

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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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 counties; 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, 214NW47.

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. 174M366, 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.

Fines provided for in Laws 1933, c. 170 (§5015-40), are "not specially granted or appropriated by law," and in absence of any agreement, by charter or otherwise, between city of South St. Paul and County of Dakota, they shall be paid into the treasury of the county. Op. Atty. Gen., Dec. 18, 1933.

Fines and costs in state cases in municipal courts, such as misdemeanors, are to be paid to county treasurer. Op. Atty. Gen. (306b-6), Apr. 6, 1934.

Fines collected under §8335-3 should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

Justice of the peace is personally responsible for check taken in payment of fine. Op. Atty. Gen. (266b-9), Sept. 5, 1934.

9708½. * * * * *

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, Cert. den. 284US683, 52SCR200. 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.