

# 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THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  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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CITER-DIGEST COMPANY

WILLIAM H. MASON,  
Editor in Chief.

MARTIN S. CHANDLER,  
RICHARD O. MASON,  
Assistant Editors.

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CHAPTER 86

ACTIONS TO VACATE CHARTERS, ETC., AND TO PREVENT USURPATIONS

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**9709. To annul act of incorporation—Fraud—**The attorney general may bring an action in the name of the state against a corporation to annul the act of incorporation, or of renewal thereof, on the ground that such act was procured upon some fraudulent suggestion, or concealment of a material fact, by some or all of the incorporators, or with their knowledge and consent. (4543) [8253]  
88-329, 92+1112; 96-255, 104+948, 953.

**9710. To vacate charter, etc.—**An action may be brought by the attorney general in the name of the state to vacate the charter or annul the existence of a corporation, other than municipal, whenever such corporation:

1. Offends against any act creating, altering, or renewing it;
2. Violates any provision of law whereby it forfeits its charter by abuse of its powers;
3. Forfeits its privileges or franchises by failure to exercise its powers;
4. Does or omits any act amounting to a surrender of its corporate rights, privileges and franchise; or
5. Exercises a franchise or privilege not conferred upon it by law.

The attorney general shall bring action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved, and in every other case in which satisfactory security shall be given to indemnify the state against costs and expenses. (4544) [8254]

36-246, 258, 30+816. See 35-222, 28+245; 40-213, 224, 40+1020; 96-255, 104+948, 953; 134-148, 158+820; 135-409, 161+156; 137-65, 162+1056.

**9711. For usurpation of office, etc.—**Whenever the attorney general has reason to believe that a cause of action can be proved, he may bring an action in the name of the state, upon his own information or upon the complaint of a private person, against the person offending, in the following cases:

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office or any franchise, or any office in a corporation created by authority of the state;
2. When any public officer does or suffers an act which by law causes a forfeiture of his office; or
3. When an association or number of persons acts as a corporation without being duly incorporated. (4545) [8255]

3-240, 164; 15-221, 172; 25-215; 25-340; 41-123, 42+858; 57-411, 59+495; 59-6, 60+676; 69-108, 71+910; 82-68, 84+495. See 27-38, 6+408; 48-497, 51+613; 96-255, 104+948; 953. Common law powers of attorney general (101-277, 112+269).

In a quo warranto proceeding instituted in this court, charges of misfeasance in office of a respondent cannot be tried, and allegations of that sort must be disregarded. 156-276, 194+624.

The mere fact that the law has been violated and an illegal village organized constitutes a prime public necessity, and all that is needed, not only to justify but to require the writ. 165-369, 206+455.

**9712. To vacate letters patent—**The attorney general may bring an action in the name of the state to vacate or annul letters patent granted by the state, whenever he has reason to believe:

1. That such letters were obtained by means of some fraudulent suggestion or concealment of a material fact, made by or with the consent or knowledge of the person to whom they were issued;
2. That such letters were issued through mistake, or in ignorance of a material fact; or
3. That the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters were granted, or have by any other means forfeited the interest acquired thereunder. (4546) [8256]

**9713. Relator to be joined—**When an action is brought by virtue of this chapter on the complaint or information of any person having an interest therein, the name of such person shall be joined with the state as plaintiff. (4547) [8257]

3-240, 164; 41-123, 42+858.

**9714. Usurping office — Complaint — Judgment —** Whenever such action is brought against a person for usurping an office, the attorney general, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, and his right thereto; and in every such case judgment may be rendered upon the right of the defendant, and also upon that of the person so alleged to be entitled, if justice shall require. (4548) [8258]

41-123, 42+858.

**9715. Claimant to have office—**If judgment be rendered in favor of the person so alleged to be entitled, he may take upon himself the execution of the office, and, by order of the court, may be put in possession thereof, and of the books and papers belonging thereto; and he may recover, by action, any damages sustained by him by reason of such usurpation. (4549) [8259]

41-123, 42+858.

**9716. Claimants may be joined—**When there are several claimants to the same office or franchise, one action may be brought against all, to determine their respective rights. (4550) [8260]

61-56, 63+176.

**9717. Judgment for usurpation—Fine—**When a person or corporation is adjudged guilty of usurping, intruding into, or unlawfully holding or exercising any office, franchise, or privilege, the court shall render judgment excluding the defendant from the office, franchise, or privilege, and may also impose a fine of not more than one thousand dollars. (4551) [8261]

41-123, 42+858.

9718. Corporation, when dissolved—If the court shall determine that a corporation, by neglect, abuse, or surrender, has forfeited its corporate rights, privileges, and franchises, it shall adjudge that it be excluded therefrom and be dissolved. (4552) [8262]

9719. Costs—If judgment be rendered in such action against a corporation, or against persons claiming to be such, the court may cause the costs therein to be collected by execution against such persons, or by process against the directors or other officers of such corporation. (4553) [8263]

9720. Judgment against corporation—Receiver, etc.—When such judgment is rendered against a corporation, the court may restrain it, appoint a receiver of its property, and make distribution thereof among its creditors, for which purpose the attorney general shall forthwith institute proceedings. (4554) [8264]

9721. Judgment roll—Copy filed—Upon rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, the attorney general shall forthwith cause a copy of the judgment roll to be filed with the secretary of state. (4555) [8265]

CHAPTER 87.

SPECIAL PROCEEDINGS

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MANDAMUS

9722. To whom issued, etc.—The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting

from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion. (4556) [8266]

1. When writ lie—The writ will only lie to compel the performance of acts which the law specially enjoins as a duty resulting from an office, trust or station (92-397, 100+105). It will not lie to control the action of the governor or other executive officers of the state even as to ministerial duties (4-309, 228; 19-103, 74; 20-363, 314; 24-517; 27-1, 6+341; 28-50, 8+902; 29-555, 12+519; 40-174, 41+817. See 3-190). It will not lie to test the right to a public office (2-180, 148; 15-221, 172; 15-455, 369; 17-113, 90; 25-340; 51-355, 53+716); or to enforce rights which are doubtful (9-139, 130; 17-113, 90; 17-429, 406; 18-40, 21; 27-458, 8+768; 32-501, 21+722; 58-514, 60+338; 95-442, 104+556); or to control discretion (32-324, 20+238; 38-397, 374-949; 44-549, 47+163; 60-510, 62+1135; 69-429, 72+705; 72-37, 74+1024; 74-371, 77+221. See as to compelling the exercise of discretion (58-275, 59+1015; 66-266, 68+1081; 77-302, 79+966; 86-350, 90+781); or to compel an officer to do an unauthorized act (2-346, 298; 26-521, 6+337; 27-90, 6+421; 32-275, 20+196; 33-381, 23+545; 92-397, 100+105); or where it would prove unavailing (33-381, 23+545; 43-328, 45+606); or to control internal affairs of foreign corporation (109-168, 123+417). Not a writ of right (95-442, 104+556). It will lie to compel calling of meeting of stockholders of domestic corporation (109-168, 123+417). It will not lie to regulate the affairs of unincorporated societies or associations (119-407, 138+432). Is exclusive remedy of parent county seeking to collect from new county its share of former's indebtedness (109-479, 124+372). Board of regents of university is an inferior tribunal, corporation, or board (104-359, 116+650).  
164-49, 204+632.

Mandamus cannot be resorted to for the purpose of reviewing an order of the district court, determining the manner of trial of a civil action. If a jury trial is denied, where a litigant is entitled to it and asserts his right, the error can be reviewed only on appeal. 159-193, 198+453.

The writ may issue to require a court in which an action is pending to hear and determine it, although the clerk may have transmitted the records and files to another court. 159-282, 198+667.

Although mandamus was not intended as a reviewing writ, the practice of using it to settle disputes as to the proper place of trial has become firmly established. 159-282, 198+667.

An application for a writ of mandamus to compel a city council to submit a proposed ordinance to a vote of the people, pursuant to a charter provision, will not be denied because the ordinance binds the city only; it being assumed that the parties are acting in good faith. 163-100, 203+514.

Determination of fitness of soldier for public employment. 164-14, 204+572.

Where, in their answer, defendants attack the resolution, adopted by the voters of a common school district, for the building of a new schoolhouse, and deny authority of the electors in such matter, and make no effort to carry out the mandate of the voters, mandamus is proper to compel action. 164-134, 204+925.

Mandamus to compel the board of public welfare to issue a permit to inter a body in relator's cemetery, where there had been no interments and to the use for burials the city council had not consented, the court

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(1927 to 1940)  
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**William H. Mason**  
*Assisted by*  
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**9706. Actions for fines, forfeitures, and penalties, etc.**

Actions with respect to money found in forfeited gambling devices. Op. Atty. Gen., June 19, 1931.

**9707. Fines, how disposed of.**

Amount of forfeited bail bond paid into municipal court must be paid into county treasury. Op. Atty. Gen., Oct. 5, 1929.

Fine of one under complaint of inspector in department of agriculture, dairy and food, was properly remitted to county of conviction. Op. Atty. Gen., July 9, 1932.

Fines provided for in Laws 1933, c. 170 (§5015-40), are "not specially granted or appropriated by law," and in absence of any agreement, by charter or otherwise, between city of South St. Paul and County of Dakota, they shall be paid into the treasury of the county. Op. Atty. Gen., Dec. 18, 1933.

Fines and costs in state cases in municipal courts, such as misdemeanors, are to be paid to county treasurer. Op. Atty. Gen. (306b-6), Apr. 6, 1934.

Fines collected under §835-3 should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

Justice of the peace is personally responsible for check taken in payment of fine. Op. Atty. Gen. (266b-9), Sept. 5, 1934.

Fines collected under §5015-40 are to be paid to county treasurer and not credited to railroad and warehouse commission fund. Op. Atty. Gen. (306h-6), Dec. 15, 1936.

Fine voluntarily paid and transmitted to state treasurer cannot be refunded. Op. Atty. Gen. (199b-7), Aug. 13, 1937.

Fines collected for violations of Veterinarians' Act. Op. Atty. Gen. (465a), May 15, 1939.

Fines collected for violation of ordinances or by-laws of a town regulating traffic on town roads must be paid into county treasury. Op. Atty. Gen. (989B-4), May 20, 1939.

Subject to Laws 1939, c. 359, amending Mason's Stat., §202-158, town of Minnetonka in Hennepin County through its board may enact and enforce ordinances or by-laws relating to streets and highways, vehicles thereon, parking, and traffic, and fines for violation should be paid into town treasury, and not into county treasury. Op. Atty. Gen. (989B-4), July 13, 1939.

**9708 1/2. \* \* \* \* \***

**DECISIONS RELATING TO CHAPTER IN GENERAL**

**1. Liability in general.**

Official bond covering term of officer and "until successor is elected and qualified" extends only for a reasonable time after expiration of term. American Surety Co. v. Independent School Dist. (CCA8), 53F(2d)173. Cert. den., 284US683, 52SCR200. See Dun. Dig. 8021.

**CHAPTER 86**

**Actions to Vacate Charters, Etc., and to Prevent Usurpations**

**9709. To annul act of incorporation—Fraud.**

179M373, 229NW353.

**9710. To vacate charter, etc.**

179M373, 229NW353.

**9711. For Usurpation of office, etc.**

Action by quo warranto to test title to office in private corporation may be brought in the district court by other officers and stockholders of the corporation without application to, or action by, the attorney general. 179M373, 229NW353.

On respondents' motion, court properly vacated an ex parte order issuing a writ of quo warranto directing respondents to show by what warrant they claimed right to act as trustees of a named religious corporation, organized under laws of this state, it conclusively appearing from petition, writ and affidavits filed that respondents were in fact and law such trustees, and hence that writ had been improvidently issued. Dollenmayer v. R., 286NW297. See Dun. Dig. 8065.

Attorney General will not institute quo warranto proceedings against one in possession of a public office and discharging the duties thereof unless there exists very

substantial ground for believing his possession to be unlawful. Op. Atty. Gen. (63b-3), Jan. 17, 1939.

Statutory provisions for quo warranto are not exclusive, since common law proceedings for same writ may be brought by any taxpayer in either district court or supreme court. Op. Atty. Gen. (361e-2), Jan. 24, 1939.

**9713. Relator to be joined.**

Title of proceeding in quo warranto. Dollenmayer v. R., 286NW297. See Dun. Dig. 8070.

**9717. Judgment for usurpation—Fine.**

Where a county commissioner accepts an incompatible office and enters upon the performance of the duties of such office, a vacancy as county commissioner exists, and he may not reassume the duties of the office of county commissioner after having resigned the incompatible office before the board of appointment had acted. Op. Atty. Gen., Feb. 8, 1932.

Where office of county commissioner is rendered vacant by officer's acceptance of an incompatible office, such officer may not be reappointed even after he has resigned the incompatible office. Op. Atty. Gen., Feb. 8, 1932.

**CHAPTER 87**

**Special Proceedings**

**MANDAMUS**

**9722. To whom issued.**

**1. When will lie.**

Where commerce commission suspends sale of registered securities pending a hearing to show cause why registration should not be cancelled, and before the hearing the corporation requests a cancellation of the registration, the commission has no right to compel the production of its records and papers, in the absence of some specific allegation of a violation of the Blue Sky Law. 172M328, 215NW186.

A writ will not be granted where, if issued, it would prove unavailing or where lapse of time has rendered the relief sought nugatory. 173M350, 217NW371.

Petitioner must show he is entitled to relief sought but where he seeks to compel public officials to form a governmental duty they are presumed able to perform and the burden is upon them to show the contrary. 173M350, 217NW371.

Where discretion of town supervisors with respect to the opening of a road has been exercised in an arbitrary and capricious manner, the court may exercise control, but it must be made to appear that there are not only available funds but also sufficient available funds to do whatever else may, in the reasonable judgment of the board, be needful on the other town roads. 175M34, 220NW166.

When an executive or administrative body determines a matter involving the exercise of its discretionary power the courts do not interfere. 175M583, 222NW286.

Mandamus is not the proper remedy to correct an error in fixing the time of trial, but if the trial court refuses to proceed with trial, mandamus is the remedy. State ex rel. Collins v. Dist. Ct. of Ramsey County, 176M636, 222NW931.

Power given by §2609 to town board to determine necessity of cutting down hedges and trees in highway is discretionary and cannot be controlled by mandamus. 177M372, 225NW296.

Mandamus does not issue from this court to review a judgment of the district court entered upon the hearing of a motion to dismiss an action brought by the relator, a resident and citizen of another state, under the Federal Employers' Liability Act to recover damages sustained while in the employ of a railroad engaged in interstate commerce in such other state. State ex rel. Boright v. Dist. Ct. Steele County. 178M236, 226NW569.

The writ will not lie to compel the attorney general to try a civil action brought by the state at the "next term" of court. 178M442, 227NW891.

Will not be granted to compel county to publish annual statement in newspaper unlawfully entering into agreement with other papers to obtain contract. 178M484, 227NW499.

The duties imposed on the governor by Mason's Minn. St., §56954, 6955, relating to the removal of officers, is discretionary and not ministerial, and mandamus will not lie. 179M337, 229NW313.

Where town board was without funds, and agreement between towns as to allotment of town road for repairs