

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 79.

**ACTIONS TO VACATE CHARTERS AND LETTERS
PATENT, AND TO PREVENT THE USURPA-
TION OF AN OFFICE OR FRANCHISE.****§ 5961. Action to annul act of incorporation obtained by
fraud.**

An action may be brought by the attorney general, in the name of the state, whenever the legislature so directs, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion, or concealment of a material fact, by the persons incorporated, or some of them, or with their knowledge and consent.

(G. S. 1866, c. 79, § 1; G. S. 1878, c. 79, § 1.)

Where a case is presented to the attorney general, making it reasonably probable that any of the acts or omissions enumerated in c. 80, Rev. St., can be proved against a corporation, it is his duty to apply for leave to bring the action contemplated by such chapter, and if he neglect or refuse so to do, *mandamus* will lie to compel him to apply for such leave. *State v. Berry*, 3 Minn. (Gil.) 190.

After application for leave to sue has been made, the discretion, as to whether suit will be brought, is for the court alone. *Id.*

See *State v. Sharp*, 27 Minn. 33, 6 N. W. Rep. 403; *State v. St. Paul & S. C. R. Co.*, 35 Minn. 222, 23 N. W. Rep. 245.

§ 5962. Action to vacate charter, etc., of corporation.

An action may be brought by the attorney general, in the name of the state, for the purpose of vacating the charter, or annulling the existence, of a corporation, other than municipal, whenever such corporation:

First.—Offends against any of the provisions of the act or acts creating, altering or renewing such corporation; or,

Second.—Violates the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or,

Third.—Whenever it has forfeited its privileges or franchises, by failure to exercise its powers; or,

Fourth.—Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or,

Fifth.—Whenever it exercises a franchise or privilege not conferred upon it by law.

And the attorney general shall bring the action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved; and also in every other case in which satisfactory security is given to indemnify the state against the costs and expenses to be incurred thereby.

(G. S. 1866, c. 79, § 2; G. S. 1878, c. 79, § 2.)

As to the distinction between special proceedings upon information in the nature of *quo warranto* and a civil action under this chapter. *State v. Minnesota Thresher Manuf'g Co.*, 40 Minn. 213, 224, 41 N. W. Rep. 1020; *State v. Tracy*, 43 Minn. 497, 51 N. W. Rep. 613.

See *Whitcomb v. Lockerby* (Minn.) 59 N. W. Rep. 495.

**§ 5963. Action against persons usurping or forfeiting
offices or franchises, etc.**

An action may be brought by the attorney general, in the name of the state, upon his own information, or upon the complaint of a private party, against the party offending in the following cases:

First. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, or any franchise, within this state, or any office in a corporation created by the authority of this state; or,

Second. When any public officer has done or suffered an act which, by the provisions of law, causes a forfeiture of his office; or,

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Third. When any association or number of persons act within this state as a corporation, without being duly incorporated. And the attorney general shall bring the action whenever he has reason to believe that any of these acts can be proved.

(G. S. 1866, c. 79, § 3; G. S. 1878, c. 79, § 3.)

See *State v. Sherwood*, 15 Minn. 221, (Gil. 172, 177;); *State v. Williams*, 25 Minn. 840, 844; *State v. Parker*, Id. 215, 218; *State v. Murray*, 41 Minn. 123, 42 N. W. Rep. 858.

§ 5964. Action to vacate letters patent.

An action may be brought by the attorney general, in the name of the state, for the purpose of vacating or annulling letters patent granted by the state, in the following cases:

First. When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion, or concealment of a material fact, made by the person to whom the same were issued, or made with his consent or knowledge; or,

Second. When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact;

Third. When he has reason to believe that the patentee, or those claiming under him, have done or omitted any act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

(G. S. 1866, c. 79, § 4; G. S. 1878, c. 79, § 4.)

§ 5965. Name of complainant to be joined as party with state.

When an action is brought by the attorney general, by virtue of this chapter, on the complaint or information of any person having an interest in the question, the name of such person shall be joined with the state as plaintiff.

(G. S. 1866, c. 79, § 5; G. S. 1878, c. 79, § 5.)

In an action in the nature of a *quo warranto* under this section, two dissimilar interests may be united—the one public, on the part of the territory, to prevent one not duly chosen from exercising official functions; and the other private, and on behalf of the claimant, to establish his right to the office, and to recover damages he may have sustained by the usurpation. *Territory v. Smith*, 3 Minn. 240, (Gil. 164.)

See *State v. Murray*, 41 Minn. 123, 130, 42 N. W. Rep. 858.

§ 5966. Action for 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, with a statement of his right thereto; and, in every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice requires.

(G. S. 1866, c. 79, § 6; G. S. 1878, c. 79, § 6.)

See *State v. Murray*, 41 Minn. 123, 130, 42 N. W. Rep. 858.

§ 5967. Same — Claimant, on qualifying, to have possession of office, etc.

If judgment is rendered in favor of the person so alleged to be entitled, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office, and may be put in possession thereof, and of the books and papers belonging thereto, by order of the court; and any party refusing to deliver the same, when ordered by the court, shall be punished as for a contempt; and he may also recover, by action, the damages which he sustains by reason of the usurpation of the office by the defendant.

(G. S. 1866, c. 79, § 7; G. S. 1878, c. 79, § 7.)

See *State v. Murray*, 41 Minn. 123, 130, 42 N. W. Rep. 858.

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§ 5968. All claimants may be joined in one action.

When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

(G. S. 1866, c. 79, § 8; G. S. 1878, c. 79, § 8.)

§ 5969. Judgment against usurpers of offices or franchises —Fines.

When a person or a corporation is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise or privilege, judgment shall be rendered that such person or corporation be excluded from the office, franchise or privilege. The court may also, in its discretion, impose upon the defendant a fine not exceeding one thousand dollars.

(G. S. 1866, c. 79, § 9; G. S. 1878, c. 79, § 9.)

See *State v. Murray*, 41 Minn. 123, 130, 42 N. W. Rep. 853.

§ 5970. Corporation adjudged dissolved, when.

If it is adjudged that a corporation has, by neglect, abuse or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

(G. S. 1866, c. 79, § 10; G. S. 1878, c. 79, § 10.)

§ 5971. Costs, how collected in action against corporation, etc.

If judgment is rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by process against the directors or other officers of such corporation.

(G. S. 1866, c. 79, § 11; G. S. 1878, c. 79, § 11.)

§ 5972. Judgment against corporation —Injunction — Receiver.

When such judgment is rendered against a corporation, the court has power to restrain the corporation, to appoint a receiver of its property, and take an account, and make distribution thereof among its creditors; and the attorney general, immediately after the rendition of such judgment, shall institute proceedings for that purpose.

(G. S. 1866, c. 79, § 12; G. S. 1878, c. 79, § 12.)

§ 5973. Copy of judgment-roll to be filed with secretary of state.

Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, the attorney general shall cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of state.

(G. S. 1866, c. 79, § 13; G. S. 1878, c. 79, § 13.)