying Law are incompatible with citizens' rights to be secure against unreasonable searches and seizures. (Unpub) 15-1978

In principle, the purposes sought to be accomplished by Assembly Substitute Amendment 3 to 1977 Assembly Bill 93, revising subch. III of ch. 13, Stats., the State's Lobbying Law, are compatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures. Some of the means selected to accomplish those purposes may, on their face or as applied violate citizens' First Amendment right of petition. 67-85

Self incrimination

See Fifth Amendment privilege

Sentencing

A criminal defendant who receives consecutive sentences that in the aggregate exceed one year, but individually are all less than one year, should be incarcerated in a county jail rather than the Wisconsin prison system. 78-44

Under sec. 56.18, Stats., a criminal defendant may be sentenced to the House of Correction where the maximum punishment authorized by statute for the offense for which the person is being sentenced is two years or less; under sec. 53.315, Stats., a person who is placed on probation after sentence is imposed and stayed, and who, as a condition of that probation, is ordered confined to the county jail between the hours or periods of his employment, may be transferred to the House of Correction, irrespective of the length of the stayed sentence. (Unpub) 51-1979

Shoplifting statute

The temporary detention provision of the shoplifting statute, sec. 943.50, Stats., cannot be used by hotel proprietors to detain guests who take hotel property without authorization. Sections 943.13(1)(b) and 943.21, Stats., do not appear to apply to a hotel guest who over stays the agreed-upon visit without obtaining an extended reservation. Rights of hotel proprietors in such situations discussed 69-217
CRIMINAL LAW (continued)

"Silent auction"

The "silent auction" is not a lottery because the element of "prize" is not present .................................................. 62-122

State Senator

A vacancy in the office of a State Senator is created under the provisions of art. XIII, sec. 3 and art. XIII, sec. 10, Wis. Const., as implemented by sec. 17.03(5), Stats., upon his conviction of and sentence for any felony punishable by imprisonment in state prison, and no further specific action is required by the State Senate to implement those provisions .............. 65-264

Stop-and-frisk

See Anonymous telephone tip

Stopping payment on checks

Stopping payment on checks used to pay for repairs to personal property—creation of a crime. The Legislature did not create a crime or invoke criminal penalties in enacting sec. 289.41(3), Stats., which renders stopping payment on a check used to pay for certain repairs to personal property "prima facie evidence of intent to defraud." This section could operate to establish prima facie evidence of only one of the elements of the crime of theft defined in sec. 943.20(1)(d), Stats. ................................. 63-81

Summons

Law enforcement officials may require a person appearing pursuant to a summons to be fingerprinted and photographed. A court may condition a person's release from custody on bail upon the taking of fingerprints and photographs .................................................. 69-254

Traffic

The State has jurisdiction over members of the Menominee Tribe on public roads and highways within the Menominee Reservation in respect to the enforcement of state traffic laws that are necessary to protect the highways against depredation or that would impair their use as a public right-of-way. State law enforcement officers can arrest any person who commits a federal offense in their presence ........................................ 66-115

Trespass

The intentional entering of an outbuilding without the consent of some person lawfully upon the premises whereon it is situated, under circumstances tending to create or provoke a breach of the peace, where such outbuilding is accessory to a main house and within the curtilage, is a violation of sec. 943.14, Stats., since "dwelling," as employed therein, has its common law meaning of "the cluster of buildings in which a man with his family resides," extending to "such outbuildings as are within the curtilage" .................................................. 62-16

Trespassing upon posted lands

Section NR 10.07(8) Wis. Adm. Code, requiring hunters to make reasonable efforts to retrieve game birds killed or injured, does not exempt a person from criminal prosecution under sec. 943.13(1)(b), Stats., for trespassing upon posted lands to retrieve birds shot from outside the posted area ...... 64-204

Truancy

A person cannot be charged with intentionally contributing to the delinquency of a minor under sec. 947.15(1)(a), Stats., on the basis of an allegation that the person either harbored a runaway or truant child, aided in the running away, or in some way encouraged the truancy or the running away, because truancy and uncontrolability are not included under the definition of "delinquent" under sec. 48.12(1), Stats. ........................................ 66-18
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Warrantless arrest

A warrantless arrest and detention for bail jumping, section 946.49, Stats., is authorized if probable cause exists that the arrestee violated the contact prohibition in section 968.075(5)(a)1. after being released under chapter 969. 78-177

Worthless checks

Police agencies and district attorneys are not prohibited by sec. 427.104(1)(b), Stats., for sending letters threatening criminal prosecution to persons who have issued worthless checks. 63-340

CURATORS, BOARD OF
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DAIRY, FOOD AND DRUGS

Food preparation

Heating hot dogs is not food preparation. Use of dry ice is not wet storage. (Unpub) ................................................................. 70-1978

Honey

Person who extracts honey for purpose of preparing it for sale is subject to a licensing requirement of sec. 97.28, Stats., unless honey is sold on retail basis only at a fixed place of business ............................................. 65-269

Milk marketing order

When the Department of Agriculture is presented with a petition for the adoption of a proposed milk marketing order under sec. 96.21, Stats., it is required to submit the proposed order to a public hearing under secs. 96.04 and 96.05, Stats. Marketing orders adopted under sec. 96.21, Stats., are subject to referendum or assent approval by milk producers. The Secretary of the Department, rather than the board, has the authority and responsibility to administer marketing orders pursuant to ch. 96 and sec. 96.21(3), Stats. Administration of ch. 96, Stats., discussed ....................... 64-198

Restaurants

Discussion of coverage of licensing requirements for restaurants under sec. 50.50(3), Stats., in light of amendments to sec. 97.28, Stats., regarding the licensing of delicatessen operations. (Unpub) ................................................................. 85-1977

Vitamins

Vitamins not intended for use in the diagnosis, cure, investigation, treatment or prevention of diseases are not drugs within the meaning of sec. 450.06, Stats., and may be sold in stores other than pharmacies ...................... 66-137

Wet storage

Heating hot dogs is not food preparation. Use of dry ice is not wet storage. (Unpub) ................................................................. 70-1978

DEEDS

See also REGISTER OF DEEDS

"Abstracts"

Although Register of Deeds can utilize microfilm and photocopies with County Board approval, use of a photocopy of writs of attachments and certificates of sale of real estate would not, even with index, be a substitute for the separate indexed book or register of "abstracts" of such documents required by sec. 59.54, Stats................................................................. 67-114

Forest Crop Law

A county Register of Deeds must record Department of Natural Resources' orders under the Forest Croplands Program, sec. 77.02(3), Stats., and the Woodland Tax Law, sec. 77.16(3), Stats., notwithstanding sec. 59.57(12), Stats., which requires that recording fees be paid in advance of recordation. 66-246

Real estate transfer fee

Section 77.22, Stats., requires the Register of Deeds to enter the amount of real estate transfer fee paid on the face of the deed. The information on the return is confidential, but this confidential status is qualified by sec. 77.23, Stats., with respect to the Department of Revenue and local assessors. (Unpub) ................................................................. 25-1976
DEFENDANT

Evidence Rule

Under new Evidence Rule 906.09, defendant may not be cross-examined about prior convictions until the Court has ruled in proceedings under Rule 901.04 that such convictions are admissible. Nature of former convictions may now be proved under the new rule. Defendant has burden of proof to establish that a former conviction is inadmissible for impeachment because obtained in violation of his right to counsel, under Loper v. Beto, 405 U.S. 473, does not apply to claimed denial of constitutional rights other than the right to counsel, although the conviction would be inadmissible for impeachment if it had been reversed on appeal, whether on constitutional or other grounds, or vacated on collateral attack ................................................................. 63-424

DELEGATES

See ELECTIONS

DENTAL EXAMINERS, BOARD OF

Open meeting

A member of the Dentistry Examining Board has a right to tape record an open meeting of the Board, providing he does so in a manner that does not interfere with such meeting; and the Board cannot lawfully deny such right. A Board member does not have a right to tape record a closed meeting of the Board ................................................................. 66-318

DENTISTRY

Corporations

Restrictions on business corporations providing medical, legal and dental services discussed ................................................................. 75-200

Crime victims compensation

Under ch. 949, Stats., DILHR is not authorized to direct payment of expenses incurred by victims of crime for dental, chiropractic, podiatric, or optometric services. (Unpub) ................................................................. 84-1977

DEPENDENT CHILDREN

See CHILDREN

DEPUTY SHERIFFS

See SHERIFFS

DEVELOPMENT, DEPARTMENT OF

Housing agency

The Department of Development is authorized to act as a public housing agency for the purpose of participating in the federal lower-income housing assistance program set forth in 42 U.S.C. sec. 1437f (Ch. 8). The Department is not required to obtain local approval prior to participating in the Ch. 8 program. (Unpub) ................................................................. 61-1980

DEVELOPMENTAL DISABILITIES BOARD

See 51.42/51.437 BOARD

DIRECT REFERENDUM

See ELECTIONS
DISABLED PERSONS

See PUBLIC ASSISTANCE

DISCRIMINATION

See also CIVIL RIGHTS

Adoption agencies

A contract between the Department of Health and Social Services and an association of private adoption agencies does not result in legally prohibited religious discrimination where any religious preferences are limited to the statutory religious matching requirement. (Unpub) 32-1983

Age Discrimination in Employment Act

County collective bargaining agreement providing for payment of employee contribution to Wisconsin Retirement System only for those deputy sheriffs under age fifty-five violates the federal Age Discrimination in Employment Act 72-91

Bartenders' licenses

Section 66.054(11), Stats., which permits the issuance of bartenders' licenses to persons of "good moral character" does not automatically preclude issuance to a former offender, especially in light of sec. 111.32(5)(h), Stats., which prohibits discrimination in employment or occupational licensing based upon a criminal conviction (with certain exceptions) 68-202

Children

Counties may adopt and enforce fair housing ordinances under section 66.432, Stats., in municipalities within such counties which already have enacted their own fair housing ordinance. No double jeopardy problem arises if a county and a municipality in the county simultaneously seek to enforce their fair housing ordinances in connection with a single act of discrimination, provided that a violation of one or both of the ordinances is punishable only by a forfeiture. Section 66.432 authorizes cities, villages, towns and counties to prohibit bases of discrimination in addition to those specified in sections 66.432 and 101.22 74-234

Cities

Cities, counties, and other local governmental entities not being a part of the executive or legislative branches of state government are neither "contracting agencies" of the State within the meaning of sec. 16.765(1), Stats., which requires a nondiscrimination clause in contracts, nor are such entities "subdivisions" of the State within the meaning of sec. 16.755(1), Stats., which empowers the Council on Small and Minority Business to review the extent of small business participation in purchasing by the State and its subdivisions 68-306

Conviction records

1. A licensing agency may not ask an applicant about juvenile delinquency records. 2. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats. 67-327

Counties

A county may enact an ordinance requiring its contractors to agree to a policy of non-discrimination in employment, even though such an ordinance provides broader protection than that afforded by state and federal equal employment opportunity laws, as long as such ordinance does not conflict with such laws 70-64

Cities, counties, and other local governmental entities not being a part of the executive or legislative branches of state government are neither "contracting agencies" of the State within the meaning of sec. 16.765(1), Stats., which requires a nondiscrimination clause in contracts, nor are such entities "subdivisions" of the State within the meaning of sec. 16.755(1), Stats., which empowers the Council on Small and Minority Business to review the
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Counties (continued)

extent of small business participation in purchasing by the State and its subdivisions ........................................ 68-306

Drugs

The state and local units of government are not "purchasers" under sec. 100.31, Stats., and sellers of drugs are not prohibited from offering or according to them pricing arrangements which are not made available to other purchasers .................................................. 65-59

Fair Employment Act

Register in Probate is protected by the Fair Employment Act which protection is not affected by a defect in the appointment .................. 67-169

Fair Housing Ordinance

Counties may adopt and enforce fair housing ordinances under section 66.432, Stats., in municipalities within such counties which already have enacted their own fair housing ordinance. No double jeopardy problem arises if a county and a municipality in the county simultaneously seek to enforce their fair housing ordinances in connection with a single act of discrimination, provided that a violation of one or both of the ordinances is punishable only by a forfeiture. Section 66.432 authorizes cities, villages, towns and counties to prohibit bases of discrimination in addition to those specified in sections 66.432 and 101.22 ........................................ 74-234

Housing

The Wisconsin Open Housing Law permits, but does not require, the Department of Industry, Labor and Human Relations to receive and process class action complaints of housing discrimination ........................................ 70-250

Jailer

The provisions of sec. 53.41, Stats., which require that at least one jailer on duty be of the same sex as those persons in custody does not conflict with the anti-sex discrimination provisions of the Wisconsin Fair Employment Act. Concept of "bona fide occupational qualification" under federal Title VII of the 1964 Civil Rights Act discussed. Counties must comply with sec. 53.41, Stats., when they can do so without conflict with Title VII .............. 70-202

Legal counsel

A state agency may insist on the presence of legal counsel when making agency personnel available for informal interviews conducted by Personnel Commission equal rights officers in the course of investigating complaints of employment discrimination against such state agency, where the equal rights officer wishes to (1) conduct on the job interviews of nonmanagerial personnel, or (2) interview agency supervisors who are not named or "immediately" involved in the discriminatory actions in question ................. 70-167

Local government entities

Cities, counties, and other local governmental entities not being a part of the executive or legislative branches of state government are neither "contracting agencies" of the State within the meaning of sec. 16.765(1), Stats., which requires a nondiscrimination clause in contracts, nor are such entities "subdivisions" of the State within the meaning of sec. 16.755(1), Stats., which empowers the Council on Small and Minority Business to review the extent of small business participation in purchasing by the State and its subdivisions ........................................ 68-306

Nursing homes

Nursing homes operated by religious or fraternal orders, whose policies restrict admittance thereto to members thereof, are not exempt from the provisions of sec. 146.30, Stats., and rules adopted pursuant thereto, unless they come within the provisions contained in subsec. (12m) of said statute. 63-30
DISCRIMINATION (continued)

Optometry
Section 449.01(3), Stats., requires a county, under a group health care benefit plan providing coverage for eye examinations performed by a licensed physician and surgeon, to pay for such services performed by an optometrist. (Unpub.) ................................................................. 33-1989

Personnel Commission
The Personnel Commission possesses the same powers and duties in processing discrimination complaints involving a state agency as employer as those exercised by the Department of Industry, Labor and Human Relations with respect to discrimination complaints involving an employer other than a state agency including the power to investigate complaints and to issue subpoenas................................................................. 68-403

Relatives
Within limits, County Board may prospectively prohibit department heads from appointing close relatives to county offices and positions but cannot totally prohibit relatives of a county board supervisor from any employment by the county. (Unpub)................................................................. 88-1977

Religion
A contract between the Department of Health and Social Services and an association of private adoption agencies does not result in legally prohibited religious discrimination where any religious preferences are limited to the statutory religious matching requirement. (Unpub)................................................................. 32-1983
Nursing homes operated by religious or fraternal orders, whose policies restrict admittance thereto to members thereof, are not exempt from the provisions of sec. 146.30, Stats., and rules adopted pursuant thereto, unless they come within the provisions contained in subsec. (12m) of said statute. 63-30
University records of employee's ethnic origin. (Unpub)................................. 79-1977

Service clubs
Section 942.04, Stats., potentially applies to service clubs; constitutionality of state regulation of such clubs is to be analyzed according to Board of Dirs. of Rotary Intern. v. Rotary Club, 481 U.S. 537, 107 S. Ct. 1940 (1987)......... 76-251

Settlement
Department of Industry, Labor and Human Relations may approve or be party to a job discrimination settlement agreement which includes less than the full back pay liability if the agreement eliminates the discrimination. If the agreement does not eliminate the discrimination the Department may proceed in the matter before it ................................................................. 66-28

Sex discrimination
Section 942.04, Stats., potentially applies to service clubs; constitutionality of state regulation of such clubs is to be analyzed according to Board of Dirs. of Rotary Intern. v. Rotary Club, 481 U.S. 537, 107 S. Ct. 1940 (1987)......... 76-251

State agency
A state agency may insist on the presence of legal counsel when making agency personnel available for informal interviews conducted by Personnel Commission equal rights officers in the course of investigating complaints of employment discrimination against such state agency, where the equal rights officer wishes to (1) conduct on the job interviews of nonmanagerial personnel, or (2) interview agency supervisors who are not named or "immediately" involved in the discrimination actions in question ................. 70-167

University
Section 36.29(1), Stats., which prohibits investment of University funds in companies which practice or condone discrimination is not an undue burden on interstate commerce, does not improperly interfere with foreign relations and is not impermissibly vague................................. 67-20
DISCRIMINATION (continued)

Vocational, technical and adult education

The employment practices of vocational, technical and adult education districts are subject to city equal employment ordinances. Such ordinances, however, can be applied only to employment with the geographic boundaries of the city ................................................................. 70-226

DISTRICT ATTORNEY

See also CORPORATION COUNSEL; COUNTY CORPORATION COUNSEL

Conflict of interest

Corporation counsel employed on part-time basis cannot accept employment as defense counsel for those whose interests are directly adverse to the State or county. Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in prosecuting a state case. County Board cannot change status of office of district attorney from one in which he is permitted to practice law privately to one in which he is not, so as to be effective during the term for which such officer was elected ......................................................... 67-31

Section 196.675(1), Stats., would be violated where a partner of a district attorney compensated on a part-time basis was retained by a public utility, if the partner-district attorney were to financially benefit directly or indirectly ................................................................. 75-111

“Costs of prosecution”

Courts lack authority to impose and enforce payment of “costs of prosecution” as a condition of probation in absence of statutory authority; courts may dismiss a criminal charge upon payment of agreed “costs of prosecution” as part of plea bargain which court accepts. (Unpub) ........................................ 42-1982

County Board

County Board cannot diminish or enlarge duties of District Attorney except where certain duties are transferred to County Corporation Counsel. (Unpub) ......................................................................... 76-1977

County Board may not by resolution require either a full-time District Attorney or the Corporation Counsel to advise town officers on matters of strictly town business, and may not engage special counsel for such purpose. 72-172

Discussed in relation to corporation counsels’ duties

Duties of corporation counsels of different counties discussed where county Department of Social Services, on behalf of persons over whom it has legal custody, requests the Department of Social Services of another county, within which such person resides, to institute a chapter 55 proceeding for protective placement in the court of the county of residence. (Unpub) ......... 35-1984

Duties

District attorney’s obligation to prosecute town forfeiture actions at the request of a town chairman under section 778.12, Stats., discussed ............ 78-166

District Attorneys, whether compensated on a full-time or part-time basis, have a duty to represent the interests of the county and State in child support and paternity matters under sec. 46.25, Stats., petitions for a child alleged to be in need of protection or services under sec. 48.13, Stats., mental commitments pursuant to sec. 51.20, Stats., alcohol commitments under sec. 51.45, Stats., and petitions for appointment of a guardian under sec. 880.295(1), Stats., where the County Board has not assigned such duties to a County Corporation Counsel ............................................... 70-148

Evidence Rule

Under new Evidence Rule 906.09, defendant may not be cross-examined about prior convictions until the Court has ruled in proceedings under Rule 901.04 that such convictions are admissible. Nature of former convictions may now be proved under the new rule. Defendant has burden of proof to
DISTRICT ATTORNEY (continued)

Evidence Rule (continued)

establish that a former conviction is inadmissible to impeach him because obtained in violation of his right to counsel, under Loper v. Beto, 405 U.S. 473. Rule of Loper v. Beto, 405 U.S. 473, does not apply to claimed denial of constitutional rights other than the right to counsel, although the conviction would be inadmissible for impeachment if it had been reversed on appeal, whether on constitutional or other grounds, or vacated on collateral attack ................................................................. 63-424

51.42/51.437 Boards

A multi-county sec. 51.42–51.437 Board is not an independent agency or body corporate, but is an agency of the contracting counties. The district attorneys or corporation counsel of the contracting counties are required to furnish legal advice and representation to such Board. The sec. 51.42/51.437 Board, however, has limited power to contract with private attorneys for the furnishing of certain legal services to clients pursuant to secs. 46.03(17), 46.036, 51.42(5), 51.437(5) and 55.04(1)(a)8., Stats. Counties could jointly employ a county corporation counsel to furnish legal services of a civil nature to the Human Services Board by reason of secs. 59.025(3), 59.07(44), 66.30, Stats. (Unpub) ............................................................... 38–1982

Section 51.42(5)(h)7. permits multicounty 51.42/51.437 Board to retain private legal counsel only where the Corporation Counsel of each county, or District Attorney of each county not having a Corporation Counsel, notifies the Board that he or she is unable to provide specific services in a timely manner. Litigation, as used in section 59.44(3), applies only to civil court proceedings and does not include grievance proceedings or proceedings before an administrative agency ....................................................... 73–8

Forfeiture actions

District attorney's obligation to prosecute town forfeiture actions at the request of a town chairman under section 778.12, Stats., discussed .................. 78–166

Industry, Labor and Human Relations, Department of

District attorneys may exercise discretion in collecting wages referred by the Department of Industry, Labor and Human Relations, but such discretion must be exercised reasonably. Specific questions concerning collection of wages are discussed including methods of collection, settlements, payment of costs and fees, and enforcement of the statutory lien ........................................... 78–171

Investigators

Investigators employed by district attorneys offices in counties which have neither a population of 500,000 or more nor cities of the second or third class do not possess general police powers. (Unpub) ............................................. 53–1982

Involuntary commitment

Under sec. 55.06(1)(c), Stats., the duty of Corporation Counsel is to assist the Court and not to act as counsel for private parties petitioning. Under sec. 55.06(9)(a), Stats., Court should order protective placement in an existing facility. Under sec. 51.20(2), Stats., Court can entertain proceedings for involuntary commitment of person who has been admitted in some facility as a voluntary in-patient .............................................................. 68–97

Juvenile court

The duties of the District Attorney under secs. 48.04(3) and 59.47(11), Stats., relate only to appearing and assisting in juvenile court proceedings. Such duties normally do not include the performance of ministerial or clerical functions in drafting juvenile court petitions under sec. 48.20(2), Stats. ... 62–273

The Juvenile Court cannot require the District Attorney to serve the summons or notice required by ch. 48, Stats. However, the District Attorney, as an officer of the Court, may voluntarily do so to aid the Court in the administration of justice .......................................................... 72–145

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DISTRICT ATTORNEY (continued)

Milwaukee County

Staff positions in the Milwaukee District Attorney's office, which are mandated by statute as unclassified positions must be created in the unclassified service, unless the county's Civil Service Commission determines that transferring these positions to the classified service is necessary to secure the best service for the county. (Unpub.) ............................................... 17-1989

Multi-county prosecutorial system

A multi-county prosecutorial system could be established, consistent with article VI, section 4, of the Wisconsin Constitution, by reorganizing certain counties and joining them solely for prosecutorial purposes, while allowing them to remain separate for the purpose of exercising all other functions of county government. The electors of each county sharing the services of a particular district attorney, however, would have to participate in the selection of their joint prosecutor ................................................ 72-4

Oath of office

An official oath is required by section 59.13(1), Stats., for a county corporation counsel but is not required for an assistant district attorney .............. 77-228

Open meetings

The District Attorney has the authority to institute an action for forfeiture for violation of the Open Meetings Law only after receiving a verified complaint pursuant to sec. 19.97(1), Stats. (Unpub) ......................... 34-1981

Part time district attorney

Although a person elected as a "part time" district attorney may not be required to forego the private practice of law and devote all his time to the performance of official duties, he may voluntarily do so. A county board may increase the salary of the district attorney during his term of office. A county board must act timely to prohibit future district attorneys from engaging in the private practice of law. Secs. 59.15(1)(a), 59.471 and 66.197, Stats. (Unpub) .......................................................... 44-1975

Paternity matters

Duties of corporation counsel in county over 500,000 concerning paternity matters under secs. 52.21-52.45, Stats., cannot be transferred to legal counsel employed in a separate department created pursuant to powers in sec. 59.025, Stats. (Unpub) ......................................................... 22-1978

Police files

The police may justifiably prevent a district attorney from inspecting their investigation files on pending criminal cases to determine whether there is exculpatory evidence which must be disclosed to a defendant only in those exceptional instances in which a compelling need to maintain secrecy outweighs the constitutional and statutory considerations ordinarily demanding access ................................................................. 76-262

Police legal advisor

County Board has no power to authorize Sheriff to employ a police legal advisor to give day-to-day advice to the Sheriff unless such person is an assistant district attorney or assistant county corporation counsel .......... 65-245

Private counsel

Neither the Soil and Water District Board nor the County Board has the power to retain private counsel except as provided by sec. 59.44(3), Stats. The District is primarily liable for legal fees incurred to date ............... 70-234

Private practice

Corporation counsel employed on part-time basis cannot accept employment as defense counsel for those whose interests are directly adverse to the State or county. Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in

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Private practice (continued)
prosecuting a state case. County Board cannot change status of office of
district attorney from one in which he is permitted to practice law privately
to one in which he is not, so as to be effective during the term for which
such officer was elected........................................................................ 67-31

Protective placement
Neither District Attorney nor Corporation Counsel have a duty to petition
for protective placement, determination of incompetency or otherwise inter­
vene where an apparently competent elderly person with life threatening
illness chooses to remain at home under doctor’s and family care rather
than seek a higher level of care which might extend her life...................... 74-188

Public records
District Attorneys do not presently possess legal authorization to destroy
documentary materials, made or received in connection with the transac­
tion of public business, and retained by them as evidence of their activities
or functions because of the information they contain, even though the
documents are found in closed files ..................................................... 68-17

Salaries
A grant from the Wisconsin Office of Justice Assistance may properly be paid
as salary increases to the district attorney and his or her assistants in the
form of overtime, without violating section 59.49(1), Stats., provided the
county makes allowance for such grant funds in its budget and duly passes
salary increases for the district attorney and his assistants as provided by
sections 66.197 and 59.15(2)(c) .................................................................. 77-63

Corporation counsel employed on part-time basis cannot accept employment
as defense counsel for those whose interests are directly adverse to the State
or county. Section 256.22(3), Stats., does not prohibit a district attorney
from compensating his partner, out of his own funds, for assistance in
prosecuting a state case. County Board cannot change status of office of
district attorney from one in which he is permitted to practice law privately
to one in which he is not, so as to be effective during the term for which
such officer was elected........................................................................ 67-31

Social Services, County Department of
The duty to represent the County Department of Social Services rests solely
with the District Attorney or Corporation Counsel and County Boards lack
the authority to engage and compensate any other person or entity for such
work ........................................................................................................... 70-136

Traffic violations
District Attorneys have a statutory duty to prosecute state traffic violations.
District Attorneys cannot properly refuse to prosecute state actions when
such refusal is based on consideration of the ultimate deposition of the
proceeds from such actions. Such consideration is for the Legislature, not
the District Attorney .................................................................................. 64-157

Wage claims, collection of
District attorneys may exercise discretion in collecting wages referred by the
Department of Industry, Labor and Human Relations, but such discretion
must be exercised reasonably. Specific questions concerning collection of
wages are discussed including methods of collection, settlements, payment
of costs and fees, and enforcement of the statutory lien ................................. 78-171

DISTRICT VOCATIONAL, TECHNICAL AND ADULT EDUCATION BOARD
See VOCATIONAL, TECHNICAL AND ADULT EDUCATION, BOARD OF

DIVORCE
See MARRIAGE AND DIVORCE
DOCUMENTS

Articles of Incorporation

The drafting of Articles of Incorporation and other corporate documents to be filed with the Secretary of State constitutes the practice of law within the meaning of sec. 256.30(2), Stats. Any relaxation of this restriction is a question for the Wisconsin Supreme Court ........................................ 65-173

Official seal

A circuit or county court may use as its official seal on documents an ink seal printed by a rubber stamp ......................................................... 66-275

DOG LICENSE FUND

See LICENSES AND PERMITS

DOMICILE

See RESIDENCE, DOMICILE AND LEGAL SETTLEMENT

DRAINAGE DISTRICTS

Powers of

1. The powers of the Drainage District Board are not superseded by the Shoreline Zoning Board of the Department of Natural Resources; however, drainage ditches which are navigable are within the jurisdiction of the Department of Natural Resources pursuant to sec. 144.26(2)(d), Stats. The only specific exemption from the jurisdiction of the Department of Natural Resources regarding navigable waters is that of sec. 30.19(1)(d), Stats., concerning the agricultural uses of land. 2. Although soil conservation districts and drainage districts are created for a different purpose, some activities of both accomplish similar ends; therefore, each district retains control over those activities which it undertakes for the purposes for which it was created. 3. The Department of Natural Resources determines dam regulations for dams on drainage ditches, regardless of the purpose of the dam ................................................................. 63-355

DRIVERS

See AUTOMOBILES AND MOTOR VEHICLES; IMPLIED CONSENT
LAW

DRIVING WHILE INTOXICATED

See DRUNK DRIVING; IMPLIED CONSENT LAW

DRUGS

See also DAIRY, FOOD AND DRUGS; INTOXICATING LIQUORS
Contraceptives

Professional nurse may sell contraceptive articles, including oral contracept- tive drugs, under sec. 450.11(5), Stats. ............................................. 66-158

Controlled substances

Researcher must obtain Controlled Substances Board registration to obtain controlled substances under Wisconsin law even though such substances are exempt under federal law. (Unpub) ................................................. 66-1976

County ordinance

Counties may not enact ordinances in conformity with state statutes prohibit- ing the possession and sale of marijuana ........................................... 77-205
DRUGS (continued)

Testing; pre-employment

A municipality's decision to require pre-employment drug testing for prospective employees must balance the need for testing in particular positions against the invasion of personal rights that the search entails, considering all relevant factors............................................................... 76-257

Municipal ordinances

Chapter 161, Stats., the Uniform Controlled Substances Act, precludes the enactment of municipal ordinances regulating the sale and possession of such "controlled substances" as marijuana .................................................. 63-107

Prescribed drugs

Provisions of ch. 168, Laws of 1975, allow only limited substitution of prescribed drugs through a formulary ............................................ 65-137

Prescription drugs

The practice of dispensing drugs, medicines, or other articles by physicians' office personnel permitted by 41 OAG 23 (1952) within the purview of sec. 450.04(3), Stats., is not in violation of sec. 450.04(2), Stats., prohibiting dispensing of such items by persons other than registered pharmacists or registered assistant pharmacists under pharmacist supervision, or in violation of sec. 450.07, Stats., prohibiting the delivering of a prescription drug without a prescription of a practitioner. Long-standing 41 OAG 23 is not modified. Violations of secs. 450.04(2) or 450.07(2), Stats., should be reported to appropriate law enforcement authorities .................................................. 63-335

Prisons and prisoners

Preparation of medication by a nurse under direction of a physician is permissible under sec. 450.04(3), Stats. Delivery of such medication to prisoners by jail attendants pursuant to instructions of the physician is permissible under sec. 450.07(2), Stats.................................................. 66-178

Vitamins

Vitamins not intended for use in the diagnosis, cure, investigation, treatment or prevention of diseases are not drugs within the meaning of sec. 450.06, Stats., and may be sold in stores other than pharmacies........................................... 66-137

DRUNK DRIVING

See also IMPLIED CONSENT LAW

Arrest and release

Section 345.24, Stats., does not require the release of a person twelve hours after his arrest for one of the alcohol-related driving offenses specified in that statute if the person's blood-alcohol content still exceeds .05 percent, as long as the person is brought before a court without unreasonable delay .. 76-95

Implied Consent Law

Section 343.305, Stats., the Implied Consent Law, discussed .................... 62-174

Release after arrest

Section 345.24, Stats., does not require the release of a person twelve hours after his arrest for one of the alcohol-related driving offenses specified in that statute if the person's blood-alcohol content still exceeds .05 percent, as long as the person is brought before a court without unreasonable delay .. 76-95

Second offense

Where a person is charged under sec. 346.63(1), Stats. (operating a vehicle while under the influence of an intoxicant or controlled substance), as a second offense, the charge may not be reduced to a violation as a first offense and the court does not have discretion to sentence under sec. 346.65(2)(a)1., Stats., sentencing for first offense. At trial the burden and verdict requirements of a criminal proceeding apply. It is mandatory that
DRUNK DRIVING (continued)

Second offense (continued)

the department treat this as a second offense for purposes of revocation under sec. 343.31(1)(b), Stats................................................................. 69-47

DWELLING CODES

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EDUCATION

See also PUBLIC INSTRUCTION, SUPERINTENDENT OF; SCHOOLS AND SCHOOL DISTRICTS; STUDENTS; TUITION; UNIVERSITY; VOCATIONAL, TECHNICAL, AND ADULT EDUCATION

Apprentices

Apprentices indentured under ch. 106, Stats., may lawfully be charged tuition at schools in the state vocational, technical and adult education system for related instruction that apprentices must receive as a condition of their apprenticeship ................................................................. 65-37

A vocational, technical and adult education district which provides apprenticeship training may contract with other districts for payment of the costs of training persons who are residents of the other districts. Such district may not refuse, however, to admit nonresident Wisconsin students to an approved apprenticeship program, because the district of the student's residence fails to reimburse the district providing the instruction, unless the State Board of Vocational, Technical and Adult Education adopts rules sanctioning such refusal .......................................................... 69-257

Church schools

See also Parochial schools

Article I, sec. 18, Wis. Const., prohibits the use of funds received under Title I of the Elementary and Secondary Education Act, as amended, to pay salaries of persons teaching in church affiliated private schools ................. 64-136

In the administration of Title IV, Elementary and Secondary Education Act, as amended, funds may not be spent to provide educational services on the premises of church affiliated private schools but such funds may be spent to provide services, through "dual enrollment" or "shared time" programs; nor may school districts be required to equalize, on a per enrollee basis, expenditures as between private and public school students; nor may the Department of Public Instruction administer Title IV programs if local school districts refuse or are legally unable to do so .............................................. 64-139

CESA

1971 Assembly Bill 1577 would violate the Establishment Clause of the First Amendment to the United States Constitution and sec. 18 of art. I of the Wisconsin Constitution. Guidelines to possibly avoid constitutional objection to CESA service contracts with private schools discussed .......................... 62-75

Cosmetology Examining Board

Cosmetology Examining Board may admit to examination a student who has successfully completed prescribed courses of study at a registered school where the student's diploma is withheld by the school for the student's failure to meet his or her financial obligation to the school ................................................. 65-113

Dual enrollment

Funds made available through the Elementary Secondary Education Act may be used in dual enrollment programs to transport children from parochial schools to public schools and return ......................................................... 65-126

In the administration of Title IV, Elementary and Secondary Education Act, as amended, funds may not be spent to provide educational services on the premises of church affiliated private schools but such funds may be spent to provide services, through "dual enrollment" or "shared time" programs; nor may school districts be required to equalize, on a per enrollee basis, expenditures as between private and public school students; nor may the
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Dual enrollment  (continued)

Department of Public Instruction administer Title IV programs if local school districts refuse or are legally unable to do so .......................... 64–139

Exceptional education needs

The Department of Health and Social Services must treat a parent’s failure to respond as a denial of permission for evaluation and placement for exceptional educational needs. The Department of Health and Social Services has no authority to appoint a surrogate parent when a child's parent cannot be located, and must utilize alternative procedures under state law .......... 71–28

Parochial schools

See also Church schools

Because of lack of statutory authority, speech therapists may not supply services to students attending therapy sessions in parochial school buildings. 63–8

The Establishment Clause of the First Amendment to the U.S. Constitution and Wis. Const. art. I, sec. 18, prohibit public schools leasing classrooms from parochial schools in order to provide educational programs for parochial school students ................................................................. 67–283

Public assistance

The term “legal settlement” as used in sec. 121.77(1), Stats., is interpreted .. 65–301

Religion

Wisconsin Constitution art. I, sec. 18, prohibiting the drawing of money from the treasury for the benefit of religious societies, or religious or theological seminaries is a proscription against using public monies for such purpose. Section 3 of 1977 Assembly Bill 500 which purports to establish a separate fund outside of the State Treasury if enacted would not avoid this prohibition since the public nature of the money is not changed................................. 67–71

Residence

The term “legal settlement” as used in sec. 121.77(1), Stats., is interpreted .. 65–301

School bus

A motor vehicle used by a vocational school to transport students in extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats. After June 30, 1977, the transportation of minors who are fulfilling their compulsory school requirements, to or from vocational school, must be done in school buses. (Unpub) ................................................................. 54–1976

A school owned or operated automobile, used in casual and occasional transportation of school children to extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats., and sec. 121.54(7), Stats., does not prohibit such use ................................................................. 64–45

Segregation

State Superintendent does not have authority to determine whether public schools are segregated or the authority to take enforceable action to desegregate public schools ................................................................. 65–282

Speech therapists

Because of lack of statutory authority, speech therapists may not supply services to students attending therapy sessions in parochial school buildings. 63–8

Student loans

Legislature may direct Public Land Commissioners to invest monies from sale of public lands in student loans but may not direct a specific investment. That portion of 17 OAG 516 (1929) inconsistent with this opinion is repudiated ................................. 65–28

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Transportation

Funds made available through the Elementary Secondary Education Act may be used in dual enrollment programs to transport children from parochial schools to public schools and return ........................................ 65–126

A motor vehicle used by a vocational school to transport students in extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats. After June 30, 1977, the transportation of minors who are fulfilling their compulsory school requirements, to or from vocational school, must be done in school buses. (Unpub) .......................................................... 54–1976

A school owned or operated automobile, used in casual and occasional transportation of school children to extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats., and sec. 121.54(7), Stats., does not prohibit such use .......................................................... 64–45

Students living less than two miles from school may not be transported by the School Board at parental expense .................................................. 62–95

Vocational and adult education

Neither art. X, sec. 3, Wis. Const., nor any other constitutional provision prohibits the charging of tuition for any course of instruction offered at a school in the system of vocational, technical and adult education operated pursuant to ch. 38, Stats. The charging of tuition at such schools, and the manner and extent whereby such charges are to be made, is a matter of policy which the Legislature is free to determine in the exercise of its legislative power under art. IV, sec. 1, Wis. Const. .................. 64–24

Students who attend state vocational, technical and adult education institutions are eligible for tuition grants under sec. 39.30, Stats. ........................................ 65–182

Wisconsin Higher Education Corporation

The Wisconsin Higher Education Corporation may provide administrative services to lenders, charge a reasonable fee and may transfer any excess funds it receives from such fees to the appropriations of the Higher Educational Aids Board, or the State. (Unpub) .................................................. 3–1977

EDUCATION, BOARD OF

Public notice requirements

Discussion of public notice requirements for meetings of city district school board under secs. 19.81–19.98 and 120.48, Stats................................. 66–93

EDUCATIONAL COMMUNICATIONS BOARD, WISCONSIN

Friends

Under sec. 20.906(1), Stats., it would not be unlawful for Friends to hold funds for the ECB that were solicited through use of ECB facilities and resources. The ECB has statutory authority to contract with Friends to assist in raising funds for educational radio and television in this State .... 70–163

ELECTED OFFICIALS

See PUBLIC OFFICIALS

ELECTIONS

See also VOTES AND VOTING

Ballots

Failure to publish notices of an election on the last Tuesday in May, the first Tuesday in June, and the second Monday preceding an election on the question of removal of a county seat and failure by the County Clerk to distribute the ballots will not invalidate the election where it appears that the voters were well informed of the time, place, and manner of the election and the issue involved, and a majority of the qualified voters who went to
ELECTIONS (continued)

Ballots (continued)

...the polls, excluding those who had an opportunity to vote on the question of removal but chose not to, voted in favor of removal .......................... 66-219

Campaign expenses

The provisions of sec. 11.50, Stats., created by ch. 107, Laws of 1977, which impose limits on the primary election campaign expenditures of candidates seeking public financing of their Spring and general election campaigns are constitutional ........................................................... 67-321

Campaign contribution limits contained in sec. 11.26(1)(d), (2), and (9), Stats., are probably valid and enforceable, despite the fact that they are expressed as a percentage of disbursement limits in sec. 11.31, Stats., previously declared invalid. Statement in opinion of August 16, 1976, to the effect that sec. 11.26(9), Stats., should be treated as a nullity is withdrawn. Section 11.26(9), Stats., is probably constitutional ........................................................... 65-237

Constitutionality of Wisconsin's Finance Law, ch. 11, Stats., discussed in light of Buckley v. Valeo, 96 S. Ct. 612 (1976). Contribution limitations and disclosure provisions are generally unaffected. Ban on corporate contributions imposed by sec. 11.38, Stats., is probably constitutional. All direct and indirect disbursement limitations on individuals, groups, and candidates contained in secs. 11.31, 11.26(9), and 11.315, Stats., are invalid, as is the limit in sec. 11.26(10), Stats., on a candidate's personal contribution to his campaign because of conflict with First Amendment rights of speech and association. Sections 11.01(16), (10), (9), and 11.23, Stats., defining the scope of regulated activity, should be narrowly construed. Restrictions on referenda-related activity in secs. 11.01(9) and 11.23, Stats., apply only to transactions directly related to a particular result in a referendum. Board does not have power to relieve minor parties from disclosure of contributors' names and other disclosure requirements imposed by sec. 11.06, Stats. Where a claim exists that a reasonable probability of threats, harassment, or reprisals will result from enforcement of the law, such determinations should be decided by the courts. The Board should oppose such requests allowing the development of an adequate record on the factual questions. Board is advised to promulgate emergency rules under sec. 227.027, Stats., to publicize its policy regarding administration and enforcement of ch. 11, Stats., as modified herein .......................................................... 65-145

Campaign reports

Those provisions of state law relating to campaign financing which conflict with the federal Election Campaign Act are invalid. The Secretary of State must retain and make available for public inspection, not later than the end of the day of receipt, the federal election campaign reports and statements required to be filed with him. The Elections Board cannot be designated as the agent of the Secretary of State for purposes of compliance by this State with the federal law. (Unpub) ................................................. 24-1977

Civil service

Discussion of restrictions on political activities of state employees under federal and state law ........................................................... 67-315

Corporations

The statutory prohibition against political contribution and disbursements by corporations or cooperatives in support of or in opposition to any referendum to be submitted to the voters in sec. 11.38(1)(a)1., Stats., is unconstitutional. Other prohibitions in sec. 11.38(1)(a)1., Stats., are severable and constitutional. 65 Op. Att'y Gen. 145 (1976) and 65 Op. Att'y Gen. 237 (1976) are modified to the extent they are inconsistent with this opinion. Companion opinion to 67 Op. Att'y Gen. 211 ........................................................... 68-64

The statutory prohibition against political contributions and disbursements by corporations or cooperatives in support or opposition to any referendum to be submitted to the voters, set forth in sec. 11.38(1)(a)1., Stats., is unconstitutional. To the extent spending for that purpose is now allowable...
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under sec. 11.38(1)(a)1., Stats., it is fully subject to the requirements and limitations otherwise set forth in ch. 11, Stats., including those requiring registration and filing .......................... 67-211

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The County Board may create office of County Executive and make resolution contingent upon referendum of electorate .......................................................... 62-14

County Highway Commissioner
Board may not utilize unidentified paper ballot in voting to appoint County Highway Commissioner, but may vote by ayes and nays or show of hands at open session if some member does not require vote to be taken in such manner that the vote of each member may be ascertained and recorded.
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Sections 489m, 490m and 561(8), ch. 90, Laws of 1973, may provide for and implement a legislative appointment to the office of county judge contrary to the provisions of art. VII, sec. 2 and art. VIII, sec. 10, Wis. Const. ...... 63-24

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Delegate selection rules
Statute and rules which restrict the partisan activities of some employes and officeholders do not offend the First Amendment even if they result in the employes or officeholders being prohibited from participating in the party caucuses which choose delegates to the National Convention .................. 73-51

Dyslexia
An elector with dyslexia may qualify for voter assistance under the provisions of sec. 6.82(2)(a), Stats. ................................................................. 62-195

Independent candidates
Under certain specified conditions, Wisconsin constitutionally cannot prevent the substitution of persons as independent candidates for the office of Vice-President of the United States. (Unpub) ...................... 55-1980

Interim appointment
A county which is self-organized pursuant to sec. 59.03, Stats., is empowered by sec. 59.03(1)(d), Stats., to adopt an ordinance providing a procedure for filling a vacancy in the office of County Supervisor allowing for an interim appointment subject to the holding of a subsequent special election in which a person other than the appointee may be selected for the balance of the original term .................................................. 65-16

Judge
Under Wis. Const. art. VII, sec. 24(1), as amended April, 1977, a person must have been licensed to practice law in Wisconsin for five years immediately prior to the date of the election, rather than the date the term begins, to be eligible to the office of Circuit Judge. (Unpub) ................................................................. 1-1979

Legislators
1979 AB 353, requiring candidates for the Legislature to declare whether they will receive a lower salary, conflicts with election bribery laws, sec. 12.11, Stats. Further, if enacted, it would violate the constitutional principle that the Legislature cannot impose additional qualifications to office. Finally, its constitutionality under the Fourteenth Amendment to the United States Constitution is subject to question .................................................. 68-214

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Notices
Failure to publish notices of an election on the last Tuesday in May, the first Tuesday in June, and the second Monday preceding an election on the question of removal of a county seat and failure by the County Clerk to distribute the ballots will not invalidate the election where it appears that the voters were well informed of the time, place, and manner of the election and the issue involved, and a majority of the qualified voters who went to the polls, excluding those who had an opportunity to vote on the question of removal but chose not to, voted in favor of removal ........................................ 66-219

Political activity for state employer
Statutes and rules which restrict the partisan activities of some employees and officeholders do not offend the First Amendment even if they result in the employees or officeholders being prohibited from participating in the party caucuses which choose delegates to the National Convention ........................................ 73-51

Political fund
Wisconsin Administrative Code section EI Bd 1.06, and the forms developed to effectuate that rule, EB-11 and EB-12, which require corporations and associations to register and twice yearly report their expenditures for the establishment and administration of a political fund and for solicitation of political contributions to such fund, improperly impose substantive requirements in addition to those reasonably within the intendment of sec. 11.38(1)(a)2., Stats., and are therefore unenforceable ........................................ 67-193

Public funds for political purposes
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Section 11.33, Stats., applies to persons elected to state office who are seeking reelection or election to a different office and to the use of public funds for political purposes ........................................ 69-259

Reapportionment
The federal district court apportioned both members and senatorial districts in its order of June 17, 1982. The effective date of new district lines for purposes of nominations, regular, recall and special elections, mass mailings and in-district travel is June 17, 1982, as to both holdover Senators and incumbents in districts where elections are scheduled in the Fall of 1982... 71-157

Recall election
If the Elections Board is presented with a valid petition for the recall of a member of Congress pursuant to Wis. Const. art. VIII, sec. 12, and sec. 9.10, Stats., it must initiate the recall election unless otherwise ordered by a court ........................................ 68-140

Residences
A candidate for the Legislature need not be a resident of the district which he seeks to represent at the time he files his nomination papers. That portion of 61 OAG 368 (1972) inconsistent herewith is repudiated .................. 65-159

Salaries and wages
Article IV, sec. 12, Wis. Const., prohibiting a Legislator from being appointed or elected to a civil office created or the emoluments of which were increased during the Legislator's term, discussed. Constitutionality of sec. 13.04(1), Stats., lifting the constitutional prohibition by allowing the former Legislator to assume the other office at the pre-increase salary, discussed .. 63-127

Schools and school districts
A school board which informs the electorate of the school district of the facts which are pertinent to an issue which will be the subject of a school district
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Common Council may not vote to fill vacancy of alderman by secret ballot. Sec. 19.88(1), Stats. ................................................. 65-131
Utilization of a secret ballot by County Board to appoint zoning administra-
tor constitutes violation of sec. 66.77(6), Stats., and is voidable .......... 64-73

Senator
A state Senator need not resign his or her present seat before filing and running for a newly numbered senate seat, merely because he or she is presently an incumbent Senator .............................................. 71-162

Town sanitary district
Where town sanitary district consists of territory wholly within one town and town board has not designated its members as commissioners but has appointed commissioners, town board is not required to call special election to elect commissioners if petition signed by at least twenty percent of the qualified electors of the district is filed ........................................ 69-245

University
Campuses of the University of Wisconsin System have no present authority to regulate political canvassing in University-owned dormitories which does not involve the solicitation of monetary contributions................................. 65-251

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The coordinating physician, as defined in Wis. Admin. Code ch. H 21, is the person authorized to establish policies and procedures in providing emergency medical services under the Emergency Medical Services Act.............. 76-159

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Interpretation of new law rendering "good Samaritans" immune from civil liability for good faith acts or omissions in giving emergency care at the scene of an emergency or accident. Statute excludes from protection health care practitioners who make their living or who specifically are paid for providing emergency care at the scene of an emergency or accident ........ 67-218

Nurse
A registered nurse functioning as an emergency medical technician may per-
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Services performed
The Department of Health and Social Services by rule may authorize the ambulance attendants to perform emergency care services which the stat-
utes specify also are performable by paramedics, but only to the extent the Department finds that the attendants can perform those services safely by reason of their training. Attendants can perform those services under proper supervision of a physician unless the Department provides otherwise by rule, but the physician's decision to delegate a service to an attendant is reviewable by the Medical Examining Board and the attendant's decision to accept the delegation is reviewable by the Department ....................... 68-299
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Costs

It would be inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to section 51.15, Stats. While section 51.15(7) does not authorize contractual agreements with counties outside of Wisconsin, sections 51.75(11), 51.87(3) and 66.30(5) each contain a legal mechanism through which financial or other responsibility for the care and treatment of individuals from such counties may be shared under certain specified circumstances .............. 78–59

EMERGENCY NUMBER SYSTEMS BOARD

Open meeting

A telephone conference call involving members of a governmental body is a meeting which must be reasonably accessible to the public and the required public notice must be given ....................................................... 69–143

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Madison Redevelopment Authority

The Madison Redevelopment Authority proceeding under sec. 66.431, Stats., to eliminate blight or slums, may include in its plan the ultimate sale of acquired property to the Vocational, Technical and Adult Education District for a campus. (Unpub) ......................................................... 95–1976

Procedures

Limited to a specific fact situation the Department of Natural Resources need not comply with the eminent domain procedure of ch. 32, Stats., when acquiring property if there is a bona fide intention not to condemn the property sought, but it must comply with Wisconsin Relocation Assistance Law if it has the statutory power to condemn the property acquired ...... 68–3

EMPLOYE TRUST FUNDS, DEPARTMENT OF

Group Insurance Board

Section 632.895(5m), Stats., which requires that disability insurance policies must provide coverage for grandchildren of the insured, does not apply to group insurance contracts between health maintenance organizations and the group insurance board of the Department of Employe Trust Funds. Under sections 40.51(7) and 40.03(6)(a)2., the group insurance board may not establish a pool of municipal employers to provide health care benefits on a self-funded basis .......................................................... 76–311

Supplemental retirement funds

The Department of Employe Trust Funds is not authorized to administer supplemental retirement funds established by collective bargaining under sec. 111.70, Stats. (Unpub) ....................................................... 59–1979

EMPLOYE TRUST FUNDS BOARD

Employment of an actuary

Employment of an actuary by the Employe Trust Funds Board under sec. 40.02, Stats., is not subject to the general contracting procedures set forth in secs. 16.70 through 16.76, Stats. (Unpub) .......................................................... 34–1980

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Equitable claim

The specific appeal procedures provided for the Public Employe Trust Funds do not take precedence over the general grant of authority to the Claims Board to hear claims against state agencies, but the Claims Board lacks authority to order payment of the claim from the trust funds........................................ 74–196

Requirements for Board membership

An appointee to the Employe Trust Funds Board whose appointment is based upon membership in the Wisconsin Retirement Board or Teachers Retirement Board continues as a member of the Employe Trust Funds Board even if he or she is no longer a member of the appointing board. The appointing board may, however, remove and replace their appointees to the ETF Board “at pleasure.” .......................................................... 75–127

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A police and fire commission is an employer under section 103.15, Stats., and may not test paramedic candidates for the HIV virus. Civil liability of the commission and the city it serves for claims brought by individuals who can prove that they contracted the HIV virus through employment-related contacts with paramedics discussed ................................................................. 77–181

Classified service

When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service ................................................................. 78–11

Collective bargaining

Matters within the scope of bargaining as set forth in sec. 111.91, Stats., agreed to by the Department of Administration and a state employe union are not effective until submitted as tentative agreements to and approved by the Joint Committee on Employment Relations. Action of the Secretary of the Department of Administration in agreeing to so-called non-recrimination clause was within his discretion but the clause itself is unenforceable until approved by the Joint Committee on Employment Relations ........... 67–38

Continuation of pay

Discussion of sec. 230.36, Stats.—continuation of pay to employe injured in hazardous employment, with respect to long-term disability........................................ 68–25

Conviction records

1. A licensing agency may not ask an applicant about juvenile delinquency records.

2. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats................................................................. 67–327

De facto status discussed

Section 15.05(2), Stats., does not authorize appointment of an employe not within the Department. De facto status discussed. Quo warranto and sec. 946.12, Stats., action discussed. Corrective action requested of officers involved. (Unpub) ................................................................. 8–1978

Discrimination

A state agency may insist on the presence of legal counsel when making agency personnel available for informal interviews conducted by Personnel Commission equal rights officers in the course of investigating complaints of employment discrimination against such state agency, where the equal rights officer wishes to (1) conduct on the job interviews of nonmanagerial personnel, or (2) interview agency supervisors who are not named or "immediately" involved in the discriminatory actions in question ........................................ 70–167

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Discrimination settlement

Department of Industry, Labor and Human Relations may approve or be party to a job discrimination settlement agreement which includes less than the full back pay liability if the agreement eliminates the discrimination. If the agreement does not eliminate the discrimination the Department may proceed in the matter before it .................................................. 66-28

Drug testing; pre-employment

A municipality's decision to require pre-employment drug testing for prospective employees must balance the need for testing in particular positions against the invasion of personal rights that the search entails, considering all relevant factors .............................................................. 76-257

Dual employment

Discussion of restrictions which section 16.417(2), Stats., imposes on dual state employment of state employees .................................................. 77-245

Equal employment opportunity ordinances

The employment practices of vocational, technical and adult education districts are subject to city equal employment opportunity ordinances. Such ordinances, however, can be applied only to employment within the geographic boundaries of the city .................................................. 70-226

Family Court Commissioner

Either the County Board as employer or the judges of the county as appointing authority has the authority under sec. 41.11(1), Stats., to extend the employment of a family court commissioner beyond normal retirement date .................................................. 67-120

51.42 Board

Where a county board has established a civil service ordinance applicable to all county personnel other than the exceptions provided in sec. 59.07(20), Stats., the Director of the 51.42 Board does not have authority to grant vacation with pay to a 51.42 Board employee which is not authorized under the county civil service ordinance .............................................. 67-143

“Hiring above the minimum”

“Raised hiring rate” and “hiring above the minimum” practices utilized by Administrator of Division of Personnel pursuant to section Pers 5.02(1) and (2) Wis. Adm. Code are primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub) ..................... 65-1978

Juvenile delinquency records

1. A licensing agency may not ask an applicant about juvenile delinquency records. 2. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats. .................. 67-327

Leave of absence

When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service .................................................. 78-11

Nepotism

Within limits, county board may prospectively prohibit department heads from appointing close relatives to county offices and positions but cannot totally prohibit relatives of a county board supervisor from any employment by the county. (Unpub) .................................................. 88-1977
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A school district lacks authority to establish a pension plan other than through participation in the Wisconsin Retirement Fund for noncertified employees not subject to a collective bargaining agreement. (Unpub)........... 68-1976

Police and Fire Commission
A police and fire commission is an employer under section 103.15, Stats., and may not test paramedic candidates for the HIV virus. Civil liability of the commission and the city it serves for claims brought by individuals who can prove that they contracted the HIV virus through employment-related contacts with paramedics discussed ............................................................. 77-181

Public records
The final decision of a quasi-judicial body regarding disciplinary action against a physician in the unclassified service is properly deemed available under the Public Records Law ............................................................. 74-156
Public records relating to employee grievances are not generally exempt from disclosure under the Public Records Law, and nondisclosure must be justified on a case-by-case basis ............................................................. 73-20

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Section 15.05(2), Stats., does not authorize appointment of an employee not within the Department. De facto status discussed. Quo warranto and sec. 946.12, Stats., action discussed. Corrective action requested of officers involved. (Unpub) ............................................................. 8-1978

Reinstatement
A public employee departing a non-elected county position in the sheriff's office to assume the elective county office of sheriff is not entitled to reinstatement to the same or a similar position upon termination of service as such elective officer, in the absence of properly authorized civil service or contractual provisions so providing ............................................................. 78-19
When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service ............................................................. 78-11

"Raised hiring rate"
"Raised hiring rate" and "hiring above the minimum" practices utilized by Administrator of Division of Personnel pursuant to section Pers 5.02(1) and (2) Wis. Adm. Code are primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub) ............................................................. 65-1978

School districts
Multiple year contract renewal provisions under section 118.24(1) and (lm), Stats., do not apply to personnel and curriculum administrators and their assistants. (Unpub)............................................................. 37-1984

Seniority
When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service ............................................................. 78-11

Ski resorts and amusement parks
Public ski resorts and amusement parks which make a charge for enjoyment of their facilities are subject to rules relating to employment made under secs. 103.01 to 103.03, Stats. (Unpub)............................................................. 72-1978

State
Discussion of restrictions which section 16.417(2), Stats., imposes on dual state employment of state employees ............................................................. 77-245

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Unemployment benefits erroneously paid

Although unemployment benefits erroneously paid constitute overpayments which the individual recipients should be required to repay, the Department of Industry, Labor and Human Relations has discretion whether to seek recovery of such overpayment ........................................ 67-228

University

Where University has obtained ethnic or racial information about its employees under a necessary pledge of confidentiality, it need not divulge such information to a Senate committee where the committee has refused to issue a subpoena requested by the chairman and the needs of the committee can apparently be satisfied without such disclosures. (Unpub) ............. 79-1977

Worker's Compensation

Payment of the "supplemental benefit" of sec. 102.44(1), Stats., as created by ch. 148, Laws of 1971, is not precluded to former state employes by Wis. Const. art. IV, sec. 26. The "second injury fund" is not impressed with a constructive trust which prevents its use for payment of such "supplemental benefits" ........................................ 62-69

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ESTABLISHMENT CLAUSE, UNITED STATES CONSTITUTION

Adolescent Pregnancy Prevention Services Board

Constitutionality of the administration of grant monies by the Adolescent Pregnancy Prevention Services Board pursuant to section 46.93, Stats., discussed ........................................ 76-233

Private schools

United States Constitution art. I and Wisconsin Constitution art. I, sec. 18, do not prohibit the State from disbursing state matching funds under National School Lunch Act (P. L. 79-396) to private as well as public schools. Sections 115.34 and 20.255(1)(fe), Stats., must be amended to permit such disbursal to private schools ........................................ 69-109

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ETHICS, STATE BOARD OF

Authority to obtain copies of tax returns

Section 19.50(5), Stats., giving Ethics Board authority to obtain copies of tax returns, and sec. 71.11(44), Stats., regarding examination of tax returns, discussed. To the extent of any conflict between the two statutes, sec. 19.50(5), Stats., being a specific statute, controls over sec. 71.11(44), Stats., being a general statute. (Unpub) ................................. 8-1979
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Confidentiality
A state public official who requests and receives confidential advice from State Ethics Board under sec. 19.46(2), Stats., does not waive confidentiality by partial disclosure of advice. (Unpub) ........................................ 17-1975

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FARMLAND PRESERVATION ACT
Exclusive agricultural zoning
The Land Conservation Board has authority to prospectively revoke an exclusive agricultural zoning ordinance certification granted under sections 91.06 and 91.78, Stats. Notice and an opportunity to be heard must be afforded to the local zoning authority and to landowners who might be affected by a decertification decision. If a decision to decertify is made, only those lands which are rezoned are subject to the lien and property tax credit recapture provisions of section 91.77(2).

FARMLAND PRESERVATION CREDIT
Private interest in public contracts
Land conservation committee responsibilities and prohibition of private interest in public contracts discussed

FARMLAND PRESERVATION PROJECT
State-wide mapping
Funds provided in the account under sec. 20.143(3)(ea), Stats., may be used for a proposed state-wide mapping for Farmland Preservation Project if those funds are either utilized to carry out preliminary mapping functions or provided to counties to develop or revise agricultural preservation plans.

FEDERAL AID
Block grant monies
The Department of Health and Social Services cannot reobligate refunds of federal block grant monies received after the federally mandated time for closing the grant year

Comprehensive Employment and Training Act
The Governor can designate counties as agencies of the State to contract with nonprofit private agencies to utilize funds to provide public service jobs under Federal Comprehensive Employment and Training Act

1971 Assembly Bill 1577 would violate the Establishment Clause of the First Amendment to the United States Constitution and sec. 18 of art. I of the Wisconsin Constitution. Guidelines to possibly avoid constitutional objection to CESA service contracts with private schools discussed
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County

County which has received payments from the federal government in lieu of taxes under sec. 1 of P. L. 94–565, 90 Stat. 2662, cannot distribute such payments to the towns in which the national forest lands are located ........ 68–23

Distribution of

Section 59.20(13), Stats., does not control the distribution of monies received from the federal government under 31 U.S.C. sec. 1601. OAG 45 (unpub) issued June 9, 1978, is withdrawn ............................................. 67–277

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Entitlement lands

Previous opinions on the distribution of payments in lieu of taxes discussed. (Unpub)................................................................. 16–1982

Indians

Federally recognized Indian tribal councils are eligible under the state program for the distribution of federal surplus property to public agencies under P. L. 94–519. (Unpub) .......................................................... 61–1979

Justice Assistance Act of 1984 funds

The Fox Valley Technical Institute is not a “unit of local government” for the purpose of receiving federal Justice Assistance Act (JAA) funds. Also, JAA funds which are specified for use by local units of government for local projects cannot be used to support statewide crime prevention activities ... 75–265

Medicaid payments may not be supplemented

A county may not, in a manner consistent with federal and state statutes and regulations prohibiting supplementation, contractually obligate itself to pay a visiting nurse association funds in addition to those received by such a home health care provider through the Medicaid program. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the applicability of federal statutes and regulations administered exclusively by federal authorities ....................... 77–287

Surplus property

Federally recognized Indian tribal councils are eligible under the state program for the distribution of federal surplus property to public agencies under P. L. 94–519. (Unpub) .......................................................... 61–1979

Unemployment Compensation Fund

Borrowing money from the federal government to replenish Wisconsin's Unemployment Compensation Fund, under the arrangements prescribed by federal law, does not contravene either Wis. Const. art. VIII, sec. 3 or 4. 71–95

FEE SPLITTING

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FEES

Annual fee for maintenance or support payments

If the court fails to order the annual fee paid under section 814.61(12)(b), Stats., for receiving and disbursing money deposited as payment for maintenance payments, child support or family support, the clerk of court can bill the payor and then collect the fee with the same remedies available as in any other case of a debt created by law. Although the clerk cannot seek a remedial sanction under chapter 785 in these situations, the clerk does have the authority to increase the fee after providing the payor with written notice of this obligation and a reasonable opportunity to pay .............. 76–265

In the appropriate case, a court may enforce the collection of the receiving and disbursing fee under section 814.61(12)(b), Stats., for maintenance payments, child support or family support payments by entering an income
Annual fee for maintenance or support payments (continued)

withholding order as one of the remedial sanctions available under section 785.04(1). The power of the clerk of court is limited to moving the court for a remedial sanction under chapter 785 after which the specific remedy is to be imposed by the court under section 785.04(1)...................... 76–100

County clerk

Changes made to section 29.09(7m), Stats., by 1987 Wisconsin Act 27 did not alter the county board’s authority to permit the county clerk to keep the issuing fees prescribed by sections 29.09(10) and 29.092(15) as part of his or her compensation............................................................... 77–267

Courts

The only fee authorized to be paid any clerk of courts under section 102.26(1), Stats., in worker’s compensation matters is a $3 fee imposed under section 814.61(5) when applicable .......................................................... 76–148

Garnishment actions

In garnishment actions, a clerk of circuit court is not authorized to collect the deposit and disbursement fees set forth in section 814.61(12)(a), Stats., unless the garnishee has paid money into Court and obtained a court order directing the Clerk of Courts to deposit the money in a safe depository. State agencies are not required to pay the fees outlined in section 814.61 (except for the filing fee in section 814.61(1)), nor are they required to pay the fee for filing a garnishment action under section 814.62(1). .................. 73–3

Milwaukee County Sheriff

Section 71.13(3)(g), Stats., requires that the Sheriff of Milwaukee County perform duties of service and filing in connection with collection of state income and franchise taxes pursuant to sec. 71.13, Stats., without advancement of fees by the Department of Revenue.................. 69–37

Mining permit application

All staff work necessary to determine whether an applicant meets the requirements of the Metallic Mining Reclamation Act must be included in the cost of evaluating the permit, including any evaluation of compliance with other environmental requirements. The withdrawal of a mining permit application by the applicant prior to a final decision on the application does not relieve the applicant from the obligation to pay the cost of evaluation .... 76–150

Municipalities

Municipality must pay $5.00 nonrefundable fee provided for in sec. 814.63(2), Stats., where a forfeiture action has been disposed of in circuit court after transfer from municipal court upon demand for jury ................... 72–129

Natural Resources, Department of

Fees collected by the Department of Natural Resources for admissions to state parks and forests are subject to sales taxation under sec. 77.52(2)(a)2., Stats. ........................................ 66–205

Public administration

Abolition of the Office of Public Administrator, effective January 1, 1974, by ch. 90, Laws of 1973, requires that such officers submit their final reports and claims for fees as soon after 1973 as possible in order to obtain reimbursement without undue delay and complications........... 62–245

Public records

The alphabetical index which the Register in Probate must maintain pursuant to section 851.72(5) is not a court record and thus is open to public access under sections 59.14(1) and 19.31. The index may not, however, contain results of proceedings under chapters 55 and 880. The $4.00 search fee of section 814.66(1)(g) applies only when a person fails to furnish the docket or file number or when a search is conducted to ascertain the existence or non-
FEES (continued)

Public records (continued)

existence of a record. The charge for a one page certified copy from the Register in Probate or Clerk of Court is comprised of an initial $3.00 certifying fee and a $1.00 per page fee and is thus $4.00 ......................... 73-16

Under the Public Records Law, the fee for copying public records may include a component for labor expenses actually, necessarily and directly incurred in connection with reproduction of public records; search fees cannot be charged as reproduction fees; local units of government cannot by ordinance establish public record copy fees that deviate from actual, necessary and direct costs of reproduction; and the municipal law provision authorizing the same fee for the same service has little if any practical impact vis-a-vis the requirement that fees for public records be limited to actual, necessary and direct costs .......................................................... 72-150

Register in Probate

Filing fees provided in sec. 253.34(1)(a), Stats., should be charged in informal probate proceedings authorized by ch. 865, Stats., created by ch. 39, Laws of 1973 ......................................................... 62-308

Section 253.34(1)(a), Stats., dealing with filing fees was not amended by ch. 310, Laws of 1971, which amended inheritance tax rules on survivorship interests ................................................................. 62-32

The time of the filing of the inventory of the estate, not the time of filing the petition for probate, determines the applicable filing fee. (Unpub.) ............ 62-1987

Sheriffs

Sheriffs may collect the statutory fee for each service or attempted service of process; fees for mileage, however, may only be collected if service is successful .............................................................. 73-106

Wage claims

District attorneys may exercise discretion in collecting wages referred by the Department of Industry, Labor and Human Relations, but such discretion must be exercised reasonably. Specific questions concerning collection of wages are discussed including methods of collection, settlements, payment of costs and fees, and enforcement of the statutory lien ........................................ 78-171

Waterfowl propagation areas

Assembly Bill 894 as drafted is constitutional and allows the State to contribute $1 of the $3 fee collected from a state waterfowl hunting stamp to private nonprofit organizations for development of waterfowl propagation areas in Canada ........................................... 67-56

51.42/51.437 BOARD

Appointments to

Persons appointed by County Executive and confirmed by County Board to County Veterans Service Commission, single county 51.42 Board or County Institutions Board serve for statutory term as stated in years and until their successors are appointed, confirmed and qualified. Persons appointed to vacancies in such positions also serve until their successors are appointed, confirmed and qualified. Difference between personal term of officer and statutory term which pertains to Office discussed ....................... 73-99

The appointing authority has broad discretion to determine the interests and abilities of persons appointed to a “51.42 board.” ............................................. 78-56

Civil service

Where a county board has established a civil service ordinance applicable to all county personnel other than the exceptions provided in sec. 59.07(20), Stats., the Director of the 51.42 Board does not have authority to grant vacation with pay to a 51.42 Board employee which is not authorized under the county civil service ordinance ..................................................... 67-143
51.42/51.437 BOARD (continued)

Corporation Council

Corporation Council should provide legal advice and representation to 51.42 and 51.437 Boards as well as to the County Board .......................... 63-468

County Board

The County Board of Supervisors may require its approval of contracts for purchase of services by the Community Services Board if so specified in its coordinated plan and budget. Otherwise it may not ........................................ 69-128

Legal counsel

Section 51.42(5)(h), permits multicounty 51.42/51.437 Board to retain private legal counsel only where the Corporation Counsel of each county, or District Attorney of each county not having a Corporation Counsel, notifies the Board that he or she is unable to provide specific services in a timely manner. Litigation, as used in section 59.44(3), applies only to civil court proceedings and does not include grievance proceedings or proceedings before an administrative agency .............................................. 73-8

Liability, reimbursement and collection for services

Liability, reimbursement and collection for services provided under secs. 51.42 and 51.437, Stats., programs discussed .................. 65-49; 63-560

Menominee Indians

Individual Menominee Tribe members are eligible to participate in voluntary programs mandated in ch. 51, Stats., but the State cannot accept tribe members into involuntary programs on the basis of tribal court orders alone .......................................................... 70-219

Minors

A juvenile court may order a 51.42 or 51.437 Board to provide care or treatment to a minor found to be in need of protection or services subject to conditions of ch. 51, Stats................................................................. 72-30

Multi-county boards

Although a multi-county combined 51.42/51.437 Board may make cuts in non-emergency services to the residents of a county that does not provide its proportionate share of funding to that board, an individual county may not escape its statutory obligation to provide non-emergency services to its residents under sections 51.42(1)(b) and 51.437(4), Stats., by refusing to make such funding available to the combined Board ................................................. 73-96

Powers

A multi-county sec. 51.42/51.437 Board is not an independent agency or body corporate, but is an agency of the contracting counties. The District Attorneys or Corporation Counsel of the contracting counties are required to furnish legal advice and representation to such Board. The sec. 51.42/51.437 Board, however, has limited power to contract with private attorneys for the furnishing of certain legal services to clients pursuant to secs. 47.03(17), 46.036, 51.42(5), 51.437(5) and 55.04(1)(a)8., Stats. Counties could jointly employ a county Corporation Counsel to furnish legal services of a civil nature to the Human Services Board by reason of secs. 59.025(3), 59.07(44), Stats. (Unpub) .................................................. 38-1982

Resignation of member

Member of combined 51.42/51.437 Board who is also County Board member may resign from combined Board and County Board has duty to fill vacancy within reasonable time. (Unpub) ............................................. 33-1975

Sheriff to furnish transportation

Section 51.20(14), Stats., requires Sheriff to furnish transportation to any individual who is the subject of a petition under sec. 57.20, Stats., at all
51.42/51.437 BOARD (continued)
Sheriff to furnish transportation (continued)

stages of the proceedings, regardless of any provision for reimbursement for transportation costs ................................................................. 68-223

Term of office

Although a county board of supervisors can require that a certain number of persons be supervisors at the time of their appointment to a 51.42, 51.437 or 115.86 Board, members are entitled to serve the term for which they were appointed, unless removed, without reference to the termination of their office as county board supervisors. (Unpub) .......................... 12-1983

FIRE DEPARTMENT

City

A city probably can contract with a county to provide fire protection to a county institution located outside of boundaries of said city .......... 62-84

County

A city probably can contract with a county to provide fire protection to a county institution located outside of boundaries of said city .......... 62-84

County trunk highway fire

Each town board providing fire protection and whose fire fighting facility responds to a fire call occasioned by a motor vehicle fire on a county trunk highway maintained by the county is entitled to reimbursements by the county an amount not to exceed $100 ........................................ 63-326

Fourth Amendment warrant requirements

State Arson Bureau and local fire and police departments are subject to the Fourth Amendment warrant requirements of the United States Constitution in conducting searches for evidence of arson. If consent to search is sought, very general guidelines are that a tenant or co-tenant may consent to search of area under his control, while consent to search a common area may be given by landlord or, if objector could not reasonably expect privacy, by a tenant ............................................................ 68-225

Joint department; three villages and one city

Section 61.65(2), Stats., permits three or more municipalities, including a mixture of three villages and a city, to establish and operate a joint fire department. Recourse to section 66.30 does not appear to be necessary or appropriate for the purpose of creating such a joint fire department........ 74-154

Milwaukee Board of Fire and Police Commissioners

The Milwaukee Board of Fire and Police Commissioners does not have original rule-making authority under sec. 62.50(23), Stats. The Board can suspend rules prescribed by the chiefs of the fire and police departments and can enact rules to replace the suspended rules .................................................. 71-60

Milwaukee, City of

The City of Milwaukee has the authority to set a mandatory retirement age for its police and fire chiefs by charter ordinance within the guidelines of the United States Age Discrimination in Employment Act. Such mandatory retirement can apply to the incumbent chiefs .................................................. 69-232

Open Meeting Law

Volunteer fire department organized as a nonprofit corporation pursuant to sec. 213.05, Stats., is not a governmental or quasi-governmental corporation and is not subject to provisions of the Open Meeting Law, secs. 19.81-19.98, Stats. .......................................................... 66-113

Police and fire services combined

Village public safety officers are not entitled to the section 891.45, Stats., presumption unless they are designated as primarily firefighters by the
FIRE DEPARTMENT (continued)
Police and fire services combined (continued)
   village or they have duties as a firefighter during a five-year period for two-thirds of their working hours ............................................................... 78-185

Retirement funds
   Section 40.21(4), Stats., limits prospective mandatory Wisconsin Retirement System coverage to present and future police and firefighter employees of cities and villages that had police and firefighter employees included in the Wisconsin Retirement Fund prior to March 31, 1978 .......................................................... 75-34

Town
   Town having fire department must provide protection for county-owned property such as a landfill site, and in case of failure to do so shall be liable for services of any fire department responding to request to fight fire in such town. County in its discretion can reimburse town for reasonable costs of services provided to landfill site within town ................................................. 67-6

FIREARM OWNERS' PROTECTION ACT
   Wisconsin law
      Section 941.29(5)(a), Stats., has been invalidated by congressional action. Pardons granted after November 15, 1986, will give recipients the right to receive, possess or transport in commerce firearms unless the pardon expressly provides otherwise ...................................................... 78-22

FIREARMS
   Correctional staff
      Correctional staff have the authority, and possess the power of a peace officer in pursuing and capturing escaped inmates ........................................ 68-352

Criminal law
   Section 941.29(5)(a), Stats., has been invalidated by congressional action. Pardons granted after November 15, 1986, will give recipients the right to receive, possess or transport in commerce firearms unless the pardon expressly provides otherwise ...................................................... 78-22

Felon
   Section 941.29(5)(a), Stats., has been invalidated by congressional action. Pardons granted after November 15, 1986, will give recipients the right to receive, possess or transport in commerce firearms unless the pardon expressly provides otherwise ...................................................... 78-22

Judges
   Although judges are conservators of the peace, they are not peace officers who are allowed to carry concealed weapons ........................................ 69-66

Ordinance by Town of Menasha exceeds authority
   A town ordinance which purports to prohibit the use of firearms but exempts town residents and their guests is in effect a restriction on hunter numbers. As such, it infringes on and exceeds the authority of the Department of Natural Resources, and presents possible equal protection problems .......... 77-137

Youthful Offenders Act
   Persons who previously received dispositions under the repealed Youthful Offenders Act are not precluded from possessing firearms under sec. 941.29, Stats. ................................................................. 71-217

FIREWOOD
   Fee
      The Department of Natural Resources has authority to assess a fee for firewood produced on state lands. Legislative committee recommendation
FIREWOOD (continued)

Fee (continued)

that funding and positions be withdrawn from a proposed state wood energy program does not affect DNR authority to sell firewood. Although DNR has authority to sell firewood, there is no requirement that it do so. While DNR is not required to charge for firewood permits, it may do so. DNR does not have a fee schedule for the sale of firewood ................. 71–23

FIRST AMENDMENT

See CONSTITUTIONAL LAW

FISH AND GAME

Criminal law

A criminal prosecution pursuant to sec. 29.995, Stats., for a repeated violation of fish and game laws must be commenced by complaint as provided in sec. 968.02, Stats. Such a prosecution must be conducted in accordance with the same statutory and constitutional requirements applicable to other criminal prosecutions................................................. 71–136

Deer shining

See also Shining

County boards do not have authority to legally proscribe deer shining since the Legislature has delegated such authority to the Department of Natural Resources ......................................................... 68–81

Endangered and threatened species

Discussion of effect and constitutionality of law broadening endangered species protection to include threatened species. Definition of endangered and threatened species. Law gives protection to any species so designated, whether or not commercial fishing interests are affected. Provisions requiring incorporation of federal rules may be invalid, if text incorporated is not set forth in detail in state rule and if future as well as existing federal rules are included in the incorporation. Contract or permit fishing for protected species is disallowed. Existing fishing licenses are subject to new restrictions. 68–9

Federal steel shot regulations

The Department of Natural Resources is not prohibited from approving federal enforcement of federal steel shot regulations by federal agents on lands under their jurisdiction in the State during the 1980 waterfowl hunting season ................................................................. 69–201

Forest Crop Law

Section 77.03, Stats., relating to enrolling land in the Forest Cropland Program, creates a right of access across an owner’s non-enrolled lands to reach the owner’s landlocked enrolled lands for the purposes of hunting and fishing ............................................................... 71–163

Game farm

Applicability of animal regulatory statutes to game farm operators discussed. 72–43

Indians

Indian fishers eligible to share in tribal treaty fishing rights are also eligible to apply for and hold a state commercial fishing license, but the State can exclude such individuals from sharing in non-Indian individual catch quotas applicable to a particular species of fish where a total harvest quota is necessary to prevent the substantial depletion of that species and where such quota must be apportioned between Indian and non-Indian fishers in order to safeguard the Indian’s treaty rights........................................ 68–416

The Stockbridge-Munsee Indian Tribe has the exclusive right to hunt and fish on tribal lands and has the right to regulate such activities by both Indian and non-Indian persons upon such lands. Current and former Stockbridge-Munsee Reservation boundaries discussed ........................................... 69–72
FISH AND GAME  (continued)

Public access

Department of Natural Resources has the power under secs. 29.50 and 30.77, Stats., to withhold stocking with fish from state hatcheries from bodies of water where public access is inadequate. Determination of adequacy of access rests on consideration of reasonableness of fee charged for use of public boat launching facilities as well as quantity of parking facilities provided. The Department may, but is not bound to, require that reasonable access be afforded at all times to the general public. Larger fees may in some circumstances be imposed on larger boats, and large boat access probably could be regulated. Provision of special facilities for the handicapped is encouraged but not required........................................ 68-233

Regulation of firearms by Town

A town ordinance which purports to prohibit the use of firearms but exempts town residents and their guests is in effect a restriction on hunter numbers. As such, it infringes on and exceeds the authority of the Department of Natural Resources, and presents possible equal protection problems ...... 77-137

Shining

See also Deer shining

Section 29.245, Stats., which prohibits the “shining” of animals under certain circumstances, is a valid exercise of the police power. The rebuttable presumption contained in sec. 29.245(2), Stats., does not render the statute unconstitutional, but certain precautions should be observed in instructing juries and in weighing evidence under the statute. Although sec. 29.245(5), Stats., broadly prohibits night shining, it is not void for vagueness......... 71-49

Trespassing on posted lands

Section NR 10.07(8) Wis. Adm. Code, requiring hunters to make reasonable efforts to retrieve game birds killed or injured, does not exempt a person from criminal prosecution under sec. 943.13(1)(b), Stats., for trespassing upon posted lands to retrieve birds shot from outside the posted area ..... 64-204

Waterfowl propagation areas

Assembly Bill 894 as drafted is constitutional and allows the state to contribute $1 of the $3 fee collected from a state waterfowl hunting stamp to private nonprofit organizations for development of waterfowl propagation areas in Canada ......................................................... 67-56

FLOOD CONTROL

Zoning

County floodplain zoning ordinances may be adopted under the authority of sec. 59.971, Stats. Such ordinances will not require the approval of town boards in order to become effective within the unincorporated areas of the county. County floodplain zoning ordinances adopted by the Department of Natural Resources pursuant to sec. 87.30, Stats., do not need approval of the town boards in order to become effective within all unincorporated areas of the county ................................................................. 62-264

FOODS

See DAIRY, FOOD AND DRUGS

FOREST CROP LAW

See also FORESTS

Deeds

A county Register of Deeds must record Department of Natural Resources’ orders under the Forest Croplands Program, sec. 77.02(3), Stats., and the Woodland Tax Law, sec. 77.16(3), Stats., notwithstanding sec. 59.57(12),
FOREST CROP LAW (continued)

Deeds (continued)

Stats., which requires that recording fees must be paid in advance of recordation ................................................. 66-246

Discussed

Although public tax-exempt entities such as municipalities may neither enter nor continue their lands in the forest tax programs of chapter 77, Stats., private entities whose property would otherwise normally be tax-exempt under chapter 70 may participate in such programs ........................................... 77-280

Highways

The exceptions established by sec. 348.20(3), Stats., are not applicable to violations of weight limits established under sec. 348.175, Stats. .................. 64-164

Right of way

Section 77.03, Stats., relating to enrolling land in the Forest Cropland Program, creates a right of access across an owner’s non-enrolled lands to reach the owner’s landlocked enrolled lands for the purposes of hunting and fishing ................................................................. 71-163

University

University forest land transferred to the University for purpose of forestry and timber studies and related research is exempt from property taxation under sec. 70.11(I), Stats., and is not subject to tax as “agricultural land” under sec. 70.116, Stats. The University lacks authority to enter its lands under subch. I, ch. 77, Stats., the Forest Crop Law, or continue the previous entry of lands it acquires .................................................. 66-78

FORESTS

Condemnation

County lands are not subject to condemnation by a town absent express statutory authority authorizing such condemnation .................................................. 62-64

County forest and park land

Where large sums had accumulated from sale or leases of county forest land and were credited to the Forestry and Parks Department, County Board resolution which would authorize transfer of funds for specific use of construction of a waterslide on county forest park lands failed passage where it did not receive two-thirds vote of the entire membership. Sec. 65.90(5), Stats. .................................................. 75-56

County Boards cannot sell or exchange county forest lands without first withdrawing them from the county forest program under sec. 28.11(11), Stats. The term “exchange” does not include a sale for valuable consideration .................................................. 66-108

County forest roads

County forest roads which are open to vehicular traffic are highways which can be designated as all-terrain vehicle routes under section 23.33(8)(b), Stats., and minors under sixteen years of age holding valid all-terrain vehicle safety certificates can operate all-terrain vehicles on highways which have been designated as all-terrain vehicle routes under the limited conditions set forth in section 23.33(4) .................................................. 77-52

Entitlement lands

County which has received payments from the federal government in lieu of taxes under sec. 1 of P. L. 94-565, 90 Stat. 2662, cannot distribute such payments to the towns in which the national forest lands are located ...... 68-23

Previous opinions on the distribution of payments in lieu of taxes discussed. (Unpub) ................................................. 16-1982

1990 F 10
FORESTS (continued)

Federal aid

Section 59.20(13), Stats., does not control the distribution of monies received from the federal government under 31 U.S.C. sec. 1601. OAG-45 (unpub), issued June 9, 1978, is withdrawn ...................................................... 67-277
Withdrawn (unpub) 45-1978

Forest Crop Law

Although public tax-exempt entities such as municipalities may neither enter nor continue their lands in the forest tax programs of chapter 77, Stats., private entities whose property would otherwise normally be tax-exempt under chapter 70 may participate in such programs........................................... 77-280

Forest land transferred to the University for purpose of forestry and timber studies and related research is exempt from property taxation under sec. 70.11(1), Stats., and is not subject to tax as “agricultural land” under sec. 70.116, Stats. The University lacks authority to enter its lands under subch. 1, ch. 77, Stats., the Forest Crop Law, or continue the previous entry of lands it acquires ................................................................. 66-78

Managed Forest Land Law

Although public tax-exempt entities such as municipalities may neither enter nor continue their lands in the forest tax programs of chapter 77, Stats., private entities whose property would otherwise normally be tax-exempt under chapter 70 may participate in such programs........................................... 77-280

National forest income

Withdrawn, see 67-277

Payments, distribution of

Previous opinions on the distribution of payments in lieu of taxes discussed. (Unpub)................................................................. 16-1982

“Peeled and unpeeled forest products cut crosswise”

Section 348.15(3)(b)2. and (5r), Stats., discussed ...................... 62-100

Prospecting on state park and forest lands

Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub)...................................................... 58-1976

Spectator sport facilities

Department of Natural Resources has no authority to construct spectator sport facilities in state forests, nor has it authority to lease state forest lands for such purpose...................................................... 63-519

State parks and forests

Fees collected by the Department of Natural Resources for admissions to state parks and forests are subject to sales taxation under sec. 77.52(2)(a)2., Stats ................................................................. 66-205

Woodland Tax Law

Although public tax-exempt entities such as municipalities may neither enter nor continue their lands in the forest tax programs of chapter 77, Stats., private entities whose property would otherwise normally be tax-exempt under chapter 70 may participate in such programs........................................... 77-280
FORFEITURES

City council

Pursuant to sec. 895.35, Stats., a city council can, in limited circumstances, reimburse a council member for reasonable attorneys' fees incurred in defending an alleged violation of the Open Meeting Law, but it cannot reimburse such member for any forfeiture imposed. Section 895.46(1), Stats., is not applicable to forfeiture actions. Such member could not be reimbursed, indirectly, under liability insurance policy procured by a municipality, for any forfeiture imposed. 66–226

Civil procedure action

In recovering forfeitures for violations of statutes, the district attorney can commence a regular civil action or a small claims action. 77–270

County Board

Before payment of a settlement is made in resolution of an action against the county, the County Board as a whole must approve it; if an action against the county results in assessment for a forfeiture, the Board may not refuse to pay it but the authorization for payment may be direct or, depending upon the amount, through the delegation permitted under sec. 59.07(3), Stats. 70–15

District Attorney

In recovering forfeitures for violations of statutes, the district attorney can commence a regular civil action or a small claims action. 77–270

The District Attorney has the authority to institute an action for forfeiture for violation of the Open Meetings Law only after receiving a verified complaint pursuant to sec. 19.97(1), Stats. (Unpub) 34–1981

Ethics Code violation

County Board may provide for a penalty in the nature of a forfeiture for violation of a Code of Ethics ordinance but may not bar violators from running for office. 66–148

Federal forfeiture action

Money resulting from a state forfeiture action under sections 161.555 and 973.075(4), Stats., must be deposited in the state school fund. Money granted to the state after a federal forfeiture proceeding need not be. 76–209

Health and Social Services, Department of

Department of Health and Social Services has no authority to impose forfeitures upon persons violating sec. 146.30, Stats., or to initiate court actions for same using agency personnel. (Unpub) 15–1975

Small claims procedure

In recovering forfeitures for violations of statutes, the district attorney can commence a regular civil action or a small claims action. 77–270

State forfeiture action

Money resulting from a state forfeiture action under sections 161.555 and 973.075(4), Stats., must be deposited in the state school fund. Money granted to the state after a federal forfeiture proceeding need not be. 76–209

Traffic regulation

Section 349.06(1), Stats., authorizes local authorities to enact and enforce any ordinance which is in strict conformity with traffic regulation provisions of ch. 350, Stats., for which the penalty for violation is a forfeiture. 66–161

FOSTER HOMES

Counties

The responsibility for providing and funding facilities for protective placements under ch. 55, Stats., is primarily on the county. The statute does not require a county nursing home to accept such a placement. 66–249
FOSTER HOMES (continued)

County agencies

County agencies do not have the authority to directly operate a foster home or what has been described as a "group foster home." (Unpub) ............... 39-1976

Detention facilities privately operated not approved

Statutes do not provide authority to the Department of Health and Social Services to approve privately operated secure detention facilities for juveniles and County Board and County Board of Public Welfare are without power to purchase secure detention services from a private operator ................................................................. 73-115

Foster parent

The potential liability of placement agencies and foster parents for the torts of foster children is the same as natural parents' liability. They are only liable for property damage or physical injury which results from a failure to provide reasonable supervision. The greater exposure falls on the foster parent. Section 895.035, Stats., does not apply to placement agencies or foster parents ................................................................. 66-164

Insurance requirement waived

Where a licensing agency waives the insurance requirement under section 48.627(1)(a) and (b), Stats., it does not assume any liability beyond the limited recovery in tort claims under sections 893.80(3) and 893.82(6) ....... 76-1

Juveniles

Section 48.31, Stats., provides counties with express authority to establish and operate juvenile detention homes and shelter care facilities. Detention homes and shelter care facilities established and operated pursuant to sec. 48.31, Stats., do not require a ch. 481 license from the Department of Health and Social Services. Counties may lease property for detention home or shelter care use .................................................... 66-50

Liability

The potential liability of placement agencies and foster parents for the torts of foster children is the same as natural parents' liability. They are only liable for property damage or physical injury which results from a failure to provide reasonable supervision. The greater exposure falls on the foster parent. Section 895.035, Stats., does not apply to placement agencies or foster parents ................................................................. 66-164

Prisons and prisoners

Community-based residential facilities and child welfare agencies, facilities, or group foster homes do not necessarily become prisons or jails by reason of the placement therein of adult criminal or juvenile offenders in the custody of the State. The question whether a particular facility has become a prison or jail depends on whether the primary purpose of the facility has become penal ................................................................. 69-52

Religious organizations

A facility owned and operated by a religious organization is subject to licensure and regulation under ch. 50, Stats., and chapter HSS 3 Wis. Adm. Code, unless the facility is a convent, monastery or similar place where residents are all members of a religious hierarchy living in seclusion and operating under a set of religious vows or rules. The Department of Health and Social Services constitutionally license and regulate Community Based Residential Facilities (CBRFs) operated by religious organizations not exempt under sec. 50.01(1), Stats., or sec. 50.03(9), Stats. Application of CBRF licensure and regulatory requirements to certain facilities operated by the Salvation Army discussed ................................................................. 71-112

Zoning

A community living arrangement which has a capacity for eight or fewer persons and which meets all other statutory criteria is entitled to locate in
FOSTER HOMES  (continued)
Zoning  (continued)
any zoning district where single or multi-family residences are a permitted 
use. Any such community living arrangement which has a capacity of from 
nine to fifteen persons is entitled to locate in any zoning district where 
multi-family residences containing more than two families are a permitted 
use, and is entitled to apply for special zoning permission to locate in any 
zoning district where single or two family uses are permitted. Such a com­ 
munity living arrangement which has a capacity of more than fifteen per­ 
sons is entitled to apply for special zoning permission to locate in any 
zoning district where single or multi-family uses are permitted. A commu­ 
nity living arrangement which meets all applicable statutory criteria is not 
entitled to locate in an exclusive agricultural zoning district, but may seek 
special zoning permission to do so if local ordinances permit .................. 76-126
A local zoning ordinance which limits occupation of single family dwellings 
to one or more persons related by blood, adoption or marriage or not more 
than two unrelated persons while valid on its face, is unenforceable against 
a licensed foster home. Said license, whether granted directly or indirectly 
by the State, is an exercise of the sovereign power of the State and is 
immune from local zoning regulations ................................................... 66-342
Foster homes contracted for (i.e., leased) by the Department of Health and 
Social Services, pursuant to sec. 48.52, Stats., are immune from local zoning 
to the extent that the zoning conflicts with the Department's possessory use 
of property for purposes contemplated by ch. 48, Stats. However, immunity 
for leased facilities is subject to sec. 13.48(13), Stats., as amended by ch. 90, 
sec. 2, Laws of 1973. Section 48.64, Stats., agreements between the Depart­ 
ment and proprietors of foster homes do not serve to immunize the proprie­ 
tor's property from local zoning. County agencies providing child welfare 
services do not have authority to lease real property for foster home use. 
The Department may assert its immunity from local zoning for property it 
acquires a possessory interest in by virtue of a sublease pursuant to sec. 
48.52(2), Stats. Property leased by the Department pursuant to sec. 
48.52(2), Stats., is not rendered exempt from property taxation. The lessor 
remains responsible for tax payment .................................................. 65-93
Foster homes owned, operated or contracted for by the Department of 
Health and Social Services or a county agency are immune from local 
zoning ordinances. Foster homes owned, operated or contracted for by 
licensed child welfare agencies are not immune. All family operated foster 
homes are subject to local zoning. Municipal foster home licensing ordi­ 
nances are unenforceable. Zoning ordinances utilizing definitions of "fam­ 
ily" to restrict the number of unrelated persons who may live in a single 
family dwelling are of questionable constitutionality ............................. 63-34
FOX VALLEY TECHNICAL INSTITUTE
Federal aid

The Fox Valley Technical Institute is not a “unit of local government” for 
the purpose of receiving federal Justice Assistance Act (JAA) funds. Also, 
JAA funds which are specified for use by local units of government for local 
projects cannot be used to support statewide crime prevention activities … 75-265

FOX VALLEY VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT
Fiscal agent

Neither the Fox Valley Vocational, Technical and Adult Education District 
nor the East Central Regional Planning Commission has the authority to 
act as fiscal agent for the Northeast Criminal Justice Coordinating Council. 71-70
FRANCHISES

Automotive dealer

Wisconsin Fair Dealership Law, is a public policy declaration concerning the unwarranted termination of dealership ........................................ 66–10

Intoxicating liquors

Intoxicating liquors; wholesale permitees; franchise sales area statements; price discrimination. Section 176.05(1a)(b), Stats., does not prohibit a wholesaler from selling intoxicating liquor to a retailer located outside the area described in the area statement provided the sale takes place within that area. State law does not prohibit nor does it require a separate charge by a wholesaler for delivery of intoxicating liquor to a retailer .............. 70–25

FREEDOM OF SPEECH

Public employe

Section 19.45(12), Stats., is constitutional ........................................ 77–184

Soliciting jury duty

Sections 756.03 and 756.031, Stats., prohibiting a person from soliciting jury duty are constitutional enactments ........................................ 69–19

FUNDS

See also FEDERAL AID

Condemnation

The question of whether benefits and assistance provided by ch. 409, Laws of 1969, as amended by ch. 103, Laws of 1971, must be afforded an owner of property or his tenant where there is no threat of condemnation, but the property owner, aware that a public agency wants the property, voluntarily sells the property to the public agency requires an exercise of discretion based upon the facts of each transaction, however, the property owner or his tenant to qualify must be displaced by the project and the expenditure of public funds must be for a public purpose ........................................ 62–168

Construction of state facilities on leased land

It is constitutional for the Legislature to authorize funds to be borrowed and expended for construction of state patrol training facilities on leased land. (Unpub) ........................................ 8–1984

Contingency fund

Under section 65.90(5), Stats., a vote of two-thirds of the entire membership of the county board is needed to transfer funds from the contingency fund to use for a purpose not anticipated in the budget ........................................ 76–145

Educational Communications Board, Wisconsin

Under sec. 20.906(1), Stats., it would not be unlawful for Friends to hold funds for the ECB that were solicited through use of ECB facilities and resources. The ECB has statutory authority to contract with Friends to assist in raising funds for educational radio and television in this State .... 70–163

Elections

Section 11.33, Stats., applies to persons elected to state office who are seeking reelection or election to a different office and to the use of public funds for political purposes ........................................ 69–259

General Fund

Pursuant to sec. 20.865, Stats., both segregated revenues and general purpose revenues of the General Fund are available for the payment of judgments arising out of segregated fund activities in the same proportion in which they were, or would have been, used to finance a program appropriation for the payment of such judgments; sec. 20.865(1)(a), Stats., includes authority
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General Fund (continued)

for payment of settlements made by the Attorney General pursuant to sec.
165.25(6), Stats. (Unpub) ...................................................... 18-1975

Investments

Municipalities and other local governmental entities may only invest in cer-
tain specifically authorized bonds, securities, deposits, etc., and may not
invest in mutual funds, even if the assets of such funds consist solely of
statutorily-allowed bonds and securities....................................... 77-274

Library system board

County Board cannot authorize single-county federated library system board
to maintain special bank account into which are deposited system revenues
and from which are paid system expenses. (Unpub) ......................... 81-1977

Municipalities

Municipalities and other local governmental entities may only invest in cer-
tain specifically authorized bonds, securities, deposits, etc., and may not
invest in mutual funds, even if the assets of such funds consist solely of
statutorily-allowed bonds and securities....................................... 77-274

Political fund

Section E1Bd 1.06 Wis. Adm. Code, and the forms developed to effectuate
that rule, EB-11 and EB-12, which require corporations and associations to
register and twice yearly report their expenditures for the establishment and
administration of a political fund and for solicitation of political contribu-
tions to such fund, improperly impose substantive requirements in addition
to those reasonably within the intendment of sec. 11.38(1)(a)2., Stats., and
are therefore unenforceable ..................................................... 67-193

Public funds

Chapter 108, Laws of 1973, contemplates the appropriation of public funds
for a valid public purpose, not for works of internal improvement, and is
constitutional ................................................................. 62-212

"State funds"

Only the portion of 1987 Assembly Bill 265 that increases benefits for persons
no longer working for a Wisconsin Retirement System participating em-
ployer is subject to the three-fourths vote requirement of article IV, section
26 of the Wisconsin Constitution. The Public Employe Trust Fund consti-
tutes "state funds" as used in article IV, section 26 of the Wisconsin
Constitution ................................................................. 76-224

Surplus funds in local unit of government

A local unit of government may not create and accumulate unappropriated
surplus funds. However, a local unit of government may maintain reason-
able amounts necessary in the exercise of sound business principles to meet
the immediate cash flow needs of the municipality during the current bud-
getary period or to accumulate needed capital in non-lapsing funds to
finance specifically identified future capital expenditures .................. 76-77

Transfer of

Under section 65.90(5), Stats., a vote of two-thirds of the entire membership
of the county board is needed to transfer funds from the contingency fund
to use for a purpose not anticipated in the budget ........................ 76-145

Unemployment compensation

Borrowing money from the federal government to replenish Wisconsin's
Unemployment Compensation Fund, under the arrangements prescribed
by federal law, does not contravene either Wis. Const. art. VIII, sec. 3 or 4. 71-95
FUNERAL DIRECTORS AND EMBALMERS

Eye removals
Special training is required of medical personnel as well as morticians before they perform eye enucleation ................................. 77-207

Insurance agent
A plan whereby a funeral service person (a licensed funeral director, operator of a licensed funeral establishment or an employee of the same) also acts as an insurance agent and as such writes a life insurance policy naming the beneficiary a funeral director or establishment and additionally negotiates a contract wherein the named insured in the policy contracts with a funeral director or establishment for providing burial or funeral services to the insured is illegal ................................................................. 76-291

Insurance beneficiary
Section 632.41(2), Stats., does not prohibit the naming of a funeral director as beneficiary of a life insurance policy in conjunction with a separate agreement between the insured and the funeral director that the proceeds will be used for funeral and burial expenses .................................. 71-7

Life insurance policy sales
Funeral service persons may be involved in the sale of life insurance if such insurance is not linked in any way to funeral or burial services................. 78-182

Personal property, use of
A manufacturer's plan, involving the utilization of funeral directors on a fee basis in the sale of movable concrete burial vaults to consumers for future use and for delivery to a cemetery to be later designated, constitutes use of personal property under a prearranged funeral plan. Accordingly, provision for deposit of funds in account in seller's name would be contrary to sec. 445.125, Stats., which requires trust account ............................................ 71-141

Rules
Although sec. 156.03(2)(a), Stats., authorizes the state health officer and the examining council by joint action to make rules governing the business practices of funeral directors and embalmers; such rules, unless specifically exempted therefrom, should be enacted pursuant to the provisions of ch. 227, Stats., or otherwise, they could be subjected to a declaratory judgment proceeding and probably would be declared null and void .................. 63-154
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GAMBLING

See also BINGO; CRIMINAL LAW; LOTTERIES

Indians

Laws regarding gambling will apply on Indian reservations if they prohibit gambling activities entirely, but not if they merely regulate these activities. Most state laws regarding the newly allowed gambling activities of lotteries and parimutuel betting will not apply on Indian Reservations because these activities will no longer be entirely prohibited. 77-24

The State’s anti-gambling laws are enforceable against Indians on Indian reservations under the authority of P. L. 280. 72-182

“Las Vegas nights”

Games such as “Las Vegas nights” wherein participants must make a payment or donation in order to gamble with play money and then use the play money at the end of the evening to bid on prizes constitute illegal lotteries under Wisconsin law. The law does not exempt benevolent and nonprofit organizations. 70-59

Pari-mutuel enabling legislation

Section 562.057, Stats., which permits simulcasting of races conducted at other racetracks to a racetrack licensed by the Wisconsin Racing Board, does not violate article IV, section 24(5) of the Wisconsin Constitution requiring “on-track” betting. 77-299

Racetracks

Section 562.057, Stats., which permits simulcasting of races conducted at other racetracks to a racetrack licensed by the Wisconsin Racing Board, does not violate article IV, section 24(5) of the Wisconsin Constitution requiring “on-track” betting. 77-299

Simulcasting of races

Section 562.057, Stats., which permits simulcasting of races conducted at other racetracks to a racetrack licensed by the Wisconsin Racing Board, does not violate article IV, section 24(5) of the Wisconsin Constitution requiring “on-track” betting. 77-299

Tavern League of Wisconsin

The Tavern League of Wisconsin is not a “service organization” within the meaning of section 163.90, Stats., so as to be eligible for a raffle license in the State of Wisconsin. 73-114

GARNISHMENT

AFDC grants

The recently enacted provisions of section 49.41(2), Stats., which provide that effective April 1, 1988, grants of AFDC may be garnisheed by landlords as provided under section 812.233, conflict with provisions of Title IV-A of the Social Security Act. 77-56

Circuit Court Clerk

In garnishment actions, a clerk of circuit court is not authorized to collect the deposit and disbursement fees set forth in section 814.61(12)(a), Stats., unless the garnishee has paid money into Court and obtained a court order directing the Clerk of Courts to deposit the money in a safe depository. State agencies are not required to pay the fees outlined in section 814.61 (except for the filing fee in section 814.61(1)), nor are they required to pay the fee for filing a garnishment action under section 814.62(1). 73-3

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GARNISHMENT (continued)

Public employe

A wage garnishment of a public employe under sec. 812.23, Stats., results in a continuing withholding of wages, less allowance specified in sec. 812.18(2), Stats., until the amount demanded in the garnishee complaint, together with disbursements, has been paid .......................................................... 68–366

Small claims garnishment

Sections 812.04(1) and 814.21(1)(a), Stats., concerning suit tax in small claims garnishment actions, construed as conflicting. Because tax cannot be imposed without clear statutory authority, lower suit tax in sec. 812.04(1), Stats., should be collected ...................................................... 68–7

State of Wisconsin

The state is immune from suit in any garnishment action not involving a state employe or officer and, with the exception of those cases falling under sections 779.15 and 779.155, Stats., monies held in the state treasury on the account of independent contractors are not available to satisfy the judgment debts owed by them ...................................................... 77–17

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GOVERNOR

Absence of Lieutenant Governor as acting Governor

Meaning of "absence" within Wis. Const. art. V, sec. 7, discussed ............ 68–109; 66–185

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Appropriation bills are subject to partial veto, but in order for legislation to constitute an appropriation there must be found within the bill authority to expend funds and a stipulation as to amount, manner and purpose of such expenditure. (Unpub) .......................................................... 24–1976

Governor's veto of one digit of a separable part of an appropriation bill constitutes an objection within the meaning of art. V, sec. 10, Wis. Const., and the entire part is returned to the Legislature for reconsideration ....... 62–238

The Governor may not alter vetoes on a partially approved and partially disapproved appropriation bill once the approved portion of the Act has been delivered to the Secretary of State pursuant to law and the disapproved portion returned to the house of origin ...................................................... 70–154

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The Governor can designate counties as agencies of the State to contract with nonprofit private agencies to utilize funds to provide public service jobs under Federal Comprehensive Employment and Training Act ..................... 66–15

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Legal limitations on the use of the Governor's contingency fund appropriated by sec. 20.525(1)(c), Stats., discussed ........................................ 66–43

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Meaning of "absence" within Wis. Const. art. V, sec. 7, discussed ............ 68–109

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Appropriation bills are subject to partial veto but in order for legislation to constitute an appropriation there must be found within the bill authority to expend funds and a stipulation as to amount, manner and purpose of such expenditure. (Unpub) .......................................................... 24-1976

Certain of the Governor's partial vetoes to ch. 107, Laws of 1977, were invalid. The entire bill should be returned to the originating house for reconsideration .......................................................... 66-310

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Scope of the duty of the Governor to allow members of the public to examine and copy public records in his custody discussed.................................................. 63-400

Shared revenue distributions

The base amount for determining 1983 shared revenue distributions is $675,000,000. (Unpub) ......................................................... 22-1982

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The Secretary of the Department of Veterans Affairs may only be removed from office by the Governor for cause. The Board has no authority to discharge, suspend, or take disciplinary action that would prevent his Secretary from fulfilling the statutory duties of his office .................................. 65-229

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Governor's veto of inseparable part of section 3 of Senate Bill 598 constitutes an objection to all of section 3 within the meaning of art. V, sec. 10, Wis. Const., and the entire section 3 is returned to the Legislature for reconsideration. Article V, sec. 10, Wis. Const., discussed ........................................... 63-313
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GREAT LAKES PROTECTION FUND

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The state may not contract public debt to finance its contribution to the proposed Great Lakes Protection Fund because the projects intended to be funded are not water improvements within the meaning of article VIII, section 7(2)(a)1. of the Wisconsin Constitution.................................................. 78-100

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See COLLECTIVE BARGAINING

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GUARDIAN

Liability of placement agencies and foster parents

The potential liability of placement agencies and foster parents for the torts of foster children is the same as natural parents' liability. They are only liable for property damage or physical injury which results from a failure to provide reasonable supervision. The greater exposure falls on the foster parent. Section 895.035, Stats., does not apply to placement agencies or foster parents .......................................................... 66-164
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HANDICAPPED CHILDREN'S EDUCATION BOARD

Board powers discussed
In counties with a county executive, the county Handicapped Children’s Education Board exercises advisory and policy-making functions associated with the special education programs and services authorized by the county board under section 115.83, Stats., and the county executive supervises the administrative functions. While the county Handicapped Children’s Education Board and the county executive share budgetary responsibilities, the county executive makes the annual budget recommendation to the county board. County personnel and procurement ordinances, and other similar ordinances which regulate administration of county government generally, apply to the operation of such county special education programs and services to the extent such ordinances are otherwise authorized and do not conflict with the state laws regulating such special education programs and services ........................................................................................................... 77-196

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The Department of Health and Social Services may not reimburse counties for administrative costs incurred in providing temporary assistance to state dependents ........................................................................................................... 70-17

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Ambulance attendants
The Department of Health and Social Services has authority to establish standards for ambulance attendants under sec. 146.50, Stats. Discussion of malpractice liability of state officers and employes ......................................................... 67-145

Child abuse and neglect investigations
A county department of social services or county department of human services may not contract with other agencies to obtain section 48.981, Stats., reporting or investigatory services in situations other than the performance of independent investigations required by section 48.981(3)(d). A cooperative contract might be possible under section 66.30(2) in order to effectuate this purpose but the services must be furnished by the county department as defined in section 48.02(2g) and not by any other public or private agency ............................................................................................................................. 76-286

Child-placing agencies, case records
If the Department of Health and Social Services does not wish to designate a child-placing agency licensed under section 48.60, Stats., to conduct searches under sections 48.432(4)(b) and 48.433(6)(b), the child-placing agency has no enforceable right to be so designated. Whether or not there is such a designation, the Department of Health and Social Services has an absolute right of access to the case records of the licensed child-placing agency.
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Child-placing agencies, case records (continued)
agency for purposes of the search program under sections 48.432 and 48.433. (Unpub) ................................................................. 22-1984

Child support records
The Department of Health and Social Services should be granted access to otherwise confidential records because that access is necessary to complete a legislatively mandated study. (Unpub) ........................................ 23-1984

Chronic renal disease program
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Collection for services
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Council on Developmental Disabilities
The Council on Developmental Disabilities is an advisory council but has additional authority and responsibilities as well. The Council while created in the Department of Health and Social Services is authorized to function independently on matters within its jurisdiction and is responsible to the Department of Health and Social Services only in its advisory role in matters not covered by sec. 51.435, Stats. (Unpub) .......................... 47-1976

Cremation
Chapters 69 and 157, Stats., are not alternatives to the requirement in section 979.10 that anyone cremating a corpse first obtain a cremation permit from the coroner. University medical schools or anyone else qualified to receive a corpse can, however, receive a corpse for research without first obtaining the cremation permit. Section 979.10 only requires that the permit be obtained before the corpse is cremated ...................................................... 77-218

Defendants, supervision of
The Department of Health and Social Services has authority to supervise defendants conditionally released under section 971.17(2), Stats., if the Court orders such supervision as a condition of release. The period of supervision, when added to the time defendant has spent in the treatment institution, cannot exceed the maximum term of imprisonment as defined in section 971.17(4). Such maximum term must be calculated as if consecutive sentences had been imposed. The Department lacks authority to supervise defendants released under section 971.17(4) ................................................................. 73-76

Discrimination
A contract between the Department of Health and Social Services and an association of private adoption agencies does not result in legally prohibited religious discrimination where any religious preferences are limited to the statutory religious matching requirement. (Unpub) ............................... 32-1983

District Attorneys
District Attorneys, whether compensated on a full-time or part-time basis, have a duty to represent the interests of the county and State in child support and paternity matters under sec. 46.25, Stats., petitioners for a child alleged to be in need of protection or services under sec. 48.13, Stats., mental commitments pursuant to sec. 51.20, Stats., alcohol commitments under sec. 51.45, Stats., and petitions for appointment of a guardian under sec. 880.295(1), Stats., where the County Board has not assigned such duties to a County Corporation Counsel .................................................. 70-148

Detention facilities privately operated
Statutes do not provide authority to the Department of Health and Social Services to approve privately operated secure detention facilities for juveniles and County Board and County Board of Public Welfare are
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without power to purchase secure detention services from a private operator................................................................. 73–115

Exceptional educational needs
The Department of Health and Social Services must treat a parent’s failure to respond as a denial of permission for evaluation and placement for exceptional educational needs. The Department of Health and Social Services has no authority to appoint a surrogate parent when a child’s parent cannot be located, and must utilize alternative procedures under state law .......... 71–28

Federal block grant monies
The Department of Health and Social Services cannot reobligate refunds of federal block grant monies received after the federally mandated time for closing the grant year ................................................................. 76–19

Forfeitures
The Department of Health and Social Services has no authority to impose forfeitures upon persons violating sec. 146.30, Stats., or to initiate court actions for same using agency personnel. (Unpub) ................................................................. 15–1975

Foster homes
A facility owned and operated by a religious organization is subject to licensure and regulation under ch. 50, Stats., and chapter HSS 3 Wis. Adm. Code, unless the facility is a convent, monastery or similar place where residents are all members of a religious hierarchy living in seclusion and operating under a set of religious vows or rules. The Department of Health and Social Services can constitutionally license and regulate Community Based Residential Facilities (CBRFs) operated by religious organizations not exempt under sec. 50.01(1), Stats., or sec. 50.03(9), Stats. Application of CBRF licensure and regulatory requirements to certain facilities operated by the Salvation Army discussed ................................................................. 71–112

Foster homes contracted for (i.e., leased) by the Department of Health and Social Services, pursuant to sec. 48.52, Stats., are immune from local zoning to the extent that the zoning conflicts with the Department’s possessory use of property for purposes contemplated by ch. 48, Stats. However, immunity for leased facilities is subject to sec. 13.48(13), Stats., as amended by ch. 90, sec. 2, Laws of 1973. Section 48.64, Stats., agreements between the Department and proprietors of foster homes do not serve to immunize the proprietor’s property from local zoning. County agencies providing child welfare services do not have authority to lease real property for foster home use. The Department may assert its immunity from local zoning for property it acquires a possessory interest in by virtue of a sublease pursuant to sec. 48.52(2), Stats. Property leased by the Department pursuant to sec. 48.52(2), Stats., is not rendered exempt from property taxation. The lessor remains responsible for tax payment ................................................................. 65–93

Foster homes owned, operated or contracted for by the Department of Health and Social Services or a county agency are immune from local zoning ordinances. Foster homes owned, operated or contracted for by licensed child welfare agencies are not immune. All family operated foster homes are subject to local zoning. Municipal foster home licensing ordinances are unenforceable. Zoning ordinances utilizing definitions of “family” to restrict the number of unrelated persons who may live in a single family dwelling are of questionable constitutionality ................................................................. 63–34

Health care review
The provisions of secs. 146.37 and 146.38, Stats., do not apply to the health care review functions and practices of state agencies, particularly the Department of Health and Social Services. (Unpub) ................................................................. 50–1979
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Health Maintenance Organizations

Health Maintenance Organizations which contract with the Department of Health and Social Services to provide coverage to medical assistance recipients are required to offer continuation of benefits to those whose eligibility for medical assistance terminates pursuant to section 632.897(1) .............. 74–149

Jail credit

The Department of Health and Social Services may not grant jail credit where it is not provided for by statute; credit is not to be granted to parolee for period of time spent in custody on new charge in foreign jurisdiction; credit is not to be granted for period of time revoked parolee spends in detention facility other than correctional facility nor for period of time revoked probationer spent in county jail on work-release as condition of probation .......... 71–102

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Health Maintenance Organizations which contract with the Department of Health and Social Services to provide coverage to medical assistance recipients are required to offer continuation of benefits to those whose eligibility for medical assistance terminates pursuant to section 632.897(1) .............. 74–149

Nursing home and hospital construction

The Department of Health and Social Services through its Board does not have statutory authority to adopt a rule requiring approval of nursing home and hospital construction on the basis of need .................. 62–153

Nursing homes

Discussion of federal and state law regarding the practice of requiring a prospective nursing home resident to forego medical assistance benefits for a stated period of time as a condition of admission .................. 75–14

Policy requirement relating to nursing home residents' freedom to choose health care provider (i.e., chiropractor) is invalid. Rule H32.07(2)(a) and sec. 146.309, Stats. (1975), discussed ........... 65–178

Prisons and prisoners

Department of Health and Social Services has power to compel cooperation of county and local officers in obtaining jail information. Sec. 46.16, Stats., does not convey authority to the Department of Health and Social Services to order methods of operation, numbers and qualifications of staff, standards for food service, and the nature of treatment and training programs in local places of confinement. Section 46.17, Stats., relates to construction and maintenance of confinement buildings and provides no additional authority to the Department under sec. 46.16, Stats. .... 63–267

Probation and parole

The Department of Health and Social Services has exclusive authority to detain and release a child who has violated the conditions of probation imposed by a court of criminal jurisdiction. The child need not be brought before a juvenile court intake worker if he or she is not also detained as a delinquent. The child can be held in the adult section of the county jail ... 72–104

Purchase of all goods and services used by state government

Enactment of secs. 58 and 59 of ch. 418, Laws of 1977, placed the responsibility for the purchase of all goods and services used by state government with the Department of Administration. The purchase of all goods and services

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Purchase of all goods and services used by state government (continued)
by the Department of Administration is made pursuant to subch. IV of ch.
16, Stats. 64 OAG 4 (1975) is no longer applicable. (Unpub) ............... 83-1979

Radioactive air emissions and water discharges
The Department of Health and Social Services may not establish rules which
regulate radioactive air emissions and water discharges from facilities regu­
lated by the United States Nuclear Regulatory Commission but may regu­
late radioactive air emissions and water discharges from other facilities .... 72-185

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Liability, reimbursement and collection for services provided under secs.
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Restaurants
Discussion of coverage of licensing requirements for restaurants under sec.
50.50(3), Stats., in light of amendments to sec. 97.28, Stats., regarding the
licensing of delicatessen operations. (Unpub) ............................................. 85-1977

Revocation proceedings
When required by the right effectively to present a defense, the Department
of Health and Social Services, having authority to do so, in the exercise of
sound discretion must issue, and for an indigent pay the costs of, compul­
sory process to obtain the attendance of witnesses on behalf of probationers
and parolees at revocation proceedings ............................................... 63-176

Social Services, County Department of
Power to classify positions in a County Department of Social Services resides
in the state Department of Health and Social Services and not in a county
board or in a committee of such county board.................................. 65-123

Vocational rehabilitation information
Section 47.40(13), Stats., precludes the release of vocational rehabilitation
information for the purpose of determining legal settlement of a dependent
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State Laboratory of Hygiene
State Laboratory of Hygiene may charge fees for tests not conducted for
local units of government, but it is not required to do so. Sec. 36.25(11)(f),
Stats. (Unpub) ................................................................. 49-1981

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HIGHER EDUCATION CORPORATION
See WISCONSIN HIGHER EDUCATION CORPORATION

HIGHWAYS
See also COUNTY HIGHWAY COMMISSIONER; COUNTY HIGHWAY
COMMITTEE
HIGHWAYS (continued)

Advertising signs, removal of

Highway maintainence authorities may summarily remove unauthorized non-traffic signs placed within the limits of highway rights of way ............... 74-219

Closing of

Where county has contract to maintain state trunk highways, county highway commissioner can temporarily close state trunk highway in case of emergency. Sec. 86.06(1), Stats. Sheriff has power to temporarily close any highway in county in case of emergency and to divert traffic. Secs. 59.24(1) and 349.02, Stats. ................................................................. 67-335

Condemnation

Tenants operating a business or farm are entitled to business or farm replacement costs payable pursuant to sec. 32.19(4m), Stats. .................. 68-114

Construction

The Department of Natural Resources does not have authority to waive the permit requirements of sec. 30.12(2), Stats., for individuals who would otherwise be subject to the statute; however, chs. 30 and 83, Stats., read together, indicate that county highway construction is not subject to the permit requirements of sec. 30.12(2), Stats. .............................................. 64-91

County Board

Section 83.025(1), Stats., as amended by ch. 160, Laws of 1973, does not require counties to develop a functional and jurisdictional classification of highways. Nor is a properly approved classification plan a prerequisite to a county board's exercise of its authority pursuant to sec. 83.025(1), Stats., as amended, to incorporate town roads into the county trunk highway system without prior approval of town boards ........................................... 63-125

County highway department

The county highway department may perform ditching and culvert work on private lands to promote a public purpose as soil conservation. However, activity in this area should respect available private sector alternatives, and ensure that accounting procedures will protect all taxpayers equally............. 76-69

Definition

County forest roads which are open to vehicular traffic are highways which can be designated as all-terrain vehicle routes under section 23.33(8)(b), Stats., and minors under sixteen years of age holding valid all-terrain vehicle safety certificates can operate all-terrain vehicles on highways which have been designated as all-terrain vehicle routes under the limited conditions set forth in section 23.33(4) .................................................. 77-52

Fire call

Each town board providing fire protection and whose fire fighting facility responds to a fire call occasioned by a motor vehicle fire on a county trunk highway maintained by the county is entitled to reimbursement by the county an amount not to exceed $100 ........................................ 63-326

Forest Crop Law

Section 77.03, Stats., relating to enrolling land in the Forest Cropland Program, creates a right of access across an owner's non-enrolled lands to reach the owner's landlocked enrolled lands for the purposes of hunting and fishing .................................................. 71-163

The exceptions established by sec. 348.20(3), Stats., are not applicable to violations of weight limits established under sec. 348.175, Stats. ........ 64-164

"Hardship acquisitions"

The Highway Commission may properly engage in "hardship acquisitions" under sec. 84.09, Stats., without the filing of an environmental impact statement under either federal or state law but must in such instances comply with the requirements of secs. 84.09 and 32.25(1), Stats. ........ 62-200
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Maintenance of state highways

Contracts providing for the maintenance of state highways by the counties may be executed by the county highway committees without the approval of the county boards .................................................. 65-140

Menominee Tribe

The State has jurisdiction over members of the Menominee Tribe on public roads and highways within the Menominee Reservation in respect to the enforcement of state traffic laws that are necessary to protect the highways against depredation or that would impair their use as a public right-of-way. State law enforcement officers can arrest any person who commits a federal offense in their presence .......................................................... 66-115

Owner of abutting land

The rights of property owners abutting a highway are subject to reasonable regulations imposed by highway maintenance authorities and are subordinate to the public's interest over the use of the land within the boundaries of a highway right-of-way ........................................ 75-10

Public parking lots

The word “highway,” as used in secs. 343.05(1) and 343.44(1), Stats., does not include public parking lots .......................................................... 65-45

Right-of-way

Rights-of-way boundaries of nondedicated roads created by affirmative act are determined by the order laying out the road, not by the location of the road’s centerline. The rights-of-way boundaries of roads created by adverse users are only those portions of land adjacent to the traveled track reasonably necessary for highway purposes, unless the road has also been worked pursuant to sec. 80.01(2), Stats. .................................................. 69-87

Towns

Town citizens have no power to enact a law authorizing the town to sell road repair materials and services to private residents. (Unpub) ...................... 54-1982

Traffic ordinance

County under sec. 349.06, Stats., can enact and enforce a traffic ordinance in strict conformity with state statutes which is applicable to town roads. 30 OAG 431 (1941) and 38 OAG 184 (1949) no longer state the law in this respect because of subsequent statutory changes .................................. 64-172

Truck traffic

Counties do not have any general police power authority to control truck traffic, but are restricted to controlling truck traffic under secs. 349.15 and 349.16, Stats. The exercise of the police power under sec. 349.15, Stats., need not be based on the condition of the roadbed, but may be exercised to promote the general welfare of the public ....................... 66-110

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The Historical Sites Foundation, Inc., created under the provisions of ch. 181, Stats., by the Board of Curators of the State Historical Society of Wisconsin acting in their individual capacities, is a private corporation and as such is not subject to the requirements of the open meetings law, sec. 19.81, Stats. .................................................. 73-53

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It was constitutional for the Legislature to extend indemnity and other liability protections to the Corporation and its agents and employees who manage and operate a state-owned circus museum .................................... 75-182

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The State Historical Society of Wisconsin is a state agency. The Board of Curators of the Society falls within the coverage of sections 893.82 and 895.46, Stats. The only members of the Board that have to comply with section 19.43 by virtue of their appointment to the Board are the three members nominated by the Governor with the advice and consent of the Senate .......................................................... 74-54

Historic Sites Foundation, Inc.

The Historic Sites Foundation, Inc., created under the provisions of chapter 181, Stats., by the Board of Curators of the State Historical Society of Wisconsin acting in their individual capacities, is a private corporation and as such is not subject to the requirements of the Open Meetings Law, section 19.81, Stats. .................................................. 73-53

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Under sec. 44.02(5), Stats., the Society may sell fermented malt beverages in the Village Tavern at Stonefield Village .............................................. 65-185

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There is no statutory requirement that schools be closed on the Mondays succeeding the holidays listed in sec. 115.01(10)(a)1., Stats., when those holidays fall on Sunday .............................................. 67-129

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Documents in the possession of the Wisconsin Hospital Rate Review Committee are not public records and, therefore, are not subject to right of inspection under sec. 19.21, Stats. The contract creating the Committee does not give the right to compel access to documents in the possession of the staff members of the Hospital Rate Review Program ............... 71-44

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The Department of Industry, Labor and Human Relations may inspect those parts of boarding homes designed for three or more persons where employes work or those used by the public, but not interiors of private dwellings. It has no authority to license or register boarding homes nor to charge an inspection fee based upon number of beds or rooms ......................... 62-107

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A community living arrangement which has a capacity for eight or fewer persons and which meets all other statutory criteria is entitled to locate in any zoning district where single or multi-family residences are a permitted use. Any such community living arrangement which has a capacity of from nine to fifteen persons is entitled to locate in any zoning district where multi-family residences containing more than two families are a permitted use, and is entitled to apply for special zoning permission to locate in any zoning district where single or two family uses are permitted. Such a community living arrangement which has a capacity of more than fifteen persons is entitled to apply for special zoning permission to locate in any zoning district where single or multi-family uses are permitted. A community living arrangement which meets all applicable statutory criteria is not entitled to locate in an exclusive agricultural zoning district, but may seek special zoning permission to do so if local ordinances permit ........................................ 76-126

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Counties may adopt and enforce fair housing ordinances under section 66.432, Stats., in municipalities within such counties which already have enacted their own fair housing ordinance. No double jeopardy problem
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arises if a county and a municipality in the county simultaneously seek to enforce their fair housing ordinances in connection with a single act of discrimination, provided that a violation of one or both of the ordinances is punishable only by a forfeiture. Section 66.432 authorizes cities, villages, towns and counties to prohibit bases of discrimination in addition to those specified in sections 66.432 and 101.22. ............................ 74–234

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A community living arrangement which has a capacity for eight or fewer persons and which meets all other statutory criteria is entitled to locate in any zoning district where single or multi-family residences are a permitted use. Any such community living arrangement which has a capacity of from nine to fifteen persons is entitled to locate in any zoning district where multi-family residences containing more than two families are a permitted use, and is entitled to apply for special zoning permission to locate in any zoning district where single or two family uses are permitted. Such a community living arrangement which has a capacity of more than fifteen persons is entitled to apply for special zoning permission to locate in any zoning district where single or multi-family uses are permitted. A community living arrangement which meets all applicable statutory criteria is not entitled to locate in an exclusive agricultural zoning district, but may seek special zoning permission to do so if local ordinances permit ...................... 76–126

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Under the Implied Consent Law, sec. 343.305, Stats., hospitals must comply with the request of a law enforcement officer to administer chemical tests including a blood test. This assumes that the driver has not withdrawn his or her consent to submit to that test. Drivers who are unconscious or otherwise incapable of withdrawing their consent are presumed not to have withdrawn it. The refusal of hospitals, physicians, nurses, and other health professionals authorized to withdraw blood to comply with such request constitutes the refusal to aid an officer within the meaning of sec. 946.40, Stats. In complying with the request, the professional incurs no civil or criminal liability, except for any negligence in the course of compliance. The person performing the chemical test must report the findings to the Department of Transportation, the law enforcement agency, and the individual involved. Failure to report to the law enforcement agency also constitutes the refusal to aid an officer within the meaning of sec. 946.40, Stats. 68-209

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The taking of a blood sample pursuant to the Wisconsin Implied Consent Law is not a procedure in connection with the performance of a drug or alcohol abuse prevention function nor is the acquired blood sample itself a patient record. The confidentiality requirements set out in 42 U.S.C. § 290dd-3 and 21 U.S.C. § 1175 have no application to such a procedure.... 73-45

Municipal court

Section 343.305, Stats., as repealed and recreated by ch. 193, Laws of 1977, does not vest in municipal court the power to conduct hearings to determine the reasonableness of a refusal to submit to chemical tests to determine blood alcohol levels, since a municipal court has only those powers expressly conferred on it by statute, and such statute contains no express language conferring the hearing power above-mentioned on a municipal court. The power of a municipal court to preside over ordinance matters would not include such hearings, since local government lacks authority to enact the provisions of sec. 343.305, Stats., as an ordinance................. 67-185

Physical restraint

A law enforcement officer may use physical restraint, subject to constitutional limitations, in order to draw a legally justified blood sample. Refusal by a health professional to comply with a law enforcement officer’s authorized request to take a blood sample from a person whom the officer has legally restrained by force constitutes the refusal to aid an officer within the meaning of section 946.40, Stats..................................................... 74-123

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The State Public Defender, under sec. 977.05(4)(h), Stats., may, if he deems it appropriate to do so, provide legal services to an indigent at a so-called “refusal hearing” conducted pursuant to sec. 343.305(8)(b)1., and 2., Stats., where such indigent, prior to such hearing, has been charged with a crimi-
IMPLIED CONSENT LAW (continued)

Public Defenders (continued)

Refusal to aid an officer

Under the Implied Consent Law, sec. 343.305, Stats., hospitals must comply with the request of a law enforcement officer to administer chemical tests including a blood test. This assumes that the driver has not withdrawn his or her consent to submit to that test. Drivers who are unconscious or otherwise incapable of withdrawing their consent are presumed not to have withdrawn it. The refusal of hospitals, physicians, nurses, and other health professionals authorized to withdraw blood to comply with such request constitutes the refusal to aid an officer within the meaning of sec. 946.40, Stats. In complying with the request, the professional incurs no civil or criminal liability, except for any negligence in the course of compliance. The person performing the chemical test must report the findings to the Department of Transportation, the law enforcement agency, and the individual involved. Failure to report to the law enforcement agency also constitutes the refusal to aid an officer within the meaning of sec. 946.40, Stats. 68-209

Refusal to submit to testing

An individual’s fifth amendment privilege against self-incrimination need not be compromised by his or her testimony elicited at the evidentiary refusal hearing afforded to individuals who have requested the opportunity to litigate the lawfulness of their refusal to submit to chemical testing under the implied consent law. Consequently, absent any statutory guidelines, the scheduling of a refusal hearing is within the discretion and calendaring possibilities of the court to which it is assigned 77-4

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Federally recognized Indian tribal councils are eligible under the state program for the distribution of federal surplus property to public agencies under P. L. 94-519. (Unpub)........................................... 61-1979

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Indian fishers eligible to share in tribal treaty fishing rights are also eligible to apply for and hold a state commercial fishing license, but the State can exclude such individuals from sharing in non-Indian individual catch quotas applicable to a particular species of fish where a total harvest quota is necessary to prevent the substantial depletion of that species and where such quota must be apportioned between Indian and non-Indian fishers in order to safeguard the Indian's treaty rights.................................. 68-416

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Lac du Flambeau Reservation

The State has express authority under the General Allotment Act of 1887, as amended, 25 U.S.C. sec. 331 et seq., particularly 25 U.S.C. sec. 349, to impose ad valorem property taxes on Indian fee patented lands located within the Lac du Flambeau Reservation which were originally allotted under the Act after February 8, 1887. Indian fee patented lands allotted prior to that date directly under the Treaty of September 30, 1854, are not taxable by the State under 25 U.S.C. sec. 349 ........................................ 72-74

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While sheriffs lack statutory or common law authority to contract to provide county dispatch services to outside entities such as tribal public safety departments, sheriffs do have exclusive authority to instruct their deputies as to how such dispatch services should be performed in furtherance of their law enforcement functions .............................................. 78-85

Law enforcement, fresh pursuit onto reservation

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Tribally owned or operated liquor establishments must comply with state liquor laws, including licensing requirements. Indian tribes are within the coverage of ch. 125, Stats., and any license issued to a tribe counts toward the local quota ................................................................. 76-80

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Public Law 280 (67 Stat. 588, 28 U.S.C. sec. 1360 and 18 U.S.C. sec. 1162) is not applicable to the Menominee Tribe but state general jurisdiction will continue until the federal and tribal governments assume jurisdiction pursuant to the Menominee Restoration Act. Menominee County or portions thereof, could be merged with an adjoining county or counties by procedures set forth in sec. 59.997, Wis. Stats., but any division of the county would require prior majority vote of the county's legal voters ....................... 64-184

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Public Law 280 (67 Stat. 588, 28 U.S.C. sec. 1360 and 18 U.S.C. sec. 1162) is not applicable to the Menominee Tribe but state general jurisdiction will continue until the federal and tribal governments assume jurisdiction pursuant to the Menominee Restoration Act. Menominee County or portions
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Fines

A defendant may be incarcerated by court order for failing to pay a fine imposed for the violation of a municipal ordinance. Unless the defendant applies to the court and obtains relief on the grounds that because of his indigency he is unable to pay the fine, the sheriff may lawfully accept and hold such defendant in the county jail ............................................................. 64-94

Law enforcement officials of this state, insofar as it is within their power to do so, ought to establish procedures for giving notice to those who face possible incarceration on account of their failure to pay a fine of their constitutional right not to be confined if the failure to pay the fine results from their indigency and of their right to a hearing on the question of their indigency ................................................................. 64-98

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Law relating to liability for cost of providing hospital and medical care to indigent person under arrest discussed. Secs. 53.38 and 49.02(5), Stats........ 67-245

Implied Consent Law

The State Public Defender, under sec. 977.05(4)(h), Stats., may, if he deems it appropriate to do so, provide legal services to an indigent at a so-called “refusal hearing” conducted pursuant to sec. 343.305(8)(b)1. and 2., Stats., where such indigent, prior to such hearing, has been charged with a criminal offense or offenses based on the same situation as that giving rise to the indigent’s refusal to provide a sample of his/her breath, blood or urine pursuant to sec. 343.305(2)(b), Stats.......................................... 71-16

Indians

Wisconsin Indian Legal Services Center, Inc., is not a “local public defender organization,” and the Public Defender Board has no authority to contract with such nonstock corporation for the furnishing of legal services to indigents pursuant to sec. 977.03, Stats........................................ 66-334

Mental, alcohol or drug abuse hearings

Assuming individual is entitled to attorney at public expense in mental hearings required by sec. 51.02, Stats., or alcohol or drug abuse hearings required by sec. 51.09(1), Stats., power to appoint, to determine indigency and to fix compensation are judicial and must be exercised by the court or under its direction and cannot be limited by the County Board or delegated to private non-profit corporation. Any power of the County Board to contract for such services is limited to administrative details ....................... 63-323

Paternity action

Litigation and discovery costs for those indigent respondents in paternity actions for whom counsel has been appointed in accordance with sec. 767.52, Stats., must be paid by the State through the Public Defender Board appropriations, except as otherwise specifically provided by statute. (Unpub) ................................................................. 33-1982

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Section 53.38, Stats., is exclusively applicable in providing relief from medical and hospital care costs incurred by an indigent prisoner while receiving emergency medical treatment in a hospital ........................................ 69-230
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A county, acting through its county board, has the implied power to create a public defender's office to function as a county agency .................. 65–168

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The State Public Defender has discretion under sec. 977.05(4)(j), Stats., to refuse appointment for indigents in conditions of confinement cases and in cases seeking post-conviction and post-commitment remedies where there is no absolute right to counsel .......................................................... 71–211

Trial costs

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Administrative duties

The administrative duties of the Industry, Labor and Human Relations Commission, vested in the Chairman by sec. 15.06(4), Stats., may be exercised solely by the Chairman or may be delegated to other Commission members, in the discretion of the Chairman. Classification of various duties of the Commission as "administrative," "policy," and "statutory," discussed ...... 64–33

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Child labor permits

Department of Industry, Labor and Human Relations may lawfully issue child labor permits to girls aged 12 and 13 to be employed as caddies on golf courses .......................................................... 63–513

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Administrative rules and statutory authorization

Wis. Admin. Code § ILHR 83.08(1)(b), authorizing delegation by DILHR of one of its powers requiring the exercise of judgment to a county, was unlawful, there being no statutory authorization for such delegation ...... 76–282

Boarding homes

The Department of Industry, Labor and Human Relations may inspect those parts of boarding homes designed for three or more persons where employees work or those used by the public, but not interiors of private dwellings. It has no authority to license or register boarding homes nor to charge an inspection fee based upon number of beds or rooms .................................. 62–107
Child labor permits

Department of Industry, Labor and Human Relations may lawfully issue child labor permits to girls aged 12 and 13 to be employed as caddies on golf courses ................................................................. 63-513

Class action complaints

The Wisconsin Open Housing Law permits, but does not require, the Department of Industry, Labor and Human Relations to receive and process class action complaints of housing discrimination ........................................ 70-250

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Discrimination

Department may approve or be party to a job discrimination settlement agreement which includes less than the full back pay liability if the agreement eliminates the discrimination. If the agreement does not eliminate the discrimination the Department may proceed in the matter before it ............ 66-28

District Attorney

District attorneys may exercise discretion in collecting wages referred by the Department of Industry, Labor and Human Relations, but such discretion must be exercised reasonably. Specific questions concerning collection of wages are discussed including methods of collection, settlements, payment of costs and fees, and enforcement of the statutory lien .......................................... 78-171

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The One- and Two-Family Dwelling Code is applicable to additions of any buildings initially constructed after the effective date of the One- and Two-Family Dwelling Code Act and the Department of Industry, Labor and Human Relations can exempt certain dwellings from aspects of Code........ 67-191

Liability of local units of government in adopting and enforcing the One- and Two-Family Dwelling Code discussed ..................................................... 69-197

Neighborhood Youth Corps

Under the Neighborhood Youth Corps program authorized by Title I-B of the Economic Opportunity Act of 1964 (42 U.S.C. secs. 2701-2994d), all enrollees of this federally sponsored and locally administered program are employees under the Wisconsin Child Labor Laws and, therefore, must be covered by suitable work permits unless exempt because of age or the nature of their activities. The Department of Industry, Labor and Human Relations does not have the authority to waive the permit fee even though this program is federally sponsored and largely financed by federal funds as the relationship of employer-employee still exists, there being no statutory exemption ................................................................. 62-256

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Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code, section Ind 85.02, are governmental bodies within the meaning of sec. 66.77(2)(c), Stats., and subject to the requirements of the Open Meeting Law (sec. 66.77, Stats.) ..................................................... 63-363

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Although unemployment benefits erroneously paid constitute overpayment which the individual recipients should be required to repay, the Department of Industry, Labor and Human Relations has discretion whether to seek recovery of such overpayments ................................................................. 67-228

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Property owners

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Public records

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Unemployment compensation "interest and penalties" fund

The Department of Industry, Labor and Human Relations lost discretionary authority to make expenditures from the unemployment compensation "interest and penalties" fund when the Legislature reenacted sec. 20.445(1)(v), Stats., in 1977, but the Department remains responsible for collection of credit extended under the old law. A decision by the Department to discontinue collection efforts is subject to review by the Department of Administration, since it has been entrusted with authority under ch. 16, Stats., to superintend collection of amounts owed the State. (Unpub)....................... 49-1978

Wage claims

District attorneys may exercise discretion in collecting wages referred by the Department of Industry, Labor and Human Relations, but such discretion must be exercised reasonably. Specific questions concerning collection of wages are discussed including methods of collection, settlements, payment of costs and fees, and enforcement of the statutory lien ........................................ 78-171

INEBRIATES AND DRUG ADDICTS

See also 51.42/51.437 BOARD

Disorderly conduct in treatment facility

Persons incapacitated by alcohol who engage in disorderly conduct in treatment facility may be so charged. Persons so incapacitated may not be charged with a crime merely for the purpose of arranging for their confinement in jail .......................................................... 64-161

Hearings

Assuming individual is entitled to attorney at public expense in mental hearings required by sec. 51.02(1), Stats., power to appoint, to determine indigency and fix compensation are judicial and must be exercised by the court or under its direction and cannot be limited by the County Board or delegated to private nonprofit corporation. Any power of the County Board to contract for such services is limited to administrative details ..... 63-323

Minors

An outpatient treatment program for alcohol and other drug abuse which meets the standards contained in section PW-MH 61.03 Wis. Adm. Code, and has been formally approved by the Department of Health and Social Services may provide treatment and services to minor at least twelve years of age without obtaining the consent of minor's parent or guardian........ 70-19

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Patient records

Prior to releasing patient records in response to a warrant or subpoena, a federally funded or federally assisted drug treatment facility must first ascertain that the issuing court has made a finding of "good cause" within the meaning of 21 U.S.C. sec. 1175(b)(2)(C) in order to avoid the possibility of a fine under 21 U.S.C. sec. 1175(f). If there is no evidence that a finding
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of good cause has been made, no state criminal law is violated by refusing to release drug treatment records.............................................. 72-12

Sheriff's responsibilities

A sheriff may not refuse to book a person lawfully arrested and brought to the county jail by any state law enforcement agency, regardless of the medical condition of the arrestee, although he may require immediate medical screening pursuant to section 53.38, Stats. A sentencing court that imposes county jail time as a condition of probation may suspend that jail time while the probationer receives hospital care, and a sheriff and county department of human services may cooperate in the billing of medical care provided to county jail prisoners .............................................. 77-249

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The responsibility for providing and funding facilities for protective placements under ch. 55, Stats., is primarily on the county. The statute does not require a county nursing home to accept such a placement.............................................. 66-249

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Mandatory assessment against “all insurers” which subsidizes Health Insurance Risk-Sharing Plan, subchapter II of chapter 619, Stats., does not apply to the state's self-insurance plan because laws of general application do not apply to the sovereign. “Public employer” self-insurance plans are also exempt because, for purposes of this statute, they share in the state's sovereignty and, thus, in its immunity to general laws.............................................. 77-230

Chronic renal disease program

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Credit unions

Credit unions’ authority to engage in the sale of insurance is limited to credit life and credit accident and sickness insurance .............................................. 73-58

Funeral directors

A plan whereby a funeral service person (a licensed funeral director, operator of a licensed funeral establishment or an employee of the same) also acts as an insurance agent and as such writes a life insurance policy naming as the beneficiary a funeral director or establishment and additionally negotiates a contract wherein the named insured in the policy contracts with a funeral director or establishment for providing burial or funeral services to the insured is illegal .............................................. 76-291

Funeral service persons may be involved in the sale of life insurance if such insurance is not linked in any way to funeral or burial services .............................................. 78-182

Governmental bodies, officers, agents, or employees

Where a licensing agency waives the insurance requirement under sec. 48.627(1)(a) and (b), Stats., it does not assume any liability beyond the limited recovery in tort claims under secs. 893.80(3) and 893.82(6) .............................................. 76-1
INSURANCE

Group Insurance Board

Section 632.895(5m), Stats., which requires that disability insurance policies must provide coverage for grandchildren of the insured, does not apply to group insurance contracts between health maintenance organizations and the group insurance board of the Department of Employee Trust Funds. Under sections 40.51(7) and 40.03(6)(a), the group insurance board may not establish a pool of municipal employers to provide health care benefits on a self-funded basis.

Health Insurance Risk-Sharing Plan

Mandatory assessment against “all insurers” which subsidizes Health Insurance Risk-Sharing Plan, subchapter II of chapter 619, Stats., does not apply to the state’s self-insurance plan because laws of general application do not apply to the sovereign. “Public employer” self-insurance plans are also exempt because, for purposes of this statute, they share in the state’s sovereignty and, thus, in its immunity to general laws.

Rustproofing warranties

Wisconsin law authorizes but does not require the commissioner of insurance to demand periodic reports from an insurer relating to rustproofing warranties it insures. The commissioner has authority to require an insurer to increase the amount of insurance backing a rustproofer’s warranties in Wisconsin. Section 100.205, Stats., was not intended to negate the application of general insurance law to rustproofing warranties.

Transplants For Life, Inc.

Transplants For Life, Inc., a plan which encourages members to donate organs for transplant and rewards members for such donations, does not constitute insurance under Wisconsin law.

Wisconsin Health Care Liability Insurance Plan

The Wisconsin Health Care Liability Insurance Plan is an agency, function or activity of the Wisconsin state government. The professional health care liability insurance policy for hospitals issued under the Health Care Liability Insurance Plan may include as “persons insured” the named hospital and its nonexcluded employees while acting within the scope of their duties as hospital employees.

Wisconsin Physicians Insurance

Commissioner of Insurance may not permit WPS, a nonprofit plan, to be organized into a stock insurance company under ch. 611, Stats. Sections 148.01(1), 148.01(3), 148.03, 148.03(1), 148.03(2), 200.26(4), 201.045, 204.31(3m), and 611.71-611.78, Stats., discussed.

INSURANCE, COMMISSIONER OF

City council

A city council of a city other than the first class does not have legal authority to obligate the city and authorize the use of city funds for payment of health insurance premiums on policies for the benefit of alderpersons and other elected officials, irrespective of their years of service, who have left office.

Counties

Liability of self-insured county performing state highway maintenance is not increased by virtue of maintenance contract with State.

Funeral directors and embalmers

Section 632.41(2), Stats., does not prohibit the naming of a funeral director as beneficiary of a life insurance policy in conjunction with a separate agreement between the insured and the funeral director that the proceeds will be used for funeral and burial expenses.

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A county's obligation to continue life insurance for those judges who have
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The Wisconsin Auto Insurance Plan and Rejected Risk Plan do not consti-
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Rustproofing warranties

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increase the amount of insurance backing a rustprofessor's warranties in
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Wisconsin Auto Insurance Plan

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cerns, not state agencies, and members of these boards are not public
officers. Questions regarding the plans and boards discussed ............... 71–127

INTEREST

Commitment fees

Commitment fees which are bona fide in nature are not a part of interest
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unlikely to meet the lender's burden of showing that the fee represents the
reasonable value of services rendered ........................................... 69–28

Lenders

Lenders need not comply with the provisions of sec. 138.053, Stats., unless
the right to increase the interest rate subsequent to the execution of the
contract is conferred by the contract itself..................................... 70–32

Loan fees

Loan fees which relate to the amount borrowed rather than to identifiable
expenses incurred as a result of the particular transaction must be consid-
ered as interest for purposes of ch. 138, Stats. These loan fees are to be
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rate usurious. These fees must be rebated in accordance with sec. 138.05(2),
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Securities

Section 138.05(1)(a), Stats., operates to limit the interest rate which a securi-
ties broker-dealer may charge to a noncorporate customer under a margin
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Veterans

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Veterans (continued)

45.79(4)(a), Stats., as amended by ch. 155, Laws of 1979, is the rate charged on loans under the most recent general obligation bond issue. (Unpub).... 26–1980

INTERSTATE COMMERCE

Discrimination

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Permit fees

Motor carrier permit fees required by sec. 194.04(4)(a), (b), and (c), Stats., are not in conflict with Interstate Commerce Commission regulations and may be collected. The permit fee required by sec. 194.04(4)(d), Stats., is in conflict with such regulations and may not be collected .................... 63–206

INTERSTATE COMPACT ON MENTAL HEALTH

Costs of treatment

It would be inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to section 51.15, Stats. While section 51.15(7) does not authorize contractual agreements with counties outside of Wisconsin, sections 51.75(11), 51.87(3) and 66.30(5) each contain a legal mechanism through which financial or other responsibility for the care and treatment of individuals from such counties may be shared under certain specified circumstances.............. 78–59

INTOXICATING LIQUORS

See also MALT BEVERAGES

Automobile

Section 346.93, Stats., contains two prohibitions: first, an absolute ban on a minor's possession of intoxicating liquor in a motor vehicle; second, a ban on a minor's possession of any malt beverage in a motor vehicle while any person under 18 years of age is a passenger or present in such motor vehicle. In order for a violation of that second prohibition to occur, a person under the age of 18 years in addition to the violator of the statute must be present in the vehicle ......................... 66–215

Carry-out

It is not illegal, under sec. 176.07, Stats., to allow the carry-out of intoxicating liquor from a “Class B” licensed premises between 12 midnight and 8 a.m. if the sale of the liquor occurred before 12 midnight. “Sale” defined.. 69–168

Class “B” liquor licensees

Class “B” liquor licensees must be similarly treated by a municipality as to the hours they may be open for sales of liquor........................................ 63–597

Closing time

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Country clubs opening any part of their facilities to the general public lose their eligibility for “country club” liquor or beer licenses issued by the
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Intoxicating liquors; wholesale permitees, franchise sales area statements, price discrimination. Section 176.05(1a)(b), Stats., does not prohibit a wholesaler from selling intoxicating liquor to a retailer located outside the area described in the area statement provided the sale takes place within that area. State law does not prohibit nor does it require a separate charge by wholesaler for delivery of intoxicating liquor to a retailer. .............. 70-258
Gifts
A gift of intoxicating liquors, made by a liquor manufacturer, rectifier or wholesaler to a liquor retailer, does not violate the "tied-house" prohibitions of ch. 176, Stats., when the liquor is dispensed by the licensed retailer, free of charge, at a wine-tasting party or similar event held for the sole benefit of a charitable organization or institution ........................................... 66-276
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Section 343.305, Stats., as repealed and recreated by ch. 193, Laws of 1977, does not vest in municipal courts the power to conduct hearings to determine the reasonableness of a refusal to submit to chemical tests to determine blood alcohol levels, since a municipal court has only those powers expressly conferred on it by statute, and such statute contains no express language conferring the hearing power above-mentioned on a municipal court. The power of a municipal court to preside over ordinance matters would not include such hearings, since local government lacks authority to enact the provisions of sec. 343.305, Stats., as an ordinance.............. 67-185
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Where a licensed Class “B” retailer of fermented malt beverages also conducts a restaurant business on the premises, sec. 66.054(8)(a), Stats., does not operate to permit the licensee to conduct any other business on the premises........................................................................................................... 66-176

Minors

An adult who furnishes beer or liquor to a minor may not be charged with contributing to the delinquency of a child under sec./947.15(1)(a), Stats., if based on the minor’s possession of such items ......................... 70-276

Section 346.93, Stats., contains two prohibitions: first, an absolute ban on a minor’s possession of intoxicating liquor in a motor vehicle; second, a ban on a minor’s possession of any malt beverage in a motor vehicle while any person under 18 years of age is a passenger or present in such motor vehicle. In order for a violation of that second prohibition to occur, a person under the age of 18 years in addition to the violator of the statute must be present in the vehicle ........................................... 66-215

Retail premises

No violation of sec. 176.07, Stats., is committed where premises licensed for the sale of intoxicating liquor at retail are so constructed, either by original construction or by remodeling, as to eliminate at all times any view of the interior of such premises from the outside........................................... 64-213

Taxation

Blend of liquor taxed under sec. 139.03(2t), Stats., and other liquor may be taxed proportionately without violating sec. 139.03(3), Stats.................. 68-138

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Section 125.33(1)(a), Stats., prohibits a person from having an interest in real estate leased to a Class “B” licensee while also being a director, officer or shareholder of a brewery................................................................. 77-76

The tied-house prohibitions of sec. 66.054(4)(a), Stats., apply to holders of temporary Class “B” beer licenses for picnics or similar gatherings issued pursuant to sec. 66.054(8)(b), Stats., unless the holder of the temporary license involved falls within the exemption contained in sec. 66.054(4)(a)8., Stats.. 67-127

Under sec. 66.054(4)(a), Stats., a Class “B” retail license may not be issued to a licensed wholesaler of fermented malt beverages ........................................... 61-68

“Trade discount”

Section 100.30(2)(Lm), Stats., qualifies the term “trade discount” in determining “cost of retailer” under sec. 100.30(2)(a), Stats., for sales of fermented malt beverages and intoxicating liquors. Section 100.30(2)(Lm), Stats., is not a catchall prohibition against all trade discounts and does not apply to bona fide quantity discounts........................................... 63-516

INVESTMENT BOARD, WISCONSIN

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Employment of investment of legal counsel by Investment Board under sec. 25.18(1)(a), Stats., is subject to competitive bidding requirements of subch. IV of ch. 16, Stats. (Unpub)........................................... 82-1978

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The State of Wisconsin Investment Board may invest the State Housing Authority Reserve Fund, as provided by sec. 25.17(2)(c), Stats., ch. 418, sec. 234, Laws of 1977. (Unpub) ........................................ 4-1979

Nominees' statement of economic interests

Section 19.43(3), Stats., requires that the Ethics Board forward copies of Investment Board nominees' statement of economic interests to members of the Senate committee to which the nomination is referred. The extent of confidentiality of such statements rests in the sound discretion of the Senate committee ........................................ 68-378

Nonrecourse debt

The State of Wisconsin Investment Board lacks the authority to borrow money and secure that debt utilizing real estate owned by it as an asset of the fixed retirement trust. Such board does have the authority to acquire encumbered real estate where the debt is assumed without recourse .......... 78-189

Open meeting

Posting in Governor's office of agenda of future Investment Board meetings is not sufficient communication under sec. 66.77(2)(e), Stats., as created by ch. 297, Laws of 1973, to the public or the news media who have filed a written request for notice ......................................................... 63-549

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The State of Wisconsin Investment Board lacks the authority to borrow money and secure that debt utilizing real estate owned by it as an asset of the fixed retirement trust. Such board does have the authority to acquire encumbered real estate where the debt is assumed without recourse .......... 78-189

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State Housing Authority Reserve Fund

The State of Wisconsin Investment Board may invest the State Housing Authority Reserve Fund as provided by sec. 25.17(2)(c), Stats., ch. 418, sec. 234, Laws of 1977. (Unpub) ........................................ 4-1979

INVESTMENTS

Municipal funds

Municipal funds may be invested in savings and loan associations to the extent permitted by sec. 219.05(1), Stats. .............................. 62-312

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Mutual funds

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JOINT SEWERAGE COMMISSION
See MUNICIPALITIES; WASTE MANAGEMENT

JOINT TENANTS
Conveyances
A certificate of termination of joint tenancy is not an instrument of conveyance which requires a real estate transfer return under sec. 77.22(1), Stats. (Unpub).................................................................................. 19-1982

Register of Deeds
Register of Deeds is not authorized to collect and forward to the county court fees set forth in sec. 253.34(1)(a), Stats., where sec. 867.045, Stats., is used for administrative joint tenancy termination for homes. Register of Deeds can administer oath under sec. 867.045(2)(b), Stats. ......................... 62-192

JUDGES
Bail
Judges and court commissioners have power, prior to the filing of a criminal complaint, to release on bail persons arrested for commission of a felony.. 65-102

Bar dues
A county board of supervisors does not have authority to pay the bar dues of elected circuit judges serving the county. Such dues are professional responsibilities of the person serving as judge and are not costs of operation of the circuit court. The Legislature could enact legislation to empower the county to pay such dues as a part of compensation or reimbursement for expense connected with duties, or could provide that the State pay such dues ...... 74-164

Cases, assignment of
Judges of the branches of County Court, rather than County Board of Judges, which is made up of both Circuit Court and County Court Judges, have power to assign specific types of cases to specific branches of the County Court, pursuant to sec. 253.18, Stats. Likewise, judges of the branches of Circuit Court have power to assign specific types of cases to specific branches of the Circuit Court, pursuant to sec. 252, Stats. .............. 63-92

Constitutional amendment
1971 Enrolled Joint Resolution 26 includes two propositions which may be submitted to the electors as one amendment to the Wisconsin Constitution. 63-28

J 1 1990
JUDGES (continued)

Insurance

A county's obligation to continue life insurance for those judges who have
exercised the sec. 753.07(4), Stats., option does not terminate when the
county salary supplements end on July 1, 1980.

John Doe proceeding

Limits of a judge's authority in presiding over or conducting a John Doe
proceeding discussed. Section 968.26, Stats., is not unconstitutional as a
violation of the separation of powers doctrine.

Legislature

Section 2 of 1977 Senate Resolution 14 which, if adopted, would create
Senate Rule 73(1)(b), prohibiting members who are attorneys from voting
on bills creating additional judgeships or pay raises or retirement benefits
for judges, would unconstitutionally deny equal protection of the laws to
those citizens represented in the Senate by members who are also attorneys.

Mittelstadt, resignation

A county judge's resignation is effective when successor qualifies. Judicial
Code's only sanction is censure.

Oath, filing of

Municipal justice files oath and bond with clerk of circuit court who files
certified copy of bond with clerk of municipality for which justice was
elected. Town boards, including those authorized to exercise village powers,
cannot prohibit conduct the same or similar to that prohibited by chs. 941
to 947, except as provided in sec. 66.051(1), (2) and (3), Stats., or other
express statutes.

Reserve judge, eligibility requirements

If defeated in the last attempt at reelection, a judge must have served eight
years as a circuit judge, not a county judge, before August 1, 1978, in order
to be eligible for appointment as a reserve judge.

Retirement systems

If sec. 356 of 1977 Senate Bill 720 or the amendment to sec. 356 contained in
Senate Amendment 3 to Senate Bill 720 were enacted into law, either would
be constitutionally invalid.

Salaries and wages

Chapter 38, Laws of 1979, is effective to every judge of a Court of Record
and Justice of the Supreme Court when either a Supreme Court Justice or
judge of a Court of Record commences a term of office.

Chapter 114, Laws of 1977, provided for 5.5% increase to the dollar value of
the salary range minimum and maximum for the salary schedule applicable
to circuit judges as of July 1, 1978; however, as sec. 20.923(2), Stats.,
provides that the salary of a circuit judge is set at the midpoint of the salary
group in effect "at the time of taking the oath of office" subject to Wis.
Const. art. IV, sec. 26, such increase is not applicable to circuit judges
during current terms until some person, on or after July 1, 1978, who was
elected or appointed, qualifies as judge and takes an oath for a new term.

JUDICIAL COMMISSION

Powers

Orders of former Judicial Commission, which was created and abolished by
Supreme Court order, which created temporary vacancies in the 26th Judicial
Circuit Court, Walworth County, and Branch I of the 22nd Judicial
Circuit Court in Waukesha County, are presumed valid until altered or held
invalid by proper authority. Final authority in the Supreme Court. Present
Judicial Commission, created by legislative act, pursuant to Wis. Const. art.
JUDICIAL COMMISSION  (continued)
   Powers (continued)
      VII, sec. 11, is successor to former Commission. The Commission has
      power to invoke its jurisdiction over the temporary vacancies, and probably
      has a duty pursuant to sec. 757.85(1), Stats., to “investigate any possible ...
      disability of a judge” and whether the disabilities, previously determined,
      continue ................................................................. 69-5

JURIES
   Freedom of speech
      Sections 756.03 and 756.031, Stats., prohibiting a person from soliciting jury
      duty, are constitutional enactments ........................................ 69-19

JURISDICTION
   Divorce Reform Act of 1977
      Interpretation of certain statutory sections enacted pursuant to ch. 105, Laws
      of 1977. The provisions of sec. 247.265, Stats., require every order for
      support or maintenance listed therein to include a wage assignment order.
      Section 247.02(1)(i), Stats., allows all actions to modify a judgment in an
      action affecting marriage to be commenced in any court having jurisdiction
      under sec. 247.01, Stats ...................................................... 68-106

Indian Child Welfare Act
   Jurisdictional questions relating to the implementation of the Indian Child

Marriage and divorce
   Interpretation of certain statutory sections enacted pursuant to ch. 105, Laws
   of 1977. The provisions of sec. 247.265, Stats., require every order for
   support or maintenance listed therein to include a wage assignment order.
   Section 247.02(1)(i), Stats., allows all actions to modify a judgment in an
   action affecting marriage to be commenced in any court having jurisdiction
   under sec. 247.01, Stats ...................................................... 68-106

Menominee County
   not applicable to the Menominee Tribe but state general jurisdiction will
   continue until the federal and tribal governments assume jurisdiction pursuant
   to the Menominee Restoration Act. Menominee County, or portions thereof,
   could be merged with an adjoining county or counties by procedures set forth in sec. 59.997, Wis. Stats., but any division of the County
   would require prior majority vote of the County’s legal voters .................. 64-184

Menominee Tribe
   Jurisdictional relationship between State and Menominee Tribe discussed .... 70-36

JUSTICE ASSISTANCE ACT OF 1984
   Use of funds
      The Fox Valley Technical Institute is not a “unit of local government” for
      the purpose of receiving federal Justice Assistance Act (JAA) funds. Also,
      JAA funds which are specified for use by local units of government for local
      projects cannot be used to support statewide crime prevention activities ... 75-265

JUVENILE COURT
   See also COURTS; MINORS
   Citation and forfeiture procedures
      Citation and forfeiture procedures for juveniles as affected by chs. 300 and
      359, Laws of 1979, are discussed ........................................... 70-67
District Attorney

The duties of the District Attorney under secs. 48.04(3) and 59.47(11), Stats., relate only to appearing and assisting in juvenile court proceedings. Such duties normally do not include the performance of ministerial or clerical functions in drafting juvenile court petitions under sec. 48.20(2), Stats. .... 62-273

The juvenile court cannot require the District Attorney to serve the summons or notice required by ch. 48, Stats. However, the District Attorney, as an officer of the court, may voluntarily do so to aid the court in the administration of justice ......................................................... 72-145

Iron County

Under the provisions of sec. 48.12, Stats., the Iron County juvenile court has jurisdiction of delinquency petitions based on violation of the Michigan criminal law by children who are residents of and present in Iron County. 62-229

Jurisdiction

The provisions of sec. 48.12, Stats., vest exclusive jurisdiction in the juvenile court over persons under 18 years of age who violate the provisions of secs. 66.054(25) and 176.31, Stats., which impose criminal penalties on a person under 18 years of age who procures, possesses or consumes any intoxicant or who falsely represents his age for the purpose of procuring any intoxicant ............................................................... 63-95

Pre-petition investigation

Pre-petition investigation provided for by sec. 48.19, Stats., is authorized whenever any human being directs information to the juvenile court tending to show that a child is delinquent, in need of supervision, dependent or neglected ............................................................... 63-279

Records, access to

The Wisconsin Council on Criminal Justice may have access to the law enforcement and social service files of Wisconsin juveniles without a court order. It may not have access to juvenile court records without a court order .............................................................................. 74-18

Resident juveniles

The Wisconsin courts have jurisdiction under ch. 48, Stats., over state resident juveniles alleged to be delinquent because they violated another state’s criminal laws ............................................................... 70-143

JUVENILE DETENTION HOMES

See FOSTER HOMES

JUVENILES

See CHILDREN; COURTS; JUVENILE COURT; MINORS
KNIVES

Balisong
Possession of balisong or butterfly knives is prohibited by section 941.24, Stats., because their blades open by a thrust or movement (Unpub)........ 21-1987

Butterfly knife
Possession of balisong or butterfly knives is prohibited by section 941.24, Stats., because their blades open by a thrust or movement (Unpub)........ 21-1987

Switchblade Knife Act (U.S.)
Possession of balisong or butterfly knives is prohibited by section 941.24, Stats., because their blades open by a thrust or movement (Unpub)........ 21-1987
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LABOR

See also EMPLOYER AND EMPLOYEE

CETA

The Governor can designate counties as agencies of the State to contract with nonprofit private agencies to utilize funds to provide public service jobs under Federal Comprehensive Employment and Training Act ............... 66-15

Child labor

Under the Neighborhood Youth Corps program authorized by Title I-B of the Economic Opportunity Act of 1964 (42 U.S.C. secs. 2701-2994d), all enrollees of this federally sponsored and locally administered program are employes under the Wisconsin Child Labor Laws and, therefore, must be covered by suitable work permits unless exempt because of age or the nature of their activities. The Department of Industry, Labor and Human Relations does not have the authority to waive the permit fee even though this program is federally sponsored and largely financed by federal funds as the relationship of employer-employe still exists, there being no statutory exemption ................................................................. 62-256

Department of Industry, Labor and Human Relations may lawfully issue child labor permits to girls aged 12 and 13 to be employed as caddies on golf courses ................................................................. 63-513

Collective bargaining

Matters within the scope of bargaining as set forth in sec. 111.91, Stats., agreed to by the Department of Administration and a state employe union are not effective until submitted as tentative agreements to and approved by the Joint Committee on Employment Relations. Action of the Secretary of the Department of Administration in agreeing to so-called non-recrimination clause was within his discretion but the clause itself is unenforceable until approved by the Joint Committee on Employment Relations ............... 67-38

Conviction records

1. A licensing agency may not ask an applicant about juvenile delinquency records. 2. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats. ............... 67-327

Discrimination

1. A licensing agency may not ask an applicant about juvenile delinquency records. 2. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats. ............... 67-327

A state agency may insist on the presence of legal counsel when making agency personnel available for informal interviews conducted by Personnel Commission equal rights officers in the course of investigating complaints of employment discrimination against such state agency, where the equal rights officers wishes to (1) conduct on the job interviews of nonmanagerial personnel, or (2) interview agency supervisors who are not named or "immediately" involved in the discriminatory actions in question ............... 70-167

Grievance records

Public records relating to employe grievances are not generally exempt from disclosure under the Public Records Law, and nondisclosure must be justified on a case-by-case basis ................................................................. 73-20

"Hiring above the minimum"

"Raised hiring rate" and "hiring above the minimum" practices utilized by Administrator of Division of Personnel pursuant to section Pers 5.02(1) and (2) Wis. Adm. Code are primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub) ............... 65-1978
LABOR (continued)

Layoffs
Layoff and reinstatement provisions in sec. 118.23, Stats., are to be applied separately to classroom teachers and principals .............................................. 70-6

Migrant workers
“Sharecropping” or other agreements attempting to establish the migrant worker as an independent contractor violate the Wisconsin Migrant Law, secs. 103.90–103.97, Stats. ................................................................. 71–92

Minimum wage
Section 104.01 to 104.12, Stats., inclusive, known as the Minimum Wage Law, do not apply to the State or its political subdivisions as employers... 62–47

Prison guards
Upon appropriate call, state traffic patrol officers may act as peace officers during a prison riot or other disturbance even when this occurs during a strike of prison guards; they may not, however, perform other duties of guards................................................................. 68–104

“Raised hiring rate”
“Raised hiring rate” and “hiring above the minimum” practices utilized by Administrator of Division of Personnel pursuant to section Pers 5.02(1) and (2) Wis. Adm. Code are primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub)..................... 65–1978

Ski resorts and amusement parks
Public ski resorts and amusement parks which make a charge for enjoyment of their facilities are subject to rules relating to employment made under secs. 103.01 to 103.03, Stats. (Unpub)........................................ 72–1978

Turnkey construction
Turnkey construction may be used for the construction of public works projects unless another method expressly is required. Municipalities are subject to sec. 66.293(3), Stats., the prevailing wage law, on contracts for any project of public works even if done by the turnkey method .............. 64–100

“Turnkey” projects
Typical “turnkey” projects financed by industrial development revenue bonds pursuant to sec. 66.521, Stats., are not subject to sec. 66.293(3), Stats. ...... 63–145

LAC DU FLAMBEAU INDIANS
See also INDIANS
Zoning
The Lac du Flambeau Indian Tribe has exclusive authority to zone Indian land, and has concurrent jurisdiction with the State to zone private property within the Tribe’s reservation boundaries unless county zoning would infringe on tribal self-government .............................................. 71–191

LAKES
See also WATERS
Artificial lakes
An artificial waterway connected with or located within 500 feet of a navigable waterway is a public waterway to which public access must be provided pursuant to sections 236.16(3) and 30.19(1)(a) and (5), Stats. ................. 76–316

LAND
See also PUBLIC LANDS
LAND (continued)

"Advance land acquisitions"

Agencies engaging in "advance land acquisitions" must comply with sec. 32.19, Stats., et seq., Wisconsin's Relocation Assistance and Payment Law. 63-201

Minimum lot width and area requirements

Each of two adjacent platted lots may not be divided for the purpose of sale or building development if such division will result in lots or parcels which do not comply with minimum lot width and area requirements established under sec. 236.16(1), Stats. Section 236.335, Stats., discussed.................. 63-122

Outlots

A proposed plat under ch. 236, Stats., may not consist solely of outlots, whether or not the proposed outlots are intended for the purpose of sale or building development. Other questions concerning outlots answered............. 66-238

Plats and platting

The duties of the head of the planning function in the Department of Local Affairs and Development in administering plat proposal reviews under sec. 236.12, Stats., in checking for compliance with the minimum survey layout and format requirements set forth in secs. 236.15, 236.16, 236.20 and 236.21(1) and (2), Stats., do not trigger environmental assessment under sec. 1.11, Stats. The Department of Local Affairs and Development and the Department of Natural Resources are not required to undertake an environmental assessment in instances where a variance in the public access to navigable waters requirements of sec. 236.16(3), Stats., is proposed since such a review is impossible. (Unpub) ................................. 93-1977

Public sale

Land acquired in name of a county by its county highway committee for use as gravel pit can be sold by the County Board, when no longer required for highway purposes, at public sale pursuant to sec. 83.08(4), Stats. Public sale must be held on notice, by auction or written bids, with sale to highest qualified bidder .................. 66-208

Relocation assistance payments

Wisconsin condemners are not bound by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P. L. 91-646, 84 Stat. 1894. Relocation assistance and payments to displaced persons must be made in accordance with secs. 32.19 to 32.27, Stats. Unrelated individuals who share a common dwelling for convenience sake without a common head of the household are "persons" under sec. 32.19, Stats. Payments to displaced persons must be made in accordance with state law..................... 63-229

Replat

A replat of a recorded subdivision must comply with the formal platting requirements of ch. 236, Stats., relating to new subdivision plats, including those relating to the survey, approval and recording................. 63-193

Chapter 236, Stats., discussed in reference to the platting, replatting and division of lots within a recorded subdivision ................... 67-121

Discussion of circumstances under which lots in a recorded subdivision may be legally divided without replatting .................. 64-80

Section 236.36, Stats., permits the replat of a part of a previously recorded subdivision plan, without circuit court action, where the only areas dedicated to the public in that portion of the original subdivision being replatted, were previously fully and properly vacated under the provisions of sec. 66.296, Stats. .................. 63-210

Reservation status

Land recently purchased and held in trust for Indian tribes or tribe members under the superintendence of the federal government has the same reservation status as land reserved for the use of Indian tribes or tribe members by treaty or legislation.................. 71-82

L 3 1990
Soil absorption tests

Soil absorption tests conducted by persons certified under sec. 145.045, Stats., must be accepted by county governments .................................................. 63-586

Subdivision

Chapter 236, Stats., discussed in reference to the platting, replatting and division of lots within a recorded subdivision ........................................ 67-121

Discussion of circumstances under which lots in a recorded subdivision may be legally divided without replatting ........................................ 64-80

Subdivision regulations

Discussion of the extent to which sec. 236.45(2)A3., Stats., limits the application of local subdivision regulations to divisions of lands. (Unpub) ...... 18-1976

Subdivision surveys

Certified survey maps under sec. 236.34, Stats., cannot be used as a substitute for subdivision surveys as defined by sec. 236.02(8), Stats. Penalties under sec. 236.31, Stats., applicable to improper use of certified surveys ........ 67-294

Tax delinquent lands

In publishing redemption notices for tax delinquent lands under sec. 75.07(1), Stats., County Treasurer is not authorized to omit the names of persons to whom such property was last assessed ........................................ 63-118

Section 75.07(1), Stats., requiring publication of redemption notice prior to expiration of time to redeem lands sold for taxes, is directory only; and failure to include in such publication the name of the person to whom such taxes were assessed does not invalidate a subsequent tax deed .............. 63-116

University

The University of Wisconsin System may sell a dormitory which no longer is needed for educational purposes upon such terms as are agreeable to the Wisconsin State Agencies Building Corporation and H.U.D. to guarantee the payment of the bonds issued for the initial construction of the building. 63-252

Agricultural zoning, revocation of

The Land Conservation Board has authority to prospectively revoke an exclusive agricultural zoning ordinance certification granted under sections 91.06 and 91.78, Stats. Notice and an opportunity to be heard must be afforded to the local zoning authority and to landowners who might be affected by a decertification decision. If a decision to decertify is made, only those lands which are rezoned are subject to the lien and property tax credit recapture provisions of section 91.77(2). ........................................ 74-78

Appointments to

Appointments to a county land conservation committee, created by the county board pursuant to section 92.06, Stats., are made by the county board, not by the county executive........................................ 76-173

Land conservation committee responsibilities and prohibition of private interest in public contracts discussed ........................................ 76-184

Consent to search

State Arson Bureau and local fire and police departments are subject to the Fourth Amendment warrant requirements of the United States Constitution in conducting searches for evidence of arson. If consent to search is sought, very general guidelines are that a tenant or co-tenant may consent to search of area under his control, while consent to search a common area
LANDLORD AND TENANT (continued)

Consent to search (continued)
may be given by landlord or, if objector could not reasonably expect privacy, by a tenant ................................................................. 68-225

Garnishment of AFDC grants
The recently enacted provisions of section 49.41(2), Stats., which provide that effective April 1, 1988, grants of AFDC may be garnisheed by landlords as provided under section 812.233, conflict with provisions of Title IV-A of the Social Security Act ............................................................ 77-56

Rent control ordinances
State statutory enabling legislation is required to authorize enactment of typical rent control ordinances. Assembly Substitute Amendment I to 1973 Assembly Bill 95 deemed incomplete and constitutionally infirm ......................... 62-276

LAW ENFORCEMENT

See also BENCH WARRANT; CRIMINAL LAW; POLICE; SHERIFFS

Arrest
A warrantless arrest and detention for bail jumping, section 946.49, Stats., is authorized if probable cause exists that the arrestee violated the contact prohibition in section 968.075(5)(a)1. after being released under chapter 969. 78-177

Automobiles and motor vehicles
The ordinance adopted by the Village of West Milwaukee which authorizes the placement of an immobilization device on an automobile of an individual who has ten or more outstanding or otherwise unsettled traffic violations does not constitute a valid exercise of a municipality's authority under Wisconsin law .............................................................. 77-73

Bench warrant
A bench warrant issued under sec. 968.09, Stats., may be directed to all law enforcement officers in the State without regard to whether the defendant is charged with violation of a state statute or county ordinance. The form of the warrant should be tailored to meet the form suggested by sec. 968.04(3)(a)7., Stats............................................................... 62-208

Section 968.09, Stats., does not authorize the issuance of a bench warrant upon the failure to pay a fine or forfeiture. (Unpub) ........................ 27-1982

The Circuit Court has neither statutory nor inherent authority to issue a bench warrant for the arrest of a violator of a county ordinance who has received a citation pursuant to sec. 66.119, Stats., and who neither posts a cash deposit nor appears at the citation return date ......................... 70-280

Boating law
Water safety patrol officers, in county patrol, created as a separate agency, do not have to be deputized by Sheriff to enforce secs. 30.50-30.80, Stats., Wisconsin's regulation of boating law................................. 65-169

Burnett County police and emergency radio
A sheriff's actions in determining access to a county's law enforcement channel are ministerial in nature. The negligent exercise of that authority could subject the sheriff to liability ............................................................ 76-7

Campus police
The University of Wisconsin has no authority to agree to hold harmless a county that incurs liability because of a university officer's torts, but the common law of indemnification would require such officer to indemnify that county and statutory indemnification would require the state to indemnify the officer when acting in the scope of his/her employment. A county sheriff may deputize university campus police officers and restrict that deputization to particular times, places and crimes. An otherwise valid arrest would not be rendered invalid, however, solely because the officer exceeded the scope of that deputization ............................................................ 78-1

L 5 1990
Citations for ordinance violations
Without statutory authority to do so, a county cannot use citations for violations of ordinances that have certain statutory counterparts. Section 66.119(3)(b), Stats., only authorizes the use of citations for violations of ordinances other than those for which a statutory counterpart exists ....... 76-211

Citizenship requirements
Sections 62.13(4)(d) and 66.11(1), Stats., making citizenship a prerequisite to becoming a police officer or deputy sheriff violate the Fourteenth Amendment of the United States Constitution when applied to resident aliens .... 65-273

Conservation wardens, power of arrest
The power of arrest of DNR wardens is limited by statute; they do not have general law enforcement authority except on state-owned lands, and property under DNR's supervision, management and control including the power to arrest violators of state law on all bodies of water which lie exclusively within such area, as determined by facility boundaries ........ 68-326

Convicted felons
Convicted felons may not serve as sheriffs, deputy sheriffs, patrolmen, police­men, or constables as these law enforcement officers are "public officers" within the meaning of that term in sec. 17.03(5), Stats., and they hold an "office of trust, profit or honor in this state" within the purview of Wis. Const. art. XIII, sec. 3 ................................................................. 65-292

Cooperative agreements
Under section 66.30, Stats., and subject to some limitation, a county may furnish certain supplemental law enforcement services to villages and towns within the county. The county sheriff’s consent to provide such supplemental services and the sheriff's approval of such a contract is required ...... 75-119

Coroner, duties
Where accident occurs in one county and victim is transported to another county, and death occurs there, Coroner where death occurs has duty to immediately report death to Coroner of county where crime, injury or event occurred, and Coroner of latter county has authority to investigate and duty to hold inquest if he deems it necessary or if directed by District Attorney of his county .......... 62-127

Correctional staff
Correctional staff have the authority, and possess the power of a peace officer in pursuing and capturing escaped inmates ......................... 68-352

Deputy sheriff
Whereas a deputy sheriff must be a resident of the county for which ap­pointed, secs. 59.24(2), 66.30, 66.305 and 66.315, Stats., would allow such deputy to serve in an adjacent county upon request for mutual assistance . 62-250

Discovery
Sheriff's criminal investigation files are not covered by a blanket exemption from the public records law, but denial of access may be justified on a case­by-case basis .......................................................... 77-42

Fingerprints and photographs
Law enforcement officials may require a person appearing pursuant to a summons to be fingerprinted and photographed. A court may condition a person's release from custody on bail upon the taking of fingerprints and photographs ........................................... 69-254
Hospitals

In certain circumstances a peace officer may command a physician, or other medical staff at a hospital or clinic, to gather evidence from a sexual assault victim .......................................................... 72-107

The taking of a blood sample pursuant to the Wisconsin Implied Consent Law is not a procedure in connection with the performance of a drug or alcohol abuse prevention function nor is the acquired blood sample itself a patient record. The confidentiality requirements set out in 42 U.S.C. § 290dd-3 and 21 U.S.C. § 1175 have no application to such a procedure ........................................ 73-45

Under the Implied Consent Law, sec. 343.305, Stats., hospitals must comply with the request of a law enforcement officer to administer chemical tests including a blood test. This assumes that the driver has not withdrawn his or her consent to submit to that test. Drivers who are unconscious or otherwise incapable of withdrawing their consent are presumed not to have withdrawn it. The refusal of hospitals, physicians, nurses, and other health professionals authorized to withdraw blood to comply with such request constitutes the refusal to aid an officer within the meaning of sec. 946.40, Stats. In complying with the request, the professional incurs no civil or criminal liability, except for any negligence in the course of compliance. The person performing the chemical test must report the findings to the Department of Transportation, the law enforcement agency, and the individual involved. Failure to report to the law enforcement agency also constitutes the refusal to aid an officer within the meaning of sec. 946.40, Stats. ........ 68-209

Identification records, juveniles

Identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody pursuant to sec. 165.83(2), Stats., for confidential reporting to the Department of Justice .............. 62-45

Implied Consent Law

A driver of a motor vehicle cannot be asked to take a test to determine alcoholic intoxication pursuant to sec. 343.305(2)(am), Stats., unless there has been a lawful arrest .......................................................... 67-314

Method by which a law enforcement agency may provide two tests for blood alcohol content under sec. 343.305(1), Stats., discussed. The agency is not required to actually own or physically possess the testing devices .......... 63-119

The taking of a blood sample pursuant to the Wisconsin Implied Consent Law is not a procedure in connection with the performance of a drug or alcohol abuse prevention function nor is the acquired blood sample itself a patient record. The confidentiality requirements set out in 42 U.S.C. § 290dd-3 and 21 U.S.C. § 1175 have no application to such a procedure .... 73-45

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LAW ENFORCEMENT (continued)

Indians

Discussion of state, county and tribal jurisdiction to regulate traffic on streets in housing projects that have been built and are maintained by the Winnebago Tribe on tribal lands .......................................................... 78-122

Jurisdictional relationship between State and Menominee Tribe discussed.... 70-36

State and county conservation wardens and Sheriff’s officers have authority under state law to arrest a Menominee Indian suspect on the reservation following fresh pursuit for an off-reservation violation of state law, if the arrest is one the officer is otherwise authorized to make. Although the State is generally obliged to comply with Menominee tribal extradition procedures, the State’s personal jurisdiction over an Indian arrested under the circumstances described is probably not pre-empted by federal law ........ 74-245

The State has jurisdiction over members of the Menominee Tribe on public roads and highways within the Menominee Reservation in respect to the enforcement of state traffic laws that are necessary to protect the highways against depredation or that would impair their use as a public right-of-way. State law enforcement officers can arrest any person who commits a federal offense in their presence.................................................... 66-115

While sheriffs lack statutory or common law authority to contract to provide county dispatch services to outside entities such as tribal public safety departments, sheriffs do have exclusive authority to instruct their deputies as to how such dispatch services should be performed in furtherance of their law enforcement functions .................................................. 78-85

Indigency, failure to pay fine

A defendant may be incarcerated by court order for failing to pay a fine imposed for the violation of a municipal ordinance. Unless the defendant applies to the Court and obtains relief on the grounds that because of his indigency he is unable to pay the fine, the Sheriff may lawfully accept and hold such defendant in the county jail .......................................................... 64-94

Law enforcement officials of this State, insofar as it is within their power to do so, ought to establish procedures for giving notice to those who face possible incarceration on account of their failure to pay a fine of their constitutional right not to be confined if the failure to pay the fine results from their indigency and of their right to a hearing on the question of their indigency.......................................................... 64-98

Investigators

Investigators employed by district attorneys offices in counties which have neither a population of 500,000 or more nor cities of the second or third class do not possess general police powers. (Unpub).......................... 53-1982

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Jurisdictional relationship between State and Menominee Tribe discussed.... 70-36

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Under sec. 66.30, Stats., a county may contract to furnish certain law enforcement services to cities, villages and towns within the county but cannot take over all law enforcement functions. A deputy sheriff may not be designated as a city police chief .......................................................... 65-47

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It is constitutional for the Legislature to authorize funds to be borrowed and expended for construction of state patrol training facilities on leased land. (Unpub).......................................................... 8-1984
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Need not be purchased by competitive bid under secs. 60.29 and 66.29, Stats., since they are "equipment" and not "supplies [or] material" ................. 66-284

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The police may justifiably prevent a district attorney from inspecting their investigation files on pending criminal cases to determine whether there is exculpatory evidence which must be disclosed to a defendant only in those exceptional instances in which a compelling need to maintain secrecy outweighs the constitutional and statutory considerations ordinarily demanding access .................................................. 76-262

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A state traffic patrol officer should not except in extreme emergencies be impressed for service as part of a posse comitatus pursuant to sec. 59.24(1), Stats. Where duly impressed he is entitled to worker's compensation, if injured, from the county or municipality but would not be entitled to regular pay from the State and probably would not be entitled to worker's compensation from the State ................................................................. 62-38

The County Board may require the appointment of regularly employed deputies to be in accordance with the pertinent civil service ordinance. The County Board may fix the number and the compensation, if any, of all deputy sheriffs, whether regularly employed or honorary deputies. Notwithstanding the number fixed by ordinance, the Sheriff retains the power to call a posse comitatus pursuant to sec. 59.24(1), Stats. .......................... 68-334

Prison riot

Upon appropriate call, state traffic patrol officers may act as peace officers during a prison riot or other disturbance even when this occurs during a strike of prison guards; they may not, however, perform other duties of guards ................................................................. 68-104

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Sections 62.13(4)(d) and 66.11(1), Stats., making citizenship a prerequisite to becoming a police officer or deputy sheriff violate the Fourteenth Amendment of the United States Constitution when applied to resident aliens ................................................................. 65-273

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The Age Discrimination in Employment Act of 1967, as amended, does not invalidate secs. 41.02(23), Stats., or 41.11(1), Stats., nor the 35 year maximum age requirement for applicants for deputy sheriffs established by the Waukesha County Civil Service Commission ................................................................. 63-530
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Section 165.85(4)(b)2, Stats., does not preclude the temporary assignment of uncertified persons to fill in as jail officers when necessary as a result of sickness, vacations or scheduling conflicts ........................................ 78-146
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In a criminal case in which a police officer testifies as a witness for the prosecution, a district attorney may have a duty under Brady v. Maryland, 373 U.S. 83 (1963), to disclose to the defendant information that another police officer in the same police department had claimed that the officer-witness did not tell the truth under oath in court in another, unrelated case. 75-62
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A warrantless arrest and detention for bail jumping, section 946.49, Stats., is authorized if probable cause exists that the arrestee violated the contact prohibition in section 968.075(5)(a)1. after being released under chapter 969. 78-177
Wisconsin Office of Justice Assistance
A grant from the Wisconsin Office of Justice Assistance may properly be paid as salary increases to the district attorney and his or her assistants in the form of overtime, without violating section 59.49(1), Stats., provided the county makes allowance for such grant funds in its budget and duly passes salary increases for the district attorney and his assistants as provided by sections 66.197 and 59.15(2)(c) .......................................................... 77-63
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Nonresident property owners
Exploration and mining rights constitute interests in land, and ownership of such interests are subject to the provisions of sec. 710.02, Stats., limiting nonresident ownership of land in Wisconsin .................................................. 69-126
Schools and school districts
Common school districts have the authority to lease property that they own if such property is not currently needed for school purposes and if the lease is authorized by the annual meeting of the common school district. The
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Schools and school districts (continued)
answer is not free from doubt and it is recommended that the Legislature
specifically grant to school boards, if authorized by the annual meeting, the
authority to lease school property not currently needed for school purposes. 67-332

State
Wis. Const. art. VIII, sec. 7(2)(d), does not preclude the State from entering
into a lease with a nonprofit corporation or other entity furnishing facilities
for governmental functions unless there is an attempt to use the lease as
part of a scheme for the State to acquire title to or the use of a facility
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See RESIDENCE, DOMICILE AND LEGAL SETTLEMENT

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The Governor may not alter vetoes on a partially approved and partially
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portion returned to the house of origin.............................................. 70-154
Governor's veto of one digit of a separable part of an appropriation bill
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Budget Bill for 1981–1982
Failure of the Governor to express his objections to several possible partial
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The Legislature may impose certain controls on public purpose corporations,
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Section 16.49, Stats., does not prohibit or restrict an officer or employe from
informing citizens of budget deliberations or suggesting that those citizens
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Constitutional amendment
1971 Enrolled Joint Resolution 26 includes two propositions which may be
submitted to the electors as one amendment to the Wisconsin Constitution. 63-28

County Judge
Sections 489m, 490m and 561(8), ch. 90, Laws of 1973, may provide for and
implement a legislative appointment to the Office of County Judge contrary
to the provisions of art. VII, sec. 2 and art. XIII, sec. 10, Wis. Const. ....... 63-24
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Crime victims compensation

Under ch. 949, Stats., DILHR is not authorized to direct payment of expenses incurred by victims of crime for dental, chiropractic, podiatric, or optometric services. (Unpub) 84-1977

Emergency rules

The Legislature intended that emergency rules pursuant to sec. 227.027, Stats., would only have effect for 120 days. Therefore, an emergency rule may not be perpetuated by simply refile it in accordance with subsec. (2) of sec. 227.027, Stats., before or after the 120 days provided in subsec. (1) lapse. 62-305

Federal Election Campaign Act

1981 Assembly Bill 176, which would create a congressional campaign fund to provide public funding for qualified candidates from Wisconsin for the United States House of Representatives, is preempted by the Federal Election Campaign Act. 70-185

Judges

1971 Enrolled Joint Resolution 26 includes two propositions which may be submitted to the electors as one amendment to the Wisconsin Constitution. 63-46

Lobbying Law

Certain provisions of Substitute Amendment 1 to 1977 Senate Bill 286, revising subch. III of ch. 13, Stats., the State’s Lobbying Law, are incompatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures and are therefore probably unconstitutional. The major portion of the bill is constitutional. (Unpub) 15-1978

In principle, the purposes sought to be accomplished by Assembly Substitute Amendment 3 to 1977 Assembly Bill 93, revising subch. III of ch. 13, Stats., the State’s Lobbying Law, are compatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures. Some of the means selected to accomplish those purposes may, on their face or as applied violate citizens’ First Amendment right of petition. 67-85

Section 13.72, Stats., which prohibits anonymous paid advertising favoring or opposing pending legislation, is unconstitutional. 77-90

Mental Health Act

Amendment of the Mental Health Act as proposed in 1981 Assembly Bill 262 would be unconstitutional. 71-34

Procedures

A bill such as 1973 Assembly Bill 1480 would probably result in a valid law even if the procedures specified in sec. 13.50(6), Stats., are disregarded by the Legislature. When an act is passed by both houses, in accordance with constitutional requirements, the courts will not inquire into whether statutory legislative procedures were followed. 63-305

Public lands

Proposed statutory language to ch. 24, Stats., does not meet constitutional and other standards. Alternate proposal offered. (Unpub) 14-1981

Publication of all general laws

Article VII, sec. 21, Wis. Const., requires full text publication of all general laws, and publication of an abstract or synopsis of such laws would not be sufficient under the Constitution. Methods other than newspaper publication, under sec. 985.04, Stats., may be utilized to give public notice of our general laws. The constitutional provisions which require the taking of yea and nay votes and the entry thereof on the journals of the Senate and Assembly can be complied with by recording the total aye vote together with a listing of the names of those legislators who voted no, were absent or
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Publication of all general laws (continued)
not voting or were paired on the question. See art. IV, sec. 20; art. V, sec. 10; art. VIII, sec. 8; art. XII, sec. 1, Wis. Const. 63-346

Retirement benefits
Only the portion of 1987 Assembly Bill 265 that increases benefits for persons no longer working for a Wisconsin Retirement System participating employer is subject to the three-fourths vote requirement of article IV, section 26 of the Wisconsin Constitution. The Public Employee Trust Fund constitutes "state funds" as used in article IV, section 26 of the Wisconsin Constitution 76-224

Retroactivity of tax penalty ordinance
Section 74.80(2), Stats., does not permit a county or municipality to enact an ordinance which would make the one-half of one percent per month penalty apply on a retroactive basis to the date the tax first became delinquent 73-72

School psychologist
Senate Bill 370 would create a new category of licensure, that of school psychologist. Only those licensed could privately practice school psychology. The definition of school psychology could be by administrative rule promulgated by the Psychology Examining Board. (Unpub) 98-1977

Statutes, conflict between two
Section 19.50(5), Stats., giving Ethics Board authority to obtain copies of tax returns, and sec. 71.11(44), Stats., regarding examination of tax returns, discussed. To the extent of any conflict between the two statutes, sec. 19.50(5), Stats., being a specific statute, controls over sec. 71.11(44), Stats., being a general statute. (Unpub) 8-1979

Textbook loans to school students 77-66

"three-fourths vote" requirement
Only the portion of 1987 Assembly Bill 265 that increases benefits for persons no longer working for a Wisconsin Retirement System participating employer is subject to the three-fourths vote requirement of article IV, section 26 of the Wisconsin Constitution. The Public Employee Trust Fund constitutes "state funds" as used in article IV, section 26 of the Wisconsin Constitution 76-224

Vetoes, Governor
Failure of the Governor to express his objections to several possible partial vetoes of the 1981-82 Budget Bill make any such possible vetoes ineffective. 70-189
The Governor may not alter vetoes on a partially approved and partially disapproved appropriation bill once the approved portion of the Act has been delivered to the Secretary of State pursuant to law and the disapproved portion returned to the house of origin 70-154
Governor's veto of one digit of a separable part of an appropriation bill constitutes an objection within the meaning of Wis. Const. art. V, sec. 10, and the entire part is returned to the Legislature for reconsideration 62-238

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Absence
Meaning of "absence" within Wis. Const. art. V, sec. 7, discussed 68-109

Administrative rule
Since there is no difference between an otherwise valid administrative rule and a law, such a rule cannot be suspended or revoked by joint resolution of the Legislature and no statute can grant the Legislature the power to do so. The Legislature could, however, by law, empower itself or a committee of its members to function as an administrative review agency, provided
Administrative rule (continued)

that the administrative rule was a correct application or interpretation of the relevant enabling legislation and provided that such determination is subject to judicial review. There is no material distinction between an otherwise valid administrative rule and an otherwise valid policy pronouncement by an agency inasmuch as they both have the force of law, but the policy pronouncements of administrators do not have the force of law. Judicial review of a policy pronouncement cannot be defeated merely by the failure of the administrative agency to properly adopt the same as a rule. 63-159

The vote of an absent member of the Joint Committee for Review of Administrative Rules cannot be counted. No time need be allowed for a roll call vote before the Committee votes. Notwithstanding sec. 13.56(2), Stats., to the contrary, the Committee cannot constitutionally suspend an otherwise valid administrative rule. 63-168

Appointees

The senate may not appoint a commissioner to fill a vacancy in a term which will not occur during the extant session of the senate. In the present case, the provisional appointment for the vacancy in the term ending March 1, 1985, was valid, but the appointment for a full term beginning March 1, 1985, and ending on March 1, 1991, was invalid. The acts of the commissioner holding over in office are valid. 76-272

Attorneys

Section 2 of 1977 Senate Resolution 14 which, if adopted, would create Senate Rule 73(1)(b), prohibiting members who are attorneys from voting on bills creating additional judgeships or pay raises or retirement benefits for judges, would unconstitutionally deny equal protection of the laws to those citizens represented in the Senate by members who are also attorneys. 67-310

Candidate

Candidate for the Legislature need not be a resident of the district which he seeks to represent at the time he files his nomination papers. That portion of 61 OAG 368 (1972) inconsistent herewith is repudiated. 65-159

Committees

The one-man vote principle is inapplicable to legislative committees since that principle applies only to the exercise of legislative powers and such powers cannot constitutionally be delegated to these committees. There has been no such unconstitutional delegation as to the Joint Committee on Finance, the Board on Government Operations, the Joint Legislative Council or the Committee to Visit State Properties. As to the Joint Committee for Review of Administrative Rules, however, the Legislature has unconstitutionally delegated to it the power to suspend a law. 63-173

Constitutional amendment

The Legislature has the duty to resubmit a proposed constitutional amendment to the people when the previous election at which the amendment was submitted has been voided by court order, notwithstanding the fact that an appeal has been taken from the order voiding the election. 65-42

Criminal law

A vacancy in the Office of a State Senator is created under the provisions of art. XIII, sec. 3 and art. XIII, sec. 10, Wis. Const., as implemented by sec. 17.03(5), Stats., upon his conviction of and sentence for any felony punishable by imprisonment in state prison, and no further specific action is required by the State Senate to implement those provisions. 65-264

Group Insurance Board

The Legislature would not commit an unfair labor practice if it unilaterally increased state employee pension benefits and costs. Such increases would not apply to employees in collective bargaining units, however, unless the Legislature so provided expressly or by necessary implication. The Group Insurance Board would not commit an unfair labor practice if it unilaterally increased state employee pension benefits and costs.
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Group Insurance Board (continued)
Insurance Board, however, being a part of the executive branch of government, would commit an unfair labor practice if it unilaterally increased benefits and costs to state employes in collective bargaining units. The removal of state employes from the state retirement system, the cessation of all contributions thereto, and the removal of a bargaining unit from the provisions of ch. 40 are subjects of collective bargaining under the State Employment Labor Relations Act............................................. 64-18

Lobbying law
Certain provisions of Substitute Amendment I to 1977 Senate Bill 286, revising subch. III of ch. 13, Stats., the State’s Lobbying Law, are incompatible with the rights of Wisconsin citizens to petition the government and to secure against unreasonable searches and seizures and are therefore probably unconstitutional. The major portion of the bill is constitutional. (Unpub)........................................................... 15-1978

Milwaukee Metropolitan Sewerage Commission
Section 13.625, Stats., does not prohibit the Milwaukee Metropolitan Sewerage District from paying normal expenses and salaries to commissioners who are legislators and does not prohibit those legislators from accepting those payments ................................................................ 78-149

Open meeting
In giving notice of public hearings held under sec. 13.56(2), Stats., Legislative Committee for Review of Administrative Rules should concurrently employ the various forms of notice available which best fit the particular circumstances ........................................................................................................ 62-299

Pension benefits and costs
The Legislature would not commit an unfair labor practice if it unilaterally increased state employe pension benefits and costs. Such increases would not apply to employes in collective bargaining units, however, unless the Legislature so provided expressly or by necessary implication. The Group Insurance Board, however, being a part of the executive branch of government, would commit an unfair labor practice if it unilaterally increased benefits and costs to state employes in collective bargaining units. The removal of state employes from the state retirement system, the cessation of all contributions thereto, and the removal of a bargaining unit from the provisions of ch. 40 are subjects of collective bargaining under the State Employment Labor Relations Act............................................. 64-18

Public Records Law
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Reapportionment
The Assembly districts altered as to boundaries and renumbered by 1983 Wisconsin Act 29, became effective July 20, 1983. An Assemblyperson is a constitutional state public officer who must be a resident and elector of the district he or she is chosen to represent. An incumbent Assemblyperson continues to represent the district from which he or she was chosen, as altered as to boundaries and as renumbered. Limitations on in-district travel and mass mailings to constituents discussed ...................... 72-172

Salaries and wages
Current statutes require that members of both houses of the Legislature receive the same basic salary. Amendment to sec. 20.923(1) and (2), Stats., is required to change this requirement .......................................................... 66-280
Section 13.625, Stats., does not prohibit the Milwaukee Metropolitan Sewerage District from paying normal expenses and salaries to commissioners
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who are legislators and does not prohibit those legislators from accepting those payments ................................................................. 78-149

Senator
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Telephone calls
Records kept by the Assembly Chief Clerk of telephone credit card numbers and of long-distance telephone calls of representatives are subject to the Public Records Law. Custodian may make a determination whether to disclose or divulge records in specific instances ........................................... 66-202

Vocational, technical and adult education
Neither art. X, sec. 3, Wis. Const., nor any other constitutional provision prohibits the charging of tuition for any course of instruction offered at a school in the system of vocational, technical and adult education operated pursuant to ch. 38, Stats. The charging of tuition at such schools, and the manner and extent whereby such charges are to be made, is a matter of policy which the Legislature is free to determine in the exercise of its legislative power under art. IV, sec. 1, Wis. Const. .......................... 64-24

Votes
The one-man vote principle is inapplicable to legislative committees since that principle applies only to the exercise of legislative powers and such powers cannot constitutionally be delegated to these committees. There has been no such unconstitutional delegation as to the Joint Committee on Finance, the Board on Government Operations, the Joint Legislative Council or the Committee to Visit State Properties. As to the Joint Committee for Review of Administrative Rules, however, the Legislature has unconstitutionally delegated to it the power to suspend a law ................................................................. 63-173

The vote of an absent member of the Joint Committee for Review of Administrative Rules cannot be counted. No time need be allowed for a roll call vote before the Committee votes. Notwithstanding sec. 13.56(2), Stats., to the contrary, the Committee cannot constitutionally suspend an otherwise valid administrative rule ................................................................. 63-168

LIABILITY

Ambulance attendants
The Department of Health and Social Services has authority to establish standards for ambulance attendants under sec. 146.50, Stats. Discussion of malpractice liability of state officers and employees ................................................................. 67-145

Cities
Pursuant to sec. 895.35, Stats., a city council can, in limited circumstances, reimburse a council member for reasonable attorneys' fees incurred in defending an alleged violation of the Open Meeting Law, but cannot reimburse such member for any forfeiture imposed. Section 895.46(1), Stats., is not applicable to forfeiture actions. Such member could not be reimbursed, indirectly, under liability insurance policy procured by a municipality, for any forfeiture imposed ................................................................. 66-226

Claims against the county
County Highway Committee does not have power to examine, settle and pay liability claims against the county without final action by the County Board. ................................................................. 67-47

County veterans' service officer
A county veterans' service officer does not have the duty under ch. 45, Stats., to transport disabled veterans to a veterans' hospital when such transportation is not readily available unless authorized by his county. The county

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LIABILITY (continued)

County veterans' service officer (continued)
would be liable to the injured veteran in an automobile accident while being transported by the veterans' service officer if the officer were authorized and performing within the scope of his employment. If he were authorized and an accident occurred, sec. 895.43(3), Stats., limits the recovery to $25,000. 67-207

Emergency care

Interpretation of new law rendering "good Samaritans" immune from civil liability for good faith acts or omissions in giving emergency care at the scene of an emergency or accident. Statute excludes from protection health care practitioners who make their living or who specifically are paid for providing emergency care at the scene of an emergency or accident ....... 67-218

"Good Samaritans"

Interpretation of new law rendering "good Samaritans" immune from civil liability for good faith acts or omissions in giving emergency care at the scene of an emergency or accident. Statute excludes from protection health care practitioners who make their living or who specifically are paid for providing emergency care at the scene of an emergency or accident ....... 67-218

Governmental bodies, officers, agents or employes

Where a licensing agency waives the insurance requirement under section 48.627(1)(a) and (b), Stats., it does not assume any liability beyond the limited recovery in tort claims under sections 893.80(3) and 893.82(6) ......... 76-1

Industry, Labor and Human Relations, Department of

The Department of Industry, Labor and Human Relations lost discretionary authority to make expenditures from the unemployment compensation "interest and penalties" fund when the Legislature reenacted sec. 20.445(1)(v), Stats., in 1977, but the Department remains responsible for collection of credit extended under the old law. A decision by the Department to discontinue collection efforts is subject to review by the Department of Administration, since it has been entrusted with authority under ch. 16, Stats., to superintend collection of amounts owed the State. (Unpub) ............. 49-1978

North Central Wisconsin Regional Planning Commission

Employes of regional planning commissions organized under section 66.945, Stats., are not state agents, officers or employes within the meaning of section 895.46(1)(a), but they are protected by that subsection's requirement that such planning commissions themselves indemnify them for liability incurred in the course of their duties ......... 77-142

Regional planning commission

Employes of regional planning commissions organized under section 66.945, Stats., are not state agents, officers or employes within the meaning of section 895.46(1)(a), but they are protected by that subsection's requirement that such planning commissions themselves indemnify them for liability incurred in the course of their duties ......... 77-142

Services provided under secs. 51.42 and 51.437, Stats.

Liability, reimbursement and collection for services provided under secs. 51.42 and 51.437, Stats., programs discussed ......... 65-49

Truancy

A person cannot be charged with intentionally contributing to the delinquency of a minor under sec. 947.15(1)(a), Stats., on the basis of an allegation that the person either harbored a runaway or truant child, aided in the running away, or in some way encouraged the truancy or the running away, because truancy and uncontrollability are not included under the definition of "delinquent" under sec. 48.12(1), Stats. ......... 66-18
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Vocational, technical and adult education districts

The limitation of damages by section 893.80(3), Stats., in actions founded upon tort against governmental bodies, officers, agents or employes, unless modified or rendered inapplicable by other statute, applies to vocational, technical and adult education districts, their officers and employes ............ 77-145

LIBRARIES

Board powers discussed

The express power of a library board under section 43.58(1), Stats., to control the expenditure of funds includes the authority to contract for necessary goods and services for the public library........................................... 77-193

Computerized records

Computerized compilation of bibliographic records discussed in relation to copyright law; under Public Records Law requester is entitled to copy of computer tape or a printout of information contained on the tape ............... 75-133

Council of Wisconsin Libraries (COWL)

Computerized compilation of bibliographic records discussed in relation to copyright law; under Public Records Law requester is entitled to copy of computer tape or a printout of information contained on the tape ............... 75-133

County

A county having a population in excess of 85,000 and which does not presently operate and maintain a library but which contains a city of over 30,000 operating a library, can establish a single-county federated library system. Secs. 43.15(4)(a) and 43.19, Stats. ........................................ 63-142

County Board

County Board, in county having a single-county federated public library system, cannot abolish system board appointed under sec. 43.19(1)(a), Stats., and transfer functions and duties to committee of County Board ... 63-317

County library tax levy

A town, city or village which does not maintain a public library, as a municipality or jointly with another municipality under contract, but which makes contributions to a nearby public library, cannot be exempted from the county library tax levy under sec. 43.64(2), Stats. ........................................ 65-182

Expenditures

The express power of a library board under section 43.58(1), Stats., to control the expenditure of funds includes the authority to contract for necessary goods and services for the public library........................................... 77-193

Federated library systems

Contract provision requiring payment as between federated library systems of a fee for use of each system’s facilities by nonresidents does not result in failure “to honor valid borrowers’ cards of all public libraries in the system by all public libraries in the system” within the meaning of section 43.24(2)(d), Stats. ........................................ 73-60

Fees for online searches

Municipal libraries may not charge a fee for lending video cassettes which are part of a reasonable permanent collection but may charge for lending additional copies. Municipal libraries may not charge a fee for online searching of bibliographic or informational databases ........................................ 78-163

Fees for users

The Madison Public Library can charge user fees for any services that fall outside of a library’s inherent information-providing functions; services that constitute core “library services” must be provided free of charge to
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Fees for users (continued)

the inhabitants of the municipality; a one-dollar fee can be collected for
lending duplicate copies of best seller books

Fees for video cassettes

Municipal libraries may not charge a fee for lending video cassettes which are
part of a reasonable permanent collection but may charge for lending
additional copies. Municipal libraries may not charge a fee for online
searching of bibliographic or informational databases

Funds for single-county federated library system

County Board cannot authorize single-county federated library system board
to maintain special bank account into which are deposited system revenues
and from which are paid system expenses. (Unpub)

Home-rule

Municipal libraries are a matter of paramount local concern as opposed to a
statewide concern and are subject to otherwise constitutionally legal local
legislative enactments under the home-rule provisions of the State Constitu-
tion. Acting pursuant to Wis. Const. art. XI, sec. 3, sec. 66.01, Stats., a city
or village governing body can change the composition of its municipal
library board and can limit powers of such board granted by ch. 43, Stats.,
where the municipal library is not part of a library system

Municipal libraries are a matter of statewide concern. Accordingly, home rule
provisions will not justify local departures from the provisions of chapter
43, Stats.

Online Computer Library Center (OCLC)

Computerized compilation of bibliographic records discussed in relation to
copyright law; under Public Records Law requester is entitled to copy of
computer tape or a printout of information contained on the tape

Online searches, fees

Municipal libraries may not charge a fee for lending video cassettes which are
part of a reasonable permanent collection but may charge for lending
additional copies. Municipal libraries may not charge a fee for online
searching of bibliographic or informational databases

Tax exemption

A municipality, otherwise qualified, is entitled to an exemption under sec.
43.64(2), Stats., where the county has not acted to levy a tax specifically
designated as a county library tax but does finance money "expended for
public library services to its inhabitants" by a general tax levy

To qualify for tax exemption from county library tax under sec. 43.64(2),
Stats., municipality or school district must have expended for its own
"library fund" during the year in which the county tax levy is made a sum
at least equal to the sum it would have to pay for the county tax levy made
during that year to fund the county budget for the ensuing year

Video cassettes, fees

Municipal libraries may not charge a fee for lending video cassettes which are
part of a reasonable permanent collection but may charge for lending
additional copies. Municipal libraries may not charge a fee for online
searching of bibliographic or informational databases

LICENSES AND PERMITS

Acquired Immune Deficiency Syndrome

Licensing boards do not have the authority to enact general regulations
which would allow them to suspend, deny or revoke the license of a person
who has a communicable disease. However, licensing boards do have the
authority on a case-by-case basis to suspend, deny or revoke the license of a
person who poses a direct threat to the health and safety of other persons or
LICENSES AND PERMITS (continued)

Acquired Immune Deficiency Syndrome (continued)
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Alderman holding a Class "B" license
An alderman holding a Class "B" Fermented Malt Beverage and Intoxicating Liquor License is ineligible to vote on the granting, renewal or revocation of such a license .................................................. 63-545

Auction business
Where a licensed Class "B" retailer of fermented malt beverages also conducts a restaurant business on the premises, sec. 66.054(8)(a), Stats., does not operate to permit the licensee to conduct any other business on the premises .................................................. 66-176

Automobiles and motor vehicles
Motor carrier permit fees required by sec. 194.04(4)(a), (b) and (c), Stats., are not in conflict with Interstate Commerce Commission regulations and may be collected. The permit fee required by sec. 194.04(4)(d), Stats., is in conflict with such regulations and may not be collected .................. 63-206

Bartenders' licenses
Municipalities may not require by ordinance that all grocery and liquor store employees and bartenders must obtain bartenders' or operators' licenses, such ordinances being in conflict with the provisions of chapter 125, Stats. 76-86
Section 66.054(11), Stats., which permits the issuance of bartenders' licenses to persons of "good moral character" does not automatically preclude issuance to a former offender, especially in light of sec. 111.32(5)(h), Stats., which prohibits discrimination in employment or occupational licensing based upon a criminal conviction (with certain exceptions) .................. 68-202

Bicycles
The licensing of bicyclists, the creation of bicycle courts and the impoundment of bicycles is a matter of statewide concern. Cities and villages cannot exercise such regulation in the absence of express legislative authorization .......................... 66-99

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Under section 66.036, Stats., additions to, and the remodeling of, structures require an on-site inspection of the existing private sewage system before a building permit may be issued .................................................. 75-38

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The loss of tax exempt status for income tax purposes does not necessarily imply that an organization is no longer nonprofit. The Bingo Control Board does not have statutory authority to revoke the bingo license of an otherwise eligible organization because of its membership policies regarding race. .................. 67-255

Child labor permits
Department of Industry, Labor and Human Relations may lawfully issue child labor permits to girls aged 12 and 13 to be employed as caddies on golf courses .................................................. 63-513

Churches
A group of churches is entitled to a permit under sec. 16.845, Stats., to use the Capitol grounds for a planned civic or social activity even if the content of the program is partly religious in nature .................................................. 68-217

Citizenship
Sections 441.04, 441.07 and 441.10, Stats., making citizenship a prerequisite to obtaining a certificate/license to practice nursing in the State of Wisconsin, are unconstitutional in that they violate rights under the Fourteenth Amendment of the United States Constitution when applied to resident aliens .................. 64-65
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Class "B" liquor and beer licenses

Legislature has manifested intent that closing hour for premises for which retail Class "B" liquor and beer licenses have been issued in counties having less than 500,000 population advance from 1:00 a.m. to 2:00 a.m. from 1:00 a.m. on the last Sunday in April until 2:00 a.m. on the last Sunday in October of each year .......................................................... 63-113

Class "B" retailer

Where a licensed Class "B" retailer of fermented malt beverages also conducts a restaurant business on the premises, sec. 66.054(8)(a), Stats., does not operate to permit the licensee to conduct any other business on the premises .................................................................................. 66-176

Commercial fishing license

Indian fishers eligible to share in tribal treaty fishing rights are also eligible to apply for and hold a state commercial fishing license, but the State can exclude such individuals from sharing in non-Indian individual catch quotas applicable to a particular species of fish where a total harvest quota is necessary to prevent the substantial depletion of that species and where such quota must be apportioned between Indian and non-Indian fishers in order to safeguard the Indian's treaty rights .................................................................................. 68-416

Communicable disease

Licensing boards do not have the authority to enact general regulations which would allow them to suspend, deny or revoke the license of a person who has a communicable disease. However, licensing boards do have the authority on a case-by-case basis to suspend, deny or revoke the license of a person who poses a direct threat to the health and safety of other persons or who, by reason of the communicable disease, is unable to perform the duties of the licensed activity .......................................................... 77-223

Conviction records

A licensing agency may not ask an applicant about juvenile delinquency records. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats. .......... 67-327

Cosmetology

An individual who regularly fixes the hair of one or only a few next-door neighbors on a private basis without compensation or expectation of compensation for services rendered, probably does not fall within the scope of the practice of cosmetology as defined in ch. 159, Stats. (Unpub) .................. 67-1978

Individuals who remove hair from the human body by means of electricity without the use of an electric needle are subject to the requirements of sec. 159.08(6m), Stats. (Unpub) .................................................................................. 52-1976

Cosmetology Examining Board

Cosmetology Examining Board may admit to examination a student who has successfully completed prescribed courses of study at a registered school where the student's diploma is withheld by the school for the student's failure to meet his or her financial obligation to the school .................. 65-113

Country clubs

Country clubs opening any part of their facilities to the general public lose their eligibility for "country club" liquor or beer licenses issued by the Secretary of the Department of Revenue pursuant to secs. 176.05(4a) and 66.054(23), Stats. .................. 69-248

Daylight Savings Time

Retail Class "B" beer and liquor licensed premises close at 1:00 a.m., Central Emergency Daylight Savings Time .......................................................... 63-1
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Discrimination

A licensing agency may not ask an applicant about juvenile delinquency records. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats. ........................................ 67-327

Section 66.054(11), Stats., which permits the issuance of bartenders' licenses to persons of "good moral character" does not automatically preclude issuance to a former offender, especially in light of sec. 111.32(5)(h), Stats., which prohibits discrimination in employment or occupational licensing based upon a criminal conviction (with certain exceptions) ........................................ 68-202

Dog license fund

Where a county board has designated the county humane society or other organization to provide a dog pound, section 174.09(2), Stats., requires any surplus in excess of $1,000 must be paid over annually by the County Treasurer or such society and no consent of the respective collecting towns, villages and cities is needed .................................................. 74-65

Drunk driving

Upon a second or subsequent conviction of drunk driving within five years of a previous conviction for the same offense, the court may not waive, under sec. 345.60, Stats., the revocation of operating privileges by the Division of Motor Vehicles as required by sec. 343.31(1)(b), Stats. ...................... 62-31

Eye removal

Special training is required of medical personnel as well as morticians before they perform eye enucleation .................................................. 77-207

Fishing licenses

Discussion of effect and constitutionality of law broadening endangered species protection to include threatened species. Definition of endangered and threatened species. Law gives protection to any species so designated, whether or not commercial fishing interests are affected. Provisions requiring incorporation of federal rules may be invalid, if text incorporated is not set forth in detail in state rule and if future as well as existing federal rules are included in the incorporation. Contract or permit fishing for protected species is disallowed. Existing fishing licenses are subject to new restrictions. 68-9

Foster home

County agencies do not have the authority to directly operate a foster home or what has been described as a "group foster home." (Unpub) .................. 39-1976

Section 48.31, Stats., provides counties with express authority to establish and operate juvenile detention homes and shelter care facilities. Detention homes and shelter care facilities established and operated pursuant to sec. 48.31, Stats., do not require a ch. 48 license from the Department of Health and Social Services. Counties may lease property for detention home or shelter care use .................................................. 66-50

Grocery store employes

Municipalities may not require by ordinance that all grocery and liquor store employes and bartenders must obtain bartenders' or operators' licenses, such ordinances being in conflict with the provisions of chapter 125, Stats. 76-86

Hearing examiner

Section 227.09(5), Stats., absolutely requires use of a hearing examiner if an examining board member participates in the decision to commence a proceeding against a licensee, but does not require such use if a board member is involved only in the investigation ........................................ 66-52

Historical Society, State

Society may sell fermented malt beverages in the Village Tavern at Stonefield Village and would not be subject to licensing or local control and regulation under sec. 66.054, Stats. .................................................. 65-185
LICENSES AND PERMITS (continued)

Honey

A person who extracts honey for the purpose of preparing it for sale is subject to the licensing requirement of sec. 97.28, Stats., unless the honey is sold on a retail basis only at a fixed place of business .................. 65-269

Independent contractor agents

A corporation not licensed as a real estate broker does not violate ch. 452, Stats., if it allows its nonlicensed employees to negotiate for and sign apartment leases of property owned by the corporation. Permitted limits of nonlicensed independent contractor agents discussed .................. 70-23

Indians

Indian fishers eligible to share in tribal treaty fishing rights are also eligible to apply for and hold a state commercial fishing license, but the State can exclude such individuals from sharing in non-Indian individual catch quotas applicable to a particular species of fish where a total harvest quota is necessary to prevent the substantial depletion of that species and where such quota must be apportioned between Indian and non-Indian fishers in order to safeguard the Indian's treaty rights .................. 68-416

State liquor laws, including licensing requirements, are applicable to liquor establishments owned or operated by either tribe members or non-Indians, and located on Indian reservations. Any license issued counts toward the local quota .................. 75-123

The state net proceeds occupation tax and mining permit process are generally not applicable to mining operations on the Sokaogon Reservation, whether those operations are conducted by the Tribe or by a non-Indian lessee. Any federal environmental impact statement required by the federal government would legally need to be shared with or presented to the State. The applicability of state pollution control laws to mining activity on the Reservation is also discussed .................. 75-220

Tribally owned or operated liquor establishments must comply with state liquor laws, including licensing requirements. Indian tribes are within the coverage of chapter 125, Stats., and any license issued to a tribe counts toward the local quota .................. 76-80

International driving permits

The requirement of sec. 343.05(2)(d), Stats., that holders of international driving permits speak and read the English language is preempted by international treaties governing driving permits and therefore is invalid under the Supremacy Clause, U.S. Const. art. VI, cl. 2 .................. 68-282

Intoxicating liquors

No violation of sec. 176.07, Stats., is committed where premises licensed for the sale of intoxicating liquor at retail are so constructed, either by original construction or by remodeling, as to eliminate at all times any view of the interior of such premises from the outside .................. 64-213

State liquor laws, including licensing requirements, are applicable to liquor establishments owned or operated by either tribe members or non-Indians, and located on Indian reservations. Any license issued counts toward the local quota .................. 75-123

The State of Wisconsin has no jurisdiction to require the Sokaogon (Mole Lake) Indian Tribe to secure a liquor license from the Town of Nashville in order to sell alcoholic beverages on the Mole Lake Indian Reservation during its annual Bluegrass Festival .................. 69-183

The tied-house prohibitions of sec. 66.054(4)(a), Stats., apply to holders of temporary Class "B" beer licenses for picnics or similar gatherings issued pursuant to sec. 66.054(8)(b), Stats., unless the holder of the temporary license involved falls within the exemption contained in sec. 66.054(4)(a)8., Stats. .................. 67-127
LICENSES AND PERMITS (continued)

Liquor retailer

A gift of intoxicating liquors, made by a liquor manufacturer, rectifier or wholesaler to a liquor retailer, does not violate the “tied-house” prohibitions of ch. 176, Stats., when the liquor is dispensed by the licensed retailer, free of charge, at a wine-tasting party or similar event held for the sole benefit of a charitable organization or institution ........................................... 66-276

Liquor store employees

Municipalities may not require by ordinance that all grocery and liquor store employees and bartenders must obtain bartenders' or operators' licenses, such ordinances being in conflict with the provisions of chapter 125, Stats. 76-86

Lobbying law

Certain provisions of Substitute Amendment 1 to 1977 Senate Bill 286, revising subch. III of ch. 13, Stats., the State's Lobbying Law are incompatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures and are therefore probably unconstitutional. The major portion of the bill is constitutional. (Unpub) .......................................................... 15-1978

Medical Examining Board

The direction in sec. 448.02(3), Stats., that the Medical Examining Board render its decision within ninety days following the completion of the hearing is mandatory rather than directory ........................................... 72-147

Mining

Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub) .................................................. 58-1976

Mining lease rights on federal lands

A person who for a fee files applications for others in federal mineral lottery with respect to securing oil or mining lease rights on federal lands, and who for further fee offers to negotiate with lease brokers for sale of such rights, is required to be licensed as a real estate broker if such leases constitute an interest in real estate in state where located. (Unpub) ............................................. 107-1977

Mining lease rights on Indian lands

The state net proceeds occupation tax and mining permit process are generally not applicable to mining operations on the Sokaogon Reservation, whether those operations are conducted by the Tribe or by a non-Indian lessee. Any federal environmental impact statement required by the federal government would legally need to be shared with or presented to the State. The applicability of state pollution control laws to mining activity on the Reservation is also discussed .......................................................... 75-220

Mining permit fees

All staff work necessary to determine whether an applicant meets the requirements of the Metallic Mining Reclamation Act must be included in the cost of evaluating the permit, including any evaluation of compliance with other environmental requirements. The withdrawal of a mining permit application by the applicant prior to a final decision on the application does not relieve the applicant from the obligation to pay the cost of evaluation .... 76-150

Motorcycle

Under sec. 343.05(1), Stats., a driver's license, endorsed for motor-driven cycle operation, is not required for operation of a motor-driven cycle on private property .................................................. 64-79

Name changes

Real Estate Examining Board cannot prescribe the name to be used on an application for real estate broker's license. Under sec. 296.36, Stats., the
LICENSES AND PERMITS (continued)

Name changes (continued)

Board should routinely accept name changes of licensed brokers, unless detriment to the public, another professional or the profession is shown. Sex and marital status of the new or renewal license applicant do not justify special procedures or requirements as to names. Use of two names discussed ................................................................. 66-21

Nursing

The Board of Nursing has authority to accredit a new baccalaureate program even though the particular students who undertake that program are already certified as registered nurses ................................................................. 68-407

Occupational license.

Imprisonment or suspension of license under section 345.47(1)(a) and (b), Stats., does not eliminate the liability of a defendant for payment of the $150 surcharge provided for in section 346.655. The county does not become liable for the surcharge if not paid. An application for an occupational license is not a special proceeding requiring the payment of clerk’s fees under section 814.61(1) ................................................................. 73-24

The Department of Regulation and Licensing has the authority to promulgate rules for procedures for the summary suspension of occupational licenses. Summary suspension of occupational licenses may constitutionally be invoked only in emergency situations and then only if the licensee is afforded a prompt hearing on whether the summary suspension should continue until a decision is made after a full hearing on the merits of the license deprivation ................................................................. 76-110

On-premise signs

Persons in the business of erecting on-premise signs are subject to the licensing requirement of sec. 84.30(10)(a), Stats................................................................. 66-295

Ophthalmic assistants

Ophthalmic assistants performing functions that are within the statutory definition of optometry under the delegation and supervision of an ophthalmologist are not engaged in the unlawful practice of optometry. A certified optometric technician who performs services included within the definition of optometry under the delegation and supervision of a licensed optometrist is engaged in the unlicensed practice of optometry ................................................................. 74-146

Out-of-state applicants

The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors may not promulgate a rule requiring out-of-state applicants for certification as land surveyors to pass an examination concerning Wisconsin practices and procedures if they possess a valid certification in another state ................................................................. 76-49

Pharmacy

A letter of reprimand properly may be imposed only after affording opportunity for hearing as provided for in a Class 2 contested case. Sec. 227.01(2)(b), Stats. If no objection was made by licensees appearing before the Board on previous reprimand hearings and if there was substantial compliance with sec. 227.07, Stats., irregularities in procedure may be considered waived ................................................................. 67-188

Out-of-state pharmacist not registered in Wisconsin is in violation of secs. 450.04(2) and 450.07(3), Stats., where he or she on a regular and continuing basis solicits orders for the retail sale of prescription drugs, where preparation is out-of-state and delivery is by mail to patients located in Wisconsin. 72-121

Pharmacy Examining Board

The Pharmacy Examining Board may utilize the services of a national examining board in passing on applicants for licensure, but the Board must make
LICENSES AND PERMITS (continued)

Pharmacy Examining Board (continued)

the final decision as to licensure. The conditions of post-examination review with applicants discussed................................................................. 68-48

Pharmacy Examining Board has discretion under sec. 450.02(6), Stats., as to whether it will register applicants on the basis of registration in another state, but lacks authority to require an examination of such applicants. (Unpub)..................................................122-1979

Political organizations

If they satisfy other conditions under sec. 163.90, Stats., and other raffle requirements, political organizations are eligible for a raffle license because contributions to such organizations are deductible for federal or state income tax purposes within the meaning of the statute. Political subdivisions of the State also are eligible for raffle licenses under the same conditions and for the same reasons .................................................. 67-323

Private detectives

Section 440.26, Stats., requiring the licensing of private detectives, does not apply to qualified arson experts or other expert witnesses merely because they may investigate matters relating to their field of expertise............. 76-35

Prospecting on state park and forest lands

Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub) ........................................ 58-1976

Psychology Examining Board

The Psychology Examining Board can require each licensee to supply it with a letter articulating the specialties the licensee intends to incorporate in the licensee's psychological practice. (Unpub) ........................................ 26-1979

Public records

The taking of a blood sample pursuant to the Wisconsin Implied Consent Law is not a procedure in connection with the performance of a drug or alcohol abuse prevention function nor is the acquired blood sample itself a patient record. The confidentiality requirements set out in 42 U.S.C. § 290dd-3 and 21 U.S.C. § 1175 have no application to such a procedure.... 73-37

Financial statements required by law to be filed with Department of Transportation in connection with applications for motor vehicle dealers' and motor vehicle salvage dealers' licenses are public records and are subject to inspection and copying under sec. 19.21(2), Stats., subject to limitations contained in court cases cited..... 66-302

Raffle license

If they satisfy other conditions under sec. 163.90, Stats., and other raffle requirements, political organizations are eligible for a raffle license because contributions to such organizations are deductible for federal or state income tax purposes within the meaning of the statute. Political subdivisions of the State also are eligible for raffle licenses under the same conditions and for the same reasons .................................................. 67-323

To be eligible to obtain a raffle license from the State of Wisconsin, an organization, whether it is tax exempt or not, must qualify as a local organization. If a licensed organization no longer meets the eligibility requirements for licensure during the effective period of the license, such license is subject to revocation or suspension by the Bingo Control Board. 76-115

Real estate broker

A person who for a fee files applications for others in federal mineral lottery with respect to securing oil or mining lease rights on federal lands, and who for further fee offers to negotiate with lease brokers for sale of such rights, is required to be licensed as a real estate broker if such leases constitute an interest in real estate in state where located. (Unpub) ............................... 107-1977
LICENSES AND PERMITS (continued)

Real Estate Examining Board

Neither secs. 440.20, 452.10(2), Stats., nor rules of the Department of Regulation and Licensing require the Board to hold hearing where citizen files verified complaint with Board requesting institution of disciplinary proceedings against a licensee. Discretion of Board discussed in light of secs. 440.03, 440.20 and 452.10(2), Stats. (1977), and sections RL 2.01–2.17 Wis. Adm. Code. Where Examining Board utilizes hearing examiner to conduct disciplinary hearing without the presence of a majority of officials who are to render a final decision, hearing examiner has power to entertain a motion to dismiss proceedings. Where denied, it amounts to an interim order and need not be preceded by proposed decision; however, where granted, it must be in form of proposed decision and include findings of fact, conclusions of law and order as required by sec. 227.09(2), Stats. Where disciplinary proceedings are involved, it would be a rare case where circumstances would permit dismissal of the proceedings prior to the conclusion of a meaningful evidentiary hearing on other than jurisdictional grounds or failure of complaint to state a cause of action........................................ 68–30

Regulatory and licensing boards

Selection and terms of officers of regulatory and licensing boards discussed . 75–247

Religious organization

A facility owned and operated by a religious organization is subject to licensure and regulation under ch. 50, Stats., and Chapter HSS 3 Wis. Adm. Code, unless the facility is a convent, monastery or similar place where residents are all members of a religious hierarchy living in seclusion and operating under a set of religious vows or rules. The Department of Health and Social Services can constitutionally license and regulate Community based Residential Facilities (CBRFs) operated by religious organizations not exempt under sec. 50.01(1), Stats., or sec. 50.03(9), Stats. Application of CBRF licensure and regulatory requirements to certain facilities operated by the Salvation Army discussed ................................................................. 71–112

School psychologist

Senate Bill 370 would create a new category of licensure, that of school psychologist. Only those licensed could privately practice school psychology. The definition of school psychology could be by administrative rule promulgated by the Psychology Examining Board. (Unpub) .................. 98–1977

Surveyors, out-of-state

The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors may not promulgate a rule requiring out-of-state applicants for certification as land surveyors to pass an examination concerning Wisconsin practices and procedures if they possess a valid certification in another state.......................................................... 76–49

Suspension or revocation

Suspension or revocation of operating privilege under secs. 343.30(1) and (1m), Stats., applies to both the regular driver’s license and to the chauffeur’s license ................................................................. 63–40

Tribal liquor license

Triably owned or operated liquor establishments must comply with state liquor laws, including licensing requirements. Indian tribes are within the coverage of chapter 125, Stats., and any license issued to a tribe counts toward the local quota ......................................................... 76–80
LICENSES AND PERMITS (continued)

Veterinarian

The Veterinary Examining Board has authority to establish rules of conduct to regulate certified animal technicians but has no authority to suspend or revoke such certificate for violation of the rules. (Unpub) ......................... 100–1977

The Veterinary Examining Board lacks authority to condition the renewal of licenses upon either reexamination or continuing education ...................... 65–35

LIENS

DILHR

District attorneys may exercise discretion in collecting wages referred by the Department of Industry, Labor and Human Relations, but such discretion must be exercised reasonably. Specific questions concerning collection of wages are discussed including methods of collection, settlements, payment of costs and fees, and enforcement of the statutory lien ......................... 78–171

Old age assistance

Statute of limitations is no defense to old age assistance liens which survive the repeal of sec. 49.26, Stats. (Unpub) ........................................ 75–1976

Statute of limitations

Statute of limitations is no defense to old age assistance liens which survive the repeal of sec. 49.26, Stats. (Unpub) ......................... 75–1976

LIEUTENANT GOVERNOR

Acting Governor

Lieutenant Governor who becomes Acting Governor may retain Lieutenant Governor's staff .......................... 66–185

Tie breaking vote cast by Lieutenant Governor Russell Olson on the indefinite postponement of 1979 Senate Bill 5 .................. 68–109

LIQUORS

See INTOXICATING LIQUORS

LOANS

See also BANKS AND BANKING; INTEREST

Farmers

A proposal for a state guarantee of loans to young farmers would violate Wis. Const. art. VIII, sec. 3, and a proposal to utilize the State's bonding power to provide low interest loans to young farmers is not authorized by Wis. Const. art. VIII, sec. 7(1) and (2)(a) .................. 66–9

Home improvement

The recent amendment to sec. 45.80(2)(c), Stats., exempts a weatherization improvement loan supplement from the “maximum primary financing” requirement only in the case of a home purchase loan. Home improvement loans made under sec. 45.76(2)(a), Stats., are therefore not exempt from such requirement. (Unpub) ................ 52–1980

Interest

Charges imposed on a seller of property as a condition of the granting of a loan to a buyer of the property are includable as part of the interest under sec. 138.05, Stats., to the extent that such charges are passed on by the seller to the buyer ....................... 68–398

Mortgage Subsidy Bond Tax Act of 1980

Certain local governments and public agencies may issue obligations to provide mortgage loans on owner-occupied residences. However, compliance
LOANS (continued)

Mortgage Subsidy Bond Tax Act of 1980 (continued)
with the Mortgage Subsidy Bond Tax Act of 1980 is necessary to allow exemption of the interest from federal taxation ........................................ 71-74

Physicians and surgeons
If sec. 39.377, Stats., is repealed or amended to change the eligibility guidelines, the State would not be liable under the former guidelines to students who have not yet effectively acted in reliance on the statute in setting up their qualifying health care practice in a particular area ................................ 71-203

Student
Change in method of computing special allowance payable on eligible student loans will not result in "materially lower rate of return." (Unpub) .............. 40-1982
Guaranteed Student Loan Program; Higher Education Aids Board; the legal relationship between the Higher Education Aids Board and the Wisconsin Higher Education Corporation as affected by various revenue bond agreements discussed ........................................ 72-135

Veterans
In making housing loans under sec. 45.352, Stats., the Department may rely on fixed standards as to the applicant's needs. When applications on hand exceed available funds, loans should be made to the most needy applicants. 62-66
The Federal Equal Opportunity Act does not apply to the Wisconsin Veterans Loan Program under ch. 45, Stats., since the latter is an assistance program authorized by law for an economically disadvantaged class ............. 68-101

Wisconsin Higher Education Corporation
Guaranteed Student Loan Program; Higher Education Aids Board; the legal relationship between the Higher Education Aids Board and the Wisconsin Higher Education Corporation as affected by various revenue bond agreements discussed ........................................ 72-135
The Wisconsin Higher Education Corporation may provide administrative services to lenders, charge a reasonable fee, and may transfer any excess funds it receives from such fees to the appropriations of the Higher Educational Aids Board, or the State. (Unpub) ........................................ 3-1977

LOBBYING

See also LEGISLATION; LEGISLATURE

Director of State Courts
Director of State Courts is required by sec. 13.695, Stats., to file a statement with respect to lobbying since the office is an agency within the definition of agency in sec. 13.62, Stats. (Unpub)........................................ 107-1979

Filing of reports and statements
Sections 13.60 through 13.73, Stats., providing for filing by lobbyists of reports and statements concerning expenditures discussed. (Unpub) ............. 3-1975

First Amendment rights
Certain provisions of Substitute Amendment 1 to 1977 Senate Bill 286, revising subch. III of ch. 13, Stats., the State's Lobbying Law, are incompatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures and are therefore probably unconstitutional. The major portion of the bill is constitutional. (Unpub) ........................................ 15-1978
In principle, the purposes sought to be accomplished by Assembly Substitute Amendment 3 to 1977 Assembly Bill 93, revising subch. III of ch. 13, Stats., the State's Lobbying Law, are compatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures. Some of the means selected to accomplish those purposes may, on their face or as applied, violate citizens' First Amendment rights of petition ........................................ 67-85
LOBBYING (continued)

Law

The lobby law prohibits a state employe from accepting compensation for serving on the board of directors or providing any other service to a principal as defined in section 13.62(12), Stats.

Public employe

Section 19.45(12), Stats., is constitutional

Secretary of State

The Secretary of State may promulgate rules and forms to aid in the administration of the Lobbying Law. However, a substantial portion of the rules proposed on April 30, 1975, would be invalid if adopted since they exceed bounds of correct interpretation of the relevant statutes and impose substantive requirements in excess of statutory authority

State agency

The state and its agencies are not "principals" under section 13.62(12), Stats.

LOTTERIES

See also BINGO; CRIMINAL LAW; GAMBLING

Bingo

Bingo games sponsored by church organizations using local cable television facilities to broadcast the program where viewers participate in their homes are in violation of ch. 163, Stats. While bingo games conducted pursuant to ch. 163, Stats., enjoy exemption from the constitutional definition of lottery, bingo games which contravene the provisions of ch. 163, Stats., constitute lotteries in this state. Such lotteries are prosecutable under sec. 163.54 or secs. 945.02(3) and 945.03(4), Stats. The fact that community antenna television is regulated by the Federal Communications Commission does not preclude a prosecution on the grounds of federal preemption. The state criminal standard does not conflict with the federal regulation

Businesses offering tickets is violation

The dissemination of out-of-state lottery tickets by business establishments in Wisconsin, with or without a purchase, is a violation of chapter 945, Stats.

Cable television facilities

Bingo games sponsored by church organizations using local cable television facilities to broadcast the program where viewers participate in their homes are in violation of ch. 163, Stats. While bingo games conducted pursuant to ch. 163, Stats., enjoy exemption from the constitutional definition of lottery, bingo games which contravene the provisions of ch. 163, Stats., constitute lotteries in this state. Such lotteries are prosecutable under sec. 163.54 or secs. 945.02(3) and 945.03(4), Stats. The fact that community antenna television is regulated by the Federal Communications Commission does not preclude a prosecution on the grounds of federal preemption. The state criminal standard does not conflict with the federal regulation

Indian reservations

Bingo conducted on Indian reservations by Indian tribes or Indian persons must comply with the Bingo Control Act

"Las Vegas nights"

Games such as "Las Vegas nights" wherein participants must make a payment or donation in order to gamble with play money and then use the play money at the end of the evening to bid on prizes constitute illegal lotteries under Wisconsin law. The law does not exempt benevolent and nonprofit organizations

Michigan lottery

Michigan lottery activities in Wisconsin and illegality of, discussed. Ch. 945, Stats.
LOTTERIES (continued)

Raffle licenses

Provisions of chapter 163 regarding eligibility for raffle license, scope of ticket sales, restrictions on ticket sales and payment of fees or salaries discussed. 75–273

To be eligible to obtain a raffle license from the State of Wisconsin, an organization, whether it is tax exempt or not, must qualify as a local organization. If a licensed organization no longer meets the eligibility requirements for licensure during the effective period of the license, such license is subject to revocation or suspension by the Bingo Control Board. 76–115

Salaries and fee payments prohibited

Provisions of chapter 163 regarding eligibility for raffle license, scope of ticket sales, restrictions on ticket sales and payment of fees or salaries discussed. 75–273

“Silent auction”

“Silent auction” is not lottery because element of “prize” not present 62–122

Soft drink company promotional plan

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The enactment of the marital property law does not change the applicability of section 946.13, Stats., to the member of a governmental body when that body employs the member’s spouse. As was the case before the marital property law, the member of the governmental body avoids violation of section 946.13 if in his private capacity he does not negotiate, bid on or enter into the employment contract and in his public capacity he does not participate in the making of the contract and does not exercise discretion in the performance of the contract ........................................................................ 76-15

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Cash discounts

The treatment of cash discounts in section 100.30(2), Stats., the minimum markup law, and proposed Wisconsin Administrative Code chapter Ag 119 does not violate federal antitrust laws, constitutional due process or exceed statutory authority ........................................ 77-163

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The treatment of cash discounts in section 100.30(2), Stats., the minimum markup law, and proposed Wisconsin Administrative Code chapter Ag 119 does not violate federal antitrust laws, constitutional due process or exceed statutory authority ........................................ 77-163

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Lottery ticket coupons

A plan whereby a soft drink company would include a coupon for a Wisconsin lottery ticket with specified purchases and the customer could redeem the coupon for a lottery ticket at a retail lottery outlet would violate section 100.16 .......................................................... 77-303

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Wisconsin law authorizes but does not require the commissioner of insurance to demand periodic reports from an insurer relating to rustproofing warranties it insures. The commissioner has authority to require an insurer to increase the amount of insurance backing a rustproofer's warranties in Wisconsin. Section 100.205, Stats., was not intended to negate the application of general insurance law to rustproofing warranties ........................................ 78-113

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Court commissioners do not have the power to officiate at marriages outside the county for which they were appointed. 78–16

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Interpretation of certain statutory sections enacted pursuant to ch. 105, Laws of 1977. The provisions of sec. 247.265, Stats., require every order for support or maintenance listed therein to include a wage assignment order. Section 247.02(1)(i), Stats., allows all actions to modify a judgment in an action affecting marriage to be commenced in any court having jurisdiction under sec. 247.01, Stats ......................................................... 68–106

Family Court Commissioner

The Family Court Commissioner represents the public interest and does not act as an advocate for the party benefited when he brings a remedial contempt proceeding to enforce an existing order or judgment under section 767.29(1), Stats ......................................................... 76–21

Fees for marriage license

A county board has no statutory authority to charge a higher marriage license fee to certain nonresidents who would be required to submit to AIDS testing in their home state or, in the alternative, require AIDS testing as a condition of obtaining a Wisconsin marriage license 77–154

Name changes

Real Estate Examining Board cannot prescribe the name to be used on an application for real estate broker's license. Under sec. 296.36, Stats., the Board should routinely accept name changes of licensed brokers, unless detriment to the public, another professional or the profession is shown. Sex and marital status of the new or renewal license applicant do not justify special procedures or requirements as to names. Use of two names discussed 66–21

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Interpretation of certain statutory sections enacted pursuant to ch. 105, Laws of 1977. The provisions of sec. 247.265, Stats., require every order for support or maintenance listed therein to include a wage assignment order. Section 247.02(1)(i), Stats., allows all actions to modify a judgment in an action affecting marriage to be commenced in any court having jurisdiction under sec. 247.01, Stats ......................................................... 68–106
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A county may not, in a manner consistent with federal and state statutes and regulations prohibiting supplementation, contractually obligate itself to pay a visiting nurse association funds in addition to those received by such a home health care provider through the Medicaid program. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the applicability of federal statutes and regulations administered exclusively by federal authorities ............................. 77-287

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Chronic

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Costs

It would be inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to section 51.15, Stats. While section 51.15(7) does not authorize contractual agreements with counties outside of Wisconsin, sections 51.75(11), 51.87(3) and 66.30(5) each contain a legal mechanism through which financial or other responsibility for the care and treatment of individuals from such counties may be shared under certain specified circumstances. ............................. 78-59

Counties

Counties are liable to reimburse emergency medical relief claims upon satisfaction of the prerequisites in sec. 49.02(5), Stats., and medical facilities are not foreclosed from submitting such claims nor are counties empowered to deny such claims because of assurances made by the facility in exchange for benefits received under the Hill-Burton Act. ............................. 70-24

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It would be inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to section 51.15, Stats. While section 51.15(7) does not authorize contractual agreements with counties outside of Wisconsin, sections 51.75(11), 51.87(3) and 66.30(5) each contain a legal mechanism through which financial or other responsibility for the care and treatment of individuals from such counties may be shared under certain specified circumstances. ............................. 78-59
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Interpretation of new law rendering "good Samaritans" immune from civil liability for good faith acts or omissions in giving emergency care at the scene of an emergency or accident. Statute excludes from protection health care practitioners who make their living or who specifically are paid for providing emergency care at the scene of an emergency or accident 67-218

Liability of state officers and employees

The Department of Health and Social Services has authority to establish standards for ambulance attendants under sec. 146.50, Stats. Discussion of malpractice liability of state officers and employees 67-145

Nursing home

A county health facility may not charge for non-medical assistance services given to medical assistance patients in excess of medical assistance rates without violating section 49.49, Stats. 73-68

Refusal of a higher level of care

Neither District Attorney nor Corporation Counsel have a duty to petition for protective placement, determination of incompetency or otherwise intervene where an apparently competent elderly person with life threatening illness chooses to remain at home under doctor's and family care rather than seek a higher level of care which might extend her life 74-188

MEDICAL ASSISTANCE PROGRAM

See STATE MEDICAL ASSISTANCE PROGRAM

MEDICAL EXAMINERS, STATE BOARD OF

Chiropodists

Podiatrists may administer injections, perform and interpret laboratory work such as blood counts, and write prescriptions in connection with treatment of the feet without violating the Medical Practice Act 62-156

Medical school instruction

Medical school instructor serving without compensation is ineligible to serve on Board of Medical Examiners 62-193

MEDICAL EXAMINING BOARD

See also PHYSICIANS AND SURGEONS

Compatibility

By reason of sec. 15.08(1), Stats., as amended by ch. 221, Laws of 1979, a person is ineligible to continue to serve on the Medical Examining Board while also serving as an officer of the Wisconsin Psychiatric Association, Inc., because such association promotes or furthers the profession of medicine. "Substantial interest" under sec. 19.46(1)(e)2., Stats., also discussed. (Unpub) 58-1980

Licenses and permits

The direction in sec. 448.02(3), Stats., that the Medical Examining Board render its decision within ninety days following the completion of the hearing is mandatory rather than directory 72-147

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MEDICAL EXAMINING BOARD (continued)
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See PHYSICIANS AND SURGEONS

MEDICAL TREATMENT
See MEDICAL AID; PHYSICIANS AND SURGEONS; PUBLIC ASSISTANCE; PUBLIC HEALTH

MEDICINE
See MEDICAL EXAMINERS, STATE BOARD OF; PHYSICIANS AND SURGEONS

MENOMINEE INDIANS
See also INDIANS
Arrest after fresh pursuit onto reservation
State and county conservation wardens and Sheriff's officers have authority under state law to arrest a Menominee Indian suspect on the reservation following fresh pursuit for an off-reservation violation of state law, if the arrest is one the officer is otherwise authorized to make. Although the State is generally obliged to comply with Menominee tribal extradition procedures, the State's personal jurisdiction over an Indian arrested under the circumstances described is probably not pre-empted by federal law........ 74-245

Coroner
The positions of county coroner and tribal police officer are incompatible governmental positions but the positions of deputy county coroner and tribal conservation warden are not incompatible ................................................................. 77-293

Deputy sheriffs
The Menominee County Sheriff's Department and the Menominee tribal police may carry out a program of cross-deputization. Menominee tribal police must meet the statutory and constitutional requirements for appointment as deputy sheriffs. (Unpub)................................................................. 93-1979

51.42 Board
Individual Menominee Tribe members are eligible to participate in voluntary programs mandated by ch. 51, Stats., but the State cannot accept Tribe members into involuntary programs on the basis of tribal court orders alone ................................................................. 70-219

Government services
Property held in trust by the federal government for the Menominee Tribe and tribal members pursuant to the Menominee Restoration Act (25 U.S.C. sec. 903, et seq.) is not subject to state taxation. Tribal members residing and working in Menominee County and the Menominee Tribe are not subject to state income tax. Government services to be provided by Menominee County and the Town of Menominee discussed ................................................................. 66-290

Jurisdiction
Public Law 280 (67 Stat. 588, 28 U.S.C. sec. 1360 and 18 U.S.C. sec. 1162) is not applicable to the Menominee Tribe but state jurisdiction will continue until the federal and tribal governments assume jurisdiction pursuant to the Menominee Restoration Act. Menominee County, or portions thereof, could be merged with an adjoining county or counties by procedures set
MENOMINEE INDIANS (continued)

Jurisdiction (continued)
forth in sec. 59.997, Wis. Stats., but any division of the County would require prior majority vote of the County's legal voters 64-184

Jurisdictional relationship
Jurisdictional relationship between State and Menominee Tribe discussed 70-36

Taxation
Property held in trust by the federal government for the Menominee Tribe and tribal members pursuant to the Menominee Restoration Act (25 U.S.C. sec. 903, et seq.) is not subject to state taxation. Tribal members residing and working in Menominee County and the Menominee Tribe are not subject to state income tax. Government services to be provided by Menominee County and the Town of Menominee discussed 66-290

Traffic laws
The State has jurisdiction over members of the Menominee Tribe on public roads and highways within the Menominee Reservation in respect to the enforcement of state traffic laws that are necessary to protect the highways against depredation or that would impair their use as a public right-of-way. State law enforcement officers can arrest any person who commits a federal offense in their presence 66-115

MENTAL HEALTH ACT
Amendment
Amendment of the Mental Health Act as proposed in 1981 Assembly Bill 262 would be unconstitutional 71-34

Protective service system
The provisions of ch. 51, the Mental Health Act, and ch. 55, the protective service system, are compatible if each is used for its intended purpose and in the manner directed by the Legislature 72-194

MENTALLY HANDICAPPED
See CHILDREN; INSANE

MIGRANT WORKERS
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MILITARY PERSONNEL
See VETERANS

MILWAUKEE BOARD OF POLICE AND FIRE COMMISSIONERS
Rule-making authority
The Milwaukee Board of Fire and Police Commissioners does not have original rule-making authority under sec. 62.50(23), Stats. The Board can suspend rules prescribed by the chiefs of the fire and police departments and can enact rules to replace the suspended rules 71-60

MILWAUKEE, CITY OF
CETA employees
The City of Milwaukee cannot terminate a CETA employee's membership in the Retirement System on grounds not in effect by the time membership was attained, except as otherwise expressly provided by the Legislature. (Unpub) 41-1978

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MILWAUKEE, CITY OF  (continued)

Mandatory retirement age for its police and fire chiefs

The City of Milwaukee has the authority to set a mandatory requirement age for its police and fire chiefs by charter ordinance within the guidelines of the United States Age Discrimination in Employment Act. Such mandatory retirement can apply to the incumbent chiefs. 69–232

Police, Chief of

Common Council of City of Milwaukee has power by reason of Wisconsin Constitution article XI, section 3, and section 62.03(2), Stats., to enact charter ordinance adopting section 62.09(13)(a), which provides that the Chief of Police shall have command of the police force of the City under the direction of the Mayor and that it is the duty of the Chief to obey all lawful written orders of the Mayor or Common Council. 73–64

Truancy ordinance

Common Council of City of Milwaukee is without power under home rule provision of the Wisconsin Constitution or under its special charter and sec. 62.11(5) to adopt an anti-truancy ordinance. State has provided special procedures in secs. 118.15 and 118.16, and has designated the school district board as its agent to deal with matters of local concern in this area. 72–156

MILWAUKEE COUNTY

District Attorney

Staff positions in the Milwaukee District Attorney’s office, which are mandated by statute as unclassified positions must be created in the unclassified service, unless the county’s Civil Service Commission determines that transferring these positions to the classified service is necessary to secure the best service for the county. (Unpub.). 17–1989

Fair housing ordinance

Counties may adopt and enforce fair housing ordinances under section 66.432, Stats., in municipalities within such counties which already have enacted their own fair housing ordinance. No double jeopardy problem arises if a county and a municipality in the county simultaneously seek to enforce their fair housing ordinances in connection with a single act of discrimination, provided that a violation of one or both of the ordinances is punishable only by a forfeiture. Section 66.432 authorizes cities, villages, towns and counties to prohibit bases of discrimination in addition to those specified in sections 66.432 and 101.22. 74–234

Public assistance applicants, fingerprinting

A county may not require or request that a public assistance applicant or recipient provide a fingerprint for the purposes of identification as a precondition to receiving aid. 74–185

MILWAUKEE SCHOOL BOARD

Retirement plan

Authority of a state or governmental subdivision to provide a retirement plan in lieu of or supplemental to existing statutory plans discussed. The Milwaukee School Board is authorized by sec. 111.70, Stats., to contract for a retirement system supplementary to the existing statutory system. 67–153

MINERAL RIGHTS

County owned

Counties may not transfer county owned mineral rights, acquired through nonpayment of taxes, to private persons without following the appraisal and public sale provisions of sec. 75.69, Stats. Under sec. 59.07(1)(c), Stats.,
MINERAL RIGHTS (continued)

County owned (continued)

counties may make gifts of land or interests in lands only to enumerated public entities ................................................................. 67-236

Federal mineral lottery

A person who for a fee files applications for others in federal mineral lottery with respect to securing oil or mining lease rights on federal lands, and who for further fee offers to negotiate with lease brokers for sale of such rights, is required to be licensed as a real estate broker if such leases constitute an interest in real estate in state where located. (Unpub) ....................... 107-1977

Fees for mining permit

All staff work necessary to determine whether an applicant meets the requirements of the Metallic Mining Reclamation Act must be included in the cost of evaluating the permit, including any evaluation of compliance with other environmental requirements. The withdrawal of a mining permit application by the applicant prior to a final decision on the application does not relieve the applicant from the obligation to pay the cost of evaluation ..... 76-150

Indian reservation

The state and tribal governments share jurisdiction to regulate prospecting and mining activity within reservation boundaries to the extent necessary to protect groundwater from contamination ........................................ 72-54

The state net proceeds occupation tax and mining permit process are generally not applicable to mining operations on the Sokaogon Reservation, whether those operations are conducted by the Tribe or by a non-Indian lessee. Any federal environmental impact statement required by the federal government would legally need to be shared with or presented to the State. The applicability of state pollution control laws to mining activity on the reservation is also discussed ............................................................ 75-220

Mining Investment and Local Impact Fund Board

The Mining Investment and Local Impact Fund Board is authorized to make grants to municipalities under sec. 70.395(2), Stats., to drill wells and fence cave-ins on private lands, to remedy public health and safety problems occasioned by mine closings. Such grants would not violate the Public Purpose Doctrine and the Internal Improvements Clause of the Wisconsin Constitution ................................................................. 70-48

Navigable lakes and waters

Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub) ........................................ 58-1976

Nonresident ownership

Exploration and mining rights constitute interests in land, and ownership of such interests are subject to the provisions of sec. 710.02, Stats., limiting nonresident ownership of land in Wisconsin.................................................. 69-126

Prospecting on state park and forest lands

Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub) ........................................ 58-1976

Railroads

Section 192.71, Stats., does not give the State a beneficial ownership interest in mineral estates reserved by railroad corporations from lands received from the public domain to aid in the construction of railroads under federal land grants of 1856 and 1864 ................................................................. 69-204
MINERAL RIGHTS (continued)

Real estate brokers

A person who for a fee files applications for others in federal mineral lottery with respect to securing oil or mining lease rights on federal lands, and who for further fee offers to negotiate with lease brokers for sale of such rights, is required to be licensed as a real estate broker if such leases constitute an interest in real estate in state where located. (Unpub) ........................... 107-1977

State interests

State reservation of land and interests in lands under ch. 452, Laws of 1911 and sec. 24.11(3), Stats., discussed............................................ 65-207

Tax delinquency proceedings

In tax delinquency proceedings, a county acquires fee simple title to land, including mineral interests therein, whether severed or not. 25 Op. Att'y Gen. 630 (1936); 49 Op. Att'y Gen. 77 (1960); 49 Op. Att'y Gen. 130 (1960). However, further legislative action is necessary to insure that assessment and tax delinquency proceedings are consistent with the provisions of 1983 Wisconsin Act 455 and are adequate to satisfy the due process rights of the owner of mineral interests to notice of the taking through delinquent tax proceedings ................................................................. 74-59

MINORS

See also CHILDREN

Alcohol and drug abuse

Except for those services for which parental consent is necessary under section 51.47(2), Stats., a physician or health care facility may release outpatient or detoxification services information only with the consent of the minor patient provided that the minor is twelve years of age or over. Wis. Admin. Code § HSS 92.06(2) (1986) and 42 C.F.R. § 2.14(b) (1987) ....... 77-187

Appeals

Judgments of commitment under Youthful Offenders Act must be appealed within 90 days ........................................................................... 66-242

Automobiles and motor vehicles

Section 346.93, Stats., contains two prohibitions: first, an absolute ban on a minor's possession of intoxicating liquor in a motor vehicle; second, a ban on a minor's possession of any malt beverage in a motor vehicle, while any person under 18 years of age is a passenger or present in such motor vehicle. In order for a violation of that second prohibition to occur, a person under the age of 18 years, in addition to the violator of the statutes, must be present in the vehicle ................................................. 66-215

Community Development Disabilities Services Board

A juvenile court may order a 51.42 or 51.437 Board to provide care or treatment to a minor found to be in need of protection or services subject to conditions of ch. 51, Stats............................................................... 72-30

Confidential reports

A school cannot use confidential information obtained from law enforcement authorities to require students, under threat of expulsion, to participate in group or individual counseling, nor can the school use such information to suspend or expel students. The school can use such confidential information to refer a student to county social welfare agencies or nongovernmental self-help groups, but only if the student consents to such referral........... 76-134

Except for those services for which parental consent is necessary under section 51.47(2), Stats., a physician or health care facility may release outpatient or detoxification services information only with the consent of the
Confidential reports (continued)

minor patient provided that the minor is twelve years of age or over. Wis. Admin. Code § HSS 92.06(2) (1986) and 42 C.F.R. § 2.14(b) (1987) ...

Identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody pursuant to sec. 165.83(2), Stats., for confidential reporting to the Department of Justice ...

Juvenile officers are not required to provide information in their possession concerning a juvenile to officials of the school attended by the juvenile when requested to do so. The school does not violate the confidential exchange provisions of sec. 48.396(1), Stats., by using the information obtained from a police officer to take disciplinary action against a student as long as the school does not reveal the reason for the disciplinary action to parties not authorized to receive such information. To the extent that 56 OAG 211 (1967) is in conflict with this opinion, it is modified ...

The duty to report suspected cases of child abuse or neglect under sec. 48.981(3)(a), Stats., prevails over any inconsistent terms in sec. 51.30, Stats..

Court costs

When a municipal court adjudges a child to have violated a municipal ordinance, that court must impose court costs and should add the ten percent penalty assessment provided in sec. 165.87(2), Stats., to any forfeiture imposed for such violation ...

Detention homes and shelter care

Section 48.31, Stats., provides counties with express authority to establish and operate juvenile detention homes and shelter care facilities. Detention homes and shelter care facilities established and operated pursuant to sec. 48.31, Stats., do not require a ch. 48, Stats., license from the Department of Health and Social Services. Counties may lease property for detention home or shelter care use ...

51.42 Board

A juvenile court may order a 51.42 or 51.437 Board to provide care or treatment to a minor found to be in need of protection or services subject to conditions of ch. 51, Stats ...

Gambling

Laws regarding gambling will apply on Indian reservations if they prohibit gambling activities entirely, but not if they merely regulate these activities. Most state laws regarding the newly allowed gambling activities of lotteries and parimutuel betting will not apply on Indian Reservations because these activities will no longer be entirely prohibited ...

Inebriates and drug addicts

An outpatient treatment program for alcohol and other drug abuse which meets the standards contained in section PW-MH 61.03 Wis. Adm. Code, and has been formally approved by the Department of Health and Social Services may provide treatment and services to a minor at least twelve years of age without obtaining the consent of the minor's parent or guardian ...

Except for those services for which parental consent is necessary under sec. 51.47(2), Stats., a physician or health care facility may release outpatient or detoxification services information only with the consent of the minor patient provided that the minor is twelve years of age or over. Wis. Admin. Code § HSS 92.06(2) (1986) and 42 C.F.R. § 2.14(b) (1987) ...

Intoxicating liquors

An adult who furnishes beer or liquor to a minor may not be charged with contributing to the delinquency of a child under sec. 947.15(1)(a), Stats., if based on the minor's possession of such items ...

Section 346.93, Stats., contains two prohibitions: first, an absolute ban on a minor's possession of intoxicating liquor in a motor vehicle; second, a ban...
MINORS (continued)

Intoxicating liquors (continued)

on a minor’s possession of any malt beverage in a motor vehicle, while any person under 18 years of age is a passenger or present in such motor vehicle. In order for a violation of that second prohibition to occur, a person under the age of 18 years, in addition to the violator of the statutes, must be present in the vehicle ......................... 66-215

Juvenile court records

The Wisconsin Council on Criminal Justice may have access to the law enforcement and social service files of Wisconsin juveniles without a court order. It may not have access to juvenile court records without a court order ........................................... 74-18

Juvenile identification records

Identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody pursuant to sec. 165.83(2), Stats., for confidential reporting to the Department of Justice .................. 62-45

Truancy

A person cannot be charged with intentionally contributing to the delinquency of a minor under sec. 947.15(1)(a), Stats., on the basis of an allegation that the person either harbored a runaway or truant child, aided in the running away, or in some way encouraged the truancy or the running away, because truancy and uncontrollability are not included under the definition of “delinquent” under sec. 48.12(1), Stats.......................... 66-18

MOBILE HOMES

County-wide zoning ordinance

In a town in which a county-wide zoning ordinance is effective, a town ordinance which purports to regulate the location of individual mobile homes is a zoning ordinance which can only be enacted in compliance with the provisions of sec. 60.74(7) or (8), Stats. Once the exercise of town zoning authority under sec. 60.74(7), Stats., is approved by referendum, town zoning ordinances and amendments need only be approved by the county boards. Section 60.74(7), Stats., requires the appropriate town authorities to hold a public hearing on town zoning, but no further hearing by the county authorities is required......................... 65-288

Menominee County

Property held in trust by the federal government for the Menominee Tribe and tribal members pursuant to the Menominee Restoration Act (25 U.S.C. sec. 903, et seq.) is not subject to state taxation. Tribal members residing and working in Menominee County and the Menominee Tribe are not subject to state income tax. Government services to be provided by Menominee County and the Town of Menominee discussed ....................... 66-290

Zoning

The authority of a county to regulate house trailers or mobile homes under the county zoning authority set forth in sec. 59.97, Stats., and other zoning questions, discussed .................. 62-292

MORTGAGES

Interest rate

Lenders need not comply with the provisions of sec. 138.053, Stats., unless the right to increase the interest rate subsequent to the execution of the contract is conferred by the contract itself.............................. 70-32

Mortgage Subsidy Bond Tax Act of 1980

Certain local governments and public agencies may issue obligations to provide mortgage loans on owner-occupied residences. However, compliance
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Milwaukee Metropolitan Sewerage District
Legislation is necessary to allow the Milwaukee Metropolitan Sewerage District to borrow up to the limits of its separate indebtedness authorized under Wis. Const. art. XI, sec. 3. (Unpub) .................................................... 27-1979

Violation of a code of ethics ordinance
County Board may provide for a penalty in the nature of a forfeiture for violation of a code of ethics ordinance but may not bar violators from running for office. Violation is not a neglect of duties required by law under sec. 59.10, Stats., or ipso facto cause for removal from office under sec. 17.09(1), Stats. ................................................................. 66-148

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Blood test

Section 343.305, Stats., as repealed and recreated by ch. 193, Laws of 1977, does not vest in municipal courts the power to conduct hearings to determine the reasonableness of a refusal to submit to chemical tests to determine blood alcohol levels, since a municipal court has only those powers expressly conferred on it by statute, and such statute contains no express language conferring the hearing power above-mentioned on a municipal court. The power of a municipal court to preside over ordinance matters would not include such hearings, since local government lacks authority to enact the provisions of sec. 343.305, Stats., as an ordinance. 67-185

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Automobiles and motor vehicles

Local governments can prohibit first acts of operating after revocation or suspension, but second offense will not be a crime. 71-132

The ordinance adopted by the Village of West Milwaukee which authorizes the placement of an immobilization device on an automobile of an individual who has ten or more outstanding or otherwise unsettled traffic violations does not constitute a valid exercise of a municipality’s authority under Wisconsin law. 77-73

Bartenders’ licenses

Municipalities may not require by ordinance that all grocery and liquor store employees and bartenders must obtain bartenders’ or operators’ licenses, such ordinances being in conflict with the provisions of chapter 125, Stats. 76-86

Bicycles

The licensing of bicyclists, the creation of bicycle courts and the impoundment of bicycles is a matter of statewide concern. Cities and villages cannot exercise such regulation in the absence of express legislative authorization. 66-99

Bids and bidders

Municipalities may require bidders to include a list of subcontractors. Counties may reject a proposal for failure to include a complete list, except when omitted subcontractors themselves submitted timely, written bids to the general contractor. 76-29

Bonds

As a general rule a municipality may not, without specific authorization, guarantee the financial obligations of a private landfill operator. (Unpub). 47-1982

Hotels, motels and marinas are not permissible projects under the definition provided in sec. 66.521(2)(b), Stats. There is no authority under sec. 66.521, Stats., to establish a reserve fund from bond proceeds for payment of principal of and interest on the bonds, except as may be contemplated under the limited circumstances of sec. 66.521(7)(h), Stats. 66-162

Section 67.04(2)(a), (b), (8), Stats., does not authorize the City of Marshfield to utilize its bonding authority to construct a building wholly for use by the Mid-State Vocational, Technical and Adult Education District on a leased basis. 71-165

Building permit

Under section 66.036, Stats., additions to, and the remodeling of, structures require an on-site inspection of the existing private sewage system before a building permit may be issued. 75-38

City clerk’s authority

Under sec. 9.20(3), Stats., a city clerk’s authority to examine the “sufficiency” and “form” of an initiative petition is at least as extensive as the city council’s under sec. 9.20(4), Stats. This judicially established authority should only be exercised where a substantive insufficiency clearly exists. 69-41
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City school district

Subject to approval of the fiscal board or the city council, a city school district has the authority to sell real and personal property no longer used for school purposes. Under sec. 120.56(2), Stats., money received from such sales must be placed in a sinking fund under the control of the fiscal board to be used for educational purposes. Municipalities may enter into an agreement with a joint school district to provide for the sale or transfer of property being used by the school district for educational purposes. Such agreement may provide for the payment of the purchase price in services, materials or property provided that the value of such purchase price constitutes fair market value.

Class “B” liquor licensees

Class “B” liquor licensees must be similarly treated by a municipality as to the hours they may be open for sales of liquor.

Code of ethics ordinance

County Board may provide for a penalty in the nature of a forfeiture for violation of a code of ethics ordinance but may not bar violators from running for office. Violation is not a neglect of duties required by law under sec. 59.10, Stats., or ipso facto cause for removal from office under sec. 17.09(1), Stats.

Commission members indemnification protection

Where a commission is created by two villages, acting pursuant to section 66.30, Stats., for a joint exercise of a power possessed by such villages, its voting members, whether drawn from the governing bodies of such villages or from citizen-residents thereof, are public officers, who enjoy the indemnification protection provided by section 895.46(1). A non-voting member of such commission, who cannot serve as an officer thereof, and whose sole power and duty is to provide “input” to the commission relative to the particular needs of the corporation appointing him/her to the commission, is neither a public officer nor a public employee, so as to enjoy the indemnification protection of section 895.46(1). Moreover, such non-voting commission member is not entitled to such protection as an agent of any department of the State of Wisconsin.

“Controlled substances”

Chapter 161, Stats., the Uniform Controlled Substances Act, precludes the enactment of municipal ordinances regulating the sale and possession of such “controlled substances” as marijuana.

Drug testing; pre-employment

A municipality’s decision to require pre-employment drug testing for prospective employees must balance the need for testing in particular positions against the invasion of personal rights that the search entails, considering all relevant factors.

Dwelling Code

Liability of local units of government in adopting and enforcing the One- and Two-Family Dwelling Code discussed.

The one- and two-family dwelling code is applicable to additions of any buildings initially constructed after the effective date of the one- and two-family dwelling code act and the Department of Industry, Labor and Human Relations can exempt certain dwellings from aspects of code.

Electric company

Section 66.60(16) authorizes cities owning their own electric companies to pass ordinances allowing unpaid charges for furnished electricity to be placed on the tax bill of the receiving property; section 66.069(1)(b) cannot be construed to authorize such ordinances.
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Electric utility
A municipal public utility commission managing a city-owned public electric utility is a governmental body under sec. 19.82(1), Stats., and its meetings are subject to secs. 19.81-19.98, Stats. .................................................. 65-243

Fire department, joint control
Section 61.65(2), Stats., permits three or more municipalities, including a mixture of three villages and a city, to establish and operate a joint fire department. Recourse to section 66.30 does not appear to be necessary or appropriate for the purpose of creating such a joint fire department........... 74-154

Forest tax programs
Although public tax-exempt entities such as municipalities may neither enter nor continue their lands in the forest tax programs of chapter 77, Stats., private entities whose property would otherwise normally be tax-exempt under chapter 70 may participate in such programs................................. 77-280

Forfeiture action
Municipality must pay five dollars nonrefundable fee provided for in sec. 814.63(2), Stats., where a forfeiture action has been disposed of in circuit court after transfer from municipal court upon demand for jury............. 72-129

Grocery store employees
Municipalities may not require by ordinance that all grocery and liquor store employees and bartenders must obtain bartenders' or operators' licenses, such ordinances being in conflict with the provisions of chapter 125, Stats. 76-86

Groundwater pollution
To accomplish public health protection as well as prevention of groundwater pollution, a county health commission, where such activity is undertaken with the consent of the property owner, can authorize its staff to enter private property for the purpose of determining the location of an existing private sewage disposal system. If consent of the property owner to such activity on his premises is not obtained, it can only be undertaken by county health commission staff pursuant to a special inspection warrant obtained under sec. 66.122, Stats. ................................................. 63-337

Human relations programs
Functions of a community relations-social development commission authorized under sec. 66.433, Stats., are not limited to study, analysis and planning, but have authority to carry out some human relations programs providing services directly to citizens.......................................... 63-182

Indigents
A defendant may be incarcerated by court order for failing to pay a fine imposed for the violation of a municipal ordinance. Unless the defendant applies to the court and obtains relief on the grounds that because of his indigency he is unable to pay the fine, the Sheriff may lawfully accept and hold such defendant in the county jail .................................................. 64-94

Law enforcement officials of this State, insofar as it is within their power to do so, ought to establish procedures for giving notice to those who face possible incarceration on account of their failure to pay a fine of their constitutional right not to be confined if the failure to pay the fine results from their indigency and of their right to a hearing on the question of their indigency.......................... 64-98

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Municipal funds may be invested in savings and loan associations to the extent permitted by sec. 219.05(1), Stats. 62-312

Municipalities and other local governmental entities may only invest in certain specifically authorized bonds, securities, deposits, etc., and may not invest in mutual funds, even if the assets of such funds consist solely of statutorily-allowed bonds and securities. 77-274

Law enforcement

Counties and municipalities do not have authority to regulate the interception and rebroadcast of local law enforcement agency radio communications. 64-103

Law enforcement contracts with counties

Under section 66.30, Stats., and subject to some limitation, a county may furnish certain supplemental law enforcement services to villages and towns within the county. The County Sheriff's consent to provide such supplemental services and the Sheriff's approval of such a contract is required. 75-119

Law enforcement contracts with municipalities

Under sec. 66.30, Stats., a county may contract to furnish certain law enforcement services to cities, villages and towns within the county but cannot take over all law enforcement functions. A deputy sheriff may not be designated as a city police chief. 65-47

Under section 66.30, Stats., and subject to some limitation, a county may furnish certain supplemental law enforcement services to villages and towns within the county. The County Sheriff's consent to provide such supplemental services and the Sheriff's approval of such a contract is required. 75-119

Libraries

Municipal libraries are a matter of statewide concern. Accordingly, home rule provisions will not justify local departures from the provisions of chapter 43, Stats. 76-203

Library tax levy

A town, city or village which does not maintain a public library, as a municipality or jointly with another municipality under contract, but which makes contributions to a nearby public library, cannot be exempted from the county library tax levy under sec. 43.64(2), Stats. 65-182

Lime pit

Pursuant to secs. 59.07(1)(a) and 59.873, Stats., a county can own and operate a lime pit in another county, within reasonable distance, if such operation is necessary to obtain sufficient supply to furnish lime at cost to farmers within the county operating such pit. However, absent a cooperation agreement pursuant to sec. 66.30, Stats., lime cannot be sold or distributed to farmers in such other county. 66-72

Liquor store employes

Municipalities may not require by ordinance that all grocery and liquor store employes and bartenders must obtain bartenders' or operators' licenses, such ordinances being in conflict with the provisions of chapter 125, Stats. 76-86

Madison Public Library

The Madison Public Library can charge user fees for any services that fall outside of a library's inherent information-providing functions; services that constitute core "library services" must be provided free of charge to the inhabitants of the municipality; a one-dollar fee can be collected for lending duplicate copies of best seller books. 73-86

Milwaukee, City of

City has power to create an ordinance making possession of marijuana an offense in the City of Milwaukee. 63 OAG 107 discussed. (Unpub). July 9, 1975
MUNICIPALITIES (continued)

Milwaukee County

If all the municipalities in Milwaukee County establish their own system or combine with several other municipalities to establish a system with a central location, Milwaukee County would be required to establish a system which connects with all central locations of the emergency telephone systems established in the County. It is possible that a mandamus proceeding could be instituted against public officials to obtain compliance with the provisions of the statute ......................................................... 68-165

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Authority of a state or governmental subdivision to provide a retirement plan in lieu of or supplemental to existing statutory plans discussed. The Milwaukee School Board is authorized by sec. 111.70, Stats., to contract for a retirement system supplementary to the existing statutory system ............. 67-153

Mobile homes

In a town in which a county-wide zoning ordinance is effective, a town ordinance which purports to regulate the location of the individual mobile homes is a zoning ordinance which can only be enacted in compliance with the provisions of sec. 60.74(7) or (8), Stats. Once the exercise of town zoning authority under sec. 60.74(7), Stats., is approved by referendum, town zoning ordinances and amendments need only be approved by the county board. Section 60.74(7), Stats., required the appropriate town authorities to hold a public hearing on town zoning, but no further hearing by the county authorities is required .......................................................... 65-288

Mutual funds

Municipalities and other local governmental entities may only invest in certain specifically authorized bonds, securities, deposits, etc., and may not invest in mutual funds, even if the assets of such funds consist solely of statutorily-allowed bonds and securities .............................................. 77-274

Nonresident property owners

1973 Senate Bill 59 contains inconsistent provisions which require redrafting, although the general intent of the Bill appears to be to provide nonresident property owners with a voice in both metropolitan sewerage district and town sanitary district bond elections. Such a limited extension of voting rights probably would not infringe the local district electors' federal or state constitutional guarantees of equal protection. Such extension of suffrage probably is required to be submitted to a vote of the electors of the State, under art. III, sec. 1, Wis. Const. ......................................................... 63-391

Nursing homes

A village has power to own and operate a home for the aged, finance the same under secs. 66.066, 66.067, and lease facility to a nonprofit corporation but probably could not lease facility to a profit corporation for operation .......................................................... 62-226

Open meetings

Boards of review cannot rely on exemptions in Open Meeting Law, sec. 19.85(1), Stats., to close any meeting in view of explicit requirements in sec. 70.47(2m), Stats. ......................................................... 65-162

Common Council's practice of giving notice in December of all contemplated meetings and general subjects to be considered during the next year does not comply with notice requirements of sec. 19.84(1)(4), Stats., even where detailed agenda is available for inspection in City Clerk's office four hours before meeting. Governmental body cannot commence an open session, convene in closed session, and reconvene into open session within twelve hours unless notice of such subsequent open session was given in the same manner as the public notice of the first open session. (Unpub) ................. 111-1979

Sections 895.35 and 895.46, Stats., apply to actions for open meetings law violations to the same extent they apply to other actions against public
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Volunteer fire department organized as a nonprofit corporation pursuant to sec. 213.05, Stats., is not a governmental or quasi-governmental corporation and is not subject to provisions of the Open Meeting Law, secs. 19.81-19.98, Stats. .......................................................... 66-113

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The ordinance adopted by the Village of West Milwaukee which authorizes the placement of an immobilization device on an automobile of an individual who has ten or more outstanding or otherwise unsettled traffic violations does not constitute a valid exercise of a municipality's authority under Wisconsin law ............................................................. 77-73

Overpayment of shared taxes
Department of Revenue should adjust the correction of an overpayment of shared taxes to municipalities and counties in 1975, as certified on the July 1976 preliminary distribution, by reducing the correction to only $3,488,454.46 and thereby provide for minimum 1975 distribution to municipalities and counties of $278,000,000. (Unpub) ......................... 76-1976

Penalty assessment
When a municipal court adjudges a child to have violated a municipal ordinance, that court must impose court costs and should add the ten percent penalty assessment provided in sec. 165.87(2), Stats., to any forfeiture imposed for such violation ............................................. 69-26

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Retirement funds
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Road construction costs
Counties may charge a one percent of project cost administrative fee for work done on municipal roads pursuant to sec. 83.035, Stats. ...................... 63-321

Sanitary district
Where town sanitary district consists of territory wholly within one town and town board has not designated its members as commissioners but has appointed commissioners, town board is not required to call special election to elect commissioners if petition signed by at least twenty percent of the qualified electors of the district is filed ........................................... 69-245

School districts
School districts may not invoke the damage and interest provisions of section 74.22, Stats., to penalize a township for failing to settle tax payments within the time required by law ............................................. 74-84
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School lunchrooms

A city health department may inspect and license public school lunchrooms pursuant to a specific ordinance even though sec. 160.01(3), Stats., precludes public school lunchrooms from regulation as restaurants by the Department of Health and Social Services and its designated agents. The authority in the Department of Public Instruction, under sec. 115.33, Stats., to ensure a sanitary facility is not precluded by sec. 160.01(3), Stats. 65-54

Sewage, private system

Under section 66.036, Stats., additions to, and the remodeling of, structures require an on-site inspection of the existing private sewage system before a building permit may be issued 75-38

Sewerage district

1973 Senate Bill 59 contains inconsistent provisions which require redrafting, although the general intent of the Bill appears to be to provide nonresident property owners with a voice in both metropolitan sewerage district and town sanitary district bond elections. Such a limited extension of voting rights probably would not infringe the local district electors' federal or state constitutional guarantees of equal protection. Such extension of suffrage probably is required to be submitted to a vote of the electors of the State, under art. III, sec. 1, Wis. Const. 63-391

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Proposed municipal solid waste facilities which replace existing municipal solid waste facilities are not exempt from the needs determination under section 144.44(2)(nm), Stats. 77-81

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Surplus funds

A local unit of government may not create and accumulate unappropriated surplus funds. However, a local unit of government may maintain reasonable amounts necessary in the exercise of sound business principles to meet the immediate cash flow needs of the municipality during the current budgetary period or to accumulate needed capital in non-lapsing funds to finance specifically identified future capital expenditures 76-77

Tax payments to school districts

School districts may not invoke the damage and interest provisions of section 74.22, Stats., to penalize a township for failing to settle tax payments within the time required by law 74-84

Tax penalty ordinance

Section 74.80(2), Stats., does not permit a county or municipality to enact an ordinance which would make the one-half of one percent per month penalty apply on a retroactive basis to the date the tax first became delinquent 73-72

Tax refunds

Municipalities may use the add-on method of recovery of refunded taxes from Vocational, Technical and Adult Education districts pursuant to section 74.73(2), Stats., regardless of whether the refunds are for unlawful taxes under section 74.73(1r) or excessive assessments under section 74.73(4). 76-268
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Taxation

A statute which would allow any city, village or town to elect to apply so-called “land value taxation,” i.e., the taxation of land as defined in sec. 70.03, Stats., exclusive of buildings or structures, to all lands within its boundaries, would be unconstitutional under the provisions of Wis. Const. art. VIII, sec. 1, which requires that general property taxation be uniform.

Local government units cannot include the value of tax-exempt manufacturing machinery and specific processing equipment and tax exempt merchants' stock-in-trade, manufacturers' materials and finished products and livestock in their property valuation totals for “non-tax” purposes, such as for municipal debt ceilings, tax levy limitations, shared tax distributions and school aid payments.

There is no constitutional prohibition against increasing either municipal tax rate limitations or increasing the municipal tax base. However, a constitutional amendment would be required to increase municipal debt limitations.

Turnkey construction

Turnkey construction may be used for the construction of public works projects unless another method expressly is required. Municipalities are subject to sec. 66.293(3), Stats., the prevailing wage law, on contracts for any project of public works even if done by the turnkey method.

Uniformity of town government

If proper case were brought, a court would probably hold that sec. 60.19(1), (am), and (c), Stats., violates the uniformity of town government constitutional requirement.

Waste management system

Towns, villages and cities in counties establishing a county solid waste management system under sec. 59.07(135), Stats., may be taxed for the capital costs of the county-wide system, but not for the operating costs.

Zoning

A town board, granted village powers under sec. 60.18(12), Stats., is not required to petition its county board prior to adopting a town zoning ordinance. Sec. 60.74(1)(am) and (7), Stats. However, where the county has adopted a zoning ordinance under sec. 59.97, Stats., such town zoning ordinance will not become effective and cannot be enforced unless and until the county takes positive action approving such town ordinance.

Towns exercising village powers can zone shorelands concurrently with counties, provided that the town ordinance is in conformance with or more restrictive than the county ordinance.

Towns with village powers lack statutory authority to unilaterally vacate streets in recorded subdivision plats.

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NATIONAL SCHOOL LUNCH ACT
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United States Constitution art. I, and Wisconsin Constitution art. I, sec. 18, do not prohibit the State from disbursing state matching funds under National School Lunch Act (P.L. 79-396) to private as well as public schools. Sections 115.34 and 20.255(1)(fe), Stats., must be amended to permit such disbursal to private schools 69-109

NATURAL RESOURCES BOARD
Worker's compensation
Worker's compensation coverage exists for members of the Natural Resources Board, who are injured while in transit to or from a board meeting, regardless of whether their transportation to such meeting is furnished by the Department of Natural Resources. (Unpub) 49-1985

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Advisory committees
Department of Natural Resources advisory committees that have at least some members who are not officers or employees of the DNR and that are appointed by the board, the secretary, district directors, bureau directors or property managers are subject to the open meetings law 78-67

Air contaminant source
Individual property owners incidentally affected by a Department of Natural Resources legislative decision to approve or disapprove plans for an air contaminant source pursuant to sec. 144.39, Stats., are not guaranteed a hearing before the Department by statute or by constitutional provisions of due process. Thus, proceedings under sec. 144.39, Stats., do not constitute a contested case 64-115

Chemical treatment of waters. A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The Department of Natural Resources is granted statewide supervision over aquatic nuisance control under sec. 144.025(2)(i), Stats. Applications for permits to chemically treat aquatic nuisances under sec. 144.025(2)(i), Stats., may be denied even though statutory and regulatory requirements have been met if such chemical treatment would be counterproductive in achieving the goals set out in sec. 144.025(1), Stats. 63-260
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Copyright of publications
The Department of Natural Resources may seek to obtain copyrights for publications entitled "Walleye Waters," "Trout Waters," "Musky Waters" and "Canoe Waters" which were written and compiled by state employees on state time provided the copyrights have not been invalidated due to the omission of the copyright notice................................................. 76-162

Criminal law
In order to obtain a conviction for violating sec. 30.195, Stats., the state must show that the defendant changed the course of a navigable stream and that no permit to change the stream's course had been granted to the defendant. The State need not show that the changed portion of the stream was navigable, nor a specific intent to change the stream's course ................. 67-265

Drainage ditches
1. Chapter 30, Stats., applies to navigable ditches that were originally navigable streams. If a navigable ditch was originally nonnavigable or had no previous stream history, Department of Natural Resources' jurisdiction depends upon the facts of each situation. 2. Whether navigable artificial drainage ditches need be connected to a navigable natural lake or stream in order that the Department of Natural Resources have jurisdictional depends upon the facts of each case. 3. The provisions of sec. 31.33, Stats., apply to nonnavigable artificial waterways insofar as is necessary to protect navigable waters and owners of flooded lands. 4. A permit pursuant to sec. 30.20(2)(c), Stats., is necessary for the removal of material from navigable natural or artificial bodies of water. A distinction need not be made between drainage ditches located in active versus inactive drainage districts. 63-493

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All staff work necessary to determine whether an applicant meets the requirements of the Metallic Mining Reclamation Act must be included in the cost of evaluating the permit, including any evaluation of compliance with other environmental requirements. The withdrawal of a mining permit application by the applicant prior to a final decision on the application does not relieve the applicant from the obligation to pay the cost of evaluation .... 76-150

Firewood
The Department of Natural Resources has authority to assess a fee for firewood produced on state lands. Legislative committee recommendation that funding and positions be withdrawn from a proposed state wood energy program does not affect DNR authority to sell firewood. Although DNR has authority to sell firewood, there is no requirement that it do so. While DNR is not required to charge for firewood permits, it may do so. DNR does not have a fee schedule for the sale of firewood ................................ 71-23

Fish and game
Department of Natural Resources has the power under secs. 29.50 and 30.77, Stats., to withhold stocking with fish from state hatcheries from bodies of water where public access is inadequate. Determination of adequacy of access rests on consideration of reasonableness of fee charged for use of

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Fish and game (continued)
public boat launching facilities as well as quantity of parking facilities provided. The Department may, but is not bound to, require that reasonable access be afforded at all times to the general public. Larger fees may in some circumstances be imposed on larger boats, and large boat access probably could be regulated. Provision of special facilities for the handicapped is encouraged but not required ........................................ 68-233

The Department of Natural Resources is not prohibited from approving federal enforcement of federal steel shot regulations by federal agents on lands under their jurisdiction in the State during the 1980 waterfowl hunting season .................... 69-201

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Mining beneath beds of navigable lakes
Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub) ........................................ 58-1976

The Department of Natural Resources may enforce the terms of lakebed grants under section 30.03(4)(a), Stats., as long as such enforcement does not conflict with section 30.05 ................................................ . 78-107

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Navigable waters
1. Chapter 30, Stats., applies to navigable ditches that were originally navigable streams. If a navigable ditch was originally nonnavigable or had no previous stream history, Department of Natural Resources' jurisdiction depends upon the facts of each situation. 2. Whether navigable artificial drainage ditches need be connected to a navigable natural lake or stream in order that the Department of Natural Resources have jurisdiction depends upon the facts of each case. 3. The provisions of sec. 31.33, Stats., apply to nonnavigable artificial waterways insofar as is necessary to protect navigable waters and owners of flooded lands. 4. A permit pursuant to sec. 30.20(2)(c), Stats., is necessary for the removal of material from navigable natural or artificial bodies of water. A distinction need not be made between drainage ditches located in active versus inactive drainage districts . 63-493

Open meeting
Department of Natural Resources advisory committees that have at least some members who are not officers or employes of the DNR and that are appointed by the board, the secretary, district directors, bureau directors or property managers are subject to the open meetings law........................................ 78-67

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NATURAL RESOURCES, DEPARTMENT OF (continued)

Permit requirements

The Department of Natural Resources does not have authority to waive the permit requirements of sec. 30.12(2), Wis. Stats., for individuals who would otherwise be subject to the statute; however, chs. 30 and 83, Stats., read together, indicate that county highway construction is not subject to the permit requirements of sec. 30.12(2), Stats. ........................................ 64-91

Prospecting and mining activity within reservation boundaries

The state and tribal governments share jurisdiction to regulate prospecting and mining activity within reservation boundaries to the extent necessary to protect groundwater from contamination ........................................ 72-54

Prospecting on state park and forest lands

Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub) ......................................................... 58-1976

Railroad bridge repair

The Department of Natural Resources is not governed by section 190.08, Stats., relating to the duty of corporations to maintain bridges and other structures, where the Department of Natural Resources has acquired abandoned railroad property for the purpose of developing hiking and biking trails ........................................................................... 77-106

Spectator sport facilities

The Department of Natural Resources has no authority to construct spectator sport facilities in state forests, nor has it authority to lease state forest lands for such purpose ..................................................... 63-519

Wardens

The power of arrest of DNR wardens is limited by statute; they do not have general law enforcement authority except on state-owned lands, and property under DNR's supervision, management and control including the power to arrest violators of state law on all bodies of water which lie exclusively within such area, as determined by facility boundaries .......... 68-326

Waste Management Fund

The Department of Natural Resources has the authority to reduce or waive the Waste Management Fund fee for solid waste resulting from mining upon a determination that the specific portions of a mine reclamation plan or related statutory undertakings will be sufficient to accomplish the purposes of sec. 144.441(3)(d), Stats., with respect to a type of waste or portion thereof ................................................................. 68-374

Water pollution

Chapter 147, Stats., relating to water pollution control did not authorize DNR to regulate Indian reservations and lands since the Legislature, in adopting provisions fashioned after federal law, intentionally omitted Indian tribal organizations from the scope of coverage while charged with knowledge that the State generally lacks power to regulate within sovereign Indian territory. (Unpub) ................................................................. 51-1978

The Department of Natural Resources must consider the effect on water pollution before it may issue a permit pursuant to sec. 30.12, Stats. (Unpub). ..................................................... 31-1980

Wetlands activity permit program

Without more explicit direction from the Legislature, current statutory or case authority does not authorize the Department of Natural Resources to establish a wetlands activity permit program, although many marshes or wetlands can and should be brought within existing water regulatory statutes ................................................................. 68-264
NAVIGABLE WATERS

See also BOUNDARIES; RIPARIAN RIGHTS; STREAMS; WATER POLLUTION; WATERS

Anchored watercraft

Public rights in navigable streams permit reasonable use of the bottom for purposes of anchoring various types of watercraft while and only so long as a public right is being enjoyed. Anchored watercraft may not be left unattended except by a riparian owner .......................................................... 63-601

Artificial drainage ditches

1. Chapter 30, Stats., applies to navigable ditches that were originally navigable streams. If a navigable ditch was originally nonnavigable or had no previous stream history, Department of Natural Resources' jurisdiction depends upon the facts of each situation. 2. Whether navigable artificial drainage ditches need be connected to a navigable natural lake or stream in order that the Department of Natural Resources have jurisdiction depends upon the facts of each case. 3. The provisions of sec. 31.33, Stats., apply to nonnavigable artificial waterways insofar as is necessary to protect navigable waters and owners of flooded lands. 4. A permit pursuant to sec. 30.20(2)(c), Stats., as necessary for the removal of material from navigable natural or artificial bodies of water. A distinction need not be made between drainage ditches located in active versus inactive drainage districts ........................................ 63-493

Artificial lakes

An artificial waterway connected with or located within 500 feet of a navigable waterway is a public waterway to which public access must be provided pursuant to sections 236.16(3) and 30.19(1)(a) and (5), Stats. ...................... 76-316

Bulkhead line

1. Where a bulkhead line has been established pursuant to sec. 30.11, Stats., a riparian owner must nonetheless obtain a permit or contract pursuant to sec. 30.20, Stats., prior to removing material from the bed of a navigable water landward of the bulkhead line, but within the original ordinary high water mark. 2. Where a bulkhead line has been established, a riparian owner may place a layer of sand or similar material landward of the bulkhead line without obtaining an additional permit pursuant to sec. 30.12(2)(b), Stats. 3. Where a bulkhead line has been established, the original ordinary high water mark presumably will be considered the ordinary high water mark for purposes of determining the applicability of sec. 30.19, Stats., although particular fact circumstances may dictate that the bulkhead line or the edge of the filled area should be considered the ordinary high water mark. 4. Where a township located on Green Bay wishes to remove organic sediment and aquatic vegetation from the shoreline, it would be more appropriate for the town to apply for a zone of removal pursuant to sec. 30.205, Stats., than to apply for a bulkhead line pursuant to sec. 30.11, Stats. .......................................................... 63-445

Criminal law

In order to obtain a conviction for violating sec. 30.195, Stats., the State must show that the defendant changed the course of a navigable stream and that no permit to change the stream's course had been granted to the defendant. The State need not show that the changed portion of the stream was navigable, nor a specific intent to change the stream's course .................... 67-265

Mining beneath beds of navigable lakes and waters

Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub) .......................................................... 58-1976

Nonresident property owners

Voting rights at the annual meeting of inland lake protection and rehabilitation districts may be extended by the Legislature to nonresident property
NAVIGABLE WATERS  (continued)
Nonresident property owners (continued)
owners, but only pursuant to a statewide referendum under Wis. Const. art. III, sec. 1(3).......................................................... 69-32

Plats and platting

The application of secs. 236.16(3) and (4), Stats., which concern lake and stream shore plats, discussed in reference to proposed subdivisions which do not immediately abut a lake or stream, but where the subdivider holds an interest in lands lying between the proposed subdivision and the lake or stream........................................... 66-85

The requirements of sec. 236.16(3), Stats., requiring subdivisions on navigable lakes or streams to provide public access does not apply to navigable lakes created by artificially enlarging a previously nonnavigable watercourse. The Department of Local Affairs and Development is not required by Executive Order No. 67 to object to a subdivision plat based on information supplied by the Department of Natural Resources that the plat is not in compliance with section NR 115 or section NR 116 Wis. Adm. Code. 64-146

Public trust

The Department of Natural Resources may enforce the terms of lakebed grants under section 30.03(4)(a), Stats., as long as such enforcement does not conflict with section 30.05. ............................................................... 78-107

State lands
State reservation of land and interests in lands under ch. 452, Laws of 1911 and sec. 24.11(3), Stats., discussed........................................... 65-207

State responsibilities
The Department of Natural Resources may enforce the terms of lakebed grants under section 30.03(4)(a), Stats., as long as such enforcement does not conflict with section 30.05. ............................................................... 78-107

Surveys
The duties of the head of the planning function in the Department of Local Affairs and Development in administering and coordinating plat proposal reviews under sec. 236.12, Stats., in checking for compliance with the minimum survey layout and format requirements set forth in secs. 236.15, 236.16, 236.20 and 236.21(1) and (2), Stats., do not trigger environmental assessment under sec. 1.11, Stats. The Department of Local Affairs and Development and the Department of Natural Resources are not required to undertake an environmental assessment in instances where a variance in the public access to navigable waters requirements of sec. 236.16(3), Stats., is proposed since such a review is impossible. (Unpub) .................................. 93-1977

Water safety patrol officers
Water safety patrol officers in county patrol, created as a separate agency, do not have to be deputized by Sheriff to enforce secs. 30.50-30.80, Stats., Wisconsin’s regulation of boating law............................ 65-169

Waterway to alleviate periodic flooding
Dredging a navigable waterway to alleviate periodic flooding is not a prohibited “work of internal improvement” within the meaning of Wis. Const. art. VIII, sec. 10............................................................... 69-176

NEIGHBORHOOD YOUTH CORPS
See LABOR, Child labor

NET PROCEEDS OCCUPATION TAX
See TAXATION, Indians

1990 N 6
NEWSPAPERS

Legal notice

A county board may direct supplemental publication of legal notices in a newspaper other than the official newspaper, provided that the supplemental publication is in a newspaper meeting the requirements of sec. 985.03, Stats. However, only the publication in the official newspaper constitutes official publication of a legal notice. (Unpub) 15-1976

A municipality may not expend funds to publish the text of a legal notice in a shopper paper which does not meet the qualifications contained in sec. 985.03(1)(a), Stats. 71-177

A municipality may not expend funds to publish the text of a legal notice in a shopper paper which does not meet the qualifications contained in section 985.03(1)(a), Stats. 71 Op. Atty Gen. 177 (1982) discussed and adhered to. (Unpub) 29-1986

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for the communication of such notices. 77-312

Under section 120.11(4), Stats., a school district in which no newspaper is published may print legal notices of the proceedings of school board meetings in a shopper paper which does not meet the qualifications contained in section 985.03(1)(a). Other legal notices required to be published by law may not be printed in such a shopper paper 75-269

Medical Examining Board

Investigative hearings or meetings conducted by the Medical Examining Board must be given public notice whether conducted in closed session or open session. (Unpub) 93-1976

Open Meeting

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for the communication of such notices. 77-312

Open Meetings of Governmental Bodies Law, subch. IV of ch. 19, Stats., does not require that notice of a meeting be given by a legal notice of paid publication. Method of giving notice pursuant to sec. 19.84(1), Stats., discussed 65-250

Public notice under sec. 19.84(2), Stats., for meeting of governmental body should be as specific as possible but a governmental body can discuss matters not specifically set forth in the notice and not known to chief presiding officer when the notice was given if the notice contains items similar to "such other matters as are authorized by law." Such procedure should be utilized with restraint 66-143

Requirements of notice given to newspapers under sec. 19.84(1)(b) and (3), Stats., discussed 66-230

Where a governmental body has convened in open session on proper notice, it can convene in closed session for proper purposes to discuss an element of subject matter for which the meeting was called, and which is proper to discuss in closed session, upon motion made and adopted with vote of each member recorded, if proper public announcement is made to those present at the meeting and if such closed session was not contemplated at the time notice for the open session was given 66-106

Written request pursuant to sec. 19.84(1)(b), Stats., by news media for notice of meetings of governmental body should be filed with chief presiding officer or his designee and separate written request should be filed with each specific governmental body 65-166

Shopper paper

A municipality may not expend funds to publish the text of a legal notice in a shopper paper which does not meet the qualifications contained in sec. 985.03(1)(a), Stats. 71-177

A municipality may not expend funds to publish the text of a legal notice in a shopper paper which does not meet the qualifications contained in section
NEWSPAPERS (continued)
Shopper paper (continued)
985.03(1)(a), Stats. 71 Op. Att'y Gen. 177 (1982) discussed and adhered to.
(Unpub) ................................................................. 29-1986
Under section 120.11(4), Stats., a school district in which no newspaper is
published may print legal notices of the proceedings of school board meet­
ings in a shopper paper which does not meet the qualifications contained in
section 985.03(1)(a). Other legal notices required to be published by law
may not be printed in such a shopper paper ............................................. 75-269

NONRESIDENT PROPERTY OWNERS
See PROPERTY

NORTH CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION

Liability
Employes of regional planning commissions organized under section 66.945,
Stats., are not state agents, officers or employes within the meaning of
section 895.46(1)(a), but they are protected by that subsection's require­
ment that such planning commissions themselves indemnify them for liability
incurred in the course of their duties ............................................. 77-142

NOTARY PUBLIC

Convicted felon
A convicted felon who has been restored to his civil rights, pursuant to sec.
57.078, Stats., is barred from the office of notary public, by art. XIII, sec. 3,
Wis. Const., unless he has been pardoned. The certificate provided for by
sec. 57.078, Stats., may be issued by other than the Department of Health
and Social Services. The serving of the sentence is what restores the per­
son's civil rights, and the certificate merely evinces the serving of the
sentence ................................................................. 63-74

Residence requirements
Section 137.01(1) and (2), Stats., which requires Wisconsin residency as a
condition of appointment as notary public in Wisconsin, does not violate
the Privileges and Immunities Clause of the Federal Constitution and
should be complied with unless and until it is declared invalid by a court of
competent jurisdiction in a proper case ............................................. 74-221

NURSES

"Charge nurse"
A licensed practical nurse may serve as a "charge nurse" under section H
32.08(5) Wis. Adm. Code, but in so doing must avoid activities which
would constitute the practice of professional nursing under sec. 441.11(2),
Wis. Stats. ................................................................. 65-71

Citizenship
Sections 441.04, 441.07 and 441.10, Stats., making citizenship a prerequisite
to obtaining a certificate/license to practice nursing in the State of Wiscon­
sin, are unconstitutional in that they violate rights under the Fourteenth
Amendment of the United States Constitution when applied to resident
aliens ................................................................. 64-65

Contraceptives
Professional nurse may sell contraceptive articles, including oral contracep­
tive drugs, under sec. 450.11(5), Stats. ............................................. 66-158
NURSES (continued)

Conviction records
1. A licensing agency may not ask an applicant about juvenile delinquency records. 2. A licensing agency may request information from an applicant regarding conviction records under sec. 111.32(5)(h), Stats. 67-327

Counties
County may contract with city for the joint provision of public health nursing services under sec. 66.30(2), Stats. 66-54

Emergency Medical Technician
A registered nurse functioning as an Emergency Medical Technician may perform any service he or she is authorized to perform as a nurse. (Unpub). 38-1981

Licensed practical nurse (L.P.N.)
A licensed practical nurse may serve as a “charge nurse” under section H 32.08(5) Wis. Adm. Code, but in so doing must avoid activities which would constitute the practice of professional nursing under sec. 441.11(2), Wis. Stats. 65-71

If acting under the supervision and direction of an R.N., an L.P.N. may manage patient care and other L.P.N.’s or less skilled assistants; supervision does not require the immediate physical presence of the R.N. and may be fulfilled by any mechanism which insures safe nursing care. (Unpub) 30-1982

Medication
Preparation of medication by a nurse under direction of a physician is permissible under sec. 450.04(3), Stats. Delivery of such medication to prisoners by jail attendants pursuant to instructions of the physician is permissible under sec. 450.07(2), Stats. 66-178

New baccalaureate program
The Board of Nursing has authority to accredit a new baccalaureate program even though the particular students who undertake that program are already certified as registered nurses 68-407

NURSING HOMES

Accountability
The governing body and/or administrator of a nursing home is not accountable for the actions of nursing home patients when such patient is not physically present in the nursing home 64-211

Administrative office space
Section 146.30(1)(a), Stats., does not prohibit nursing homes from providing adequate administrative office space to enable those nursing home employees, licensed to treat the sick, to perform their duties and responsibilities with respect to the care of patients residing therein. (Unpub) 16-1975

Health and Social Services, Department of
Policy requirement relating to nursing home residents’ freedom to choose health care provider (i.e., chiropractor) is invalid. Rule H 32.07(2)(a) and sec. 146.309, Stats. (1975), discussed 65-178

The Department of Health and Social Services through its Board does not have statutory authority to adopt a rule requiring approval of nursing home and hospital construction on the basis of need 62-153
NURSING HOMES (continued)

Fraternal orders

Nursing homes operated by religious or fraternal orders whose policies restrict admittance thereto to members thereof, are not exempt from the provisions of sec. 146.30, Stats., and rules adopted pursuant thereto, unless they come within the provisions contained in subsec. (12m) of said statute.

Guarantor agreements

Nursing home guarantor agreements may violate section 49.49(4), Stats., after the resident becomes certified Medicaid eligible.

Licensed practical nurse

If acting under the supervision and direction of an R.N., an L.P.N. may manage patient care and other L.P.N.'s or less skilled assistants; supervision does not require the immediate physical presence of an R.N. and may be fulfilled by any mechanism which insures safe nursing care. (Unpub)...

Medicaid and contracts for prospective residents

Discussion of federal and state law regarding the practice of requiring a prospective nursing home resident to forego medical assistance benefits for a stated period of time as a condition of admission.

Nursing home guarantor agreements may violate section 49.49(4), Stats., after the resident becomes certified Medicaid eligible.

Milwaukee County

Milwaukee County does not have authority to enact and enforce an ordinance which would establish certain rights of residents of nursing homes, group foster homes, residential care facilities and hospitals which contract for the care of residents. The State has given the Department of Health and Social Services preemptive authority over community-based residential facilities and nursing homes.

Protective placements

The responsibility for providing and funding facilities for protective placements under ch. 55, Stats., is primarily on the county. The statute does not require a county nursing home to accept such a placement.

Religion

Neither Wisconsin nor federal law prohibits a nursing home operated by a bona fide, nonprofit religious organization from giving preference in admission to members of that religion.

Nursing homes operated by religious or fraternal orders whose policies restrict admittance thereto to members thereof, are not exempt from the provisions of sec. 146.30, Stats., and rules adopted pursuant thereto, unless they come within the provisions contained in subsec. (12m) of said statute.

Richland County, bequest to Pine Valley Manor

The County Board, not the Board of Trustees, determines the disposition of a bequest made to a county institution operated pursuant to section 46.18, Stats. The County Board, acting pursuant to sections 59.07(101) and 59.75, may authorize the County Treasurer to place such a bequest in long-term investments, with the income from such investments to be expended at the institution.

Rock County Health Care Center

A county health facility may not charge for non-medical assistance services given to medical assistance patients in excess of medical assistance rates without violating section 49.49, Stats.

Village

A village has power to own and operate a home for the aged, finance the same under secs. 66.066, 66.067, Stats., and lease facility to a nonprofit corporation but probably could not lease to a profit corporation for operation.
OFFICERS AND OFFICES
See PUBLIC OFFICIALS; COMPATIBILITY

OLD AGE ASSISTANCE

Property taxes
The general concept of allowing elderly homeowners (age sixty-five or seventy) of low and moderate income to defer repayment of money advanced to them by the State for payment of their property taxes with such loan being secured by some type of priority lien on the property involved, is constitutional. However, funds for such a program cannot be obtained through general obligation bonding within the meaning and intent of Wis. Const. art. VIII, sec. 7. The financing of such a program with revenue bonds probably would be constitutional under Wis. Const. art. VIII, secs. 3, 4, 7. (Unpub) 13–1981

ONEIDA INDIANS
See also INDIANS

Administrative Code
State does not have jurisdiction to enforce Wisconsin Administrative Code with respect to construction of buildings on Oneida Indian Reservation trust land. 58 OAG 91 (1969) withdrawn 65–276

Construction of buildings
State does not have jurisdiction to enforce Wisconsin Administrative Code with respect to construction of buildings on Oneida Indian Reservation trust land. 58 OAG 91 (1969) withdrawn 65–276

Contracts
The Oneida Tribe is not a "municipality" within the meaning of sections 66.20 to 66.26, Stats. The Green Bay Metro Sewerage District may enter into an enforceable contract with the Tribe if certain conditions are met... 76–189

Green Bay Metropolitan Sewerage District
The Oneida Tribe is not a "municipality" within the meaning of sections 66.20 to 66.26, Stats. The Green Bay Metro Sewerage District may enter into an enforceable contract with the Tribe if certain conditions are met... 76–189

Law enforcement
While sheriffs lack statutory or common law authority to contract to provide county dispatch services to outside entities such as tribal public safety departments, sheriffs do have exclusive authority to instruct their deputies as to how such dispatch services should be performed in furtherance of their law enforcement functions. 78–85

Sewerage Commission
Section 144.07(4)(a), Stats., does not authorize joint sewerage commissions to include tribal governments as member governmental units 72–132

OPEN MEETING
See also CONFIDENTIAL REPORTS; PUBLIC RECORDS; and articles found in Introduction to 49 OAG (1960), 54 OAG (1965), and 65 OAG (1976)

Accessible, without assistance, to persons with disabilities
State governmental bodies are required to hold meetings in places which are accessible, without assistance, to persons with disabilities. Local govern-
OPEN MEETING (continued)

Accessible, without assistance, to persons with disabilities (continued)
mental bodies are required to hold meetings in places which are accessible with or without assistance to persons with disabilities .......................... 69-251

Advisory committees

Department of Natural Resources advisory committees that have at least some members who are not officers or employes of the DNR and that are appointed by the board, the secretary, district directors, bureau directors or property managers are subject to the open meetings law ....................... 78-67

Annual town meeting

A town board is a “governmental body” within the meaning of the Open Meetings Law and is subject to its provisions, including the notice requirements of secs. 19.83 and 19.84, Stats. An annual town meeting is a meeting of the electorate. It is not a “governmental body” within the meaning of the Open Meetings Law, and therefore, notice under subch. IV, ch. 19, Stats., is not required. If an annual town meeting is held at a time other than on the first Tuesday in April, notice must be given as required by secs. 60.17(2) and 60.13, Stats. Other Open Meetings Law notice requirements discussed .... 66-237

Apprenticeship committees

Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code, sec. Ind. 85.02, are governmental bodies within the meaning of sec. 66.77(2)(c), Stats., and subject to the requirements of the Open Meeting Law (sec. 66.77, Stats.) ...................................................... 63-363

Articles

Introduction to 49 OAG (1960), 54 OAG (1965) and 65 OAG (1976)

Attorneys

If there is no conflict between the Rules of the Board of Attorneys Professional Responsibility and the Open Meeting Law, it lies within the discretion of the Court to defer to legislative policy. If there is a conflict, the Court probably would conclude that the Open Meeting Law is inapplicable. (Unpub) ................................................................. 67-1979

Attorneys’ fees

Pursuant to sec. 895.35, Stats., a city council can, in limited circumstances, reimburse a council member for reasonable attorneys’ fees incurred in defending an alleged violation of the Open Meeting Law, but cannot reimburse such member for any forfeiture imposed. Section 895.46(1), Stats., is not applicable to forfeiture actions. Such member could not be reimbursed, indirectly, under liability insurance policy procured by a municipality, for any forfeiture imposed .................................................. 66-226

Sections 895.35 and 895.46, Stats., apply to actions for open meetings law violations to the same extent they apply to other actions against public officers and employes, except that public officials cannot be reimbursed for forfeitures they are ordered to pay for violating the open meetings law .... 77-177

Central Wisconsin State Fair Association

See State Fair

Closed session

A county board chairperson and a county board committee are not authorized by section 19.85(1)(c), Stats., to meet in closed session to discuss
OPEN MEETING (continued)

Closed session (continued)

appointments to county board committees; however, in appropriate circumstances section 19.85(1)(f) would authorize closed sessions .......................... 76-276

Common school district board could utilize closed session to discuss qualifications of potential candidates for vacancy, if and only if, personal matters to be discussed might unduly damage reputations. (Unpub) .................... 9-1976

Governmental body can call closed session for proper purpose without giving notice to members of news media who have filed written request under sec. 66.77(2)(e), Stats. ................................................. 63-470

University subunit may discuss promotions not relating to tenure, merit increases and property purchase recommendation in closed session .......... 66-60

Where a governmental body has convened in open session on proper notice, it can convene in closed session for proper purposes to discuss an element of subject matter for which the meeting was called, and which is proper to discuss in closed session, upon motion made and adopted with vote of each member recorded, if proper public announcement is made to those present at the meeting and if such closed session was not contemplated at the time notice for the open session was given ........................................ 66-106

Where Water and Light Commission has power to fix compensation of employees, it may meet in closed session to discuss and vote upon increases for non-union employees. A record must be made of motions and roll-call votes at open and closed meetings. Such record is open to inspection and copying subject to sec. 19.21, Stats., and common-law limitation with respect thereto ......................................................... 67-117

Collective Bargaining

Where Common Council hears a grievance under a procedure established under a signed contract, the Council is engaged in collective bargaining within the meaning of sec. 111.70(1)(d), Stats., and is therefore, for that purpose, not a "governmental body" within the meaning of sec. 19.82(1), Stats., of the Open Meeting Law ................................................. 67-276

Common Council

Common Council may not vote to fill vacancy on Council by secret ballot. Sec. 19.88(1), Stats. ......................................................... 65-131

"Communication"

Meaning of "communication" in sec. 66.77(2)(e), Stats., the Open Meeting Law, discussed with reference to giving the public and news media members adequate notice ......................................................... 63-509

Posting in Governor's office of agenda of future Investment Board meetings is not sufficient communication under sec. 66.77(2)(e), Stats., as created by ch. 297, Laws of 1973, to the public or the news media who have filed a written request for notice ......................................................... 63-549

Coroner's inquest

The Open Meeting Law does not apply to a coroner's inquest ......................................................... 67-250

Employment Relations Commission


Equal rights conciliation session

Equal rights conciliation session involving representative of a city, the employee and a representative of the Department of Industry, Labor and Human Relations is not a meeting of a governmental body under sec. 66.77, Stats., and may be closed to the public. (Unpub) ................................. 43-1975

Exemptions

Boards of review cannot rely on exemptions on Open Meeting Law, sec. 19.85(1), Stats., to close any meeting in view of explicit requirements in sec. 70.47(2m), Stats. ......................................................... 65-162
OPEN MEETING (continued)

Forfeiture

Sections 895.35 and 895.46, Stats., apply to actions for open meetings law violations to the same extent they apply to other actions against public officers and employees, except that public officials cannot be reimbursed for forfeitures they are ordered to pay for violating the open meetings law .... 77-177

The District Attorney has the authority to institute an action for forfeiture for violation of the Open Meetings Law only after receiving a verified complaint pursuant to sec. 19.97(1), Stats. (Unpub) 34-1981

"friends" organizations

Open meetings and public records laws are not applicable to independently created and independently operated non-stock, non-profit "friends" corporations organized to provide financial and other support to radio and television stations licensed to governmental agencies 74-38

Grievance procedures

Where Common Council hears a grievance under a procedure established under a signed contract, the Council is engaged in collective bargaining within the meaning of sec. 111.70(1)(d), Stats., and is therefore, for that purpose, not a "governmental body" within the meaning of sec. 19.82(1), Stats., of the Open Meeting Law 67-276

Joint apprenticeship committees 63-363

Legal notice

See Public notice

Medical Examining Board

Investigative hearings or meetings conducted by the Medical Examining Board must be given public notice whether conducted in closed session or open session. (Unpub) 93-1976

Municipality

Common Council's practice of giving notice in December of all contemplated meetings and general subjects to be considered during the next year does not comply with notice requirements of sec. 19.84(1)-(4), Stats., even where detailed agenda is available for inspection in City Clerk's office four hours before meeting. Governmental body cannot commence an open session, convene into closed session, and reconvene into open session within twelve hours unless notice of such subsequent open session was given in the same manner as the public notice of first open session. (Unpub) 111-1979

Natural Resources, Department of

Department of Natural Resources advisory committees that have at least some members who are not officers or employees of the DNR and that are appointed by the board, the secretary, district directors, bureau directors or property managers are subject to the open meetings law 78-67

News media

Written request pursuant to sec. 19.84(1)(b), Stats., by news media for notice of meetings of governmental body should be filed with chief presiding officer or his designee and separate written request should be filed with each specific governmental body 65-166

Notice

See Public notice

Private corporation

The Historic Sites Foundation, Inc., created under the provisions of chapter 181, Stats., by the Board of Curators of the State Historical Society of Wisconsin acting in their individual capacities, is a private corporation and as such is not subject to the requirements of the Open Meetings Law, section 19.81, Stats. 73-53
OPEN MEETING (continued)

Public notice

A municipality may not expend funds to publish the text of a legal notice in a shopper paper which does not meet the qualifications contained in section 985.03(1)(a), Stats. 71 Op. Att’y Gen. 177 (1982) discussed and adhered to. (Unpub) ......................................................... 29-1986

A town board is a “governmental body” within the meaning of the Open Meetings Law and is subject to its provisions, including the notice requirements of secs. 19.83 and 19.84, Stats. An annual town meeting is a meeting of the electorate. It is not a “governmental body” within the meaning of the Open Meetings Law, and therefore, notice under subch. IV, ch. 19, Stats., is not required. If an annual town meeting is held at a time other than on the first Tuesday in April, notice must be given as required by secs. 60.17(2) and 60.13, Stats. Other Open Meetings Law notice requirements discussed ........ 66-237

Common Council’s practice of giving notice in December of all contemplated meetings and general subjects to be considered during the next year does not comply with notice requirements of sec. 19.84(1)-(4), Stats., even where detailed agenda is available for inspection in City Clerk’s office four hours before meeting. Governmental body cannot commence an open session, convene into closed session, and reconvene into open session within twelve hours unless notice of such subsequent open session was given in the same manner as the public notice of first open session. (Unpub) .................. 111-1979

In giving notice of public hearings held under sec. 13.56(2), Stats., legislative committee for review of administrative rules should concurrently employ the various forms of notice available which would best fit the particular circumstances ................................................................. 62-299

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for the communication of such notices ................................................................. 77-312

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Public notice under sec. 19.84(2), Stats., for meeting of governmental body must contain reference to specific subject matter upon which discussion or action is anticipated and reference to “regular business” is not sufficient in most instances. (Unpub) ................................................................. 65-1976

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Specificity of notice required by governmental body where agenda item includes item “Citizens and Delegations,” cross reference 66 OAG 68 (1977). ................................................................. 66-195

Under section 120.11(4), Stats., a school district in which no newspaper is published may print legal notices of the proceedings of school board meetings in a shopper paper which does not meet the qualifications contained in section 985.03(1)(a). Other legal notices required to be published by law may not be printed in such a shopper paper ................................................................. 75-269

Public Utility Commission

A municipal Public Utility Commission managing a city-owned public electric utility is a governmental body under sec. 19.82(1), Stats., and its meetings are subject to secs. 19.81-19.98, Stats. ................................................................. 65-243

Quorum

The presence of more than one-half of the members of a governmental body in one place presumptively creates a meeting within the meaning of the Open Meeting Law, but the presumption is rebuttable and it is necessary to look to the facts in each case, including whether the members are convening for the purpose of exercising responsibilities, authority, power or duties delegated in the body ................................................................. 66-254
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Reapportionment

The December 2, 1981, meeting of the Senate Special Committee on Reapportionment was probably held in violation of Wisconsin's Open Meetings of Governmental Bodies Law ........................................ 71-63

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"Private conference" held under sec. 118.22(3), Stats., on nonrenewal of teacher's contract is a "meeting" within sec. 19.82(2), Stats., and school board could hold closed session under sec. 19.85(1)(c), Stats., although specific notice to teacher under sec. 19.85(1)(b), Stats., would have to be given where nonrenewal was based on charges and teacher would have right to require open meeting where evidentiary hearing was held or before final action or nonrenewal where charges were involved ....................... 66-211

Under section 120.11(4), Stats., a school district in which no newspaper is published may print legal notices of the proceedings of school board meetings in a shopper paper which does not meet the qualifications contained in section 985.03(1)(a). Other legal notices required to be published by law may not be printed in such a shopper paper ........................................ 75-269

Where school board permits citizens to appear at regular meeting and notes fact in agenda and notice, board may discuss and act on such matters, if urgent, even though express subject was not referred to in notice. There is no requirement that the board delay the matter until the next meeting, although nothing would prevent it from doing so either ...................... 66-68

Schools and school districts

The presence of more than one-half of the members of a governmental body in one place presumptively creates a meeting within the meaning of the Open Meeting Law, but the presumption is rebuttable and it is necessary to look to the facts in each case, including whether the members are convening for the purpose of exercising responsibilities, authority, power or duties delegated in the body ............................................... 66-254

Specificity of notice

Specificity of notice required by governmental body where agenda item includes item "Citizens and Delegations," cross reference 66 OAG 68 (1977). 66-195

State Fair

The Board of Directors of the Central Wisconsin State Fair Association, which was organized as a county agricultural society under section 1460, Stats. (1898), is not a governmental body within sec. 19.82(1), Stats., and is not subject to the Open Meeting Law. (Unpub) ........................................ 41-1983

Tape recordings

A member of the Dentistry Examining Board has a right to tape record an open meeting of the Board, providing he does so in a manner that does not interfere with such meeting; and the Board cannot lawfully deny such right. A Board member does not have a right to tape record a closed meeting of the Board .............................................. 66-318

Teacher's contract

"Private conference" held under sec. 118.22(3), Stats., on nonrenewal of teacher's contract is a "meeting" within sec. 19.82(2), Stats., and school board could hold closed session under sec. 19.85(1)(c), Stats., although specific notice to teacher under sec. 19.85(1)(b), Stats., would have to be
OPEN MEETING (continued)
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given where nonrenewal was based on charges and teacher would have right
to require open meeting where evidentiary hearing was held or before final
action or nonrenewal where charges were involved ............................. 66-211

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A telephone conference call involving members of a governmental body is a
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public notice must be given .......................................................... 69-143

Town board
A town board is a "governmental body" within the meaning of the Open
Meetings Law and is subject to its provisions, including the notice require­
ments of secs. 19.83 and 19.84, Stats. An annual town meeting is a meeting
of the electorate. It is not a "governmental body" within the meaning of the
Open Meetings Law, and therefore, notice under subch. IV, ch. 19, Stats., is
not required. If an annual town meeting is held at a time other than on the
first Tuesday in April, notice must be given as required by secs. 60.17(2) and
60.13, Stats. Other Open Meetings Law notice requirements discussed .. 66-237
Whereas it is preferable to hold meetings of a town board in a public building
such as a town hall, fire station or school building, such meeting can be
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Town meeting
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The Clinical Practice Plan Committee, Departmental Practice Plan Commit­
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and subject to the Open Meeting Law ............................................. 70-140

Volunteer fire department
Volunteer fire department organized as a nonprofit corporation pursuant to
sec. 213.05, Stats., is not a governmental or quasi-governmental corpo­
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19.81-19.98, Stats. ................................................................. 66-113

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Voting procedures employed by Worker's Compensation and Unemployment
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block on reconvening are contrary to secs. 66.77 and 15.09(4), (5), Stats... 63-414

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Application of subch. IV, ch. 19, Stats. (1975), to subchs. I, III, IV and V of
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Relations Commission ................................................................. 68-171

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OPTOMETRY

Corporations

Restrictions on business corporations providing medical, legal and dental services discussed ............................................................ 75-200

Crime victims compensation

Under ch. 949, Stats., DILHR is not authorized to direct payment of expenses incurred by victims of crime for dental, chiropractic, podiatric, or optometric services. (Unpub) ............................................................ 84-1977

Discrimination

Section 449.01(3), Stats., requires a county, under a group health care benefit plan providing coverage for eye examinations performed by a licensed physician and surgeon, to pay for such services performed by an optometrist. (Unpub.) ............................................................ 33-1989

Ophthalmic assistants

Ophthalmic assistants performing functions that are within the statutory definition of optometry under the delegation and supervision of an ophthalmologist are not engaged in the unlawful practice of optometry. A certified optometric technician who performs services included within the definition of optometry under the delegation and supervision of a licensed optometrist is engaged in the unlicensed practice of optometry........................... 74-146

Price advertising

The prohibition against advertising the price of lenses, frames and complete glasses contained in sec. 449.10, Stats., violates the First Amendment to the United States Constitution and therefore is invalid. Further, price advertising of lenses, frames and complete glasses by optometrists is not unprofessional conduct under sec. 449.08, Stats. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 96 S. Ct. 1817 (1976). 60 OAG 335 (1971) and 48 OAG 223 (1959) are withdrawn ........ 66-190

60 OAG 335 (1971) and 48 OAG 223 (1959) are withdrawn

ORDINANCES

Automobiles and motor vehicles

As used in sec. 165.87(2), Stats., the words “nonmoving traffic violations” apply only to violations of ordinances adopted under secs. 349.13 and 349.14, Stats., and violations of secs. 346.50 through 346.55, Stats. 66-308

Local governments can prohibit first acts of operating after revocation or suspension, but second offense will not be a crime 71-132

The ordinance adopted by the Village of West Milwaukee which authorizes the placement of an immobilization device on an automobile of an individual who has ten or more outstanding or otherwise unsettled traffic violations does not constitute a valid exercise of a municipality’s authority under Wisconsin law ............................................................ 77-73

Bad checks

Counties possess the statutory authority to enact and enforce ordinances prohibiting the issuance of bad checks and trespassing but do not have the authority to enact and enforce ordinances prohibiting battery and theft.... 78-38

Battery

Counties possess the statutory authority to enact and enforce ordinances prohibiting the issuance of bad checks and trespassing but do not have the authority to enact and enforce ordinances prohibiting battery and theft.... 78-38

Code of Ethics ordinance

County Board may provide for a penalty in the nature of a forfeiture for violation of a Code of Ethics ordinance but may not bar violators from running for office. Violation is not a neglect of duties required by law under
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Code of Ethics ordinance (continued)

sec. 59.10, Stats., or ipso facto cause for removal from office under sec. 17.09(1), Stats. 66-148

Questions concerning proposed county Code of Ethics ordinance answered.

1. A county board may provide for a forfeiture but not a fine for violations of an ordinance. 66 OAG 148 (1977). 2. A county board lacks the authority to prohibit county clerk (Election Commission in Milwaukee County) from placing on ballot candidates who have not complied with Code of Ethics ordinance. 3. County board lacks the authority to order the withholding of salary of elected officials who fail to comply with a Code of Ethics ordinance. 4. The county board lacks authority to prohibit county officers from acting as agent or attorney for an entity other than the county in connection with any transaction involving the county in which such officers participate during the course of their service for a period of 12 months after leaving county service. 5. A board created by the county board, unless it is a committee of the county board, lacks authority to issue subpoenas or administer oaths. 6. A county ordinance cannot provide for blanket nondisclosure of county ethics board opinions contrary to the Public Records Law. 67-164

Codification and publication of municipal ordinances discussed 70-124

Counties

Without statutory authority to do so, a county cannot use citations for violations of ordinances that have certain statutory counterparts. Section 66.119(3)(b), Stats., only authorizes the use of citations for violations of ordinances other than those for which a statutory counterpart exists 76-211

County clerk

Section 59.09(1), Stats., discussed in reference to requirement that county clerks must publish county ordinances and distribute copies to town clerks. 62-81

County conservation

A county ordinance passed under section 92.11, Stats., may be applicable to incorporated as well as unincorporated areas of the county, whereas a county ordinance passed under section 92.16 is applicable only in the unincorporated areas of the county 77-87

County zoning

A town with village powers that is subject to a county zoning ordinance is not prohibited by statute from any and all regulation of driveway installation. A town which is subject to a county zoning ordinance that contains no limitation on the issuance of county zoning permits may not set a quota on the number of residential building permits that the town will issue each year. The extent to which sec. 91.73(4), Stats., as created by ch. 29, Laws of 1977, and amended by ch. 169, Laws of 1977, alters the procedures applicable for the amendment of county comprehensive zoning ordinances under sec. 59.97(5)(e), Stats., is discussed 67-290

Discrimination

A county may enact an ordinance requiring its contractors to agree to a policy of non-discrimination in employment, even though such an ordinance provides broader protection than that afforded by state and federal equal employment opportunity laws, as long as such ordinance does not conflict with such laws 70-64

Equal employment opportunity

The employment practices of vocational, technical and adult education districts are subject to city equal employment opportunity ordinances. Such ordinances, however, can be applied only to employment within the geographic boundaries of the city 70-226

Fire alarm systems

A county has power under sec. 59.07(64), Stats., to enact an ordinance, applicable countywide, prohibiting the giving of false alarms on security or
ORDINANCES (continued)

Fire alarm systems (continued)

fire alarm systems connected to the Sheriff's department. Provisions amounting to a building code would not be applicable in cities, villages or towns having ordinances or codes covering the same subject. Authority of the Sheriff to act as licensing authority or to collect license fees discussed. 72-153

Firearm ordinance by Town exceeds authority

A town ordinance which purports to prohibit the use of firearms but exempts town residents and their guests is in effect a restriction on hunter numbers. As such, it infringes on and exceeds the authority of the Department of Natural Resources, and presents possible equal protection problems. 77-137

Marijuana

Chapter 161, Stats., the Uniform Controlled Substances Act, precludes the enactment of municipal ordinances regulating the sale and possession of such "controlled substances" as marijuana. 63-107

Counties may not enact ordinances in conformity with state statutes prohibiting the possession and sale of marijuana. 77-205

Milwaukee, City of

City has power to create an ordinance making possession of marijuana an offense in the City of Milwaukee. 63 OAG 107 discussed. (Unpub) July 9, 1975

Milwaukee charter ordinance concerning Chief of Police

Common Council of City of Milwaukee has power by reason of Wisconsin Constitution article XI, section 3, and section 62.03(2), Stats., to enact charter ordinance adopting section 62.09(13)(a), which provides that the Chief of Police shall have command of the police force of the City under the direction of the Mayor and that it is the duty of the Chief to obey all lawful written orders of the Mayor or Common Council. 73-64

Milwaukee County ordinances

The Milwaukee County board may not delegate the exclusive authority to approve contracts for budgeted public works projects to the museum board or to the zoological board. Except in extraordinary circumstances, the attorney general will not issue opinions concerning the meaning or intent of municipal ordinances. 77-120

Total prohibition of all use of all Milwaukee County park buildings for political purposes is unconstitutional. Validity of regulations restricting political assemblies to certain areas of certain parks depends on whether the restrictions may be considered reasonable "time, place and manner" regulations. Current sec. 47.02, Milwaukee County Ordinances vests unbridled discretion in permit-granting authority. To withstand constitutional attack explicit, objective standards ensuring even-handed application of the ordinance must be provided. 67-16

Mobile homes

In a town in which a county-wide zoning ordinance is effective, a town ordinance which purports to regulate the location of individual mobile homes is a zoning ordinance which can only be enacted in compliance with the provisions of sec. 60.74(7) or (8), Stats. Once the exercise of town zoning authority under sec. 60.74(7), Stats., is approved by referendum, town zoning ordinances and amendments need only be approved by the County Board. Section 60.74(7), Stats., requires the appropriate town authorities to hold a public hearing on town zoning, but no further hearing by the county authorities is required. 65-288

Municipalities

Codification and publication of municipal ordinances discussed. 70-124

Except in extraordinary circumstances, the attorney general will not issue opinions concerning the meaning or intent of municipal ordinances. OAG 26-88 discussed and adhered to. (Unpub) 58-1988
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Municipally-owned electric companies

Section 66.60(16) authorizes cities owning their own electric companies to pass ordinances allowing unpaid charges for furnished electricity to be placed on the tax bill of the receiving property; section 66.069(1)(b) cannot be construed to authorize such ordinances................................................................. 73-128

"Nonmoving traffic violations"

As used in sec. 165.87(2), Stats., the words "nonmoving traffic violations" apply only to violations of ordinances adopted under secs. 349.13 and 349.14, Stats., and violations of secs. 346.50 through 346.55, Stats. .......... 66-308

Nursing homes

Milwaukee County does not have authority to enact and enforce an ordinance which would establish certain rights of residents of nursing homes, group foster homes, residential care facilities and hospitals which contract for the care of residents. The State has given the Department of Health and Social Services preemptive authority over community-based residential facilities and nursing homes...................................................... 68-45

Purchase of lands

An ordinance enacted by a city council to purchase lands sold for taxes under sec. 74.43(3), Stats., only becomes operative where the County Board has not acted to purchase such lands under sec. 74.44(1), Stats. Advertising and bidding requirements of sec. 75.69(1), Stats., are not applicable to a sale to a city under sec. 75.69(2), Stats., but are applicable to a subsequent sale by a city, unless the transfer still falls within the exemptions in sec. 75.69(2), Stats. ................................................................. 67-150

Real estate taxes

Section 74.80(2), Stats., permits counties and cities to impose by ordinance a flat six percent or less penalty on overdue real estate taxes and special assessments, regardless of when they became or become overdue ............. 71-189

Register of Deeds

A county board lacks statutory authority to enact ordinances directing the register of deeds to refuse to record documents containing restrictive covenants or requiring the register of deeds to place notices on liber volumes and copies of real estate documents, directing the public's attention to the possibility that such covenants may be legally unenforceable............................ 77-262

Resurveys of public lands

Requirements for relocating established and perpetuation of the corners of the survey of the public lands discussed. Section 60.38, Stats., requires that resurveys of the public lands be recorded with the Register of Deeds in the county where the resurveyed land is located and kept as the County Board directs by resolution as long as a separate index is maintained.............. 66-126

State is subject to local zoning

Under sec. 13.48(13), Stats., the State is subject to local governmental zoning regulations when remodeling a newly acquired or leased facility ...... 67-251

Statutory counterparts

Without statutory authority to do so, a county cannot use citations for violations of ordinances that have certain statutory counterparts. Section 66.119(3)(b), Stats., only authorizes the use of citations for violations of ordinances other than those for which a statutory counterpart exists...... 76-211

Subdivision control ordinances

Discussion of the application of municipal and county subdivision control ordinances within the municipality's extraterritorial plat approval jurisdiction................................................................. 66-103

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Theft

Counties possess the statutory authority to enact and enforce ordinances prohibiting the issuance of bad checks and trespassing but do not have the authority to enact and enforce ordinances prohibiting battery and theft.... 78-38

Trespass to land

Counties possess the statutory authority to enact and enforce ordinances prohibiting the issuance of bad checks and trespassing but do not have the authority to enact and enforce ordinances prohibiting battery and theft.... 78-38

County Board has authority under sec. 59.07(64), Stats., to enact a county ordinance prohibiting trespass to land that is similar to and consistent with sec. 943.13, Stats. 69-92

University

Campus police have jurisdiction to arrest only on campus unless deputized by a sheriff. Local ordinances are not applicable on campus 68-67

Veto powers

A county board does not have power to amend a resolution, ordinance or part thereof, vetoed by the county executive, but can pass a separate substitute for submission to the executive. A county board has a duty to promptly reconsider vetoed resolutions, ordinances or parts thereof 74-73

County executive’s power of partial approval under Wisconsin Constitution article IV, section 23a, extends to any part of a county board resolution or ordinance containing an appropriation. Status of veto power of executives in populous counties discussed in view of court determination in 1959 that section 59.031(6) was unconstitutional and subsequent amendment of the Wisconsin Constitution 73-92

West Milwaukee

The ordinance adopted by the Village of West Milwaukee which authorizes the placement of an immobilization device on an automobile of an individual who has ten or more outstanding or otherwise unsettled traffic violations does not constitute a valid exercise of a municipality’s authority under Wisconsin law 77-73

Zoning

A county which has enacted a county-wide comprehensive zoning ordinance under sec. 59.97, Stats., may not enact any zoning provision authorizing withdrawal of town approval of such ordinance or otherwise specifically excluding or exempting any town from the operation of such ordinance...

1. An extraterritorial zoning ordinance may utilize interior section lines. 2. Interim extraterritorial zoning ordinances need not be based on a land use survey. 3. Amendment of interim extraterritorial zoning ordinances discussed. 4. Appeals under an interim extraterritorial zoning ordinance are handled by the city or village. 5. Administration of extraterritorial zoning is by the city or village. 6. The joint extraterritorial zoning committee continues to exist after adoption of the comprehensive extraterritorial zoning ordinance...

In a town in which a county-wide zoning ordinance is effective, a town ordinance which purports to regulate the location of individual mobile homes is a zoning ordinance which can only be enacted in compliance with the provisions of sec. 60.74(7) or (8), Stats. Once the exercise of town zoning authority under sec. 60.74(7), Stats., is approved by referendum, town zoning ordinances and amendments need only be approved by the county board. Section 60.74(7), Stats., requires the appropriate town au-
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the county authorities is required .................................................. 65-288

Towns exercising village powers can zone shorelands concurrently with coun-
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restrictive than the county ordinance .............................................. 65-108

Under sec. 13.48(13), Stats., the State is subject to local governmental zoning
regulations when remodeling a newly acquired or leased facility .......... 67-251

ORIGINAL RECORDS

Criminal cases

Clerks of court are not authorized to send the original records of criminal
cases to the public defendant prior to the time an appeal has been taken
unless an order signed by a judge of the court authorizes such release ...... 69-63

OUTDOOR RECREATION ACT

Highways

ORAP funds may be used for the planting of trees and shrubs along state
highways and to mark scenic easements as part of the State's beautification
and outdoor recreation programs .................................................. 62-135

Mildams

Recreational Program funds (ORAP) may be used to restore deteriorated
mildams provided a public use is evident ...................................... 63-245

Spectator sport facilities

The Department of Natural Resources has no authority to construct specta-
tor sport facilities in state forests, nor has it authority to lease state forest
lands for such purpose ............................................................. 63-519
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PARAMEDIC

See also MEDICAL AID

Acquired Immune Deficiency Syndrome

A police and fire commission is an employer under section 103.15, Stats., and may not test paramedic candidates for the HIV virus. Civil liability of the commission and the city it serves for claims brought by individuals who can prove that they contracted the HIV virus through employment-related contacts with paramedics discussed ........................................... 77–181

Liability

Interpretation of new law rendering "good Samaritans" immune from civil liability for good faith acts or omissions in giving emergency care at the scene of an emergency or accident. Statute excludes from protection health care practitioners who make their living or who specifically are paid for providing emergency care at the scene of an emergency or accident ........... 67–218

Services performed

The Department of Health and Social Services by rule may authorize the ambulance attendants to perform emergency care services which the statutes specify also are performable by paramedics, but only to the extent the Department finds that the attendants can perform those services safely by reason of their training. Attendants can perform those services under proper supervision of a physician unless the Department provides otherwise by rule, but the physician's decision to delegate a service to an attendant is reviewable by the Medical Examining Board and the attendant's decision to accept the delegation is reviewable by the Department ................................. 68–299

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The Department of Health and Social Services has authority to establish standards for ambulance attendants under sec. 146.50, Stats. Discussion of malpractice liability of state officers and employes .............................. 67–145

PARENTAL RIGHTS

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PARKING

See also COUNTY PARK COMMISSION; OUTDOOR RECREATION ACT; STATE PARKS
PARKS  (continued)

Counties

An agreement to purchase park land whereby a county is to make deferred payments from an existing nonlapsing account (sufficient to cover the entire obligation) secured by mortgaging the property to the grantor, would not create an obligation within the ambit of ch. 67, Stats., nor constitute a debt in the context of art. XI, sec. 3, Wis. Const. 63-309

Milwaukee County

Total prohibition of all use of all Milwaukee County park buildings for political purposes is unconstitutional. Validity of regulations restricting political assemblies to certain areas of certain parks depends on whether the restrictions may be considered reasonable “time, place and manner” regulations. Current sec. 47.02, Milwaukee County ordinances, vests unbridled discretion in permit-granting authority. To withstand constitutional attack explicit, objective standards ensuring even-handed application of the ordinance must be provided 67-16

Town sanitary district

Town sanitary district organized under secs. 60.30-60.309, Stats., has power to levy special assessments for improvements against county-owned park lands located within the district 64-206

PARTNERSHIP ACT

Power of attorney

Under the Limited Partnership Act, certificates required to be filed need not be accompanied by documents evidencing power of attorney. (Unpub) 6-1985

Paternity

See CHILDREN

Patients

See also PHYSICIANS AND SURGEONS

Prisons and prisoners

An individual in custody of the Sheriff for transport to, from and during an involuntary commitment hearing under sec. 51.20, Stats., has rights to the least restrictive restraint appropriate for the individual, regardless of the individual's patient status under sec. 51.61, Stats. 71-183

Penal Institutions

See PRISONS AND PRISONERS

Pensions

See also RETIREMENT SYSTEMS

Benefits and costs

The Legislature would not commit an unfair labor practice if it unilaterally increased state employe pension benefits and costs. Such increases would not apply to employees in collective bargaining units, however, unless the Legislature so provided expressly or by necessary implication. The Group Insurance Board, however, being a part of the executive branch of government, would commit an unfair labor practice if it unilaterally increased benefits and costs to state employees in collective bargaining units. The removal of state employees from the state retirement system, the cessation of all contributions thereto, and the removal of a bargaining unit from the provisions of ch. 40 are subjects of collective bargaining under the State Employment Labor Relations Act 64-18

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PENSIONS (continued)

Milwaukee

The City of Milwaukee cannot terminate a CETA employe's membership in the Retirement System on grounds not in effect by the time membership was attained, except as otherwise expressly provided by the Legislature. (Unpub) ................................................................. 41-1978

Teacher's Retirement Fund

Discussion of authority of Employe Trust Funds Board to change the form of payment to members of retirement benefits resulting from additional deposits in the Wisconsin Retirement Fund, State Teachers Retirement System and Milwaukee Teachers Retirement Fund. (Unpub) ............... 80-1977

PER DIEMS

See PUBLIC OFFICIALS

PERMITS

See LICENSES AND PERMITS

PERSONNEL BOARD

Clerical occupational group

The Personnel Board may not approve the assignment of a classification in the clerical occupational group to a lower pay range than the pay range to which a classification in a different occupational group is assigned if the classifications include positions involving "work of equivalent skills and responsibilities." The phrase "the principle of equal pay for work of equivalent skills and responsibilities" contained in sec. 230.09(2)(b), Stats., requires equal pay only for substantially similar or equal work. The Board may not give retroactive effect to the establishment of classifications and grade levels or the assignment of classifications to the appropriate pay rates or ranges ................................................................. 68-190

PERSONNEL COMMISSION

Discrimination

A state agency may insist on the presence of legal counsel when making agency personnel available for informal interviews conducted by Personnel Commission equal rights officers in the course of investigating complaints of employment discrimination against such state agency, where the equal rights officer wishes to (1) conduct on the job interviews of nonmanagerial personnel, or (2) interview agency supervisors who are not named or "immediately" involved in the discriminatory actions in question ....................... 70-167

The Personnel Commission possesses the same powers and duties in processing discrimination complaints involving a state agency as employer as those exercised by the Department of Industry, Labor and Human Relations with respect to discrimination complaints involving an employer other than a state agency including the power to investigate complaints and to issue subpoenas ................................................................. 68-403

Quorum

A single member of the Personnel Commission is empowered to act as the Commission where two of the three Commission positions are vacant .... 68-323

PHARMACY

Controlled substances

Researcher must obtain Controlled Substances Board registration to obtain controlled substances under Wisconsin law even though such substances are exempt under federal law. (Unpub) ................................................................. 66-1976
Counties

County supervisor who is pharmacist is probably not in violation of sec. 946.13, Stats., when he furnishes prescription services to medicaid patients where State is solely liable for payment .................................................. 64–108

Licenses and permits

The Pharmacy Examining Board may utilize the services of a National Examining Board in passing on applicants for licensure, but the Board must make the final decision as to licensure. The conditions of post-examination review with applicants discussed .................................................. 68–48

Medicaid patients

County supervisor who is pharmacist is probably not in violation of sec. 946.13, Stats., when he furnishes prescription services to medicaid patients where State is solely liable for payment .................................................. 64–108

Out-of-state

Out-of-state pharmacist not registered in Wisconsin is in violation of secs. 450.04(2) and 450.07(3), Stats., where he or she on a regular and continuing basis solicits orders for the retail sale of prescription drugs, where preparation is out-of-state and delivery is by mail to patients located in Wisconsin .................................................. 72–121

Prescribed drugs

The provisions of ch. 168, Laws of 1975, allow only limited substitution of prescribed drugs through a formulary .................................................. 65–137

Pricing arrangements

The State and local units of government are not "purchasers" under sec. 100.31, Stats., and sellers of drugs are not prohibited from offering or according to them pricing arrangements which are not made available to other purchasers .................................................. 65–59

Vitamins

Vitamins not intended for use in the diagnosis, cure, investigation, treatment or prevention of diseases are not drugs within the meaning of sec. 450.06, Stats., and may be sold in stores other than pharmacies .................................................. 66–137

PHARMACY, STATE BOARD OF

Licenses and permits

A letter of reprimand properly may be imposed only after affording opportunity for hearing as provided for in a Class 2 contested case. Sec. 227.01(2)(b), Stats. If no objection was made by licensees appearing before the Board on previous reprimand hearings and if there was substantial compliance with sec. 227.07, Stats., irregularities in procedure may be considered waived .................................................. 67–188

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Practicing without referral

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Chiropractic practice

The Medical Practices Act, ch. 448, Stats., permits a physician, subject to certain limitations, to advise a patient whether or not continued chiropractic care is necessary, and the giving of such advice while it may technically fall within the definition of chiropractic practice, does not constitute the unauthorized practice of chiropractic ................................. 68-316

Confidential communications

A medical or mental health professional may report suspected child abuse under the permissive provisions of section 48.981(3), Stats., when the abuser, rather than the victim, is seen in the course of professional duties. Section 51.30 does not act as a bar to such reports made in good faith .... 76-39

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Crime victim compensation

Under ch. 949, Stats., DILHR is not authorized to direct payment of expenses incurred by victims of crime for dental, chiropractic, podiatric, or optometric services. (Unpub) .................................................. 84-1977

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If a submission of controversy under ch. 655, Stats., is dismissed on the merits by voluntary agreement, the claimant is barred from commencing a second action on the same claim, but claimant may be relieved from the dismissal stipulation and the matter may be effectively "reopened" if there is a basis for according relief and the Patients Compensation Panel exercises its discretion to grant such relief ............................................. 71-1

Dispensing drugs, medicines

The practice of dispensing drugs, medicines, or other articles by physicians' office personnel permitted by 41 OAG 23 (1952) within the purview of sec. 450.04(3), Stats., is not in violation of sec. 450.04(2), Stats., prohibiting dispensing of such items by persons other than registered pharmacists or registered assistant pharmacists under pharmacist supervision, or in violation of sec. 450.07, Stats., prohibiting the delivering of a prescription drug without a prescription of a practitioner. Long-standing 41 OAG 23 is not modified. Violations of sec. 450.04(2) or sec. 450.07(2), Stats., should be reported to appropriate law enforcement authorities ......................... 63-335

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Eye enucleation

Special training is required of medical personnel as well as morticians before they perform eye enucleation ............................................. 77-207

"Fee-splitting"

There is no violation of the "fee-splitting" statute, sec. 448.08(1), Stats., where a physician, through a service corporation owned by the physician, bills the patient for his own services, and that of physical therapist employed by the corporation, provided the billing states an accurate dollar figure for the respective services. A medical professional service corporation
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Privileged communications

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Service corporation directors

A service corporation incorporated under section 180.99, Stats., by persons all licensed in the same profession may not have persons on the board of directors who do not have the same license as the original incorporators. (Unpub) ................................................................. 45-1985

Submission of controversy

If a submission of controversy under ch. 655, Stats., is dismissed on the merits by voluntary agreement, the claimant is barred from commencing a second action on the same claim, but claimant may be relieved from the dismissal stipulation and the matter may be effectively “reopened” if there is a basis for according relief and the Patients Compensation Panel exercises its discretion to grant such relief ................................................. 71-1

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Condominium

Unless a condominium under ch. 703, Stats., actually involves a division of land, or successive divisions of land, it is not subject to the land platting and subdivision approval requirements of ch. 236, Stats. The extent to which local governments may vary the terms of secs. 236.16(1) and (2) and 236.20(4)(d), Stats., by ordinance, discussed 64-175

The legal description of condominium units must conform to the requirements of chapter 703, Stats., the Condominium Law. The requirements of chapter 236, dealing with platting and subdividing, may not be used to legally describe condominium units 75-94

Coroner

The offices of coroner and deputy coroner are incompatible with that of city police officer; and the office of coroner is incompatible with that of assistant chief of a volunteer fire department 78-49

Elections

Where town sanitary district consists of territory wholly within one town and town board has not designated its members as commissioners but has appointed commissioners, town board is not required to call special election to elect commissioners if petition signed by at least twenty percent of the qualified electors of the district is filed 69-245

Ink-drawn plat

1. Section 236.20(1)(a), Stats., requires that plats be submitted on the paper described therein. Plats submitted on other paper are objectionable. 2. Only the original ink-drawn plat on the required paper can be recorded with the Register of Deeds 67-8

Island subdivision

Discussion of the circumstances under which the statutory platting standards set forth in secs. 236.16(1), (2) and (3) and 236.20(4)(d), Stats., may be waived or varied with specific reference to the approval of island subdivision plats 62-315

Lot size

For the purpose of determining lot area under the provisions of sec. 236.02(8), Stats.: 1. If a lot abuts a public or private road or street, the total lot size (area) does not include the land extended to the middle of the road or street. 2. An easement of access to a parcel is not to be included in determining the total lot area. 3. A body of navigable water separates a parcel of land as effectively as does a public highway 66-1

Meandered lake

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Navigable waters

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Public access

The duties of the head of the planning function in the Department of Local Affairs and Development in administering and coordinating plat proposal reviews under sec. 236.12, Stats., in checking for compliance with the minimum survey layout and format requirements set forth in secs. 236.15, 236.16, 236.20 and 236.21(1) and (2), Stats., do not trigger environmental assessment under sec. 1.11, Stats. The Department of Local Affairs and Development and the Department of Natural Resources are not required to undertake an environmental assessment in instances where a variance in the public access to navigable waters requirements of sec. 236.16(3), Stats., is proposed since such a review is impossible. (Unpub) ......................... 93-1977

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Discussion of the extent to which sec. 236.45(2)(a)3., Stats., limits the application of local subdivision regulations to divisions of lands. (Unpub) ...... 18-1976

Subdivision surveys

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The duties of the head of the planning function in the Department of Local
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reviews under sec. 236.12, Stats., in checking for compliance with the mini­
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assessment under sec. 1.11, Stats. The Department of Local Affairs and
Development and the Department of Natural Resources are not required to
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A warrantless arrest and detention for bail jumping, section 946.49, Stats., is
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Flashing blue lights on public vehicles are prohibited by sec. 347.07(2)(c),
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Previous opinion at 65 OAG 273 (1976), to the effect that sec. 66.11(1), Stats.,
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Court decision with respect to a similar requirement in New York ............ 68-61

Confidential reports

A school cannot use confidential information obtained from law enforcement
authorities to require students, under threat of expulsion, to participate in
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a police officer to take disciplinary action against a student as long as the
school does not reveal the reason for the disciplinary action to parties not
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men or constables as these law enforcement officers are “public officers”
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The police may justifiably prevent a district attorney from inspecting their
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The Milwaukee Board of Fire and Police Commissioners does not have
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United States Age Discrimination in Employment Act. Such mandatory retirement can apply to the incumbent chiefs ................................................. 69–232

Posse comitatus

A state traffic patrol officer should not except in extreme emergencies be impressed for service as part of a posse comitatus pursuant to sec. 59.24(1), Stats. Where duly impressed he is entitled to worker's compensation, if injured, from the county or municipality but would not be entitled to regular pay from the State and probably would not be entitled to worker's compensation from the State .................................................. 62–38

Public records

Sheriff's radio log, intradepartmental documents kept by sheriff and blood test records of deceased automobile drivers in hands of sheriff are public records subject to inspection and copying under sec. 19.21(2), Stats., and subject to limitations contained in court cases cited which place duty on custodian to withhold disclosure where substantial harmful effect upon the public interest would result. Specific reason for withholding must be given which may be tested by mandamus in the courts. Such records do not appear to be records required by law to be kept by sheriff. Where records are required by law to be kept by sheriff, right of inspection exists under sec. 59.14(1), Stats. That portion of 41 OAG 237 (1952) inconsistent with this opinion is repudiated .................................................. 67–12

Release on bail denied discussed

Acting under the authority of section 969.07, Stats., local law enforcement officials may deny release from custody to a person arrested for a misdemeanor if in the officials' opinion the person is not in a fit condition to care for his or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others .................................................................. 75–209

Residency

Whereas a deputy sheriff must be a resident of the county for which appointed, secs. 59.24(2), 66.30, 66.305 and 66.315, Stats., would allow such deputy to serve in an adjacent county upon request for mutual assistance . 62–250

Retirement funds

Section 40.21(4), Stats., limits prospective mandatory Wisconsin Retirement System coverage to present and future police and firefighter employees of cities and villages that had police and firefighter employees included in the Wisconsin Retirement Fund prior to March 31, 1978 .................................................. 75–34

Security guards

Police officers working as private security persons are subject to the same licensing provisions in sec. 440.26, Stats., as are non-police officers............. 69–226

Surety bonds

Law enforcement officers may be authorized by court rule to accept surety bonds for, or, under specified circumstances, 10 percent cash deposits of, the amount listed in a misdemeanor bail schedule when an accused cannot be promptly taken before a judge for bail determination. However, such rules may not afford officers discretion as to the amount or form of bail an individual accused must post ............................................. 63–241

Testimony, credibility of

In a criminal case in which a police officer testifies as a witness for the prosecution, a district attorney may have a duty under Brady v. Maryland, 373 U.S. 83 (1963), to disclose to the defendant information that another police officer in the same police department had claimed that the officer-witness did not tell the truth under oath in court in another, unrelated case. 75–62
Town constable

Powers of town constable are largely statutory and include power to make arrests for violations of state traffic laws and enforce town ordinances. Town board has only limited control over such officer and cannot restrict such officer's statutory law enforcement activities. Annual town meeting of electors establishes compensation in lieu of statutory fees...

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Tribal police

The Menominee County Sheriff's Department and the Menominee tribal police may carry out a program of cross-deputation. Menominee tribal police must meet the statutory and constitutional requirements for appointment as deputy sheriffs. (Unpub)................................. 93-1979

University

The University of Wisconsin has no authority to agree to hold harmless a county that incurs liability because of a university officer's torts, but the common law of indemnification would require such officer to indemnify that county and statutory indemnification would require the state to indemnify the officer when acting in the scope of his/her employment. A county sheriff may deputize university campus police officers and restrict that deputation to particular times, places and crimes. An otherwise valid arrest would not be rendered invalid, however, solely because the officer exceeded the scope of that deputation ......................................................... 78-1

Unmarked police car

A person who flees or attempts to elude an unmarked police car, with flashing red lights and/or siren operating, does not violate sec. 346.04(3), Stats., unless the person knows that the signal from the unmarked vehicle was given by a traffic officer .............................................................. 65-27

Water safety patrol officers

Water safety patrol officers in county patrol, created as a separate agency, do not have to be deputized by Sheriff to enforce secs. 30.50-30.80, Stats., Wisconsin's regulation of boating law......................................... 65-169

Witness fees

Where it is duty of county traffic officer to prosecute or assist in prosecution of county traffic offense he is not entitled to witness fees but may be paid additional compensation where duty takes place outside regular working hours.......................................................... 62-93

Worker's compensation

A state traffic patrol officer should not except in extreme emergencies be impressed for service as part of a posse comitatus pursuant to sec. 59.24(1), Stats. Where duly impressed he is entitled to worker's compensation, if injured, from the county or municipality but would not be entitled to regular pay from the State and probably would not be entitled to worker's compensation from the State .......................................................... 62-38

POLITICAL FUND

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POLLUTION

See also NATURAL RESOURCES, DEPARTMENT OF; WASTE MANAGEMENT; WATER POLLUTION

Air

A work area established only by movable partitions which do not extend completely from floor to ceiling is not included in the term "office" as defined in section 101.123(1)(c), Stats. (Unpub) ................................. 21-1984
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"Air quality"

The definition of “air quality” contained in State Amendment 2 to 1973 Senate Bill 40 is adequate to comply with the federal Clean Air Act of 1970 (P.L. 91-604) as recently construed in federal court decisions. The definition of “existing ambient air quality” as it is contained in Senate Amendment 2 to 1973 Senate Bill 40 may be in conflict with any base line reference date for existing air quality which may be adopted under the Clean Air Act of 1970 as recently construed in federal court decisions. 63-64

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Federal Clean Air Act

Assembly Bill 221, if enacted, would be superseded under federal Clean Air Act of 1970 ................................................................. 62-165

Indian reservations

Chapter 147, Stats., relating to water pollution control, did not authorize DNR to regulate Indian reservations and lands since the Legislature, in adopting provisions fashioned after federal law, intentionally omitted Indian tribal organizations from the scope of coverage while charged with knowledge that the State generally lacks power to regulate within sovereign Indian territory. (Unpub) ...................................................... 51-1978

Mining operations

The state net proceeds occupation tax and mining permit process are generally not applicable to mining operations on the Sokaogon Reservation, whether those operations are conducted by the Tribe or by a non-Indian lessee. Any federal environmental impact statement required by the federal government would legally need to be shared with or presented to the State. The applicability of state pollution control laws to mining activity on the Reservation is also discussed .......................... 75-220

Property owners

Individual property owners incidentally affected by a Department of Natural Resources legislative decision to approve or disapprove plans for an air contaminant source pursuant to sec. 144.39, Stats., are not guaranteed a hearing before the Department by statute or by constitutional provisions of due process. Thus, proceedings under sec. 144.39, Stats., do not constitute a contested case.................................................. 64-115

Smoking

A work area established only by movable partitions which do not extend completely from floor to ceiling is not included in the term “office” as defined in section 101.123(1)(c), Stats. (Unpub) ......................... 21-1984

State discharge permits

Assembly Bill 128 which is designed to create a system of state discharge permits congruent with the National Pollutant Discharge Elimination System created by the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) cannot be amended to tie deadlines under the state law to the availability of federal financial assistance for municipalities without violating the federal Act ................................................................. 62-115

Water pollution control

Chapter 147, Stats., relating to water pollution control, did not authorize DNR to regulate Indian reservations and lands since the Legislature, in adopting provisions fashioned after federal law, intentionally omitted Indian tribal organizations from the scope of coverage while charged with knowledge that the State generally lacks power to regulate within sovereign Indian territory. (Unpub) ...................................................... 51-1978

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Consecutive sentences
A criminal defendant who receives consecutive sentences that in the aggregate exceed one year, but individually are all less than one year, should be incarcerated in a county jail rather than the Wisconsin prison system .... 78-44

Contempt, civil and criminal
A person confined in the county jail for civil (remedial) contempt of court is not eligible for "good time" credit under section 53.43, Stats. ................. 74-96

Correctional staff
Correctional staff have the authority, and possess the power of a peace officer in pursuing and capturing escaped inmates ................................. 68-352

Costs of medical care
See Medical care

County Clerk
As custodian of the jail and its prisoners, the Sheriff has the exclusive right to determine where duplicate sets of jail keys will be kept; the County Clerk is not authorized to retain a duplicate set of jail keys if the Sheriff does not agree to such possession .................................................. 68-330

County jail
A criminal defendant who receives consecutive sentences that in the aggregate exceed one year, but individually are all less than one year, should be incarcerated in a county jail rather than the Wisconsin prison system .... 78-44
Neither the sheriff nor the county board may "privatize" the jailer function of the office of sheriff under section 59.23(1), Stats., by contracting with a private firm to take charge and custody of county prisoners held in the county jail .................................................. 77-94
A county cannot meet the requirements of sec. 59.68(1), Stats., by constructing a jail outside the county seat and maintaining a facility at the county seat to be used only for securing defendants on the day of trial. A facility housing county jail functions other than rehabilitation may not be located outside the county seat. (Unpub) .............................................. 32-1975

Emergency medical treatment
Section 53.38, Stats., is exclusively applicable in providing relief from medical and hospital care costs incurred by an indigent prisoner while receiving emergency medical treatment in a hospital ........................................ 69-230

Good time
Persons committed pursuant to a verdict of not guilty by reason of mental disease or defect should be credited with statutory good time pursuant to sec. 971.17(4), Stats., only after the effective date of that statute............ 70-169
A person confined in the county jail for civil (remedial) contempt of court is not eligible for "good time" credit under section 53.43, Stats. ................. 74-96

Group homes
Community-based residential facilities and child welfare agencies, facilities, or group foster homes do not necessarily become prisons or jails by reason of the placement therein of adult criminal or juvenile offenders in the custody of the State. The question whether a particular facility has become
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a prison or jail depends on whether the primary purpose of the facility has become penal ................................................................. 69-52

Guards

Upon appropriate call, state traffic patrol officers may act as peace officers during a prison riot or other disturbance even when this occurs during a strike of prison guards; they may not, however, perform other duties of guards ................................................................. 68-104

Health and Social Services, Department of

Department of Health and Social Services has power to compel cooperation of county and local officers in obtaining jail information. Sec. 46.16, Stats. 67-242

Section 46.16, Stats., does not convey authority to the Department of Health and Social Services to order methods of operation, numbers and qualifications of staff, standards for food service, and the nature of treatment and training programs in local places of confinement. Section 46.17, Stats., relates to construction and maintenance of confinement buildings and provides no additional authority to the Department under sec. 46.16, Stats. 63-267

Huber Law

Sheriff's jail policy prohibiting Huber Law prisoners from pursuing employment in business establishments that dispense alcoholic beverages impermissibly conflicts with the Huber Law ........................................ 74-113

Jailer

The provisions of sec. 53.41, Stats., which require that at least one jailer on duty be of the same sex as those persons in custody does not conflict with the anti-sex discrimination provisions of the Wisconsin Fair Employment Act concept of "bona fide occupational qualification" under federal Title VII of the 1964 Civil Rights Act discussed. Counties must comply with sec. 53.41, Stats., when they can do so without conflict with Title VII .............. 70-202

Medical care

A sheriff may not refuse to book a person lawfully arrested and brought to the county jail by any state law enforcement agency, regardless of the medical condition of the arrestee, although he may require immediate medical screening pursuant to section 53.38, Stats. A sentencing court that imposes county jail time as a condition of probation may suspend that jail time while the probationer receives hospital care, and a sheriff and county department of human services may cooperate in the billing of medical care provided to county jail prisoners ........................................ 77-249

Law relating to liability for cost of providing hospital and medical care to indigent person under arrest discussed. Secs. 53.38 and 49.02(5), Stats...... 67-245

Medication

Preparation of medication by a nurse under direction of a physician is permissible under sec. 450.04(3), Stats. Delivery of such medication to prisoners by jail attendants pursuant to instructions of the physician is permissible under sec. 450.07(2), Stats.................................................. 66-178

Mental disease

Persons committed pursuant to a verdict of not guilty by reason of mental disease or defect should be credited with statutory good time pursuant to sec. 971.17(4), Stats., only after the effective date of that statute................. 70-169

Paralegal personnel

A jailer may not absolutely prohibit paralegal personnel from conducting interviews of inmates but may adopt reasonable regulations to assure discipline and control of inmates and maintenance of order and safety in the jail. A jailer cannot set up certification or training requirements for paralegal personnel who are assigned by lawyers to interview inmates. A jailer cannot deny paralegal personnel access to inmate clients of lawyers, solely because
PRISONS AND PRISONERS (continued)

Paralegal personnel (continued)

of past criminal record of such paralegal personnel. A jailer can control and
limit visits by paralegal personnel because of overcrowding or lack of
adequate facilities but may not prohibit such visits for those reasons...... 64-152

Privatization

Neither the sheriff nor the county board may "privatize" the jailer function of
the office of sheriff under section 59.23(1), Stats., by contracting with a
private firm to take charge and custody of county prisoners held in the
county jail .......................................................... 77-94

Probation and parole

When a probationer or parolee has been arrested for and charged with a new
crime and also appears to have violated other conditions of probation or
parole, which violations themselves appear to justify revocation, the De­
partment of Health and Social Services has no obligation to delay revoca­
tion hearings until court proceedings on the new crime are completed. It
may and should proceed with such hearings and, when appropriate, revoke
probation or parole on the basis of the other proven violations of the
conditions thereof. Under the described circumstances, the Department and
the probationer or parolee may, but probably should not, agree to delay
revocation hearings until the completion of court proceedings on the new
crime. The use of Department-employed hearing examiners to conduct final
probation and parole revocation hearings, at which they make rulings on
motions and ask supplemental questions of witnesses, and to make a synop­
sis of the evidence, findings of fact, and a recommendation to the Secretary
of the Department of Health and Social Services, who makes the decision
on revocation, is consistent with the requirements of due process as defined
in applicable federal and state court decisions........................... 65-20

Public defender access to prisoners

The state public defender may be denied access to jail inmates who have not
requested counsel, and jail authorities need only provide over the telephone
that information necessary for the public defender to assess the need to
make an indigency determination in person under section 977.07(1), Stats.,
for an inmate who has requested counsel and claims indigency .......... 78-133

Reapportionment

Institutional populations, as well as other populations which may include
persons disenfranchised for some reason, are part of the total population
included in the 1980 federal decennial census of population and may not be
disregarded for congressional or state legislative redistricting purposes. U.S.
Const. art. I, sec. 2; Wis. Const. art. IV, sec. 3. Although the Legislature
may constitutionally authorize the use of voter population or citizen popu­
lation for local apportionment purposes, when total population is used for
the purpose of equal population redistricting of county supervisory or city
aldermanic districts on the basis of the 1980 census population, institutional
populations cannot be excluded from the total population count .......... 70-80

Release

The Department of Health and Social Services has authority to supervise
defendants conditionally released under section 971.17(2), Stats., if the
court orders such supervision as a condition of release. The period of
supervision, when added to the time defendant has spent in the treatment
institution, cannot exceed the maximum term of imprisonment as defined in
section 971.17(4). Such maximum term must be calculated as if consecutive
sentences had been imposed. The Department lacks authority to supervise
defendants released under section 971.17(4).......................... 73-76

Release on bail denied discussed

Acting under the authority of section 969.07, Stats., local law enforcement
officials may deny release from custody to a person arrested for a misde-
PRISONS AND PRISONERS (continued)

Release on bail denied discussed (continued)
meanor if in the officials' opinion the person is not in a fit condition to care
for his or her own safety or would constitute, because of his or her physical
condition, a danger to the safety of others .............................. 75–209

Restraint

An individual in custody of the Sheriff for transport to, from and during an
involuntary commitment hearing under sec. 51.20, Stats., has rights to the
least restrictive restraint appropriate for the individual, regardless of the
individual's patient status under sec. 51.61, Stats. .......................... 71–183

Sentencing

A criminal defendant who receives consecutive sentences that in the aggregate
exceed one year, but individually are all less than one year, should be
incarcerated in a county jail rather than the Wisconsin prison system .... 78–44

Courts cannot place conditions on a sentence of incarceration. Pursuant to
statutes, a court may order a defendant to perform community service work
in lieu of part or all of a fine imposed by the court or as a condition of
probation. A court cannot impose probation or order a defendant to per­
form community service work in lieu of imposing a statutorily required
minimum jail sentence .......................................................... 71–41

Sex discrimination

The provisions of sec. 53.41, Stats., which require that at least one jailer on
duty be of the same sex as those persons in custody does not conflict with
the anti-sex discrimination provisions of the Wisconsin Fair Employment
Act concept of "bona fide occupational qualification" under federal Title
VII of the 1964 Civil Rights Act discussed. Counties must comply with sec.
53.41, Stats., when they can do so without conflict with Title VII .... 70–202

State patrol

Upon appropriate call, state traffic patrol officers may act as peace officers
during a prison riot or other disturbance even when this occurs during a
strike of prison guards; they may not, however, perform other duties of
guards .................................................................................. 68–104

Temporary jail officers

Section 165.85(4)(b)2, Stats., does not preclude the temporary assignment of
uncertified persons to fill in as jail officers when necessary as a result of
sickness, vacations or scheduling conflicts .................................. 78–146

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Rights and responsibilities of counties in prisoner transfers to the Wisconsin
Resource Center discussed ...................................................... 71–170

PRIVATE CLINICS

Bonds

Discussion of what constitutes a "clinic" under sec. 66.521(2)(b)7., Stats. 64–133

PRIVATE DETECTIVES

Badge

Section RL 3.24 Wis. Adm. Code prohibits use of any badge by those
engaged in private detective activity. Non-misleading private use by those
not engaged in private detective activity not prohibited by statute .... 68–169

Expert witnesses in arson cases

Section 440.26, Stats., requiring the licensing of private detectives, does not
apply to qualified arson experts or other expert witnesses merely because
they may investigate matters relating to their field of expertise ....... 76–35
PRIVATE INDUSTRY COUNCIL

Job Training Partnership Act

Section 946.13(1)(a), Stats., may be violated by members of Private Industry Councils when private or public entities of which they are executives, directors or board members receive benefits under the Job Training Partnership Act ................................................................. 77-306

PRIVATE SCHOOLS

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PROBATE

See REGISTER IN PROBATE

PROBATION AND PAROLE

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Consecutive terms

Under sec. 973.09(1), Stats., a court may not impose consecutive probation terms ................................................................. 69-173

"Costs of prosecution"

Courts lack authority to impose and enforce payment of "costs of prosecution" as a condition of probation in absence of statutory authority; courts may dismiss a criminal charge upon payment of agreed "costs of prosecution" as part of plea bargain which court accepts. (Unpub) ................. 42-1982

Courts

Neither sec. 973.09(3)(a), Stats., nor any of the other probation statutes authorizes the trial court to shorten the period of probation once probation has been imposed. (Unpub) .................................................... 39-1982

Indigent

When required by the right effectively to present a defense, the Department of Health and Social Services, having authority to do so, in the exercise of sound discretion must issue, and for an indigent pay the costs of, compulsory process to obtain the attendance of witnesses on behalf of probationers and parolees at revocation proceedings ........................................ 63-176

Jail credit

The Department of Health and Social Services may not grant jail credit where it is not provided for by statute; credit is not to be granted to parolee for period of time spent in custody on new charge and conviction in foreign jurisdiction; credit is not to be granted for period of time revoked parolee spends in detention facility other than correctional facility nor for period of time revoked probationer spent in county jail on work-release as condition of probation ................................................................. 71-102

Juvenile

The Department of Health and Social Services has exclusive authority to detain and release a child who has violated the conditions of probation imposed by a court of criminal jurisdiction. The child need not be brought before a juvenile court intake worker if he or she is not also detained as a delinquent. The child can be held in the adult section of the county jail ...

New crime

When a probationer or parolee has been arrested for and charged with a new crime and also appears to have violated other conditions of probation or parole, which violations themselves appear to justify revocation, the Department of Health and Social Services has no obligation to delay revocation hearings until court proceedings on the new crime are completed. It may and should proceed with such hearings and, when appropriate, revoke

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New crime (continued)
probation or parole on the basis of the other proven violations of the conditions thereof. Under the described circumstances, the Department and the probationer or parolee may, but probably should not, agree to delay revocation hearings until the completion of court proceedings on the new crime. The use of Department-employed hearing examiners to conduct final probation and parole revocation hearings, at which they make rulings on motions and ask supplemental questions of witnesses, and to make a synopsis of the evidence, findings of fact, and a recommendation to the Secretary of the Department of Health and Social Services, who makes the decision on revocation, is consistent with the requirements of due process as defined in applicable federal and state court decisions......................... 65-20

Revocation hearings

When a probationer or parolee has been arrested for and charged with a new crime and also appears to have violated other conditions of probation or parole, which violations themselves appear to justify revocation, the Department of Health and Social Services has no obligation to delay revocation hearings until court proceedings on the new crime are completed. It may and should proceed with such hearings and, when appropriate, revoke probation or parole on the basis of the other proven violations of the conditions thereof. Under the described circumstances, the Department and the probationer or parolee may, but probably should not, agree to delay revocation hearings until the completion of court proceedings on the new crime. The use of Department-employed hearing examiners to conduct final probation and parole revocation hearings, at which they make rulings on motions and ask supplemental questions of witnesses, and to make a synopsis of the evidence, findings of fact, and a recommendation to the Secretary of the Department of Health and Social Services, who makes the decision on revocation, is consistent with the requirements of due process as defined in applicable federal and state court decisions......................... 65-20

Welfare fraud clients as county employes

Probationers who provide child-care services under a state-run program as a condition of their probation are not agents of the State for purposes of indemnity, but they are county employes for purposes of worker's compensation ......................................................... 75-43

PROPERTY

Easement and owners' rights

The rights of property owners abutting a highway are subject to reasonable regulations imposed by highway maintenance authorities and are subordinate to the public's interest over the use of the land within the boundaries of a highway right-of-way................................................................. 75-10

Exploration and mining rights

Exploration and mining rights constitute interests in land, and ownership of such interests are subject to the provisions of sec. 710.02, Stats., limiting nonresident ownership of land in Wisconsin.................. 69-126

Inland lake protection and rehabilitation districts

Voting rights at the annual meeting of inland lake protection and rehabilitation districts may be extended by the Legislature to nonresident property owners, but only pursuant to a statewide referendum under Wis. Const. art. III, sec. 1(3)................................................................. 69-32
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Nonresident owners

Exploration and mining rights constitute interests in land, and ownership of such interests are subject to the provisions of sec. 710.02, Stats., limiting nonresident ownership of land in Wisconsin. 69-126

Voting rights at the annual meeting of inland lake protection and rehabilitation districts may be extended by the Legislature to nonresident property owners, but only pursuant to a statewide referendum under Wis. Const. art. III, sec. 1(3). 69-32

Old age assistance

The general concept of allowing elderly homeowners (age sixty-five or seventy) of low and moderate income to defer repayment of money advanced to them by the State for payment of their property taxes, with such loan being secured by some type of priority lien on the property involved, is constitutional. However, funds for such a program cannot be obtained through general obligation bonding, within the meaning and intent of Wis. Const. art. VIII, sec. 7. The financing of such a program with revenue bonds probably would be constitutional under Wis. Const. art. VIII, secs. 3, 4, 7. (Unpub) 13-1981

Refunds of taxes erroneously assessed

Section 74.73(2), Stats., provides that where a town, city or village refunds property taxes erroneously assessed as a result of an error or defect of law not caused by such local taxing jurisdiction or an official thereof, such entity is entitled to a credit by the county for that portion of such taxes previously paid over to the county. The statute does not direct that the next county levy be increased by such amount or authorize the county to levy a "special county charge" against such entity to recoup the amount so credited. 77-201

Tax Increment Law

The Tax Increment Law appears constitutional on its face and the Department of Revenue should carry out its duties and responsibilities under the law as directed by the Legislature. 65-194

Tax payment dates for 1988

When the deadline dates for making property tax installment payments fall on Sundays, the deadlines for making personal payments and postmarking mailed payments are extended to the next business days, which in 1988 are February 1 and August 1. To satisfy section 74.025, Stats., the proper official should receive mailed payments within five days of those dates, not within five days of January 31 and July 31. 77-1

Taxes erroneously assessed

Section 74.73(2), Stats., provides that where a town, city or village refunds property taxes erroneously assessed as a result of an error or defect of law not caused by such local taxing jurisdiction or an official thereof, such entity is entitled to a credit by the county for that portion of such taxes previously paid over to the county. The statute does not direct that the next county levy be increased by such amount or authorize the county to levy a "special county charge" against such entity to recoup the amount so credited. 77-201

PROTECTIVE OCCUPATION
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PSYCHOLOGY EXAMINING BOARD

Psychology Examining Board

Psychology Examining Board can require a letter articulating specialties licensee intends to include in his/her practice. (Unpub) 75-1976
PUBLIC ACCESS

See also NATURAL RESOURCES, DEPARTMENT OF; PLATS AND PLATTING

Fish from state hatcheries

Department of Natural Resources has the power under secs. 29.50 and 30.77, Stats., to withhold stocking with fish from state hatcheries from bodies of water where public access is inadequate. Determination of adequacy of access rests on consideration of reasonableness of fee charged for use of public boat launching facilities as well as quantity of parking facilities provided. The Department may, but is not bound to, require that reasonable access be afforded at all times to the general public. Larger fees may in some circumstances be imposed on larger boats, and large boat access probably could be regulated. Provision of special facilities for the handicapped is encouraged but not required................. 68-233

Navigable waters

The application of secs. 236.16(3) and (4), Stats., which concern lake and stream shore plats, discussed in reference to proposed subdivisions which do not immediately abut a lake or stream, but where the subdivider holds an interest in lands lying between the proposed subdivision and the lake or stream ....................................................... 66-85

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The application of secs. 236.16(3) and (4), Stats., which concern lake and stream shore plats, discussed in reference to proposed subdivisions which do not immediately abut a lake or stream, but where the subdivider holds an interest in lands lying between the proposed subdivision and the lake or stream ....................................................... 66-85

PUBLIC ADMINISTRATOR

Abolition of the Office

Abolition of the Office of Public Administrator, effective January 1, 1974, by ch. 90, Laws of 1973, requires that such officers submit their final reports and claims for fees as soon after 1973 as possible in order to obtain reimbursement without undue delay and complications......................... 62-245

Reimbursement

Abolition of the Office of Public Administrator, effective January 1, 1974, by ch. 90, Laws of 1973, requires that such officers submit their final reports and claims for fees as soon after 1973 as possible in order to obtain reimbursement without undue delay and complications......................... 62-245

Retirement

Public administrators are public officials and, therefore, includable as "employees" under the Federal-State Social Security coverage agreement. Public administrators may be properly excluded by act of the Legislature from future coverage under the Wisconsin Retirement Fund and State Group Life Insurance ....................................................... 62-20

PUBLIC ASSISTANCE

See also FOSTER HOMES; INDIGENT; PUBLIC WELFARE

AFDC recipients

Because records concerning AFDC recipients are confidential, only the amounts of monthly payments made to AFDC recipients, together with their names and addresses, may be released to the Department of Revenue by the Department of Health and Social Services. AFDC recipients must be notified when such information is released....................................................... 69-95

Promulgation of rules by HSS to recoup improper payments discussed .......... 65-125

Section 49.19(6), Stats., which provides that an AFDC mother may be required to do remunerative work has not been affected by amendments to

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AFDC recipients (continued)

the Work Incentive Program, nor does it violate equal protection provisions of the Fourteenth Amendment, U.S. Const. 62-120

Attorney's fees

Attorney's fees are not chargeable against public assistance recovered in an action under sec. 49.65, Stats. (1979) 70-61

Collection agencies

County is a necessary party to an action on a claim where it has received an assignment under sec. 49.65, Stats. The county may take steps necessary to enforce its claim. Compromise and attorney fees discussed 65-119

Disabled persons

Wisconsin Council on Developmental Disabilities is an advisory council having additional authority and responsibilities. (Unpub) 47-1976

Fingerprinting applicants

A county may not require or request that a public assistance applicant or recipient provide a fingerprint for the purposes of identification as a precondition to receiving aid 74-185

Indigent prisoner

Section 53.38, Stats., is exclusively applicable in providing relief from medical and hospital care costs incurred by an indigent prisoner while receiving emergency medical treatment in a hospital 69-230

Medical aid

Power of county to provide limited rescue functions in connection with ambulance service and make charges discussed 65-87

Medical assistance

A county health facility may not charge for non-medical assistance services given to medical assistance patients in excess of medical assistance rates without violating section 49.49, Stats. 73-68

Old age assistance liens

Statute of limitations is no defense to old age assistance liens which survive the repeal of sec. 49.26, Stats. (Unpub) 75-1976

Statute of limitations

Statute of limitations is no defense to old age assistance liens which survive the repeal of sec. 49.26, Stats. (Unpub) 75-1976

Tuition

The term "legal settlement" as used in sec. 121.77(1), Stats., is interpreted 65-301

Welfare checks

The conclusion of 52 OAG 439 (1963), that welfare payment checks must not only be prepared but actually mailed by the County Treasurer, is still valid. 70-201

PUBLIC BUILDINGS

Christmas pageant

The described Christmas pageant presented by the Madison Civic Music Association, Inc., in the Capitol does not involve governmental advancement or inhibition of religion or governmental entanglement with religion as contemplated and prohibited by Wis. Const. art. I, sec. 18 67-180

Physically handicapped

While neither the United States Constitution nor the Wisconsin Constitution compels states to require that public buildings and seats of government be constructed and maintained as to be accessible to the physically handicapped, the Legislature has an affirmative duty to address this problem and
PUBLIC BUILDINGS  
Physically handicapped  
assure equal access to all constituted classes of citizens, including the physically handicapped  

PUBLIC CONTRACT  
See CONTRACTS  

PUBLIC DEFENDERS  

Administrative rules  
The state public defender may be denied access to jail inmates who have not requested counsel, and jail authorities need only provide over the telephone that information necessary for the public defender to assess the need to make an indigency determination in person under section 977.07(1), Stats., for an inmate who has requested counsel and claims indigency  

Budget Bill for 1987  
Section 16.49, Stats., does not prohibit or restrict an officer or employee from informing citizens of budget deliberations or suggesting that those citizens inform their elected officials of their opinions  

Civil forfeiture action  
The State Public Defender has the authority to represent indigent material witnesses who are subject to the sec. 969.01(3), Stats., bail provisions so long as this does not create a conflict of interest with another client, but does not have the authority to represent an indigent in a civil forfeiture action unless that action is reasonably related to one for which the indigent is entitled to counsel  

County board  
A county, acting through its county board, has the implied power to create a public defender's office to function as a county agency  

Implied Consent Law  
The State Public Defender, under sec. 977.05(4)(h), Stats., may, if he deems it appropriate to do so, provide legal services to an indigent at a so-called "refusal hearing" conducted pursuant to sec. 343.305(8)(b)1. and 2., Stats., where such indigent, prior to such hearing, has been charged with a criminal offense or offenses based on the same situation as that giving rise to the indigent's refusal to provide a sample of his/her breath, blood or urine pursuant to sec. 343.305(2)(b), Stats.  

Indigent  
Power to appoint counsel for indigent defendant vested by sec. 970.02(6), Stats., in judge cannot be transferred without the consent of such judge to a nonstock, nonprofit corporation operating as a public defender's office absent specific legislation or rule promulgated by the Supreme Court  
The power to appoint counsel for an indigent defendant vested by sec. 970.02(6), Stats., in a judge cannot be transferred to a non-stock, nonprofit corporation operating as a public defender's office  
The State Public Defender has discretion under sec. 977.05(4)(j), Stats., to refuse appointment for indigents in conditions of confinement cases and in cases seeking post-conviction and post-commitment remedies where there is no absolute right to counsel  

Jail inmates  
See Prisons and prisoners  

Original records  
Clerks of court are not authorized to send the original records of criminal cases to the public defender prior to the time an appeal has been taken unless an order signed by a judge of the court authorizes such release  
PUBLIC DEFENDERS (continued)
Prisons and prisoners, access to

The state public defender may be denied access to jail inmates who have not requested counsel, and jail authorities need only provide over the telephone that information necessary for the public defender to assess the need to make an indigency determination in person under section 977.07(1), Stats., for an inmate who has requested counsel and claims indigency ............... 78–133

Trial costs
Under sec. 977.08(5)(f), Stats., trial representation costs are incurred whenever services which give rise to a legal obligation to pay compensation are rendered between January 1 and June 30, 1981 ...................... 70–74

Wisconsin Indian Legal Services Center, Inc.
Wisconsin Indian Legal Services Center, Inc., is not a "local public defender organization," and the Public Defender Board has no authority to contract with such nonstock corporation for the furnishing of legal services to indigents pursuant to sec. 977.03, Stats. ............................ 66–334

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See PUBLIC OFFICIALS

PUBLIC FUNDS
See FUNDS

PUBLIC HEALTH
Ambulance attendants
The Department of Health and Social Services has authority to establish standards for ambulance attendants under sec. 146.50, Stats. Discussion of malpractice liability of state officers and employes .................................. 67–145

Ambulance service
Power of county to provide limited rescue functions in connection with ambulance service and to make reasonable charges therefor discussed in view of secs. 59.07(41), 146.35 and 146.50, Stats. .......................... 65–87

Chronic renal disease program
Responsibility for administration of chronic renal disease program under sec. 49.48, Stats., discussed. (Unpub) ................... 10–1978

City-county employes compensation
Section 140.09(5), (6), Stats., authorizes the county board of supervisors to determine compensation to be paid members of a city-county board of health and employes of a city-county health department .......... 72–33

Commitments
The responsibility for providing and funding facilities for protective placements under ch. 55, Stats., is primarily on the county. The statute does not require a county nursing home to accept such a placement ............... 66–249

Confidential reports
Before client information is released to another division within a county community human services department, a written and informed consent is necessary. The community human services board and the director may view client information without a written and informed consent for any purpose related to their powers and duties ......................... 69–273

Counties
County may contract with city for the joint provision of public health nursing services under sec. 66.30(2), Stats. ....................... 66–54
PUBLIC HEALTH (continued)

County board

Since matters affecting health and welfare are of statewide concern, sec. 59.025(2)(3), Stats., created by ch. 118, Laws of 1973, does not authorize county boards to abolish county departments, boards or committees pertaining to health and welfare and required by existing state statutes nor does it authorize the transfer of their functions and duties of consolidation of them into a single “Community Human Services Board” 63-580

County infirmary, patient funds

Administrator or trustees of county infirmary cannot deposit funds of residents in interest bearing account and use interest to purchase items for common use of residents. (Unpub) 42-1975

Crime victims compensation

Under ch. 949, Stats., DILHR is not authorized to direct payment of expenses incurred by victims of crime for dental, chiropractic, podiatric, or optometric services. (Unpub) 84-1977

Emergency medical treatment

It would be inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to section 51.15, Stats. While section 51.15(7) does not authorize contractual agreements with counties outside of Wisconsin, sections 51.75(11), 51.87(3) and 66.30(5) each contain a legal mechanism through which financial or other responsibility for the care and treatment of individuals from such counties may be shared under certain specified circumstances 78-59

51.42 Board

A county board has the power to reduce membership on a sec. 51.42 Board from fifteen to nine, but must do so by abolishing the offices of specific members as their current terms expire 65-40

Food preparation

Heating hot dogs is not food preparation. Use of dry ice is not wet storage. (Unpub) 70-1978

Funeral directors and embalmers

Although sec. 156.03(2)(a), Stats., authorizes the state health officer and the examining council by joint action to make rules governing the business practices of funeral directors and embalmers; such rules, unless specifically exempted therefrom, should be enacted pursuant to the provisions of ch. 227, Stats., or otherwise, they could be subjected to a declaratory judgment proceeding and probably would be declared null and void 63-154

“Good Samaritans”

Interpretation of new law rendering “good Samaritans” immune from civil liability for good faith acts or omissions in giving emergency care at the scene of an emergency or accident. Statute excludes from protection health care practitioners who make their living or who specifically are paid for providing emergency care at the scene of an emergency or accident 67-218

Groundwater pollution

To accomplish public health protection as well as prevention of groundwater pollution, a county health commission, where such activity is undertaken with the consent of the property owner, can authorize its staff to enter private property for the purpose of determining the location of an existing private sewage disposal system. If consent of the property owner to such activity on his premises is not obtained, it can only be undertaken by county health commission staff pursuant to a special inspection warrant obtained under sec. 66.122, Stats. 63-337
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The provisions of secs. 146.37 and 146.38, Stats., do not apply to the health care review functions and practices of state agencies, particularly the Department of Health & Social Services. (Unpub) ................................. 50-1979

Immunization records
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Liability, reimbursement and collection
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Physical therapists
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Restaurants
Discussion of coverage of licensing requirements for restaurants under sec. 50.50(3), Stats., in light of amendments to sec. 97.28, Stats., regarding the licensing of delicatessen operations. (Unpub) ...................................... 85-1977

Schools and school districts
A school district may contract with a vocational, technical and adult educational district pursuant to sec. 66.30, Stats., for a health occupations course to be taught in the public high school, subject to the teacher's licensing by the Department of Public Instruction .................................................. 68-148

PUBLIC INLAND LAKE PROTECTION AND REHABILITATION

Property owners
Individuals who lease but do not own real property may not participate in the formation and operation of a public inland lake protection and rehabilitation district under ch. 33, Stats. (Unpub) .................................................. 65-1982

PUBLIC INSTRUCTION, SUPERINTENDENT OF

See also EDUCATION

Church schools
Article I, sec. 18, Wis. Const., prohibits the use of funds received under Title I of the Elementary and Secondary Education Act, as amended, to pay salaries of persons teaching in church affiliated private schools .......... 64-136

In the administration of Title IV, Elementary and Secondary Education Act, as amended, funds may not be spent to provide educational services on the premises of church affiliated private schools but such funds may be spent to provide services through "dual enrollment" or "shared time" programs; nor may school districts be required to equalize, on a per enrolling basis, expenditures as between private and public school students; nor may the Department of Public Instruction administer Title IV programs if local school districts refuse or are legally unable to do so ......................... 64-139

"Dual enrollment"
In the administration of Title IV, Elementary and Secondary Education Act, as amended, funds may not be spent to provide educational services on the premises of church affiliated private schools but such funds may be spent to provide services through "dual enrollment" or "shared time" programs; nor may school districts be required to equalize, on a per enrolling basis, expenditures as between private and public school students; nor may the
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"Dual enrollment" (continued)
Department of Public Instruction administer Title IV programs if local school districts refuse or are legally unable to do so ............................... 64–139

School Lunch Program
Department of Public Instruction may, if so authorized under sec. 16.54, Stats., implement the School Lunch Program and Special Food Service Plan for Children in secular and sectarian private schools and child-care institutions without violating the United States or Wisconsin Constitutions. 63–473

Segregation
Superintendent does not have authority to determine whether public schools are segregated or the authority to take enforceable action to desegregate public schools ................................................................. 65–282

State aid
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County forest lands
County boards cannot sell or exchange county forest lands without first withdrawing them from the county forest program under sec. 28.11(11), Stats. The term "exchange" does not include a sale for valuable consideration ................................................................. 66–108

County owned mineral rights
Counties may not transfer county owned mineral rights acquired through nonpayment of taxes, to private persons without following the appraisal and public sale provisions of sec. 75.69, Stats. Under sec. 59.07(1)(c), Stats., counties may make gifts of land or interests in lands only to enumerated public entities ................................................................. 67–236

Eminent domain
Limited to a specific fact situation the Department of Natural Resources need not comply with the eminent domain procedure of ch. 32, Stats., when acquiring property if there is a bona fide intention not to condemn the property sought, but it must comply with Wisconsin Relocation Assistance Law if it has the statutory power to condemn the property acquired ...... 68–3

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Proposed statutory language to ch. 24, Stats., does not meet constitutional and other standards. Alternate proposal offered. (Unpub) ....................... 14–1981
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Nonpayment of taxes

An interested person may redeem land sold for the nonpayment of taxes up until the time a tax deed conveying the same is recorded ................... 63-592

State reservation of land and interests in lands under ch. 452, Laws of 1911 and sec. 24.11(3), Stats., discussed. ................................. 65-207

Survey

Requirements for relocation, establishing and perpetuation of the corners of the survey of the public lands discussed. Section 60.38, Stats., requires that resurveys of the public lands be recorded with the Register of Deeds in the county where the resurveyed land is located and kept as the county board directs by resolution as long as a separate index is maintained.............. 66-126

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State reservation of land and interests in lands under ch. 452, Laws of 1911 and sec. 24.11(3), Stats., discussed. ................................. 65-207

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Where, as a result of the alteration of the county board supervisory districts, a supervisor's residence is left outside the district he or she represents, the supervisor may continue to represent that district until the expiration of his term. When a city has combined the offices of alderman and county board supervisor where the aldermanic and supervisory boundaries are coterminous, the county board retains its discretion to decide whether to alter the supervisory districts after the city has annexed territory ................. 76-10
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Appointees

Individual appointed to fill vacancy in office of sheriff is entitled to same salary as predecessor. County board may increase but cannot decrease such compensation during term of such officer. Status of appointees to newly created state offices discussed. De facto status of such officers discussed.
The senate may not appoint a commissioner to fill a vacancy in a term which will not occur during the extant session of the senate. In the present case, the provisional appointment for the vacancy in the term ending March 1, 1985, was valid, but the appointment for a full term beginning March 1, 1985, and ending on March 1, 1991, was invalid. The acts of the commissioner holding over in office are valid.

Assemblyperson

The assembly districts altered as to boundaries and renumbered by 1983 Wisconsin Act 29, became effective July 20, 1983. An assemblyperson is a constitutional state public officer who must be a resident and elector of the district he or she is chosen to represent. An incumbent assemblyperson continues to represent the district from which he or she was chosen, as altered as to boundaries and as renumbered. Limitations on in-district travel and mass mailings to constituents discussed.

Attorneys

The members of the Board of Attorneys Professional Responsibility and the members of the Professional Responsibility Committees are officers within the meaning of secs. 895.34 and 895.46, Stats., and are protected by civil immunity when acting within the scope of their office in the absence of malicious, willful and intentional misconduct. (Unpub)

The State Bar of Wisconsin is a state agency created by the constitutional authority of the Supreme Court. The authorized functions of the State Bar may come under the “state action” exemption to the antitrust laws and the procedures employed by the Unauthorized Practice Committee and the Ethics Committee appear to provide due process but specific opinions in this regard must be given on a case-by-case basis. Volunteer lawyers giving free legal advice in the “Lawyer Hotline” program are agents of the State Bar and are entitled to common law immunity and indemnification under section 895.46(1)(a), Stats.

Banking Review Board

Banking Review Board members are not authorized to act in cases involving banks in which they or their spouses own stock.

Board memberships of various kinds

Persons appointed by County Executive and confirmed by County Board to County Veterans Service Commission, single county 51.42 Board or County Institutions Board serve for statutory term as stated in years and until their successors are appointed, confirmed and qualified. Persons appointed to vacancies in such positions also serve until their successors are appointed, confirmed and qualified. Difference between personal term of officer and statutory term which pertains to office discussed.

Bribery

Article XIII, section 11 of the Wisconsin Constitution discussed.

Budget bills

Section 16.49, Stats., does not prohibit or restrict an officer or employe from informing citizens of budget deliberations or suggesting that those citizens inform their elected officials of their opinions.

Business interests

Section 15.06(3)(a), Stats., does not prohibit a commissioner from having any business interests. It prohibits a commissioner from pursuing business inter-
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ests which would prevent him or her from properly fulfilling the duties of
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Code of Ethics ordinance

County Board may provide for a penalty in the nature of a forfeiture for
violation of a Code of Ethics ordinance but may not bar violators from
running for office. Violation is not a neglect of duties required by law under
sec. 59.10, Stats., or ipso facto cause for removal from office under sec.
17.09(1), Stats. .......................... 66-148

Questions concerning proposed county Code of Ethics ordinance answered.
1. A county board may provide for a forfeiture but not a fine for violations
of an ordinance. 66 OAG 148 (1977). 2. A county board lacks the authority
to prohibit county clerk (Election Commission in Milwaukee County) from
placing on ballot candidates who have not complied with Code of Ethics
ordinance. 3. County board lacks the authority to order the withholding of
salary of elected officials who fail to comply with a Code of Ethics ordi­
nance. 4. The county board lacks authority to prohibit county officers from
acting as agent or attorney for an entity other than the county in connec­
tion with any transaction involving the county in which such officers par­
ticipate during the course of their service for a period of twelve months
after leaving county service. 5. A board created by the county board, unless
it is a committee of the county board, lacks authority to issue subpoenas or
administer oaths. 6. A county ordinance cannot provide for blanket nondis­
closure of county ethics board opinions contrary to the Public Records Law.

Commission members; indemnification protection

Where a commission is created by two villages, acting pursuant to section
66.30, Stats., for a joint exercise of a power possessed by such villages, its
voting members, whether drawn from the governing bodies of such villages
or from citizen-residents thereof, are public officers who enjoy the indemni­
fication protection provided by section 895.46(1). A non-voting member of
such commission, who cannot serve as an officer thereof, and whose sole
power and duty is to provide "input" to the commission relative to the
particular needs of the corporation appointing him/her to the commission is
neither a public officer nor a public employe, so as to enjoy the indemnifica­
tion protection of section 895.46(1). Moreover, such non-voting commis­
sion member is not entitled to such protection as an agent of any depart­
ment of the State of Wisconsin .......................... 74-208

Commissioners

Section 15.06(3)(a), Stats., does not prohibit a commissioner from having any
business interests. It prohibits a commissioner from pursuing business inter­
ests which would prevent him or her from properly fulfilling the duties of
the office of commissioner and precludes a commissioner from holding any
public or private office or position of profit .......................... 77-36

Compatibility

See COMPATIBILITY

Complimentary season golf passes

The practice of a county park commission, in granting free or complimentary
season golf passes for the use of the county-owned and operated golf course
to elected county officials and certain appointed county officials, is deemed
to be in excess of the authority of such commission where such practice
cannot be shown to serve any identifiable public purpose .......................... 63-213

Convicted felon

A convicted felon who has been restored to his civil rights, pursuant to sec.
57.078, Stats., is barred from the office of notary public, by art. XIII, sec. 3,
Wis. Const., unless he has been pardoned. The certificate provided for by
sec. 57.078, Stats., may be issued by other than the Department of Health
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and Social Services. The serving of the sentence is what restores the person's civil rights, and the certificate merely evinces the serving of the sentence ................................................................. 63-74

Corporation counsel

Duties of corporation counsel in county over 500,000 concerning paternity matters under secs. 52.21–52.45, Stats., cannot be transferred to legal counsel employed in a separate department created pursuant to powers in sec. 59.025, Stats. (Unpub) ................................................................. 22-1978

Corporation counsel employed on part-time basis cannot accept employment as defense counsel for those whose interests are directly adverse to the State or county .............................................................................. 67-31

County Board

County Board does not have power to establish number of days elected officials may utilize for vacation or sick leave or to grant longevity pay to elected officials, but can pay premiums for individual or group hospital, surgical and life insurance for them ................................................................. 66-329

County board supervisor

A county board supervisor elected at the 1984 Spring election who moved from such district in the Fall of 1984 vacated his office even though he continued to reside in the same county because 1983 Wisconsin Act 484 amended section 59.125, Stats., to require that "[n]o person is eligible to hold the office of county supervisor who is not a resident of the supervisory district from which he or she was chosen." ...................................................................................... 74-160

County Board Supervisor who is also member of a committee of the County Board or of County Highway Committee can only receive one per diem on days Board meets but can receive mileage allowance provided for in sec. 59.03(3)(g), Stats., for each mile traveled to and returning from meetings of the Board by the most usual traveled route and can also be reimbursed at the rate established by the Board pursuant to sec. 59.15(3), Stats., as the standard mileage allowance for officers for necessary expenses incurred for any additional miles traveled in performance of committee of County Board duties or Highway Committee duties on the same day .............................................................................. 68-73

Where, as a result of the alteration of the county board supervisory districts, a supervisor's residence is left outside the district he or she represents, the supervisor may continue to represent that district until the expiration of his term. When a city has combined the offices of alderman and county board supervisor where the aldermanic and supervisory boundaries are coterminous, the county board retains its discretion to decide whether to alter the supervisory districts after the city has annexed territory ...................................................................................... 76-10

County court reporter

Salary questions discussed with respect to county court reporter who resigned effective July 31, 1978, and was appointed by judge of same court as circuit court reporter on August 2, 1978. Ch. 449, Laws of 1977. (Unpub) ........... 19-1979

County housing authority

County may appropriate money to county housing authority under secs. 59.075, 66.40–66.404, Stats., but such authority is separate body politic and county cannot pay per diem or other compensation to commissioners. Sec. 66.40(5)(b), Stats................................................................. 62-303

Criminal charge against

Claim for expense reimbursement by a public officer, under specific fact situation, is both an action taken in such officer's official capacity and an action growing out of performance of official duties thereby permitting municipal government to pay expenses associated with criminal charge against such officer based upon such claim pursuant to sec. 895.35, Stats. . 71-4
De facto status action discussed

Section 15.05(2), Stats., does not authorize appointment of an employee not within the department. De facto status discussed. Quo warranto and sec. 946.12, Stats., action discussed. Corrective action requested of officers involved (Unpub) 8-1978; 66-33

Definition of

When one person holds two government positions and sec. 19.42(8), Stats., identifies the holder of one of the positions as a state public official and specifically exempts from that definition the holder of the other position, the person is a state public official when acting in his covered capacity and is not a state public official when acting in his exempted capacity 64-143

Deputy sheriff

Deputy sheriff appointed under sec. 59.21(2) and (8)(a), Stats., must be a resident of the State and must, before qualifying and serving, be a resident of the county and must continue to maintain residency therein 66-315

Dismissal

Where statute provides that a public officer serves at pleasure but is appointed for a term, such public officer may be summarily dismissed during the term 62-97

District attorney

Section 256.22(3), Stats., does not prohibit a district attorney from compensating his partner, out of his own funds, for assistance in prosecuting a state case 67-31

Dual employment

Discussion of restrictions which section 16.417(2), Stats., imposes on dual state employment of state employes 77-245

Elections

Section 11.33, Stats., applies to persons elected to state office who are seeking reelection or election to a different office and to the use of public funds for political purposes 69-259

Expenses for attendees of Wisconsin Conservation Congress

Counties lack statutory authority to pay the expenses of private citizens or county board members who attend meetings of the Wisconsin Conservation Congress; 61 Op. Att’y Gen. 327 (1972) discussed and adhered to. (Unpub) 29-1984

Family court commissioners

Family court commissioners must be appointed in Pepin and Buffalo Counties; each must be a resident of the county he serves and each county is obligated to pay an annual salary to each officer and each part-time officer is entitled to the state salary supplement at the rate of $2,000 per year. (Unpub) 21-1975

Farmers Home Administration Director

Position of State Director of the Farmers Home Administration is probably an “office of profit or trust under the United States” as that term is used in Wis. Const. art. XIII, sec. 3, and a person holding such office would be ineligible to at the same time serve as a member of the Wisconsin Natural Resources Board 67-51

Financial disclosure

Discussion of possible conflict between the requirements of financial disclosure contained within the Code of Ethics for Public Officials with respect to the confidentiality requirements set forth in the Code of Professional Responsibility for Lawyers and other laws related thereto 68-411
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Section 16.49, Stats., does not prohibit or restrict an officer or employe from informing citizens of budget deliberations or suggesting that those citizens inform their elected officials of their opinions .................................................. 77-59

Insurance

Section 632.895(5m), Stats., which requires that disability insurance policies must provide coverage for grandchildren of the insured, does not apply to group insurance contracts between health maintenance organizations and the group insurance board of the Department of Employe Trust Funds. Under sections 40.51(7) and 40.03(6)(a)2., the group insurance board may not establish a pool of municipal employers to provide health care benefits on a self-funded basis .......................................................... 76-311

Judges

Chapter 114, Laws of 1977, provided for a 5.5% increase to the dollar value of the salary range minimum and maximum for the salary schedule applicable to circuit judges as of July 1, 1978; however, as sec. 20.923(2), Stats., provides that the salary of a circuit judge is set at the midpoint of the salary group in effect “at the time of taking the oath of office” subject to Wis. Const. art. IV, sec. 26, such increase is not applicable to circuit judges during current terms until some person, on or after July 1, 1978, who was elected or appointed, qualifies as judge and takes an oath for a new term. (Unpub) .............................................................. 74-1978

Leave of absence

A public employe departing a non-elected county position in the sheriff’s office to assume the elective county office of sheriff is not entitled to reinstatement to the same or a similar position upon termination of service as such elective officer, in the absence of properly authorized civil service or contractual provisions so providing .................................................. 78-19

Classified state employes whose positions are federally funded in whole or in part, and who are not covered by a collective bargaining agreement, are entitled to leaves of absence in order to run for partisan political office and cannot be compelled to resign. Leaves of absence for such employes are governed generally by the terms of applicable collective bargaining agreements .................................................. 73-131

When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service .................................................. 78-11

Legislature

Current statutes require that members of both houses of Legislature receive the same basic salary. Amendment to sec. 20.923(1) and (2), Stats., is required to change this requirement .................................................. 66-280

Records kept by the Assembly Chief Clerk of telephone credit card numbers and of long-distance telephone calls of Representatives are subject to the Public Records Law. Custodian may make a determination whether to disclose or divulge records in specific instances .................................................. 66-202

Section 2 of 1977 Senate Resolution 14 which, if adopted, would create Senate Rule 73(1)(b), prohibiting members who are attorneys from voting on bills creating additional judgeships or pay raises or retirement benefits for judges, would unconstitutionally deny equal protection of the laws to those citizens represented in the Senate by members who are also attorneys. .................................................. 67-310

Section 13.625, Stats., does not prohibit the Milwaukee Metropolitan Sewerage District from paying normal expenses and salaries to commissioners who are legislators and does not prohibit those legislators from accepting those payments .................................................. 78-149
Liability

A county veterans' service officer does not have the duty under ch. 45, Stats., to transport disabled veterans to a veterans' hospital when such transportation is not readily available unless authorized by his county. The county would be liable to the injured veteran in an automobile accident while being transported by the veterans' service officer if the officer were authorized and performing within the scope of his employment. If he were authorized and an accident occurred, sec. 895.43(3), Stats., limits the recovery to $25,000. Sections 895.35 and 895.46, Stats., apply to actions for open meetings law violations to the same extent they apply to other actions against public officers and employees, except that public officials cannot be reimbursed for forfeitures they are ordered to pay for violating the open meetings law.

The Department of Health and Social Services has authority to establish standards for ambulance attendants under sec. 146.50, Stats. The Department of Health and Social Services has authority to establish standards for ambulance attendants under sec. 146.50, Stats.

Lobbying Law

Certain provisions of Substitute Amendment I to 1977 Senate Bill 286, revising subch. III of ch. 13, Stats., the State's Lobbying Law, are incompatible with the rights of Wisconsin citizens to petition the government and to be secure against unreasonable searches and seizures and are therefore probably unconstitutional. The major portion of the bill is constitutional. The lobby law prohibits a state employe from accepting compensation for serving on the board of directors or providing any other service to a principal as defined in section 13.62(12), Stats.

Mileage Fees

In general, sheriff, traffic officer or policeman who issues a uniform traffic citation where no warrant has been issued is not entitled to service or mileage fees for delivering citation.

Nepotism

Within limits, county board may prospectively prohibit department heads from appointing close relatives to county offices and positions but cannot totally prohibit relatives of a county board supervisor from any employment by the county. (Unpub)

Notary Public

Section 137.01(1) and (2), Stats., which requires Wisconsin residency as a condition of appointment as Notary Public in Wisconsin, does not violate the Privileges and Immunities Clause of the Federal Constitution and should be complied with unless and until it is declared invalid by a court of competent jurisdiction in a proper case.

Open Meeting

A town board is a "governmental body" within the meaning of the Open Meetings Law and is subject to its provisions, including the notice requirements of secs. 19.83 and 19.84, Stats. An annual town meeting is a meeting of the electorate. It is not a "governmental body" within the meaning of the Open Meetings Law, and therefore, notice under subch. IV, ch. 19, Stats., is not required. If an annual town meeting is held at a time other than on the first Tuesday in April, notice must be given as required by secs. 60.17(2) and 60.13, Stats. Other Open Meetings Law notice requirements discussed.

Public notice under sec. 19.84(2), Stats., for meeting of governmental body must contain reference to specific subject matter upon which discussion or action is anticipated and reference to "regular business" is not sufficient in most instances. (Unpub)

Sections 895.35 and 895.46, Stats., apply to actions for open meetings law violations to the same extent they apply to other actions against public officers and employees, except that public officials cannot be reimbursed for forfeitures they are ordered to pay for violating the open meetings law.

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Article XIII, section 11 of the Wisconsin Constitution discussed.............. 77-237

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County board supervisor who is also member of a committee of the county board or of county highway committee can only receive one per diem on days board meets but can receive mileage allowance provided for in sec. 59.03(3)(g), Stats., for each mile traveled to and returning from meetings of the board by the most usual traveled route and can also be reimbursed at the rate established by the board pursuant to sec. 59.15(3), Stats., as the standard mileage allowance for officers for necessary expenses incurred for any additional miles traveled in performance of committee of county board duties or highway committee duties on the same day .................. 68-73

County may appropriate money to county housing authority under secs. 59.075, 66.40-66.404, Stats., but such authority is separate body politic and county cannot pay per diem or other compensation to commissioners. Sec. 66.40(5)(b), Stats.................................................. 62-303

Status of appointees to newly created state offices discussed. De facto status of such officers discussed............................ 66-33

Political activities

Classified state employes whose positions are federally funded in whole or in part, and who are not covered by a collective bargaining agreement, are entitled to leaves of absence in order to run for partisan political office and cannot be compelled to resign. Leaves of absence for such employes are governed generally by the terms of applicable collective bargaining agreements .............................................................. 73-131

State employes covered by the Hatch Act cannot be discharged for partisan political participation while on leaves of absence pursuant to sec. 16.35(2) and (4), Stats.................................................. 63-217

Statutes and rules which restrict the partisan activities of some employes and officeholders do not offend the First Amendment even if they result in the employes or officeholders being prohibited from participating in the party caucuses which choose delegates to the National Convention .......... 73-51

Private interest in public contracts

Section 118.12(1)(a), Stats., applies only to materials and items that are part of or reasonably could become part of a school district's instructional process; enforcement authority usually lies with the school board president for the district; violations of section 118.12(1)(a) could possibly constitute violations of sections 946.12 and 946.13..................................................... 74-89

Section 946.13, Stats., which prohibits private interests in public contracts, applies to county board or department purchases aggregating more than $5,000 from a county supervisor-owned business..................... 76-178

Section 946.13(1)(a), Stats., may be violated by members of Private Industry Councils when private or public entities of which they are executives, directors or board members receive benefits under the Job Training Partnership Act .......................................................... 77-306

Where the county board as a whole must decide whether to purchase land, a county board supervisor would violate section 946.13(1)(a), Stats., if land owned by his partnership was sold to the county for a purchase price in excess of $5,000............................................. 76-90

Where the village board administers a community development block grant program, a member of the village board would violate section 946.13(1)(a), Stats., if he or she obtained a loan in excess of $5,000 under the program. Acting in his private capacity as a contractor, the board member would violate section 946.13(1) if he contracted to perform the construction work for a third person who obtained a loan under the program .............. 76-278
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Provisional appointees

Provisional appointees under sec. 17.20(2), Stats., need not be confirmed by the Senate before they can begin to serve but can serve pending Senate confirmation or rejection or appointment withdrawal by the Governor...

Quo warranto action discussed

Section 15.05(2), Stats., does not authorize appointment of an employee not within the Department. De facto status discussed. Quo warranto and sec. 946.12, Stats., action discussed. Corrective action requested of officers involved (Unpub)...

Real Estate Examining Board member

Incumbent Real Estate Examining Board member is entitled to hold over in office until his successor is duly appointed and confirmed by the Senate, and Board is without authority to reimburse nominee for expenses incurred in attending meeting during orientation period prior to confirmation under facts stated...

Reimbursement

Article XIII, section 11 of the Wisconsin Constitution discussed...

Pursuant to sec. 895.35, Stats., a city council can, in limited circumstances, reimburse a council member for reasonable attorneys' fees incurred in defending an alleged violation of the Open Meeting Law, but cannot reimburse such member for any forfeiture imposed. Section 895.46(1), Stats., is not applicable to forfeiture actions. Such member could not be reimbursed, indirectly, under liability insurance policy procured by a municipality, for any forfeiture imposed...

Section 13.625, Stats., does not prohibit the Milwaukee Metropolitan Sewerage District from paying normal expenses and salaries to commissioners who are legislators and does not prohibit those legislators from accepting those payments...

Reinstatement

A public employe departing a non-elected county position in the sheriff's office to assume the elective county office of sheriff is not entitled to reinstatement to the same or a similar position upon termination of service as such elective officer, in the absence of properly authorized civil service or contractual provisions so providing...

When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service...

Residency requirements

A county board supervisor elected at the 1984 Spring election who moved from such district in the Fall of 1984 vacated his office even though he continued to reside in the same county because 1983 Wisconsin Act 484 amended section 59.125, Stats., to require that "No person is eligible to hold the office of county supervisor who is not a resident of the supervisory district from which he or she was chosen."

Salaries and wages

Article IV, sec. 12, Wis. Const., prohibiting a legislator from being appointed or elected to a civil office created or the emoluments of which were increased during the legislator's term, discussed. Constitutionality of sec. 13.04(1), Stats., lifting the constitutional prohibition by allowing the former legislator to assume the other office at the pre-increase salary, discussed...

A commissioner who is designated chairperson of a state commission under section 15.06(2), Stats., is not appointed to a new position. Wis. Const. art. IV, § 26, thus precludes a salary increase based on such designation...

Proposal to amend sec. 20.923, Stats., insofar as it is applicable to state officials appointed for a fixed term, other than judicial officers, which would...
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provide that the "salary rates during the term shall be set by the appointing " officer at the time of appointment," but that any "scheduled pay increases" during the term "shall be subject to the pay range maximums in effect at the time the official's pay rates are scheduled to be adjusted" would, if adopted, be violative of article IV, sec. 26 of the Wisconsin Constitution. Pay adjustments during a term must be clearly provided for in specific amount or be ascertainable by reference to a salary range schedule which was in effect on the date of appointment of such official, and which is not subject to discretionary change thereafter, to be valid. A schedule or plan must not be dependent upon the exercise of legislative or administrative discretion during the term for its implementation ........................................... 72-45
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State Senator
A vacancy in the office of a State Senator is created under the provisions of art. XIII, sec. 3 and art. XIII, sec. 10, Wis. Const., as implemented by sec. 17.03(5), Stats., upon his conviction of and sentence for any felony punishable by imprisonment in state prison, and no further specific action is required by the State Senate to implement those provisions ....................... 65-264
Wisconsin Housing Finance Authority
The Wisconsin Housing Finance Authority does not have the power to increase the salary of its Executive Director up to the maximum of the executive group range established under sec. 20.923(1), Stats., for positions assigned to Wisconsin state executive salary group 6 until February 1, 1983. 71-186
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A county board supervisor elected at the 1984 Spring election who moved from such district in the Fall of 1984 vacated his office even though he continued to reside in the same county because 1983 Wisconsin Act 484 amended section 59.125, Stats., to require that "[n]o person is eligible to hold the office of county supervisor who is not a resident of the supervisory district from which he or she was chosen." ........................................... 74-160
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ment or inhibition of religion or governmental entanglement with religion
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PUBLIC PURPOSE DOCTRINE
County funds
Under appropriate circumstances, a county may appropriate county funds
reasonably necessary for improvement, maintenance and operation of
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file number or when a search is conducted to ascertain the existence or non­
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Code of Ethics ordinance (continued)

tion with any transaction involving the county in which such officers participate during the course of their service for a period of 12 months after leaving county service. 5. A county board created by the county board, unless it is a committee of the county board, lacks authority to issue subpoenas or administer oaths. 6. A county ordinance cannot provide for blanket nondisclosure of county ethics board opinions contrary to the Public Records Law ............................................................. 67-164

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Copies of records

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Common school districts are presently without authority to destroy records which fall within sec. 19.21(1), Stats., and which are not pupil records under sec. 118.125(1), Stats. Where city-school district is involved, city council could by ordinance provide for destruction of obsolete school district records under sec. 19.21(5)(a), Stats. Meaning of public records as related to school districts discussed .......................................................... 63–272

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District Attorney

District Attorneys do not presently possess legal authorization to destroy documentary materials, made or received in connection with the transaction of public business, and retained by them as evidence of their activities or functions because of the information they contain, even though the documents are found in closed files .......................................................... 68–17

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Information on sex, ethnic background and handicapped status obtained through state employment applications for affirmative action purposes is exempt from disclosure under the Public Records Law, but birth date information is not .......................................................... 73–26
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Foreign corporations
Under sec. 180.833(1)(k), Stats., the Secretary of State may require that foreign corporations file appropriate information and statements, for the purpose of assisting him in determining the accuracy of their reports indicating the proportion of their capital employed in the State. However, the Secretary of State may not treat such information and statements as a public record................................................. 62-261

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Legal notices
A county board may direct supplemental publication of legal notices in a newspaper other than the official newspaper, provided that the supplemental publication is in a newspaper meeting the requirements of sec. 985.03, Stats. However, only the publication in the official newspaper constitutes official publication of a legal notice. (Unpub) ......................... 15-1976
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Marriage and divorce
Sections 59.07(97), 59.39(9m), 59.395(7) and 767.29(1), Stats., require a clerk of circuit court to keep a record of payments and arrearages in payments ordered by a court for child support and maintenance. Such clerk is required to compute and enter amounts of arrearage on the basis of court orders and judgments on file with such clerk and payments received and receipted by such clerk. (Unpub) ................................................... 20-1982

Motor vehicle dealers
Financial statements required by law to be filed with Department of Transportation in connection with applications for motor vehicle dealers and motor vehicle salvage dealers’ licenses are public records and are subject to inspection and copying under sec. 19.21(2), Stats., subject to limitations contained in court cases cited................................. 66-302

Preliminary versions of a document
Preliminary versions of a document prepared by an employee for his or her own or another’s signature are not public records. Public records must have some relation to the functions of the agency. Separation costs must be borne by the agency. Actual damages are the liability of the agency. Punitive damages and forfeitures can be the liability of either the agency or the legal custodian or both. Section 895.46(1)(a), Stats., probably provides indemnification for punitive damages assessed against the custodian but not for forfeitures............................................. 72-99

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Radio

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Real estate transfer fee

Section 77.22, Stats., requires the Register of Deeds to enter the amount of real estate transfer fee paid on the face of the deed. The information on the return is confidential, but this confidential status is qualified by sec. 77.23, Stats., with respect to the Department of Revenue and local assessors. (Unpub) .............................................................. 25-1976

Register in Probate

Section 880.33(6), Stats., requires closing only of documents filed with the Register in Probate with respect to ch. 880 proceedings while sec. 55.06(17), Stats., requires the closing of all records filed with respect to ch. 55 proceedings including index, docket and files maintained by the Register in Probate. 67-130

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The Public Records Law permits the Department of Regulation and Licensing to refuse to disclose records relating to complaints against health care professionals while the matters are merely "under investigation"; good faith disclosure of the same will not expose the custodian to liability for damages; and prospective continuing requests for records are not contemplated by the Public Records Law........................................................ 73-37

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Salary information submitted to the state commission of savings and loan in connection with an absorption application is not exempt from disclosure under the state public records law........................................... 77-20

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Salary information submitted to the state commission of savings and loan in connection with an absorption application is not exempt from disclosure under the state public records law........................................... 77-20

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Common school districts are presently without authority to destroy records which fall within sec. 19.21(1), Stats., and which are not pupil records under sec. 118.125(1), Stats. Where city-school district is involved, city council could by ordinance provide for destruction of obsolete school district...
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STUDENT RECORDS

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SURVEY RECORD SYSTEM

Counties that employ rather than elect a county surveyor pursuant to sec. 59.12, Stats., are required to maintain the survey record system described in sec. 59.60(2), Stats. Further, all counties are required to maintain the survey record system to enable registered land surveyors to comply with statutory filing requirements........................................... 72-96

TEACHERS SALARIES

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TELEPHONE

Records kept by the Assembly Chief Clerk of telephone credit card numbers and of long-distance telephone calls of Representatives are subject to the Public Records Law. Custodian may make a determination whether to disclose or divulge records in specific instances........................................ 66-202

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The Public Service Commission has the authority to determine that a holding
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business ventures, is itself a public utility within the meaning of sec.
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Where Water and Light Commission has power to fix compensation of employees, it may meet in closed session to discuss and vote upon increases for non-union employees. A record must be made of motions and roll-call votes at open and closed meetings. Such record is open to inspection and copying subject to sec. 19.21, Stats., and common-law limitations with respect thereto .................................................. 67-117

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Rate increases
Utility rate increases granted under an automatic fuel adjustment without a sec. 196.20(2), Stats., hearing probably would not be illegal if the automatic adjustment clause were limited to purchased fuel or power.......................... 70-108

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Community Relations-Social Development Commission
Functions of a Community Relations-Social Development Commission authorized under sec. 66.433, Stats., are not limited to study, analysis and planning, but have authority to carry out some human relations programs providing services directly to citizens .................................................. 63-182

Council on Developmental Disabilities
The Council on Developmental Disabilities is an advisory council but has additional authority and responsibilities as well. The Council while created in the Department of Health and Social Services is authorized to function independently on matters within its jurisdiction and is responsible to the Department of Health and Social Services only in its advisory role in matters not covered by sec. 51.435, Stats. (Unpub) ..................... 47-1976

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County Board has no power to hire and fire employees of County Welfare Department ........................................................................ 65-163
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County agencies do not have the authority to directly operate a foster home or what has been described as a "group foster home." (Unpub) ............... 39–1976

Foster homes contracted for (i.e., leased) by the Department of Health and Social Services, pursuant to sec. 48.52, Stats., are immune from local zoning to the extent that the zoning conflicts with the Department’s possessory use of property for purposes contemplated by ch. 48, Stats. However, immunity for leased facilities is subject to sec. 13.48(13), Stats., as amended by ch. 90, sec. 2, Laws of 1973. Section 48.64, Stats., agreements between the Department and proprietors of foster homes do not serve to immunize the proprietor’s property from local zoning. County agencies providing child welfare services do not have authority to lease real property for foster home use. The Department may assert its immunity from local zoning for property it acquires a possessory interest in by virtue of a sublease pursuant to sec. 48.52(2), Stats. Property leased by the Department pursuant to sec. 48.52(2), Stats., is not rendered exempt from property taxation. The lessor remains responsible for tax payment ............... 65–93

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Section 48.31, Stats., provides counties with express authority to establish and operate juvenile detention homes and shelter care facilities. Detention homes and shelter care facilities established and operated pursuant to sec. 48.31, Stats., do not require a ch. 48 license from the Department of Health and Social Services. Counties may lease property for detention home or shelter care use ............... 66–50

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Heavy movable diesel engine utilized in county lime quarry is equipment rather than materials or supplies and may be purchased by county board or committee to which board has delegated power if funds have been appropriated without resort to competitive bidding if county has not otherwise required by resolution or ordinance. Secs. 59.08(1), 66.29(1)(c), Stats. ............... 66–198

Milwaukee County zoo and museum

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Vocational Rehabilitation, Division of
The provisions of ch. 16, subch. IV, Stats., applying to state purchases, do not apply to the purchase of materials, supplies, equipment and other personal property and contractual services made by the Division of Vocational Rehabilitation for clients under rehabilitation plans .................. 64–4
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R.N.
See NURSES

RACETRACKS
See AUTOMOBILES AND MOTOR VEHICLES; GAMBLING

RADAR DETECTOR
Prohibit the use and sale of

Proposed legislation to create sec. 347.483, Stats., which would prohibit the use and sale of radar detectors meets due process requirements and is constitutionally sound. Moreover, such a law would not violate the Commerce or Supremacy Clauses of the United States Constitution .................. 68-256

RADIO
“Friends” organizations

Open Meetings and Public Records Laws are not applicable to independently created and independently operated non-stock, non-profit “friends” corporations organized to provide financial and other support to radio and television stations licensed to governmental agencies ..................... 74-38

Law enforcement

Counties and municipalities do not have authority to regulate the interception and rebroadcast of local law enforcement agency radio communications ................................................................. 64-103

Police and emergency use in Burnett County

A sheriff’s actions in determining access to a county’s law enforcement channel are ministerial in nature. The negligent exercise of that authority could subject the sheriff to liability ................................................................. 76-7

Public records

Sheriff’s radio log, intradepartmental documents kept by sheriff and blood test records of deceased automobile drivers in hands of sheriff are public records subject to inspection and copying under sec. 19.21(2), Stats., and subject to limitations contained in court cases cited which place duty on custodian to withhold disclosure where substantial harmful effect upon the public interest would result. Specific reason for withholding must be given which may be tested by mandamus in the courts. Such records do not appear to be records required by law to be kept by sheriff. Where records are required by law to be kept by sheriff, right of inspection exists under sec. 59.14(1), Stats. That portion of 41 Op. Att’y Gen. 237 (1952) inconsistent with this opinion is repudiated .................. 67-12

RAFFLES
See LOTTERIES

RAILROADS
Abandoned right of ways

The Department of Natural Resources is not governed by section 190.08, Stats., relating to the duty of corporations to maintain bridges and other structures, where the Department of Natural Resources has acquired abandoned railroad property for the purpose of developing hiking and biking trails ............................................................................................................ 77-106
RAILROADS (continued)

Mineral rights

Section 192.71, Stats., does not give the State a beneficial ownership interest in mineral estates reserved by railroad corporations from lands received from the public domain to aid in the construction of railroads under federal land grants of 1856 and 1864.

69-204

RATTLESNAKES

See BOUNTIES

REAL ESTATE

"Abstracts"

Although Register of Deeds can utilize microfilm and photocopies with county board approval, use of a photocopy of writs of attachments and certificates of sale of real estate would not, even with index, be a substitute for the separate indexed book or register of "abstracts" of such documents required by sec. 59.54, Stats.

67-114

Assessments

Section 70.325, Stats., violates article VIII, section 1 of the Wisconsin Constitution.

77-128

Brokers

A person who for a fee files applications for others in federal mineral lottery with respect to securing oil or mining lease rights on federal lands, and who for further fee offers to negotiate with lease brokers for sale of such rights, is required to be licensed as a real estate broker if such leases constitute an interest in real estate in state where located. (Unpub)

107-1977

County

A county may acquire real estate owned by a private fair association without referendum where it does not intend to conduct county fairs or exhibitions on such property itself. (Unpub)

4-1975

Subsections (5), (6) and (7) of section 75.35, Stats., created by 1987 Wisconsin Act 27 first apply to sales of property the county acquired at a section 74.39 tax sale on or after the effective date of section 3203(47)(c) of 1987 Wisconsin Act 27.

77-133

County Board Supervisor selling real estate to county

Where the county board as a whole must decide whether to purchase land, a county board supervisor would violate section 946.13(1)(a), Stats., if land owned by his partnership was sold to the county for a purchase price in excess of $5,000.

76-90

Criminal law

Section 77.27, Stats., is violated when value is intentionally falsified on a Wisconsin Real Estate Transfer Return. Falsely declaring a transfer as a sale when it is in fact a gift does not constitute a violation of sec. 77.27, Stats., nor will it support the issuance of a false swearing complaint under sec. 946.32, Stats., but it may constitute a gift tax avoidance in violation of sec. 72.86(6), Stats.

62-251

Draftsman

Section 59.513, Stats., which requires identification of the draftsman in order to be a recordable instrument does not apply unless the instrument affects real estate in the manner described in the statute.

63-594

Industrial development revenue bond financing

A project for a golf course and residential real estate development is not eligible for industrial development revenue bond financing, although a golf course independent of a residential real estate development would qualify as
REAL ESTATE (continued)

Industrial development revenue bond financing (continued)

a permissible project under sec. 66.521(2)(b)1l., Stats. Discussion of the term "recreational facility." (Unpub) .................................................. 90-1977

Investment Board, Wisconsin

Board has authority to voluntarily contribute money to a private improvement association for street improvements, if the improvements will directly benefit the Board's property .............................................................. 65-85

Liens

State of limitations is no defense to old age assistance liens which survive the repeal of sec. 49.26, Stats. (Unpub) .................................................. 75-1976

Old-age-assistance lien foreclosure

Under sec. 49.26, Stats., a county department of social services, by its directors, may make valid conveyance of real estate acquired by the department as a result of old-age-assistance lien foreclosures or transfers in lieu thereof, or as the result of assignments to the department made by the county court in probate or administration proceedings in the estates of old-age-assistance recipients or of out-of-state real property voluntarily transferred to the department.............................................................. 63-488

Rental unit energy efficiency statute

The rental unit energy efficiency statute, section 101.122, Stats., applies to the state .................................................. 76-207

Schools and school districts

Subject to approval of the fiscal board or the city council, a city school district has the authority to sell real and personal property no longer used for school purposes. Under sec. 120.56(2), Stats., money received from such sales must be placed in a sinking fund under the control of the fiscal board to be used for educational purposes. Municipalities may enter into an agreement with a joint school district to provide for the sale or transfer of property being used by the school district for educational purposes. Such agreement may provide for the payment of the purchase price in services, materials or property provided that the value of such purchase price constitutes the fair market value .................................................. 66-272

Statute of limitations

Statute of limitations is no defense to old-age-assistance liens which survive the repeal of sec. 49.26, Stats. (Unpub) .................................................. 75-1976

Tax sale

Subsections (5), (6) and (7) of section 75.35, Stats., created by 1987 Wisconsin Act 27 first apply to sales of property the county acquired at a section 74.39 tax sale on or after the effective date of section 3203(47)(c) of 1987 Wisconsin Act 27 .................................................. 77-133

Taxation

Section 70.325, Stats., violates article VIII, section 1 of the Wisconsin Constitution .................................................. 77-128

Tract index system

In a county maintaining a tract index system, the Register of Deeds must enter into the index any deed, mortgage or other instrument recorded in his office which affects title or mentions an indexed tract or any part thereof. 63-254

Transfer fee

Section 77.22, Stats., requires the Register of Deeds to enter the amount of real estate transfer fee paid on the face of the deed. The information on the return is confidential, but this confidential status is qualified by sec. 77.23, Stats., with respect to the Department of Revenue and local assessors. (Unpub) .................................................. 25-1976
REAL ESTATE BROKERS

Corporations

A corporation cannot be licensed as a real estate salesperson under ch. 452, Stats. (1979-80), or as revised by ch. 94, Laws of 1981....................... 71-38

Independent contractor agents

A corporation not licensed as a real estate broker does not violate ch. 452, Stats., if it allows its nonlicensed employees to negotiate for and sign apartment leases of property owned by the corporation. Permitted limits of nonlicensed independent contractor agents discussed........................................... 70-23

Licenses and permits

A person who for a fee files applications for others in federal mineral lottery with respect to securing oil or mining lease rights on federal lands, and who for further fee offers to negotiate with lease brokers for sale of such rights is required to be licensed as a real estate broker if such leases constitute an interest in real estate in state where located. (Unpub) ......................... 107-1977

Name changes

Real Estate Examining Board cannot prescribe the name to be used on an application for real estate broker's license. Under sec. 296.36, Stats., the Board should routinely accept name changes of licensed brokers, unless detriment to the public, another professional or the profession is shown. Sex and marital status of the new or renewal license applicant do not justify special procedures or requirements as to names. Use of two names discussed ................................................................. 66-21

Nonresident

Section 452.11(1), Stats., requiring nonresident real estate brokers to maintain an active place of business and prohibiting them from employing brokers or salespersons in this state, is unconstitutional since it violates the privileges and immunities clause of the United States Constitution ...... 77-109

REAL ESTATE EXAMINING BOARD

Disciplinary proceedings

Neither secs. 440.20 and 452.10(2), Stats., nor rules of the Department of Regulation and Licensing require the Board to hold hearing where citizen files verified complaint with Board requesting institution of disciplinary proceedings against a licensee. Discretion of Board discussed in light of secs. 440.03, 440.20 and 452.10(2), Stats. (1977), and sections RL 2.01-2.17 Wis. Adm. Code. Where Examining Board utilizes hearing examiner to conduct disciplinary hearing without the presence of a majority of officials who are to render a final decision, hearing examiner has power to entertain a motion to dismiss proceedings. Where denied, it amounts to an interim order and need not be preceded by proposed decision; however, where granted, it must be in form of proposed decision and include findings of fact, conclusions of law and order as required by sec. 227.09(2), Stats. Where disciplinary proceedings are involved, it would be a rare case where circumstances would permit dismissal of the proceedings prior to the conclusion of a meaningful evidentiary hearing on other than jurisdictional grounds or failure of complaint to state a cause of action...................... 68-30

Flood plain zoning status of property

Provisions in Executive Order 67 (1973), with respect to duty of real estate broker to advise prospective purchasers of flood plain zoning status of property, do not constitute new standard but suggest course of action Real Estate Examining Board might take. Action to be taken would depend on facts in each case................................................................. 63-236

Incumbent member

Incumbent Real Estate Examining Board member is entitled to hold over in office until his successor is duly appointed and confirmed by the Senate, and
REAL ESTATE EXAMINING BOARD (continued)
Incumbent member (continued)

Board is without authority to reimburse nominee for expenses incurred in attending meeting during orientation period prior to confirmation under facts stated ................................................................. 63-192

Subpoena

The Real Estate Examining Board and its members have the power to issue subpoenas. However, the records of the Department of Revenue are not subject to subpoena but are available to the Board under sec. 71.11(44), Stats. (Unpub) ................................................................. 57-1977

REAPPORTIONMENT

Assemblyperson

The Assembly districts altered as to boundaries and renumbered by 1983 Wisconsin Act 29, became effective July 20, 1983. An Assemblyperson is a constitutional state public officer who must be a resident and elector of the district he or she is chosen to represent. An incumbent Assemblyperson continues to represent the district from which he or she was chosen, as altered as to boundaries and as renumbered. Limitations on in-district travel and mass mailings to constituents discussed ........................................ 72-172

Census

Wisconsin Constitution art. IV, sec. 3 requiring legislative reapportionment “after each enumeration made by the authority of the United States” does not require reapportionment after the new federal mid-decade census .......... 67-81

Counties

Under sec. 59.03(3)(c), Stats., alteration of county supervisory district boundaries between decennial censuses is authorized only where ward boundaries originally relied upon in reapportioning the county have been subsequently altered by incorporation, annexation, detachment or consolidation .......... 63-544

Effective date

The federal district court apportioned both members and Senatorial districts in its order of June 17, 1982. The effective date of new district lines for purposes of nominations, regular, recall and special elections, mass mailings and in-district travel is June 17, 1982, as to both holdover Senators and incumbents in districts where elections are scheduled in the Fall of 1982... 71-157

Institutional populations

Institutional populations, as well as other populations which may include persons disenfranchised for some reason, are part of the total population included in the 1980 federal decennial census of population and may not be disregarded for congressional or state legislative redistricting purposes. U.S. Const. art. I, sec. 2; Wis. Const. art. IV, sec. 3. Although the Legislature may constitutionally authorize the use of voter population or citizen population for local apportionment purposes, when total population is used for the purpose of equal population redistricting of county supervisory or city aldermanic districts on the basis of the 1980 census population, institutional populations cannot be excluded from the total population count .......... 70-80

Open meetings

The December 2, 1981, meeting of the Senate Special Committee on Reapportionment was probably held in violation of Wisconsin’s Open Meetings of Governmental Bodies Law ................................................................. 71-63

Residence of County Board supervisor

Where, as a result of the alteration of the County Board supervisory districts, a supervisor’s residence is left outside the district he or she represents, the supervisor may continue to represent that district until the expiration of his term. When a city has combined the offices of alderman and county board supervisor where the aldermanic and supervisory boundaries are cotermi-
REAPPORTIONMENT (continued)
Residence of County Board supervisor (continued)

nous, the count board retains its discretion to decide whether to alter the supervisory districts after the city has annexed territory ....................... 76-10

Senator

A State Senator need not resign his or her present seat before filing and running for a newly numbered Senate seat, merely because he or she is presently an incumbent Senator ................................................................. 71-162

RECORDS

See CONFIDENTIAL REPORTS; COURTS; JUVENILE COURT; MINORS; POLICE; PUBLIC RECORDS; REGISTER IN PROBATE; REGISTER OF DEEDS

REDEVELOPMENT AUTHORITY

Commissioner, reimbursement of

A city may reimburse a commissioner of the city Redevelopment Authority for his legal expenses incurred where charges are filed against him in his official capacity seeking his removal from office for cause and such charges are found by the Common Council to be unsupported. Such reimbursement is discretionary. The city Redevelopment Authority lacks statutory authority to authorize reimbursement for such legal expenses ...................... 63-421

Condemnation

Assuming a Redevelopment Authority, properly proceeds under sec. 66.431, Stats., to satisfy all statutory and other legal requirements necessary to establish a project area and implement a redevelopment plan therefore, it may proceed to condemn any property within the project area even though some portions of the urban renewal area are not in fact blighted ........... 65-116

Mortgage Subsidy Bond Tax Act of 1980

Certain local governments and public agencies may issue obligations to provide mortgage loans on owner-occupied residences. However, compliance with the Mortgage Subsidy Bond Tax Act of 1980 is necessary to allow exemption of the interest from federal taxation ................................. 71-74

REDISTRICTING

See REAPPORTIONMENT

REFERENDUM

See also ELECTIONS

City clerk

Under sec. 9.20(3), Stats., a city clerk’s authority to examine the “sufficiency” and “form” of an initiative petition is at least as extensive as the city council’s under sec. 9.20(4), Stats. This judiciously established authority should only be exercised where a substantive insufficiency clearly exists ....... 69-41

County Executive

A county board may adopt an ordinance creating the office of county executive and make the ordinance contingent upon approval in a countywide referendum. The office of county executive is created at the time the results of the referendum become final. The first election for the office occurs at least 120 days after the creation of the office becomes effective. The county executive takes office on the third Tuesday in April of the year of the election ................................................................. 78-227

Vocational, Technical and Adult Education, Board of

Section 67.12(12)(e)5, 6, created by ch. 250, Laws of 1973, is construed to permit a vocational, technical and adult education district board to initiate
REFERENDUM (continued)
Vocational, Technical and Adult Education, Board of (continued)
a referendum on question of borrowing by issuing promissory notes, the result of which will be binding on the board ......................... 63-551

REGENTS, BOARD OF
Compulsory fees
Regents should identify how compulsory fees will be used to necessarily and conveniently further the objects of the University before approving a segregated fee, under sec. 37.11(8), Stats., to finance a legal services program for Oshkosh Student Association ............................................. 63-385

Fee waivers to employees
Resolutions 2877 and 2938, passed by the former Board of Regents of the Wisconsin State Universities, remain valid for the purposes of allowing certain fee waivers to employees of former Wisconsin State Universities. Such fee waivers are not vested employment rights or benefits under ch. 100, Laws of 1971. The privilege may be extended or rescinded by the present University of Wisconsin System Board of Regents. (Unpub) ........... 1-1976

Retirement plan for former President Weaver
The Board of Regents lacked and still lacks the authority to establish a retirement plan for former President Weaver in addition or supplementary to the State Teacher's Retirement System. Wisconsin Constitution art. IV, sec. 26, precludes the Legislature from providing such a supplemental retirement program since Dr. Weaver is no longer employed by the Board. The Legislature is not, however, precluded from ensuring that a not legally enforceable employment agreement previously entered into is fully performed................................................................. 70-266

REGIONAL PLANNING
County Board
Appointments to regional planning commissions on behalf of a county, under sec. 66.945(3)(b), Stats., are made by the County Board, unless the county has a county executive or a county administrator in which event such appointments are made by that county officer, under the authority set forth in either sec. 59.032(2)(c) or sec. 59.033(2)(c), Stats. ......................... 62-197

Equal protection
Representation provisions of sec. 66.945(3), Stats., do not violate the Equal Protection Clause ................................................................. 62-136

Transportation, Department of
The Department of Transportation's contracting authority under sec. 84.01(13), Stats., is not limited to traditional engineering or surveying services. The Department is given the discretion to decide what special expertise it needs and the most practical and economical means to obtain it in connection with its highway program activities. (Unpub)............. 35-1982

REGISTER IN PROBATE
Certified copy of record
The alphabetical index which the Register in Probate must maintain pursuant to section 851.72(5) is not a court record and thus is open to public access under sections 59.14(1) and 19.31. The index may not, however, contain results of proceedings under chapters 55 and 880. The $4.00 search fee of section 814.66(1)(j) applies only when a person fails to furnish the docket or file number or when a search is conducted to ascertain the existence or non-existence of a record. The charge for a one page certified copy from the Register in Probate or Clerk of Court is comprised of an initial $3.00 certifying fee and a $1.00 per page fee and is thus $4.00 ......................... 73-16
REGISTER IN PROBATE  (continued)

Closing of records

Section 880.33(6), Stats., requires closing only of documents filed with the Register in Probate with respect to ch. 880 proceedings while sec. 55.06(17), Stats., requires the closing of all records filed with respect to ch. 55 proceedings including index, docket and files maintained by the Register in Probate. 67-130

County Treasurer

Section 851.74(3), Stats. (1977), which requires registers in Probate to make payments to the County Treasurer on the first Monday of each month, does not preclude more frequent payments 68-117

Discrimination

A Register in Probate is protected by the Fair Employment Act, which protection is not affected by a defect in the appointment 67-169

Filing fees

Filing fees provided in sec. 253.34(1)(a), Stats., should be charged in informal probate proceedings authorized by ch. 865, Stats., created by ch. 39, Laws of 1973 62-308

The time of the filing of the inventory of the estate, not the time of filing the petition for probate, determines the applicable filing fee. (Unpub.) 62-1987

Inheritance tax

Section 253.34(1)(a), Stats., dealing with filing fees was not amended by ch. 310, Laws of 1971, which amended inheritance tax rules on survivorship interests 62-32

Official of the county court

A probate registrar is an official of the county court and secs. 256.22 and 59.40, Stats., would prohibit an attorney who serves as probate registrar from practicing law in county court 63-55

REGISTER OF DEEDS

See also DEEDS

Certified copies of birth, death and marriage records

The amount payable to a Register of Deeds for issuing certified copies of birth, death and marriage records is $4 if the Register must search for the records but $1 if no search is necessary 68-311

Certified survey maps

"Mylar" may not be utilized in the place of "durable white paper" in the making of certified survey maps to be recorded in the office of the Register of Deeds, under the provisions of sec. 236.34(1), Stats. (Unpub) 10-1976

"Common-law liens"

Registers of Deeds have no obligation under law to file or record "common-law liens," or "common-law writs of attachment" because such instruments do not, as a matter of law, affect an interest in land or personal property, and are frivolous on their face 69-58

Compatibility

The offices of Register of Deeds and school board member of a common school district are compatible. (Unpub) 79-1976

County

A county Register of Deeds must record Department of Natural Resources' orders under the Forest Croplands Program, sec. 77.02(3), Stats., and the Woodland Tax Law, sec. 77.16(3), Stats., notwithstanding sec. 59.57(12), Stats., which requires that recording fees be paid in advance of recordation. 66-246
**REGISTER OF DEEDS (continued)**

**Joint tenants**

Register of Deeds is not authorized to collect and forward to the county court fees set forth in sec. 253.34(1)(a), Stats., where sec. 867.045, Stats., is used for administrative joint tenancy termination for homes. Register of Deeds can administer oath under sec. 867.045(2)(b), Stats. 62–192

**Microfilm**

Although Register of Deeds can utilize microfilm and photocopies with County Board approval, use of a photocopy of writs of attachments and certificates of sale of real estate would not, even with index, be a substitute for the separate indexed book or register of “abstracts” of such documents required by sec. 59.54, Stats. 67–114

**Photocopies**

Although Register of Deeds can utilize microfilm and photocopies with County Board approval, use of a photocopy of writs of attachments and certificates of sale of real estate would not, even with index, be a substitute for the separate indexed book or register of “abstracts” of such documents required by sec. 59.54, Stats. 67–114

**Plats**

1. Section 236.20(1)(a), Stats., requires that plats be submitted on the paper described therein. Plats submitted on other paper are objectionable. 2. Only the original ink-drawn plat on the required paper can be recorded with the Register of Deeds 67–8

**Public lands**

Requirements for relocating, establishing and perpetuation of the corners of the survey of the public lands discussed. Section 60.38, Stats., requires that resurveys of the public lands be recorded with the Register of Deeds in the county where the resurveyed land is located and kept as the County Board directs by resolution as long as a separate index is maintained 66–126

**Real estate transfer fee**

Section 77.22, Stats., requires the Register of Deeds to enter the amount of real estate transfer fee paid on the face of the deed. The information on the return is confidential, but this confidential status is qualified by sec. 77.23, Stats., with respect to the Department of Revenue and local assessors. (Unpub.) 25–1976

**Restrictive covenants in documents**

A county board lacks statutory authority to enact ordinances directing the register of deeds to refuse to record documents containing restrictive covenants or requiring the register of deeds to place notices on liber volumes and copies of real estate documents, directing the public’s attention to the possibility that such covenants may be legally unenforceable 77–262

**Survey maps**

Certified survey maps provided for by sec. 236.34, Stats., are corrected by subsequent recording of corrected survey maps 66–90

**Tract index system**

In a county maintaining a tract index system, the Register of Deeds must enter into the index any deed, mortgage or other instrument recorded in his office which affects title to or mentions an indexed tract or any part thereof. When in its judgment the existing tract index, for any reason, is unfit, unreliable or unserviceable, the county board of any county may contract with a competent person for the compilation of a new and corrected tract index. A performance bond may be required 65–258

**REGISTERED NURSES**

See NURSES
Acquired Immune Deficiency Syndrome

Licensing boards do not have the authority to enact general regulations which would allow them to suspend, deny or revoke the license of a person who has a communicable disease. However, licensing boards do have the authority on a case-by-case basis to suspend, deny or revoke the license of a person who poses a direct threat to the health and safety of other persons or who, by reason of the communicable disease, is unable to perform the duties of the licensed activity.

Compatibility

A member of a licensing board is not, as a matter of law, precluded from holding membership in or acting as an officer of a private professional society or association.

Communicable disease

Licensing boards do not have the authority to enact general regulations which would allow them to suspend, deny or revoke the license of a person who has a communicable disease. However, licensing boards do have the authority on a case-by-case basis to suspend, deny or revoke the license of a person who poses a direct threat to the health and safety of other persons or who, by reason of the communicable disease, is unable to perform the duties of the licensed activity.

Cosmetology Examining Board

Relationship between the Department of Regulation and Licensing, its Secretary, the Cosmetology Examining Board and the Governor discussed in the areas of personnel, examinations and educational activities.

Disciplinary proceedings; standard of proof

Placing the lowest standard of proof — preponderance of the evidence — upon the Department of Regulation and Licensing and the licensing boards attached to it, in proceedings that could result in a decision adversely affecting an occupational or professional license does not offend the Fourteenth Amendment due process requirement.

Health care professionals, records relating to

The Public Records Law permits the Department of Regulation and Licensing to refuse to disclose records relating to complaints against health care professionals while the matters are merely "under investigation"; good faith disclosure of the same will not expose the custodian to liability for damages; and prospective continuing requests for records are not contemplated by the Public Records Law.

Hearing examiner

Section 227.09(5), Stats., absolutely requires use of a hearing examiner if an examining board member participates in the decision to commence a proceeding against a licensee, but does not require such use if a board member is involved only in the investigation.

Officers of boards

Selection and terms of officers of regulatory and licensing boards discussed.

Public records

Neither sec. 19.21(2), Stats., nor any other statute requires or authorizes the Department of Regulation and Licensing to have pre-addressed mailing labels for persons in various licensed professions printed up by computer programs and processes for use by private persons or corporations even where a charge is made. The Department cannot deny inspection and copying to protect licensees from unsolicited mail.

Raffles

Provisions of chapter 163 regarding eligibility for raffle license, scope of ticket sales, restrictions on ticket sales and payment of fees or salaries discussed.
REGULATION AND LICENSING, DEPARTMENT OF (continued)
Rehabilitation Act of 1973 (U.S.)

Licensing boards do not have the authority to enact general regulations which would allow them to suspend, deny or revoke the license of a person who has a communicable disease. However, licensing boards do have the authority on a case-by-case basis to suspend, deny or revoke the license of a person who poses a direct threat to the health and safety of other persons or who, by reason of the communicable disease, is unable to perform the duties of the licensed activity .................................................. 77-223

Suspension of occupational licenses

The Department of Regulation and Licensing has the authority to promulgate rules for procedures for the summary suspension of occupational licenses. Summary suspension of occupational licenses may constitutionally be invoked only in emergency situations and then only if the licensee is afforded a prompt hearing on whether the summary suspension should continue until a decision is made after a full hearing on the merits of the license deprivation .......................................................... 76-110

REIMBURSEMENT

See also APPROPRIATIONS AND EXPENDITURES; PUBLIC OFFICIALS

Attorneys' fees

Pursuant to sec. 895.35, Stats., a city council can, in limited circumstances, reimburse a council member for reasonable attorneys' fees incurred in defending an alleged violation of the Open Meeting Law, but cannot reimburse such member for any forfeiture imposed. Section 895.46(1), Stats., is not applicable to forfeiture actions. Such member could not be reimbursed, indirectly, under liability insurance policy procured by a municipality, for any forfeiture imposed ...................... 66-226

County Board supervisors

Only County Board supervisors can serve on committees of the County Board under sec. 59.06, Stats., and persons who are not supervisors cannot serve or be compensated by per diem or receive reimbursement for expenses. 65-303

Health and Social Services, Department of

The Department of Health and Social Services may not reimburse counties for administrative costs incurred in providing temporary assistance to state dependents .......................................................... 70-17

Legal expenses

A city may reimburse a commissioner of the City Redevelopment Authority for his legal expenses incurred where charges are filed against him in his official capacity seeking his removal from office for cause and such charges are found by the Common Council to be unsupported. Such reimbursement is discretionary. The City Redevelopment Authority lacks statutory authority to authorize reimbursement for such legal expenses ...................... 63-421

Claim for expense reimbursement by a public officer, under specific fact situation, is both an action taken in such officer's official capacity and an action growing out of performance of official duties thereby permitting municipal government to pay expenses associated with criminal charge against such officer based upon such claim pursuant to sec. 895.35, Stats. 71-4

Records relating to health care professionals. (Unpub) ...................... 10-1984

State automobiles

The reimbursement rate payable by state employes for personal use of state automobiles is the rate set forth in the Uniform Travel Schedule for state reimbursement of state employes for business use of personal automobiles when a state-owned automobile is not available. (Unpub) ...................... 63-1982
RELIGION

Capitol grounds

A group of churches is entitled to a permit under sec. 16.845, Stats., to use the Capitol grounds for a planned civic or social activity even if the content of the program is partly religious in nature. 68-217

Christmas pageant

The described Christmas pageant presented by the Madison Civic Music Association, Inc., in the Capitol does not involve governmental advancement or inhibition of religion or governmental entanglement with religion as contemplated and prohibited by Wis. Const. art. I, sec. 18. 67-180

Driver's license photographs

The administrative rule of the Department of Transportation granting an exemption on religious grounds from the photograph-taking requirement of sections 343.17(2) and 343.14(3), Stats., is violative of the First Amendment, United States Constitution and of Wis. Const. art. I, § 18. 75-115

Education

Wisconsin Constitution art. I, sec. 18, prohibiting the drawing of money from the Treasury for the benefit of religious societies, or religious or theological seminaries is a proscription against using public monies for such purpose. Section 3 of 1977 Assembly Bill 500 which purports to establish a separate fund outside of the State Treasury if enacted would not avoid this prohibition since the public nature of the money is not changed. 67-71

Foster homes

A facility owned and operated by a religious organization is subject to licensure and regulation under ch. 50, Stats., and chapter HSS 3 Wis. Adm. Code, unless the facility is a convent, monastery or similar place where residents are all members of a religious hierarchy living in seclusion and operating under a set of religious vows or rules. The Department of Health and Social Services can constitutionally license and regulate Community Based Residential Facilities (CBRFs) operated by religious organizations not exempt under sec. 50.01(1), Stats., or sec. 50.03(9), Stats. Application of CBRF licensure and regulatory requirements to certain facilities operated by the Salvation Army discussed. 71-112

Nursing homes

Neither Wisconsin nor federal law prohibits a nursing home operated by a bona fide, nonprofit religious organization from giving preference in admission to members of that religion. 70-210

Nursing homes operated by religious or fraternal orders, whose politics restrict admittance thereto to members thereof, are not exempt from the provisions of sec. 146.30, Stats., and rules adopted pursuant thereto, unless they come within the provisions contained in subsec. (12m) of said statute. 63-30

Public schools leasing classrooms

The Establishment Clause of the First Amendment to the U.S. Constitution and Wis. Const. art. I, sec. 18, prohibit public schools leasing classrooms from parochial schools in order to provide educational programs for parochial school students. 67-283

Relocation Assistance Act

Religious societies incorporated under ch. 187, Stats., are "persons" within the meaning of the Relocation Assistance Act and are entitled to the benefits of such Act if they otherwise qualify. 63-578

St. Coletta School

St. Coletta School cannot receive public funds because its governing body is chosen by a religious organization and part of its teachings are sectarian. (Unpub). 10-1977
RELIGION (continued)

University buildings
Leasing of University buildings to a religious congregation during nonschool days and hours on a temporary basis while the congregation's existing facility is being renovated and leasing convention space to a church conference would not violate separation of church and state provisions of the First Amendment to United States Constitution and art. 1, sec. 18, of the Wisconsin Constitution ................................................. 63-374

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University of Wisconsin athletes may not engage in voluntary prayer led by a coach prior to an athletic event, although silent meditation or prayer organized by athletes may be undertaken within certain guidelines.................. 75-81

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RENT
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RESERVATION BOUNDARIES
See INDIANS

RESIDENCE, DOMICILE AND LEGAL SETTLEMENT
Apprentices
Apprentices indentured under ch. 106, Stats., may lawfully be charged tuition at schools in the state vocational, technical and adult education system for related instruction that apprentices must receive as a condition of their apprenticeship .................................................. 65-37

Chronic renal disease program
Responsibility for administration of chronic renal disease program under sec. 49.48, Stats., discussed. (Unpub) ............................................. 10-1978

Civil service
The residency requirement for classified civil service positions when no similar requirement exists for positions in the unclassified service constitutes a violation of the equal protection clause of the fourteenth amendment to the United States Constitution............................................. 76-45

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Deputy sheriff
Deputy sheriff appointed under sec. 59.21(2) and (8)(a), Stats., must be a resident of the State and must, before qualifying and serving, be a resident of the county and must continue to maintain residency therein ............. 66-315

51.42 Board
Liability, reimbursement and collection for services provided under secs. 51.42 and 51.437, Stats., programs discussed ........................................ 65-49

Foster homes
A local zoning ordinance which limits occupation of single family dwellings to one or more persons related by blood, adoption or marriage or not more than two unrelated persons while valid on its face, is unenforceable against a licensed foster home. Said license, whether granted directly or indirectly by the State, is an exercise of the sovereign power of the State and is immune from local zoning regulations ............................................. 66-342
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Indians

Indians residing on nontaxable land are electors of the town of residence. Where new towns are created by division, each such town must be 36 sections in area, unless each such town, after division, has 75 electors and taxable real estate of $200,000 or more ............................................. 66–256

Jurisdictional relationship between State and Menominee Tribe discussed ........................................... 70–36

Law enforcement officers

Sections 62.13(4)(d) and 66.11(1), Stats., making citizenship a prerequisite to becoming a police officer or deputy sheriff violate the Fourteenth Amendment of the United States Constitution when applied to resident aliens .... 65–273

Legislator

A candidate for the Legislature need not be a resident of the district which he seeks to represent at the time he files his nomination papers. That portion of 61 OAG 368 (1972) inconsistent herewith is repudiated .................. 65–159

Notary Public

Section 137.01(1) and (2), Stats., which requires Wisconsin residency as a condition of appointment as Notary Public in Wisconsin, does not violate the Privileges and Immunities Clause of the Federal Constitution and should be complied with unless and until it is declared invalid by a court of competent jurisdiction in a proper case .............. 74–221

Protective placements

Under chapter 55, Stats., the definition of residency contained in section 49.01(8g) is to be used for venue purposes and for the purpose of assigning financial liability between counties for the cost of non-emergency services. Although the assignment of financial liability between counties is not contemplated in protective placement proceedings under chapter 55, in such proceedings a court may place an individual through another county's board, but any such placement order is not binding unless that county receives notice and an opportunity to be heard .................. 76–103

Public health services

Liability, reimbursement and collection for services provided under secs. 51.42 and 51.437, Stats., programs discussed .................................................. 65–49

Teachers

County Board has power to adopt ordinance requiring all county employes, including those employed by the Handicapped Childrens Education Board (HCEB) pursuant to section 115.86(5), Stats., to maintain residence within the county. However, HCEB rather than County Board has power to appoint such personnel and to remove them. Exercise of such power may be limited by civil service ordinance or labor contract .................. 73–1

Vocational, technical and adult education

A vocational, technical and adult education district which provides apprenticeship training may contract with other districts for payment of the costs of training persons who are residents of the other districts. Such district may not refuse, however, to admit nonresident Wisconsin students to an approved apprenticeship program, because the district of the student's residence fails to reimburse the district providing the instruction, unless the State Board of Vocational, Technical and Adult Education adopts rules sanctioning such refusal .................. 69–257

Section 38.24(3)(b), Stats., making the district board of a student's district of residence liable for payment of nonresident fees when attending another district VTAE school is not a denial of equal protection. VTAE districts cannot enter into agreements with each other to waive the nonresident tuition provided for in sec. 38.24(3)(b), Stats. .................. 69–139

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See FOSTER HOMES; NURSING HOMES

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Circuit judge
Milwaukee County Board is not authorized by ch. 405, Laws of 1965, to change the provisions of the Milwaukee County Employees' Retirement System so as to provide a pension payable to circuit court judges based on the salary paid by the State. 62–149

Deputy sheriffs
The Age Discrimination in Employment Act of 1967, as amended, does not invalidate secs. 41.02(23), Stats. (retirement ages under the Public Employees Retirement Law), or 41.11(1), Stats. (mandatory retirement at reaching retirement age), nor the 35 year maximum age requirement for applicants for deputy sheriffs established by the Waukesha County Civil Service Commission. 63–530

Early retirement
The University must bear the full cost of the early retirement payment required by ch. 388, Laws of 1981. (Unpub). 42–1983

Employe Trust Funds, Department of
Department of Employe Trust Funds is not authorized to administer supplemental retirement funds established by collective bargaining under sec. 111.70, Stats. (Unpub) 59–1979

Employe Trust Funds, Public
The specific appeal procedures provided for the Public Employe Trust Funds do not take precedence over the general grant of authority to the Claims Board to hear claims against state agencies, but the Claims Board lacks authority to order payment of the claim from the trust funds. 74–193

Investment earnings
Section 684r of the 1987 budget bill, which limits the distribution from the special performance dividend to only those annuitants receiving a supplemental benefit, does not violate the United States or Wisconsin Constitutions. 76–299

Judges
If sec. 356 of 1977 Senate Bill 720 or the amendment to sec. 356 contained in Senate Amendment 3 to Senate Bill 720 were enacted into law, either would be constitutionally invalid. 67–134

Legislation to increase benefits
Only the portion of 1987 Assembly Bill 265 that increases benefits for persons no longer working for a Wisconsin Retirement System participating employer is subject to the three-fourths vote requirement of article IV, section 26 of the Wisconsin Constitution. The Public Employe Trust Fund constitutes "state funds" as used in article IV, section 26 of the Wisconsin Constitution. 76–224

Milwaukee
The City of Milwaukee cannot terminate a CETA employee's membership in the Retirement System on grounds not in effect by the time membership was attained, except as otherwise expressly provided by the Legislature. (Unpub) 41–1978

Taxation of certain public employe pensions may impair contracts in violation of the state and federal constitutions. 74–100
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Milwaukee School Board

Authority of a state or governmental subdivision to provide a retirement plan in lieu of or supplemental to existing statutory plans discussed. The Milwaukee School Board is authorized by sec. 111.70, Stats., to contract for a retirement system supplementary to the existing statutory system .......... 67-153

Public administrators

Public administrators are public officials and, therefore, includable as “employees” under the Federal-State Social Security coverage agreement. Public administrators may be properly excluded by act of the Legislature from future coverage under the Wisconsin Retirement Fund and State Group Life Insurance ................................................................. 62-20

Regents, Board of

The Board of Regents lacked and still lacks the authority to establish a retirement plan for former President Weaver in addition or supplementary to the State Teachers Retirement System. Wisconsin Constitution art. IV, sec. 26, precludes the Legislature from providing such a supplemental retirement program since Dr. Weaver is no longer employed by the Board. The Legislature is not, however, precluded from ensuring that a not legally enforceable employment agreement previously entered into is fully performed ......................................................... 70-266

School district

Cannot establish pension plan other than through participation in the Wisconsin Retirement Fund for non-certified employees not subject to a collective bargaining agreement. (Unpub) ......................................................... 68-1976

Teachers Retirement Board

Public school administrators are eligible to be candidates for and to vote for teacher representatives on the Teachers Retirement Board ............. 76-141

Teachers Retirement Fund

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School boards have authority to contract with teachers to provide for an increment or sum in addition to the regular salary in return for the teacher choosing an early retirement option ......................................................... 63-16

Teachers’ required deposits paid to retirement funds by the employer on behalf of the teachers are not to be used to determine the “final average compensation” under secs. 42.20(2b)(a) or 42.70(1)(t), Stats. .......... 62-221

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The University must bear the full cost of the early retirement payment required by ch. 388, Laws of 1981. (Unpub) ................................................................. 42-1983

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Discovery

Access to public records by parties to civil litigation, including administrative proceedings, must be accomplished through applicable means of discovery. 74-1

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REVISOR OF STATUTES

Age restrictions

Section 3017(2) of 1985 Wisconsin Act 29 (the 1985 State Budget Bill) violates article IV, section 18 of the Wisconsin Constitution................. 75-192

Wisconsin Administrative Code

It is within the discretionary power of the Revisor of Statutes whether to purchase and utilize the Federal Standards found in the Federal Register and attach state printed covers thereto in lieu of completely reprinting them in the standard format of the Wisconsin Administrative Code as authorized by secs. 227.024(7) and 35.93(1), Stats. .................................................. 63-78

Wisconsin town law forms

For purposes of sec. 70.67(2), Stats., the town board is the governing body of the town .............................................................. 63-10

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RIGHT OF WAY

Forest Crop Law

Section 77.03, Stats., relating to enrolling land in the Forest Cropland Program, creates a right of access across an owner's non-enrolled lands to reach the owner's landlocked enrolled lands for the purposes of hunting and fishing ................................................................. 71-163

Lot area

For the purpose of determining lot area under the provisions of sec. 236.02(8), Stats.: 1. If a lot abuts a public or private road or street, the total lot size (area) does not include the land extended to the middle of the road or street. 2. An easement of access to a parcel is not to be included in determining the total lot area. 3. A body of navigable water separates a parcel of land as effectively as does a public highway...................... 66-1

Menominee Tribe

Property held in trust by the federal government for the Menominee Tribe and tribal members pursuant to the Menominee Restoration Act (25 U.S.C. sec. 903, et seq.) is not subject to state taxation. Tribal members residing and working in Menominee County and the Menominee Tribe are not subject to state income tax. Government services to be provided by Menominee County and the Town of Menominee discussed .......................... 66-290

Nondedicated roads

Rights-of-way boundaries of nondedicated roads created by affirmative act are determined by the order laying out the road, not by the location of the road's centerline. The rights-of-way boundaries of roads created by adverse users are only those portions of land adjacent to the traveled track reasonably necessary for highway purposes, unless the road has also been worked pursuant to sec. 80.01(2), Stats. .............................................. 69-87

RIPARIAN RIGHTS

See also NAVIGABLE WATERS

Anchored watercraft

Public rights in navigable stream permit reasonable use of the bottom for purposes of anchoring various types of watercraft while and only so long as a public right is being enjoyed. Anchored watercraft may not be left unattended except by a riparian owner .................. 63-601

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RIPARIAN RIGHTS (continued)

Bulkhead line

1. Where a bulkhead line has been established pursuant to sec. 30.11, Stats., a riparian owner must nonetheless obtain a permit or contract pursuant to sec. 30.20, Stats., prior to removing material from the bed of a navigable water landward of the bulkhead line, but within the original ordinary high water mark. 2. Where a bulkhead line has been established, a riparian owner may place a layer of sand or similar material landward of the bulkhead line without obtaining an additional permit pursuant to sec. 30.12(2)(b), Stats. 3. Where a bulkhead line has been established, the original ordinary high water mark presumably will be considered the ordinary high water mark for purposes of determining the applicability of sec. 30.19, Stats., although particular fact circumstances may dictate that the bulkhead line or the edge of the filled area should be considered the ordinary high water mark. 4. Where a township located on Green Bay wishes to remove organic sediment and aquatic vegetation from the shoreline, it would be more appropriate for the town to apply for a zone of removal pursuant to sec. 30.205, Stats., than to apply for a bulkhead line pursuant to sec. 30.11, Stats. 63-445

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See STREAMS

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RULE-MAKING

Administrative agencies
Administrative agencies are subject to the rule-making procedures in making discretionary choices even if those choices are based on opinions of the Attorney General. Conversely, the rule-making procedure does not apply where the opinion describes what the law mandates 68-363

Local Affairs and Development, Department of
The Department of Local Affairs and Development may enact such rules pursuant to sec. 227.014, Stats., as are necessary to carry out its responsibilities under secs. 32.19 and 32.25 through 32.27, Stats. (Unpub) 96-1977

Surveyor applicants
Examining Board, rather than constituent sections, has rule-making authority and may adopt a rule interpreting sec. 443.02(3)(a)4., Stats., for registering land surveyor applicants to require applicants to show knowledge regarding land surveying procedures and practices peculiar to Wisconsin. (Unpub) 73-1978

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SALARIES AND WAGES

See also COMPENSATION

Appointee to Sheriff

Individual appointed to fill vacancy in office of Sheriff is entitled to same salary as predecessor. County Board may increase but cannot decrease such compensation during term of such officer. (Unpub) .......................... 1-1975

Circuit judges

Chapter 38, Laws of 1979, is effective to every judge of a court of record and Justice of the Supreme Court when either a Supreme Court Justice or judge of a court of record commences a term of office ................................................. 69-4

Chapter 114, Laws of 1977, provided for a 5.5% increase to the dollar value of the salary range minimum and maximum for the salary schedule applicable to circuit judges as of July 1, 1978; however, as sec. 20.923(2), Stats., provides that the salary of a circuit judge is set at the midpoint of the salary group in effect "at the time of taking the oath of office" subject to Wis. Const. art. IV, sec. 26, such increase is not applicable to circuit judges during current terms until some person, on or after July 1, 1978, who as elected or appointed, qualifies as judge and takes an oath for a new term. (Unpub) ................................................................. 74-1978

Clerical occupational group

The Personnel Board may not approve the assignment of a classification in the clerical occupational group to a lower pay range than the pay range to which a classification in a different occupational group is assigned if the qualifications include positions involving "work of equivalent skills and responsibilities." The phrase "the principle of equal pay for work of equivalent skills and responsibilities" contained in sec. 230.09(2)(b), Stats., requires equal pay only for substantially similar or equal work. The Board may not give retroactive effect to the establishment of classifications and grade levels or the assignment of classifications to the appropriate pay rates or ranges .................................................. 68-190

Collective bargaining

"Raised hiring rate" and "hiring above the minimum" practices utilized by Administrator of Division of Personnel pursuant to sections Pers 5.02(1) and (2) Wis. Adm. Code are primarily matters of compensation and wage rates related to salary-schedule adjustments and are subject to collective bargaining in some degree under sec. 111.91(1), Stats. (Unpub) .................. 65-1978

Commission chairperson

A commissioner who is designated chairperson of a state commission under section 15.06(2), Stats., is not appointed to a new position. Wis. Const. art. IV, § 26, thus precludes a salary increase based on such designation ...... 76-52

County Board

County Board does not have power to establish number of days elected officials may utilize for vacation or sick leave or to grant longevity pay to elected officials, but can pay premiums for individual or group hospital, surgical and life insurance for them .......................................................... 66-329

County board supervisors

Only county board supervisors can serve on committees of the County Board under sec. 59.06, Stats., and persons who are not supervisors cannot serve or be compensated by per diem or receive reimbursement for expenses .... 65-303

County Highway Commissioner

Appointed by County Board, and salary may be changed during their term. 63-286

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County Housing Authority

County may appropriate money to County Housing Authority under secs. 59.075, 66.40-66.404, Stats., but such authority is separate body politic and county cannot pay per diem or other compensation to commissioners. Sec. 66.40(5)(b), Stats. 62-303

County judge

County Board can reduce additional salary payable to county judge under sec. 253.07(2), Stats., during term only to extent necessary to keep salary of county judge, state, county and county addition, within the limits set forth in sec. 20.923(3), Stats., created by ch. 90, Laws of 1973 62-269

If Senator Keppler assumes judicial office to which he was elected during his term as legislator, his compensation during his entire judicial term would be that which was applicable to the office of county judge of Sheboygan County which was in effect prior to the effective date of any increase which occurred within the term for which he was elected as legislator, which began in January 1977 68-1

County officer

County officer cannot be paid separate salary for performing services which are incidental to his office 67-1

County officials

The salaries of elected county officials may be increased during their terms. But any increase put into effect after the earliest time for filing nomination papers does not carry forward to the new term unless the county board again votes the increase 69-1

Court Reporter

Salary questions discussed with respect to county Court Reporter who resigned effective July 31, 1978, and was appointed by Judge of same court as circuit Court Reporter on August 2, 1978. Chapter 449, Laws of 1977. (Unpub) 19-1979

District attorney

Although a person elected as a "part time" district attorney may not be required to forego the private practice of law and devote all his time to the performance of official duties, he may voluntarily do so. A county board may increase the salary of the district attorney during his term of office. A county board must act timely to prohibit future district attorneys from engaging in the private practice of law. Secs. 59.15(1)(a), 59.471 and 66.197, Stats. (Unpub) 44-1975

Family court commissioners

Family court commissioners must be appointed in Pepin and Buffalo Counties; each must be a resident of the county he serves and each county is obligated to pay an annual salary to each officer and each part-time officer is entitled to the state salary supplement at the rate of $2,000 per year. (Unpub) 21-1975

51.42 Board

Where a county board has established a civil service ordinance applicable to all county personnel other than the exceptions provided in sec. 59.07(20), Stats., the Director of the 51.42 Board does not have authority to grant vacation with pay to employee which is not authorized under the county civil service ordinance 67-143

Garnishment

A wage garnishment of a public employe under sec. 812.23, Stats., results in a continuing withholding of wages, less allowances specified in sec. 812.18(2),
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Garnishment (continued)
Stats., until the amount demanded in the garnishee complaint, together with disbursements, has been paid .......................................................... 68-366
Sections 812.04(1) and 814.21(1)(a), Stats., concerning suit tax in small claims garnishment actions, construed as conflicting. Because tax cannot be imposed without clear statutory authority, lower suit tax in sec. 812.04(1), Stats., should be collected.......................................................... 68-7

Grant money used as overtime wages
A grant from the Wisconsin Office of Justice Assistance may properly be paid as salary increases to the district attorney and his or her assistants in the form of overtime, without violating section 59.49(1), Stats., provided the county makes allowance for such grant funds in its budget and duly passes salary increases for the district attorney and his assistants as provided by sections 66.197 and 59.15(2)(c) .......................................................... 77-63

Legislator
A legislator may be elected to a constitutional or statutory state elective office even though the emoluments of such office were raised during his legislative term. If so elected, he is limited by sec. 13.04(1), Stats., to the emoluments of the office prior to such increase. A legislator is not eligible, however, for appointment to an office created during his term or to an office the emoluments of which appointive office were raised during his legislative term .... 63-127
If Senator Keppler assumes judicial office to which he was elected during his term as legislator, his compensation during his entire judicial term would be that which was applicable to the office of county judge of Sheboygan County which was in effect prior to the effective date of any increase which occurred within the term for which he was elected as legislator, which began in January 1977 .......................................................... 68-1
Section 13.625, Stats., does not prohibit the Milwaukee Metropolitan Sewerage District from paying normal expenses and salaries to commissioners who are legislators and does not prohibit those legislators from accepting those payments .......................................................... 78-149

Minimum Wage Law
Sections 104.01 to 104.12, Stats., inclusive, known as the Minimum Wage Law, do not apply to the State or its political subdivisions as employers... 62-47

Public officials
Proposal to amend sec. 20.923, Stats., insofar as it is applicable to state officials appointed for a fixed term, other than judicial officers, which would provide that the “salary rates during the term shall be set by the appointing officer at the time of appointment,” but that any “scheduled pay increases” during the term “shall be subject to pay range maximums in effect at the time the official's pay rates are scheduled to be adjusted” would, if adopted, be violative of article IV, section 26 of the Wisconsin Constitution. Pay adjustments during a term must be clearly provided for in specific amount or be ascertainable by reference to a salary range schedule which was in effect on the date of appointment of such official, and which is not subject to discretionary change thereafter, to be valid. A schedule or plan must not be dependent upon the exercise of legislative or administrative discretion during the term for its implementation.......................................................... 72-45

Sheriffs
In a county having no undersheriff, a person elected and serving as Sheriff vacated office by accepting office of town supervisor during his term but is entitled to compensation paid and can continue to exercise duties of Sheriff until successor is elected or appointed and qualifies.................. 73-83
SALARIES AND WAGES (continued)

Teachers salaries
Matters and documents in the possession or control of school district officials containing information concerning the salaries, including fringe benefits, paid to individual teachers are matters of public record ......................... 63-143

Turnkey construction
Turnkey construction may be used for the construction of public works projects unless another method expressly is required. Municipalities are subject to sec. 66.293(3), Stats., the prevailing wage law, on contracts for any project of public works even if done by the turnkey method ............ 64-100

Unclassified personnel
Salary adjustments for unclassified administrators, executive assistants and deputies discussed. (Unpub) ................................................... 33-1979

Veterans Affairs, Secretary of
Salary adjustment for the incumbent Secretary discussed ................... 67-257, 262

Water and Light Commission
Where Water and Light Commission has power to fix compensation of employes, it may meet in closed session to discuss and vote upon increases for non-union employes. A record must be made of motions and roll-call votes at open and closed meetings. Such record is open to inspection and copying subject to sec. 19.21, Stats., and common-law limitations with respect thereto ........................................ 67-117

Wisconsin Housing Finance Authority
The Wisconsin Housing Finance Authority does not have the power to increase the salary of its Executive Director up to the maximum of the executive group range established under sec. 20.923(1), Stats., for positions assigned to Wisconsin state executive salary group 6 until February 1, 1983. 71-186

SANITARIANS
See COUNTY SANITARIANS

SAVINGS AND LOAN ASSOCIATIONS

Commissioners
Constitutionality of ch. 45, Laws of 1981, delegating authority to commissioners of various financial institutions, discussed ......................... 71-195

Interest
Charges imposed on a seller of property as a condition of the granting of a loan to a buyer of the property are includable as part of the interest under sec. 138.05, Stats., to the extent that such charges are passed on by the seller to the buyer ........................................ 68-398

Investment of deposited funds
Section 112.05, Stats., does not apply to or restrict the investment of deposited funds by a savings and loan association except when it acts as trustee. 70-218

Municipal funds
Municipal funds may be invested in savings and loan associations to the extent permitted by sec. 219.05(1), Stats. ................................................. 62-312

Prepayment penalty
Imposition of a prepayment penalty on mortgage loans can only be made when the conditions of sec. 215.21(11), Stats., are met. Section 215.21(19), Stats., also discussed ................. 66-90
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Public records
Salary information submitted to the state commission of savings and loan in connection with an absorption application is not exempt from disclosure under the state public records law. 77-20

Second mortgage
Second mortgage constitutes equivalent security interest when held by savings and loan association which holds first mortgage, and there are no intervening liens. Sections 428.101, 428.106(5), 227.014(2)(a), Stats., discussed 63-557

SCHOOLS AND SCHOOL DISTRICTS

See also EDUCATION; PUBLIC INSTRUCTION, SUPERINTENDENT OF; STUDENTS; TUITION; VOCATIONAL, TECHNICAL AND ADULT EDUCATION; UNIVERSITY

Board member and employment by Board of spouse
The enactment of the marital property law does not change the applicability of section 946.13, Stats., to the member of a governmental body when that body employs the member's spouse. As was the case before the marital property law, the member of the governmental body avoids violation of section 946.13 if in his private capacity he does not negotiate, bid on or enter into the employment contract and in his public capacity he does not participate in the making of the contract and does not exercise discretion in the performance of the contract 76-15

Buses
See School buses

Charitable and penal institutions
The nonagricultural lands at the Northern Center for the Developmentally Disabled and other similar institutions are not subject to taxation for school purposes under sec. 70.114, Stats. (Unpub) 110-1977

Church schools
In the administration of Title IV, Elementary and Secondary Education Act, as amended, funds may not be spent to provide educational services on the premises of church affiliated private schools but such funds may be spent to provide services through "dual enrollment" or "shared time" programs; nor may school districts be required to equalize, on a per enrollee basis, expenditures as between private and public school students; nor may the Department of Public Instruction administer Title IV programs if local school districts refuse or are legally unable to do so 64-139

Compatibility
The offices of Register of Deeds and school board member of a common school district are compatible. (Unpub) 79-1976

Confidential reports
See Student records

Contracts
Multiple year contract renewal provisions under section 118.24(1) and (1m), Stats., do not apply to personnel and curriculum administrators and their assistants. (Unpub) 37-1984

Counties
Counties are liable for proportionate share of tax certified to them prior to repeal of sec. 59.07(21), by sec. 300m of ch. 90, Laws of 1973 63-300
SCHOOLS AND SCHOOL DISTRICTS (continued)

Damage and interest provisions on tax payments

School districts may not invoke the damage and interest provisions of section 74.22, Stats., to penalize a township for failing to settle tax payments within the time required by law ................................................ 74-84

 Destruction of obsolete school district records

Common school districts are presently without authority to destroy records which fall within sec. 19.21(1), Stats., and which are not pupil records under sec. 118.125(1), Stats. Where city school district is involved, city council could by ordinance provide for destruction of obsolete school district records under sec. 19.21(5)(a), Stats. Meaning of public records as related to school districts discussed .............................................. 63-272

Driver education programs

Public school districts may not charge students for the cost of providing driver education programs if the programs are credited towards graduation. 71-209

A school district and a cooperative educational service agency may not, without legislative authority, contract with a private driving school and receive state aid for pupil driving instruction services performed by such driving school................................................................. 76-26

“Dual enrollment”

In the administration of Title IV, Elementary and Secondary Education Act, as amended, funds may not be spent to provide educational services on the premises of church affiliated private schools but such funds may be spent to provide services through “dual enrollment” or “shared time” programs; nor may school districts be required to equalize, on a per enrollee basis, expenditures as between private and public school students; nor may the Department of Public Instruction administer Title IV programs if local school districts refuse or are legally unable to do so......................................................... 64-139

Elections

A school board which informs the electorate of the school district of the facts which are pertinent to an issue which will be the subject of a school district referendum need not register or file campaign financing reports under ch. 11, Stats. ........................................................................................................ 68-167

Employes, sales and promotion of materials to students

Section 118.12(1)(a), Stats., applies only to materials and items that are part of or reasonably could become part of a school district’s instructional process; enforcement authority usually lies with the school board president for the district; violations of section 118.12(1)(a) could possibly constitute violations of sections 946.12 and 946.13....................................................... 74-89

Grants and gifts

A school district has no power to transfer gift and grant moneys received by the district under section 118.27, Stats., to a nonprofit, nonstock, section 501(c)(3) corporation, which would manage the moneys and distribute the principal and interest for the benefit of area high school students in the form of scholarships; if moneys are accepted under section 118.27, the school district must act as trustee of the moneys, except under the circumstances outlined in section 66.30(2m). .............................................................................. 74-45

Health occupations course

A school district may contract with a vocational, technical and adult education district pursuant to sec. 66.30, Stats., for a health occupations course to be taught in the public high school, subject to the teacher’s licensing by the Department of Public Instruction ......................................................... 68-148

Holidays

There is no statutory requirement that schools be closed on the Mondays succeeding the holidays listed in sec. 115.01(10)(a)1., Stats., when those holidays fall on Sunday ................................................................. 67-129
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Junior Achievement Bank

Would be a banking business within the meaning of sec. 224.02, Stats., and violates sec. 224.03, Stats. ................................................................. 62-254

Layoffs

Layoff and reinstatement provisions in sec. 118.23, Stats., are to be applied separately to classroom teachers and principals .................................................. 70-6

Lease financing. (Unpub) ........................................................................... 10-1983

Leases

Common school districts have the authority to lease property that they own if such property is not currently needed for school purposes and if the lease is authorized by the annual meeting of the common school district. The answer is not free from doubt and it is recommended that the Legislature specifically grant to school boards, if authorized by the annual meeting, the authority to lease school property not currently needed for school purposes. 67-332

"Legal settlement"

The term "legal settlement" as used in sec. 121.77(1), Stats., is interpreted .................................................. 65-301

Lunchrooms

A city health department may inspect and license public school lunchrooms pursuant to a specific ordinance even though sec. 160.01(3), Stats., precludes public school lunchrooms from regulation as restaurants by the Department of Health and Social Services and its designated agents. The authority in the Department of Public Instruction, under sec. 115.33, Stats., to ensure a sanitary facility is not precluded by sec. 160.01(3), Stats. ........ 65-54

Milwaukee, City of

Common Council of City of Milwaukee is without power under home rule provision of the Wisconsin Constitution or under its special charter and sec. 62.11(5), Stats., to adopt an anti-truancy ordinance. State has provided special procedures in secs. 118.15 and 118.16, Stats., and has designated the school district board as its agent to deal with matters of local concern in this area............................................................... 72-156

Milwaukee School Board

Authority of a state or governmental subdivision to provide a retirement plan in lieu of or supplemental to existing statutory plans discussed. The Milwaukee School Board is authorized by sec. 111.70, Stats., to contract for a retirement system supplementary to the existing statutory system ............. 67-153

Open meeting

In exceptional cases, section 19.85(1)(f), Stats., would permit a school board to reconvene into closed session to interview applicants for a vacant position on such board, but appointment should be made in open session. Section 19.85(1)(c) would not permit a closed session for purposes of interviewing applicants for a vacant school board position and to make appointment thereto ................................................................. 74-70

Discussion of public notice requirements for meetings of city district school board under secs. 19.81-19.98 and 120.48, Stats. ............................................................... 66-93

Common school district board could utilize closed session to discuss qualifications of potential candidates for vacancy, if and only if, personal matters to be discussed might unduly damage reputations. (Unpub) ......................... 9-1976

"Private conference" held under sec. 118.22(3), Stats., on nonrenewal of teacher's contract is a "meeting" within sec. 19.82(2), Stats., and school board could hold closed session under sec. 19.85(1)(c), Stats., although specific notice to teacher under sec. 19.85(1)(b), Stats., would have to be given where nonrenewal was based on charges and teacher would have right
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to require open meeting where evidentiary hearing was held or before final action or nonrenewal where charges were involved ................................. 66-211

Specificity of notice required by governmental body where agenda item includes item "Citizens and Delegations," cross reference unpublished OAG 19-1977 ......................................................... 66-195

The presence of more than one-half of the members of a governmental body in one place presumptively creates a meeting within the meaning of the Open Meeting Law, but the presumption is rebuttable and it is necessary to look to the facts in each case, including whether the members are convening for the purpose of exercising responsibilities, authority, power or duties delegated in the body ........................................................... 66-254

Under section 120.11(4), Stats., a school district in which no newspaper is published may print legal notices of the proceedings of school board meetings in a shopper paper which does not meet the qualifications contained in section 985.03(1)(a). Other legal notices required to be published by law may not be printed in such a shopper paper ........................................ 75-269

Where school board permits citizens to appear at regular meeting and notes fact in agenda and notice, board may discuss and act on such matters, if urgent, even though express subject was not referred to in notice. There is no requirement that the board delay the matter until the next meeting, although nothing would prevent it from doing so either ....................... 66-68

Parochial and private schools

Because of lack of statutory authority, speech therapists may not supply services to students attending therapy sessions in parochial school buildings. 63-8

Chapter 307, Laws of 1973, sec. 118.255, Stats., authorizes local school districts to provide health and welfare services, but not educational services, to students attending private schools. However, that Act may be unconstitutional to the extent that any of the services authorized thereby are rendered in church-affiliated private schools ........................................ 64-75

Discussion of whether a private school pupil or a child in a home-based private educational program may participate in selected courses or activities of the public school district. A public school district may lease space in a sectarian school for holding classes for public school students ....................... 75-251

Funds made available through the Elementary Secondary Education Act may be used in dual enrollment programs to transport children from parochial schools to public school and return .................................................. 65-126

The Establishment Clause of the First Amendment to the U.S. Constitution and Wis. Const. art. I, sec. 18, prohibit public schools leasing classrooms from parochial schools in order to provide educational programs for parochial school students .................................................. 67-283

1979 Assembly Bill 227, which if enacted into law would require school boards to purchase textbooks and loan them without charge to pupils of public and private schools within the district, does not violate the United States or Wisconsin Constitution .................................................. 68-287

Private interest in public contracts

Section 118.12(1)(a), Stats., applies only to materials and items that are part of or reasonably could become part of a school district's instructional process; enforcement authority usually lies with the school board president for the district; violations of section 118.12(1)(a) could possibly constitute violations of sections 946.12 and 946.13 .................................................. 74-89

Private schools

See Parochial and private schools

Psychologist

Senate Bill 370 would create a new category of licensure, that of school psychiatrist. Only those licensed could privately practice school psychology. The definition of school psychology could be by administrative rule promulgated by the Psychology Examining Board. (Unpub) ......................... 98-1977
SCHOOLS AND SCHOOL DISTRICTS (continued)

Public records

A written notice and request for transfer of pupil records under sec. 118.125(4), Stats., is both a pupil record and public record which must be maintained for at least five years after the pupil ceases to be enrolled. “Pupil records” as defined in sec. 118.125(1), Stats., are “public records” within sec. 19.32(2), Stats., but are subject to special statutes which limit access and direct maximum and minimum periods of maintenance before destruction for various classes of pupil records. Secs. 19.21(6) and 118.125(3), Stats. ........................................... 72-169

Common school districts are presently without authority to destroy records which fall within sec. 19.21(1), Stats., and which are not pupil records under sec. 118.125(1), Stats. Where city school district is involved, city council could by ordinance provide for destruction of obsolete school district records under sec. 19.21(5)(a), Stats. Meaning of public records as related to school districts discussed .................................. 63-272

Pupil information

Pupil information which local education agencies are required to release to the Department of Public Instruction under the reporting provisions of ch. 89, Laws of 1973, may be provided, with or without permission, without violation of the state or federal confidentiality statutes, sec. 118.125(e), Stats., and sec. 438, P. L. 93-380.................................................... 65-1

Retirement

School boards have authority to contract with teachers to provide for an increment or sum in addition to the regular salary in return for the teacher choosing an early retirement option ........................................... 63-16

School district cannot establish pension plan other than through participation in the Wisconsin Retirement Fund for noncertified employees not subject to a collective bargaining agreement. (Unpub) ........................................... 68-1976

St. Coletta School

Cannot receive public funds because its governing body is chosen by a religious organization and part of its teachings are sectarian. (Unpub) ...... 10-1977

Sales of property no longer used for school purposes

Subject to approval of the fiscal board or the city council, a city school district has the authority to sell real and personal property no longer used for school purposes. Under sec. 120.56(2), Stats., money received from such sales must be placed in a sinking fund under the control of the fiscal board to be used for educational purposes. Municipalities may enter into an agreement with a joint school district to provide for the sale or transfer of property being used by the school district for educational purposes. Such agreement may provide for the payment of the purchase price in services, materials or property provided that the value of such purchase price constitutes the fair market value ........................................... 66-272

School buses

A motor vehicle used by a vocational school to transport students in extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats. After June 30, 1977, the transportation of minors who are fulfilling their compulsory school requirements, to or from vocational school, must be done in school buses. (Unpub) ........................................... 54-1976

A school owned or operated automobile, used in casual and occasional transportation of school children to extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats., and sec. 121.54(7), Stats., does not prohibit such use ........................................... 64-45

School boards may acquire school buses by tax-exempt lease financing. (Unpub) ........................................... 10-1983

Students may have bus riding privileges suspended without being suspended or expelled from school. However, both public and private school students
SCHOOLS AND SCHOOL DISTRICTS (continued)

School buses (continued)

must be afforded due process as provided by sec. 120.13(1), Stats., before such suspension can take place ........................................ 63-526

Under secs. 121.54(7), 343.12 and 340.01(56), Stats., a school bus and school bus operator need only be provided for the transportation of those students engaged in the extracurricular activity of the school. Exceptions to the requirements of providing a school bus and school bus operator for the transportation of students discussed ........................................ 65-298

School Lunch Program

Department of Public Instruction may, if so authorized under sec. 16.54, Stats., implement the School Lunch Program and Special Food Service Plan for Children in secular and sectarian private schools and child-care institutions without violating the United States or Wisconsin Constitutions. 63-473

Segregation

The State Superintendent does not have authority to determine whether public schools are segregated or the authority to take enforceable action to desegregate public schools ........................................ 65-282

Speech therapists

Because of lack of statutory authority, speech therapists may not supply services to students attending therapy sessions in parochial school buildings. 63-8

State aid

A school district and a cooperative educational service agency may not, without legislative authority, contract with a private driving school and receive state aid for pupil driving instruction services performed by such driving school ........................................ 76-26

Section 121.17(1)(a), Stats., vests discretion in the State Superintendent to withhold state aid from a school district operating under ch. 119, Stats., if the “scope and character of the work” in such district are not maintained because of failure to comply with the 180-day requirement of sec. 121.02(1)(h), Stats. Section 121.17(3), Stats., requires the withholding of state aid from such a school district only if, in the absence of extenuating circumstances set forth in that statutory provision, it fails to employ and pay qualified teachers during the full school session established by the board of school directors ........................................ 66-155

School districts may obtain adjustments in state aid payments whether their equalized valuation is changed either as a result of a reassessment of or a finding of exemption of manufacturing property. A final order or decision of the Tax Appeals Commission or a final order or judgment of a court can be a final redetermination under the Act. A decision of the Board of Assessors is not sufficient to support a request for adjustment in state aid. 73-119

Student records

A school cannot use confidential information obtained from law enforcement authorities to require students, under threat of expulsion, to participate in group or individual counseling, nor can the school use such information to suspend or expel students. The school can use such confidential information to refer a student to county social welfare agencies or nongovernmental self-help groups, but only if the student consents to such referral .......... 76-134

Secondary schools may not legally provide a vocational, technical and adult education district with the names of high school dropout students .......... 67-254
SCHOOLS AND SCHOOL DISTRICTS  (continued)

Taxation

Matters and documents in the possession or control of school district officials containing information concerning the salaries, including fringe benefits, paid to individual teachers are matters of public record. 63–143

Vocational, Technical and Adult Education District owning residential property is subject to tax levied for school purposes under sec. 70.114(1), Stats. 63–187

When school taxes are collected on property in school district A but are erroneously paid to school district B, school district A is entitled, under sec. 74.78, Stats., to recover the amount so paid, with interest at six percent. Action on a claim under sec. 74.78, Stats., is subject to the six-year statute of limitation. To the extent that 14 OAG 443 (1925), 20 OAG 1177 (1931), and 24 OAG 170 (1935), are inconsistent with this opinion, they are repudiated. 68–389

Textbook loans to school students. 77–66

Textbooks

1979 Assembly Bill 227, which if enacted into law would require school boards to purchase textbooks and loan them without charge to pupils of public and private schools within the district, does not violate the United States or Wisconsin Constitution. 68–287

Transportation

A motor vehicle used by a vocational school to transport students in extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats. After June 30, 1977, the transportation of minors who are fulfilling their compulsory school requirements, to or from vocational school, must be done in school buses. (Unpub) 54–1976

A school owned or operated automobile, used in casual and occasional transportation of school children to extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats., and sec. 121.54(7), Stats., does not prohibit such use. 64–45

Funds made available through the Elementary Secondary Education Act may be used in dual enrollment programs to transport children from parochial schools to public schools and return. 65–126

Students living less than two miles from school may not be transported by the school board at parental expense. 62–95

Under secs. 121.54(7), 343.12 and 340.01(56), Stats., a school bus and school bus operator need only be provided for the transportation of those students engaged in the extracurricular activity of the school. Exceptions to the requirements of providing a school bus and school bus operator for the transportation of students discussed. 65–298

The requirements of section 121.555(2)(a), (c)1., 2., 3. and 5. and (d), Stats., apply to all drivers transporting pupils other than only their own children to and from curricular and extracurricular activities, if such transportation has been provided by the school board. The requirements of section 121.555(2)(b) and (c)4. only apply if the vehicle used is owned or leased by a school or a school bus contractor or is operated by a school district employe. 75–146

Truancy ordinance

Common Council of City of Milwaukee is without power under home rule provision of the Wisconsin Constitution or under its special charter and sec. 62.11(3), Stats., to adopt an anti-truancy ordinance. State has provided special procedures in secs. 118.15 and 118.16, Stats., and has designated the school district board as its agent to deal with matters of local concern in this area. 72–156

Tuition

Neither art. X, sec. 3, Wis. Const., nor any other constitutional provisions prohibits the charging of tuition for any course of instruction offered at a school in the system of vocational, technical and adult education operated.
SCHOOLS AND SCHOOL DISTRICTS (continued)

Tuition (continued)

pursuant to ch. 38, Stats. The charging of tuition at such schools, and the manner and extent whereby such charges are to be made, is a matter of policy which the Legislature is free to determine in the exercise of its legislative power under art. IV, sec. 1, Wis. Const. 64–24

Students who attend state vocational, technical and adult institutions are eligible for tuition grants under sec. 39.30, Stats. 66–182

Vocational school teachers

Discussion of the power of the Superintendent of Public Instruction to license vocational school teachers to teach public school students 68–248

Vocational, technical and adult education

Neither art. X, sec. 3, Wis. Const., nor any other constitutional provisions prohibits the charging of tuition for any course of instruction offered at a school in the system of vocational, technical and adult education operated pursuant to ch. 38, Stats. The charging of tuition at such schools, and the manner and extent whereby such charges are to be made, is a matter of policy which the Legislature is free to determine in the exercise of its legislative power under art. IV, sec. 1, Wis. Const. 64–24

Section 38.08(1)(a), Stats., requires that a "school district administrator of a school district" appointed to a district board of Vocational, Technical and Adult Education have the qualifications specified in sec. 115.01(11), Stats. 70–256

Section 38.24(3)(b), Stats., making the district board of a student's district of residence liable for payment of nonresident fees when attending another district VTAE school is not a denial of equal protection. VTAE districts cannot enter into agreements with each other to waive the nonresident tuition provided for in sec. 38.24(3)(b), Stats. 69–139

Votes and voting

Decision of the Wisconsin Supreme Court upholding weighted voting on school district fiscal boards remains in full force and effect notwithstanding subsequent developments in the law of one person, one vote. 69–14

SEARCH AND SEIZURE

See CRIMINAL LAW

SECRECY

See CONFIDENTIAL REPORTS; OPEN MEETING; PUBLIC RECORDS

SECRETARY OF STATE

Election campaign reports

Those provisions of state law relating to campaign financing which conflict with the federal Election Campaign Act are invalid. The Secretary of State must retain and make available for public inspection, not later than the end of the day of receipt, the federal election campaign reports and statements required to be filed with him. The Elections Board cannot be designated as the agent of the Secretary of State for purposes of compliance by this State with the federal law. (Unpub) 24–1977

Lobbying Law

The Secretary of State may promulgate rules and forms to aid in the administration of the Lobbying Law. However, a substantial portion of the rules proposed on April 30, 1975, would be invalid if adopted since they exceed bounds of correct interpretation of the relevant statutes and impose substantive requirements in excess of statutory authority. 64–49
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Uniform Commercial Code
Changes in the Uniform Commercial Code filing procedures brought about by the amendments to secs. 409.401(1)(c) and 409.403(1), Stats., by ch. 215, Laws of 1973, discussed........................................................ 63–439

SECURITY GUARDS
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SECURITIES LAW
Investment Board, Wisconsin
Section 25.18(1)(f) and (j), Stats., which permits the State of Wisconsin Investment Board to lend securities to dealers, is constitutional. (Unpub) ....120–1979

Margin account agreement
Section 138.05(1), Stats., operates to limit the interest rate which a securities broker-dealer may charge to a noncorporate customer under a margin account agreement; a choice-of-law provisions in margin account agreement will have the effect of avoiding the applicability of sec. 138.05(1)(a), Stats., to interest charges made under the agreement if and only if the agreement bears a "reasonable relation" to the state of the chosen law .... 64–11

SENATE
Elections
A state Senator need not resign his or her present seat before filing and running for a newly numbered Senate seat, merely because he or she is presently an incumbent Senator .................................................. 71–162

Vacancy
A vacancy in the office of a state Senator is created under the provisions of art. XIII, sec. 3 and art. XIII, sec. 10, Wis. Const., as implemented by sec. 17.03(5), Stats., upon his conviction of and sentence for any felony punishable by imprisonment in state prison, and no further specific action is required by the state Senate to implement those provisions .............. 65–264

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SHELTER HOMES
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SHERIFFS
See also PUBLIC OFFICIALS
Age Discrimination in Employment Act
County collective bargaining agreement providing for payment of employe contribution to Wisconsin Retirement System only for those deputy sheriffsue

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SHERIFFS (continued)

Age Discrimination in Employment Act (continued)
under age fifty-five violates the federal Age Discrimination in Employment Act ................................................. 72-91

Blood or breathalyzer tests for employes
A Sheriff’s department may require an officer to take a breathalyzer or blood test if the officer appears to be under the influence of intoxicants or drugs when the officer reports for duty or is on duty .............. 73-104

Booking arrestees
A sheriff may not refuse to book a person lawfully arrested and brought to the county jail by any state law enforcement agency, regardless of the medical condition of the arrestee, although he may require immediate medical screening pursuant to section 53.38, Stats. A sentencing court that imposes county jail time as a condition of probation may suspend that jail time while the probationer receives hospital care, and a sheriff and county department of human services may cooperate in the billing of medical care provided to county jail prisoners ........................................ 77-249

Citizenship
Previous opinion at 65 OAG 273 (1976), to the effect that sec. 66.11(1), Stats., is unconstitutional to the extent that it requires U.S. citizenship of police officers and deputy sheriffs is withdrawn in light of a United States Supreme Court decision with respect to a similar requirement in New York ........ 68-61

Civil service selection
County Board under 500,000 not having civil service system for deputy sheriffs can abolish traffic department organized under sec. 83.016, Stats., and with the cooperation of the Sheriff, such traffic patrolmen can be appointed deputies in the Sheriff’s department without providing for civil service selection under sec. 59.21(8)(cm), Stats. Language in 36 OAG 174 (1947) and 38 OAG 245 (1949) distinguished in view of sec. 59.025, Stats., which was enacted after issuance of those opinions .......................... 71-199

Civil service seniority
A public employe departing a non-elected county position in the sheriff’s office to assume the elective county office of sheriff is not entitled to reinstatement to the same or a similar position upon termination of service as such elective officer, in the absence of properly authorized civil service or contractual provisions so providing ......................................................... 78-19

When section 63.065, Stats., permits a person to return from approved leave of absence to classified service without loss of seniority, the statute means that the person is treated for seniority purposes as though he or she never left the position in classified service ......................................................... 78-11

Compatibility
In a county having no undersheriff, a person elected and serving as Sheriff vacated office by accepting office of town supervisor during his term but is entitled to compensation paid and can continue to exercise duties of Sheriff until successor is elected or appointed and qualifies .......................... 73-83

Convicted felons
Convicted felons may not serve as sheriffs, deputy sheriffs, patrolmen, policemen, or constables as these law enforcement officers are “public officers” within the meaning of that term in sec. 17.03(5), Stats., and they hold an “office of trust, profit or honor in this state” within the purview of Wis. Const. art. XIII, sec. 3 ................................................. 65-292

Coroner
The county board of a county with a population less than 500,000 may abolish the position of undersheriff and transfer all statutory duties and powers of an undersheriff, including those set forth in sec. 59.21(8)(b)1., Stats., to the civil service position of chief deputy sheriff, created under sec. •
SHERIFFS (continued)

Coroner (continued)

59.21(8), Stats. The coroner does not exercise the powers and duties of the sheriff, under the authority of sec. 59.34(2), Stats., when there is no sheriff, if the functions, duties, responsibilities and privileges of undersheriff have been properly transferred, pursuant to sec. 59.025(3)(b), (c), Stats., to the position of chief deputy sheriff, which is created and filled, pursuant to sec. 59.21(8), Stats. (Unpub). ........................................................ 25–1982

The offices of coroner and deputy coroner are incompatible with that of city police officer; and the office of coroner is incompatible with that of assistant chief of a volunteer fire department ........................................ 78–49

Counties

County, with cooperation of Sheriff and County Board, may join with other counties to share services of deputy sheriffs in narcotics investigations within limits of secs. 59.24(2), 66.305, 66.315, Stats. ........................................ 63–596

Deputy sheriff

Deputy sheriff appointed under sec. 59.21(2) and (8)(a), Stats., must be a resident of the State and must, before qualifying and serving, be a resident of the county and must continue to maintain residency therein .......... 66–315

Leave without pay for a deputy who has been elected to a county or state office must be granted. Applicable statutes discussed ........................................ 68–124

Making citizenship a prerequisite for deputy sheriff position violates Fourteenth Amendment ............................................................ 65–273

The County Board may require the appointment of regularly employed deputies to be in accordance with the pertinent civil service ordinance. The county board may fix the number and the compensation, if any, of all deputy sheriffs, whether regularly employed or honorary deputies. Notwithstanding the number fixed by ordinance, the Sheriff retains the power to call a posse comitatus pursuant to sec. 59.24(1), Stats. ...................... 68–334

The Menominee County Sheriff’s Department and the Menominee tribal police may carry out a program of cross-deputization. Menominee tribal police must meet the statutory and constitutional requirements for appointment as deputy sheriffs. (Unpub) .............................................. 93–1979

The University of Wisconsin has no authority to agree to hold harmless a county that incurs liability because of a university officer’s torts, but the common law of indemnification would require such officer to indemnify that county and statutory indemnification would require the state to indemnify the officer when acting in the scope of his/her employment. A county sheriff may deputize university campus police officers and restrict that deputization to particular times, places and crimes. An otherwise valid arrest would not be rendered invalid, however, solely because the officer exceeded the scope of that deputization. ................................................. 78–1

Whereas a deputy sheriff must be a resident of the county for which appointed, secs. 59.24(2), 66.30, 66.305, and 66.315, Stats., would allow such deputy to serve in an adjacent county upon request for mutual assistance . 62–250

Fair Credit Reporting Act

A county sheriff’s department is not a consumer reporting agency subject to the Fair Credit Reporting Act. The Federal Trade Commission has taken an opposite position ........................................ 63–364

Fees

Section 71.13(3)(g), Stats., requires that the Sheriff of Milwaukee County perform duties of service and filing in connection with collection of state income and franchise taxes pursuant to sec. 71.13, Stats., without advancement of fees by the Department of Revenue ........................................ 69–37

Sheriffs may collect the statutory fee for each service or attempted service of process; fees for mileage, however, may only be collected if service is successful ........................................................................ 73–106

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SHERIFFS (continued)

Section 51.20(14), Stats., requires Sheriff to furnish transportation to any individual who is the subject of a petition under sec. 51.20, Stats., at all stages of the proceedings, regardless of any provision for reimbursement for transportation costs ................................................................. 68-223

Fire alarm systems

A county has power under sec. 59.07(64), Stats., to enact an ordinance, applicable countywide, prohibiting the giving of false alarms on security or fire alarm systems connected to the Sheriff’s department. Provisions amounting to a building code would not be applicable in cities, villages or towns having ordinances or codes covering the same subject. Authority of Sheriff to act as licensing authority or to collect license fees discussed…… 72-153

Forfeiture funds

Money resulting from a state forfeiture action under sections 161.555 and 973.075(4), Stats., must be deposited in the state school fund. Money granted to the state after a federal forfeiture proceeding need not be…… 76-209

Highways

Where county has contract to maintain state trunk highways, county highway commissioner can temporarily close state trunk highway in case of emergency. Sec. 86.06(1), Stats. Sheriff has power to temporarily close any highway in county in case of emergency and to divert traffic. Secs. 59.24(1) and 349.02, Stats................................................................ 67-335

Indians

The Menominee County Sheriff’s Department and the Menominee tribal police may carry out a program of cross-deputization. Menominee tribal police must meet the statutory and constitutional requirements for appointment as deputy sheriffs. (Unpub) .............................................. 93-1979

Indians, fresh pursuit onto reservation

State and county conservation wardens and Sheriff’s officers have authority under state law to arrest a Menominee Indian suspect on the reservation following fresh pursuit for an off-reservation violation of state law, if the arrest is one the officer is otherwise authorized to make. Although the State is generally obliged to comply with Menominee tribal extradition procedures, the State’s personal jurisdiction over an Indian arrested under the circumstances described is probably not pre-empted by federal law…… 74-245

While sheriffs lack statutory or common law authority to contract to provide county dispatch services to outside entities such as tribal public safety departments, sheriffs do have exclusive authority to instruct their deputies as to how such dispatch services should be performed in furtherance of their law enforcement functions ................................................................. 78-85

Indigents

A sheriff may not refuse to book a person lawfully arrested and brought to the county jail by any state law enforcement agency, regardless of the medical condition of the arrestee, although he may require immediate medical screening pursuant to section 53.38, Stats. A sentencing court that imposes county jail time as a condition of probation may suspend that jail time while the probationer receives hospital care, and a sheriff and county department of human services may cooperate in the billing of medical care provided to county jail prisoners ................................................................. 77-249

Jail keys

As custodian of the jail and its prisoners, the Sheriff has the exclusive right to determine where duplicate sets of jail keys will be kept; the County Clerk is not authorized to retain a duplicate set of jail keys if the Sheriff does not agree to such possession ........................................................................................................ 68-330
Neither the sheriff nor the county board may "privatize" the jailer function of the office of sheriff under section 59.23(1), Stats., by contracting with a private firm to take charge and custody of county prisoners held in the county jail .................................................. 77-94

Legal advisor

County Board has no power to authorize Sheriff to employ a police legal advisor to give day-to-day advice to the Sheriff unless such person is an assistant district attorney or assistant county corporation counsel ........ 65-245

Medical care for indigent arrestees and prisoners

A sheriff may not refuse to book a person lawfully arrested and brought to the county jail by any state law enforcement agency, regardless of the medical condition of the arrestee, although he may require immediate medical screening pursuant to section 53.38, Stats. A sentencing court that imposes county jail time as a condition of probation may suspend that jail time while the probationer receives hospital care, and a sheriff and county department of human services may cooperate in the billing of medical care provided to county jail prisoners .................................................. 77-249

Posse comitatus

The County Board may require the appointment of regularly employed deputies to be in accordance with the pertinent civil service ordinance. The County Board may fix the number and the compensation, if any, of all deputy sheriffs, whether regularly employed or honorary deputies. Notwithstanding the number fixed by ordinance, the Sheriff retains the power to call a posse comitatus pursuant to sec. 59.24(1), Stats............................. 68-334

Public records

Sheriff’s criminal investigation files are not covered by a blanket exemption from the public records law, but denial of access may be justified on a case-by-case basis .................................................. 77-42

Sheriff’s radio log, intradepartmental documents kept by Sheriff and blood test records of deceased automobile drivers in hands of Sheriff are public records subject to inspection and copying under sec. 19.21(2), Stats., and subject to limitations contained in court cases cited which place duty on custodian to withhold disclosure where substantial harmful effect upon the public interest would result. Specific reason for withholding must be given which may be tested by mandamus in the courts. Such records do not appear to be records required by law to be kept by Sheriff. Where records are acquired by law to be kept by Sheriff, right of inspection exists under sec. 59.14(1), Stats. That portion of 41 OAG 237 (1952) inconsistent with this opinion is repudiated .................................................. 67-12

Radio channel for police and emergency use

A sheriff’s actions in determining access to a county’s law enforcement channel are ministerial in nature. The negligent exercise of that authority could subject the sheriff to liability .................................................. 76-7

Release on bail denied discussed

Acting under the authority of section 969.07, Stats., local law enforcement officials may deny release from custody to a person arrested for a misdemeanor if in the officials’ opinion the person is not in a fit condition to care for his or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others .................................................. 75-209
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Salaries and wages

Individual appointed to fill vacancy in office of Sheriff is entitled to same salary as predecessor. County Board may increase but cannot decrease such compensation during term of such officer. (Unpub) ......................... 1-1975

The salaries of elected county officials may be increased during their terms. But any increase put into effect after the earliest time for filing nomination papers does not carry forward to the new term unless the County Board again votes the increase ............................................. 69-1

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A sheriff who is unsuccessful in serving an execution on a judgment is not entitled to a fee allowed under sec. 59.28, Stats., unless he has in some manner demanded payment on an execution on the judgment under sec. 59.28(6), Stats. ................................. 67-140

Tribal police

The Menominee County Sheriff's Department and the Menominee tribal police may carry out a program of cross-deputization. Menominee tribal police must meet the statutory and constitutional requirements for appointment as deputy sheriffs. (Unpub) .............................................. 93-1979

While sheriffs lack statutory or common law authority to contract to provide county dispatch services to outside entities such as tribal public safety departments, sheriffs do have exclusive authority to instruct their deputies as to how such dispatch services should be performed in furtherance of their law enforcement functions ............................................. 78-85

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Water safety patrol officers in county patrol, created as a separate agency, do not have to be deputized by Sheriff to enforce secs. 30.50-30.80, Stats., Wisconsin's Regulation of Boating Law ...................................... 65-169

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Accident reports

Snowmobile accident reports filed with the Department of Natural Resources pursuant to section 350.15(3), Stats., are not confidential documents ...... 76-56

Conservation warden

A conservation warden, acting pursuant to the arrest power conferred upon him by sec. 29.05(1), Stats., may arrest with or without a warrant, any person detected in the actual violation, or any person whom such officer has reasonable cause to believe guilty of a violation of ch. 350, Stats., except where applicable to highways. A conservation warden has the power under sec. 29.05(1), Stats., to stop any snowmobile and to make necessary inquiries, if he has reasonable cause to believe there is a violation of ch. 350, Stats., and to conduct a limited weapons search where he reasonably suspects that he or another is in danger of physical injury ...................... 64-166

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Section 349.06(1), Stats., authorizes local authorities to enact and enforce any ordinance which is in strict conformity with traffic regulation provisions of ch. 350, Stats., for which the penalty for violation is a forfeiture .......... 66-161
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Operation of “adjacent to a roadway”

The rights of property owners abutting a highway are subject to reasonable regulations imposed by highway maintenance authorities and are subordinate to the public’s interest over the use of the land within the boundaries of a highway right of way. 75-10

SOIL CONSERVATION

Referendum election
An ordinance formulated and proposed by the supervisors of a county soil and water conservation district, created pursuant to sec. 92.05, Stats., is not necessarily invalid simply because its effect is limited to the regulation of agricultural practices and uses on land currently utilized for agricultural purposes. All resident electors of the “area to be affected” by such an ordinance may vote in a referendum election on the ordinance whether or not they reside on the specific kind of property which may be the subject of such regulations. 68-126

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The lobby law prohibits a state employe from accepting compensation for serving on the board of directors or providing any other service to a principal as defined in section 13.62(12), Stats. 77-160

Garnishment
The state is immune from suit in any garnishment action not involving a state employe or officer and, with the exception of those cases falling under sections 779.15 and 779.155, Stats., monies held in the state treasury on the account of independent contractors are not available to satisfy the judgment debts owed by them. 77-17

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A deficit reported in financial statements prepared in accordance with Generally Accepted Accounting Principles would not violate article VIII, section 5 of the Wisconsin Constitution, which requires a balanced budget. 74-202

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The state may not contract public debt to finance its contribution to the proposed Great Lakes Protection Fund because the projects intended to be funded are not water improvements within the meaning of article VIII, section 7(2)(a)l. of the Wisconsin Constitution. 78-100

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Navigable stream

In order to obtain a conviction for violation sec. 30.195, Stats., the State must show that the defendant changed the course of a navigable stream and that no permit to change the stream's course had been granted to the defendant. The State need not show that the changed portion of the stream was navigable, nor a specific intent to change the stream's course .............. 67-265

Pedestrian mall

The expenses incurred by a city in converting a vehicular traffic street to a pedestrian mall may be assessed against the State as an abutter under sec. 66.64, Stats., and the assessment paid if approved by the Board of Commissioners of Public Lands. (Unpub) ............................................. 45-1975

Public debt

The state may not contract public debt to finance its contribution to the proposed Great Lakes Protection Fund because the projects intended to be funded are not water improvements within the meaning of article VIII, section 7(2)(a)1. of the Wisconsin Constitution ........................................ 78-100

Purchase of all goods and services

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The State of Wisconsin Investment Board lacks the authority to borrow money and secure that debt utilizing real estate owned by it as an asset of the fixed retirement trust. Such board does have the authority to acquire encumbered real estate where the debt is assumed without recourse ....... 78-189

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Responsibility for administration of chronic renal disease program under sec. 49.48, Stats., discussed. (Unpub) ........................................ 10-1978

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Federally recognized Indian tribal councils are eligible under the state program for the distribution of federal surplus property to public agencies under P. L. 94-519. (Unpub) .......................................................... 61-1979

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The Department of Health and Social Services may not reimburse counties for administrative costs incurred in providing temporary assistance to state dependents .................................................. 70-17

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1979 Assembly Bill 227, which if enacted into law would require school boards to purchase textbooks and loan them without charge to pupils of public and private schools within the district, does not violate the United States or Wisconsin Constitution .................................................. 68-287

Religion
Wisconsin Constitution art. I, sec. 18, prohibiting the drawing of money from the Treasury for the benefit of religious societies, or religious or theological seminaries is a proscription against using public monies for such purpose. Section 3 of 1977 Assembly Bill 500 which purports to establish a separate fund outside of the State Treasury if enacted would not avoid this prohibition since the public nature of the money is not changed .................. 67-71

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the "scope and character of the work" in such district are not maintained because of failure to comply with the 180-day requirement of sec. 121.02(1)(h), Stats. Section 121.17(3), Stats., requires the withholding of state aid from such a school district only if, in the absence of extenuating circumstances set forth in that statutory provision, it fails to employ and pay qualified teachers during the full school session established by the board of school directors .................................................... 66-155

School districts may obtain adjustments in state aid payments whether their equalized valuation is changed either as a result of a reassessment of or a finding of exemption of manufacturing property. A final order or decision of the Tax Appeals Commission or a final order or judgment of a court can be a final redetermination under the Act. A decision of the Board of Assessors is not sufficient to support a request for adjustment in state aid . 73-119

Vocational, Technical and Adult Education, Board of

The Wisconsin Board of Vocational, Technical and Adult Education has authority to adopt a policy which provides for the payment of state aids for the nonreimbursed costs incurred when vocational, technical and adult education districts enter into contracts pursuant to section 38.14(3), Stats., and when the State Board determines that the services provided are not "community services" within the meaning of section 38.28(1m)(a). In order to receive state aids for qualifying contracts, however, fees must be charged which are equivalent to the uniform program and material fees normally charged to district students .................................................... 74-67

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Ethics Committee

The State Bar of Wisconsin is a state agency created by the constitutional authority of the Supreme Court. The authorized functions of the State Bar may come under the "State Action" exemption to the antitrust laws and the procedures employed by the Unauthorized Practice Committee and the Ethics Committee appear to provide due process but specific opinions in this regard must be given on a case-by-case basis. Volunteer lawyers giving free legal advice in the "Lawyer Hotline" program are agents of the State Bar and are entitled to common law immunity and indemnification under section 895.46(1)(a), Stats. .................................................... 75-153

"Lawyer Hotline" Program

The State Bar of Wisconsin is a state agency created by the constitutional authority of the Supreme Court. The authorized functions of the State Bar may come under the "State Action" exemption to the antitrust laws and the procedures employed by the Unauthorized Practice Committee and the
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Ethics Committee appear to provide due process but specific opinions in this regard must be given on a case-by-case basis. Volunteer lawyers giving free legal advice in the "Lawyer Hotline" program are agents of the State Bar and are entitled to common law immunity and indemnification under section 895.46(1)(a), Stats. 75–153

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The State Bar of Wisconsin is a state agency created by the constitutional authority of the Supreme Court. The authorized functions of the State Bar may come under the "State Action" exemption to the antitrust laws and the procedures employed by the Unauthorized Practice Committee and the Ethics Committee appear to provide due process but specific opinions in this regard must be given on a case-by-case basis. Volunteer lawyers giving free legal advice in the "Lawyer Hotline" program are agents of the State Bar and are entitled to common law immunity and indemnification under section 895.46(1)(a), Stats. 75–153

STATE BUILDING COMMISSION

See BUILDING COMMISSION, STATE

STATE FAIR

Bonds

Issuance of general obligation bonds to finance State Fair Park coliseum is authorized by statute and is not violative of the State Constitution. 62–236

Open meeting

The Board of Directors of the Central Wisconsin State Fair Association, which was organized as a county agricultural society under sec. 1460, Stats. (1898), is not a governmental body within sec. 19.82(1), Stats., and is not subject to the Open Meetings Law. (Unpub) 41–1983

STATE HISTORICAL SOCIETY

See HISTORICAL SOCIETY, STATE

STATE MEDICAL ASSISTANCE PROGRAM

Chiropractic services

Chapter 147, Laws of 1973, amended the State Medical Assistance Program to provide for payment for chiropractic services, including necessary x-rays. Such payment is authorized regardless of whether there are matching federal funds. (Unpub) 2–1975

STATE OFFICE BUILDING

Parking

It is possible for the State to lease one of its parking facilities to an independent contractor upon a finding that an independent contractor can perform the service of operating and maintaining the parking facility more economically or more efficiently than the civil service system. 62–183

Protective services

Department of Administration has authority to provide protective services in leased buildings. (Unpub) 84–1976

Restaurant

Subject to certain limitations, the lease of state office building space to a restaurant or other commercial enterprise serving both state employees and

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the general public is constitutionally permissible. Such leases do not require competitive bidding ............................................. 69-121

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Fees
Fees collected by the Department of Natural Resources for admissions to state parks and forests are subject to sales taxation under sec. 77.52(2)(a)2., Stats. ............................................. 66-205

Prospecting on state park and forest lands
Department of Natural Resources may grant contracts for mining beneath beds of navigable lakes and waters and licenses for prospecting on state park and forest lands, but it may not grant leases for mining purposes on state park and forest lands. (Unpub)............................................. 58-1976

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P0sse comitatus
A state traffic patrol officer should not except in extreme emergencies be impressed for service as part of a posse comitatus pursuant to sec. 59.24(1), Stats. Where duly impressed he is entitled to workmen's compensation, if injured, from the county or municipality but would not be entitled to regular pay from the State and probably would not be entitled to workmen's compensation from the State ............................................. 62-38

Prison riot
Upon appropriate call, state traffic patrol officers may act as peace officers during a prison riot or other disturbance even when this occurs during a strike of prison guards; they may not, however, perform other duties of guards ............................................. 68-104

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Section RL 3.24 Wis. Adm. Code prohibits use of any badge by those engaged in private detective activity. Non-misleading private use by those not engaged in private detective activity not prohibited by statute ............ 68-169

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State property is not subject to assessment of special charges under sec. 66.60(16), Stats., for maintenance of State Street Mall-Capitol Concourse project as proposed by the City of Madison. Section 66.64, Stats., is limited to special assessments for improvements ............................................. 69-269

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Prisons and prisoners
Department of Health and Social Services has power to compel cooperation of county and local officers in obtaining jail information. Sec. 46.16, Stats. 67-242
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The Stockbridge-Munsee Indian Tribe has the exclusive right to hunt and fish on tribal lands and has the right to regulate such activities by both Indian and non-Indian persons upon such lands. Current and former Stockbridge-Munsee Reservation boundaries discussed ........................................... 69–72

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In order to obtain a conviction for violating sec. 30.195, Stats., the State must show that the defendant changed the course of a navigable stream and that no permit to change the stream’s course had been granted to the defendant. The State need not show that the changed portion of the stream was navigable, nor a specific intent to change the stream’s course .............. 67–265

STREET IMPROVEMENT

See APPROPRIATIONS AND EXPENDITURES; HIGHWAYS AND BRIDGES; MUNICIPALITIES

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See also EDUCATION

Bus riding privileges

Students may have bus riding privileges suspended without being suspended or expelled from school. However, both public and private school students must be afforded due process as provided by sec. 120.13(1), Stats., before such suspension can take place ................................................. 63–526

Confidential reports

A school cannot use confidential information obtained from law enforcement authorities to require students, under threat of expulsion, to participate in group or individual counseling, nor can the school use such information to suspend or expel students. The school can use such confidential information to refer a student to county social welfare agencies or nongovernmental self-help groups, but only if the student consents to such referral .......... 76–134

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Campuses of the University of Wisconsin System have no present authority to regulate political canvassing in University-owned dormitories which does not involve the solicitation of monetary contributions .......................... 65–261

Higher Educational Aids Board

The Wisconsin Higher Education Corporation may provide administrative services to lenders, charge a reasonable fee, and may transfer any excess funds it receives from such fees to the appropriations of the Higher Educational Aids Board or the State. (Unpub) ........................................... 3–1977

Legal services program

Regents should identify how compulsory fees will be used to necessarily and conveniently further the objects of the University before approving a segregated fee, under sec. 37.11(8), Stats., to finance a legal services program for Oshkosh Student Association ................................................. 63–385

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Student loan funds established by gift under sec. 36.065, Stats., for the benefit
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Records

Section 13.94, Stats., contains authority for the State Auditor to secure
certain information from student records for the purpose of auditing full-
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Students who attend state vocational, technical and adult institutions are
eligible for tuition grants under sec. 39.30, Stats.................................. 66-182

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to the subpoena and to remain in attendance until excused ..................... 68-251

Lobbying Law

Certain provisions of Substitute Amendment 1 to 1977 Senate Bill 286,
revising subch. III of ch. 13, Stats., the State's Lobbying Law, are incom-
patible with the rights of Wisconsin citizens to petition the government and
to be secure against unreasonable searches and seizures and are therefore
probably unconstitutional. The major portion of the Bill is constitutional.
(Unpub) ........................................................................ 15-1978

In principle, the purposes sought to be accomplished by Assembly Substitute
Amendment 3 to 1977 Assembly Bill 93, revising subch. III of ch. 13, Stats.,
the State's Lobbying Law are compatible with the rights of Wisconsin
citizens to petition the government and to be secure against unreasonable
searches and seizures. Some of the means selected to accomplish those
purposes may, on their face or as applied violate citizens' First Amendment
right of petition ................................................................. 67-85

Patient records

Prior to releasing patient records in response to a warrant or subpoena, a
federally funded or federally assisted drug treatment facility must first
ascertain that the issuing court has made a finding of "good cause" within
the meaning of 21 U.S.C. sec. 1175(b)(2)(C) in order to avoid the possibility
of a fine under 21 U.S.C. sec. 1175(f). If there is no evidence that a finding
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to release drug treatment records .............................................. 72-12

Personnel Commission

The Personnel Commission possesses the same powers and duties in process-
ing discrimination complaints involving a state agency as employer as those
exercised by the Department of Industrial, Labor and Human Relations
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The Real Estate Examining Board and its members have the power to issue subpoenas. However, the records of the Department of Revenue are not subject to subpoena, but are available to the Board under sec. 71.11(44), Stats. (Unpub)................................. 57-1977

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Emergency planning committees

A local emergency planning committee created by the county board pursuant to section 59.07(146), Stats., is in many respects treated as other county committees. The county board has the authority to appropriate funds for the committee and the county’s relationship to the committee is the same as the county’s relationship to the other county bodies created under section 59.07, with the exception that the county must be consistent with the authority exercised by the state emergency response commission. The county corporation counsel should provide legal advice and assistance to the LEPC. If the LEPC or its members are sued, the attorney general represents them; and the state would pay the judgment if the requirements of section 895.46 have been satisfied .............................. 78-27

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1971 Enrolled Joint Resolution 26 includes two propositions which may be submitted to the electors as one amendment to the Wisconsin Constitution 63-28, 46

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Certified survey maps

“Mylar” may not be utilized in the place of “durable white paper” in the making of certified survey maps to be recorded in the office of the Register of Deeds, under the provisions of sec. 236.34(1), Stats. (Unpub).............. 10-1976

Condominium

The legal description of condominium units must conform to the requirements of chapter 703, Stats., the Condominium Law. The requirements of chapter 236, dealing with platting and subdividing, may not be used to legally describe condominium units ................................................. 75-94

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Duties of county and other land surveyors and minimum standards for property surveys discussed ................................................. 69-160

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A city or village engineer is not required to be registered as a land surveyor when acting pursuant to sec. 59.635(2), Stats. (1977) .............. 68-185
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Meandered lake
Methods discussed for establishing or reestablishing an E-W 1/4 line and the center 1/4 corner when the E 1/4 corner falls in a meandered lake ......... 66-261

Public lands
A resurvey of the public lands under sec. 59.635(8), Stats., requires reestablishing all corner posts placed by government surveyors in the original survey of the public lands. If a county board approves a resurvey program under sec. 59.635(8), Stats., the resurvey must be completed in 20 years or less and at least 5 percent of the resurvey must be completed each calendar year ........................................................................................................ 66-134
Requirements of relocating, establishing and perpetuation of the corners of the survey of the public lands discussed. Section 60.38, Stats., requires that resurveys of the public lands be recorded with the Register of Deeds in the county where the resurveyed land is located and kept as the County Board directs by resolution as long as a separate index is maintained........... 66-126
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Proceeds, disposal of
Subsections (5), (6) and (7) of section 75.35, Stats., created by 1987 Wisconsin Act 27 first apply to sales of property the county acquired at a section 74.39 tax sale on or after the effective date of section 3203(47)(c) of 1987 Wisconsin Act 27 ................................................................. 77-133

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A deficit reported in financial statements prepared in accordance with Generally Accepted Accounting Principles would not violate article VIII, section 5 of the Wisconsin Constitution, which requires a balanced budget .......... 74-202

Ad valorem tax
An ad valorem tax upon automobiles, where the assessment would be based on the manufacturer’s suggested retail price and the age of the vehicle, and where the rate would be unrelated to the tax rate upon other taxable property, would violate the uniformity requirement of Wis. Const. art. VIII, sec. 1. (Unpub) ............................................................. 99-1977

Automobiles and motor vehicles
An ad valorem tax upon automobiles, where the assessment would be based on the manufacturer’s suggested retail price and the age of the vehicle, and where the rate would be unrelated to the tax rate upon other taxable property, would violate the uniformity requirement of Wis. Const. art. VIII, sec. 1. (Unpub) ............................................................. 99-1977

Charitable institutions
The nonagricultural lands at the Northern Center for the Developmentally Disabled and other similar institutions are not subject to taxation for school purposes under sec. 70.114, Stats. (Unpub) .............................................. 110-1977

Charitable organizations
The loss of tax exempt status for income tax purposes does not necessarily imply that an organization is no longer nonprofit. The Bingo Control Board does not have statutory authority to revoke the bingo license of an otherwise eligible organization because of its membership policies regarding race ................................................................. 67-255

Cigarette tax laws
The State may not constitutionally impose the general sales tax, section 77.52, Stats., on reservation sales of cigarettes and bingo admissions by Indian retailers to non-members of the governing tribe. The State may impose the use tax, section 77.53, Stats., on such cigarettes sales and, arguably, on sales of bingo admissions. Section 77.53 requires Indian retailers to precollect the use tax. Whether the chapter 77 use tax may be
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Wisconsin's cigarette tax laws do not apply to Indian persons or Indian tribes selling cigarettes on Indian reservations ......................................................... 68–151

Conservation
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Counties are liable for proportionate share of tax certified to them prior to repeal of sec. 59.07(21), Stats., by sec. 300m of ch. 90, Laws of 1973 ........... 63–300
Section 75.36, Stats., provides that a county need not assume and pay all unpaid or delinquent municipal taxes, assessments and charges due on a parcel of property at the time the county acquires such property by tax deed. The statute also provides that the county is not required to assume and pay any such taxes which remain unrecovered upon the sale of such property because the sum realized was insufficient to pay all such outstanding municipal tax obligations. (Unpub.) ................................................................. 31–1987
Subsections (5), (6) and (7) of section 75.35, Stats., created by 1987 Wisconsin Act 27 first apply to sales of property the county acquired at a section 74.39 tax sale on or after the effective date of section 3203(47)(c) of 1987 Wisconsin Act 27 ................................................................. 77–133
Where a county proceeds under sec. 75.69(1), Stats., to advertise and sell tax delinquent property, it must reject all bids less than the appraised value, but, if it determines to accept any bid, it can accept the bid it deems in good faith to be most advantageous to the county in view of the criteria set forth in the bid notice. Such bid need not be the highest bid in dollars ................. 70–1

County cannot levy a "special county charge"
Section 74.73(2), Stats., provides that where a town, city or village refunds property taxes erroneously assessed as a result of an error or defect of law not caused by such local taxing jurisdiction or an official thereof, such entity is entitled to a credit by the county for that portion of such taxes previously paid over to the county. The statute does not direct that the next county levy be increased by such amount or authorize the county to levy a "special county charge" against such entity to recoup the amount so credited ................................................................. 77–201

County treasurer
County treasurer has duty to collect personal property tax returned delinquent by the town, but may charge tax back to the town after one year. Collection methods discussed ................................................................. 63–204

Delayed refund claims
1977 amendment to sec. 70.511(2), Stats., which allows municipalities to pass on part of delayed refund claims to other taxing districts for which taxes were collected, does not violate the uniformity provision of Wis. Const. art. VIII, sec. 1. For purposes of the amendment, "taxing districts" includes school and VfAE districts ................................................................. 69–220

Exemption is forfeited
Under sec. 70.11(4), Stats., tax exemption is forfeited on property owned by a religious organization when that property is leased to a benevolent association and part of the resulting lease-hold income is used to retire the debt on the property. (Unpub.) ................................................................. 44–1982
TAXATION (continued)

Fort Atkinson

Where city created tax incremental finance district by resolution adopted May 1, 1977, date of creation for purposes of calculating extended six year cut-off period within which expenditures must be made under sec. 66.46(6)(a)2., Stats., was January 1, 1977, and six year period expired on December 31, 1982. (Unpub) .......................................................... 23-1983

Foster homes

Foster homes contracted for (i.e., leased) by the Department of Health and Social Services, pursuant to sec. 48.52, Stats., are immune from local zoning to the extent that the zoning conflicts with the Department's possessory use of property for purposes contemplated by ch. 48, Stats. However, immunity for leased facilities is subject to sec. 13.48(13), Stats., as amended by ch. 90, sec. 2, Laws of 1973. Section 48.64, Stats., agreements between the Department and proprietors of foster homes do not serve to immunize the proprietor's property from local zoning. County agencies providing child welfare services do not have authority to lease real property for foster home use. The Department may assert its immunity from local zoning for property it acquires a possessory interest in by virtue of a sublease pursuant to sec. 48.52(2), Stats. Property leased by the Department pursuant to sec. 48.52(2), Stats., is not rendered exempt from property taxation. The lessor remains responsible for tax payment .......................................................... 65-93

"Homestead property"

Proposals for exemptions of "homestead property" from local property taxation probably are unconstitutional under the Equal Protection Clause of the State and Federal Constitutions and the Tax Uniformity Clause of the State Constitution .......................................................... 66-337

Income tax laws

Discussion of constitutional and policy considerations associated with federalization of state income tax laws .......................................................... 66-331

Income tax lien

Income tax lien is extinguished by tax deed under sec. 75.14, Stats., or by judgment under sec. 75.521, Stats. .......................................................... 62-234

Indian fee patented lands

The State has express authority under the General Allotment Act of 1887, as amended, 25 U.S.C. sec. 331 et seq., particularly 25 U.S.C. sec. 349, to impose ad valorem property taxes on Indian fee patented lands located within the Lac du Flambeau Reservation which were originally allotted under the Act after February 8, 1887. Indian fee patented lands allowed prior to that date directly under the Treaty of September 30, 1854, are not taxable by the State under 25 U.S.C. sec. 349 .......................................................... 72-74

Indians

Land recently purchased and held in trust for Indian tribes or tribe members under the superintendence of the federal government has the same reservation status as land reserved for the use of Indian tribes or tribe members by treaty or legislation .......................................................... 71-82

The State may not constitutionally impose the general sales tax, section 77.52, Stats., on reservation sales of cigarettes and bingo admissions by Indian retailers to non-members of the governing tribe. The State may impose the use tax, section 77.53, Stats., on such cigarette sales and, arguably, on sales of bingo admissions. Section 77.53 requires Indian retailers to precollect the use tax. Whether the chapter 77 use tax may be imposed on reservation sales of other types of services to non-Indians depends on the facts of the particular case. Impediments to effective enforcement when the retailer is an Indian tribal corporation discussed .......................................................... 74-134

The state net proceeds occupation tax and mining permit process are generally not applicable to mining operations on the Sokaogon Reservation,
TAXATION (continued)

Indians (continued)

whether those operations are conducted by the Tribe or by a non-Indian lessee. Any federal environmental impact statement required by the federal government would legally need to be shared with or presented to the State. The applicability of state pollution control laws to mining activity on the Reservation is also discussed .......................................................... 75-220

Wisconsin’s cigarette tax laws do not apply to Indian persons or Indian tribes selling cigarettes on Indian reservations.................................................. 68-151

Inheritance, appraiser

There is authority for the county court to appoint an additional appraiser for inheritance tax purposes in an estate where death occurred prior to May 14, 1972, and to pay for such an appraiser on the certificate of the county judge out of inheritance tax funds in possession of the Department of Revenue. (Unpub).......................................................... 21-1976

Inheritance tax rules

Section 253.34(1)(a), Stats., dealing with filing fees was not amended by ch. 310, Laws of 1971, which amended inheritance tax rules on survivorship interests .......................................................... 62-32

Interest

Semiannual tax payments varying by one cent are too trivial to justify assessing interest by county treasurer under sec. 74.03(4), Stats...................... 68-361

Intoxicating liquors

Blend of liquor taxed under sec. 139.03(2t), Stats., and other liquor may be taxed proportionately without violating sec. 139.03, Stats............... 68-138

Lands

In publishing redemption notices for tax delinquent lands under sec. 75.07(1), Stats., county treasurer is not authorized to omit the names of persons to whom such property was last assessed .......................................................... 63-118

Section 75.07(1), Stats., requiring publication of redemption notice prior to expiration of time to redeem lands sold for taxes, is directory only; and failure to include in such publication the name of the person to whom such taxes were assessed does not invalidate a subsequent tax deed .............. 63-116

"Land value taxation"

A statute which would allow any city, village or town to elect to apply so-called "land value taxation," i.e., the taxation of land as defined in sec. 70.03, Stats., exclusive of buildings or structures, to all lands within its boundaries, would be unconstitutional under the provisions of Wis. Const. art. VIII, sec. 1, which requires that general property taxation be uniform. 68-76

A municipality, otherwise qualified, is entitled to an exemption under section 43.64(2), Stats., where the county has not acted to levy a tax specifically designated as a county library tax but does finance "money expended for public library services to its inhabitants" by a general tax levy .................. 72-190

A town, city or village which does not maintain a public library, as a municipality or jointly with another municipality under contract, but which makes contributions to a nearby public library, cannot be exempted from the county library tax levy under sec. 43.64(2), Stats. .................. 65-182

Menominee Tribe

Property held in trust by the federal government for the Menominee Tribe and tribal members pursuant to the Menominee Restoration Act (25 U.S.C. sec. 903, et seq.) is not subject to state taxation. Tribal members residing and working in Menominee County and the Menominee Tribe are not subject to state income tax. Government services to be provided by Menominee County and the Town of Menominee discussed .................. 66-290

Mill rate limitations

Mill rate limitations on local taxing authorities provided in secs. 60.18(1), 61.46(1), 62.12(4) and 65.07(1)(a) and (l), Stats., apply to assessed values which do not exceed full values ........................................... 62-49
TAXATION (continued)

Municipal tax base

There is no constitutional prohibition against increasing either municipal tax rate limitations or increasing the municipal tax base. However, a constitutional amendment would be required to increase municipal debt limitations. 63-567

Municipal tax rate

There is no constitutional prohibition against increasing either municipal tax rate limitations or increasing the municipal tax base. However, a constitutional amendment would be required to increase municipal debt limitations. 63-567

Municipalities

Local government units cannot include the value of tax-exempt manufacturing machinery and specific processing equipment and tax exempt merchants' stock-in-trade, manufacturers' materials and finished products and livestock in their property valuation totals for "non-tax" purposes, such as for municipal debt ceilings, tax levy limitations, shared tax distributions and school aid payments. 63-465

National forest income


Withdrawn, see 67-277

Section 59.20(13), Stats., does not control the distribution of monies received from the federal government under 31 U.S.C. sec. 1601, et seq. Unpublished OAG 45-1978, issued June 9, 1978, is withdrawn 67-277

Offset provisions

Section 646.51(7), Stats., is applicable to franchise taxes, income taxes and fire department dues. Only Wisconsin's assessments are used for offsets against Wisconsin taxes. The retaliatory tax provision of section 76.66, Stats., applies. If assessments are reimbursed, a tax credit should be recaptured 72-17

Old age assistance

The general concept of allowing elderly homeowners (age sixty-five or seventy) of low and moderate income to defer repayment of money advanced to them by the State for payment of their property taxes, with such loan being secured by some type of priority lien on the property involved, is constitutional. However, funds for such a program cannot be obtained through general obligation bonding, within the meaning and intent of Wis. Const. art. VIII, sec. 7. The financing of such a program with revenue bonds probably would be constitutional under Wis. Const. art. VIII, secs. 3, 4, 7. (Unpub) 13-1981

Overpayment of shared taxes to municipalities

Department of Revenue should adjust the correction of an overpayment of shared taxes to municipalities and counties in 1975, as certified on the July 1976, preliminary distribution, by reducing the correction to only $3,488,454.46 and thereby provide for a minimum 1975 distribution to municipalities and counties of $278,000,000. (Unpub) 76-1976

Payment of property taxes by mail

Section 74.025, Stats., as amended, applies only to payment of property taxes by mail 68-188

Penalty on overdue real estate taxes and special assessments

Section 74.80(2), Stats., permits counties and cities to impose by ordinance a flat six percent or less penalty on overdue real estate taxes and special assessments regardless of when they became or become overdue 71-189

Political contributions

If they satisfy other conditions under sec. 163.90, Stats., and other raffle requirements, political organizations are eligible for a raffle license because
TAXATION (continued)

Political contributions (continued)

Contributions to such organizations are deductible for federal or state income tax purposes within the meaning of the statute. Political subdivisions of the state also are eligible for raffle licenses under the same conditions and for the same reasons ................................................................. 67-323

Property taxes

A statute which would allow any city, village or town to elect to apply so-called “land value taxation,” i.e., the taxation of land as defined in sec. 70.03, Stats., exclusive of buildings or structures, to all lands within its boundaries, would be unconstitutional under the provisions of Wis. Const. art. VIII, sec. 1, which requires that general property taxation be uniform. Section 74.73(2), Stats., provides that where a town, city or village refunds property taxes erroneously assessed as a result of an error or defect of law not caused by such local taxing jurisdiction or an official thereof, such entity is entitled to a credit by the county for that portion of such taxes previously paid over to the county. The statute does not direct that the next county levy be increased by such amount or authorize the county to levy a “special county charge” against such entity to recoup the amount so credited ................................................................. 77-201

The statutes do not provide that town taxpayers may be granted special treatment for payment of property taxes even when a reassessment is not completed until shortly before the due date for payment of taxes .......... 68-163

When the deadline dates for making property tax installment payments fall on Sundays, the deadlines for making personal payments and postmarking mailed payments are extended to the next business days, which in 1988 are February 1 and August 1. To satisfy section 74.025, Stats., the proper official should receive mailed payments within five days of those dates, not within five days of January 31 and July 31 ........................................ 77-1

Public records, sales tax on fees for

Fees charged for furnishing copies of public records are subject to sales tax. Fees charged for records searches and for certifying copies of records are not subject to sales tax ................................................................. 73-36

Real estate taxes

Section 70.325, Stats., violates article VIII, section 1 of the Wisconsin Constitution ................................................................. 77-128

Section 74.80(2), Stats., permits counties and cities to impose by ordinance a flat six percent or less penalty on overdue real estate taxes and special assessments, regardless of when they became or become overdue ..... 71-189

Section 75.36, Stats., provides that a county need not assume and pay all unpaid or delinquent municipal taxes, assessments and charges due on a parcel of property at the time the county acquires such property by tax deed. The statute also provides that the county is not required to assume and pay any such taxes which remain unrecovered upon the sale of such property because the sum realized was insufficient to pay all such outstanding municipal tax obligations. (Unpub.) ........................................ 31-1987

Real estate transfer

Section 77.22, Stats., is violated when value is intentionally falsified on a Wisconsin Real Estate Transfer Return. Falsely declaring a transfer as a sale when it is in fact a gift does not constitute a violation of sec. 77.27, Stats., nor will it support the issuance of a false swearing complaint under sec. 946.32, Stats., but it may constitute a gift tax avoidance in violation of sec. 72.86(6), Stats. ................................................................. 62-251

Section 77.22, Stats., requires the Register of Deeds to enter the amount of real estate transfer fee paid on the face of the deed. The information on the return is confidential, but this confidential status is qualified by sec. 77.23, Stats., with respect to the Department of Revenue and local assessors. (Unpub) ................................................................. 25-1976
TAXATION (continued)

Refunds

Municipalities may use the add-on method of recovery of refunded taxes from Vocational, Technical and Adult Education districts pursuant to section 74.73(2), Stats., regardless of whether the refunds are for unlawful taxes under section 74.73(1r) or excessive assessments under section 74.73(4). 76-268

Section 74.73(2), Stats., provides that where a town, city or village refunds property taxes erroneously assessed as a result of an error or defect of law not caused by such local taxing jurisdiction or an official thereof, such entity is entitled to a credit by the county for that portion of such taxes previously paid over to the county. The statute does not direct that the next county levy be increased by such amount or authorize the county to levy a "special county charge" against such entity to recoup the amount so credited .................................................. 77-201

Religious organization

Under sec. 70.11(4), Stats., tax exemption is forfeited on property owned by a religious organization when that property is leased to a benevolent association and part of the resulting lease-hold income is used to retire the debt on the property. (Unpub) .......................................................... 44-1982

Retirement systems

Taxation of certain public employe pensions may impair contracts in violation of the state and federal constitutions .................. 74-100

Retroactivity of penalty ordinance

Section 74.80(2), Stats., does not permit a county or municipality to enact an ordinance which would make the one-half of one percent per month penalty apply on a retroactive basis to the date the tax first became delinquent .... 73-72

Sales and use tax

The State may not constitutionally impose the general sales tax, section 77.52, Stats., on reservation sales of cigarettes and bingo admissions by Indian retailers to non-members of the governing tribe. The State may impose the use tax, section 77.53, Stats., on such cigarette sales and, arguably, on sales of bingo admissions. Section 77.53 requires Indian retailers to precollect the use tax. Whether the chapter 77 use tax may be imposed on reservation sales of other types of services to non-Indians depends on the facts of the particular case. Impediments to effective enforcement when the retailer is an Indian tribe or tribal corporation discussed ................. 74-134

Sales tax

Admission fees collected by Circus World Museum in Baraboo are subject to sales tax under sec. 77.52(2)(a)2., Stats. ....................... 67-200

Schools and school districts

When school taxes are collected on property in school district A but are erroneously paid to school district B, school district A is entitled, under sec. 74.78, Stats., to recover the amount so paid, with interest at six percent. Action on a claim under sec. 74.78, Stats., is subject to the six-year statute of limitations. To the extent that 14 OAG 443 (1925), 20 OAG 1177 (1931), and 24 OAG 170 (1935) are inconsistent with this opinion, they are repudiated .................................................. 68-389

School districts may not invoke the damage and interest provisions of section 74.22, Stats., to penalize a township for failing to settle tax payments within the time required by law .................................................. 74-84

School districts may obtain adjustments in state aid payments whether their equalized valuation is changed either as a result of a reassessment of or a finding of exemption of manufacturing property. A final order or decision of the Tax Appeals Commission or a final order or judgment of a court can be a final redetermination under the Act. A decision of the Board of Assessors is not sufficient to support a request for adjustment in state aid . 73-119

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TAXATION (continued)

Shared revenue distribution

The base amount for determining 1983 shared revenue distribution is $675,000,000. (Unpub) .......................................................... 22-1982

Special assessments

Section 74.80(2), Stats., permits counties and cities to impose by ordinance a flat six percent or less penalty on overdue real estate taxes and special assessments, regardless of when they became or become overdue .......... 71-189

Subpoena

The Real Estate Examining Board and its members have the power to issue subpoenas. However, the records of the Department of Revenue are not subject to subpoena but are available to the Board under sec. 71.11(44), Stats. (Unpub).......................................................... 57-1977

Suit tax

Sections 812.04(1) and 814.21(1)(a), Stats., concerning suit tax in small claims garnishment actions, construed as conflicting. Because tax cannot be imposed without clear statutory authority, lower suit tax in sec. 812.04(1), Stats., should be collected................................. 68-7

Tax exempt status

Standards for determining whether a nonprofit corporation qualifies for tax exempt status as a retirement home under sec. 70.11(4) discussed .......................................................... 66-232

Tax Increment Law

The Tax Increment Law appears constitutional on its face and the Department of Revenue should carry out its duties and responsibilities under the Law as directed by the Legislature .................................... 65-194

Uniformity Clause

Discussion of the Tax Uniformity Clause (Wis. Const. art. VIII, sec. 1) relating to the amendment of April 2, 1974, for the taxation of agricultural land and undeveloped land. Proposed legislation which places a ceiling on the assessment of agricultural land would be unconstitutional ....... 68-179

Section 70.11(24), Stats., is unconstitutional as violative of the Uniformity Clause in Wis. Const. art. VIII, sec. 1.......................... 66-326

University

Forest land transferred to the University for purpose of forestry and timber studies and related research is exempt from property taxation under sec. 70.11(1), Stats., and is not subject to tax as "agricultural land" under sec. 70.116, Stats. The University lacks authority to enter its lands under subch. I, ch. 77, Stats., the Forest Crop Law, or continue the previous entry of lands it acquires .......................................................... 66-78

Land owned by the University of Wisconsin-Eau Claire Foundation, Inc., is not owned by the State and is not exempt from taxation under sec. 70.11(1), Stats. (Unpub).......................................................... 40-1979

Vocational, Technical and Adult Education District

Vocational, Technical and Adult Education District owning residential property is subject to tax levied for school purposes under sec. 70.114(1), Stats.. 63-187

Waste management system

Towns, villages and cities in counties establishing a county solid waste management system under sec. 59.07(135), Stats., may be taxed for the capital costs of the county-wide system, but not for the operating costs............. 67-77

TEACHERS

See also RESIDENCE, DOMICILE AND LEGAL SETTLEMENT; RETIREMENT SYSTEMS

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TEACHERS (continued)

Compatibility

Compatibility of the office of alderperson with positions of city employe, teacher in city school district and firefighter discussed in general terms

Employe Trust Funds, Department of

Department of Employe Trust Funds is not authorized to administer supplemental retirement funds established by collective bargaining under sec. 111.70, Stats. (Unpub)

Income continuation benefit

A University of Wisconsin teacher must, under sec. 40.146(8)(b), Stats., exhaust all accumulated sick leave prior to payment of an income continuation benefit. A University teacher must exhaust all available sick leave credit before being eligible for a State Teachers Retirement System disability annuity. (Unpub)

Layoffs

Layoff and reinstatement provisions in sec. 118.23, Stats., are to be applied separately to classroom teachers and principals

Public records

Matters and documents in the possession or control of school district officials containing information concerning the salaries, including fringe benefits, paid to individual teachers are matters of public record

Residence within county

County Board has power to adopt ordinance requiring all county employes, including those employed by the Handicapped Childrens Education Board (HCEB) pursuant to section 115.86(3), Stats., to maintain residence within the county. However, HCEB rather than County Board has power to appoint such personnel and to remove them. Exercise of such power may be limited by civil service ordinance or labor contract

Retirement

Authority of a state or governmental subdivision to provide a retirement plan in lieu of or supplemental to existing statutory plans discussed. The Milwaukee School Board is authorized by sec. 111.70, Stats., to contract for a retirement system supplementary to the existing statutory system

Discussion of authority of Employe Trust Funds to change the form of payment to members of retirement benefits resulting from additional deposits in the Wisconsin Retirement Fund, State Teachers Retirement System and Milwaukee Teachers Retirement Fund. (Unpub)

School boards have authority to contract with teachers to provide for an increment or sum in addition to the regular salary in return for the teacher choosing an early retirement option

Teachers' required deposits paid to retirement funds by the employer on behalf of the teachers are not to be used to determine the "final average compensation" under secs. 42.20(26)(a) or 42.70(2)(t), Stats.

Salaries

Matters and documents in the possession or control of school district officials containing information concerning the salaries, including fringe benefits, paid to individual teachers are matters of public record

State aid

Section 121.17(1)(a), Stats., vests discretion in the State Superintendent to withhold state aid from a school district operating under ch. 119, Stats., if the "scope and character of the work" in such district are not maintained because of failure to comply with the 180-day requirement of sec. 121.02(1)(h), Stats. Section 121.17(3), Stats., requires the withholding of state aid from such a school district only if, in the absence of extenuating circumstances set forth in that statutory provision, it fails to employ and
TEACHERS (continued)

State aid (continued)

pay qualified teachers during the full school session established by the board of school directors ................................. 66-155

Unclassified personnel

A University of Wisconsin teacher must, under sec. 40.146(8)(b), Stats., exhaust all accumulated sick leave prior to payment of an income continuation benefit. A University teacher must exhaust all available sick leave credit before being eligible for a State Teachers Retirement System disability annuity. (Unpub) .................................................. 38-1978

Vocational school teachers

Discussion of the power of the Superintendent of Public Instruction to license vocational school teachers to teach public school students ............. 68-248

TELEPHONE

Emergency telephone systems

If all the municipalities in Milwaukee County establish their own system or combine with several other municipalities to establish a system with a central location, Milwaukee County would be required to establish a system which connects with all central locations of the emergency telephone systems established in the county. It is possible that a mandamus proceeding could be instituted against public officials to obtain compliance with the provisions of the statute .......................................................... 68-165

TELEVISION

Cable television facilities

Bingo games sponsored by church organizations using local cable television facilities to broadcast the program where viewers participate in their homes are in violation of ch. 163, Stats. While bingo games conducted pursuant to ch. 163, Stats., enjoy exemption from the constitutional definition of lottery, bingo games which contravene the provisions of ch. 163, Stats., constitute lotteries in this State. Such lotteries are prosecutable under sec. 163.54 or secs. 945.02(3) and 945.03(4), Stats. The fact that community antenna television is regulated by the Federal Communications Commission does not preclude a prosecution on the grounds of federal preemption. The state criminal standard does not conflict with the federal regulation .............. 65-80

Coroner's inquest

Open Meeting Law does not apply to a Coroner's inquest ..................... 67-250

"Friends" organization

Open meetings and public records laws are not applicable to independently created and independently operated non-stock, non-profit "friends" corporations organized to provide financial and other support to radio and television stations licensed to governmental agencies ....................... 74-38

Lotteries

Bingo games sponsored by church organizations using local cable television facilities to broadcast the program where viewers participate in their homes are in violation of ch. 163, Stats. While bingo games conducted pursuant to ch. 163, Stats., enjoy exemption from the constitutional definition of lottery, bingo games which contravene the provisions of ch. 163, Stats., constitute lotteries in this State. Such lotteries are prosecutable under sec. 163.54 or secs. 945.02(3) and 945.03(4), Stats. The fact that community antenna television is regulated by the Federal Communications Commission does not preclude a prosecution on the grounds of federal preemption. The state criminal standard does not conflict with the federal regulation .............. 65-80

TOWNS

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TOWNS (continued)

See also MUNICIPALITIES

Assessments

Town sanitary district organized under secs. 60.30-60.309, Stats., has power to levy special assessments for improvements against county-owned park lands located within the district .................................................. 64-206

Boundaries

The responsibility of town supervisors under ch. 90, Stats., is limited to assigning to the occupants of adjoining lands the respective share of a division fence which each occupant shall erect and repair, and does not authorize town supervisors to settle boundary disputes .................... 70-187

Compatibility

60 OAG 276 (1971) discussed. The conclusion in that opinion is questionable. Until the law is changed offices of town clerk and town treasurer are probably incompatible ................................................................. 68-393

Constable

Powers of town constable are largely statutory and include power to make arrests for violations of state traffic laws and enforce town traffic ordinances. Town board has only limited control over such officer and cannot restrict such officer's statutory law enforcement activities. Annual town meeting of electors establishes compensation in lieu of statutory fees...... 68-254

Contracts

Towns must let "public contracts" pursuant to the competitive bidding procedures of secs. 60.29(1m) and 66.29, Stats. Contracts which are not "public contracts" are not subject to either advertising or competitive bidding procedures. The definition of public contract includes "supplies" and "materials," but does not include "equipment" ......................................................... 66-284

County aid

County aid available for construction of bridges under sec. 81.38, Stats., may be provided only to towns, and not to cities or villages and may not be provided once a town commences a bridge project. County aid for bridge projects may be provided to cities and villages under sec. 83.03(1), Stats. Such aid may be provided once a municipality has begun work on a bridge project but not after the project has been completed. (Unpub) ............... 56-1982

County-wide comprehensive zoning ordinance

A county which has enacted a county-wide comprehensive zoning ordinance under sec. 59.97, Stats., may not enact any zoning provision authorizing withdrawal of town approval of such ordinance or otherwise specifically excluding or exempting any town from the operation of such ordinance ... 67-197

In a town in which a county-wide zoning ordinance is effective, a town ordinance which purports to regulate the location of individual mobile homes is a zoning ordinance which can only be enacted in compliance with the provisions of sec. 60.74(7) or (8), Stats. Once the exercise of town zoning authority under sec. 60.74(7), Stats., is approved by referendum, town zoning ordinances and amendments need only be approved by the County Board. Section 60.74(7), Stats., requires the appropriate town authorities to hold a public hearing on town zoning, but no further hearing by the county authorities is required............................................................ 65-288

A town with village powers that is subject to a county zoning ordinance is not prohibited by statute from any and all regulation of driveway installation. A town which is subject to a county zoning ordinance that contains no limitation on the issuance of county zoning permits may not set a quota on the number of residential building permits that the town will issue each year. 76-60

Under the provisions of sec. 59.97(5)(c), Stats., town board approval of a comprehensive county zoning ordinance must extend to such ordinance in its entirety and may not extend only to parts of such ordinance .......... 63-199

T 11 1990
Driveways

A town with village powers that is subject to a county zoning ordinance is not prohibited by statute from any and all regulation of driveway installation. A town which is subject to a county zoning ordinance that contains no limitation on the issuance of county zoning permits may not set a quota on the number of residential building permits that the town will issue each year.

Entitlement lands

Previous opinions on the distribution of payments in lieu of taxes discussed. (Unpub) .......................................................... 16–1982

Fire department

Town having fire department must provide protection for county-owned property such as a landfill site, and in case of failure to do so shall be liable for services of any fire department responding to request to fight fire in such town. County in its discretion can reimburse town for reasonable costs of services provided to landfill site within town ........................................ 67–6

Law enforcement

Powers of town constable are largely statutory and include power to make arrests for violations of state traffic laws and enforce town traffic ordinances. Town board has only limited control over such officer and cannot restrict such officer's statutory law enforcement activities. Annual town meeting of electors establishes compensation in lieu of statutory fees .... 68–254

National forest lands

County which has received payments from the federal government in lieu of taxes under sec. 1 of P. L. 94–565, 90 Stats. 2662, cannot distribute such payments to the towns in which the national forest lands are located ...... 68–23

Open meetings

A town board is a "governmental body" within the meaning of the Open Meetings Law and is subject to its provisions, including the notice requirements of sec. 19.83 and 19.84, Stats. An annual town meeting is a meeting of the electorate. It is not a "governmental body" within the meaning of the Open Meetings Law, and therefore, notice under subch. IV, ch. 19, Stats., is not required. If an annual town meeting is held at a time other than on the first Tuesday in April, notice must be given as required by secs. 60.17(2) and 60.13, Stats. Other Open Meetings Law notice requirements discussed .... 66–237

Place where meetings are held

Whereas it is preferable to hold meetings of a town board in a public building such as a town hall, fire station or school building, such meeting can be legally held at the home of a town officer if proper notice is given and if the home is, in fact, reasonably accessible to members of the public during all times the meeting is in progress ........................................... 67–125

Property taxes

The statutes do not provide that town taxpayers may be granted special treatment for payment of property taxes even when a reassessment is not completed until shortly before the due date for payment of taxes ........ 68–163

Revisor of Statutes

For purposes of sec. 70.67(2), Stats., the town board is the governing body of the town ................................................................. 63–10

Road repair materials and services to private residents

Town citizens have no power to enact a law authorizing the town to sell road repair materials and services to private residents. (Unpub) ...................... 54–1982

Senior citizen center

Revenue sharing monies may be expended by a town board to operate a senior citizen center under state law. (Unpub) ........................................... 23–1980
TOWNS (continued)

Sewage system

A town board not operating a sewage system cannot make special assessments on property located within the corporate limits of the town but outside the corporate limits of the town sanitary district for benefits claimed to accrue from the system operated by the district and pay the same to the district. 63-343

Streets

See Village powers

Uniformity of town government

If proper case were brought, a court would probably hold that sec. 60.19(1), (am), and (c), Stats., violate the uniformity of town government constitutional requirement. 63-105

Village powers

A town board, granted village powers under sec. 60.18(12), Stats., is not required to petition its county board prior to adopting a town zoning ordinance. Sec 60.74(1)(am) and (7), Stats. However, where the county has adopted a zoning ordinance under sec. 59.97, Stats., such town zoning ordinance will not become effective and cannot be enforced unless and until the county takes positive action approving such town ordinance. 62-139

Municipal justice files oath and bond with clerk of circuit court who filed certified copy of bond with clerk of municipality for which justice was elected. Town boards, including those authorized to exercise village powers, cannot prohibit conduct the same or similar to that prohibited by chs. 941 to 947, Stats., except as provided in sec. 66.051(1), (2) and (3), Stats., or other express statutes. 66-58

Towns exercising village powers can zone shorelands concurrently with counties, provided that the town ordinance is in conformance with or more restrictive than the county ordinance. 65-108

Towns with village powers lack statutory authority to unilaterally vacate streets in recorded subdivision plats. 78-77

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TRADE REGULATIONS

See MARKETING AND TRADE PRACTICES

TRADING STAMPS

See MARKETING AND TRADE PRACTICES

TRAFFIC

See also AUTOMOBILES AND MOTOR VEHICLES

Court commissioner

A court commissioner lacks authority in traffic cases to accept pleas of no contest from defendants who do not appear but make a deposit, to accept pleas of no contest and guilty from defendants who appear, and to assess penalties against these defendants, since a court commissioner has only those powers conferred by statute and since the statutes do not authorize court commissioners to conduct such activities. (Unpub) 21-1978

Courts

In traffic regulation cases, sec. 345.315, Stats., controls over sec. 300.05, Stats., insofar as request for substitution of a justice is concerned but not over sec. 300.055, Stats., which grants defendant right to secure transfer to county court upon request, accompanied by $1 fee, at any time prior to trial. 66-64

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Dismissal of traffic complaints

Courts may not dismiss traffic complaints on payment of penalty and costs, or costs alone............................................................. 63-328

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District Attorneys have a statutory duty to prosecute state traffic violations. District Attorneys cannot properly refuse to prosecute state actions when such refusal is based on consideration of the ultimate deposition of the proceeds from such actions. Such consideration is for the Legislature, not the District Attorney ............................................................. 64-157

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Imprisonment or suspension of license under section 345.47(1)(a) and (b), Stats., does not eliminate the liability of a defendant for payment of the $150 surcharge provided for in section 346.655. The county does not become liable for the surcharge if not paid. An application for an occupational license is not a special proceeding requiring the payment of clerk's fees under section 814.61(1). ................................................................. 73-24

Forfeiture

Section 349.06(1), Stats., authorizes local authorities to enact and enforce any ordinance which is in strict conformity with traffic regulation provisions of ch. 350 for which the penalty for violation is a forfeiture ................................................................. 66-161

Police jurisdiction

Where not acting pursuant to mutual assistance statutes, Clark County officers do not have authority to conduct police operations in each and every territory in which a traffic offense triable in Clark County Circuit Court may arise................................................................. 69-194

Sheriffs

County Board in county under 500,000 not having civil services system for deputy sheriffs can abolish traffic department organized under sec. 83.016, Stats., and with the cooperation of the Sheriff, such traffic patrolmen can be appointed deputies in the Sheriff's department without providing for civil service selection under sec. 59.21(8)(cm), Stats. Language in 36 OAG 174 (1947) and 38 OAG 245 (1949) distinguished in view of sec. 59.025, Stats., which was enacted after issuance of those opinions ................................................................. 71-199

Where county has contract to maintain state trunk highways, County Highway Commissioner can temporarily close state trunk highway in case of emergency. Sec. 86.06(1), Stats. Sheriff has power to temporarily close any highway in county in case of emergency and to divert traffic. Secs. 59.24(1) and 349.02, Stats................................................................. 67-335

Speed limits

Section 343.30(1n), Stats., does not apply to violations of sec. 346.57(4)(hm), Stats., created by ch. 157, Laws of 1973 ................................................................. 63-20

Truck traffic

Counties do not have any general police power authority to control truck traffic, but are restricted to controlling truck traffic under secs. 349.15 and 349.16, Stats. The exercise of the police power under sec. 349.15, Stats., need not be based on the condition of the roadbed, but may be exercised to promote the general welfare of the public ................................................................. 66-110

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State regulation prohibiting single-hulled barges and requiring double-hulled barges on the Mississippi River adjacent to Wisconsin would violate the Supremacy Clause of the United States Constitution ......................... 75–176

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Funds made available through the Elementary Secondary Education Act may be used in dual enrollment programs to transport children from parochial schools to public schools and return ........................................ 65–126

School buses
See also SCHOOLS AND SCHOOL DISTRICTS
A motor vehicle used by a vocational school to transport students in extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats. After June 30, 1977, the transportation of minors who are fulfilling their compulsory school requirements, to or from vocational school, must be done in school buses. (Unpub) ................................................ 54–1976
A school owned or operated automobile, used in casual and occasional transportation of school children to extracurricular activities is not a school bus as defined in sec. 340.01(56), Stats., and sec. 121.54(7), Stats., does not prohibit such use .................................................. 64–45
Students living less than two miles from school may not be transported by the school board at parental expense ................................................ 62–95
Students may have bus riding privileges suspended without being suspended or expelled from school. However, both public and private school students must be afforded due process as provided by sec. 120.13(1), Stats., before such suspension can take place ........................................ 63–526
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The jurisdiction of the Secretary of Transportation with respect to control over the erection of high structures is limited by the provisions contained in sec. 114.135(7), Stats., to those structures that either extend to a height of more than 500 feet above the ground or surface of the water within one mile of the location of the object, or a height determined by the ratio of one foot vertical to 40 feet horizontal measured from the nearest boundary of the nearest public airport in the State. If a local zoning ordinance, rule or regulation permits the erection of structures which exceed these heights, a conflict of jurisdiction would arise and the Secretary could invoke sec. 114.135(9), Stats., to resolve the conflict ......................... 62–232

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The Department of Transportation's contracting authority under sec. 84.01(13), Stats., is not limited to traditional engineering or surveying services. The Department is given the discretion to decide what special exper-
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connection with its highway program activities. (Unpub).................... 35–1982

Religion
The administrative rule of the Department of Transportation granting an
exemption on religious grounds from the photograph-taking requirement of
sections 343.17(2) and 343.14(3), Stats., is violative of the First Amend-
ment, United States Constitution, and of Wis. Const. art. I, § 18. ............ 75–115

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The entire amount of bail forfeited under sec. 969.13(4), Stats., is to be
retained by the county treasurer and no part thereof is to be paid to the
state treasurer................................................................. 62–247

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See EDUCATION; MINORS

TRUCKS
See AUTOMOBILES AND MOTOR VEHICLES; TRAFFIC;
TRANSPORTATION

TRUST COMPANIES
See BANKS AND BANKING

TRUST FUNDS
Bonds
The State is not required to pay claims on bonds and coupons evidencing
public debt issued pursuant to subch. 1 of ch. 18, Stats., once those obliga-
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for a loan from the trust fund which the Board administers. (Unpub)..... 8–1981

Student loan funds
Student loan funds established by gift under sec. 36.065, Stats., for the benefit
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Apprentices

Apprentices indentured under ch. 106, Stats., may lawfully be charged tuition at schools in the state vocational, technical and adult education system for related instruction that apprentices must receive as a condition of their apprenticeship. 65-37

A vocational, technical and adult education district which provides apprenticeship training may contract with other districts for payment of the costs of training persons who are residents of the other districts. Such district may not refuse, however, to admit nonresident Wisconsin students to an approved apprenticeship program, because the district of the student's residence fails to reimburse the district providing the instruction, unless the State Board of Vocational, Technical and Adult Education adopts rules sanctioning such refusal. 69-257

Grants

Students who attend state vocational, technical and adult institutions are eligible for tuition grants under sec. 39.30, Stats. 66-182

"Legal settlement"

The term "legal settlement" as used in sec. 121.77(1), Stats., is interpreted. 65-301

Refund policies

The VTAE Board has the statutory duty under sec. 38.24(3)(b), Stats., to establish tuition refund policies at schools under its jurisdiction and such power cannot be circumscribed by a rule of the Cosmetology Examining Board. (Unpub) 102-1977

Vocational, technical and adult education

Neither art. X, Wis. Const., nor any other constitutional provision prohibits the charging of tuition for any course of instruction offered at a school in the system of vocational, technical and adult education operated pursuant to ch. 38, Stats. The charging of tuition at such schools, and the manner and extent whereby such charges are to be made, is a matter of policy which the Legislature is free to determine in the exercise of its legislative power under art. IV, sec. 1, Wis. Const. 64-24

Section 38.24(3)(b), Stats., making the district board of a student's district of residence liable for payment of nonresident fees when attending another district VTAE school is not a denial of equal protection. VTAE districts cannot enter into agreements with each other to waive the nonresident tuition provided for in sec. 38.24(3)(b), Stats. 69-139
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Overpayments

Although unemployment benefits erroneously paid constitute overpayments which the individual recipients should be required to repay, the Department of Industry, Labor and Human Relations has discretion whether to seek recovery of such overpayment ............................................. 67-228

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Nursing home placement decision

Section 243.07, Stats., the Uniform Durable Power of Attorney Act, can permit an attorney-in-fact to make medical decisions but cannot be used to place someone in a nursing home or to avoid the other requirements of chapters 880 and 55 ............................................................ 77-156

UNIFORM PARENTAGE ACT

Paternity actions

Litigation and discovery costs for those indigent respondents in paternity actions for whom counsel has been appointed in accordance with sec. 767.52, Stats., must be paid by the State through the Public Defender Board appropriations, except as otherwise specifically provided by statute. (Unpub) ......................................................... 33-1982

UNIVERSITY

Campus police

Campus police have jurisdiction to arrest only on campus unless deputized by a sheriff. Local ordinances are not applicable on campus.......................... 68-67

The University of Wisconsin has no authority to agree to hold harmless a county that incurs liability because of a university officer's torts, but the common law of indemnification would require such officer to indemnify that county and statutory indemnification would require the state to indemnify the officer when acting in the scope of his/her employment. A county sheriff may deputize university campus police officers and restrict that deputization to particular times, places and crimes. An otherwise valid arrest would not be rendered invalid, however, solely because the officer exceeded the scope of that deputization. .......................................................... 78-1

Confidentiality

Where University has obtained ethnic or racial information about its employees under a necessary pledge of confidentiality, it need not divulge such information to a Senate committee where the committee has refused to issue a subpoena requested by the chairman and the needs of the committee can apparently be satisfied without such disclosure. (Unpub) ...................... 79-1977

Dormitory, sale of

University of Wisconsin System may sell a dormitory which no longer is needed for educational purposes upon such terms as are agreeable to the Wisconsin State Agencies Building Corporation and H.U.D. to guarantee the payment of the bonds issued for the initial construction of the building. 63-252
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Campuses of the University of Wisconsin System have no present authority to regulate political canvassing in University-owned dormitories which does not involve the solicitation of monetary contributions ...................... 65-261

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Where University has obtained ethnic or racial information about its employes under a necessary pledge of confidentiality, it need not divulge such information to a Senate committee where the committee has refused to issue a subpoena requested by the chairman and the needs of the committee can apparently be satisfied without such disclosure. (Unpub) .................. 79-1977

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Classified audit fee structure may be established by University Regents using age for classification purposes ................................................. 62-1

Fee waivers to employes

Resolutions 2877 and 2938, passed by the former Board of Regents of the Wisconsin State Universities, remain valid for the purposes of allowing certain fee waivers to employes of former Wisconsin State Universities. Such fee waivers are not vested employment rights or benefits under ch. 100, Laws of 1971. The privilege may be extended or rescinded by the present University of Wisconsin System Board of Regents. (Unpub) .......... 1-1976

Forest land

Forest land transferred to the University for purpose of forestry and timber studies and related research is exempt from property taxation under sec. 70.11(1), Stats., and is not subject to tax as "agricultural land" under sec. 70.116, Stats. The University lacks authority to enter its lands under subch. I, ch. 77, Stats., the Forest Crop Law, or continue the previous entry of lands it acquires ............... 66-78

Income continuation benefit

A University of Wisconsin teacher must, under sec. 40.146(8)(b), Stats., exhaust all accumulated sick leave prior to payment of an income continuation benefit. A University teacher must exhaust all available sick leave credit before being eligible for a State Teachers Retirement System disability annuity. (Unpub) ........................................... 38-1978

Investment of University funds

Section 36.29(1), Stats., which prohibits investment of University funds in companies which practice or condone discrimination is not an undue burden on interstate commerce, does not improperly interfere with foreign relations and is not impermissibly vague ........................................ 67-20

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Open meetings

The Clinical Practice Plan Committee, Department of Practice Plan Committees and University of Wisconsin Clinical Practice Association, which are components of the University of Wisconsin School of Medicine Clinical Practice Plan, are "governmental bodies" as defined in sec. 19.82(1), Stats., and subject to the Open Meetings Law ................... 70-140

University subunit may discuss promotions not relating to tenure, merit increases and property purchase recommendations in closed session ........ 66-60
Prayer before football games

University of Wisconsin athletes may not engage in voluntary prayer led by a coach prior to an athletic event, although silent meditation or prayer organized by athletes may be undertaken within certain guidelines. 75-81

Private interest in public contracts

Section 946.13, Stats., prohibiting private interest in public contracts may impose criminal liability upon the University of Wisconsin employees who in their private capacities deal contractually with the State of Wisconsin to provide services and equipment. (Unpub) 64-1977

Public records

Where University has obtained ethnic or racial information about its employees under a necessary pledge of confidentiality, it need not divulge such information to a Senate committee where the committee has refused to issue a subpoena requested by the chairman and the needs of the committee can apparently be satisfied without such disclosure. (Unpub) 79-1977

Religion

Leasing of University buildings to a religious congregation during nonschool days and hours on a temporary basis while the congregation's existing facility is being renovated and leasing convention space to a church conference would not violate separation of church and state provisions of the First Amendment to United States Constitution and art. I, sec. 18, of the Wisconsin Constitution 63-374

Retirement systems

The University must bear the full cost of the early retirement payment required by ch. 388, Laws of 1981. (Unpub) 42-1983

Stevens Point

Expenses incurred by city in converting street to mall may be assessed against State as abutter and paid if approved by Board of Commissioners of Public Lands. (Unpub) 45-1975

Student loan

Student loan funds established by gift under sec. 36.065, Stats., for the benefit of students are trust funds 62-109

Student records

Section 13.94, Stats., contains authority for the State Auditor to secure certain information from student records for the purpose of auditing full-time equivalency reports submitted by the University of Wisconsin. (Unpub) 84-1978

Taxation

Land owned by the University of Wisconsin-Eau Claire Foundation, Inc., is not owned by the State and is not exempt from taxation under sec. 70.11(1), Stats. (Unpub) 40-1979

Trust funds

University cannot accept trust funds which are for unlawful purpose and expenditure of trust funds must comply with special and general laws 62-4

USURY

Commitment fees

Commitment fees which are bona fide in nature are not a part of interest under sec. 138.05, Stats., although across the board fees imposed without regard for the customer's need or desire for a bona fide commitment are unlikely to meet the lender's burden of showing that the fee represents the reasonable value of services rendered 69-28
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County Veterans Service Commission, appointment to
Persons appointed by County Executive and confirmed by County Board to
County Veterans Service Commission, single county 51.42 Board or
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pointed to vacancies in such positions also serve until their successors are
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Those provisions of sec. 45.37, Stats., which limit derivative membership in
the Wisconsin Veterans Home of otherwise eligible spouses and surviving
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Equal Protection Clause of the Fourteenth Amendment to the United
States Constitution because there is no rational relationship between the sex
of the otherwise eligible spouse or parent of the veteran and the state
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Equal Protection Clause
Those provisions of sec. 45.37, Stats., which limit derivative membership in
the Wisconsin Veterans Home of otherwise eligible spouses and surviving
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States Constitution because there is no rational relationship between the sex
of the otherwise eligible spouse or parent of the veteran and the state
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Home improvement loans
The recent amendment to sec. 45.80(2)(c), Stats., exempts a weatherization improvement loan supplement from the “maximum primary financing” requirement only in the case of a home purchase loan. Home improvement loans made under sec. 45.76(2)(a), Stats., are therefore not exempt from such requirement. (Unpub) ................................................................. 52–1980

Liability
A county veterans’ service officer does not have the duty under ch. 45, Stats., to transport disabled veterans to a veterans’ hospital when such transportation is not readily available unless authorized by his county. The county would be liable to the injured veteran in an automobile accident while being transported by the veterans’ service officer if the officer were authorized and performing within the scope of his employment. If he were authorized and an accident occurred, sec. 895.43(3), Stats., limits the recovery to $25,000. 67–207

Loans
The Federal Equal Opportunity Act does not apply to the Wisconsin Veterans Loan Program under ch. 45, Stats., since the latter is an assistance program authorized by law for an economically disadvantaged class ……… 68–101
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Under current law the authority of the Department of Veterans Affairs to release veterans loan status information to lenders and credit reporting agencies is very limited …………………………………………………………………………………………………… 77–49

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Funds for a first mortgage loan program to finance private housing for veterans cannot be obtained through state general obligation bonding within the meaning and intent of art. VIII, sec. 7, Wis. Const. ……… 63–342
In making housing loans under sec. 45.352, Stats., the Department may rely on fixed standards as to the applicant’s needs. When applications on hand exceed available funds, loans should be made to the most needy applicants. 62–66

Wills
A will made by a person prior to entering the Wisconsin Veterans Home and prior to July 31, 1975, is invalid. A will made by a person who entered the Home before July 31, 1975, but who made the will on or after July 31, 1975, is valid. (Unpub) …………………………………………………………………………………………………… 48–1980

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Authority to provide legal assistance
The Department of Veterans Affairs does not have express or implied authority under the provisions contained in chapter 45, Stats., to permit the Department to utilize employee time and resources to assist in the establishment and operation of a charitable nonstock, nonprofit corporation which would provide assistance to veterans and their dependents and survivors. (Unpub) …………………………………………………………………………………………………… 37–1985

Board of Veterans Affairs
Quorum for Board of Veterans Affairs is four, since Board has statutory membership of seven and “membership” as used in sec. 15.07(4), Stats., means authorized number of positions and not number of positions which are currently occupied. Resignation of board member is not effective until successor is chosen and qualifies. Sec. 17.01(13), Stats. …………………………………………………………………………………………………… 66–192
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Veterinary Examining Board
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VETERINARY EXAMINERS, BOARD OF

Certified animal technicians
The Veterinary Examining Board has authority to establish rules of conduct to regulate certified animal technicians but has no authority to suspend or revoke such certificate for violation of the rules. (Unpub)... 100-1977

Renewal of license
The Veterinary Examining Board lacks authority to condition the renewal of licenses upon either reexamination or continuing education... 65-35

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Fire and police services combined
Village public safety officers are not entitled to the section 891.45, Stats., presumption unless they are designated as primarily firefighters by the village or they have duties as a firefighter during a five-year period for two-thirds of their working hours... 78-185

Incorporation referendum
An incorporation referendum held pursuant to sec. 66.018, Stats., is effective immediately if a majority of the votes cast are for incorporation... 70-128
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Libraries

Municipal libraries are a matter of paramount local concern as opposed to a statewide concern and are subject to otherwise constitutionally legal local legislative enactments under the home-rule provisions of the State Constitution. Acting pursuant to Wis. Const. art. XI, sec. 3, sec. 66.01, Stats., a city or village governing body can change the composition of its municipal library board and can limit powers of such board granted by ch. 43, Stats., where the municipal library is not part of a library system ................. 70-54

Zoning

1. An extraterritorial zoning ordinance may utilize interior section lines. 2. Interim extraterritorial zoning ordinances need not be based on a land use survey. 3. Amendment of interim extraterritorial zoning ordinances discussed. 4. Appeals under an interim extraterritorial zoning ordinance are handled by the city or village. 5. Administration of extraterritorial zoning is by the city or village. 6. The joint extraterritorial zoning committee continues to exist after adoption of the comprehensive extraterritorial zoning ordinance .................................................. 67-238

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Mother of child born out of wedlock may cause any surname to be entered on the child's birth certificate........................................................................ 63-501

Death certificate

A bank, its employes and agents violate section 69.24(1)(a), Stats., when copying a certified copy of a vital record for use by the Federal Reserve Bank ........................................................................ 78-232

Microfilm

Although Register of Deeds can utilize microfilm and photocopies with County Board approval, use of a photocopy of writs of attachments and certificates of sale of real estate would not, even with index, be a substitute for the separate indexed book or register of "abstracts" of such documents required by sec. 59.54, Stats........................................................................ 67-114

Name changes

Real Estate Examining Board cannot prescribe the name to be used on an application for real estate broker's license. Under sec. 296.36, Stats., the Board should routinely accept name changes of licensed brokers, unless detriment to the public, another professional or the profession is shown. Sex and marital status of the new or renewal license applicant do not justify special procedures or requirements as to names. Use of two names discussed ........................................................................ 66-21

Photocopies

A bank, its employes and agents violate section 69.24(1)(a), Stats., when copying a certified copy of a vital record for use by the Federal Reserve Bank ........................................................................ 78-232

Although Register of Deeds can utilize microfilm and photocopies with County Board approval, use of a photocopy of writs of attachments and certificates of sale of real estate would not, even with index, be a substitute for the separate indexed book or register of "abstracts" of such documents required by sec. 59.54, Stats........................................................................ 67-114

VOCATIONAL, TECHNICAL AND ADULT EDUCATION

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Administrator

Section 38.08(1)(a), Stats., requires that "a school district administrator of a school district" appointed to a district board of vocational, technical and adult education have the qualifications specified in sec. 115.01(11), Stats. 

Bonds

Section 67.04(2)(a), (b)(8), Stats., does not authorize the City of Marshfield to utilize its bonding authority to construct a building wholly for use by the Mid-State Vocational Technical and Adult Education District on a leased basis.

Equal employment opportunity ordinances

The employment practices of vocational, technical and adult education districts are subject to city equal employment opportunity ordinances. Such ordinances, however, can be applied only to employment within the geographic boundaries of the city.

Fox Valley Vocational, Technical and Adult Education District

Neither the Fox Valley Vocational, Technical and Adult Education District nor the East Central Regional Planning Commission has the authority to act as fiscal agent for the Northeast Criminal Justice Coordinating Council.

High school dropout students

Secondary schools may not legally provide a vocational, technical and adult education district with the names of high school dropout students.

Levy limit

The levy limit imposed on vocational, technical and adult education districts by section 38.16(1), Stats., does not include amounts charged under section 74.73(2), for recovery of unlawful taxes or overassessments.

Liability

The limitation of damages by section 893.80(3), Stats., in actions founded upon tort against governmental bodies, officers, agents or employees, unless modified or rendered inapplicable by other statute, applies to vocational, technical and adult education districts, their officers and employees.

Public records

A local vocational, technical and adult education district is a "school district" within the meaning of the Wisconsin Public Records Law. Sec. 19.21, Stats. Except for any pupil records under sec. 118.125, Stats., a VTAE district must preserve records at least seven years before destruction. Sec. 19.21(7), Stats. A VTAE district may not maintain records on microfilm.

Tax refunds

Municipalities may use the add-on method of recovery of refunded taxes from Vocational, Technical and Adult Education districts pursuant to section 74.73(2), Stats., regardless of whether the refunds are for unlawful taxes under section 74.73(4r) or excessive assessments under section 74.73(4).

Teachers

Discussion of the power of the Superintendent of Public Instruction to license vocational school teachers to teach public school students.

Tuition

Neither art. X, sec. 3, Wis. Const., nor any other constitutional provision prohibits the charging of tuition for any course of instruction offered at a school in the system of vocational, technical and adult education operated pursuant to ch. 38, Stats. The charging of tuition at such schools, and the manner and extent whereby such charges are to be made, is a matter of policy which the Legislature is free to determine in the exercise of its legislative power under art. IV, sec. 1, Wis. Const.
Tuition grants

Students who attend state vocational, technical and adult institutions are eligible for tuition grants under sec. 39.30, Stats. 66-182

Appointments to VTAE Board

Criteria and procedures for review of district board appointments by the state VTAE board explained. Effect of an "elected official" member not seeking re-election midway in his term as a district board member discussed 76-120

Criteria for appointment to district VTAE boards discussed, including changes in status of "employer," "employee" and "elected official" representatives and incompatibility between board membership and the offices of sheriff and circuit judge. Discussion of meeting notice requirements of sections 38.10(2)(d)3. and 19.84(3), Stats. Definition of "public officer" for purposes of section 38.10(1m) relating to participation on board appointment committee 77-256

The State Board of Vocational, Technical and Adult Education may by rule require that the record concerning appointment of district board members show compliance with statutory procedural requirements, and the State Board may disapprove appointments because of procedural irregularities except those involving the Open Meetings Law. Also, appointment by the appointment committee and approval by the State Board is required to move a previously approved candidate from one membership category to another 73-108

Apprentices

Apprentices indentured under ch. 106, Stats., may lawfully be charged tuition at schools in the state vocational, technical and adult education system for related instruction that apprentices must receive as a condition of their apprenticeship 65-37

A vocational, technical and adult education district which provides apprenticeship training may contract with other districts for payment of the costs of training persons who are residents of the other districts. Such district may not refuse, however, to admit nonresident Wisconsin students to an approved apprenticeship program, because the district of the student's residence fails to reimburse the district providing the instruction, unless the State Board of Vocational, Technical and Adult Education adopts rules sanctioning such refusal 69-257

Appropriations and expenditures

That part of sec. 67.12(12)(e)5., Stats., requiring the petition requesting that a referendum be held on a vocational, technical and adult education district board's resolution to incur indebtedness to contain the signatures of electors from each county in the district equal to at least 2.5% of the population of the county is unconstitutional as applied to the Moraine Park District. Equal protection of the laws is denied to electors in certain counties of the district in that their signatures on the petition, because of the wide disparity in population among the counties, are accorded greatly disproportionate weight as compared to the signatures of electors in other counties 66-349

Composition of VTAE Board

The State Board of Vocational, Technical and Adult Education may by rule require that the record concerning appointment of district board members show compliance with statutory procedural requirements, and the State Board may disapprove appointments because of procedural irregularities except those involving the Open Meetings Law. Also, appointment by the appointment committee and approval by the State Board is required to move a previously approved candidate from one membership category to another 73-108
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Cosmetology Examining Board

Cannot circumscribe tuition refund policy set by the VTAE Board. (Unpub). 102-1977

Dismissal of employe

Where statute provides that a public officer serves at pleasure but is appointed for a term, such public officer may be summarily dismissed during the term ................................................................. 62-97

District board appointments

Criteria and procedures for review of district board appointments by the state VTAE board explained. Effect of an "elected official" member not seeking re-election midway in his term as a district board member discussed ........ 76-120

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Eminent domain

Vocational, technical and adult education districts and the State Board of Vocational, Technical and Adult Education do not have the power of eminent domain and, therefore, are not subject to secs. 32.19 to 32.27, Stats., (Relocation Act) ................................................................. 63-367

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Nonresident Wisconsin students

A vocational, technical and adult education district which provides apprenticeship training may contract with other districts for payment of the costs of training persons who are residents of the other districts. Such district may not refuse, however, to admit nonresident Wisconsin students to an approved apprenticeship program, because the district of the student's residence fails to reimburse the district providing the instruction, unless the State Board of Vocational, Technical and Adult Education adopts rules sanctioning such refusal ................................................................. 69-257

Political activity by state employees

Statutes and rules which restrict the partisan activities of some employees and officeholders do not offend the First Amendment even if they result in the employees or officeholders being prohibited from participating in the party caucuses which choose delegates to the National Convention ................................. 73-51

Promissory notes

Section 67.12(12)(e)5., 6., created by ch. 250, Laws of 1973, is construed to permit a vocational, technical and adult education district board to initiate a referendum on question of borrowing by issuing promissory notes, the results of which will be binding on the board ................................................................. 63-551

State aid

The Wisconsin Board of Vocational, Technical and Adult Education has authority to adopt a policy which provides for the payment of state aids for the nonreimbursed costs incurred when vocational, technical and adult education districts enter into contracts pursuant to section 38.14(3), Stats., and when the State Board determines that the services provided are not "community services" within the meaning of section 38.28(1m)(a). In order to receive state aids for qualifying contracts, however, fees must be charged
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which are equivalent to the uniform program and material fees normally charged to district students ................................................................. 74–67

Taxation

Vocational, technical and adult education district owning residential property is subject to tax levied for school purposes under sec. 70.114(1), Stats. 63–187

Transportation

VTAE Board may subsidize public bus line to provide transportation under sec. 38.14(6), Stats. ................................................................. 63–305

Tuition

Section 38.24(3)(b), Stats., making the district board of a student’s district of residence liable for payment of nonresident fees when attending another district VTAE school is not a denial of equal protection. VTAE districts cannot enter into agreements with each other to waive the nonresident tuition provided for in sec. 38.24(3)(b), Stats. ................................................................. 69–139

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Agriculture

An ordinance formulated and proposed by the supervisors of a county soil and water conservation district, created pursuant to sec. 92.05, Stats., is not necessarily invalid simply because its effect is limited to the regulation of agricultural practices and uses on land currently utilized for agricultural purposes. All resident electors of the “area to be affected” by such an ordinance may vote in a referendum election on the ordinance whether or not they reside on the specific kind of property which may be the subject of such regulations ................................................................. 68–126

Ballots

Failure to publish notices of an election on the last Tuesday in May, the first Tuesday in June, and the second Monday preceding an election on the question of removal of a county seat and failure by the County Clerk to distribute the ballots will not invalidate the election where it appears that the voters were well informed of the time, place, and manner of the election and the issue involved, and a majority of the qualified voters who went to the polls, excluding those who had an opportunity to vote on the question of removal but chose not to, voted in favor of removal ................................................................. 66–219

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Dyslexia

An elector with dyslexia may qualify for voter assistance under the provisions of sec. 6.82(2)(a), Stats. ................................................................. 62–195

Federal election campaign reports

Those provisions of state law relating to campaign financing which conflict with the Federal Election Campaign Act are invalid. The Secretary of State must retain and make available for public inspection, not later than the end of the day of receipt, the federal election campaign reports and statements required to be filed with him. The Elections Board cannot be designated as the agent of the Secretary of State for purposes of compliance by this State with the federal law. (Unpub) ................................................................. 24–1977

Metropolitan sewerage district

1973 Senate Bill 59 contains inconsistent provisions which require redrafting, although the general intent of the Bill appears to be to provide nonresident property owners with a voice in both metropolitan sewerage district and
VOTES AND VOTING (continued)

Metropolitan sewerage district (continued)

Town sanitary district bond elections. Such a limited extension of voting rights probably would not infringe the local district electors' federal or state constitutional guarantees of equal protection. Such extension of suffrage probably is required to be submitted to a vote of the electors of the State, under art. III, sec. 1, Wis. Const. 63-391

Nonresident property owners

Voting rights at the annual meeting of inland lake protection and rehabilitation districts may be extended by the Legislature to nonresident property owners, but only pursuant to a statewide referendum under Wis. Const. art. III, sec. 1(3). 69-32

Open meeting

Voting procedures employed by Workmen's Compensation and Unemployment Advisory Councils which utilize adjournment of public meeting for purposes of having members representing employers and members representing employees or workers to separately meet in closed caucuses and to vote as a block on reconvening are contrary to secs. 66.77 and 15.09(4), (5), Stats. 63-414

Publication of notice

Failure to publish notices of an election on the last Tuesday in May, the first Tuesday in June, and the second Monday preceding an election on the question of removal of a county seat and failure by the County Clerk to distribute the ballots will not invalidate the election where it appears that the voters were well informed of the time, place, and manner of the election and the issue involved, and a majority of the qualified voters who went to the polls, excluding those who had an opportunity to vote on the question of removal but chose not to, voted in favor of removal. 66-219

Reapportionment

The federal district court apportioned both members and senatorial districts in its order of June 17, 1982. The effective date of new district lines for purposes of nominations, regular, recall and special elections, mass mailings and in-district travel is June 17, 1982, as to both holdover senators and incumbents in districts where elections are scheduled in the Fall of 1982. 71-157

Referendum

That part of sec. 67.12(12)(e)5., Stats., requiring the petition requesting that a referendum be held on a vocational, technical and adult education district board's resolution to incur indebtedness to contain the signatures of electors from each county in the district equal to at least 2.5% of the population of the county is unconstitutional as applied to the Moraine Park District. Equal protection of the laws is denied to electors in certain counties of the district in that their signatures on the petition, because of the wide disparity in population among the counties, are accorded greatly disproportionate weight as compared to the signatures of electors in other counties. 66-349

Secrecy

City Common Council may not vote to fill vacancy on Council by secret ballot. 65-131

Town sanitary district

1973 Senate Bill 59 contains inconsistent provisions which require redrafting, although the general intent of the Bill appears to be to provide nonresident property owners with a voice in both metropolitan sewerage district and town sanitary district bond elections. Such a limited extension of voting rights probably would not infringe the local district electors' federal or state constitutional guarantees of equal protection. Such extension of suffrage probably is required to be submitted to a vote of the electors of the State, under art. III, sec. 1, Wis. Const. 63-391
Unidentified paper ballots

County Board may not utilize unidentified paper ballot in voting to appoint County Highway Commissioner, but may vote by ayes and nays or show of hands at open session if some member does not require vote to be taken in such manner that the vote of each member may be ascertained and recorded. Sec. 66.77(6), Stats. 63-569

Vocational, technical and adult education

That part of sec. 67.12(12)(e)5., Stats., requiring the petition requesting that a referendum be held on a vocational, technical and adult education district board's resolution to incur indebtedness to contain the signatures of electors from each county in the district equal to at least 2.5% of the population of the county is unconstitutional as applied to the Moraine Park District. Equal protection of the laws is denied to electors in certain counties of the district in that their signatures on the petition, because of the wide disparity in population among the counties, are accorded greatly disproportionate weight as compared to the signatures of electors in other counties 66-349

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See also POLLUTION

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A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The Department of Natural Resources is granted statewide supervision over aquatic nuisance control under sec. 144.025(2)(i), Stats. Applications for permits to chemically treat aquatic nuisances under sec. 144.025(2)(i), Stats., may be denied even though statutory and regulatory requirements have been met if such chemical treatment would be counterproductive in achieving the goals set out in sec. 144.025(1), Stats. ................................................................. 63-260

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A joint sewerage commission is empowered within the territorial limits of its district to enact and enforce regulations which would be required of it under the mandates of the Clean Water Act of 1977, but it cannot make appropriations or issue bonds without the approval of the governing bodies which established it................................................................. 68-83

Legislation is necessary to allow the Milwaukee Metropolitan Sewerage District to borrow up to the limits of its separate indebtedness authorized under Wis. Const. art. XI, sec. 3. (Unpub) ............................. 27-1979

Brown County

In counties with a population of less than 500,000 having a county executive, a solid waste management board established by the county board pursuant to section 59.07(135), Stats., is restricted to performing advisory, policy-making or legislative functions, and the county executive is responsible for the administrative functions set forth in the statute ........................................ 77-98

Counties

In counties with a population of less than 500,000 having a county executive, a solid waste management board established by the county board pursuant to section 59.07(135), Stats., is restricted to performing advisory, policy-making or legislative functions, and the county executive is responsible for the administrative functions set forth in the statute ........................................ 77-98

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Towns, villages and cities in counties establishing a county-wide solid waste management system may be taxed for capital costs but not operating costs of system ................................................................. 67-77

Under sec. 59.07(135), Stats., a county may contract with another municipality or private company to pay the costs of operating a solid waste disposal site, including one owned by a private collector, as long as the necessary approvals have been secured under ch. 144, Stats. Costs of operation of such sites are to be borne by the users while capital costs are to be borne by the general county property tax ........................................ 72-27

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The Oneida Tribe is not a "municipality" within the meaning of sections 66.20 to 66.26, Stats. The Green Bay Metro Sewerage District may enter into an enforceable contract with the Tribe if certain conditions are met ................................................................. 76-189

Groundwater pollution

To accomplish public health protection as well as prevention of groundwater pollution, a county health commission, where such activity is undertaken
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Groundwater pollution (continued)

with the consent of the property owner, can authorize its staff to enter private property for the purpose of determining the location of an existing private sewage disposal system. If consent of the property owner to such activity on his premises is not obtained, it can only be undertaken by county health commission staff pursuant to special inspection warrant obtained under sec. 66.122, Stats................................................. 63–337

Indians

Chapter 147, Stats., relating to water pollution control, did not authorize DNR to regulate Indian reservations and lands since the Legislature, in adopting provisions fashioned after federal law, intentionally omitted Indian tribal organizations from the scope of coverage while charged with knowledge that the state generally lacks power to regulate within sovereign Indian territory. (Unpub) ...................................................... 51–1978

Section 144.07(4)(a), Stats., does not authorize joint sewerage commissions to include tribal governments as member governmental units ............................. 72–132

The Oneida Tribe is not a “municipality” within the meaning of sections 66.20 to 66.26, Stats. The Green Bay Metro Sewerage District may enter into an enforceable contract with the Tribe if certain conditions are met... 76–189

Joint sewerage commission

A joint sewerage commission is empowered within the territorial limits of its district to enact and enforce regulations which would be required of it under the mandates of the Clean Water Act of 1977, but it cannot make appropriations or issue bonds without the approval of the governing bodies which established it................................................. 68–83

Section 144.07(4)(a), Stats., does not authorize joint sewerage commissions to include tribal governments as member governmental units ............................. 72–132

Milwaukee Metropolitan Sewerage District

Legislation is necessary to allow the Milwaukee Metropolitan Sewerage District to borrow up to the limits of its separate indebtedness authorized under Wis. Const. art. XI, sec. 3. (Unpub) ................................... 27–1979

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The Department of Natural Resources must consider the effect on water pollution before it may issue a permit pursuant to sec. 30.12, Stats. (Unpub). 31–1980

Permits

The Department of Natural Resources has authority under state law to issue Wisconsin Pollution Discharge Elimination System permits to federal agencies pursuant to ch. 147, Stats. A federal agency or any officer, agent or employee thereof responsible for the discharge of any pollutant into the waters of the State is a “person” within the meaning of secs. 147.02(1) and 147.015(1), Stats .......................................................... 68–52

The Department of Natural Resources must consider the effect of water pollution before it may issue a permit pursuant to sec. 30.12, Stats. (Unpub). 31–1980

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To accomplish public health protection as well as prevention of groundwater pollution, a county health commission, where such activity is undertaken with the consent of the property owner, can authorize its staff to enter
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Private system (continued)

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Under section 66.036, Stats., additions to, and the remodeling of, structures require an on-site inspection of the existing private sewage system before a building permit may be issued ........................................... 75-38

Sewerage district

1973 Senate Bill 59 contains inconsistent provisions which require redrafting, although the general intent of the Bill appears to be to provide nonresident property owners with a voice in both metropolitan sewerage district and town sanitary district bond elections. Such a limited extension of voting rights probably would not infringe the local district electors’ federal or state constitutional guarantees of equal protection. Such extension of suffrage probably is required to be submitted to a vote of the electors of the State, under art. III, sec. 1, Wis. Const................................. 63-391

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Wisconsin Pollution Discharge Elimination System permits

The Department of Natural Resources has authority under state law to issue Wisconsin Pollution Discharge Elimination System permits to federal agencies pursuant to ch. 147, Stats. A federal agency or any officer, agent or employee thereof responsible for the discharge of any pollutant into the waters of the state is a “person” within the meaning of secs. 147.02(1) and 147.015(1), Stats.................................................. 68-52

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See also POLLUTION

Aquatic nuisances

A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The Department of Natural Resources is granted statewide supervision over aquatic nuisance control under sec. 144.025(2)(i), Stats. Applications for permits to chemically treat aquatic nuisances under sec. 144.025(2)(i), Stats., may be denied even though statutory and regulatory requirements have been met if such chemical treatment would be counterproductive in achieving the goals set out in sec. 144.025(1), Stats.................................................. 63-260

Groundwater pollution

To accomplish public health protection as well as prevention of groundwater pollution, a county health commission, where such activity is undertaken with the consent of the property owner, can authorize its staff to enter
WATER POLLUTION (continued)

Groundwater pollution (continued)

private property for the purpose of determining the location of an existing private sewage disposal system. If consent of the property owner to such activity on his premises is not obtained, it can only be undertaken by county health commission staff pursuant to special inspection warrant obtained under sec. 66.122, Stats. ......................................................... 63–337

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Permits

The Department of Natural Resources must consider the effect on water pollution before it may issue a permit pursuant to sec. 30.12, Stats. (Unpub). 31–1980

Pesticides

When a criminal action is brought for a violation of ch. 94, Stats., prohibiting deposit of pesticides in public waters of the State, such proceeding is not barred by a civil action to recover the statutory value of fish killed by such pesticides ............................................................... 62–130

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Indian reservations and lands

Chapter 147, Stats., relating to water pollution control, did not authorize DNR to regulate Indian reservations and lands since the Legislature, in adopting provisions fashioned after federal law, intentionally omitted Indian tribal organizations from the scope of coverage while charged with knowledge that the state generally lacks power to regulate within sovereign Indian territory. (Unpub) ........................................ 51–1978

Joint sewerage commission

A joint sewerage commission is empowered within the territorial limits of its district to enact and enforce regulations which would be required of it under the mandates of the Clean Water Act of 1977, but it cannot make appropriations or issue bonds without the approval of the governing bodies which established it ............................................................... 68–83

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Wisconsin Pollution Discharge Elimination System permits

The Department of Natural Resources has authority under state law to issue Wisconsin Pollution Discharge Elimination System permits to federal agencies pursuant to ch. 147, Stats. A federal agency or any officer, agent or employe thereof responsible for the discharge of any pollutant into the
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The senate may not appoint a commissioner to fill a vacancy in a term which will not occur during the extant session of the senate. In the present case, the provisional appointment for the vacancy in the term ending March 1, 1985, was valid, but the appointment for a full term beginning March 1, 1985, and ending on March 1, 1991, was invalid. The acts of the commissioner holding over in office are valid .................................................. 76-272

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Religious societies incorporated under ch. 187, Stats., are "persons" within the meaning of the Relocation Assistance Act and are entitled to the benefits of such Act if they otherwise qualify.

State Debt Financing

State debt financing of relocation payments under sec. 32.19, Stats., is permissible under the Wisconsin Constitution.

Tenant

A tenant who rents or leases a new parcel of property in reasonable anticipation of displacement prior to actual displacement is entitled to receive replacement payments as provided by sec. 32.19(4m)(b), Stats.

Tenants may not be treated as owners

Under the Relocation Assistance Act, tenants may not be treated as owners, and are limited to those benefits provided by the Legislature for tenants.

Vocational, Technical and Adult Education, Board of

Vocational, technical and adult education districts and the State Board of Vocational, Technical and Adult Education do not have the power of eminent domain and, therefore, are not subject to secs. 32.19 to 32.27, Stats. (Relocation Act).

Wisconsin Resource Center

Prisoner Transfers

Rights and responsibilities of counties in prisoner transfers to the Wisconsin Resource Center discussed.

Wisconsin Retirement Fund

Age Discrimination in Employment Act

County collective bargaining agreement providing for payment of employee contributions to Wisconsin Retirement System only for those deputy sheriffs under age fifty-five violates the federal Age Discrimination in Employment Act.

Fixed Retirement Trust

Validity of possible statutory modifications to the Fixed Retirement Trust of the Wisconsin Retirement System discussed.

Police and Firefighter Employes

Section 40.21(4), Stats., limits prospective mandatory Wisconsin Retirement System coverage to present and future police and firefighter employes of cities and villages that had police and firefighter employes included in the Wisconsin Retirement Fund prior to March 31, 1978.

Prior Service Credit

The prior service credit for elected officials participating in the Wisconsin Retirement Fund, authorized by ch. 288, Laws of 1973 (sec. 41.02(12)(i), Stats.), may be paid in whole or in part by the governmental employer of those officials eligible for that credit.

Public Administrators

Public administrators are public officials and, therefore, includable as "employees" under the Federal-State Social Security coverage agreement. Public administrators may be properly excluded by act of the Legislature from future coverage under the Wisconsin Retirement Fund and State Group Life Insurance.
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School district

School district lacks authority to establish a pension plan other than through participation in the Wisconsin Retirement Fund for noncertified employees not subject to a collective bargaining agreement. (Unpub) 68–1976

WISCONSIN RETIREMENT SYSTEM

Age discrimination in Employment Act

County collective bargaining agreement providing for payment of employe contributions to Wisconsin Retirement System only for those deputy sheriffs under age fifty-five violates the federal Age Discrimination in Employment Act 72–91

Benefits for persons no longer working

Only the portion of 1987 Assembly Bill 265 that increases benefits for persons no longer working for a Wisconsin Retirement System participating employer is subject to the three-fourths vote requirement of article IV, section 26 of the Wisconsin Constitution. The Public Employe Trust Fund constitutes “state funds” as used in article IV, section 26 of the Wisconsin Constitution 76–224

Police and firefighter employes

Section 40.21(4), Stats., limits prospective mandatory Wisconsin Retirement System coverage to present and future police and firefighter employes of cities and villages that had police and firefighter employes included in the Wisconsin Retirement Fund prior to March 31, 1978 75–34

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Not a “state agency”

The Wisconsin Student Association is not a “state agency” within the meaning of such term as employed in sec. 20.918, Stats. (Unpub) 47–1980

WISCONSIN VETERANS HOME

Derivative membership

Those provisions of sec. 45.37, Stats., which limit derivative membership in the Wisconsin Veterans Home of otherwise eligible spouses and surviving spouses of male veterans and which limit the derivative membership of otherwise eligible parents of veterans to mothers are violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because there is no rational relationship between the sex of the otherwise eligible spouse or parent of the veteran and the state objectives sought to be advanced by sec. 45.37, Stats. 64–69

Wills

A will made by a person prior to entering the Wisconsin Veterans Home and prior to July 31, 1975, is invalid. A will made by a person who entered the Home before July 31, 1975, but who made the will on or after July 31, 1975, is valid. (Unpub) 48–1980
WISCONSIN WATERWAYS COMMISSION

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WORKER'S COMPENSATION

Disaster training exercise

A disaster training exercise is covered employment for workmen's compensation purposes under sec. 22.16(9)(d), Stats. Pursuant to that provision, a person remains the employee of his or her initial emergency government unit for the duration of an emergency government activity. Section 22.16(9)(f), Stats., also construed .......................................................... 62-217

Emergency government unit

A disaster training exercise is covered employment for workmen's compensation purposes under sec. 22.16(9)(d), Stats. Pursuant to that provision, a person remains the employee of his or her initial emergency government unit for the duration of an emergency government activity. Section 22.16(9)(f), Stats., also construed .......................................................... 62-217

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Indian persons receiving relief under sec. 49.046, Stats., and participating in a Work Experience Program under sec. 49.047, Stats., are not automatically covered by the Worker's Compensation Law .......................................................... 70-111

Natural Resources Board member

Worker's compensation coverage exists for members of the Natural Resources Board, who are injured while in transit to or from a board meeting, regardless of whether their transportation to such meeting is furnished by the Department of Natural Resources. (Unpub) .......................................................... 49-1985

Police

A state traffic patrol officer should not except in extreme emergencies be impressed for service as part of a posse comitatus pursuant to sec. 59.24(1), Stats. Where duly impressed he is entitled to workmen's compensation, if injured, from the county or municipality but would not be entitled to regular pay from the State and probably would not be entitled to workmen's compensation from the State .......................................................... 62-38

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"Second injury fund"

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Firearms

Persons who previously received dispositions under the repealed Youthful Offenders Act are not precluded from possessing firearms under sec. 941.29, Stats. ................................................................. 71-217
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ZONING

Agricultural districts

A community living arrangement which has a capacity for eight or fewer persons and which meets all other statutory criteria is entitled to locate in any zoning district where single or multi-family residences are a permitted use. Any such community living arrangement which has a capacity of from nine to fifteen persons is entitled to locate in any zoning district where multi-family residences containing more than two families are a permitted use, and is entitled to apply for special zoning permission to locate in any zoning district where single or two family uses are permitted. Such a community living arrangement which has a capacity of more than fifteen persons is entitled to apply for special zoning permission to locate in any zoning district where single or multi-family uses are permitted. A community living arrangement which meets all applicable statutory criteria is not entitled to locate in an exclusive agricultural zoning district, but may seek special zoning permission to do so if local ordinances permit 76-126

Agricultural zoning, revocation of

The Land Conservation Board has authority to prospectively revoke an exclusive agricultural zoning ordinance certification granted under sections 91.06 and 91.78, Stats. Notice and an opportunity to be heard must be afforded to the local zoning authority and to landowners who might be affected by a decertification decision. If a decision to decertify is made, only those lands which are rezoned are subject to the lien and property tax credit recapture provisions of section 91.77(2) 74-78

Artificial ditch

Section 59.971, Stats., authorizes counties to zone lands located within 300 feet of an artificial ditch that is navigable in fact 63-57

Community living arrangements

See also Foster homes

A community living arrangement which has a capacity for eight or fewer persons and which meets all other statutory criteria is entitled to locate in any zoning district where single or multi-family residences are a permitted use. Any such community living arrangement which has a capacity of from nine to fifteen persons is entitled to locate in any zoning district where multi-family residences containing more than two families are a permitted use, and is entitled to apply for special zoning permission to locate in any zoning district where single or two family uses are permitted. Such a community living arrangement which has a capacity of more than fifteen persons is entitled to apply for special zoning permission to locate in any zoning district where single or multi-family uses are permitted. A community living arrangement which meets all applicable statutory criteria is not entitled to locate in an exclusive agricultural zoning district, but may seek special zoning permission to do so if local ordinances permit 76-126

Condominium

Unless a condominium under ch. 703, Stats., actually involves a division of land, or successive divisions of land, it is not subject to the land platting and subdivision approval requirements of ch. 236, Stats. The extent to which local governments may vary the terms of secs. 236.16(1) and (2) and 236.20(4)(d), Stats., by ordinance, discussed 64-175

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ZONING (continued)

County Board of Adjustment

The extent to which sec. 59.99, Stats., authorizes the County Board of Adjustment to grant zoning variances and review decisions of the County Planning and Zoning Committee, discussed .......................... 69-146

County ordinances

1. An extraterritorial zoning ordinance may utilize interior section lines. 2. Interim extraterritorial zoning ordinances need not be based on a land use survey. 3. Amendment of interim extraterritorial zoning ordinances discussed. 4. Appeals under an interim extraterritorial zoning ordinance are handled by the city or village. 5. Administration of extraterritorial zoning is by the city or village. 6. The joint extraterritorial zoning committee continues to exist after adoption of the comprehensive extraterritorial zoning ordinance .................................................. 67-238

The extent to which sec. 91.73(4), Stats., as created by ch. 29, Laws of 1977, and amended by ch. 169, Laws of 1977, alters the procedures applicable for the amendment of county comprehensive zoning ordinances under sec. 59.97(5)(e), Stats., is discussed .................................................. 67-290

County planning and zoning agency

Committee of the County Board acting as county planning and zoning agency pursuant to secs. 59.025(3)(c), 59.06 and 59.97(2)(a), Stats., rather than County Executive, has power to appoint director for planning and zoning. (Unpub) .................................................. 14-1983

County shoreland zoning

County shoreland zoning of unincorporated areas adopted pursuant to sec. 59.971, Stats., is not superseded by municipal extraterritorial zoning under sec. 62.23(7a), Stats. Sections 59.971, 62.23(7), 62.23(7a) and 144.26, discussed. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations .................................................. 63-69

County zoning

County zoning under sec. 59.97(9), Stats., is only effective during the period of county ownership and such zoning terminates on transfer of ownership. (Unpub) .................................................. 71-1976

Under the provisions of sec. 59.97(5)(e), Stats., town board approval of a comprehensive county zoning ordinance must extend to such ordinance in its entirety and may not extend only to parts of such ordinance .................. 63-199

Countywide comprehensive zoning ordinance

A county which has enacted a countywide comprehensive zoning ordinance under sec. 59.97, Stats., may not enact any zoning provision authorizing withdrawal of town approval of such ordinance or otherwise specifically excluding or exempting any town from the operation of such ordinance ... 67-197

A town with village powers that is subject to a county zoning ordinance is not prohibited by statute from any and all regulation of driveway installation. A town which is subject to a county zoning ordinance that contains no limitation on the issuance of county zoning permits may not set a quota on the number of residential building permits that the town will issue each year. 76-60

Driveway installation

A town with village powers that is subject to a county zoning ordinance is not prohibited by statute from any and all regulation of driveway installation. A town which is subject to a county zoning ordinance that contains no limitation on the issuance of county zoning permits may not set a quota on the number of residential building permits that the town will issue each year. 76-60

Flood control

County floodplain zoning ordinances may be adopted under the authority of sec. 59.971, Stats. Such ordinances will not require the approval of town
ZONING (continued)

Flood control (continued)
boards in order to become effective within the unincorporated areas of the county. County floodplain zoning ordinances adopted by the Department of Natural Resources pursuant to sec. 87.30, Stats., do not need approval of the town boards in order to become effective within all unincorporated areas of the county ............................................................. 62-264

Foster homes

A local zoning ordinance which limits occupation of single family dwellings to one or more persons related by blood, adoption or marriage or not more than two unrelated persons while valid on its face, is unenforceable against a licensed foster home. Said license, whether granted directly or indirectly by the State, is an exercise of the sovereign power of the State and is immune from local zoning regulations ............................................................. 66-342

Foster homes contracted for (i.e., leased) by the Department of Health and Social Services, pursuant to sec. 48.52, Stats., are immune from local zoning to the extent that the zoning conflicts with the Department’s possessory use of property for purposes contemplated by ch. 48, Stats. However, immunity for leased facilities is subject to sec. 13.48(13), Stats., as amended by ch. 90, sec. 2, Laws of 1973. Section 48.64, Stats., agreements between the Department and proprietors of foster homes do not serve to immunize the proprietor’s property from local zoning. County agencies providing child welfare services do not have authority to lease real property for foster home use. The Department may assert its immunity from local zoning for property it acquires a possessory interest in by virtue of a sublease pursuant to sec. 48.52(2), Stats. Property leased by the Department pursuant to sec. 48.52(2), Stats., is not rendered exempt from property taxation. The lessor remains responsible for tax payment ............................................................. 65-93

Foster homes owned, operated or contracted for by the Department of Health and Social Services or a county agency are immune from local zoning ordinances. Foster homes owned, operated or contracted for by licensed child welfare agencies are not immune. All family operated foster homes are subject to local zoning. Municipal foster home licensing ordinances are unenforceable. Zoning ordinances utilizing definitions of “family” to restrict the number of unrelated persons who may live in a single dwelling are of questionable constitutionality ............................................................. 63-34

Group homes

See Community living arrangements; Foster homes

Indians

The Lac du Flambeau Indian Tribe has exclusive authority to zone Indian land, and has concurrent jurisdiction with the State to zone private property within the Tribe’s reservation boundaries unless county zoning would infringe on tribal self-government ............................................................. 71-191

Mobile homes

In a town in which a countywide zoning ordinance is effective, a town ordinance which purports to regulate the location of individual mobile homes is a zoning ordinance which can only be enacted in compliance with the provisions of sec. 60.74(7) or (8), Stats. Once the exercise of town zoning authority under sec. 60.74(7), Stats., is approved by referendum, town zoning ordinances and amendments need only be approved by the County Board. Section 60.74(7), Stats., requires the appropriate town authorities to hold a public hearing on town zoning, but no further hearing by the county authorities is required ............................................................. 65-288

The authority of a county to regulate house trailers or mobile homes under the county zoning authority set forth in sec. 59.97, Stats., and other zoning questions, discussed ............................................................. 62-292
Multi-family residences

See also Foster homes

A community living arrangement which has a capacity for eight or fewer persons and which meets all other statutory criteria is entitled to locate in any zoning district where single or multi-family residences are a permitted use. Any such community living arrangement which has a capacity of from nine to fifteen persons is entitled to locate in any zoning district where multi-family residences containing more than two families are a permitted use, and is entitled to apply for special zoning permission to locate in any zoning district where single or two family uses are permitted. Such a community living arrangement which has a capacity of more than fifteen persons is entitled to apply for special zoning permission to locate in any zoning district where single or multi-family uses are permitted. A community living arrangement which meets all applicable statutory criteria is not entitled to locate in an exclusive agricultural zoning district, but may seek special zoning permission to do so if local ordinances permit.............................................................. 76-126

Municipalities

A town board, granted village powers under sec. 60.18(12), Stats., is not required to petition its County Board prior to adopting a town zoning ordinance. Sec. 60.74(1)(am) and (7), Stats. However, where the county has adopted a zoning ordinance under sec. 59.97, Stats., such town zoning ordinance will not become effective and cannot be enforced unless and until the county takes positive action approving such town ordinance............... 62-139

Real estate broker

Provisions in Executive Order 67 (1973), with respect to duty of real estate broker to advise prospective purchasers of floodplain zoning status of property, do not constitute new standard but suggest course of action Real Estate Examining Board might take. Action to be taken would depend on facts in each case ................................................................. 63-236

Shorelands

Towns exercising village powers can zone shorelands concurrently with counties, provided that the town ordinance is in conformance with or more restrictive than the county ordinance.................. 65-108

State

Under sec. 13.48(13), Stats., the State is subject to local governmental zoning regulations when remodeling a newly acquired or leased facility .......... 67-251

Towns

A town with village powers that is subject to a county zoning ordinance is not prohibited by statute from any and all regulation of driveway installation. A town which is subject to a county zoning ordinance that contains no limitation on the issuance of county zoning permits may not set a quota on the number of residential building permits that the town will issue each year. 76-60

Under the provisions of sec. 59.97(5)(c), Stats., town board approval of a comprehensive county zoning ordinance must extend to such ordinance in its entirety and may not extend only to parts of such ordinance.............. 63-199

Transportation, Department of

The jurisdiction of the Secretary of Transportation with respect to control over the erection of high structures is limited by the provisions contained in sec. 114.135(7), Stats., to those structures that either extend to a height of more than 500 feet above the ground or surface of the water within one mile of the location of the object, or a height determined by the ratio of one foot vertical to 40 feet horizontal measured from the nearest boundary of the nearest public airport in the State. If a local zoning ordinance, rule or
ZONING (continued)

Transportation, Department of (continued)

regulation permits the erection of structures, which exceed these heights, a
conflict of jurisdiction would arise and the Secretary could invoke sec.
114.135(9), Stats., to resolve the conflict .............................................. 62-232

Variance

A self-created or self-imposed hardship does not constitute an "unnecessary
hardship" for which a county zoning board of adjustment may grant a
variance under the provisions of sec. 59.99(7)(c), Stats. ......................... 62-111
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