

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



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

CITER- DIGEST CO.
SAINT PAUL, MINNESOTA.
1934

and shall have dismissed with prejudice the suit involving said lands and their value and the proceeds from sales thereof now pending in the Supreme Court

of the United States, and entitled United States versus State of Minnesota. (Act Apr. 18, 1929, c. 226, §2.)

CHAPTER 41 Eminent Domain

6537. Right of eminent domain.

177M146, 225NW86.
An enlargement by the court against objection, of condemnation proceedings to include easements over lands or lots not sought in the state's petition, is an unwarranted interference with properly delegated legislative functions. *State v. Erickson*, 185M60, 239NW908. See Dun. Dig. 4158(71).

The highway commissioner's order designating the permanent re-routing of a trunk highway does not in itself constitute a taking of the property within the designated route. It is the exercise of a legislative function constitutionally delegated to the commissioner by the Legislature and is conclusive on the courts as to the necessity of the taking. *State v. Erickson*, 185M60, 239NW908. See Dun. Dig. 4158(71).

Village of North St. Paul has authority to condemn rights of way for an alley or to condemn an easement for water and sewer pipes across private property. *Op. Atty. Gen.*, May 26, 1931.

6538. Definitions.

Owner of lot abutting on a street has no right of action against a railroad which crosses the street upon an embankment and obstructs its use when the damage he suffers is not special. *Locascio v. N.*, 185M281, 240NW 661. See Dun. Dig. 3049(14).

6541. Petition and notice.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

6543. Order made thereon—Commissioners.

Owner of land abutting on trunk highway on which easement for highway purposes has been taken may object to placing of mail box thereon by another person. *Op. Atty. Gen.*, Sept 6, 1932.

6546. Payment—Tender—Deposit in court.

Boundary dispute between claimants of land condemned. *Fitzpatrick v. B.*, 176M468, 223NW767.

The United States seeking to condemn lands for a public building, has no further interest in the condemnation proceedings after it pays the award to the clerk of the court. *St. Paul v. Certain Lands*, (CCA8), 48F(2d)805. See Dun. Dig. 3100.

Where an award is made to owner of land upon which mortgage is being foreclosed, the purchaser at the foreclosure sale is entitled to the award in the absence of redemption. *Op. Atty. Gen.*, Apr. 2, 1931.

6548. Accruing taxes.

Delinquent taxes on land are a first lien and should be paid first out of an award made in condemnation proceedings by the highway department. *Op. Atty. Gen.*, Aug. 8, 1930.

Where damages are awarded in condemnation proceedings by the highway department, and they are insufficient to cover taxes against the land, they should be distributed among the various funds the same as they would be if the taxes had been paid. *Op. Atty. Gen.*, Aug. 8, 1930.

Where Government condemns property for post office, title does not pass until final judgment and payment of the award, and county auditor has authority until that time to assess taxes against the property, even though under Mason's USCA, Title 40, §258, title relates back to the date of the filing of the commissioner's award. *Op. Atty. Gen.*, Jan. 26, 1931.

Where City of St. Paul acquired by condemnation portions of property for widening of street and property owner gave City deed on December 26th, 1930, and award was ratified by City Council on December 30th, 1930, but proceedings of Council were not published in the official newspaper until January 3rd, 1931, on which date award was paid, taxes for 1930 spread by the auditor on December 24th, 1930, constituted a lien on the property and should be paid by the City. *Op. Atty. Gen.*, April 25, 1931.

6549. Appeal.

City intervening to recover special assessments, held not entitled to appeal from award. *St. Paul v. Certain Lands*, (CCA8), 48F(2d)805. See Dun. Dig. 3107.

6550. Trial—Costs.

To the extent that traffic upon a trunk highway is beneficial to an abutting farm, as such, it is a benefit in common with the general public. 176M525, 223NW 923.

Special benefits may be shown in the reduction of damages. 176M525, 223NW923.

Gross damages are first to be determined and then award is to be apportioned as justice may require. 176 M525, 223NW923.

Where such rule is ignored, and a different procedure is adopted without objection, in which the dissatisfied party has acquiesced, he cannot thereafter complain. 176M525, 223NW923.

Persons appointed by the court, and who serve as appraisers in a condemnation proceeding, are competent witnesses who may be called by either party on an appeal. *Northern States Power Co. v. B.*, 187M353, 245NW 609. See Dun. Dig. 3112.

6551. Judgment—Possession.

Where the United States condemned property on which special assessments had been levied for a street improvement, and title passed to the government by deposit of the condemnation money in court, the city had no equitable lien on the condemnation money where judgment confirming the assessment was reversed on appeal, and the lien of the assessment did not attach to the land prior to the transfer of the title to the government, especially where there was no presumption that the condemnation commissioners included in the award any increase in the value of the land arising from the improvement, though a reassessment was made after the government obtained title. *Drake v. C.*, (CC A8), 65F(2d)119. See Dun. Dig. 3076.

One obtaining market value of property was not entitled to an additional award for expense of removal from the premises. 176M389, 223NW458.

6552. Interest—Award, when payable—Dismissal.

48F(2d)183.
In condemnation proceedings the charter provisions, in force at the time the order of the city council confirming the award is adopted, governs the right to interest thereon. *L. Realty Co. v. C.*, 183M499, 237NW192. See Dun. Dig. 3103.

6557-1. Eminent domain proceedings by state or its agencies—Procedure.

State v. Stanley, 247NW509; note under §2554.

(e).
Where commissioner of highways trespasses upon or appropriates land outside right of way, he becomes liable to owner thereof for damage thereto. *Nelson v. B.*, 248NW49. See Dun. Dig. 3128.

6557-4. Easement for snow fences.—Whenever the right to establish a public road is acquired by the state or by any of its agencies or political subdivisions, there shall be included in the easement so acquired the power to erect and maintain temporary snow fences as required upon lands adjoining the highway part of which lands have been taken for road purposes. The right to erect and maintain such fences shall be considered in awarding damages and any award shall be conclusively presumed to include the damages, if any, caused by the right to erect and maintain such fences provided that if the state or agency or political subdivision thereof shall file with its petition or at any time before the question of damages is submitted to a jury a written disclaimer of its desire and intention to acquire a right to erect and maintain snow fences as to any particular tract of land involved, then no such right shall be acquired in such proceeding and no consideration given to such fences as an element of damage. (Act Apr. 26, 1929, c. 396, §1.)

6578-1. Award of competition and damage in condemnation proceedings.—Whenever an award of compensation and damages shall be confirmed by the city council of any city of the first class in the State of Minnesota, existing and governed under a charter adopted pursuant to Section 36, Article 4, of the State Constitution, in any proceeding for the taking of property under the power of eminent domain, and not appealed from, and whenever the same, when appealed from, shall not be set aside by the court, the same shall constitute a lawful and sufficient condemnation and appropriation to public use of the

land and property and rights in property for which compensation or damages are so awarded, and the city council shall thereupon cause to be paid from the funds of such city, to the owner of such property, the amount awarded to each severally.

Before payment of such award, the owner of such property or the claimant of the award shall furnish an abstract of title showing himself entitled to all of the compensation and damage claimed. In case of neglect to furnish such abstract, or if there shall be any doubt as to who is entitled to such compensation or damage or any part of the same, the amount so awarded shall be by the city council appropriated and set apart in the city treasury for whoever shall show clear right to receive the same. The city council may in its discretion require of such claimant a bond with good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded and all loss, costs of expenses on account of such claim, Provided, that whenever the city attorney shall certify in writing to the city council that he is in doubt as to whom the said award shall be paid, said city council may order a warrant to be drawn for the same, payable to the clerk of the district court, and the city clerk shall deliver the same to said clerk of the same court, and take his receipt for the same; which deposit with said clerk of the court shall have the same effect as if set aside in the city treasury, as hereinbefore provided, and in which case the parties entitled to the same shall establish their right to the same by a petition to the said District Court, setting up the facts entitling them thereto, and by proving the same to the satisfaction of the court, and when so established the court shall make an order directing to whom the same shall be paid.

Upon the payment of said award or appropriation or the setting apart of the money in the city treasury to pay the same as aforesaid, the city shall become vested with the title to the property taken and condemned absolutely for all purposes for which the city may ever have occasion to use the same, and may forthwith enter upon and use the same. Provided that whenever any such award shall be con-

firmed by the city council of any such city and an appeal shall be taken therefrom, the city council shall be and hereby is authorized and empowered, by resolution enacted by affirmative vote of a majority of all of its members elected, to appropriate and set aside in the treasury of the city, in a fund therein to be known as the "Condemnation and Award Fund," a sum of money equal in amount to such award providing for the retention thereof therein, during the pendency of the appeal, available at all times for the payment thereof upon demand to whomsoever may be shown to have a clear right thereto, and further pledge the full faith and credit of the city for the payment of any increase of the award allowed upon the appeal; then in such case, regardless of the appeal, upon the enactment of such resolution by the city council and the setting apart of the amount of the award in the treasury of the city, the city shall be entitled to enter upon and take possession of the property condemned and to put such property to the use or uses for which such condemnation was made. ('21, c. 219, §1; Apr. 25, 1931, c. 396.)

This section is not violative of the 14th amendment, in that it does not afford a fair tribunal to a property owner. 32F(2d)748.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177 M146, 225NW86.

This section sufficiently protects the landowner against any taking of his property without compensation first paid or secured. 177M146, 225NW86.

Proceedings held to sufficiently show purpose for which land was taken and that it was taken for a public purpose. 177M146, 225NW86.

In street widening proceeding, landowner is entitled to damages at least to the extent of market value of the land taken in the condition and situation it then occupied, not an isolated tract, but as a part of the whole. Improvement of Third St., 177M159, 225NW92.

Landowner cannot claim damages on theory that at some future time there may be a change of the grade of the street, his right to receive damages at any such time not being affected. Improvement of Third St., 177 M159, 225NW92.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. Siggelkow v. A., 187M395, 245NW629. See Dun. Dig. 5412.

CHAPTER 42

Water Powers

UNIFORM STAGE OF WATER IN LAKES AND STREAMS

6602-2. Control of shore lines.—That in order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and St. Louis Counties designated in the Act of Congress of July 10, 1930 (Chapter 880), and no alteration of the natural water level or volume of flowage of any such stream or body of water shall be made and no easement for flooding or overflowing or otherwise affecting lands of the State of Minnesota adjacent thereto shall be granted, unless and until specific authority shall have first been obtained by Act of the Legislature of the State of Minnesota: Provided, that with the written approval and consent of the Department of Conservation, together with the signed authority of the Executive Council of the State of Minnesota, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in extent may be constructed to maintain temporarily water levels not higher than the normal

high water mark: Provided, however, that every such approval shall be subject to suitable charges, time limitation, and other conditions designed fully to protect the public interest in the intent of this Act. Provided further, that the provisions of this Act shall not apply to that portion of any proposed development for water power purposes now or heretofore actually occupied and maintained by any applicant for license to make such development under the terms of the Federal Water Power Act if the application for such license was pending on or before January 1, 1928. Such occupancy is hereby legalized and confirmed and such occupant is hereby granted the right to occupy and use for water power purposes, and so long as required and used for such purposes, the state lands and waters now or heretofore so occupied and used up to an elevation not exceeding 2 feet above the lowest crest of the spillway or overflow dam of such occupant as now constructed; provided that no water control structures shall be used higher than those now or heretofore used. The occupant shall pay to the state annually reasonable compensation for the use of the state lands affected, to be determined by the Commissioner of Conservation after investigation. The occupant shall comply with the following requirements: (1) to pay the State within ninety days after the passage