

(3) COSTS AND FEES; FORFEITURES TO GO TO TREASURY. (a) Fees in forfeiture actions in circuit court for violations of ordinances are prescribed in s. 814.63 (1) and (2).

(b) All forfeitures and penalties recovered for the violation of an ordinance or bylaw of a city, village, town, town sanitary district, or public inland lake protection and rehabilitation district shall be paid into the city, village, town, town sanitary district, or public inland lake protection and rehabilitation district treasury for the use of the city, village, town, town sanitary district, or public inland lake protection and rehabilitation district, except as provided in par. (c) and sub. (1) (bm). The judge shall report and pay into the treasury, quarterly, or at more frequent intervals if required, all moneys collected belonging to the city, village, town, town sanitary district, or public inland lake protection and rehabilitation district. The report shall be certified and filed in the office of the treasurer. The judge is entitled to duplicate receipts, one of which he or she shall file with the city, village, or town clerk, or with the town sanitary district or the public inland lake protection and rehabilitation district.

(c) The entire amount in excess of \$150 of any forfeiture imposed for the violation of any traffic regulation in conformity with ch. 348 shall be transmitted to the county treasurer if the violation occurred on an interstate highway, a state trunk highway, or a highway over which the local highway authority does not have primary maintenance responsibility. The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (L).

History: 1971 c. 278; 1973 c. 336; 1975 c. 231; 1977 c. 29, 182, 269, 272, 305, 418, 447, 449; 1979 c. 32 s. 92 (17); 1979 c. 110 s. 60 (13); 1979 c. 331; 1981 c. 20, 317; 1983 a. 418 s. 8; 1987 a. 27, 389; Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 107; 1991 a. 39, 40, 189; 1993 a. 16, 167, 246, 491; 1995 a. 201, 349; 1997 a. 27; 1999 a. 9; 1999 a. 150 ss. 278 to 283; Stats. 1999 s. 66.0114; 2001 a. 16; 2003 a. 33, 139, 326.

Costs should be awarded a defendant who prevails in a municipal ordinance violation case. *Milwaukee v. Leschke*, 57 Wis. 2d 159, 203 N.W.2d 669 (1973).

The simultaneous sale of four different magazines by the same seller to the same buyer may give rise to separate violations of an obscenity ordinance. *Madison v. Nickel*, 66 Wis. 2d 71, 223 N.W.2d 865 (1974).

Under the rationale of *Pedersen*, 56 Wis. 2d 286, sub. (1) (c) is constitutional except when imprisonment under the statute is used as a means of collection from an indigent defendant. *West Allis v. State ex rel. Tochalauski*, 67 Wis. 2d 26, 226 N.W.2d 424 (1975).

Sub. (1) (a) does not authorize the issuance of arrest warrants without a showing of probable cause. *State ex rel. Warrender v. Kenosha County Ct.*, 67 Wis. 2d 333, 231 N.W.2d 193 (1975).

An officer may make a warrantless arrest for an ordinance violation if a statutory counterpart of the ordinance exists. *City of Madison v. Ricky Two Crow*, 88 Wis. 2d 156, 276 N.W.2d 359 (Ct. App. 1979).

An award of costs of prosecution under sub. (1) (c) and s. 800.09 does not include actual attorney fees. *Town of Wayne v. Bishop*, 210 Wis. 2d 218, 565 N.W.2d 201 (Ct. App. 1997), 95–2387.

The appearance required under sub. (1) (b) in an OWI action under s. 346.63 (1) may be made by mail as it is a civil action; a defendant's not guilty plea was an appearance beginning the 10 day period in which a jury trial could be requested. *City of Fond du Lac v. Kaehne*, 229 Wis. 2d 323, 599 N.W.2d 870 (Ct. App. 1999), 98–3619.

The defendant has the burden to raise and prove indigency when imprisonment is ordered for failure to pay fine under sub. (1) (c). 64 Atty. Gen. 94.

A judgment for payment of a forfeiture can be docketed, accumulates interest at 12 percent, and may be enforced through collection remedies available in other civil proceedings. OAG 2–95.

66.0115 Outstanding unpaid forfeitures. (1) In this section, “municipality” means a county, city, village or town. Except as provided under sub. (2), any municipality may refuse to issue any license or permit to a person who has not paid an overdue forfeiture resulting from a violation of an ordinance of the municipality. Any municipality, by written agreement between itself and any other city, village or town within the county in which the municipality is located, may refuse to issue any license or permit to a person who has not paid an overdue forfeiture resulting from a violation of an ordinance of any municipality which is a party to the agreement. No municipality may refuse to issue a license or permit to a person who is appealing the imposition of a forfeiture.

(2) A municipality may not refuse to issue any of the following licenses under sub. (1):

(a) A marriage license issued under s. 765.12.

(b) A hunting or fishing license issued under ch. 29.

(c) A dog license issued under s. 174.07.

History: 1981 c. 198; 1999 a. 150 s. 273; Stats. 1999 s. 66.0115.

66.0117 Judgment against local governmental units.

(1) In this section:

(a) “Local governmental unit” means a city, village, town, county, school district, technical college district, town sanitary district or public inland lake protection and rehabilitation district.

(b) “Statement” means all of the following:

1. A certified transcript of a judgment.

2. A judgment creditor's affidavit of the amount due on a judgment, of payments made on the judgment and that the judgment has not been appealed.

(2) (a) If a final judgment for the payment of money is recovered against a local governmental unit, or an officer of the local governmental unit, when the judgment is to be paid by the local governmental unit, the judgment creditor may file a statement with the clerk of circuit court. The clerk of circuit court shall send a copy of the statement to the appropriate municipal clerk.

(b) If a statement is filed under par. (a), the amount due, with costs and interest to the time when the money will be available for payment, shall be added to the next tax levy, and shall, when received, be paid to satisfy the judgment. If the judgment is appealed after filing the transcript with the clerk of circuit court, and before the tax is collected, the money shall not be collected on that levy. If the municipal clerk fails to include the proper amount in the first tax levy, he or she shall include it or the portion required to complete it in the next levy.

(3) In the case of school districts, town sanitary districts or public inland lake protection and rehabilitation districts a statement shall be filed with the clerk of the town, village or city in which the district or any part of it lies, and levy shall be made against the taxable property of the district.

(4) No process for the collection of a judgment shall issue until after the time when the money, if collected upon the first tax levy under sub. (2) (b), is available for payment, and then only by leave of court upon motion.

(5) If by reason of dissolution or other cause, pending action, or after judgment, a statement cannot be filed with the clerk described in sub. (2) (a) or (3), it shall be filed with the clerk or clerks whose duty it is to make up the tax roll for the property liable.

History: 1971 c. 154; 1975 c. 197; 1993 a. 399; 1995 a. 224; 1999 a. 150 ss. 29, 255; Stats. 1999 s. 66.0117.

Sub. (1) (b) [now sub. (2) (b)] requires assessment of the full amount of a judgment against a town or sanitary district in the first levy made thereafter. If the full amount has not been assessed in 2 levies, additional levies may be levied. *Davy Engineering Co. v. Clerk of Town of Mentor*, 221 Wis. 2d 744, 585 N.W.2d 832 (Ct. App. 1998), 97–3575.

66.0119 Special inspection warrants. (1) (a) “Inspection purposes” includes such purposes as building, housing, electrical, plumbing, heating, gas, fire, health, safety, environmental pollution, water quality, waterways, use of water, food, zoning, property assessment, meter and obtaining data required to be submitted in an initial site report or feasibility report under subch. III of ch. 289 or s. 291.23, 291.25, 291.29 or 291.31 or an environmental impact statement related to one of those reports. “Inspection purposes” also includes purposes for obtaining information specified in s. 196.02 (5m) by or on behalf of the public service commission.

(b) “Peace officer” means a state, county, city, village, town, town sanitary district or public inland lake protection and rehabilitation district officer, agent or employee charged under statute or municipal ordinance with powers or duties involving inspection of real or personal property, including buildings, building premises and building contents, and means a local health officer, as defined in s. 250.01 (5), or his or her designee.

(c) “Public building” has the meaning given in s. 101.01 (12).

(2) A peace officer may apply for, obtain and execute a special inspection warrant issued under this section. Except in cases of

emergency where no special inspection warrant is required, special inspection warrants shall be issued for inspection of personal or real properties which are not public buildings or for inspection of portions of public buildings which are not open to the public only upon showing that consent to entry for inspection purposes has been refused.

(3) The following forms for use under this section are illustrative and not mandatory:

AFFIDAVIT

STATE OF WISCONSIN

.... County

In the court of the of

A. F., being duly sworn, says that on the day of, (year), in said county, in and upon certain premises in the (city, town or village) of and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section of the Wisconsin statutes) or (section of ordinances of said municipality) or both. The facts tending to establish the grounds for issuing a special inspection warrant are as follows: (set forth brief statement of reasons for inspection, frequency and approximate date of last inspection, if any, which shall be deemed probable cause for issuance of warrant).

Wherefore, the said A. F. prays that a special inspection warrant be issued to search such premises for said purpose.

...(Signed) A. F.

Subscribed and sworn to before me this day of, (year)

.... Judge of the Court.

SPECIAL INSPECTION WARRANT

STATE OF WISCONSIN

.... County

In the court of the of

THE STATE OF WISCONSIN, To the sheriff or any constable or any peace officer of said county:

Whereas, A. B. has this day complained (in writing) to the said court upon oath that on the day of, (year), in said county, in and upon certain premises in the (city, town or village) of and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section of the Wisconsin statutes) or (section of ordinances of said municipality) or both and prayed that a special inspection warrant be issued to search said premises.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said purposes.

Dated this day of, (year),

.... Judge of the Court.

ENDORSEMENT ON WARRANT

Received by me, (year), at o'clock M.

.... Sheriff (or peace officer).

RETURN OF OFFICER

STATE OF WISCONSIN

.... Court

.... County.

I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings).

Dated this day of, (year)

.... Sheriff (or peace officer).

History: 1971 c. 185 s. 7; 1981 c. 374; 1983 a. 189 s. 329 (4); 1989 a. 159; 1995 a. 27, 227; 1999 a. 150 ss. 30, 287 to 292; Stats. 1999 s. 66.0119; 2003 a. 89; 2007 a. 130.

Warrants for administrative or regulatory searches modify the conventional understanding of probable cause requirements for warrants as the essence of the search is that there is no probable cause to believe a search will yield evidence of a violation. Refusal of consent is not a constitutional requirement for issuing the warrant, although it may be a statutory violation. Suppression only applies to constitutional violations. *State v. Jackowski*, 2001 WI App 187, 247 Wis. 2d 430, 633 N.W.2d 649, 00–2851.

Discussing the constitutional limitations on inspections pursuant to warrants issued under this section. *Platteville Area Apartment Ass'n v. City of Platteville*, 179 F.3d 574 (1999).

66.0121 Orders; action; proof of demand. No action may be brought upon a city, village, town or school district order until 30 days after a demand for the payment of the order has been made. If an action is brought and the defendant fails to appear and defend the action, judgment shall not be entered without affirmative proof of the demand. If judgment is entered without proof of the demand, the judgment is void.

History: 1993 a. 246; 1995 a. 225; 1999 a. 150 s. 294; Stats. 1999 s. 66.0121.

66.0123 Recreation authority. (1) In this section, “governmental unit” means a town board or school board.

(2) A governmental unit may, after compliance with s. 65.90, provide funds for the establishment, operation and maintenance of a department of public recreation.

(3) (a) A governmental unit may delegate the power to establish, maintain and operate a department of public recreation to a recreation board, which shall consist of 3 members and shall be appointed by the chairperson or other presiding officer of the governmental unit. The first appointments shall be made so that one member serves one year, one serves 2 years and one serves 3 years. After the first appointments, terms are 3 years.

(b) When 2 or more of the governmental units desire to conduct, jointly, a department of public recreation, the joint recreation board shall consist of not less than 3 members selected by the presiding officers of the governmental units acting jointly. Appointments shall be made for terms as provided in par. (a).

(c) The members of a recreation board shall serve gratuitously.

(d) A recreation board may conduct the activities of the department of public recreation, expend funds, employ a supervisor of recreation, employ assistants, purchase equipment and supplies and generally supervise the administration, maintenance and operation of the department of public recreation and recreational activities authorized by the recreation board.

(4) (a) A recreation board may conduct public recreation activities on property purchased or leased by a governmental unit for recreational purposes and under its own custody, on other public property under the custody of any other public authority, body or board with the consent of the public authority, body or board, or on private property with the consent of its owner. The recreation board, with the approval of the appointing authority, may accept gifts and bequests of land, money or other personal property, and use the gifts and bequests in whole or in part, the income from the gifts and bequests or the proceeds from the sale of any such property in the establishment, maintenance and operation of recreational activities.

(b) A recreation board shall annually submit to the governmental unit a report of the board’s activities, including receipts and expenditures. The report shall be submitted not less than 15 days before the annual meeting of the governmental unit.

(c) An audit shall be made of the accounts of the recreation board in the same manner as provided for audits for towns or school districts as the case may be.

(d) The persons selected by the recreation board shall furnish a surety bond in an amount fixed by the governmental unit.

History: 1975 c. 233; 1993 a. 184; 1999 a. 150 ss. 32, 499, 500; Stats. 1999 s. 66.0123.