

THE  
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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## CHAPTER 78.

**ACTIONS ON OFFICIAL SECURITIES AND TO RECOVER FINES AND FORFEITURES.****§ 5947. Corporation may be surety on bonds—Certificate of insurance commissioner.**

Whenever any bond, recognizance, obligation or stipulation or undertaking is by law, municipal or otherwise, or by the rules or regulations of any board, body or organization or officer, municipal or otherwise, required or permitted to be made, given, tendered or filed for the security or protection of any person, persons, corporation, municipality, or any department thereof, or any other organization whatever, conditioned for the doing or not doing of anything in such bond, recognizance, obligation, stipulation or undertaking specified, any and all heads of departments, public officers, state, county, town or municipal, and any and all boards, courts, judges and municipalities now or hereafter required or permitted to accept or approve of the sufficiency of any such bonds, recognizance, obligation, stipulation or undertaking, may, in the discretion of such head of department, court, judge, public officer or municipality, accept such bond, recognizance, obligation, stipulation or undertaking, and approve the same whenever the same is executed, or the conditions thereof are guaranteed, solely by a corporation authorized under its charter, to guarantee the fidelity of persons holding places of public or private trust, to guarantee the performance of contracts, other than insurance policies, and to execute and guarantee bonds and undertakings required or permitted in actions or proceedings in law; and whenever any such bond, recognizance, obligation, stipulation or undertaking is so required to be made, given, tendered or filed with one surety, or with two or more sureties, the execution of the same, or the guaranteeing of the performance of the conditions thereof, shall be sufficient, when executed or guaranteed solely by such company so authorized, and shall be in all respects a full and complete compliance with every requirement of every law, ordinance, rule or regulation, that such bond, undertaking, recognizance, obligation or stipulation shall be executed or guaranteed by one surety, or by two or more sureties, or that such sureties shall be residents or householders or freeholders or both, and any and all heads of departments, courts, judges, boards and municipalities, and any and all public officers, state, county, town or municipal, whose duty it may be, or shall hereafter be, to accept or approve the sufficiency of any such bond, recognizance, obligation, stipulation or undertaking, may accept and approve the same, when executed, or guaranteed, solely by such company, and all such corporations are hereby vested with full power and authority to execute and guarantee such bonds, recognizances, stipulations, obligations or undertakings, whether given under the laws of this state or of the United States or of any state or country. The certificate of the commissioner of insurance of this state, to the effect that it appears to his satisfaction, from sufficient evidence on file in his office, that the company, corporation or association executing any such bond as surety thereon, or as guarantor thereof, has furnished the same security which is required by law, or regulations of his department, of life insurance companies, under the provisions of sections three hundred and fifty-five to section three hundred and fifty-eight, inclusive, of chapter thirty-four of the General Statutes of eighteen hundred and seventy-eight, which provisions, so far as the same can reasonably apply, are hereby made applicable to all companies, corporations and associations affected by this act, and such sureties shall not be accepted or approved, unless such certificate is produced, or a

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duly certified copy thereof is produced and filed with the officer, board or party approving the same.

(1893, c. 42, § 1.)

## § 5948. Same—Premium chargeable to trust fund.

Any receiver, assignee, trustee, committee, guardian, executor or administrator or other fiduciary required by law to give bond as such, may include as a part of his lawful expenses such reasonable sum paid such a company for such suretyship not exceeding one per centum per annum on the amount of said bond, as the head of department, court, judge or officer by whom, or the court or body by which he was appointed, allows; and in all actions or proceedings, the party entitled to recover costs may include therein such reasonable sum as may have been paid such company for executing or guaranteeing any bond or undertaking therein.

(Id. § 2.)

## § 5949. Same—Release from liability.

Any company executing such bond, recognizance, obligation, stipulation or undertaking, and any such surety may be released from its liability on the same terms and conditions as are or may be by law prescribed for the release of individuals upon any such bond, recognizance, obligation, stipulation or undertaking; it being the true intent and meaning of this act to enable corporations created for the purpose to become surety on bonds, recognizances, obligations or undertakings required by law, municipal or otherwise or the rules or regulations of any court, judge, board, city charter, village, town organization or otherwise.

(Id. § 3.)

## § 5950. Same—Estoppel.

Any company which shall execute any bond, recognizance, obligation, stipulation or undertaking as surety under the provisions of this act, shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability.

(Id. § 4.)

## § 5951. Official bonds, security to whom—Obligee.

The official bond or other security of a public officer to the state, or any municipal body or corporation, whether with or without sureties, is to be construed as security to all persons severally, for the official delinquencies against which it is intended to provide, as well as to the state, body or corporation designated therein: provided, that when no other provision is made by law, it shall run to the state of Minnesota.

(G. S. 1866, c. 78, § 1; G. S. 1878, c. 78, § 1.)

§§ 5951-5953 apply to constables' bonds. *Litchfield v. McDonald*, 35 Minn. 167, 28 N. W. Rep. 191. The leave required is no part of the cause of action, and the statute of limitations commences to run from the same time that it would if no such leave were required. *Id.*; *Easton v. Sorenson*, 53 Minn. 309, 55 N. W. Rep. 123.

See *Board of County Com'rs v. Smith*, 22 Minn. 97, 110.

## § 5952. Who may bring action.

When a public officer, by official misconduct or neglect, forfeits his official bond, or renders his sureties liable upon an official security, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer and his sureties, to recover the amount to which he is entitled by reason of the delinquency.

(G. S. 1866, c. 78, § 2; G. S. 1878, c. 78, § 2.)

<sup>1</sup>An act relative to recognizances, stipulations, bonds, obligations and undertakings, and to allow corporations to be accepted as surety thereon. Approved April 18, 1893. By § 5, all inconsistent acts are repealed, and this act appears to supersede Laws 1887, c. 201.

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## § 5953. Leave to bring action.

Before an action can be brought by a plaintiff, other than the state or body politic named in the bond, leave shall be obtained of the district court, or a judge thereof, within the county where the action is triable, by the production of a copy of the bond, and an affidavit showing the delinquency; and if the delinquency is such that, if established on the trial, it would entitle the party applying to recover in the action, leave shall be granted.

(G. S. 1866, c. 78, § 3; G. S. 1878, c. 78, § 3.)

An action may be prosecuted by a county against its treasurer and the sureties on his bond without leave of court. *County of Waseca v. Sheehan*, 42 Minn. 57, 43 N. W. Rep. 690.

## § 5954. Several actions on same bond.

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

(G. S. 1866, c. 78, § 4; G. S. 1878, c. 78, § 4.)

## § 5955. Execution, how indorsed.

Upon the execution issued on a judgment recovered, upon the official security of a public officer, against him and a surety, there shall be indorsed a direction to the officer to whom the execution is delivered, to collect the same out of the property of the principal, if sufficient can be found, and if not, then to collect it out of the property of the surety.

(G. S. 1866, c. 78, § 5; G. S. 1878, c. 78, § 5.)

## § 5956. Actions for fines and forfeitures — By whom brought.

Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or who, by special provisions of law, are authorized to recover them; and, whether prosecuted by public officers or by private persons, are governed by the same rules as other civil actions, except as herein otherwise prescribed.

(G. S. 1866, c. 78, § 6; G. S. 1878, c. 78, § 6.)

## § 5957. Action for penalty—Amount recoverable.

When an action is brought for a penalty which is limited by law not to exceed a certain amount, the action may be brought for that amount, and upon trial, the amount recovered shall be determined in proportion to the offence.

(G. S. 1866, c. 78, § 7; G. S. 1878, c. 78, § 7.)

## § 5958. Same—Collusive recovery not a bar to another action.

A recovery of a judgment for a penalty or forfeiture, by collusion between the parties, with intent to save the defendant from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the prosecutor, does not prevent the recovery of the same by another person.

(G. S. 1866, c. 78, § 8; G. S. 1878, c. 78, § 8.)

## § 5959. Fines, how disposed of—Action by state for forfeited property.

Fines and forfeitures not specially granted or appropriated by law shall be paid into the treasury of the county where the same are incurred; and whenever any property, real or personal, is forfeited to the state, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought, by the proper officer, in the district court of any county where such property may be.

(G. S. 1866, c. 78, § 9, as amended 1870, c. 73, § 1; G. S. 1878, c. 78, § 9.)

See *Village of St. James v. Hingtgen*, 47 Minn. 521, 524, 50 N. W. Rep. 700.

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**§ 5960. Prosecutions for fines, etc.—In what court—Commitment of defendant.**

All fines and forfeitures imposed as a punishment for any offence, or for the violation or neglect of any duty imposed by statute, may be prosecuted for and recovered by indictment in the district court; or, when the amount or value thereof does not exceed one hundred dollars, the same may be prosecuted for by complaint before a justice of the peace, who shall have jurisdiction therefor concurrently with the district court; and in all cases of the imposition of a fine pursuant to statute, as punishment for any offence, the offender may be committed till the same is paid, or he is otherwise discharged according to law.

(G. S. 1866, c. 78, § 10; G. S. 1878, c. 78, § 10.)

A prosecution before a justice of the peace for obstructing a public highway is a criminal action. *State v. Cotton*, 29 Minn. 187, 12 N. W. Rep. 529. In such case, where the defendant is owner of the soil, and disputes the legal existence of the public easement, the question of title to real estate is involved. The plea of "not guilty" in such case does not show the question of title to be involved, but it must be made to appear by the evidence given or offered. *Id.*

As to commitment until the fine is paid. *State v. Peterson*, 38 Minn. 143, 149, 36 N. W. Rep. 443.

See *Weideman v. State* (Minn) 56 N. W. Rep. 688.

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