

THE 79
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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CHAPTER 30.

LIMITED PARTNERSHIP.

§ 2330. Limited partnership, how formed.

A limited partnership for the transaction of mercantile, mechanical or manufacturing business within this state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this chapter shall not be construed to authorize any such partnership for the purpose of banking or insurance.

(G. S. 1866, c. 30, § 1; G. S. 1878, c. 30, § 1.)

§ 2331. To consist of general and special partners.

Such partnership may consist of one or more persons who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the fund so contributed by him or them to the capital.

(G. S. 1866, c. 30, § 2; G. S. 1878, c. 30, § 2.)

A check drawn by the special partner on a bank in which he has funds, and delivered to the general partner, is not an actual cash payment such as will entitle him to the protection of a special partner. *McGinnis v. Farrelly*, 27 Fed. Rep. 33.

If the special partner's contribution is not in actual cash, he is liable as a general partner. In *re Allen*, 41 Minn. 430, 43 N. W. Rep. 382.

As to assignment in insolvency in such case. *Id.*

§ 2332. Powers of general partners.

The general partners only are authorized to transact business and sign for the partnership, and to bind the same.

(G. S. 1866, c. 30, § 3; G. S. 1878, c. 30, § 3.)

§ 2333. Certificate to be made—Its contents.

The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

First. The name or firm under which such partnership is to be conducted.

Second. The general nature of the business to be transacted.

Third. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

Fourth. The amount of capital which each special partner has contributed to the common stock.

Fifth. The period at which the partnership is to commence, and at which it is to terminate.

(G. S. 1866, c. 30, § 4; G. S. 1878, c. 30, § 4.)

§ 2334. Certificate to be acknowledged.

The certificate shall be acknowledged or proved, as to the several persons signing the same, before the same person before whom a conveyance of lands may be now or hereafter acknowledged or proved, and such acknowledgment or proof shall be made and certified in the same manner as the acknowledgment or proof of the conveyance of lands may be made or certified.

(G. S. 1866, c. 30, § 5; G. S. 1878, c. 30, § 5.)

§ 2335. Certificate to be filed and recorded.

The certificate, so acknowledged and certified shall be filed in the office of the register of deeds of the county in which the principal place of business of the partnership is situated, and shall also be recorded by him at large in a

book to be kept for that purpose, open to public inspection. If the partnership has places of business situated in different counties, a transcript of the certificate and acknowledgment thereof, duly certified by the register of deeds in whose office it is filed, under his official seal, shall be filed and recorded, in like manner, in the office of the register of deeds of every such county.

(G. S. 1866, c. 30, § 6; G. S. 1878, c. 30, § 6.)

§ 2336. Affidavit to be filed—Its contents.

At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash.

(G. S. 1866, c. 30, § 7; G. S. 1878, c. 30, § 7.)

§ 2337. Certificate and affidavit essential—False statements.

No such partnership shall be deemed to be formed until a certificate is made, acknowledged, filed and recorded, and an affidavit is filed as above directed; and if any false statement is made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

(G. S. 1866, c. 30, § 8; G. S. 1878, c. 30, § 8.)

A statement in the certificate of an amount greater than that actually contributed by the special partner renders him liable as a general partner; and under a complaint charging defendants generally as partners, the answer setting up an alleged special partnership, evidence is admissible to show the falsity of the certificate. *Sharp v. Hutchinson*, (N. Y.) 3 N. E. Rep. 500.

§ 2338. Copy of certificate to be published.

The partners shall publish a copy of such certificate when registered, for at least six weeks immediately after such registry, in a newspaper printed and published in the county where such registry is made, if there is one, and if not, then in a newspaper printed and published at the capital of the state; and if such publication is not made, the partnership shall be deemed general.

(G. S. 1866, c. 30, § 9; G. S. 1878, c. 30, § 9.)

§ 2339. Proof of publication may be filed.

Affidavits of the publication of such notice, by the publishers, or their foreman, of the newspaper in which the same is published, may be filed with the register of deeds directing the same, and shall be evidence of the facts therein contained.

(G. S. 1866, c. 30, § 10; G. S. 1878, c. 30, § 10.)

§ 2340. Partnership, how renewed.

Every renewal or discontinuance of such partnership beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice given, in the manner herein required for its original formation; and every such partnership which is not renewed or continued, shall be deemed a general partnership.

(G. S. 1866, c. 30, § 11; G. S. 1878, c. 30, § 11.)

§ 2341. Effect of alteration of names of parties, etc.

Every alteration which is made in the names of the parties, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which in any manner is carried on after any such alteration is made, shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last section.

(G. S. 1866, c. 30, § 12; G. S. 1878, c. 30, § 12.)

§ 2342. The partnership name—Sign to be posted.

The business of the partnership shall be conducted under a firm name, in which the names of the general partners only shall be inserted: provided, that when there are two or more general partners, the firm name may consist of either the name or names of one or more of such general partners, with or without the addition of the words "& Company," or "& Co.;" and if the name of any special partner shall be inserted in said firm name with his privity, he shall be deemed a general partner: provided further, that the partnership shall put upon the outside and in front of the building in which it has its chief place of business, in a conspicuous place, a sign on which shall be painted, in legible English characters, all the names in full of all the members of the partnership.

(G. S. 1866, c. 30, § 13, as amended 1872, c. 55, § 1; G. S. 1878, c. 30, § 13.)

§ 2343. Actions, how conducted.

All actions respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this chapter that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such actions; and excepting also those cases when special partners are held severally responsible on account of sums by them received or withdrawn from the common stock as before provided.

(G. S. 1866, c. 30, § 14; G. S. 1878, c. 30, § 14.)

§ 2344. Capital not to be withdrawn.

During the continuance of any partnership under the provisions of this chapter, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce such capital stock below the sum stated in the certificates before mentioned; and if, at any time during the continuance or at the termination of the partnership, the property or assets are not sufficient to pay the partnership debts, then the special partners shall severally be held responsible for all sums by them in any way received, withdrawn or divided, with interest thereon from the time when they were so withdrawn respectively.

(G. S. 1866, c. 30, § 15; G. S. 1878, c. 30, § 15.)

§ 2345. Powers and rights of special partner.

A special partner may, from time to time, examine into the state and progress of the partnership concerns, may advise as to their management, may loan money to and advance and pay money for the partnership, and take and hold the notes, drafts, acceptances and bonds of the partnership as security for the repayment of any money so loaned, advanced or paid by him, with interest thereon. He may use and lend his name and credit as security for the partnership in its business, and shall have the same remedies in these respects as any other creditors of the partnership. He may negotiate sales and make purchases for the partnership, with the approval of one or more of the general partners. He shall not transact any business for the partnership, or be employed for that purpose, otherwise than is herein provided, and if he shall interfere contrary to these provisions, he shall be deemed a general partner.

(G. S. 1866, c. 30, § 16, as amended 1872, c. 55, § 2; G. S. 1878, c. 30, § 16.)

§ 2346. Preferences by insolvent partnership.

Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership; and every judgment confessed, lien created or security given by such partnership, under the like circumstances and with the like intent, is void as against the creditors of such partnership.

(G. S. 1866, c. 30, § 17; G. S. 1878, c. 30, § 17.)

§ 2347. Preferences by partners.

Every such sale, assignment, or transfer of any of the property or effects of a general or special partner, made by such special or general partner when insolvent or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership a preference over creditors of the partnership, and every judgment confessed, lien created, or security given by such partner under the like circumstances and with the like intent, is void as against the creditors of the partnership.

(G. S. 1866, c. 30, § 18; G. S. 1878, c. 30, § 18.)

§ 2348. Violation of two preceding sections—Penalty.

Every special partner who violates any provision of the two preceding sections, or who concurs in or assents to any such violation by any individual partner, is liable as a general partner.

(G. S. 1866, c. 30, § 19; G. S. 1878, c. 30, § 19.)

§ 2349. Claims of special partners as creditors.

In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership are satisfied.

(G. S. 1866, c. 30, § 20; G. S. 1878, c. 30, § 20.)

§ 2350. No dissolution by act of parties without notice given.

No dissolution of such partnership by the act of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution is filed and recorded in the office of the register of deeds in which the original certificate was recorded, and published once in each week for four successive weeks, in a newspaper printed and published in each of the counties where the partnership has places of business, and if there is no newspaper published in such counties, then by publishing the same as aforesaid in a newspaper printed and published at the capital of the state.

(G. S. 1866, c. 30, § 21; G. S. 1878, c. 30, § 21.)

§ 2351. Accounts between partners.

The general and special partners shall be liable to account to each other for all their acts relating to the partnership affairs, and the management of the concerns of the partnership both in law and equity.

(1872, c. 55, § 3; G. S. 1878, c. 30, § 22.)

§ 2352. Fraud in conducting partnership.

A party who shall be guilty of any wilful fraud in the affairs of the partnership shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine or imprisonment, or both, in the discretion of the court in which such conviction is had.

(1872, c. 55, § 3; G. S. 1878, c. 30, § 23.)