

Chapter Two

Setting Up Township Government: Form and Operation

§ 2-1. What is a Township?

There are two types of Townships. One is a Congressional township. The other is a political township or town government.

A. Congressional Townships

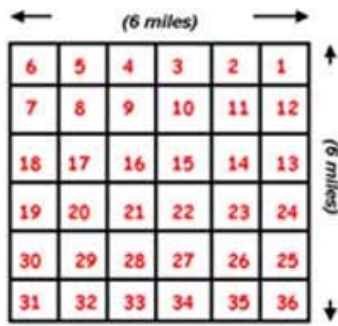
A Congressional Township is a unit of measure for land. The Land Ordinance of 1785 established the basis for the Public Land Survey System. Land was to be systematically surveyed into square townships, six miles on a side. Each of these townships were sub-divided into thirty-six sections of one square mile. Hence a Congressional township is a unit of land that is 6 miles by 6 miles. This new measurement system was the brainchild of Thomas Jefferson. With the addition of the Northwest Territory in 1787, which included the northeast part of Minnesota, Congress wanted to survey the new land.

Survey crews were sent out to measure the new territory. Dragging a chain of a set length across the ground, surveyors measured the land, keeping notes as they went. In Minnesota, these field notes were created between 1847 and 1911, prior to opening Minnesota for land sale to residents and immigrants. All the survey notes have been digitized and are now online at the U.S. Bureau of Land Management's (BLM) GLO web site.

When you consider the size and terrain of Minnesota, it is difficult to comprehend the scope of such a project. What is perhaps even more remarkable is how accurate those surveys were. However, many

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townships do not actually contain exactly 36 square miles of land. There remains a significant degree of inaccuracies in property descriptions in rural Minnesota because of various adjustments for bodies of water, terrain features, and the curvature of the earth. Nevertheless, despite the lack of GPS, the original surveyed township lines are valuable and are still a vital part of property descriptions. Congressional townships also serve as the platform on which town government is built.

B. Town Government

Townships are the original form of local government in Minnesota and are sometimes referred to as a “political township.”

The township form of government, a carryover from Europe, generally refers to organized but unincorporated communities governed by a local board of supervisors and created to provide services to their residents – building and maintaining roads, schools, and having a Justice of the Peace – providing a sense of community to residents. There are 1,781 townships across Minnesota.

The establishment of township government in Minnesota is based on Minnesota’s Constitution. Under Article 12, Section 3 of the Constitution, the Legislature is authorized to “provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions . . .” It is through this authority the Legislature has created cities and towns.

Towns are public corporations. Minn. Stat. § 365.02. Both cities and towns are considered general purpose local governments because they, unlike special districts created for a specific purpose, have been granted the authority to serve the broad-based needs of their residents.

The governing body of a standard township is comprised of three supervisors, a clerk, and a treasurer. Each position is an elected office with its own list of statutory duties. Residents may change this standard compliment of elected town officers by voting in one of the optional forms of town government. *Optional forms of town government are discussed in § 2-4.*

The Minnesota Constitution not only provides for the establishment of local governments, but it also allows the Legislature to provide, by law, their “functions.” The Legislature instructs local governments what they may, may not, and must do. Local governments do not have any inherent authority. The Legislature dictates all local government authority; thus, the courts refer to local governments as “creatures of the Legislature.” Understanding which powers have been delegated to towns and the nature of delegated powers is key to understanding the role of towns in the overall scheme of government in Minnesota. *Town powers are outlined in Chapter 5.*

Is it a Township or a Town?

Sometimes people refer to “townships” as “towns.” Minnesota statutes also interchange the terms. While townships are recognized geographically as the 36 square miles, it is more precise to refer to the organized government of a township as a “town.” However, rural Minnesotans often to refer to small municipalities as “towns,” which can create confusion. Recognize that either term may be appropriate and this Manual uses both.

§ 2-2. Establishing a Town

A congressional township is considered unorganized territory until it is formally organized into a local unit of government. While most of Minnesota is organized into 1781 townships, part of northern Minnesota, including Lake of the Woods and Koochiching counties are unorganized.

One of the primary reasons why a town becomes organized is to allow the residents within a relatively small geographic area to gain more direct control over governmental policies and services. The value of local government is tied to the notion that residents are in the best position to decide issues, such as the type and level of government services and how best to deliver those services to their community. Rising populations in parts of rural Minnesota and a desire to have more control over local issues have typically led to the organization of towns.

There are two categories of organized towns in Minnesota. One category is recognized for having fewer than 1200 residents and outside the metro area. The second, have a population of over 1200 or because of their proximity to the Twin Cities, allowing them to adopt expanded powers. Minn. Stat. §368.01. These towns are commonly re-

ferred to as “urban towns.” See § 2-3.

To organize a town, there must be at least 25 legal voters residing in the area to be organized. Minn. Stat. § 379.01, subd. 1 & 2. If there are not 25 voters within the territory of one congressional township, the territory of up to five congressional townships can be brought together to form a town. Once a petition to organize is brought to the County, the County conducts an election to vote on the question. If the vote is positive, an organizational meeting is held to select interim officers and to initiate the other activities needed to organize a local government.

An interesting, but largely forgotten, aspect of the formation of a town is its relationship with cities wholly contained within the boundaries of the town. There are cities in this state that are not separate from the surrounding town government. These cities’ residents can vote at town elections and meetings and may even be elected to the town board. However, town residents do not enjoy the same benefits of being able to vote in city elections or hold office in the city. Procedures do exist for the separation of cities and towns. Minn. Stat. §§ 365.44 & 412.081.

Towns are often referred to as “grassroots government.” This reference stems from the community-based nature of how town government is structured. Most towns have small populations, but a big sense of community. Often those serving on town boards are long-time, if not lifetime, residents of the area and serve out of a sense of stewardship for their community.

In townships, citizens contribute their talents, skills, and ideas to preserve the quality of life, build their communities and to deliver important services. Township officials are creative in delivering quality services with the least possible burden to taxpayers.

Township officials live in the communities they serve and stay in touch with ever changing needs. An important responsibility is balancing private property rights with the impact on the community in land use decisions.

Efficient. Effective. Accountable. Accessible. Minnesota township governments embody America's great democratic principles.

§ 2-3. Urban Towns

“Urban town” is not a term used in the statutes, but is instead a short-hand reference to towns that receive new or expanded powers under Minnesota Statutes Ch. 368. The powers, primarily fall into one of three categories:

1. entirely new powers;
2. previously existing powers that no longer require voter approval; and
3. powers that were previously held by the town but are authorized by different or additional statutes for urban towns.

Towns do not need to be in an “urban” area to exercise urban powers.

It is also important to note that towns granted additional powers by special legislation may not have the full scope of powers provided in Minn. Stat. § 368.01. They may be similar since the special legislation often referred to the same list of city powers used to develop the list of powers in Minn. Stat. § 368.01, but the powers may not be identical and there may be limitations placed on the exercise of the powers granted. Therefore, towns operating under powers granted by special legislation are well served to keep a copy of the special legislation on hand so it can be referred to as needed to ensure it is exercising those powers consistent with the legislation. It may be the case that one or more of the powers granted by special legislation have since been granted to all towns or those qualifying as urban towns. As such, it may no longer be necessary to rely on the special legislation and the town can instead refer to and follow the statutory procedures associated with the general grant of authority.

Urban town powers allow the town to operate more like cities, but urban town powers are not as extensive as the powers granted cities. They could be characterized as functioning at a level between rural towns and cities. Urban towns are granted economic development powers not available to rural towns, but they are not nearly as broad as the economic development powers granted cit-

ies. Perhaps the most distinguishing feature of urban towns is the ability of the town board to exercise a variety of the town’s powers without having to first obtain authority from town electors at an annual or special town meeting. Many of these powers are listed in Minn. Stat. § 368.01.

When a town adopts urban town powers, it is



required to submit the question of whether to increase the size of the town board from three supervisors to five supervisors. Minn. Stat. § 367.31. Other than this potential increase

in the number of supervisors, the structure and function of the town remain the same.

Since 2001, towns located in the seven-county metropolitan area (Minn. Stat. § 473.121, subd. 2) that are exercising powers under Minn. Stat. § 368.01 have been required to comply with the requirements of the Minnesota Government Data Practices Act (“MDA”), which is found at Minn. Stat. Chap. 13. Being subject to the MDA places a significant burden on these towns as the steps required to get into compliance, and then to stay in compliance, with the MDA is no easy task. Also, significant penalties may be imposed on those towns required to comply that fail to do so. Towns subject to the MDA need to ensure they comply and that they remain aware of the often-changing requirements of the MDA.

Refer to Document Number **TM5000** for additional information on complying with the MDA.

Refer to Document Number **GI2000 and TP2000** for additional information on urban towns.

§ 2-4. Optional Forms of Town Government

Every town can change some aspects of the town board’s fundamental structure. By default, a town board consists of three supervisors, one clerk, and one treasurer – all of whom are elected. Towns may alter this default structure by adopting one or more optional township government plans. Statute designates each option by letter as follows: The Legislature has created four options (Option A – Option D) towns can adopt for the government of the town. Minn. Stat. § 367.30.

The decision to pursue an optional form of township government can be initiated either by board action or by elector petition. In either case, the question of whether to adopt the option is submitted to the electors by ballot at the next annual town election. If the option passes, the board must follow the statutory procedure to implement the option. The town board cannot enact an optional form of government without a ballot vote of the electors.

If electors choose to petition to change to one of the four options, at least 15 percent of the electors voting at the last previous town election must sign the petition. Minn. Stat. § 367.31, subd. 1. Contact the Elections Division of the Secretary of State’s Office for help determining the number of electors in the last town election. The form of the petition must comply with the rules established by the Secretary of State’s Office, which is available online.

Minnesota Secretary of State’s Office can provide:

- Number of voters in last election
 - Sample Petitions
- Call: 1-877-600-VOTE (8683)
 Website: <http://www.sos.state.mn.us/>

A. Clerk Duties

Minn. Rule. 8205.1040 lays out the procedure for clerks to deal with petitions requesting optional forms of government. Completed petitions must be filed with the town clerk. The

Plan	Effect
Option A - Five Supervisor Board	Allows for 5 elected supervisors instead of 3.
Option B - Appointed Clerk or Treasurer	Allows supervisors to appoint either a clerk, a treasurer, or both. Eliminates elections for clerk and/or treasurer.
Option C - Town Administrator	Allows supervisors to appoint a town administrator, who has powers listed in Minn. Stat. § 367.35, sub. 2.
Option D - Combined Clerk & Treasurer	One person serves as town’s clerk and treasurer. Depending on the town’s annual revenue, the town may need independent-outside audits.

clerk is required to provide the person who delivers the petition a receipt. The clerk then has ten days in which to inspect the petition to verify the signatures are proper and that it complies with applicable statutory requirements. The clerk usually submits the petition to the county auditor to verify that the individuals who signed the petition are eligible to vote. After eligibility of the petition’s signatories is verified, the petition is returned to the clerk. If the petition is deficient in the number of eligible signatories or form, the clerk must notify the person who submitted the petition of its deficiency. If the petition is sufficient, the clerk presents the petition to the town board. Once received, the town board must submit the option question to the electors.

B. More than one question

If the option to combine the clerk and treasurer position is being considered, realize there are two parts to the decision. Because the combined clerk-treasurer position can be made either an elected or appointed position, the decision to ask the question must be accompanied with the decision of whether the position will be elected or appointed. If the proposal is to make the combined position appointive, ***The Option B question must also***

be asked along with a note indicating the adopting of Option B is contingent on the simultaneous adopting of Option D. Minn. Stat. § 367.31, subd. 4.

Also, towns adopting urban town powers under Minn. Stat. § 368.01, or who are granted those powers by special law, are **required** to submit the Option A question (five-member board of supervisors) to the electors at the town election following the grant of powers. Minn. Stat. § 367.31, subd. 2.

C. 74-Day Rule

The board motion or submission of the petition must occur more than 74 days before the election to provide the county auditor notice of the ballot questions to be asked at a town election. If the process is initiated after the deadline, the question cannot be asked until the following town election. Minn. Stat. § 205.16, subd. 4.

D. Notice

The town clerk **must** include the language of the question in the published and posted notice of the town election where the question will appear. Minn. Stat. § 367.31, subd. 3.

E. Language on the Ballot

The wording for each question is included in the statute. Minn. Stat. § 367.31, subd. 4. Clerks must follow the election law requirements for developing the ballot on which the question will appear. Minn. Stat. § 204B.36, subd. 3.

If a majority of the votes cast on the question are in the affirmative, the option shall be adopted in the town. Minn. Stat. § 367.31, subd. 5. After the election, the clerk is required to promptly file with the county auditor and the Secretary of State a certificate stating the date of the election, the question submitted, and the vote results. Minn. Stat. § 67.31, subd. 7.

F. Implementation

Implementing an option once it has been adopted can be a challenge. There are several factors that determine how, for instance, the option to combine the clerk and treasurer position is to be handled. Towns asking an op-

tion question must be aware of how to implement the option they are considering in preparation for the election. **The importance of understanding the immediate effects of adopting an option cannot be overemphasized when you consider some options can result in the nullification of a person's election.**

The long-term consequences of an option should also be considered. As an example, the adoption of Option D providing for a combined clerk-treasurer position triggers a requirement to have outside audits conducted. Minn. Stat. § 367.36, subd. 1. If the town's annual revenue is more than \$150,000, adjusted for inflation, an annual audit by the State Auditor or a CPA is required. If the annual revenues are below that amount, the audit must be conducted at least once every five years. The adjustment for inflation is determined "using the annual implicit price deflator for state and local expenditures as published by the United States Department of Commerce." Minn. Stat. § 367.36, subd. 1(c).

G. Abandonment of Option

The statutes provide an opportunity to abandon a previously adopted option and reverting to the form of town government that existed prior to the adoption of the option. The question of abandonment is raised in the same manner as the question to adopt an option, i.e., by board motion or elector petition. Minn. Stat. § 367.31, subd. 6. However, the question to abandon an option cannot be asked within three years after the option was adopted.

The same language is used for the question to abandon an option as is used to adopt an option, except that the word "abandoned" is substituted for the word "adopted" in the question. If a majority of the votes cast on the question are in favor of abandonment, the optional form of government is extinguished according to the statutory procedure.

Refer to Document Number **GI1000** for additional information on the optional forms of town government, and the procedures involved in adoption and abandonment.