

# MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-  
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT  
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  
BY THE SUBSEQUENT LEGISLATION OF 1925  
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CHAPTER 46

NOTARIES PUBLIC

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6937. **Appointment—Fee**—The governor may appoint and commission as notaries public, by and with the advice and consent of the senate, as many citizens of this state, over the age of twenty-one years, resident in the county for which appointed, as he deems necessary. The fee for each commission shall not exceed three dollars, and shall be paid to the governor's private secretary. (2656) [5708].

6938. **Term—Bond—Oath**—Every notary so commissioned shall hold office for seven years, unless sooner removed by the governor or the district court; and, before entering upon the duties of his office, he shall give a bond to the state in the sum of two thousand dollars, to be approved by the governor, conditioned for the faithful discharge of the duties of his office, which, with his oath of office, shall be filed with the secretary of state. (2657) [5709].

Liability on defective bond (55-187, 56+751). Liability where notary certifies to acknowledgment without personal knowledge as to identity of party (100-289, 110+966).

129-221, 152+267.

That no leave of court to sue on an official bond has been obtained cannot be raised, where the answer consists only of a general denial. 210+161.

6939. **Seal—Register**—Every notary shall provide himself with an official seal, with which he shall authenticate his official acts, and upon which shall be engraved the arms of this state, the words "Notarial Seal," and the name of the county in which he resides. Such seal, with his official register, shall be exempt from execution, and, on his death or removal from office, such register shall be deposited with the clerk of the district court of his county. (2658) [5710].

Official acts of notary void unless authenticated by seal (28-118, 9+636; 39-102, 38+801; 81-225, 83+835. See 36-9, 29+338; 36-243, 31+211; 49-235, 51+920).

A notary's official seal is essential to a certification of a mechanic's lien statement. 161-147, 201+603.

6940. **Powers**—Every such notary shall have power throughout the state, while residing in the county for which he was appointed, to administer all oaths required or authorized by law, to take and certify depositions, acknowledgments of deeds, and other instruments, and to receive, make out, and record notarial protests. (2659) [5711].

May administer oath required by ordinance (84-281, 87+764). Attorney in action, if notary, may take affidavit of service of summons therein (18-90, 72). Taking proof or acknowledgment ministerial, and not judicial (100-289, 110+966).

6941. **Date of expiration of commission and name to be indorsed**—Each notary public so appointed, commissioned and qualified, shall have power throughout this state, while residing within the county for which he was appointed, to administer all oaths required or authorized to be administered in this state; to take and certify all depositions to be used in any of the courts of this state; to take and certify all acknowledgments of deeds, mortgages, liens, powers of attorney and other instruments in writing and to receive, make out and record notarial protests.

Every notary public, taking an acknowledgment of an instrument, taking a deposition, administering an oath, or making a notarial protest, shall, immediately following his signature to the jurat or certificate of acknowledgment, indorse the date of the expiration of his commission; such indorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form: My commission expires ..... 192..... Every notary public, in addition to signing his name to the jurat or certificate of acknowledgment, shall, immediately following his signature and immediately preceding his official description, indorse thereon his name with a typewriter or print the same legibly with a stamp or with pen and ink. Provided, however, that the failure so to indorse or print said name shall not invalidate any jurat or certificate of acknowledgment. (G. S. '94 § 2271, amended '05 c. 48 § 1; '21 c. 430 § 1) [5712].

**Historical**—G. S. 1894 § 2271 was G. S. 1866 c. 26 § 4, which was repealed, its provisions being incorporated in the preceding section. So far as the above section differs from the Revised Laws, it is to be construed, as amendatory or supplementary. Omission in notary's certificate of the time of expiration of commission does not vitiate the instrument when filed as constructive notice (192+111).

6942. **Record of commission—Certificates**—The commission of every notary shall be recorded in the office of the clerk of the district court of the county for which he is appointed, in a book kept for that purpose, on payment of a fee of one dollar; and thereafter such clerk, when requested, shall certify to his official acts in the same manner and for the same fees allowed by law for similar certificates to authenticate acts of justices of the peace. (2660) [5713].

6943. **Notary in detached county—Powers**—That in any county which has heretofore been detached from another county of this state, and which has been newly created and organized, any notary public residing in such newly created and organized county, who was a resident of the county from which such new county was detached and created shall have the same powers during the unexpired term of his appointment as such notary public which he was authorized by law to exercise under the commission issued to him as a resident of the county from which said new county was detached and created, and within which he was originally appointed such notary public; and all acts heretofore done by any such notary public, while residing in said newly created and organized county, otherwise in conformity of law, are hereby declared to be legal and valid and to the same effect as if said notary public had been originally commissioned as a resident of said

newly created and organized county; provided, that the provisions of this section shall not apply to any action or proceeding now pending in any court in this state. ('07 c. 323 § 1) [5714]

**6944. Record of commission**—Such notary public so residing in said newly created and organized county shall have his commission as such notary public recorded by the clerk of the district court of said newly created and organized county in which he resides, or of the county to which said newly created county is attached for judicial purposes as provided in section two thousand six hundred sixty, Revised Laws 1905 [6942], and when so recorded shall be entitled to the same certificate of and from the clerk of said district court as provided in said section two thousand six hundred sixty, Revised Laws 1905 [6942]. ('07 c. 323 § 2) [5715]

**6945. Seal**—Such notary shall also immediately upon the adoption of this act, provide himself with an official seal as provided in and in conformity with section two thousand six hundred fifty-eight, Revised Laws 1905 [6939]. ('07 c. 323 § 3) [5716]

**6946. Misconduct**—Any notary who shall exercise the duties of his office after the expiration of his term, or when otherwise disqualified, or who shall append his official signature to acknowledgments or other documents when the parties executing the same have not appeared before him, shall be guilty of a misdemeanor. (2661) [5717]

Cited (100-289, 110+366).

That no leave of court to sue on an official bond has been obtained cannot be raised, where the answer consists only of a general denial. 210+161.

**6947. Protests**—Every notary protesting any bill of exchange or promissory note for non-acceptance or non-payment shall give notice thereof in writing to each party protested against, immediately after such protest is made; and such notice may in all cases be given by depositing the same in the postoffice, postage paid, and directed to the party protested against, at his reputed place of residence; and the notary shall, in such instrument of protest, certify to the time and manner of service of such notice upon the several parties protested against, and shall make a record of such instrument of protest in his official register, which record, or a certified copy thereof, shall be prima facie evidence of the facts therein contained. (2662) [5718]

3-323, 227; 7-426, 341; 16-68, 56; 28-337, 94872.

**6948. Instrument of protest as evidence**—The instrument of protest of any notary of this state, or of any other state or territory of the United States, accompanying any bill of exchange or promissory note which has been protested by such notary for non-acceptance or for non-payment, shall be received in all the courts of this state as prima facie evidence of the

facts therein certified; but any party may contradict such certificate by other evidence. (2663) [5719]

7-426, 341; 16-68, 56; 17-209, 183; 19-396, 342; 28-337, 94872; 31-329, 174863; 61-291, 63+739; 69 Fed. 798.

Cited (98-302, 108+272).

**6949. Taking depositions**—In taking depositions, he shall have the same power to compel the attendance of and to punish witnesses for refusing to testify which may be vested by law in justices of the peace, and all sheriffs and constables shall serve and return all process issued by such notaries in taking depositions. (2664) [5720]

**6950. Removal from office**—Every notary who shall charge or receive a fee or reward for any act or service done or rendered by him under this chapter greater than the amount allowed by law, or who dishonestly or unfaithfully discharges his duties as notary, shall, on complaint filed and substantiated as in other civil cases in the district court of the county in which he resides, be removed from office by such court. The fact of such removal shall thereupon be certified by the clerk to the governor, and the person so removed shall thereafter be ineligible to such office. (2665) [5721]

**6951. Acknowledgments and affidavits legalized**—That all acknowledgments and affidavits taken by any members of the legislature of this state as a notary public, who at the time of taking such acknowledgment was a member of said state legislature, are hereby legalized and made valid and effectual in all particulars, together with the records thereof where the instrument bearing such acknowledgment has been recorded as provided by law; provided, that this act shall not extend to any action or proceeding now pending. ('21 c. 139 § 1)

**6951-1. Acknowledgments by members of legislature as notaries public legalized—Instruments and records legalized**—That every acknowledgment taken by any member of the Legislature of this State as a notary public, who at the time of taking such acknowledgment was a member of said State Legislature, is hereby legalized and made valid, and all deeds, mortgages and other instruments affecting the title to or creating liens upon any real estate within this state, bearing such acknowledgment, which have been recorded in the proper county in this state, are, together with the record thereof, hereby legalized and made valid and effectual to all intents and purposes and of the same force and effect in all respects, for the purpose of notice, evidence and otherwise, as if such defect of acknowledgment and record had not existed. ('25, c. 3, § 1)

**6951-2. Same—Pending actions not affected**—Provided that the provisions of this act shall not apply to or affect any action or proceeding now pending in any of the courts of this state. ('25, c. 3, § 2)

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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## CHAPTER 46

## Notaries Public

**6938. Term—Bond—Oath.**

Owner of property had no cause of action against a notary public for wrongful and false certificate of the execution of a bill of sale which was forged, the plaintiff not being divested of his title by the forged instrument. *Zitlow v. C.*, 175M615, 221NW244.

Official action of notary public is not affected by insolvency of surety, but impairment of bonds does not affect liability of principal. *Op. Atty. Gen.*, Oct. 25, 1933.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. *Op. Atty. Gen.* (320j), Dec. 13, 1934.

Commission of notary public does not automatically terminate upon insolvency of bonding company or surety, but he should be notified to furnish a new bond, but the furnishing of a new bond does not extend term for which originally appointed. *Op. Atty. Gen.* (320b), May 15, 1937.

**6939. Seal—Register.**

A notary's certificate of acknowledgment without the seal is a nullity, and filing of chattel mortgage in office of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in good faith. *Hartkopf v. F.*, 191M595, 256NW169. See *Dun. Dig.* 71, 1445.

Great seal of Minnesota is not necessary on tax deed. *Op. Atty. Gen.* (410), Sept. 1, 1939.

Certificate of acknowledgment without official seal is a nullity. *Op. Atty. Gen.* (320f), Sept. 8, 1939.

**6940. Powers.**

Certificate of acknowledgment stating that grantor acknowledged deed is some proof of genuineness of instrument. *Craig v. W.*, 190M499, 252NW332. See *Dun. Dig.* 78.

Where notary of one county takes acknowledgment in another county the venue of the certificate should be entitled in the county where taken, and the recital and designation should be of the county for which he holds the commission. *Op. Atty. Gen.*, Feb. 10, 1933.

Notary public has power to take acknowledgment in county other than that in which he resided at time his commission was issued. *Op. Atty. Gen.*, July 24, 1933.

An acknowledgment on a tax deed taken in Ramsey County before a Notary Public who resides in Hennepin County is valid. *Op. Atty. Gen.* (410), Sept. 1, 1939.

**6942. Record of commission—Certificates.**

Acknowledgments taken by a notary who has not filed his commission with clerk of district court are valid. *Op. Atty. Gen.* (320f), Dec. 8, 1938.

**6945. Seal.**

Mortgages legalized where notarial seal did not bear county name. *Laws* 1939, c. 151.

**6946. Misconduct.**

The violation of this section as well as section 10323 did not prevent a prosecution under that section. 171 M345, 214NW262.

**6951-3. Certain acknowledgments legalized.**—All acknowledgments within and upon legal documents of every kind and nature heretofore taken by persons as notaries public residing in any one of the counties of this state, who were not citizens of the United States, acting in good faith under a void appointment to the office of notary public by the governor of this state between April 18, 1932, and the date of the approval of this act, together with the record of such acknowledgments and the documents containing the same, are hereby legalized and made valid and effective to all intents and purposes as though the appointment of such persons to the office of notary public had been in all respects lawful and valid. (Act Mar. 4, 1939, c. 47, §1.)

**6951-4. Not to apply to pending actions.**—This act shall not apply to any pending actions and no action shall be maintained questioning the validity of any acknowledgment coming within the purview of Section 1 of this act unless said action be brought within 6 months after its enactment. (Act Mar. 4, 1939, c. 47, §2.)

## CHAPTER 47

## Resignations—Vacancies—Removals

**6952. Resignations.**

A resignation of public office is not complete and operative unless there be an intention to relinquish a part of term, accompanied by act of relinquishment. *Hosford v. B.*, 201M1, 275NW81. See *Dun. Dig.* 7989.

Offices of alderman and constable in city of Le Sueur are incompatible, and where one qualified for office of constable, he automatically vacated his office as alderman, and no resignation was necessary. *Op. Atty. Gen.*, May 9, 1933.

Resignation of a state senator may be accepted by the governor, but he need not issue a writ of election if there is to be no session of the legislature before expiration of term for which senator was elected. *Op. Atty. Gen.* (2801-2), Apr. 30, 1934.

Resignation of member of dental board must be submitted to governor in order to be effective. *Op. Atty. Gen.* (139b), Jan. 12, 1938.

Acceptance of second incompatible office vacates first office. *Op. Atty. Gen.* (358f), Jan. 18, 1938.

**6953. Vacancies.**

Where village recorder resigned a few weeks before regular election, and trustee of village was appointed to perform duties of recorder until election, and he accepted only on understanding that he did not have to vacate his office as trustee and did not take oath of office of recorder or accept compensation, court did not abuse its discretion in denying petition for leave to file an information in nature of quo warranto on ground that respondent forfeited his office as trustee by performing incompatible duties of office of recorder. *State v. Ingelbretson*, 201M222, 275NW686. See *Dun. Dig.* 7990(35).

Const., art. 6, §10, furnishes the only guide in determining when and under what circumstances governor may appoint a judge to fill a vacancy, but power to fill va-

cancy does not include power to declare one. *State v. Holm*, 202M500, 279NW218. See *Dun. Dig.* 4954, 7990.

Failure of town treasurer to qualify creates a vacancy which may be filled by appointment. *Op. Atty. Gen.*, Mar. 21, 1929.

Whether village treasurer who has obtained a position in another state may still hold the office depends upon whether or not he has ceased to be an inhabitant of the village. *Op. Atty. Gen.*, Mar. 4, 1931.

Removal from office takes effect irrevocably upon conviction and imposition of sentence, and the officer is not restored upon the entry of a stay of execution of the taking of an appeal. *Op. Atty. Gen.*, Sept. 1, 1931.

With the possible exception of officers in certain villages operating under special laws, there is no provision for the removal of an elective village officer for misconduct except by securing his conviction of a felony or of an offense involving a violation of his official oath. *Op. Atty. Gen.*, Sept. 1, 1931.

Vacancy in office of justice of the peace of city of Wayzata is to be filled by appointment of governor. *Op. Atty. Gen.* (266a-12), Apr. 20, 1934.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. *Op. Atty. Gen.* (320j), Dec. 13, 1934.

Whether acceptance of federal appointment in another city creates vacancy in office of city justice depends upon whether he has ceased to be an inhabitant of his city. *Op. Atty. Gen.* (266a-12), Oct. 17, 1935.

Village counsel has no power to remove one of its members, such as the recorder, proper procedure being appropriate action in district court. *Op. Atty. Gen.* (475), Mar. 26, 1936.

Civil service rule requiring chief of police to be resident of city is valid. *Op. Atty. Gen.* (735b-3), June 25, 1936.