

Subd. 2. Regulations submitted to commissioner Prior to the initial zoning of any airport hazard area under Laws 1945, Chapter 303, the municipality, county, or joint airport zoning board which is to adopt the regulations shall submit its proposed regulations to the commissioner in order that he may determine whether it conforms to the minimum standards prescribed by him. He shall immediately examine such proposed regulations and report to the municipality, county, or joint airport zoning board his approval, or his objections, if any. If any objections are made by him on the ground that such regulations do not conform to the minimum standards prescribed by him for the class of airport involved, the municipality, county, or joint zoning board shall make such amendments as are necessary to meet such objections. The governing body of the municipality or county or the joint airport zoning board shall not hold its public meeting or take other action until the proposed regulations are approved by the commissioner as conforming to such minimum standards. *A copy of such regulations as adopted shall be filed with the register of deeds in each county in which such zoned area is located.*

Sec. 2. Substantive rights existing prior to the passage of this act and heretofore exercised shall not be affected by the filing of such regulations.

Approved April 1, 1957.

CHAPTER 273—H. F. No. 1160

[Not Coded]

An act relating to the conciliation court of the city of Duluth; amending Laws 1927, Chapter 17, Section 17 and Section 19, as amended.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Laws 1927, Chapter 17, Section 17, is amended to read:

Sec. 17. Default judgments. *Subdivision 1.* The defendant in any action, unless the court shall otherwise order, shall be defaulted unless he shall not later than the second day before the day set for hearing personally, or by his authorized agent, state to the clerk of the court, orally, or in writing, his full and specific defense to the claim, and unless he shall also appear in person at the hearing. In case the defendant, duly notified or summoned as provided in section 14 of this act,

shall fail to state his defense to the clerk, orally, or in writing, and shall fail to appear at the time set for the hearing, the judge may, except in the case of an unliquidated claim for damages, without formal proof on the part of the plaintiff, order that judgment shall be entered by default, if the judge is satisfied upon examination of the receipt for the registered mail notice, or the return of service, if service of the notice has been made in the manner provided by law for the service of a summons in the district court, that the defendant has actually been notified of such hearing by registered mail, or that the actual service of such notice upon him has been made. If the judge is not so satisfied he shall forthwith fix a later date for such hearing, notify the plaintiff of the same and shall direct that the clerk issue a notice of such postponed hearing and that the same be served upon the defendant by one of the methods heretofore recited in section 14 of this act. In the case of an unliquidated claim for damages the amount of damages must be proved by the plaintiff at the hearing whether the defendant defends or not. When judgment by default is entered against a defendant, due notice of the same shall be given him by mail or written notice by the clerk.

Subd. 2. If the defendant appears and the plaintiff does not appear at any time set for hearing, the judge may dismiss the claim for want of prosecution, or enter a finding upon the merits for the defendant, or the action may be continued at the discretion of the court.

Subd. 3. When a default judgment or a judgment for dismissal on the merits has been ordered for failure to appear, the judge, within ten days after notice thereof was mailed, may vacate the judgment *ex parte* and grant a new hearing, if the defaulting party shows lack of notice, mistake, inadvertence, or excusable neglect as the cause for his failure to appear. Absolute or conditional costs not exceeding \$15 to the other party may be ordered as a prerequisite to that relief. The clerk shall notify the other party by mail of the new hearing date.

Subd. 4. When a defendant shows that he did not receive a notice before the hearing within sufficient time to permit a defense and that he did not receive notice of the entry of judgment against him within sufficient time to permit him to make application for relief within ten days or shows other good cause, a judge may vacate a default judgment and grant a new hearing on the merits with or without the payment of absolute or conditional costs. The clerk shall notify the parties by mail of the new hearing date.

Subd. 5. When a judge orders payment of absolute or

conditional costs as a condition of an order under any provisions of this act, the amount shall be paid to the clerk before the order becomes effective. Every such order is invalid unless such costs are paid to the clerk within ten days from the date of the order. Conditional costs shall be held by the clerk to abide the final order entered in the case. Absolute costs shall be paid over by the clerk forthwith to the other party as his absolute property.

Subd. 6. If judgment by default by entered, the judgment shall have all force of a judgment of a court of record, and the clerk, on application therefor by the judgment creditor *after ten days from the date of entry of judgment* shall issue a transcript of *such* judgment from the conciliation court to the municipal court proper, where *the* judgment shall be docketed by the clerk of the municipal court in the same manner and shall be enforced as the judgment of the municipal court. Provided, however, that no judgment by default shall by its terms provide for the satisfaction of the same by the payment of money into court, either in a lump sum, or by installments.

Sec. 2. Laws 1927, Chapter 17, Section 19, as amended by Extra Session Laws 1937, Chapter 67, Section 7, is amended to read:

Sec. 19. **Appeals; procedure.** *Subdivision 1.* Any party aggrieved by the judgment rendered by the conciliation judge *after a contested hearing at which he has appeared and submitted evidence* may have his cause removed to the municipal court for trial *de novo*, but no cause shall be so removed unless within ten days after such judgment is rendered, and after the clerk shall have *delivered or* mailed notice of the entry of judgment to each of the parties thereto, which notice shall be *delivered or* mailed immediately and shall specify the day on which the time for removal of said cause shall expire; the party so removing same shall do the following things, to-wit:

(a) Serve upon the opposite party or his attorney a written demand for trial of the cause in the municipal court, said demand to be served in the same manner now provided by law for the service of a summons in the municipal court and file with the clerk of the conciliation court such original demand with proof of service thereof. *If the opposing party or his attorney cannot be found and service of the demand be made within the ten-day period the aggrieved party may file with the clerk within the ten-day period the original and a copy of the demand, together with an affidavit by himself or his attorney showing that due and diligent search has been*

made and that the opposing party or his attorney cannot be found and the filing of this affidavit shall serve in lieu of making service and filing proof of service. When such an affidavit is filed, the clerk shall mail the copy of the demand to the opposing party at his last known residence address. Such original demand or proof of service shall show the office address of the attorney for each party that has such attorney, and the addresses of all parties to the action.

(b) Pay to the clerk of the conciliation court \$1.

(c) *File with the clerk of conciliation court an affidavit by the aggrieved party or his attorney stating that the removal is made in good faith and not for the purpose of delay.*

Subd. 2. Within ten days after compliance with the foregoing provisions of this section the clerk of the conciliation court shall deposit \$1 with the municipal court for the use and benefit of the City of Duluth and shall file with the municipal court all the files in such action together with a copy of such judgment and the cause shall be tried in the municipal court as though originally commenced therein, and the claim of the plaintiff and the answer of the defendant appearing in the files shall stand as the complaint and answer respectively in such action. Provided, however, that any pleading may be amended at the time of the trial in the municipal court at the discretion of *the* court.

Subd. 3. When *the* papers are so filed in the municipal court, *the* judgment of the conciliation court and all proceedings thereunder shall be stayed pending *the* appeal. *The* cause shall then be tried in the municipal court, and without the service or filing of any notice of trial or not of issue whatever, shall be by the clerk placed on the calendar of civil causes for the term next ensuing, provided, however, that *the* appeal shall be effected at least four days before the opening day of *the* term. All causes so appealed shall be disposed of in the same manner as other causes on the civil calendar of the municipal court, provided that when any cause so removed from the conciliation court is called for trial and the party so appealing does not appear the stay shall be vacated and the appeal dismissed.

Subd. 4. If either of the parties shall demand a jury, *the* demand shall be made in the manner and at the time by law provided for demanding a jury in the municipal court. If a jury is not so demanded the same shall be deemed to have been waived by both parties.

Subd. 5. The prevailing party upon such appeal shall be awarded an attorney's fee by the municipal court in the

sum of \$10 if a trial be had in the municipal court upon the merits and in the sum of \$5 upon a dismissal of *the* appeal after the same shall have appeared upon the calendar for trial, the attorney's fees to be in addition to disbursements now allowed to be taxed and inserted in the judgment under the provisions of this act. If the judgment of the conciliation court be reversed or modified, the party in whose favor such reversal or modification is made, shall, for the purposes of this section, be deemed to be the prevailing party. If the judgment of the conciliation court be affirmed without modification, the respondent upon such appeal, whether plaintiff or defendant, shall be deemed to be the prevailing party.

Subd. 6. (a) When a motion for vacation of a default judgment under subdivisions 3 or 4 of section 17 has been denied, the aggrieved party may demand limited removal to the municipal court for hearing de novo of his motion. The demand for limited removal and notice of the hearing de novo must be served by the aggrieved party on the other party in accordance with the provisions of subdivision 1 (a) of this section and the original demand and notice, with proof of service, must be filed with the clerk of the conciliation court within ten days after the motion has been denied, or the original and one copy of the demand and notice, together with an affidavit similar to that required by subdivision 1 (a) hereof must be filed with the clerk within said ten-day period. When such an affidavit is filed, the clerk shall then mail the copy of the demand and notice to the other party at his last known residence address. The aggrieved party shall pay a fee of \$2 to the clerk of the conciliation court for filing the demand and notice and this fee shall not be recoverable as a disbursement. The notice shall set a date for hearing de novo at a special term of the municipal court not less than ten nor more than 30 days subsequent to the date of filing the original demand and notice.

(b) The clerk of conciliation court thereupon shall pay over to the municipal court for the use and benefit of the City of Duluth the \$2 fee and shall file in municipal court the removal demand and notice, together with all orders, affidavits and other papers filed in the cause in the conciliation court. The clerk of municipal court shall then place the cause on the special term calendar for hearing on the date specified in the notice.

(c) The judge who hears the motion de novo at special term may deny the motion, without allowance of costs, or grant the motion with or without the allowance of absolute or conditional costs. At the hearing de novo the municipal judge shall consider the entire file of the conciliation court together with any subsequent affidavits or showing made by either party.

(d) *The clerk of municipal court shall send a copy of the order made after the de novo hearing to both parties and return the file to the conciliation court.*

Subd. 7. With respect to any cause removed from conciliation court to municipal court any judge, other than the judge before whom the cause was tried or heard in conciliation court, may preside at the trial or hearing de novo.

Subd. 8. Causes removed from conciliation court to municipal court may be removed from the municipal court to the district court or to the supreme court in the same manner, upon like proceedings, and with the same effect as causes originally brought in the municipal court.

Subd. 9. In computing any period of time prescribed or allowed by this act, the day of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Approved April 1, 1957.

CHAPTER 274—H. F. No. 1497

[Coded]

An act authorizing the state board of health to use duplicating equipment in its Minneapolis office.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [144.073] **Use of duplicating equipment.** The State Board of Health is authorized to maintain and operate mimeograph or similar type of stencil duplicating equipment in its Minneapolis office to expedite the issuance of communicable disease bulletins and public health information circulars to health officers and other public health workers.

Approved April 1, 1957.

CHAPTER 275—H. F. No. 720

An act relating to aeronautics and public corporations created in connection therewith; amending Minnesota Statutes