

1938 Supplement
To
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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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daries of such district may file a petition with the State soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist in the consideration thereof. Within sixty (60) days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district all occupiers of lands lying within the boundaries of the districts shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, and probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the declaration of public policy set forth in Section 1 of this act; provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the State soil conservation committee of a certification that the committee has determined that the continued operation of the district

is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the State soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section 10 of this act, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The State soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this act, more often than once in two (2) years. (Apr. 26, 1937, c. 441, §14.)

6932-15. Provisions severable.—If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Apr. 26, 1937, c. 441, §15.)

6932-16. Short title.—This act may be known and cited as the Minnesota Soil Conservation Districts Law. The Governor of the State of Minnesota shall cause to be furnished to the Secretary of Agriculture of the United States by registered mail, a certified copy of this act within ten days after its approval by him. (Apr. 26, 1937, c. 441, §16.)

CHAPTER 46 Notaries Public

6938. Term—Bond—Oath.

Owner of property had no cause of action against a notary public for wrongful and false certificate of the execution of a bill of sale which was forged, the plaintiff not being divested of his title by the forged instrument. *Zitlow v. C.*, 175M615, 221NW244.

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

Conviction of crime vacates office of notary public and restoration of civil rights does not reinstate officer and

he cannot take acknowledgment without issue of a new commission. *Op. Atty. Gen.* (320j), Dec. 13, 1934.

Commission of notary public does not automatically terminate upon insolvency of bonding company or surety, but he should be notified to furnish a new bond, but the furnishing of a new bond does not extend term for which originally appointed. *Op. Atty. Gen.* (320b), May 15, 1937.

6939. Seal—Register.

A notary's certificate of acknowledgment without the seal is a nullity, and filing of chattel mortgage in office

of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in good faith. *Hartkopf v. F.*, 191M595, 256NW169. See *Dun. Dig.* 71, 1445.

6940. Powers.

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

Where notary of one county takes acknowledgment in another county the venue of the certificate should be

entitled in the county where taken, and the recital and designation should be of the county for which he holds the commission. *Op. Atty. Gen.*, Feb. 10, 1933.

Notary public has power to take acknowledgment in county other than that in which he resided at time his commission was issued. *Op. Atty. Gen.*, July 24, 1933.

6946. Misconduct.

The violation of this section as well as section 10323 did not prevent a prosecution under that section. 171 M345, 214NW262.

CHAPTER 47

Resignations—Vacancies—Removals

6952. Resignations.

Offices of alderman and constable in city of Le Sueur are incompatible, and where one qualified for office of constable, he automatically vacated his office as alderman, and no resignation was necessary. *Op. Atty. Gen.*, May 9, 1933.

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

6953. Vacancies.

Failure of town treasurer to qualify creates a vacancy which may be filled by appointment. *Op. Atty. Gen.*, Mar. 21, 1929.

Whether village treasurer who has obtained a position in another state may still hold the office depends upon whether or not he has ceased to be an inhabitant of the village. *Op. Atty. Gen.*, Mar. 4, 1931.

Removal from office takes effect irrevocably upon conviction and imposition of sentence, and the officer is not restored upon the entry of a stay of execution of the taking of an appeal. *Op. Atty. Gen.*, Sept. 1, 1931.

With the possible exception of officers in certain villages operating under special laws, there is no provision for the removal of an elective village officer for misconduct except by securing his conviction of a felony or of an offense involving a violation of his official oath. *Op. Atty. Gen.*, Sept. 1, 1931.

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

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

Whether acceptance of federal appointment in another city creates vacancy in office of city justice depends upon whether he has ceased to be an inhabitant of his city. *Op. Atty. Gen.* (266a-12), Oct. 17, 1935.

Village counsel has no power to remove one of its members, such as the recorder, proper procedure being appropriate action in district court. *Op. Atty. Gen.* (475), Mar. 26, 1936.

Civil service rule requiring chief of police to be resident of city is valid. *Op. Atty. Gen.* (785b-3), June 25, 1936.

Commission of notary public does not automatically terminate upon insolvency of bonding company or surety, but he should be notified to furnish a new bond, but the furnishing of a new bond does not extend term for which originally appointed. *Op. Atty. Gen.* (320b), May 15, 1937.

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

Subd. 1.

Person appointed to fill vacancy in office of county commissioner holds only until beginning of official year next following the next ensuing general election. *Op. Atty. Gen.*, Feb. 13, 1934.

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

Subd. 2.

Question whether resignation of president of council of the village of Buhl would become effective immediately without any action on the part of the board discussed. *Op. Atty. Gen.*, Mar. 3, 1932.

Subd. 4.

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

Whether absence of village trustee from village for six months for purpose of obtaining employment constitutes abandonment of office and right to compensation is a question of fact. *Op. Atty. Gen.* (359a-21), Dec. 19, 1935.

Subd. 5.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. *Op. Atty. Gen.*, Feb. 10, 1930.

A village recorder wilfully failing to perform the duties of his office may be convicted under §10028, and thus create a vacancy in his office under this section. *Op. Atty. Gen.*, Oct. 20, 1931.

One acting as assistant assessor in city of Eveleth was not officer and there was no vacation of office by reason of his conviction of crime. *Op. Atty. Gen.*, May 14, 1932.

There is no provision of law for removal of village trustee but his office becomes vacant upon conviction of an infamous crime or any offense involving a violation of his official oath. *Op. Atty. Gen.*, Apr. 6, 1933.

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

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

It is ground for removal of member of water, light, power and building commission that he sells supplies to the commission or purchases supplies from other members, but village council has no power to remove the officer, and officer may recover value of supplies to the village. *Op. Atty. Gen.* (707b-6), Feb. 11, 1936.

City council has no authority to remove members of water and light commission, at least in absence of a conviction of an offense involving violation of official oath. *Op. Atty. Gen.* (358e-1), May 15, 1937.

Subd. 6.

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

Person receiving next highest number of votes for justice of the peace is not elected to the office because person who did receive highest number failed to qualify. *Op. Atty. Gen.* (266a-5), Dec. 10, 1935.

Where candidate receiving highest number of votes for mayor of a village was not eligible because he was a citizen of the United States for less than 3 months, a vacancy in office resulted, but the city council after passage of sufficient time could appoint such previously ineligible candidate to office. *Op. Atty. Gen.* (184i), Dec. 12, 1935.

There is no specific time limit within which village officers must qualify, but a vacancy occurs if they do not qualify within a reasonable time. *Op. Atty. Gen.* (471h), Jan. 7, 1936.

Surety on official bond may not cancel bond during term of office without consent of all parties concerned, and consent may not lawfully be given by governing body until a satisfactory new bond is furnished. *Op. Atty. Gen.* (469b-5), Feb. 21, 1936.

Where one elected to office of president of a village refuses to qualify within a reasonable time, a vacancy exists, and former officer does not hold over. *Op. Atty. Gen.* (471m), Jan. 13, 1937.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. *Op. Atty. Gen.* (456g), Feb. 18, 1937.

6954. Removal by governor.

The duties of the governor under this section are not mandatory, are not merely ministerial, and cannot be coerced by mandamus. 179M337, 229NW313.

Protracted absences of justice from his town might amount to nonfeasance in office. *Op. Atty. Gen.*, Mar. 19, 1929.

If municipal judge neglects his duties or corruptly violates his oath of office, his removal should be sought by petition to governor. *Op. Atty. Gen.*, June 26, 1933.

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

Persistent refusal or neglect to enforce sentence imposing fine may be made basis for removal of justice of peace. *Op. Atty. Gen.* (266b-9), Nov. 26, 1934.

Removal from public office in Minnesota. 20MinnLaw Rev 721.