

1938 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1938)
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 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.



Edited by

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

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1938

WAREHOUSE RECEIPTS

5111. Form of receipts—Essential terms.

Commission has authority to order warehousemen to indorse statutes respecting their liability upon face of receipts issued. Op. Atty. Gen. (371b-14), May 10, 1937.

5114. Definition of negotiable receipt.

Christensen v. S., 190M299, 251NW686; note under §5163.

5123. Lost or destroyed receipts.

Where grain has been stored by owner on his own premises and under seal and warehouse certificates have been issued by state grain inspection department and lost, bond may be given to protect all concerned in connection with application for loan from federal government. Op. Atty. Gen. (215c-9), June 2, 1934.

5163. Delivery of goods without obtaining negotiable receipt.

Where circumstances of a public warehouseman's misappropriation of storage grain are such as to indicate to commission merchant to whom it is shipped that misappropriation is not an isolated transaction but one of a series or in accordance with shipper's general practice or habit, commission merchant is put upon inquiry as to character of grain in subsequent shipments from warehouseman and, if such inquiry, pursued as far as circumstances of situation would lead a man of reasonable business prudence, would have disclosed misappropriation, commission merchant who sells subsequent shipments is liable to owners of grain or their assignee for its value. Christensen v. S., 190M299, 251NW686. See Dun. Dig. 10140.

A warehouseman operating under agreement of elevator for sale of deed and receives distributor's bond executed to secretary of agriculture of United States, acting on behalf of United States, may waive receipt provided for by this section. Op. Atty. Gen. (371b-14), Dec. 22, 1934.

WAREHOUSES IN CITIES AND VILLAGES WITH POPULATION OF 5,000 OR MORE

5172. Supervision by Commission over warehousemen.

Public warehouse statute does not apply to warehouse in village having less than 5,000 inhabitants. J. I. Case Co. v. J., 190M518, 252NW436.

5173. Construction of various terms.

Whether or not a certain person is a warehouseman is a question of fact to be determined by the commission. Op. Atty. Gen. (645b-21), Nov. 2, 1934.

Merchandise brokers maintaining a small warehouse for convenience of customers is a "warehouseman." Op. Atty. Gen. (371b-14), Nov. 27, 1934.

(c).

General bonded warehouses as authorized by Mason's U.S.C.A. Title 26, §393, are not within purview of act. Op. Atty. Gen. (645b-25), May 24, 1935.

A company operating field warehouses on grounds of plant of persons desiring to use their commodities for bank collateral purposes was a "warehouseman" subject to public warehouse statutes of state. Op. Atty. Gen. (654b-21), Feb. 27, 1936.

Opinion of Feb. 27, 1936, adhered to. Op. Atty. Gen. (645b-21), May 1, 1936.

5174. What is required of warehousemen.

Where plaintiff claimed warehouseman's lien as against conditional seller, evidence held not to show that conditional purchaser was lessee of any part of warehouse wherein goods were stored. J. I. Case Co. v. J., 190M518, 252NW436. See Dun. Dig. 10147.

Warehousemen's leasing rentals are to be fixed same as other rates. Op. Atty. Gen. (645b-22), Dec. 23, 1935.

5182. Obligation to issue uniform receipts.

Commission has authority to order warehousemen to indorse statutes respecting their liability upon face of receipts issued. Op. Atty. Gen. (371b-14), May 10, 1937.

5184. Filing schedule of rates.

Warehousemen's leasing rentals are to be fixed same as other rates. Op. Atty. Gen. (645b-22), Dec. 23, 1935.

5188. Commission to fix rates and regulations.

Warehousemen's leasing rentals are to be fixed same as other rates. Op. Atty. Gen. (645b-22), Dec. 23, 1935.

CHAPTER 28A

Department of Weights and Measures

5270. Department created—Jurisdiction of railroad and warehouse commission.

Op. Atty. Gen. (371b-2), July 5, 1934; note under §5282. Statutory provisions relative to weighing supersede any charter or ordinance provisions on same subject. Op. Atty. Gen. (495), Dec. 27, 1935.

5276. Duties and powers of department.

175M276, 221NW6.

5277. Inspecting, testing, sealing—Incorrect weights, measures, etc.

Statutory provisions relative to weighing supersede any charter or ordinance provisions on same subject. Op. Atty. Gen. (495), Dec. 27, 1935.

5282. Abolishing fee for inspection of weights and measures.

This section has no application to question as to whether common carriers or warehouse or elevator should be billed for cost of testing track scales used by common carrier for purpose of weighing carload freight. Op. Atty. Gen. (371b-2), July 5, 1934.

INSPECTION OF METERS AND DEVICES FOR MEASURING OF ELECTRICITY, GAS AND WATER

5285-1. Inspection and test by railroad and warehouse commission—Petition for by residents of municipalities—Fees—Sealing and labeling devices.—The railroad and warehouse commission shall have power to inspect and test all meters, mechanical devices and measures of every kind, and tools, appliances and accessories connected therewith, used, employed, kept, sold or offered or exposed for sale within this state for the purpose of measuring the amount, quantity or extent of electricity, gas or water furnished, sold or distributed to the public by any person, association, corporation or municipality except cities of the first class having, or which may hereafter have meter inspection departments. Upon petition of at least 10 consumers of electricity, gas or water within the

territorial limits of any municipality and upon the deposit with the clerk of such municipality by each of such consumers of a fee of 25 cents for each such meter, mechanical device and measure installed or used upon the premises of each such petitioning consumer, the governing body of such municipality may request the commission to make an inspection and test of all such meters, mechanical devices and measures upon the premises of such petitioning consumers. Thereupon the commission, within a reasonable time after the receipt by it of such request shall proceed to make an inspection and test of all such meters, mechanical devices and measures upon the premises of all such petitioning consumers and upon the premises of all other consumers within such municipality who, at the time of such inspection and test, shall have deposited with the clerk of such municipality said fee of 25 cents for each such meter, mechanical device and measure upon the premises of such consumers. All such fees collected by the clerk of any such municipality shall be remitted by such municipality to the commission within 30 days of the completion of such inspection and test, and deposited to the credit of the Weights and Measures fund. All such meters, mechanical devices and measures found, upon inspection, to be correct and accurate, shall be sealed with proper devices to be approved by the commission. The commission, or any of its employes, shall condemn, seize and destroy all incorrect and inaccurate meters, mechanical devices and measures which, in the judgment of the commission, cannot be satisfactorily repaired; and such as are incorrect and inaccurate and yet may be repaired, shall be marked as "Condemned for Repair," in the manner to be prescribed by the commission. The owners of such meters, mechanical devices and measures which have been so "Condemned for Repair," shall have the same repaired and corrected within 30 days; and such meters, mechanical devices

and measures shall not be disposed of without the consent of the commission. In the general performance of its duty the commission, or any of its employes, may enter or go into or upon any premises, building, stand or place at all reasonable times. ('27, c. 291, §1 [Eff. July 1, 1927, by §3]; Mar. 27, 1931, c. 98.)

Mandatory jurisdiction of commission to test meters may only be invoked by governing body of municipality. Op. Atty. Gen. (371b), Sept. 24, 1936.

WEIGHING AND GRADING OF SLAUGHTER LIVESTOCK

5285-11. Definitions.—(a) As used herein, the terms "packing plants" and "slaughtering houses" shall mean plants, houses and places of business where livestock purchased or acquired at places within the state of Minnesota are slaughtered.

(b) The term "concentration point" shall mean any stockyards at which livestock is assembled by rail, or by rail and/or other means of transportation, and at which livestock is bought and sold or is assembled for shipment or reshipment to a packing plant or a public stockyards, or graded or weighed for the purpose of establishing a basis for sale or reshipment. A concentration point shall not be considered to be a railroad stockyards owned and operated by a railroad company and used as a railroad shipping facility and which is used by the public only for loading and unloading of livestock shipped by rail. A concentration point shall not be considered to be a stockyard or place where only feeder pigs weighing 50 pounds or less are sold.

(c) The term "buyer" shall mean any person, firm, corporation, or his or its employees, agents and representatives, engaged in buying slaughter livestock direct from producers, their agents or representatives, except persons engaged exclusively in the sale of meats at retail.

(d) The term "packers" shall mean any person engaged in the business of buying livestock for purposes of slaughter or of manufacturing or preparing meats or meat products for sale or shipment within the state of Minnesota. "Packers" shall not include persons engaged exclusively in the sale of meats at retail.

(e) The term livestock commission merchant shall mean any person or firm engaged in selling or buying livestock at a public terminal livestock market. (Act Apr. 20, 1935, c. 216, §1.)

Act. includes stockyards defined by the Packers and Stockyards Act, but is inoperative as to stockyards under supervision of Secretary of Agriculture, except that Secretary may appoint a state agency for weighing of livestock. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

Packers at public terminal livestock market are not "buyers" where the purchasers are from commission firms and not directly from producers. Id.
This act amends in several respects Laws 1919, Ex. Sess., c. 40 (§§4685, et seq.). Id.

(e). A packing company buying slaughter livestock direct from producers, their agents or representatives, and not engaged exclusively in sale of meats at retail, is a "buyer." Op. Atty. Gen. (371b-10), Mar. 17, 1937.

A packing establishment which is a "packer" within definition of federal packers and stockyards act, but which is not subject to federal regulation as a "stockyard" is subject to provisions of this act relating to licensing of buyers. Id.

5285-12. Railroad and warehouse commission to appoint weighers.—The railroad and warehouse commission shall appoint at packing plants, slaughtering houses and concentration points where the average daily number of livestock slaughtered or handled is 250 head or more, such weighers as may be necessary for weighing livestock, provided that no weighers shall be appointed at packing plants or slaughtering houses at which the only livestock slaughtered or handled is purchased or acquired at a public stockyards as defined by Laws 1919, Chapter 461 [§5255]. The commission shall prescribe and follow such reasonable regulations as it deems necessary for determining such daily average. Such weighers shall weigh

all livestock coming to said places for sale or slaughter, unless the same has been previously weighed by state weighers, and shall keep a record thereof. Upon request the weighers shall furnish the interested parties a certificate setting forth the number of animals weighed and the actual weight of such animal or animals. Such certificate shall be prima facie evidence of the facts therein certified. The scales at all such places on which livestock is weighed shall be constructed and maintained in accordance with requirements of the state department of weights and measures, and shall be tested up to the maximum draft that may be weighed thereon by the state department of weights and measures at least once every 30 days. (Act Apr. 20, 1935, c. 216, §2.)

Commission is authorized to fix hours during which weighing services will be performed. Op. Atty. Gen. (271b-10), Aug. 29, 1936.

Commission has no power to relax apparent requirement as to weighing and feeding of livestock at concentration points. Id.

Commission has jurisdiction to weigh stock at packing plant slaughtering 250 head or more daily notwithstanding stock has been purchased elsewhere in state. Op. Atty. Gen. (371b-10), Feb. 17, 1937.

5285-13. Commission to fix fees.—The commission shall prescribe the fee necessary to cover the cost of such weighing, to be assessed and collected from the seller in such manner as the commission may prescribe, providing that the fee assessed be the same, and the manner of collection thereof be uniform at all markets, including the public terminal livestock market, in the state of Minnesota at which the average daily number of head of livestock bought and sold is 250 or more. All monies so collected shall be deposited in the state treasury and known as the livestock weighing fund, and shall be paid out only on the order of the commission and the auditor's warrant. (Act Apr. 20, 1935, c. 216, §3.)

Commission is authorized to appoint weighers at points like Austin, Amberton and Albert Lea and assess costs of weighing against interested packing company, if points referred to are packing plants, slaughter houses or concentration points where the average daily run is 250 head or more. Op. Atty. Gen. (371-10), Aug. 29, 1936.

5285-14. Qualifications of weighers.—No weigher shall during his term of service be in any manner interested in the handling, shipping, purchase or sale of livestock, nor in the employment of any person or corporation engaged therein. (Act Apr. 20, 1935, c. 216, §4.)

5285-15. Bonds.—Every such weigher shall give to the state a bond in the sum of \$2,000.00, conditioned for the faithful discharge of his duties. (Act Apr. 20, 1935, c. 216, §5.)

5285-16. Certain acts deemed gross misdemeanor.—Any weigher who shall knowingly or carelessly weigh any livestock improperly, or give any false certificate of weight, or accept money or other consideration directly or indirectly for any neglect or improper performance of duty, or who shall be guilty of any neglect of duty, and any person who shall, improperly, influence or attempt to influence any such weigher in the performance of his duty by preventing his proper access to the scales used in the weighing of livestock or otherwise, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00, or by imprisonment in the county jail for not less than 30 days, nor more than one year, or by both such fine and imprisonment. (Act Apr. 20, 1935, c. 216, §6.)

5285-17. Commission to prescribe rules and regulations.—(a) The railroad and warehouse commission shall prescribe rules and regulations relating to the weighing, fill, dockage, grades and inspection of livestock, and it shall be the duty of every owner or operator of any packing plant, slaughtering house and concentration point to comply with such rules and regulations, and the commission shall employ not

more than nine inspectors at a salary not to exceed \$3,000.00 each per annum to supervise and inspect the weighing, grading, fill and dockage of livestock at packing plants, slaughtering houses, concentration points and public stockyards, and to insure compliance with such rules and regulations and with the provisions of this act; provided, however, that nothing herein contained shall authorize or empower the commission to employ or designate any person or persons to fill, dock or grade livestock.

(b) Every owner or proprietor of a packing plant, slaughtering house or concentration point and every livestock commission merchant shall keep within the state of Minnesota such accounts, records and memoranda as to fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stock holding or otherwise. The commission is authorized to require annual or more frequent reports from every owner or proprietor of any packing plant, slaughtering house, concentration point or public stockyards subject to the provisions of this act, in such form or forms and relating to such matters and things connected with such business as the commission may prescribe. The commission shall at all times have access to all accounts, records and memoranda, including all documents, papers and correspondence on the date that this act becomes a law or thereafter existing and kept or required to be kept by owners or operators of packing houses, slaughtering houses, concentration points and public stockyards subject to this act. The commission may prescribe the manner and form in which such accounts, records and memoranda shall be kept and the matters and things connected with the business of such person or persons which such accounts, records and memoranda shall disclose. Thereafter any person who fails to keep accounts, records and memoranda in the manner and form prescribed or approved by the commission shall upon conviction be fined not more than \$10,000.00, or imprisoned not more than one year, or both.

(c) Any employee or agent of the commission duly authorized in writing by the commission shall at all reasonable times, for the purpose of examination, have access to and the right to copy any book, account, record, paper or correspondence relating to the business of any owner or operator of a packing plant, slaughtering house, concentration point or public stockyards, or to which the commission is authorized to have access under the provisions hereof. Any person who upon demand refuses any duly authorized employee or agent of the commission such right of access or copying, or hinders, obstructs or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of \$500.00 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Said penalty shall be recoverable in a civil suit brought in the name of the state of Minnesota and shall be paid into the treasury of the state as miscellaneous receipts.

(d) Upon the application of the attorney general of the state of Minnesota at the request of the commission, the district courts of the state of Minnesota shall have jurisdiction to issue writs of mandamus commanding the owner or operator of any packing plant, slaughtering house or concentration point to comply with the provisions of this section of this act, or any order of the commission made in pursuance thereof. (Act Apr. 20, 1935, c. 216, §7.)

Power granted to commission to make rules and regulations is not delegation of legislative power. Op. Atty. Gen. (82c), Mar. 21, 1935.

(h). Commission is to prescribe form but packers must provide printing costs for themselves. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

5285-18. Buyers must be licensed after June 30, 1935.—On and after June 30, 1935, all buyers of live-

stock as herein defined shall be duly licensed as hereinafter provided. No agent shall act for any such buyer unless the buyer is duly licensed and has designated such agent to act in his behalf and notified the railroad and warehouse commission in his application for license or in writing of such appointment, and requested the commission to issue to such agent an agent's license. The buyer shall be accountable and responsible for the acts of his or its agents.

Each livestock commission merchant, person, firm, corporation, or his or its employees, agents and representatives, before engaging in the business of buying livestock, shall annually on or before June 30th of each year file an application with the railroad and warehouse commission on a form prescribed by it for a license to transact such business. The application shall state the nature of the business as hereinabove set forth, the name or names of the person or persons applying for the license, and if the applicant be a firm, association, partnership or corporation, the full name of each member of such firm, association or partnership, or the names of the officers of the corporation, and the name of the agent or agents of such person, firm, association, partnership or corporation, the postoffice address of the principal place of business of the applicant and such other facts as the commission shall prescribe.

Each applicant shall file with his application a surety bond issued by a responsible surety company in the sum of \$2,000.00, in which the commission shall be the obligee but which shall be for the purpose of protecting any person dealing with such applicant, or his or their agent or agents, from loss by reason of acts of fraud, dishonesty, forgery and theft on the part of the principal and/or his or their agents and representatives. The commission shall thereupon issue to such applicant on payment of the sum of five dollars a license entitling the applicant to conduct the business of buying livestock at the place or places named in the application until the 31st day of March next following. A similar license shall be issued to each agent upon the payment of five dollars, and no agent shall engage in the buying of livestock without first securing a license.

The commission may decline to grant or may revoke a license when it is satisfied that (a) the applicant or licensee has violated the laws of this state governing the shipment or transportation of livestock; (b) that the applicant or licensee has been guilty of fraudulent practices in the purchase of livestock or in dealing in livestock; or (c) that the applicant or licensee has violated or failed to comply with the provisions of this act. Before any license shall be revoked the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had before the commission upon at least ten days' notice to the licensee to determine whether such license shall be revoked or declined, which notice may be served either by registered mail addressed to the address of the licensee as shown in his application or in the manner provided by law for the service of a summons. At the time and place fixed for hearing the commission or any official, employee or agent of the commission authorized by the commission shall receive evidence, administer oaths, examine witnesses and hear the testimony, and shall thereafter file an order either dismissing the proceedings or revoking the license. (Act Apr. 20, 1935, c. 216, §8.)

License fee must be paid into state treasury pursuant to Mason's Stats. 1927, §121. Op. Atty. Gen. (1967), Oct. 4, 1935.

Commission may have licenses expire on June 30 of each year instead of March 31. Op. Atty. Gen. (832j-8), May 13, 1936.

Commission is not required to recognize any bond cancellation notice. Op. Atty. Gen. (371a-2), July 21, 1936.

Livestock buyers' bond expires on June 30 of each year and a new bond must be written annually. Id.

Penal sum of bond is surety's maximum liability. Id. Packers operating at South St. Paul are not required to secure a license or file a bond. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

5285-19. Buyers must keep records.—Each buyer shall keep a record in form satisfactory to the rail-

road and warehouse commission showing the grading of animals purchased, the number and weight of animals of each grade included in the purchase, the price per hundred pounds paid for the animals of each grade, the number of animals docked, the number of animals in each grade docked, and the amount of dockage of each grade and such other accounts, records and memoranda concerning his buying transactions as may from time to time be required by the commission, and the commission shall at all times have access to such accounts, records and memoranda and may at any time examine livestock purchased by buyer and may take such action as it deems necessary to prevent or discover violations of this act. (Act Apr. 20, 1935, c. 216, §9.)

5285-20. Scales must be tested regularly.—The buyers of slaughter livestock operating at concentration points shall have the scales upon which the animals are weighed, inspected and tested by a scale inspector of the state department of weights and measures at least once every thirty days at their own expense. All such scales shall be tested up to the maximum draft that may be weighed on the scales. (Act Apr. 20, 1935, c. 216, §10.)

Buyers of livestock must bear expense of testing and inspecting railroad stockyard scales at concentration point. Op. Atty. Gen. (495f-2), Oct. 14, 1935.

Expense of testing scales at union stockyards may not be charged against the stockyards company. Op. Atty. Gen. (371b-10), Nov. 20, 1935.

5285-21. Livestock must be fed before weighing.—The seller may require the buyer of his livestock to give the livestock such feed as it will consume during a two-hour period prior to weighing, the feed to be furnished by the buyer at the expense of the seller, and after such feeding the animals shall be given by

the buyer free access to water until their thirst is fully quenched. If, however, feeding is omitted, the actual scale weight shall apply as the sole basis for settlement with the shipper. (Act Apr. 20, 1935, c. 216, §11.)

Commission has no power to relax apparent requirement as to weighing and feeding of livestock at concentration points. Op. Atty. Gen. (371b-10), Aug. 29, 1936.

5285-22. Bonds to be filed with secretary of state.—All bonds required by this act shall be filed with the secretary of state. Suit may be brought thereon by any person injured by the misconduct of the principal. (Act Apr. 20, 1935, c. 216, §12.)

5285-23. Violations to be gross misdemeanor.—Any person who shall violate any of the provisions of this act, and for which violation no penalty is hereinbefore specified, shall be guilty of a gross misdemeanor and shall be punished for each such offense by a fine of not less than \$100.00 nor more than \$1,000.00, or by imprisonment in the county jail for not less than 30 days nor more than one year, or by both such fine and imprisonment. (Act Apr. 20, 1935, c. 216, §13.)

5285-24. Acts severable.—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate any other part or provision in the remainder of the Act; and if any part or provision of this Act shall for any reason be adjudged by any such court constitutionally inapplicable to any case within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other type of case within their terms. (Act Apr. 20, 1935, c. 216, §14.)

CHAPTER 28A-1

Telephone Companies

5287. Construction of "Telephone Company."

A telephone company after expiration of term of its original franchise, which was conditioned upon its furnishing to city free poles, wires, conductors, and conduits for its separate police and fire alarm systems, cannot be compelled by Railroad and Warehouse Commission to furnish such facilities to city; such use of its property not being a public use subject to commission supervision, but a strictly private use, to be covered, if at all, by voluntary contract. City of St. Paul v. T., 193M484, 258 NW822. See Dun. Dig. 9583a.

5289. Rates to be fair and reasonable.

Co-operative farm line telephone companies come under jurisdiction of commission as provided in this section. Op. Atty. Gen., Mar. 2, 1933.

Issue of confiscation as to telephone rates must be submitted to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Western Base Telephone Co. v. N., 188M524, 248NW220.

In determining rates, rural subscribers are not entitled to have considered profits made from advertisement in telephone directories. Id.

5290. Schedule of rates, etc.

Interstate business of telegraph and telephone companies comes under the federal law regulating commerce (Mason's U. S. Code. Title 49, Chap. 1.). 173M424, 217 NW386.

A telephone company after expiration of term of its original franchise, which was conditioned upon its furnishing to city free poles, wires, conductors, and conduits for its separate police and fire alarm systems, cannot be compelled by Railroad and Warehouse Commission to furnish such facilities to city; such use of its property not being a public use subject to commission supervision, but a strictly private use, to be covered, if at all, by voluntary contract. City of St. Paul v. T., 193M484, 258 NW822. See Dun. Dig. 9583a.

5291. Commission to fix reasonable rates.

Act July 24, 1937, Sp. Ses., c. 98, §9, makes an appropriation of \$25,000 to constitute a revolving fund with which to conduct investigations of telephone rates. It is omitted as temporary.

Western Base Telephone Co. v. N., 188M524, 248NW220; note under §5296.

5295. Connections between telephone companies not discontinued.

In determining whether one is guilty of an offense under §5310 in severing the connection between a company's exchange and the rural telephone company, the fact that the connection was made under private arrangements and not pursuant to an order of the Railroad and Warehouse Commission would be immaterial. Op. Atty. Gen., April 7, 1931.

A nonstockholder served by co-operative farm line telephone company has no enforceable right where majority of stockholders disconnect line from exchanges of other companies. Op. Atty. Gen., Mar. 2, 1933.

Township telephone system may sever connection without consent of railroad and warehouse commission. Op. Atty. Gen. (434a-8), Apr. 24, 1936.

5296. Telephone companies required to permit physical connection.

Right to compel physical connection between telephone companies rests entirely in statutory law. Western Base Telephone Co. v. N., 188M524, 248NW220.

Any rate for switching services between telephone companies is confiscatory if insufficient to constitute reasonable return on value of property used and services required. Id.

A sound method of apportionment of property jointly used in switching services is to base apportionment upon use which includes volume of traffic. Id.

Commission may disregard its own rules, which provide a method of determining cost of service stations' switching, when they are found inadequate or obsolete. Id.

Value of use is not shown by gross earnings. Id. Neither joint property nor joint traffic expense can be apportioned on the per circuit basis. Id.

Testimony by competent valuation experts who have recently examined property and made estimates is preferable to mere calculations based on averages and assumed probabilities based on official reports. Id.

First step in arriving at value of telephone plant, or any public utility, is to ascertain its reproduction cost new, less depreciation. Id.

Depreciation is that diminution in value of property which takes place in physical thing and is ascertained by physical inspection. Id.

Depreciation which has been overcome by repairs and replacements is not considered. Id.