

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.



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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 Buse 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 Buse 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 Buse 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.*

In fixing rate, company is entitled to any increase in value of property since it was acquired, but must stand loss of any shrinkage in value. *Id.*

Profits of the past cannot be used to sustain confiscatory rates for future. *Id.*

Rural companies receiving switching services are not entitled to credit for use of their lines and facilities by local exchange. *Id.*

Fact that company owning local exchange also owns toll lines occupying positions on its switchboard does not entitle rural subscribers to have toll lines share in expense incurred by exchange back of switchboard so as to, in any way, affect rates to be paid by them. *Id.*

5297. Free or reduced rates to officers, etc.

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.*

5299. Commission to grant authority for constructing telephone lines.

Duplication of telephone service is not to be regarded as contrary to the policy of the state, and it is to be permitted if the commission considers that it will promote public convenience by reducing rates so as to make it financially possible for greater number of persons to be served. *Op. Atty. Gen. (98a-13), July 12, 1934.*

5302. Municipalities given right to operate telephone exchanges.

Village council may sell or lease its telephone exchange without submission to electors. *Op. Atty. Gen., Apr. 16, 1929.*

5306. Companies given right to purchase property of other companies with consent of commission.

Section applies to sale of telephone exchange by a village. *Op. Atty. Gen., Apr. 16, 1929.*

Commission having consented to purchase of one telephone corporation by another had no power to thereafter revoke such order, and could take no official interest in proceedings before interstate commerce commission. *Op. Atty. Gen., May 10, 1933.*

5308. Mode of procedure for appeals from decisions of commission.

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 Buse Telephone Co. v. N., 188M524, 248NW220.*

Rate making is a legislative and not a judicial function. *Id.*

5310. Violation a gross misdemeanor.

In determining whether severing of connections would be a violation of §5295, the fact that the connection between the lines of the companies was made under a private arrangement would be immaterial. *Op. Atty. Gen., Apr. 7, 1931.*

In a prosecution for severing connections of lines of two companies in violation of §5295, complaint must allege sufficient facts to bring both companies within the definition of the term "telephone company" as set forth in §5287. *Op. Atty. Gen., Apr. 7, 1931.*

5311-1. Burden of proof to be upon telephone company.—In any investigation, action or proceeding arising under, or growing out of, an action initiated by the Commission upon its own motion, the burden of proof shall be upon the telephone company to establish the reasonableness of the existing rates. (Apr. 24, 1937, c. 426, §1.)

5311-2. Telephone companies to pay expense of revaluation.—(a) Whenever the Commission, in any rate proceeding initiated in the manner provided in Section 1, shall deem it necessary to ascertain and determine the value of any telephone property for rate making purposes, the telephone company whose properties are involved shall pay the reasonable expenses attributable thereto. In the order fixing the rates upon the valuation thus found, the Commission shall state the amount of such cost assessed against the telephone company, the details of which shall be made available to the company upon request, whereupon the company shall within 30 days deposit with the State Treasurer who shall enter the monies so received on the books in his office as a special fund to be known as the Minnesota Telephone Rate Investigation Fund and such funds shall by said treas-

urer be kept separate from all other state funds. The Railroad and Warehouse Commission when in need of funds to carry on the rate investigation shall make application to the State Auditor, specifying in detail what the funds are to be used for, who shall thereupon draw his warrant on the State Treasury for the amount required by the Railroad and Warehouse Commission to make such investigation:

Such expense so assessed against any telephone company shall be allowed and considered by the Commission as part of the operating expense of said company in fixing any rates for said company, and the expenses so assessed shall in no case exceed 1% of the gross operating exchange revenues in the last preceding calendar year derived from the particular exchange or exchanges, the rates of which are under investigation; or, in case of toll properties, of the gross intrastate toll operating revenues for such period.

(b) Amounts assessed against any telephone company in Section 2 that are not paid within 30 days after the mailing of a registered letter notifying the telephone company of the amount assessed against it, shall draw interest at the rate of 6% per annum, and upon failure to pay the same, the attorney general shall proceed by action in the name of the State, against such telephone company to collect the amount due, together with interest and costs of the suit. In such action the defendant shall be entitled to raise every relevant issue of law and fact, but the Commission's findings of fact made pursuant to this Act shall be prima facie evidence of the facts therein stated. (Apr. 24, 1937, c. 426, §2.)

5311-3. Companies to report to commission.

Every telephone company subject to the provisions of this Act shall make such reports to the Commission as it shall from time to time require, including such data and such detail as the Commission may determine necessary to permit the Commission to keep informed as to additions, removals and changes in the property of such company used, or useful, in rendering telephone service, and the cost thereof. (Apr. 24, 1937, c. 426, §3.)

5311-4. Expenditures not approved by commission not to be included.—In future rate case proceedings, the value of any specific additions or betterments then existing in the physical property placed after the passage of this Act, exceeding \$10,000.00 in cost, and not approved by the Commission, shall be excluded from the rate base value unless the telephone company can show at the time of such investment that such additions or betterments were then provided and in the public interest. (Apr. 24, 1937, c. 426, §4.)

5311-5. To what companies act shall apply.—The provisions of this Act shall apply only to telephone exchanges rendering service in cities of the first and second class and to toll properties of telephone companies operating toll lines in more than four counties of the state. (Apr. 24, 1937, c. 426, §5.)

5311-6. Provisions severable.—If any part, or parts, of the foregoing sections or subdivisions of this Act, or the application thereof to any persons or circumstances be held invalid, no other section, subdivision, clause, sentence, or provision of this Act shall be affected thereby. (Apr. 24, 1937, c. 426, §6.)

Sec. 7 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

5312. Town boards may construct telephone systems for fire protection.

Where an organized township constructs and maintains a town telephone system, under §§5312 to 5316 and furnishes ordinary telephone service thereby to private residents of township, town is engaged in operating a public utility and is liable for negligence of its officers and agents in so doing. *Storti v. T., 194M628, 261NW463. See Dun. Dig. 9658.*

Fact that township owned telephone system is also operated in part for governmental purposes, for protection from forest and prairie fires, promoting public

welfare, public health, and public safety, and facilitating work of public improvements, does not exempt town from liability for negligence in operating a public utility. *Id.*

A township telephone company organized under State Fire Protection law has no authority to buy an interest in an adjoining exchange without a vote of the township voters. *Op. Atty. Gen., Aug. 6, 1931.*

On dissolution of township, it is discretionary with county board to maintain or refuse to take over township telephone lines. *Op. Atty. Gen. (98c-3), July 28, 1934.*

Town may appropriate money to co-operative telephone company if necessary for fire prevention. *Op. Atty. Gen. (916b), Feb. 21, 1936.*

5313. Town telephone lines outside corporate limits.

Township may connect its telephone system with telephone exchange located 20 miles outside township without any order of railroad and warehouse commission. *Op. Atty. Gen. (98a-3), June 30, 1936.*

5314. Tax levy for construction.

Where levy for one year is insufficient to construct telephone system the levies of several years may be accumulated until the fund is sufficient for the purpose. *Op. Atty. Gen., Apr. 24, 1930.*

Town board has no authority to use the road and bridge fund to keep up the operating expenses of a township telephone company organized under State Fire Protection law. *Op. Atty. Gen., Aug. 6, 1931.*

It was not the intention of the legislature that maintenance cost be paid by the township, and a town board has no authority to levy a tax to take care of non-payment of delinquent telephone fees. *Op. Atty. Gen. (98c-3), July 28, 1934.*

5317. Local exchanges shall permit connection.

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

Township may connect its telephone system with telephone exchange located 20 miles outside township without any order of railroad and warehouse commission. *Op. Atty. Gen. (98a-3), June 30, 1936.*

5318. Private owners may sell telephone lines to township—Railroad and Warehouse Commission to fix value.—When, under the provisions of this act, a township telephone system shall be established in any township wherein any of the inhabitants of such town are already provided with telephone service furnished by any other telephone company, person or persons, such township shall, when so requested by said telephone company, person or persons, acquire from said telephone company all telephone equipment used by said telephone company, person or persons, in furnishing telephone service to the inhabitants of such township exclusively. For the purpose of determining the purchase price of such equipment application shall be made to the state railroad and warehouse commission, whose duty it shall be thereupon to determine the just compensation which the owner of such telephone equipment is entitled to receive therefor from the township. Before deciding upon such compensation, said commission shall at a public meeting which may be adjourned from time to time hear all interested parties on the question involved. The commission shall by order fix the compensation and furnish a copy of its order to the township, and to the telephone company, person or persons concerned. An appeal may be taken to the district court of the county wherein such township is situated from that part of the order fixing the com-

penetration to be paid, within thirty days, by either party, which appeal shall be tried the same as other appeals hereunder; if no such appeal is taken the order of the commission shall become final at the end of thirty days, and when appeal is taken the decision of the district court or of the supreme court, if taken there from the district court shall be final.

When, under the provisions of this act a township telephone system has been established in any township, and it has been determined by the board of supervisors of said township to be for the best interest of public service and all parties concerned, to sell and transfer said township telephone system to any telephone company, person or persons giving service organized for that purpose and qualified to purchase said system and operate the same, the said board or supervisors shall have authority to sell, transfer, and convey said township telephone system upon such reasonable price and terms as it may determine, provided, that there shall be presented to the board of supervisors by a petition signed by at least twenty-five per cent of the freeholders of said township asking the sale thereof, and, if such sale and agreed sale price be approved at an annual or special town meeting, it being stated in the notice of such annual and special meeting that the proposition will be considered thereat, by sixty-six per cent of the legal voters attending such meeting.

If any township telephone lines are sold under the provisions of this act, and the township has theretofore issued bonds for the construction thereof, and any part of said bonds are then outstanding and unpaid; the entire consideration received from the sale, or such part as may be necessary, shall be held and applied only for the payment and retirement of such bonds. ('21, c. 439, §7; Apr. 11, 1929, c. 150, §1.)

A town board is without power to give away an interest which it has purchased in an adjoining exchange. *Op. Atty. Gen., Aug. 6, 1931.*

5319. Town boards to manage.—The town board of supervisors of any such township is hereby vested with all necessary authority to manage, maintain and operate any township telephone system constructed under the provisions of this act, and, to that end, may, among other things, contract for the connection of such township lines with exchanges owned by others for switching, lease the system for a reasonable compensation, local exchange and toll connections, hire and discharge such employees as may be necessary to operate and maintain such township system, establish rules and regulations, and, subject to the approval of the railroad and warehouse commission establish and from time to time change rates and charges, covering the service furnished to the users. ('21, c. 439, §8; Apr. 11, 1929, c. 150, §2.)

Town board may cancel out and refuse to connect with another exchange and operate its telephone service by house to house calls without a central exchange connection. *Op. Atty. Gen., Aug. 6, 1931.*

Town board has no authority to use the road and bridge fund to keep up the operating expenses of a township telephone company organized under State Fire Protection law. *Op. Atty. Gen., Aug. 6, 1931.*

One of three connected towns could not cut off the other towns. *Op. Atty. Gen. (371b-13), May 14, 1936.*

CHAPTER 28B

Department of Banking—Division of Banking in Department of Commerce

5320. Department established.

Banking division of department of commerce created pursuant to Laws 1909, c. 201, as amended by Laws 1925, c. 426, art. 8, is a department of state government within meaning of §9677-1, and legislature contemplated administration of amount of fidelity bond for those for whom legislature has not fixed amount. *Op. Atty. Gen. (980a-8), May 5, 1937.*

5323. Powers and duties of superintendent.

179M217, 228NW926.

Duluth Morris Plan Company comes within provisions of section and gives commissioner of banks power and

duty to safeguard rights of those dealing with it. *Op. Atty. Gen., Jan. 19, 1933.*

Whether Duluth Morris Plan Company may purchase of its own stock to hold for resale is a matter resting within discretion of commissioner of banks. *Op. Atty. Gen., Jan. 19, 1933.*

Where a variable clause appears in certificate of incorporation, commissioner of banks may insist on adoption of by-law fixing definite number of directors. *Op. Atty. Gen. (29a-13), June 2, 1937.*