

REVISED LAWS OF MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
FRANCIS B. TIFFANY

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CHAPTER 56.

AUCTIONEERS.

2813. Licensed by county board or auditor.—The county board or auditor may license any voter of its county as an auctioneer. Such license shall be issued by the auditor, and shall authorize the licensee to conduct the business of an auctioneer in the county in which the same is issued, and adjoining counties, for the period of one year. It shall be recorded by the auditor in a book kept for that purpose. Before such license is issued, the licensee shall pay into the county treasury a fee of ten dollars. (R. L. § 2813, as amended by Laws 1909, c. 249, § 1.)

[CHAPTER 56A.]

[HAWKERS, PEDDLERS AND TRANSIENT MERCHANTS.]

[2818—]1. Terms defined.—Every person traveling from house to house for the purpose of offering for sale any article of merchandise, either for immediate or future delivery or according to sample is hereby declared to be a hawker and peddler. And every person, corporation or co-partnership exposing and offering for sale at retail in any city or village in this state a stock of goods, wares and merchandise is hereby declared to be a transient merchant, unless the carrying on and maintaining of said business in said city or village is in pursuance of an intention to maintain and carry on the same therein permanently and whenever it appears that any such stock of goods, wares and merchandise has been brought to any such city or village by a person not a resident therein and that it is claimed that such stock is to be closed out at reduced prices, such facts shall be presumptive evidence that the person so offering said goods for sale does not intend to maintain a permanent location in said city or village. ('09 c. 248 § 1)

Historical.—"An act to tax the occupation of, and to license, hawkers, peddlers and transient merchants and defining said occupations." Approved April 19, 1909.

Constitutionality.—This act is unconstitutional. *State v. Parr*, 123 N. W. 408.

[2818—]2. Hawkers and peddlers—License—Fees.—No person shall engage in or follow the business or occupation of a hawker or peddler until he shall have obtained a license from the state of Minnesota so to do; and for such license shall pay into the treasury of the state of Minnesota an annual license fee and tax as follows; where he shall use in such business or occupation a wagon or other vehicle drawn by two or more horses, or other beasts of burden, or automobile or other vehicle or conveyance propelled by any mechanical power, the sum of fifty dollars; where he shall use in such business or occupation a wagon or other vehicle drawn by one horse or other beast of burden, the sum of twenty-five dollars; where he shall use in such business or occupation a push or hand cart, bicycle or other vehicle not drawn by horses, or other beast of burden, or propelled by any mechanical power, the sum of ten dollars; and where he shall conduct such business on foot by means of pack, basket or other means of carrying merchandise on foot, the sum of ten dollars. ('09 c. 248 § 2)

[2818—]3. License of hawker and peddler, how applied for and issued.—The application for a license as hawker and peddler shall

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HAWKERS, PEDDLERS, ETC.

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be made in writing to the state auditor on blanks to be furnished by him and upon the warrant of the state auditor the applicant shall pay the license fee required to the state treasurer who shall issue to the applicant his receipt therefor and upon the filing of such receipt with the secretary of state, that officer shall issue to the applicant a license to engage in such occupation in the manner described in such receipt for a period of one year from the date of such license. ('09 c. 248 § 3)

[2818—]4. License of transient merchant, how applied for and issued—Fees.—No person, firm or corporation shall engage in or follow the business of a transient merchant as hereinbefore defined at any place in this state without first obtaining a license from the state of Minnesota, authorizing him so to do, and paying into the treasury of the state the sum of one hundred and fifty dollars. Application for such license shall be made to the state auditor upon blanks prepared by him, who shall issue his warrant to the state treasurer authorizing the payment to him of said sum of one hundred and fifty dollars, said treasurer shall issue his receipt therefor and upon the filing of said receipt with the secretary of state said applicant shall be entitled to such license for the period elapsing from the date of such license until the first day of May next ensuing. ('09 c. 248 § 4)

[2818—]5. Transient merchant—Business, where carried on.—No person, co-partnership firm or corporation shall carry on the business of transient merchant in more than one place in this state at the same time. ('09 c. 248 § 5)

[2818—]6. Right of municipalities to regulate.—Nothing in this act contained shall be construed as prohibiting or in any way limiting or interfering with the right of any city, village or other municipal corporation or governmental sub-division of the state to regulate or license the carrying on within such municipality of the business of hawker or peddler or transient merchant in any case where authority has been or shall hereafter be conferred upon it so to do, but the requirements of this act shall be in addition thereto. ('09 c. 248 § 6)

[2818—]7. Revocation of license.—Any license issued pursuant to the terms of this act may be revoked by the secretary of state upon the conviction of any person to whom the same was issued, of any false or fraudulent representation or misrepresentation in the sale of any goods, wares or merchandise or upon conviction of such person of the sale of any adulterated food, drink or drug, or the sale of any food deleterious to health; and the filing with the secretary of state of a certified copy of the final judgment of any court in which any such person may have been tried showing his conviction of such offense shall be sufficient authority for the revocation of such license. ('09 c. 248 § 7)

[2818—]8. Engaging in business without license—Penalty.—Every person and each member of any firm or co-partnership and each officer of any corporation engaging in or following the business of hawker, peddler or transient merchant in this state without having first obtained a license as hereinbefore provided shall be deemed guilty of a misdemeanor. ('09 c. 248 § 8)

[2818—]9. Persons not affected.—The provisions of this act shall not apply to persons engaged in interstate or foreign commerce, nor to the sale of articles which at the time of such sale are the subjects of interstate or foreign commerce, nor to the salesmen of wholesale merchants or manufacturers in selling to retail merchants nor to the solicitation by permanent merchants or their employees of orders from customers resident in the same or the ad-

joining county as such permanent merchant; nor to any sale made by virtue of any judgment, order or process of any court or upon the foreclosure of any mortgage or pursuant to any law of this state or of the United States or in the enforcement of any contract right or lien, nor to the sale by any individual of any article grown, produced by him. ('09 c. 248 § 9)

[2818—]10. **Cities having 50,000 inhabitants.**—No license under this act shall be required of any person for carrying on his business or calling in any city of this state having a population of 50,000 or over when he has been duly licensed thereto by such city. ('09 c. 248 § 10)

CHAPTER 58.

CORPORATIONS.

GENERAL PROVISIONS.

2838. Existing corporations continued.

Existing corporations.—The right to exercise the power of eminent domain, conferred upon a corporation organized under G. S. 1894, c. 34, tit. 1, was not abrogated, but confirmed and re-enacted, by the Revised Laws. Minneapolis & St. P. S. Ry. Co. v. Manitou Forest Syndicate, 101 Minn. 132, 112 N. W. 13.

Cited in State v. Duluth Board of Trade, 107 Minn. 506, 121 N. W. 395.

2841. Public service corporations.

See note under section next following.

Right to occupy streets, etc.—The crossing of streets and alleys incidental to constructing a railroad from place to place does not constitute the occupancy of such streets or alleys for the purpose of operating a railway thereon, within this section. Minneapolis & St. P. S. Ry. Co. v. Manitou Forest Syndicate, 101 Minn. 132, 112 N. W. 13.

See note under section 2916.

Water power—Diversion of navigable waters.—A corporation organized under G. S. 1894, c. 34, was not authorized by section 2592, section 2604, as amended by Laws 1899, c. 51, and Laws 1901, c. 360, and section 2633 thereof as an incident to the construction of a canal and the creation of a water power, to divert the waters from navigable lakes and streams to such an extent as to interfere with present or future navigation and by means of canals carry it over a divide and discharge it into a different drainage area, thus permanently withdrawing it from its natural course. Minnesota Canal & Power Co. v. Koochiching Co., 97 Minn. 429, 107 N. W. 405, 5 L. R. A. (N. S.) 638.

A public service corporation, although authorized to condemn private property for the construction of canals and reservoirs for the generation of electric power, may not exercise such power when the particular enterprise contemplates an interference with the navigability of the navigable waters of the state, unless such interference is expressly authorized by statute. Minnesota Canal & Power Co. v. Pratt, 101 Minn. 197, 112 N. W. 395.

2842. State and local control—Eminent domain.

Eminent domain—For what purposes.—The generation of electricity by water power for distribution and sale to the general public on equal terms, subject to governmental control, is a public enterprise, and property so used is devoted to public use. But the creation of a water power and a water power plant for the purpose of "supplying water from the wheels thereof" to the public is a private enterprise, in the aid of which the power of eminent domain cannot be exercised; the nature of water power being such that, under such conditions, it cannot be used by the public to such extent as to make the use a public use. Minnesota Canal & Power Co. v. Koochiching Co., 97 Minn. 429, 107 N. W. 405, 5 L. R. A. (N. S.) 638.

Sections 2841, 2842, 2926, 2927, conferring the power of eminent domain on public service corporations for specified purposes, authorize the exercise of such power in aid of the construction of canals and reservoirs to be used to create and