

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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repair work, shall constitute a part of the cost of such construction, cleaning and repair operation and shall be paid out of the proper ditch fund provided for the maintenance of the ditch so cleaned, constructed, or repaired, all such charges for the use of the machine to be credited to the county. ('27, c. 140, §2; Mar. 9, 1929, c. 50, §2.)

FINANCIAL PROVISIONS

6912-1. County Board may negotiate for extension of payment of bonds.—The County Board of any county in which there is situated any drainage district having a bonded indebtedness, shall have authority to negotiate with the holders of the bonds of such drainage district for the extension of the time of payment and the reduction of the rate of interest. In the event that the holders of two-thirds of the aggregate amount of such bonds shall consent in writing to such an extension of the time of payment

or to such a reduction of the rate of interest, or to both, and the County Board shall agree to such changes in the terms of such bonds, such changes shall become binding upon such county drainage district and upon all the holders of bonds against such drainage district, who shall have consented thereto, or who shall hereafter consent thereto, in writing. (Act Apr. 1, 1933, c. 140.)

CURATIVE AND MISCELLANEOUS PROVISIONS

In a proceeding to construct judicial ditch under Laws 1925, c. 415, the petition need be signed only by majority of residence owners, or by owners of 51% of the land affected, not by owners of lands benefited; such lands not being known until after survey. 172M295, 216NW 229.

6913-B. Errors.

Where ditch did not provide benefits contemplated for particular land, assessments paid could be refunded and charged against drainage district. Op. Atty. Gen., Feb. 8, 1934.

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.

Official action of notary public is not affected by insolvency of surety, but impairment of bonds does not affect liability of principal. Op. Atty. Gen., Oct. 25, 1933.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. Op. Atty. Gen. (320j), Dec. 13, 1934.

6939. Seal—Register.

A notary's certificate of acknowledgment without the seal is a nullity, and filing of chattel mortgage in office of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in

good faith. Hartkopf v. F., 191M595, 256NW169. See Dun. Dig. 71, 1445.

6940. Powers.

Certificate of acknowledgment stating that grantor acknowledged deed is some proof of genuineness of instrument. Craig v. W., 190M499, 252NW332. See Dun. Dig. 78.

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.

Resignation of a state senator may be accepted by the governor, but he need not issue a writ of election if there is to be no session of the legislature before expiration of term for which senator was elected. Op. Atty. Gen. (2801-2), Apr. 30, 1934.

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.

Vacancy in office of justice of the peace of city of Wayzata is to be filled by appointment of governor. Op. Atty. Gen. (266a-12), Apr. 20, 1934.

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and he cannot take acknowledgment without issue of a new commission. Op. Atty. Gen. (320j), Dec. 13, 1934.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

Subd. 1.

Person appointed to fill vacancy in office of county commissioner holds only until beginning of official year

next following the next ensuing general election. Op. Atty. Gen., Feb. 13, 1934.

Person appointed to fill vacancy in office of county commissioner holds until beginning of official year next following the next ensuing general election. Op. Atty. Gen. (126h), May 2, 1934.

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. 4.

Member of water, light, power and building commission must be an inhabitant and resident of the city. Op. Atty. Gen., Feb. 2, 1934.

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.

The term "infamous crime" would not apply to a conviction of a misdemeanor such as the illegal sale of liquor. Op. Atty. Gen. (61f), Aug. 21, 1934.

Whether illegal sale of liquor by mayor of a city involves a violation of his official oath depends on the nature of his oath and the place of the sale. Id.

Subd. 6.

Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). Op. Atty. Gen. (437a-15), June 21, 1935.