

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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and death is merely conjectural and speculative. *Peterson v. L.*, 186M101, 242NW549. See Dun. Dig. 2620.

In an action for wrongful death of wife, evidence of plaintiff's use of intoxicants, coupled with testimony indicating that wife, because thereof, was contemplating a separation and possible divorce, is relevant. *Peterson v. P.*, 186M583, 244NW68. See Dun. Dig. 2617.

Evidence held to sustain finding that death from lobar pneumonia 52 days after automobile accident was caused by it. *Anderson v. A.*, 248NW35. See Dun. Dig. 2620, 6999.

**9661. Next of kin—Liability for debts.**

32F(2d)665.

CHAPTER 85

Official and Other Bonds—Fines and Forfeitures

**9677. Bonds, etc.**

City officials should furnish new bond at beginning of each term of office, and a renewal certificate of bonding company is insufficient. *Op. Atty. Gen.*, Jan. 24, 1933.

Relected township officials are required to furnish new bonds instead of renewal certificates. *Op. Atty. Gen.*, June 5, 1933.

**9677-1. State may take fidelity insurance.**—The comptroller from time to time shall make surveys of each department or other agency of the state government to determine the employes in such department or agency whose fidelity should be assured by individual bond or fidelity insurance policy, and the amount of such bond or insurance necessary for each such employe, and shall submit a list thereof to the commission of administration and finance for its action thereon. The commission may approve in whole or in part and shall certify its action thereon to the directing head of each such department or agency, who shall require each of the employes so listed to give bond to the state in the amount indicated in such certificate. The commission in such certificate may direct that, in lieu of individual bonds so required, the directing head of any such department or agency shall procure and keep in effect a schedule or position insurance policy, in such aggregate amount as the commission shall direct, insuring the fidelity of such department employes in the respective amounts so required, upon a form to be prescribed by the comptroller. Such policy may cover also the subordinate officers of such department required by law to give bond to the state, and in the amount which the Commission shall require. The surety upon the bonds of all state officers and state employes required under any law of the state shall be a corporation authorized to act as sole surety upon such official bonds, and all such bonds shall be approved by the attorney general as to form and generally by the comptroller, who shall keep an appropriate record of such approval and cause such bond or policy to be filed in the office of the secretary of state. (Laws 1929, c. 263, §1; Apr. 20, 1931, c. 233, §1.)

**9677-2. Payment of premium.**—The premiums upon the bonds of all state officers and the premiums on all fidelity insurance placed under the provisions of this act shall be paid out of the appropriation for the maintenance of the department for which such bond or insurance is required, and such fidelity insurance, when placed in lieu of individual bond, shall be deemed full compliance with any provision of law requiring any such official or employe to give bond to the state for the faithful discharge of duty. If schedule or position insurance is provided covering the personnel of any department or agency all individual fidelity bonds covering such officers or employes theretofore bonded shall be canceled and a proportionate part of the premiums paid therefor refunded. (Laws 1929, c. 263, §2; Apr. 20, 1931, c. 233, §2.)

**9677-3. Inconsistent acts repealed.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Laws 1929, c. 263, §3; Apr. 20, 1931, c. 233, §3.)

**9687. State and county officers—Uniform bond.**

Village treasurer and surety on official bond were not relieved from liability for money of village deposited in a bank that failed, where there was no compliance with statute. *Village of Hallock v. P.*, 250NW4. See Dun. Dig. 8022.

Interest cannot be recovered of the surety until notice of breach and demand to make good default of treasurer. *Id.* See Dun. Dig. 4884.

Sureties on bond of school district treasurer cannot withdraw therefrom until the expiration of the term or by consent of all parties concerned. *Op. Atty. Gen.*, Nov. 5, 1931.

**9689. Surety companies.**

Surety company held to have breached bond by failing to establish and maintain mortgage as lien prior to mechanic's liens. *Danielski v. P.*, 186M24, 242NW342. See Dun. Dig. 9107c.

In action on lien priority bond, evidence held to sustain finding that plaintiff suffered damages through failure of surety to establish and maintain mortgage as lien prior to mechanic's liens. *Danielski v. P.*, 186M24, 242NW342.

**9692. Undertaking in lieu of bond.**

174M56, 218NW444.

State is not required to furnish a bond in order to procure a temporary writ of injunction. *State v. Nelson.* 248NW751. See Dun. Dig. 4499.

Where county issued auditor's warrant to Minnesota State Sanitarium and it was lost in the mail, the county auditor could issue a duplicate without a bond of the estate. *Op. Atty. Gen.*, Aug. 20, 1931.

**9693. Cost of surety bonds to be expense of receivers.**

Any receiver, assignee, trustee, committee, guardian, executor, administrator, or other fiduciary, required by law to give bond as such, may include as a part of his lawful expenses such actual sum paid for such suretyship, not exceeding ten dollars per annum when the amount of the bond is not more than one thousand dollars, and not more than one per cent per annum on the excess when over one thousand dollars, as the head of the department, court, judge, or officer by whom or the court or body by which he is appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein the reasonable fees of such company for executing or guaranteeing any bond or undertaking therein. The several county and town boards, and the governing body of any city, village, or school district, may allow the treasurer of the municipality such reasonable sum, not exceeding the amount herein specified, as may have been paid by him for such suretyship, to be paid out of the general revenue fund of the municipality: Provided, that the officers required by law to approve such bill may first designate the surety company to be employed, if its charges be as low as those offered by any other responsible company. (R. L. '05, §4528; G. S. '13, §8238; Apr. 17, 1933, c. 311.)

Probate judge must keep record of proceedings in insanity and juvenile matters. *Op. Atty. Gen.*, Mar. 27, 1933.

**9694. Bonds, by whom approved.**

(3)

A supersedeas bond may be approved and filed in the Supreme Court after an appeal has been perfected and jurisdiction acquired. *Barrett v. S.*, 184M107, 237NW881. See Dun. Dig. 325(74).

**9695. Place of filing bonds.**

Village treasurer's bond need not be filed or recorded with register of deeds, and county is under no obligation to pay expense of recording. *Op. Atty. Gen.*, May 1, 1933.

**9700. Contractors bonds.**

No contract with the State, or with any municipal corporation or other public board or body thereof, for the doing of any public work, shall be valid for any purpose, unless the contractor shall give bond to the state or other body contracted with, for the use of the obligee and of all persons doing work or furnishing skill, tools, machinery or materials or insurance premiums or equipment or supplies for any camp maintained for the feeding or keeping of men and animals engaged under, or for the purpose of, such contract, conditioned for the

payment, as they become due, of all just claims for such work, tools, machinery, skill, materials, insurance premiums, equipment and supplies, for the completion of the contract in accordance with its terms, for saving the obligee harmless from all costs and charges that may accrue on account of the doing of the work specified, and for the enforcing of the terms of the bond if action is brought on the bond, including reasonable attorney's fees, in any case where such action is successfully maintained and for the compliance with the laws appertaining thereto. The penalty of such bond shall be not less than the contract price, and if after the giving of said bond the contract price should for any reason be increased, the obligee may require an additional bond, the penalty of which shall be not less than the amount of such increase, and if such additional bond be not furnished within ten days after such demand, the work on such contract shall cease until such additional bond shall have been furnished. Provided, that in contracts made by the state board of control or the Minnesota Highway Department on behalf of the state the penalty of the bond shall be in such amount as the state board of control or the Commissioner of Highways may fix, but not less than three-quarters of contract price. (R. L. '05, §4535; '09, c. 429, §1; G. S. '13, §8245; '23, c. 373, §1; Apr. 25, 1929, c. 369, §1; Apr. 20, 1931, c. 229, §1.)

#### 1. In general.

There could not be any recovery from. 172M259, 214 NW888.

"Insurance premiums" includes insurance. 174M366, 219NW546.

Purpose to furnish bond under this section being established, it cannot be defeated by omission of one of its provisions, either voluntary or through inadvertence. 174M366, 219NW546.

The charter of Duluth gives the city council power to enact ordinances regulating the letting of contracts for public work and prescribing surety bonds. 174M579, 219NW943.

Particular language of contract controlled over general language in bond as respected work to be done and premium chargeable for bond. 175M14, 220NW543.

Construction of two additional bridges under "work order," held not a change or modification of the original contract, but an independent undertaking, and surety on original bond was not entitled to additional premium. 175M14, 220NW543.

In a suit by a creditor against surety on bond which guarantees payment for material furnished, the doctrine of substantial performance has no application. 175M256, 220NW958.

Contractor discovering mistake in bid for construction of school building three years after the transaction, could not obtain recovery of the deposit which had been forfeited for failure to furnish a bond. 177M329, 225 NW149.

Commercial fisherman's license bond held intended to be limited to provisions of §9700 to 9705 and governed by such sections rather than §9191 with respect to service of notice within 90 days and suit within one year. Op. Atty. Gen., Aug. 28, 1933.

#### 2. "Materials."

While under rule of Miller v. Am. Bonding Co., 133 M336, 158NW432, there may be recovery for material and labor used in incidental repairs of contractor's machinery, there can be none for major repairs involving replacement of old with new parts in absence of proof that the new parts were consumed in the work. 178M288, 226NW940.

#### 3. Bank advancing money.

Bank held not entitled to recover from surety for advances made to contractor, following First Nat. Bank v. O'Neil, 176M258, 223NW298. First Nat. Bk. Aitkin v. H., 177M194, 225NW11.

#### 9701. Bidders to have right of action in certain cases.

Commission of Administration and Finance may return a bidder's check where he has made an honest mistake in his estimates without gross negligence on his part, provided the next lowest bidder accepts the job and the state suffers no loss. Op. Atty. Gen., July 31, 1931.

County should refuse to return deposit made with bid until liabilities under the contract partially performed have been determined, the contractor having attempted to perform the work without giving the bond required by statute. Op. Atty. Gen., Sept. 5, 1931.

**9702. Approval and filing of bond.**—Such bond shall be approved by, and filed with, the treasurer of the obligee named therein unless the contract be for work upon a state trunk highway, or erection, improvement, or repair of buildings for a state institu-

tion, in which case it shall be approved and filed with the board or officer having the financial management thereof (OF SUCH INSTITUTION). If such bond be not taken, the corporation or body for which work is done under the contract shall be liable to all persons furnishing labor, skill or material to the contractor thereunder for any loss resulting to them from such failure. No assignment, modification or change of the contract, or change in the work covered thereby, nor any extension of time for completion of the contract, shall release the sureties on said bond. (R. L. '05, §4536; '07, c. 379; G. S. '13, §8246; Apr. 13, 1931, c. 157.)

Construction of two additional bridges under "work order," held not a change or modification of the original contract but an independent undertaking, and surety on original bond was not entitled to additional premium. 175M14, 220NW543.

Construction of a more robust wall under work order, held a mere "change" or "modification" of the original contract. 175M14, 220NW543.

#### 9703. Action on bond.

175M8, 220NW958; notes under §9700, 9705.

A bank which advances money to pay checks for labor and material is not subrogated to the rights of the laborers and materialmen. First Nat. Bk. of Chisholm v. O., 176M258, 223NW298.

Bank held not entitled to recover from surety for advances made to contractor, following First Nat. Bank v. O'Neil, 176M258, 223NW298. First Nat. Bk. of Aitkin v. H., 177M194, 225NW11.

In action by surety against township to recover for completion of abandoned contract, burden of proof was upon plaintiff to show what work it performed and how much was still due. 177M408, 225NW291.

Liability on contractor's bond held properly determined by trial court by whom case was tried without a jury. 178M183, 226NW473.

**9705. Limit of time to bring action.**—No action shall be maintained on any such bond unless within ninety days after the completion of the contract and acceptance thereof by the proper public authorities, the claimant shall file a written notice specifying the nature and amount of his claim and the date of furnishing the last item thereof, in the office of the commissioner of insurance in case the contract is for the performance of work for the state or any department thereof, and in case the contract is let by any county, municipal corporation or other public board or body, then such notice shall be filed in the office of the county auditor of the county letting the contract or the county in which such municipal corporation, public board or body is situate, and if situate in two or more counties then such notice shall be filed in the office of the county auditor of each such county; nor unless the action is begun within one year after the filing of such notice. The county auditor shall enter the time of filing every such notice in a book kept for that purpose which shall be properly indexed. (R. L. '05, §4539; '09, c. 413, §1; G. S. '13, §8249; Apr. 25, 1929, c. 369, §2.)

Op. Atty. Gen., Aug. 28, 1933; note under §9700.

Notice mailed to the surety at its home office in another state, authorized action on bond. 171M305, 214 NW47.

In a suit on a contractor's bond for material furnished in the erection of a school building the notice prescribed by this section is sufficient though not specifying the date on which the last item was furnished; and the evidence held to show a proper service of the notice on the bonding company. 172M424, 215NW675.

Construed as referring to the "completion of the building" and not to the "completion of the contract." 174M366, 219NW546.

The doctrine of Johnson v. Laurence, 171M202, is not controlling as between the surety and creditors of a public contractor. 174M366, 219NW546.

As between the surety and creditors there must be strict performance of the contract, and the doctrine of substantial performance has no application. Id.

An acceptance of a building by a school board does not require the formal acceptance by motion or resolution passed by the board in session. It does require an act with intent to receive the building as its own as a compliance with the required duty of the contractor. 174 M366, 219NW546.

Notice required by this section does not apply to bonds given by those who enter contracts with city of Duluth for public work. 174M579, 219NW943.

Required notices to surety held given within 90 days of completion of contract. 175M256, 220NW958.

Notice on surety held to sufficiently specify the "nature of the claim." Any deficiency in notice was waived

by the surety retaining and acting on it without suggesting defect. 176M113, 222NW573.

The amendment by Laws 1929, c. 369, §2, does not apply to St. Paul, which has a home-rule charter. Guaranteed Concrete Co. v. G., 185M454, 241NW588.

**9705-1. Notice.**—The commissioner of insurance or the county auditor in whose office the written notice above specified is filed shall upon receipt of said written notice mail one copy of the same by registered mail to the principal contractor, at his last known address, and to each of the sureties on his bond, at their last known addresses, and the claimant shall at the time he files said written notice furnish the commissioner of insurance or the county auditor in whose office the notice is filed at least two copies of said notice. The commissioner of insurance or county auditor with whom said notice is filed shall be entitled to charge a fee of \$1.00 for filing said notice and mailing the copies as herein provided; and provided further that the failure of the commissioner of insurance or the county auditor with whom said notice is filed to mail said copies as herein provided, shall in no way affect the validity of the claim or the right of the claimant to maintain an action thereon. (Act Apr. 25, 1929, c. 369, §3.)

**9705-2. Not to affect pending actions.**—This act shall not affect any action or proceedings now pending in any of the courts of this state. (Act Apr. 25, 1929, c. 369, §4.)

**9705-3. Effective May 1, 1929.**—This act shall take effect and be in force from and after May 1, 1929. (Act Apr. 25, 1929, c. 369, §5.)

**9706. Actions for fines, forfeitures, and penalties, etc.**

Actions with respect to money found in forfeited gambling devices. Op. Atty. Gen., June 19, 1931.

**9707. Fines, how disposed of.**

Amount of forfeited bail bond paid into municipal court must be paid into county treasury. Op. Atty. Gen., Oct. 5, 1929.

Fine of one under complaint of inspector in department of agriculture, dairy and food, was properly remitted to county of conviction. Op. Atty. Gen., July 9, 1932.

**9708 1/2. \* \* \* \* \***

**DECISIONS RELATING TO CHAPTER IN GENERAL**

**1. Liability in general.**

Official bond covering term of officer and "until successor is elected and qualified" extends only for a reasonable time after expiration of term. American Surety Co. v. Independent School Dist., (CCA8), 53F(2d)178. See Dun. Dig. 8021.

**CHAPTER 86**

**Actions to Vacate Charters, Etc., and to Prevent Usurpations**

**9709. To annul act of incorporation—Fraud.**

179M373, 229NW353.

**9710. To vacate charter, etc.**

179M373, 229NW353.

**9711. For Usurpation of office, etc.**

Action by quo warranto to test title to office in private corporation may be brought in the district court by other officers and stockholders of the corporation without application to, or action by, the attorney general. 179M373, 229NW353.

**9717. Judgment for usurpation—Fine.**

Where a county commissioner accepts an incompatible office and enters upon the performance of the duties of such office, a vacancy as county commissioner exists, and he may not reassume the duties of the office of county commissioner after having resigned the incompatible office before the board of appointment had acted. Op. Atty. Gen., Feb. 8, 1932.

Where office of county commissioner is rendered vacant by officer's acceptance of an incompatible office, such officer may not be reappointed even after he has resigned the incompatible office. Op. Atty. Gen., Feb. 8, 1932.

**CHAPTER 87**

**Special Proceedings**

**MANDAMUS**

**9722. To whom issued.**

**1. When will lie.**

Where commerce commission suspends sale of registered securities pending a hearing to show cause why registration should not be cancelled, and before the hearing the corporation requests a cancellation of the registration, the commission has no right to compel the production of its records and papers, in the absence of some specific allegation of a violation of the Blue Sky Law. 172M328, 215NW186.

A writ will not be granted where, if issued, it would prove unavailing or where lapse of time has rendered the relief sought nugatory. 173M350, 217NW371.

Petitioner must show he is entitled to relief sought but where he seeks to compel public officials to form a governmental duty they are presumed able to perform and the burden is upon them to show the contrary. 173M350, 217NW371.

Where discretion of town supervisors with respect to the opening of a road has been exercised in an arbitrary and capricious manner, the court may exercise control, but it must be made to appear that there are not only available funds but also sufficient available funds to do whatever else may, in the reasonable judgment of the board, be needful on the other town roads. 175M34, 220NW166.

When an executive or administrative body determines a matter involving the exercise of its discretionary power the courts do not interfere. 175M583, 222NW285.

Mandamus is not the proper remedy to correct an error in fixing the time of trial, but if the trial court refuses to proceed with trial, mandamus is the remedy. State ex rel. Collins v. Dist. Ct. of Ramsey County, 176M636, 222NW931.

Power given by §2609 to town board to determine necessity of cutting down hedges and trees in highway is discretionary and cannot be controlled by mandamus. 177M372, 225NW296.

Mandamus does not issue from this court to review a judgment of the district court entered upon the hearing of a motion to dismiss an action brought by the relator, a resident and citizen of another state, under the Federal Employers' Liability Act to recover damages sustained while in the employ of a railroad engaged in interstate commerce in such other state. State ex rel. Boright v. Dist. Ct. Steele County. 178M236, 226NW569.

Will not be granted to compel county to publish annual statement in newspaper unlawfully entering into agreement with other papers to obtain contract. 178M484, 227NW499.

The writ will not lie to compel the attorney general to try a civil action brought by the state at the "next term" of court. 178M442, 227NW891.

The duties imposed on the governor by Mason's Minn. St., §§6954, 6955, relating to the removal of officers, is discretionary and not ministerial, and mandamus will not lie. 179M337, 229NW313.

Where town board was without funds, and agreement between towns as to allotment of town road for repairs was uncertain, mandamus to compel compliance with contract would not issue. 179M392, 229NW577.

Mandamus may be used to enforce right of a member of an incorporated relief association to be placed on pension roll under its by-laws. 181M444, 232NW797. See Dun. Dig. 5752, 5767.

The granting or withholding the remedy of mandamus rested in the discretion of the trial court, and the granting of the writ was not error. State v. Magie, 183M60, 235NW526. See Dun. Dig. 5752a.

The legal remedy of mandamus is granted on equitable principles, and the relator may be rejected if he has not "clean hands." State v. Magie, 183M60, 235NW526. See Dun. Dig. 5758, 5752(81).

Title to a public office cannot be determined in mandamus proceeding, but temporary possession of the office pending litigation to try title thereto may be con-