

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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MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1938

citizens of every state by governmental confusion, competition and conflict. (Apr. 21, 1937, c. 315, §11.)

53-72. Effective immediately.—This act shall take effect immediately. (Apr. 21, 1937, c. 315, §12.)

53-73. Acts severable.—If any clause or other portion of this Act is held to be invalid, that decision

shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that all such remaining portions of this Act are severable, and that it would have enacted such remaining portions if the invalid portions had not been included in this Act. (Apr. 21, 1937, c. 315, §13.)

CHAPTER 4

Executive Department

THE GOVERNOR

55. Secretary, etc.

Superintendent has no power to enter into an agreement with an employee's union concerning seniority rights of employees, number of working hours, wages, and settlement of disputes. Op. Atty. Gen. (707b-11), May 6, 1935.

56. State capitol.

Senate has no right by resolution to control use of rooms and furniture while it is not in session. Op. Atty. Gen., June 12, 1933.

56-1. Governor to assign space in building.—The governor shall determine the particular departments, officers and agents of the state government, to be assigned to the building to be erected hereunder, and in the order of such assignment may prescribe the reasonable rental charge to be paid for the space assigned therein to any department, the cost of maintenance of which is payable from the receipts of such department or agency, the amount of such rental to be applied toward the cost of maintenance of the building to be erected hereunder. (Act Apr. 23, 1929, c. 309, §6.)

The above provision constitutes §6 of Act, April 23, 1929, c. 309, creating the State Building Commission to serve during the erection of the state office building. The other sections of the act are temporary and are omitted from this compilation. Sections 1, 2 and 3 of the act were amended by Laws 1931, c. 61, and Laws 1931, c. 79. Section 2 was again amended by Laws 1931, c. 106.

Members of the state legislature are not eligible to serve as members of the state building commission. Op. Atty. Gen., June 5, 1931.

The office of a member of the 1929 legislature did not terminate until January 1, 1931, and he cannot be eligible to serve as a member of the state building commission created by Laws 1929, c. 301, until January 1, 1932. Op. Atty. Gen., June 5, 1931.

Governor may decide whether department of rural credit shall be assigned space in state office building and whether there shall be a rental charged, and if he decides that it should take space from private party, conservator may rent outside space from a private party under a lease for a reasonable time. Op. Atty. Gen. (770c-6), Mar. 24, 1937.

58. Powers of.

Governor cannot remove village constable. Op. Atty. Gen., Aug. 31, 1933.

STATE TREASURER

81. Duties—Bond.

General bond of state treasurer does not cover unemployment compensation. Op. Atty. Gen. (885q-1), Apr. 14, 1937.

88. Revenue fund temporarily filled. For the purpose of supplying deficiencies in the revenue fund, the treasurer may temporarily borrow from other public funds sums not exceeding in the aggregate six million dollars in any year; provided that no fund shall be so impaired thereby that all proper demands thereon cannot be met. (R. L. '05, §48; G. S. '13, §86; 21, c. 52; Apr. 23, 1935, c. 239.)

Sec. 2 of Act Apr. 23, 1935, cited, provides that the act shall take effect from its passage.

89. Gifts—Acceptance.

Gifts of land may be made to state for benefit of state teachers college of St. Cloud to be used as a municipal forest if state auditor, governor and state treasurer determine that it is for best interest of state and institution to accept same. Op. Atty. Gen. (359a-9), June 11, 1937.

95-1. Disposition of certain moneys.—All moneys received by the state treasurer in his official capacity

from persons making such payment without disclosing their identity or without direction as to application shall be covered into the state treasury and credited to the general revenue fund. The treasurer shall keep a record of moneys so received and credited, noting therein the date of receipt, date of payment into the treasury, and such other information as he may have at hand concerning each item so received and credited. (Act Mar. 22, 1929, c. 85.)

95-2. State Treasurer's revolving fund created.—That a revolving fund of twenty thousand dollars (\$20,000.00) be created, to be kept in the State Treasurer's office for the purpose of cashing drafts, checks, and state warrants, which shall be cleared from day to day in the usual manner. (Act Feb. 23, 1935, c. 19, §1.)

95-3. Appropriations.—There is hereby appropriated, the sum of twenty thousand dollars (\$20,000.00) from the revenue fund of the State, not otherwise appropriated, and the State Auditor is hereby authorized and directed to issue a state warrant on the state revenue fund, payable to the State Treasurer, in the amount of twenty thousand dollars (\$20,000.00) and the State Treasurer is authorized and directed to procure cash on said warrant for the purpose of carrying out the use thereof as above outlined. The State Treasurer shall at all times be liable to the State under his bond for the full amount of said \$20,000.00. (Act Feb. 23, 1935, c. 19, §2.)

BOARDS OF AUDIT AND DEPOSIT

98. Designation as depositories of state funds—Interest, etc.

174M583, 219NW916; note under §106.

179M143, 228NW613.

Op. Atty. Gen., Mar. 5, 1929; note under §1973-1.

Sureties on bonds securing state deposits held not released by the consolidation or merger of the bank with another bank. 173M406, 217NW360.

Moneys of University of Minnesota placed in designated depositories is state money on which interest must be paid notwithstanding federal banking act of 1933, §11. Op. Atty. Gen., Oct. 9, 1933.

Deputy registrars of motor vehicles are not liable for funds after depositing them in a bank designated by the state as a state depository. Op. Atty. Gen. (632a-17), Apr. 22, 1935.

99. Surety bond—interest on time deposits—maximum amount of deposits.—Before any bank or trust company shall receive state funds it shall give to the state a corporate surety bond. If corporate surety bond is furnished the board of deposit may fix a limit of deposit equal to the penalty named in such bond. More than one corporate surety bond may be furnished, the aggregate thereof to equal the amount required. Depository bonds shall include the condition that there shall be paid to the state treasurer, or his order upon demand, or if a time deposit when due, at any place in this state designated by him, free of exchange, all of the state funds deposited in the depository furnishing such bond at any time while the same shall be in force, with interest upon time deposits at the rate agreed upon and approved by the board. The board of deposit shall fix the limit of deposit to be made in any depository. Depository bonds shall be approved by the board and filed with the treasurer. (As Am. Apr. 22, 1937, c. 351, §1.)

174M583, 219NW916; note under §106.

179M143, 228NW613.

100. Additional bonds.—The board of deposit shall not approve the bond of any bank or trust company until fully satisfied that the same is in proper form, the sureties sufficient, the bank or trust company prosperous and financially sound, and the capital stock claimed by it fully paid up and not impaired. And at any time the board or the treasurer may require of any such bank or trust company a new or an additional bond, or may revoke its designation of any bank as such depository. Immediately upon such revocation of an active depository the treasurer shall withdraw all state moneys therefrom and shall make no further deposits therein and upon such revocation of an inactive depository the treasurer shall withdraw all state moneys therefrom when due. (As Am. Apr. 22, 1937, c. 351, §1.)

101. Classes of depositors—withdrawal of deposits.—State depositories shall be divided into two classes to be known as active and inactive. A bank or trust company may be designated as a depository of both classes. All state funds deposited under designations as active depositories shall be subject to withdrawal by the treasurer upon demand, and no interest shall be charged thereon. Surplus funds not required to meet the state's current disbursements shall be deposited for a definite period in banks or trust companies designated as inactive depositories, and interest shall be paid upon such deposits at a rate of not less than one per cent nor more than three per cent per annum to be fixed from time to time by the state board of deposit in accordance with the current rate upon deposits of a similar character. (As Am. Apr. 22, 1937, c. 351, §1.)

101-1. Law repealed.—Laws 1933, Chapter 217, is hereby repealed. (Apr. 22, 1937, c. 351, §2.)

101-2. Effective August 23, 1937.—This act shall take effect and be in force from and after August 23, 1937. (Apr. 22, 1937, c. 351, §3.)

102. Collateral security in lieu of bond.

Where bank required to give bond in specified amount gives bond for half the amount and deposits securities for the balance the surety on the bond held not entitled to require the state to apply the securities in reduction of liability on the bond. 179M143, 228NW613.

While a state bank may give a bond to secure the government for deposit of postal savings, it may not pledge any portion of its assets. Op. Atty. Gen., May 22, 1931.

Where a bank pledges authorized securities for public moneys on deposit, and also gives personal bond containing a stipulation that there would be no liability on the bond until the pledged collateral has been exhausted, recovery may be had on the personal bond without exhausting the pledged collateral. Op. Atty. Gen., Feb. 3, 1932.

Highway fund revenue warrants of state of Colorado may not be regarded as bonds of state within meaning of section. Op. Atty. Gen. (140f-7), Jan. 22, 1937.

104. [Repealed.]

Repealed by Act Apr. 13, 1933, c. 217, §2, post, §104-2.

104-1. [Repealed.]

Repealed Apr. 22, 1937, c. 351, §2, effective Aug. 23, 1937, ante, §§101-1, 101-2.

104-2. [Repealed.]

Act Apr. 13, 1933, c. 217, §2, which repealed Laws 1919, c. 419, §8, is repealed by Act Apr. 22, 1937, c. 351, §2.

106. Security not to be subrogated to State's claim in insolvency of banks.

This section does not delegate legislative power to the state board of deposit (now the executive council) in violation of Const., Art. 3. 174M583, 219NW916.

It does not violate the federal Constitution. 174M583, 219NW916.

Sureties cannot compel commissioner of banks to pay state's deposit claim as a preferred claim, where the state seeks recovery from the sureties. 174M583, 219NW916.

Where bank required to give bond in specified amount gives bond for half the amount and deposits securities for the balance, the surety on the bond held not entitled to require the state to apply the securities in reduction of liability on the bond. 179M143, 228NW613.

State is a preferred creditor entitled to all assets if not sufficient to pay claim in full. Op. Atty. Gen., Aug. 1, 1933.

Deposited funds of a school district do not constitute a preferred claim against depository. Op. Atty. Gen., Feb. 8, 1934.

107. Depositories—Securities in lieu of bond.

Op. Atty. Gen., Feb. 3, 1932; note under §102. Where an unauthorized pledge of assets is made by bank and it becomes insolvent, receiver may recover assets pledged, or damages, if they have been converted. 174M286, 219NW163.

A bank has no power to pledge any of its assets to secure the repayment of the deposits, except as given by statute. 174M286, 219NW163.

A commercial bank has no power to pledge bills receivable to secure deposits, even though it be to induce an extension of a past-due deposit. 175M363, 221NW242.

107-1. State Treasurer to designate depositories.—

Where any statute of this State requires or permits a Bank or Trust Company to deposit securities with the State Treasurer, the latter, on the request of such depositor, may designate some other Bank or Trust Company as the depository of such securities under such depository agreement as may be prescribed and approved by him, and which will not deprive the State Treasurer of the control thereof and the charges of such depository shall be paid by the depositing Bank or Trust Company. If such depositing Bank or Trust Company is a member of the Federal Reserve system, the Federal Reserve Bank in this State may be the depository designated by the State Treasurer. (Act Apr. 17, 1933, c. 287.)

ATTORNEY GENERAL

109. Appearance.

Mandamus 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.

Discretion of attorney general in determining what litigation he will prosecute in name of state is plenary and not subject to review. State v. City of Fraser, 191 M427, 254NW776. See Dun. Dig. 8845.

Where in a mandamus proceeding against state auditor on relation of a private party, he has signed and verified his return or answer also signed by private legal counsel employed at his own expense, attorney general does not have absolute right to have such return or answer stricken, and counsel of auditor ousted from participating in proceeding, where real controversy is between different departments of the state and auditor believes that an attempt is being made to compel him to do an unlawful act. State v. District Court, 196M44, 264 NW227. See Dun. Dig. 8845.

Granting of leave to a municipal corporation to file an information in nature of quo warranto, notwithstanding refusal of attorney general to apply for writ or to consent to its filing, lies in sound discretion of court, and that discretion should be exercised favorably, and leave granted where one municipal corporation, on grounds prima facie valid, challenges legal effectiveness of proceedings by another to take over and include within its limits territory belonging to former, issue so raised being one of public rather than mere private interest. State v. City of Chisholm, 196M285, 264NW798. See Dun. Dig. 8845.

Supreme court has power to grant quo warranto over objection of attorney general. State v. City of Chisholm, 196M285, 266NW689. See Dun. Dig. 8064.

110. Attorney General—deputies—assistants.—The

attorney general may appoint, and at his pleasure remove, two deputy attorneys general and six assistant attorneys general who shall render such aid as he may require of them in the discharge of his official duty. He shall keep a record of his official correspondence and of all matters placed in his hands by the governor, auditor, secretary of state or treasurer, or any officer or board in charge of any of the business of the state upon which any official action is necessary; he shall also keep a record of all legal proceedings instituted by him or in which he appears, and of the several steps taken therein. All official opinions shall be in writing and copies thereof made and filed in his office. The deputy attorneys general and each of said assistants shall, to the extent authorized in writing by the attorney general, have authority to appear before grand juries or in any court of this state, as the attorney general himself might do.

The attorney general shall have power to employ such assistance, whether lay, legal, or expert, as he may deem necessary for the protection of the interests of the state through the proper conduct of its

legal business. ('05, c. 227, §2; '11, c. 56, §1, G. S. '13, §101; '17, c. 61, §1; Apr. 18, 1931, c. 211, §1.)

Laws 1931, c. 211, §2, repeals Laws 1919, c. 272, authorizing appointment of additional assistant attorney general.

Assistant attorney general member of rural credit bureau holds an office created by statute and thereby designated as "without term," and serves at pleasure of attorney general. *State v. Poirier*, 189M200, 248NW 747.

Soldiers' preference acts are not controlling in respect of appointment to position of inheritance tax examiner by attorney general. *State v. Peterson*, 194M60, 259NW 696. See *Dun. Dig.* 7986.

113. Advice—Opinions.

Ordinarily the attorney general declines to give an opinion on a matter involved in a case pending in court. *Op. Atty. Gen.*, April 27, 1931.

Attorney general cannot determine matters in litigation. *Op. Atty. Gen.*, Aug. 28, 1933.

It is not the function of the attorney general to determine a question of fact, but all his office may do is to advise as to applicability of the law to the fact submitted. *Op. Atty. Gen.* (632e-24), June 27, 1934; (10a-2), July 6, 1934.

Attorney general is permitted to render official opinions on county matters only upon request of the County Attorney. *Op. Atty. Gen.* (107b-1), July 6, 1934.

Attorney general will not give an opinion as to whether particular institutions are exempt from taxation until such a time as the question arises, either upon an application to the tax commission for an abatement of the taxes, or on account of assertion of a defense in tax proceedings. *Op. Atty. Gen.* (414d-10), July 19, 1934.

Attorney general has no authority to advise in reference to power of court. *Op. Atty. Gen.* (341k-9), May 16, 1935.

Attorney general will not approve form of contract proposed by commission of administration and finance which on its face, or by reason of ascertained facts allude defeats purpose which it proposes to accomplish. *Op. Atty. Gen.* (980a-9), Oct 25, 1935.

Whether election of teacher and principal is valid held a question of fact upon which attorney general cannot pass. *Op. Atty. Gen.* (166h-4), Aug. 21, 1936.

Communications requesting opinion should be addressed to attorney general rather than to assistant. *Op. Atty. Gen.* (172c-5), Nov. 6, 1936.

Cannot render opinion on question pending in court. *Op. Atty. Gen.* (184h), Dec. 21, 1936.

114. State officers and boards—Special counsel.

Where in a mandamus proceeding against state auditor on relation of a private party, he has signed and verified his return or answer also signed by private legal counsel employed at his own expense, attorney general does not have absolute right to have such return or answer stricken, and counsel of auditor ousted from participating in proceeding, where real controversy is between different departments of the state and auditor believes that an attempt is being made to compel him to do an unlawful act. *State v. District Court*, 196M44, 264NW227. See *Dun. Dig.* 8845.

Soldiers' home board may not employ or pay for an attorney except as provided in this section. *Op. Atty. Gen.* (394f), Dec. 29, 1937.

115. Opinion to county, city, village or town attorney, etc.

Aside from its effect as practical construction where a statute is involved and whatever protection it may afford a school officer acting pursuant thereto, opinion of attorney general on school district matters does not have effect of law. *Lindquist v. A.*, 196M233, 265NW54. See *Dun. Dig.* 8845.

Constitutionality of statute or charter is matter for court, and attorney general is reluctant to express opinion, unless unconstitutionality is apparent. *Op. Atty. Gen.*, June 23, 1932.

This section limits attorney general to giving opinions in writing to county, city, village and town attorneys on questions of public importance. *Op. Atty. Gen.*, Feb. 17, 1933.

Section does not permit attorney general to render official opinions to private individuals or corporations, even though inquiry relates to matter of public concern. *Op. Atty. Gen.*, June 1, 1933.

Attorney general will not render opinions on questions pending before a court. *Op. Atty. Gen.*, Oct. 30, 1933.

Attorney general will not run counter to decision of district court in a particular judicial district. *Op. Atty. Gen.*, Nov. 27, 1933.

After election has been held and result declared, it is not province of attorney general to decide question of validity of election between two claimants. *Op. Atty. Gen.*, Dec. 11, 1933.

After election has been held and votes canvassed and result declared, it is not in province of attorney general to determine rights of claimants to office. *Op. Atty. Gen.*, Dec. 22, 1933.

Attorney general will not decide question of validity of an election already held. *Op. Atty. Gen.*, Jan. 16, 1934.

Designation of depositary by school district in accordance with opinion of attorney general was lawful as respected liability of treasurer notwithstanding later opinion of attorney general that such a designation would not be legal. *Op. Atty. Gen.* (159a-21), Apr. 3, 1934.

Attorney general will not determine whether certain acts of a candidate or nominee for an office constitute a violation of Corrupt Practices Act, where there is a dispute between two claimants. *Op. Atty. Gen.* (627f-2), Oct. 5, 1934.

Where an election has already been held and there may be a contest, attorney general will not determine whether person elected violated Corrupt Practices Act. *Op. Atty. Gen.* (627f-2), Nov. 28, 1934.

Attorney general will decline to render any opinion relating to a matter which is pending before a court for determination. *Op. Atty. Gen.* (59a-12), Jan. 15, 1935.

It is the policy of the attorney general not to render opinions on questions that are being determined by a court. *Op. Atty. Gen.* (218f), Feb. 5, 1935.

Matter of authority of sheriff to forcibly remove a poor person from a house to county poor house is a county matter and attorney general will not pass thereon on application of city attorney. *Op. Atty. Gen.* (339o-3), Feb. 6, 1935.

Attorney general may not render an opinion concerning private civil liability. *Op. Atty. Gen.* (218g-13), Feb. 7, 1935.

Attorney general cannot pass on questions of fact in giving an opinion. *Op. Atty. Gen.* (125a-11), Feb. 25, 1935.

Attorney general has no authority to advise in reference to power of court. *Op. Atty. Gen.* (341k-9), May 16, 1935.

Attorney general will not express opinion on matter pending before court. *Op. Atty. Gen.* (217c), July 17, 1935.

Attorney general is not authorized to render opinions directly to school district, but only to state commissioner of education. *Op. Atty. Gen.* (817a), Aug. 21, 1935.

Attorney general will not render opinion relative to powers and duties of the judiciary. *Op. Atty. Gen.* (307c), Jan. 23, 1936.

Attorney general will not advise with respect to legal authority of county board, made upon request of county attorney. *Op. Atty. Gen.* (124), May 9, 1936.

Whether under facts stated there can be criminal prosecution for contributing to delinquency of minor is a question for county attorney and not attorney general to determine. *Op. Atty. Gen.* (605b-9), May 16, 1936.

Attorney general cannot pass on questions of fact. *Op. Atty. Gen.* (494b-5), May 18, 1936.

Attorney general does not render opinions contrary to decisions of district court in a particular judicial district. *Op. Atty. Gen.* (434a-4), Aug. 20, 1936.

Attorney general cannot pass upon questions of fact in determining what constitutes lottery. *Op. Atty. Gen.* (510c-6), Sept. 25, 1936.

Communications requesting opinion should be addressed to attorney general rather than to assistant. *Op. Atty. Gen.* (172c-5), Nov. 6, 1936.

Official opinions are limited to those offices designated and municipal officials, and an opinion to the federal surplus commodities corporation is not official. *Op. Atty. Gen.* (215c-9), Mar. 3, 1937.

What constitutes a club entitled to a beer license is a question of fact which must be decided by local governing body, and not by attorney general. *Op. Atty. Gen.* (217f-2), Apr. 7, 1937.

Duty of making determination as to whether criminal prosecution should be commenced rests upon county attorney and if conscientiously and fairly made is not subject to review either by attorney general or any other office. *Op. Atty. Gen.* (605b-33), Apr. 17, 1937.

Office of attorney general must abide by decision of district court holding statute unconstitutional, in absence of an appeal and a different conclusion on part of supreme court. *Op. Atty. Gen.* (82f), June 1, 1937.

Determination of legal settlement for assistance purposes is a matter of fact to be determined by county agency in first instance, and not by the attorney general. *Op. Atty. Gen.* (521t-2), June 3, 1937.

Attorney general will not render an opinion upon any matter which is pending in court for determination. *Op. Atty. Gen.* (408f), July 31, 1936.

116-3. Attorney General to bring action to recover on bonds.—That the Attorney General of the State of Minnesota be and he is authorized, with the approval of the Governor of this state, to commence any action or proceedings in the name of the State of Minnesota to recover upon any bonds or obligations of any other state of the United States which may now or hereafter be held or owned by the State of Minnesota, or any of its boards or departments, and upon any bonds held in any sinking fund or guaranty funds deposited or pledged with the state by trust companies, banks, fidelity or insurance companies, or held by the commissioner of banks as liquidator. (Act Apr. 21, 1933, c. 399.)

GENERAL PROVISIONS

117-2. Same Appropriations available.

Act appropriating money for expenses of state government. Laws 1931, c. 306.

Laws 1933, c. 109, transfers to department of conservation, division of lands and minerals unexpended funds in items 3, 4 and 5.

118. Estimates and budgets.

Op. Atty. Gen., July 24, 1931.

121. Fees of departments to be paid into treasury.

A custom of the sheriff's office of serving papers without collecting the fees in advance and then, without more, merely holding the originals for payment of the fees comes so far from having any legal justification that, however much acquiesced in by other public officials, it cannot create an estoppel against the county. *St. Louis County v. M.*, 198M127, 269NW105. See *Dun. Dig.* 8753.

Sheriff of St. Louis county is by virtue of his office a trustee in respect to fees earned by him, whether collected or not, and he is held to a strict accountability and highest practical degree of care as to collection of such fees, burden being upon him to prove exercise of such care as to fees earned but not collected. *Id.*

Inspection and license fees received by oil inspection division cannot be used by that division. Op. Atty. Gen., Oct. 9, 1933.

License fee provided for by Laws 1935, ch. 216, §8, must be paid into state treasury. Op. Atty. Gen. (1961), Oct. 4, 1935.

122. Compromise of State claims.—Whenever the strict enforcement by the state of a demand for money or other property against any person is deemed by the Attorney General to be impracticable or inequitable, he may submit the same to the executive council for compromise. The executive council shall consider the equities of the case, the situation and financial ability of the debtors, and the interests of the state, and determine in writing upon what terms the demand in question should be settled as against all or any of the parties thereto. Thereupon the Attorney General shall adjust the claim in accordance with such determination and shall execute in behalf of the state all papers necessary and proper to carry the compromise into effect and to release from such claim any and all parties thereto who shall seasonably comply with the conditions of the settlement so authorized. (R. L. '05, §67; G. S. '13, §112; Feb. 13, 1929, c. 14.)

Commission of administration of finance has no power to cancel balance of term of existing lease of Douglas Lodge and substitutes new and longer lease therefor, but cancellation must be had through the executive council, after which new lease should be supervised and controlled by the commission of administration and finance. Op. Atty. Gen. (980b-31), May 13, 1935.

122-1. May cancel uncollectible drafts.—The executive council upon the written recommendation of the comptroller, shall have authority to cancel any uncollectible drafts or accounts due to the state. (Act Apr. 26, 1929, c. 406, §1.)

Op. Atty. Gen. (980b-31), May 13, 1935; note under 122.

122-2. Certification by comptroller.—As soon as practicable after the close of each fiscal year the comptroller shall certify to the council a list of uncollectible auditor's drafts and uncollectible auditor's drafts and uncollectible accounts due to the state which have accumulated during the preceding year or years. (Act Apr. 26, 1929, c. 406, §2.)

122-3. Certification by executive secretary.—Whenever any drafts or accounts are cancelled under this act the executive secretary shall make a certified list thereof to the auditor and treasurer whose duty it shall be to cancel the record thereof in their office. (Act Apr. 26, 1929, c. 406, §3.)

122-4. Time of cancellation.—No draft or account for a sum in excess of \$25.00 shall be cancelled until more than six years after the issuance of such draft or the due date of such account, and nothing in this act shall be construed as a cancellation or abandonment of the state's claim against the person or corporation against whom the cancelled draft was drawn or account held, but the state shall nevertheless have authority to make collection thereof. (Act Apr. 26, 1929, c. 406, §4.)

124. Auditor to cancel all unexpended appropriations.

Unexpended portion of an appropriation for use during the fiscal year ending June 30, 1932, may not be cancelled until June 30, 1933. Op. Atty. Gen., Aug. 8, 1931.

125. Officials not to exceed appropriation.

Though state has no Octane testing machine and pipe line company installs such machine and agrees to charge for state tests what state charges therefor, there is no way for the state to pay over test fees to the pipe line company without an appropriation from the legislature. Op. Atty. Gen., Dec. 27, 1933.

Expenses incurred in investigating sale of stock of Northwest Bancorporation and First Bank Stock Corporation could be paid out of appropriation made by Laws, Special Session, 1933, c. 32, although services were rendered prior to its passage. Op. Atty. Gen., Jan. 4, 1934.

Industrial commission may only pay items provided for in current appropriations and cannot pay telephone charges, postage, rent, furniture, etc., entered into without authority by citizens serving on committee without pay. Op. Atty. Gen. (9-a-21), May 28, 1934.

Act increasing minimum compensation of deputy oil inspectors without making appropriations therefor did not contemplate reduction of needed personnel to efficiently administer an important revenue producing tax law, and though an act ordinarily becomes effective day following approval, such act would not become effective until after an appropriation had been made by legislature, in absence of administrative means of making salary and wage adjustment to compensate for minimum salaries prescribed. Op. Atty. Gen. (9a-27), May 10, 1937.

Oil inspection department must observe statute fixing certain minimum salary, and must keep within appropriations made, though it must result in reducing personnel or salaries of other personnel not fixed by law. Op. Atty. Gen. (325a-21), June 8, 1937.

125-7. Duplicate bonds, etc., may be issued in certain cases.—When any bond, certificate of indebtedness, or other written obligation of the state issued by the state or by any department, bureau, board, or other agency of the state government according to law has been lost, destroyed, or stolen, a duplicate of such obligation, with unpaid interest coupons, if any, which were attached at the time of the loss, destruction, or theft, shall be issued to the owner, his guardian, or the representative of his estate as hereinafter provided, upon the furnishing of satisfactory proof of ownership and of such loss, destruction, or theft to the authority empowered to approve indemnity bonds, as hereinafter provided, and upon the certification of the approval of such proof by such authority to the state treasurer. (Act Apr. 15, 1929, c. 192, §1.)

125-8. Execution.—Such duplicate obligation shall be prepared by the state treasurer and shall be an exact and complete copy of the original, including the signatures, but need not be a facsimile. Each such duplicate obligation shall have written or printed thereon a certificate, the form of which shall be approved by the attorney general, stating, in substance, that such obligation is a duplicate issued pursuant to this act, with like force and effect as the original. Such certificate shall be signed by the state treasurer, attested by the secretary of state, and sealed with the great seal of the state, and shall bear the approval of the attorney general as to the issuance of the duplicate and the form of the certificate. Each such duplicate shall have plainly written or printed thereon across the face or upon the margin the word "duplicate." Each coupon attached to such duplicate obligation shall have plainly written or printed thereon in like manner the word "duplicate" followed by the date of issue and the signature or facsimile signature of the state treasurer. (Act Apr. 15, 1929, c. 192, §2.)

125-9. Delivery to owner—Bond.—Such duplicate obligation when executed shall be delivered by the state treasurer to the owner of the original obligation, his guardian, the representative of his estate, provided such owner, guardian or representative shall first file with the state treasurer a bond in the full amount of such obligation and unpaid interest to maturity, with sufficient sureties, approved by the same authority as state depository bonds, indemnifying the state of Minnesota against any loss thereon

by reason of the existence of the original obligation or any coupon thereto attached, unless such bond is waived as hereinafter provided, and provided such owner, guardian or representative shall furnish satisfactory proof to the state treasurer that such original obligation and coupons have not been found or presented for payment up to the time of such delivery, and if any thereof have been found or presented, duplicates shall be delivered only of such as have not been found or presented. A record of the issuance and delivery of each such duplicate obligation and attached coupons shall be made by the state treasurer and shall be forthwith reported by him to the state auditor, who shall also make a record of the same. Such duplicate obligations and coupons, when issued and delivered as hereinbefore provided, shall have the same force and effect as the originals. (Act Apr. 15, 1929, c. 192, §3.)

125-10. Bond may be cancelled after six years.—The authority empowered to approve the indemnity bond required by Section 3 of this act may waive such bond, in its discretion, at any time six years after the date of the maturity of such lost, destroyed or stolen bond, certificate of indebtedness, or other written obligation of the state, in any special case where it deems that the person entitled to a duplicate is unable to furnish such indemnity bond without hardship and that it is improbable that the original obligation will ever be found or presented for payment. Such waiver shall be certified to the state treasurer. (Act Apr. 15, 1929, c. 192, §4.)

125-11. Certificates of indebtedness to pay warrants on revenue fund.—Whenever it becomes necessary in order to meet the current demands upon the revenue fund for the payment of warrants issued or to be issued against said fund for the payment of appropriations, the executive council at any time prior to June 30, 1937, upon adopting a resolution determining such necessity, may issue and sell certificates of indebtedness of the state payable out of said revenue fund in such amount as may be necessary to pay such warrants, such certificates to be numbered serially and to be of such denomination and bear such dates of issue and of maturity and such rate of interest as the said council shall determine, provided that no such certificate shall mature more than six (6) months after the date of its issuance or sale, whichever is later, and providing further that the aggregate amount of such certificates at any time outstanding shall never exceed \$9,000,000. If funds are not available to retire any such certificates at maturity, the same may be refunded by the issuance of new certificates or may be extended by agreement with the holders thereof. Certificates issued and sold pursuant to the authorization of this act shall be retired out of the receipts of the revenue fund appropriated to the payment of the warrants issued against said fund but taken up with the proceeds of such certificates. \$200,000 or so much thereof as may be necessary is hereby appropriated and made available for the biennium ending June 30, 1937, to pay the interest upon such certificates. (Act Jan. 6, 1934, Ex. Ses., c. 52; Apr. 24, 1935, c. 255.)
Act July 24, 1937, Sp. Ses., c. 96, authorizes issuance of certificates of indebtedness at any time prior to June 30, 1939. It is omitted as temporary.

125-12. May not hire publicity representative.—No state department, bureau or division, whether the same operates on funds appropriated or receipts or fees of any nature whatsoever, including, but not limited to, the Department of Rural Credits, Highway Department and Game and Fish Division, shall use any of such funds for the payment of the salary or expenses of a publicity representative. The head of any such department, bureau or division shall be personally liable for funds spent contrary to this provision.

This shall not be construed, however, as preventing any such department, bureau or division, from

sending out any bulletins or other publicity required by any state law or necessary for the satisfactory conduct of the business for which such department, bureau or division was created. (Act Apr. 29, 1935, c. 391, §38.)

Repeated Apr. 24, 1937, c. 457, §40.

125-13. Reimbursement of employees compensation revolving fund.—In all cases where any state department owes the Employees Compensation Revolving Fund created by Laws 1933, Chapter 161 [§§ 4337-6 to 4337-10], for claims paid its employees and no direct appropriation is made therefor, such department shall reimburse said Revolving Fund from the funds available to it for supplies and expense. (Act Apr. 29, 1935, c. 391, §39.)

Repeated Apr. 24, 1937, c. 457, §38.

125-14. Certain acts illegal.—It is hereby made illegal for any official or head of any state department or any employee thereof to use monies appropriated by this act or fees collected for any other purpose than the purpose for which such moneys have been appropriated and any such act by any head of a department or any state official is hereby declared to be illegal and be cause for immediate removal of such official or head of a state department from the position he holds with the government of this state, or if proof is made of such charge before any judge of any District Court of this state such Court may cause such official or head of a state department to be removed upon proof being duly made of the misappropriation or for any other purpose than for which the appropriation was made, except in an emergency and then only with the approval of Commission of Administration and Finance. (Apr. 24, 1937, c. 457, §36.)

Sec. 41 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

Appropriation can only be expended for purposes stated except in emergency, and what constitutes an emergency is a matter for both official or head of department and commission of administration and finance to agree upon. Op. Atty. Gen. (9a-3), June 7, 1937.

126. Board of Relief. * * * * *

2. Certificates of indebtedness for relief of distress authorized.—The state board of relief is hereby authorized to take any measures necessary to prevent or avert any impending disaster which threatens to destroy life or property in this state, to grant relief or temporary assistance to communities in this state stricken by disease, flood, storm, fire (or) action of the elements, or extreme economic distress causing destitution of families or individuals or disabled persons, or prevent the occurrence or spread of any such calamity or disaster which might entail loss of life or property or result in great suffering and hardship among the people of this state, and in any such event, it shall have the authority to commandeer and take for use, in any such emergency, any property, vehicle, motor car or any means of transportation by rail or water or any means of communication or any public service, which in the opinion of the said board might be necessary to save life or property or prevent and avert any such impending disaster or furnish assistance or relief to communities in this state, so stricken, or for the prevention of any such calamity. The owner of any property so taken shall be given a receipt for the same and shall be paid for the use of such property or for any damage which might be caused to the same while in the service of the state board. (As amended Apr. 21, 1933, c. 355.) * * * * *

6. Loan Authorized.—For the purpose of carrying out the provisions of this act, whenever an emergency exists, the board of relief hereby created is authorized to borrow such a sum of money, not exceeding seven hundred fifty thousand dollars (\$750,000), as shall in its judgment be necessary and sufficient. (As amended Apr. 21, 1933, c. 355.) * * * * *

This act does not authorize the State Board of Relief to take a note for seed grain furnished by the state to a farmer without such grain or means to procure it, be-

cause of the excessive floods which occurred in Marshall county in the year 1919. 172M344, 215NW510.

By receiving the grain from the state and by giving his note therefor, defendant held not to have become estopped from denying liability on the note. 172M344, 215NW510.

2. Authority.

Executive council has power to place unemployed persons upon farms and furnish them with animals, machinery, feed and furniture to get them started. Op. Atty. Gen., May 20, 1933.

Act permits executive council to grant relief to be disbursed by Soldiers' Home Board. Op. Atty. Gen., Aug. 1, 1933.

Responsibility for administration of fund appropriated by executive council for relief of disabled veterans and their families rests with state board of control and not state soldiers' home board. Op. Atty. Gen., Oct. 6, 1933.

Act creating Lincoln-Lyon tornado relief commission, defining powers respecting relief to tornado swept district. Laws 1931, c. 130.

128-2. State Geographic Board established.—There is here established a State Geographic Board which shall consist of the Commissioner of Conservation, the Commissioner of State Highways, and the Superintendent of the Minnesota Historical Society. (Mar. 8, 1937, c. 63, §1.)

128-3. Powers and duties.—It shall be the duty of the State Geographic Board and it shall have power and authority:

(a) To determine the correct and most appropriate names of the lakes, streams, places and other geographic features in the state, and the spelling thereof;

(b) To pass upon and give names to lakes, streams, places and other geographic features in the state for which no single generally accepted name has been in use;

(c) In cooperation with the county boards and with their approval, to change the names of lakes, streams, places and other geographic features, with the end in view of eliminating, as far as possible, duplication of names within the state;

(d) To prepare and publish an official state dictionary of geographic names and to publish the same, either as a completed whole or in parts when ready;

(e) To serve as the state representatives of the United States geographic board and to cooperate with the said board to the end that there shall be no conflict between the state and federal designations of geographic features in the state. (Mar. 8, 1937, c. 63, §2.)

Constitution, art. 4, §33, does not interfere in any way with exercise of powers granted by this act. Op. Atty. Gen. (230), July 2, 1937.

128-4. Names given to be official.—Whenever the State Geographic Board shall have given a name to any lake, stream, place and other geographic feature within the State, such name shall be used in all maps, records, documents and other publications issued by the State or any of its departments and political subdivisions, and such name shall be deemed the official name of such geographic features. (Mar. 8, 1937, c. 63, §3.)

128-5. County boards naming geographic features must have approval of Geographic Board.—No County Board shall order the change of or establish the name of any lake, river, or other body of water without the written approval of the State Geographic Board endorsed on any resolution determining or fixing said name, which endorsement must be made on the same prior to recording with the Register of Deeds. (Mar. 8, 1937, c. 63, §4.)

128-6. Inconsistent acts repealed.—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act. (Mar. 8, 1937, c. 63, §5.)

Sec. 6 of Act Mar. 8, 1937, provides that the act shall take effect from its passage.

CHAPTER 5 Judicial Department

SUPREME COURT

132. Writs—Process.

Deduction of inheritance tax because of disallowance of claims against estate cannot be reached by certiorari. 179M233, 228NW920.

Appeal and not mandamus is proper remedy to compel making of findings of fact. 180M580, 230NW472.

Where mandamus is used to review an order of trial court on motion to change place of trial to promote convenience of witnesses and ends of justice, only matters presented to trial court can be considered. State v. District Court of Brown County, 194M595, 261NW701. See Dun. Dig. 5764a, 10126, 10127, 10129.

Granting of leave to a municipal corporation to file an information in nature of quo warranto, notwithstanding refusal of attorney general to apply for writ or to consent to its filing, lies in sound discretion of court, and that discretion should be exercised favorably, and leave granted where one municipal corporation, on grounds prima facie valid, challenges legal effectiveness of proceedings by another to take over and include within its limits territory belonging to former, issue so raised being one of public rather than mere private interest. State v. City of Chisholm, 196M285, 264NW798. See Dun. Dig. 8070.

Supreme court has power to grant leave to file information for writ of quo warranto to test propriety of including land within boundaries of a city over objections of the attorney general. State v. City of Chisholm, 196M285, 266NW689. See Dun. Dig. 8064.

In quo warranto by one town attacking taking in of additional territory by a city, another town occupying same position as petitioner will be granted leave to intervene. Id. See Dun. Dig. 8070.

In quo warranto by town testing validity of taking territory into city, taxpayers and residents of town having special rights that will be affected may be permitted to intervene, but this does not mean that they would be permitted to come in as original and only relators. Id.

Writ of prohibition to court christian. 20MinnLaw Rev272.

133. Power—rules.

Where the verdict was of murder in second degree, but evidence sustains conviction only in third degree, supreme court has power to direct entry of judgment accordingly. State v. Jackson, 198M111, 268NW924. See Dun. Dig. 2501.

Rules governing attorneys in the practice of their profession. 16MinnLawRev270.

COMMISSIONERS

135 to 137. [Superseded.]

Superseded by amendment of art. 6, §2, of the constitution, promulgated Nov. 20, 1930.

MINNESOTA REPORTS

150. Printing and binding reports of decisions—Contracts by commissioner of purchases—Purchase and distribution of volumes by state.—The reports of such decisions shall be printed and bound in style and quality to be approved by the court, shall contain at least six hundred pages of four and one-half inches in width, and shall be equal in quality of paper and binding to the best of those heretofore published.

The Commissioner of Purchases, pursuant to provisions of Chapter 426, General Laws 1925 [§53-10], under appropriate specifications to be approved by the court, from time to time and for designated periods not exceeding ten years, shall enter into a contract, in form and manner approved by the court, for the continued publication of such bound volumes, with suitable provisions requiring the publisher at all times to keep the published volumes on sale at a designated place within the state at a specified maximum price per volume, and specifying the number of such volumes to be sold and delivered to the state