

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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CHAPTER 46

Notaries Public

6938. Term—Bond—Oath.

Owner of property had no cause of action against a notary public for wrongful and false certificate of the execution of a bill of sale which was forged, the plaintiff not being divested of his title by the forged instrument. *Zitlow v. C.*, 175M615, 221NW244.

6940. Powers.

Where notary of one county takes acknowledgment in another county the venue of the certificate should be

entitled in the county where taken, and the recital and designation should be of the county for which he holds the commission. *Op. Atty. Gen.*, Feb. 10, 1933.

Notary public has power to take acknowledgment in county other than that in which he resided at time his commission was issued. *Op. Atty. Gen.*, July 24, 1933.

6946. Misconduct.

The violation of this section as well as section 10323 did not prevent a prosecution under that section. 171 M345, 214NW262.

CHAPTER 47

Resignations—Vacancies—Removals

6952. Resignations.

Offices of alderman and constable in city of Le Sueur are incompatible, and where one qualified for office of constable, he automatically vacated his office as alderman, and no resignation was necessary. *Op. Atty. Gen.*, May 9, 1933.

6953. Vacancies.

Failure of town treasurer to qualify creates a vacancy which may be filled by appointment. *Op. Atty. Gen.*, Mar. 21, 1929.

Whether village treasurer who has obtained a position in another state may still hold the office depends upon whether or not he has ceased to be an inhabitant of the village. *Op. Atty. Gen.*, Mar. 4, 1931.

Removal from office takes effect irrevocably upon conviction and imposition of sentence, and the officer is not restored upon the entry of a stay of execution of the taking of an appeal. *Op. Atty. Gen.*, Sept. 1, 1931.

With the possible exception of officers in certain villages operating under special laws, there is no provision for the removal of an elective village officer for misconduct except by securing his conviction of a felony or of an offense involving a violation of his official oath. *Op. Atty. Gen.*, Sept. 1, 1931.

Subd. 2.

Question whether resignation of president of council of the village of Buhl would become effective immediately without any action on the part of the board discussed. *Op. Atty. Gen.*, Mar. 3, 1932.

Subd. 5.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. *Op. Atty. Gen.*, Feb. 10, 1930.

A village recorder wilfully failing to perform the duties of his office may be convicted under §10028, and thus create a vacancy in his office under this section. *Op. Atty. Gen.*, Oct. 20, 1931.

One acting as assistant assessor in city of Eveleth was not officer and there was no vacation of office by reason of his conviction of crime. *Op. Atty. Gen.*, May 14, 1932.

There is no provision of law for removal of village trustee but his office becomes vacant upon conviction of an infamous crime or any offense involving a violation of his official oath. *Op. Atty. Gen.*, Apr. 6, 1933.

6954. Removal by governor.

The duties of the governor under this section are not mandatory, are not merely ministerial, and cannot be coerced by mandamus. 179M337, 229NW313.

Protracted absences of justice from his town might amount to nonfeasance in office. *Op. Atty. Gen.*, Mar. 19, 1929.

If municipal judge neglects his duties or corruptly violates his oath of office, his removal should be sought by petition to governor. *Op. Atty. Gen.*, June 26, 1933.

Governor cannot remove village constable. *Op. Atty. Gen.*, Aug. 31, 1933.

6955. Special commissioner to take testimony.

179M337, 229NW313.

6957. Appointment—How long to continue—Impeachment.

No lawful ballots can be cast for office of sheriff at a general election unless term of incumbent, whether elected or appointed, expires on first Monday of January following such election. *State v. Borgen*, 248NW 744.

The provisions of Laws 1929, c. 413, prevail over this section, and a person appointed to fill a vacancy in a village office holds until the expiration of the term, and not merely until the next municipal election. *Op. Atty. Gen.*, Nov. 13, 1931.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oath of office.

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. 171M376, 214NW258.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. *Op. Atty. Gen.*, Feb. 10, 1930.

6965. Forms of oath, etc.

Attorneys suspended for misconduct. 177M203, 225 NW97.

6967. By whom and how administered.

List of officers authorized to administer oaths and take acknowledgments and requirements as to attachment of seal stated. *Op. Atty. Gen.*, Mar. 23, 1933.

ACKNOWLEDGMENTS

6971. Corporate acknowledgment—Evidence.

Op. Atty. Gen., March 23, 1933; note under §6967.

6981. Execution according to foreign law.—All deeds and other instruments may be executed and ac-

knowledgeed in a foreign country in accordance with the laws of the place of execution.

If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws, shall be proved as follows:

1. If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof.

2. If in a foreign country, by the certificate of an officer of the United States authorized by this chapter to take acknowledgments therein, under his seal of office, if there be one.

3. If there be no such officer of the United States therein, then by the certificate of a counselor or diplomatic officer of any other nation with which the United States has diplomatic relations, in which case, the seal of such consular or diplomatic officer shall

be certified by his Foreign Office or by the diplomatic representative of such nation in the United States.

4. Any instrument heretofore or hereafter executed, acknowledged and certified as provided herein, shall entitle such instrument to be admitted and read in evidence in all courts and elsewhere without other proof of execution. (R. L. '05, §2691; G. S. '13, §5748; Apr. 18, 1931, c. 201.)

(1). If an instrument is executed in accordance with the laws of the place of execution, it is entitled to record in this state, provided there is attached thereto a certificate of the clerk or other certifying officer of the court of record of the county or district so showing. Op. Att. Gen., Aug. 7, 1931.

6983. Acknowledgments after expiration of commission—Curative.

Laws 1929, c. 169, and Laws 1929, c. 214, legalizes acknowledgments taken by person after expiration of term.

CHAPTER 49

Fees

6987. Fees of clerk of district court.

Fees earned by clerk of district court, but outstanding on account should be included in the statement. Op. Att. Gen., Jan. 7, 1932.

Fees received by clerk of district court under section 2097 should be included in the statement. Op. Att. Gen., Jan. 7, 1932.

(40). This section applies to a default action to foreclose a real estate mortgage though the action is tried to the court, and clerk's fees are limited to \$4.00. Op. Att. Gen., Apr. 27, 1931.

6987-1. Fees of the clerk of the District Court.—

In any county of this state where incumbents of the office of clerk of the district court prior to the incumbent holding office at the time of the passage of this act have neglected for six years to enter or file papers or other documents or index the same in such office which should have been entered or filed by them, and as a result thereof the county records are incomplete, the board of county commissioners may agree with the clerk of the district court to properly enter or file all such papers and documents and index the same, and for such work may pay such clerk in addition to the salary and clerk hire provided by law, the fees provided for such work by General Statutes 1923, Section 6987; provided, that no such extra fee shall be paid for the doing of any work which should have been done by such incumbent. (Act Apr. 16, 1929, c. 207.)

6991. Fees, when paid—other fees.

In order to effect a change of venue, the deposit fee must be paid within the prescribed time. 178M617, 225 NW926.

6993. Fees of sheriffs.

Sheriff is entitled to mileage both going and returning from serving papers. Op. Att. Gen., Feb. 14, 1929.

Sheriff in selling pledged property at auction under Mason's Stat. 1927, §8561, is entitled to \$1.50 for posting notices and \$3.00 for the sale. Op. Att. Gen., May 20, 1929.

Deputy sheriff is not entitled to compensation to which the sheriff is not entitled. Op. Att. Gen., May 17, 1930.

Sheriff is entitled to mileage for distance actually traveled, and where he receives flat rate for use of his automobile he is not entitled to mileage. A per diem is not allowable unless given by statute. Op. Att. Gen., June 17, 1930.

County clerk is charged only with duty of preparing original citations in delinquent personal property tax proceedings, and it is the duty of the sheriff to prepare such copies as he needs for service, for which he may be allowed a reasonable compensation. Op. Att. Gen., Aug. 1, 1930.

Sheriff is not entitled to a fee from the county for selling property on execution under a judgment in favor of county against sureties on a depository bond. Op. Att. Gen., Dec. 23, 1930.

Sheriff is not entitled to charge any fees for time spent in appearing in habeas corpus proceedings. Op. Att. Gen., May 6, 1931.

This section is affected as to the sheriffs of some counties by Laws 1931, c. 331, ante §§254-47, 254-48. Op. Att. Gen., May 23, 1931.

A sheriff transporting a feeble-minded person to a state institution is entitled to reimbursement for his actual expenses in transporting the person mentioned, and where he uses his own car the expense may exceed seven cents per mile while the feeble-minded person is in the car. Op. Att. Gen., June 15, 1931.

The general fee statute with reference to sheriffs is superseded by Laws 1917, c. 312, fixing the salaries of sheriffs in certain counties, and the sheriff of a county under that law is not entitled to fees or mileage for serving a criminal warrant. Op. Att. Gen., Nov. 27, 1931.

Limit of indebtedness which may be contracted by county in anticipation of uncollected taxes pursuant to §1938-21, includes county charges under this section. Op. Att. Gen., Apr. 28, 1932.

(5). On sale of land under divorce decree providing that "said lien be enforced on execution according to law and statute provided for sale of property on execution" sheriff was merely entitled to ordinary fee for selling property under decree. Op. Att. Gen., July 1, 1932.

(Whenver a collection is made on execution after levy, sheriff is entitled to fees provided herein, but is not entitled to mileage in addition thereto. Op. Att. Gen., Oct. 14, 1932.

(9). Sheriff is entitled to the usual mileage allowance in addition to the three dollar fee for serving a writ of restitution. Op. Att. Gen., Oct. 5, 1931.

(19). A sheriff is entitled to charge \$1 in returning an execution unsatisfied except where the county may be a party. Op. Att. Gen., Mar. 8, 1932.

Whenever the sheriff makes a partial collection or collects upon the execution in full, he is not entitled to charge \$1, but must obtain his fees out of the money so collected. Op. Att. Gen., Mar. 8, 1932.

(24). Sheriff may charge officials of another state a fee of \$4.00 per day in transporting a prisoner demanded by another state to the boundary line of this state. Op. Att. Gen., May 6, 1931.

(25). If a sheriff serves different individuals with notices in two separate actions on the same trip, he is entitled to full mileage from the county seat and back for each action. Op. Att. Gen., Aug. 5, 1930.

Where a number of services are made in the same action upon different persons, the sheriff is entitled to charge \$1.00 for each notice served, but only mileage for distance traveled and not full mileage from county seat and return for each individual service. Op. Att. Gen., Aug. 5, 1930.

6994. Compensation of sheriffs, etc., in certain counties.

Op. Att. Gen., July 11, 1932; note under §7005.

6995. Fees of coroners.

Coroner cannot charge fee for testifying as expert witness at inquest called by deputy. Op. Att. Gen., Sept. 13, 1929.

This section is not superseded by Laws 1931, c. 331 (§§254-47, 254-48). Op. Att. Gen., Oct. 14, 1932.

(2). This section supersedes and amends sec. 952 as to coroners' fees. Op. Att. Gen., Jan. 26, 1933.

6996. Fees of constables.

A constable serving at election polls is entitled to same compensation as a special officer. Op. Att. Gen., Apr. 11, 1933.

Compensation of judges and clerks of election and peace officers cannot be diminished or increased by any other except legislature. Id.

(10). A constable attending on justice's court is entitled to only \$1 per day regardless of the number of cases and regardless of whether or not the constable testifies therein. Op. Att. Gen., Dec. 19, 1931.

(11). Mileage of ten cents provided for constables under this subdivision is not affected by Laws 1931, c. 331, ante, §§254-47, 254-48. Op. Att. Gen., July 2, 1931.

A constable is entitled to mileage while transporting a prisoner to a county jail, and the amount of the allowance is not affected by Laws 1931, c. 331, ante, §§254-47, 254-48. Op. Att. Gen., July 7, 1931.

(20). Amount of mileage allowance to constable for transporting prisoner to county jail is not affected by Laws 1933, c. 13. Op. Att. Gen., Sept. 22, 1933.

6998. Fees of justices of the peace.

In computing folios for determining fees, all printed matter, as well as matter filled in, is considered. Op. Att. Gen., Sept. 30, 1930.