

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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of such examination, fix and determine. In case of default in the payment of any amount so ascertained to be due, together with the expense incurred in making such examination, for a period of twenty days after notice to such delinquent individual or organization of the amount at which the same may be fixed by the state auditor, such delinquent shall, ipso facto, forfeit and shall be thereby disqualified from receiving any new license or any renewal of license; and shall in addition forfeit to the state of Minnesota the sum of Five Hundred Dollars (\$500.00), which may be recovered by the Attorney General in the name of the state of Minnesota in the same manner as other

penalties are by law recovered. (Act Jan. 28, 1933, c. 7, §15.)

3260-16. Acts repealed.—Mason's Minnesota Statutes of 1927, Sections 3251 to 3260, inclusive, are hereby repealed. (Act Jan. 28, 1933, c. 7, §16.)

3260-17. Acts repealed.—Mason's Minnesota Statutes of 1927, Section 10286 so far as inconsistent with this Act is hereby repealed. (Act Jan. 28, 1933, c. 7, §17.)

3260-18. Effective May 1, 1933.—This act shall take effect and be in force from and after May 1, 1933. (Act Jan. 28, 1933, c. 7, §18.)

CHAPTER 17

Illegitimate Children—Bastards

3261. Complaint—Where filed—Warrant.

At common law the father was not charged with the support of his illegitimate child, and the bastardy statute charges the father with the support of such child and furnishes the only remedy. 175M547, 221NW911.

Husband and wife are competent to give evidence that the former is not the father of a child of the wife conceived before the dissolution of the marriage by divorce. State v. Soyka, 181M533, 233NW300. See Dun. Dig. 10312. Bastardy proceeding is civil in character rather than criminal. State v. Hanson, 187M235, 244NW809. See Dun. Dig. 827.

3262. Action, how entered—Proceedings.

A bastardy proceeding is a civil proceeding, not a criminal action, and defendant may be called by prosecution for cross-examination. State v. Jeffrey, 247NW692. See Dun. Dig. 827(76).

3265. Trial—Exclusion of public, etc.

Verdict in bastardy case held not sustained by evidence. 173M294, 217NW118.

Evidence held sufficient to sustain a conviction. 173M 627, 218NW110.

Where defendant was adjudged father of illegitimate child and was directed to pay certain sums for its support to a child welfare board which agreed to pay such sums to the plaintiff for boarding and caring for the child, plaintiff could sue the welfare board for sums received by it. Salvay v. R., 175M484, 221NW719.

Exclusion of evidence of intercourse with third person

at indefinite prior time, held proper, and evidence of promise to marry during period of illicit relation was admissible. 179M80, 228NW335.

Evidence held to support conviction. 179M436, 229NW 564.

Defendant in filiation proceeding held not entitled to dismissal for lack of speedy trial because of his own conduct contributing to delay. State v. Hanson, 187M 235, 244NW809. See Dun. Dig. 842, 2469.

Mother of illegitimate is not entitled to recover from adjudged father money expended by her in care and support of child; father having been ordered by district court to make periodical payments to a county welfare board. Lawson v. M., 248NW658.

Guardian of illegitimate child may claim payments after death of father but only those that had matured at time of death. Op. Atty. Gen., Aug. 21, 1933.

3266. Father to pay all expenses.

Lawson v. M., 248NW658; note under §3265.

3268. Hearing—Judgment.

Conviction of bastardy, held free from error. 181M 374, 232NW624. See Dun. Dig. 827.

3270. Procedure—Warrant.

Indication by court that instructions given were requested by one of the parties, held error. 181M374, 232 NW624. See Dun. Dig. 9776(13).

3272.

Lawson v. M., 248NW658; note under §3265.

CHAPTER 18

Public Examiner

3274. Department established—Powers and duties.

Comptroller has no authority to comply with request to make audit of tally sheets of election. Op. Atty. Gen., May 19, 1932.

Counties, cities, villages, towns, or school districts, except municipalities expressly or impliedly authorized by their charters, may not validly incur expense for examination of accounts and affairs by anyone other than the state comptroller. Op. Atty. Gen., Mar. 31, 1933.

3277. Reports of examinations—Violations of law.

Petition for audit of affairs of city is not part of audit made by state examiner, and is not public record as defined in this section, but public examiner is not prohibited from divulging matter contained in such petition. Op. Atty. Gen., May 28, 1932.

3278. Fees for examination of counties.—All the powers and duties conferred and imposed upon the public examiner in the foregoing sections shall be exercised and performed by him in respect to the offices, institutions, public property and improvements of the several counties of the state of Minnesota. At least once in each year, the public examiner shall visit, without previous notice, each of such counties and make a thorough examination of all accounts and records relating to the receipt and disbursement of the public funds and the custody of the public funds and other property. He shall prescribe and install systems of accounts and financial reports, that shall be uniform so far as practicable for the same class of offices. A copy of the report of such examination shall be filed and subject to public inspection in the office of the public examiner, and another copy

in the office of the county auditor of the county thus examined; provided, that if any such examination shall disclose malfeasance, misfeasance, or nonfeasance in the office of such county, such report shall be filed with the county attorney of said county, and it shall be the duty of such county attorney to institute such civil and criminal proceedings, as the law and the protection of the public interests shall require.

The county receiving such examination shall pay to the state the total cost and expenses of such examination, including the salaries paid to the examiners while actually engaged in making such examination, provided, that such salary charge shall not exceed \$10.00 per day. The appropriation accounts of the comptroller shall be credited with all collections made for any such examinations, and said moneys so collected are hereby appropriated for the use and purposes of said accounts. (G. S. '13, §3231; '13, c. 555, §5; Apr. 9, 1931, c. 125, and Apr. 20, 1931, c. 246.)

Op. Atty. Gen., Apr. 13, 1933; note under §3286-1.

Where county has made an excessive payment of clerk hire, county attorney has authority independent of the county board to institute an action to recover moneys disclosed by the comptroller's report to have been illegally paid out. Op. Atty. Gen., Jan. 9, 1932.

A county may not hire a private auditor to investigate ditch account. Op. Atty. Gen., Apr. 13, 1933.

A village may not employ a private auditor to examine alleged shortage in office of treasurer. Id.

3279. Cities of more than 50,000 inhabitants.

This section supersedes Duluth City Charter, §34, with reference to examination and publication of books and accounts of cities of first class. Op. Atty. Gen., Aug. 3, 1933.

3280. Other cities.

County attorney is not charged with the duty of instituting civil proceedings where examiner has found irregularities in the expenditure of moneys of a city of the fourth class, but need only prosecute criminal actions. Op. Atty. Gen., Apr. 1, 1931.

The first reference to "Section 7" is intended to be "Section 6" and it is probable that the second reference to "Section 7" was intended to read "Section 5." Op. Atty. Gen., Apr. 1, 1931.

County attorney is not required to institute civil action on behalf of towns, villages or school districts to recover moneys illegally expended as disclosed by the report of the public examiner. Op. Atty. Gen., Aug. 14, 1931.

Council of New Ulm has right to employ private accountants to make audit of books of city. Op. Atty. Gen., Apr. 18, 1932.

This section does not prevent council from having audit made by private accountant but such private audit does not prevent subsequent audit by public examiner upon petition. Op. Atty. Gen., Mar. 24, 1933.

3281. School districts, towns and villages.

Op. Atty. Gen., Aug. 14, 1931; note under §3280.

Op. Atty. Gen., Apr. 13, 1933; note under §3286-1.

3286. Assistants and employees and bonds to be given.

The appointment of an assistant public examiner is at the pleasure of the comptroller, and an honorably discharged soldier was not entitled to a preference. State v. Rines, 185M49, 239NW670. See Dun. Dig. 7986.

3286-1. Examination of municipal records.—

A petition for an examination under the provisions of Chapter 18, General Statutes 1923, of the books, records and accounts and affairs of any city, village, town or school district shall in the case of a city, village, or town be signed by at least one freeholder for each 100 inhabitants thereof, the number of which shall not be less than ten and in the case of a school district by not less than ten freeholders. Before such petition is delivered to the comptroller it shall be presented to the County Auditor of the County in which such city, town, village, or school district is situated, who shall determine whether such petition is signed by the required number of free holders and shall certify such fact thereon and such certificate shall be conclusive evidence thereof in any action or proceeding for the recovery of the costs, charges and expenses of any examination made pursuant to such petition. (Act Apr. 19, 1929, c. 259, §1.)

Petition for audit of affairs of city is not part of audit made by state examiner, and is not public record as defined in this section, but public examiner is not prohibited from divulging matter contained in such petition. Op. Atty. Gen., May 28, 1932.

Unless authorized to the contrary by charter provisions, express or implied, village is not authorized to expend public funds to pay private auditors of its affairs. Op. Atty. Gen., Apr. 13, 1933.

Neither Duluth board of education nor Duluth teachers' retirement fund association were liable for cost of audit of records of retirement fund association where no request was made for its examination. Op. Atty. Gen., Oct. 9, 1933.

3286-2. To be made upon written requests.—

Upon a written request signed by a majority of the members of the governing body of any city, village, town or school district, the comptroller shall examine the books, records, accounts and affairs of the same, but such written request shall be presented to the clerk or recording officer of such city, village, town or school district, before being presented to the comptroller, who shall determine whether the same is signed by a majority of the members of such governing body and, if found to be so signed, shall certify such fact, which certificate shall be conclusive evidence thereof in any action or proceeding for the recovery of the costs, charges and expenses of any examination made pursuant to such request. (Act Apr. 19, 1929, c. 259, §2.)

Audit of examination by certified public accountant may not be accepted in lieu of examination by public examiner. Op. Atty. Gen., June 16, 1932.

3286-3. Municipality to pay cost of examination.

—Upon the examination of the books, records, accounts and affairs of any city, including cities of the first class, village, town or school district, as provided by law, such city, village, town or school district shall be liable to the state for the total cost and expenses of such examination, including the salaries paid to the examiners while actually engaged in making such examination, provided, that such salary charge shall not exceed \$10.00 per day. The appropriation accounts of the comptroller shall be credited with all collections made for any such examinations, and said moneys so collected are hereby appropriated for the uses and purposes of said accounts. (Act Apr. 19, 1929, c. 259, §3.)

3286-4. Collection for examination.—

On July first of each year the state treasurer shall certify to the state auditor all uncollected drafts for the examination of any city, village, town or school district which have remained unpaid for a period of three months from the date of such draft. Upon receipt of such list the auditor shall forthwith notify the clerk or recording officer of each city, village, town or school district, against which the state has a claim, that if the same is not paid, with interest from the date of the draft, within 90 days, the full amount thereof will be certified to the auditor for the county or counties in which such city, village, town or school district is situated, for collection by special tax levy as herein provided. Such notice shall be served by registered mail and the deposit thereof in the United States mail shall constitute due and legal service thereof upon said city, village, town or school district. (Act Apr. 19, 1929, c. 259, §4.)

3286-5. Municipalities may contest claim upon notice.—

On or before September first following service of said notice, any such city, village, town or school district may serve notice in writing, upon the attorney general that it desires to contest the legality of the state's claim, whereupon such claim shall be withdrawn from the state auditor, and the attorney general shall forthwith file with the clerk of the district court of the county in which such city, village, town or school district, or major part thereof, is situated, a verified statement of the state's claim, duly itemized, and serve upon the clerk of such city, village, town or school district, by registered mail, a copy of such statement. Such city, village, town or school district may file with the clerk of such district court, within ten days after the service of such statement upon it, verified objections to the state's claim, and such district court shall thereupon summarily, in or out of term hear and determine the amount due the state, if any, for such examination, at a time and place fixed by the court therefor. The clerk of such court shall certify to the county auditor of the county or counties in which such city, village, town or school district is situated, the amount so determined by the court to be due to the state, if any. (Act Apr. 19, 1929, c. 259, §5.)

3286-6. State Auditor to certify amount due.—

On October first of each year, the state auditor shall certify the respective amounts due the state from the various cities, villages, towns and school districts, as shown by the list so filed by the treasurer, and not withdrawn therefrom, including interest computed to July first following, to the county auditor of the county in which any such city, village, town or school district is in whole or in part situated. The county auditor, upon receiving a certificate from the state auditor or a certificate from the clerk of court, as hereinbefore provided, shall include the amount of the state's claim, with 25 per cent added, in the tax levy for general revenue purposes of the municipality liable therefor, and such additional levy shall not be within any limitation imposed by law upon the amount of taxes which may be levied for revenue purposes. Upon completion of the June tax settlement following such levy the county treasurer shall

deduct from the amount apportioned to the municipality for general revenue purposes, the amount due the state under this act, including interest, and remit the same to the state treasurer. (Act Apr. 19, 1929, c. 259, §6.)

3286-7. Inconsistent acts repealed.—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Act Apr. 19, 1929, c. 259, §7.)

CHAPTER 19

Insurance

3288-1. Public emergency declared.—It is hereby declared that a public emergency exists affecting the health, comfort, and safety of the people of this State, growing out of the abnormal disruption in economic and financial processes, the declaration of a banking holiday in this State and other states and by the Federal Government, the inability of insurers to carry on in a normal and ordinary manner the functions of their business owing to the situation now existing with reference to currency, specie and checks, and other facts and circumstances curtailing and hampering the conduct of the business of insurance in a normal and ordinary manner. (Act Mar. 13, 1933, c. 78, §1.)

3288-2. May suspend provisions of law relating to insurance—Notice.—During the period of the emergency as hereinafter defined, the Commissioner of Insurance shall have the power, with the approval of the Governor, to suspend, in whole or in part, any provision of the laws relating to insurance. In addition to such power and not in limitation thereof, he shall also have power, with the approval of the Governor, during such period to make, rescind, alter and amend rules and regulations imposing any conditions upon the conduct of the business of any insurer which may be necessary or desirable to maintain sound methods of insurance and to safeguard the interests of policyholders, beneficiaries, and the public generally during such period. In the discretion of the Commissioner of Insurance, such rules or regulations may be published in a manner to be prescribed by him or may be otherwise brought to the attention of the insurer or insurers affected in a manner to be prescribed by the Commissioner of Insurance. (Act Mar. 13, 1933, c. 78, §2.)

3288-3. Law shall supersede existing laws.—Such rules or regulations may be inconsistent with existing law, and in such event shall supersede such existing law inconsistent therewith. (Act Mar. 13, 1933, c. 78, §3.)

3288-4. Rule to become ineffective, when.—Such rules or regulations of the Commissioner of Insurance adopted pursuant to this Act shall become ineffective upon the termination of such emergency and thereupon all the existing law which may have been suspended or superseded pursuant to this Act shall become effective. (Act Mar. 13, 1933, c. 78, §4.)

3288-5. Effective—termination.—The period of the emergency herein provided for shall be from the date of the taking effect of this Act until such date as the legislature may, by joint resolution, designate to be the termination thereof or, if the legislature be not in session, the date so designated by proclamation of the Governor. (Act Mar. 13, 1933, c. 78, §5.)

3288-6. Violation a misdemeanor.—Any violation of the provisions of this Act or of any rule or regulation adopted by the Commissioner of Insurance pursuant thereto, shall be a misdemeanor. (Act Mar. 13, 1933, c. 78, §6.)

3288-7. Definitions.—The word "insurer" as used in this Act includes all corporations, associations, societies, and orders to which any provision of the laws relating to insurance is applicable. (Act Mar. 13, 1933, c. 78, §7.)

3288-8. Provisions separable.—If any provision of this Act, or the application of such provision to any insurer or circumstance, shall be held invalid, the

remainder of this Act, or the application of such provision to insurers or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Act Mar. 13, 1933, c. 78, §8.)

3288-9. Effective March 15, 1933.—This Act, being an Emergency Act, shall be of no force or effect after March 15, 1935. (Act Mar. 13, 1933, c. 78, §9.)

3302. Computation of net value.

Reserve maintained by life insurance company, held to constitute unearned premiums for purpose of computing federal income tax. 22 U. S. Board of Tax Appeals 784. See Dun. Dig. 4720.

3304. Reserves.

4.
22 U. S. Board of Tax Appeals 784.

GENERAL PROVISIONS

3312. Definitions.

22 U. S. Board of Tax Appeals 784.
This section defines "net assets" as used in section 3335. Op. Atty. Gen., Dec. 3, 1931.
Since there is no longer a constitutional stockholder's liability, such item should not be taken into consideration as an asset of a fire insurance company. Op. Atty. Gen., Dec. 3, 1931.

3313. Acceptance of laws.

Insurance contract solicited by foreign corporation without compliance with state insurance laws, held not interstate commerce. 275US274, 48SCR124, aff'g 169M 516, 211NW478.

3314. Insurance defined—Unlawful contracts—Contracts deemed made in this state.

275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

Hardware Dealers' M. F. I. Co. v. Glidden Co., 284US 151, 52SCR69, aff'g 181Minn518, 233NW310; §3512; note 10.

Indemnity bond to bank against loss from taking counterfeit collateral, held not to extend to unsigned bills of lading, the goods described in which were never delivered to the carrier. 48F(2d)611. See Dun. Dig. 4336.
Loss arising from cracking of opal because alone of its inherent tendency to disintegrate cannot be recovered under an "all risk" transportation policy. 172M13, 214NW473.

The insurance business is affected with public interest and is subject to governmental regulations. 175M73, 220 NW425.

In action by assured in indemnity policy to recover amounts paid in settlement of negligence suits which defendant refused to defend, evidence held to sustain finding that plaintiff complied with terms of policy requiring "immediate notice." Farrell et al. v. N., 183M 65, 235NW612. See Dun. Dig. 4876(45).

Certificate of Membership in the "Steele County North Dakota Benevolent Society" held to constitute "insurance" subject to supervision of the commissioner. Op. Atty. Gen., June 12, 1931.

Plan of certain so-called mutual benefit or benevolent societies held to constitute the writing of insurance. Op. Atty. Gen., Oct. 7, 1931.

So-called "service contract" held to constitute insurance contract and person selling them insurance agent. Op. Atty. Gen., Sept. 16, 1933.

3315. Capital stock required and business which may be transacted * * * * *

(a) 15. **Funeral benefits to be paid in money.**—To make contracts providing that upon the death of the assured a funeral benefit will be paid in money, the aggregate amount of which shall not exceed \$150.00 upon any one life. Provided, however, that any corporation that has been licensed to do business for three successive years may make contracts not to exceed \$300.00 upon any one life; provided further that any corporation licensed under this act which now or hereafter has a paid up capital of \$15,000.00, and maintains with the commissioner of insurance a