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(1927 to 1938)
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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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CHAPTER 52

Partition Fences

7248. Fence viewers.

Establishment of center of section of land. 172M388, 215NW426.

County board may compel construction of party line fences in territory where townships have been dissolved. Op. Atty. Gen. (434a-4), Sept. 24, 1936.

7250. Occupants to maintain.

Land in part woodland, meadow and slough, adjoining other lands not under plow, held not "improved" so as to impose obligation to build joint line fence. Op. Atty. Gen., Apr. 28, 1932.

A village must maintain its share of partition fence as to land outside village limits used in connection

with water system of village operating in both a proprietary capacity and governmental capacity. Op. Atty. Gen., Mar. 24, 1934.

There can be no partition fence between land separated by a cartway established either under the statute or by dedication as a public road, but if third person using the way has merely a license, there may be a partition fence. Op. Atty. Gen. (377b-10(e)) (631h), July 5, 1934.

7266. Viewers in counties not divided.

County board may compel construction of party line fences in territory where townships have been dissolved. Op. Atty. Gen. (434a-4), Sept. 24, 1936.

CHAPTER 53

Estrays and Beasts Doing Damage

BEASTS DOING DAMAGE

7274. Who may distrain.

Where federal government purchased and branded distressed cattle in drouth areas and turned them over to state emergency relief administration for grazing and they were contracted out to individuals under an agreement that they be grazed and cared for, owner of property damaged by such animals may not hold them in attempt to force collection of damages; such cattle belonging to the state. Op. Atty. Gen. (400a), Sept. 23, 1934.

7275. Notice to owner.

Notice is not waived by a general statement of the owner of the animals to one taking them up, "to have the damages appraised and he would pay for them." Pruka v. M., 182M421, 234NW641. See Dun. Dig. 277, 10134.

The notice required in proceedings to distrain animals doing damage is a written notice and is jurisdictional. Pruka v. M., 182M421, 234NW641. See Dun. Dig. 277.

MISCHIEVOUS DOGS

7285. Keeping after notice.

Owner of dog becomes liable on receiving notice by seeing the forbidden act or by information from any other person, oral or written. Op. Atty. Gen., Oct. 30, 1929.

Section is a criminal statute and may be enforced in justice court. Op. Atty. Gen. (146f), Dec. 9, 1936.

7286. Dogs worrying livestock or poultry.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

7287. Nuisance, when—Procedure.

174M457, 219NW770.

Dogs may be killed under statutory authority when they are nuisances, G. S. 1923, §7287, or when they menace live stock or poultry, G. S. 1923, §7286, as amended. 175M368, 221NW430.

Common-law rule is not abrogated by this section. 175M368, 221NW430.

RUNNING AT LARGE OF CERTAIN ANIMALS

7295. Permitting to run at large unlawful.

Where plaintiff was injured at night by driving his automobile against carcass of a horse which had just been killed in a collision with a truck, jury might find that negligent permitting of horse at large was a proximate cause of injury to plaintiff. Wedel v. J., 196M170, 264NW689. See Dun. Dig. 277.

In action for injuries received by automobile driver colliding with carcass of horse in the nighttime, truck driver who ran into and killed horse and left it on the highway held confronted with an emergency and was not negligent as a matter of law in attempting to swerve around horse instead of applying his brakes, and he was not negligent in failing to arrange for removal of the horse or placing a warning of its presence where he was very badly injured and required prompt medical attention to save his life. Id.

7297-1. County board to license dogs.—The Board of County Commissioners of any county, by a ma-

majority vote, may provide for the licensing and regulating the running at large of dogs, and create a live-stock indemnity fund to be handled and disbursed as hereinafter set forth. After the plan therefor shall have been in operation in any county for at least one year, the Board of County Commissioners thereof may by a majority vote, abandon the same. In any county containing a city of the first class or a city of the second class located in more than one county the board of county commissioners shall exclude from the operation of this act such city of the first class or a city of the second class located in more than one county. (Act Apr. 21, 1931, c. 295, §1; Jan. 24, 1936, Ex. Ses., c. 69.)

7297-2. Owners to obtain licenses.—The owners of all dogs six months old or over, except dogs kept in kennels, in all counties providing for the licensing and regulating the running at large of dogs as provided for in Section one of this act, shall annually obtain a license therefor, as herein provided, and it shall be unlawful for the owner of any dog six months old or over to allow such dog to run at large without being so licensed or without wearing the license tag herein provided for. (Act Apr. 21, 1931, c. 295, §2.)

7297-3. Who are owners.—For the purposes of this act, the term "owner" shall, in addition to its ordinary meaning, include any person who keeps or harbors a dog. (Act Apr. 21, 1931, c. 295, §3.)

7297-4. County auditor to issue license.—The owner of a dog for which a license shall be required, shall on or before the 15th day of July, of each year apply to the auditor of the county in which such owner resides for a license for each dog owned by him. (Act Apr. 21, 1931, c. 295, §4.)

7297-5. Application.—Application for license shall be made after July 15th and at any time, for a dog which has come into the possession or ownership of the applicant or which has reached the age of six months after said date. (Act Apr. 21, 1931, c. 295, §5.)

7297-6. Contents of application.—Such application shall be in writing on blank provided therefor by the county auditor and shall state the breed, sex, age, color, markings and name, if any, of the dog, and if a female, whether or not spayed, and the address of the owner and shall be signed by him, or a duly authorized agent of such owner. (Act Apr. 21, 1931, c. 295, §6.)

7297-7. License fee.—The annual license fee shall be \$1.00 for each male or spayed female dog and

\$3.00 for each unspayed female dog. Such fee shall accompany the application for license. (Act Apr. 21, 1931, c. 295, §7.)

7297-8. Auditor to deliver license.—The county auditor, upon receipt of such application and license fee, shall deliver or mail to the applicant a license which shall be in form of a metal tag stamped as follows:

- (a) The year in which it is issued.
- (b) The name of the County in which it is issued.
- (c) The serial number as shown by the record book in the office of the county auditor. (Act Apr. 21, 1931, c. 295, §8.)

7297-9. License to be attached to collar.—Such license tag shall be attached by the owner to a substantial collar, and during the term of the license shall at all times be kept on the dog for which the license is issued. (Act Apr. 21, 1931, c. 295, §9.)

7297-10. Licenses to expire July 15.—All licenses shall expire on July 15th of each year following the date of issuance. (Act Apr. 21, 1931, c. 295, §10.)

7297-11. Licenses may be transferred.—When the permanent ownership of a dog is transferred, the license may be transferred by the county auditor by notation on the license record, giving the name and address of the new owner. (Act Apr. 21, 1931, c. 295, §11.)

7297-12. Owner moving to new county.—When a dog licensed in one county is permanently transferred to another county, the owner thereof shall surrender the original license tag to the auditor of the county to which such dog is removed, providing such latter county has availed itself of the provisions of this act as provided in section one thereof. The auditor shall thereupon preserve the surrender tag, and, without license fee, issue a new license tag. The auditor shall note on the license record the fact that the newly issued license tag is issued to effect a transfer of, and is in lieu of such surrender license tag. (Act Apr. 21, 1931, c. 295, §12.)

7297-13. Auditor to collect transfer fee.—The auditor on making any transfer shall collect a fee of 25 cents, which shall with all license fees, penalties and fines that are collected in such county, be paid into the county treasury to the credit of the Live Stock Indemnity Fund, which is hereby provided, and herein called the Indemnity Fund. For the performance of his duties under this act, in addition to his compensation otherwise fixed by law, the auditor shall receive such compensation, payable from the indemnity fund, as may be fixed by the County Board at its annual meeting in January, of each year. (Act Apr. 21, 1931, c. 295, §13.)

7297-14. Licenses may not be transferred to another dog.—A license tag issued for one dog shall not be transferable to another dog. (Act Apr. 21, 1931, c. 295, §14.)

7297-15. Duplicate licenses.—Upon the filing of an affidavit that the license tag has been lost or destroyed, the owner may obtain another tag upon the payment of 25 cents. The auditor shall enter in the license record the new number assigned. (Act Apr. 21, 1931, c. 295, §15.)

7297-16. Assessor to list dogs.—Each assessor shall, at the time of listing personal property for assessment, list and return to the county auditor the names of all persons who own or harbor dogs, and indicate on such lists whether the dogs are male, female or spayed, and the number thereof. For such service the assessor shall receive, from the indemnity fund, in addition to any and all other fees or compensation allowed by law, the sum of ten cents for each dog reported, which fees shall be paid in full when the return is made. (Act Apr. 21, 1931, c. 295, §16.)

7297-17. Penalties for non-payment of license.—All license fees shall become delinquent on the first day of September of the year in which they are due and payable and a penalty of \$1.00 shall be added to each unpaid license on and after such date. (Act Apr. 21, 1931, c. 295, §17.)

7297-18. Names of unlicensed dog owners to be published.—The county auditor shall between the first and the 20th days of September cause to be published once in the official newspaper of the county, a list of names of all the owners of unlicensed dogs as shown by a comparison of his license record and the assessor's returns, or as otherwise ascertained or known by him. (Act Apr. 21, 1931, c. 295, §18.)

7297-19. Owner to appear.—Such publication shall be notice to each owner that he may appear before the county auditor on or before the 30th day of September, following, and by affidavit show cause why the license fee and penalty should not be assessed against him as a tax, and no exemption from such taxation shall be granted except on the affidavit of such owner, which shall be filed and preserved by such auditor. (Act Apr. 21, 1931, c. 295, §19.)

7297-20. Cost of publication.—The cost of publishing the list of delinquent owners shall be paid from the indemnity fund upon the filing of proper proof of publication. (Act Apr. 21, 1931, c. 295, §20.)

7297-21. Auditor to certify list to county treasurer.—Immediately following September 30th, the auditor shall, except as to persons to whom he has granted exemptions, certify to the county treasurer:

- (a) The name of the owner of each unlicensed dog.
- (b) The number of dogs so owned by said person and the sex thereof.
- (c) The amount of the unpaid license fee, plus a penalty of \$1.00 for each dog. (Act Apr. 21, 1931, c. 295, §21.)

7297-22. Auditor to include license fee in tax.—After issuance of said certificate, the auditor shall at once enter, as a tax against each person owning dogs, except to persons who have been granted exemptions as herein provided, the amount of the tax and penalty as is in said certificate stated. Said tax and penalty shall be attended with the same consequences and be certified to the treasurer and be collected in the same manner as personal property taxes for the current year. (Act Apr. 21, 1931, c. 295, §22.)

Eight per cent penalty to be charged on dog license tax and penalty not paid prior to March 1 following the date when tax becomes due. Op. Atty. Gen. (146d-2), May 22, 1936.

7297-23. Violation a misdemeanor.—The violation of any of the foregoing provisions relating to listing of dogs for assessment by the owners thereof or the removal of a license tag from a dog prior to the expiration of the license, by any person who is not the owner thereof or his agent, shall be a misdemeanor. (Act Apr. 21, 1931, c. 295, §23.)

7297-24. County treasurer to receive funds.—The auditor shall make payment to the county treasurer of all funds received by him hereunder on the first day of each month. The treasurer shall keep said funds, together with all tax collections and penalties and all fines imposed for the violation of this act as herein provided, as the livestock indemnity fund, which is hereby created in each county coming within the provisions of this act. (Act Apr. 21, 1931, c. 295, §24.)

7297-25. Auditor to keep record of licenses.—The county auditor shall keep a book to be known as the record licenses which shall show:

- (a) The serial number and date of each application for license.

(b) The description of the dog as specified in the application, together with the name of the owner of said dog.

(c) The date when each license tag is issued and the serial number of such tag.

(d) The amount of all fees, licenses and penalties, and costs and fines paid to him.

(e) Such other data as the law may require. (Act Apr. 21, 1931, c. 295, §25.)

7297-26. Auditor to prepare forms.—All forms for blanks, records, books and tags, including proper columns in the assessor's books in which to note the ownership of dogs, shall be prepared by the auditor. All such blanks, books, tags and supplies shall be furnished by the county and paid for out of the indemnity fund. (Act Apr. 21, 1931, c. 295, §26.)

7297-27. Peace officers may kill dogs.—It shall be lawful for peace officers within their respective jurisdictions, to kill any dog for which a license is required, when such dog is not wearing a collar with a license tag showing license then to be in effect, attached to such collar as herein provided. (Act Apr. 21, 1931, c. 295, §27.)

7297-28. Dogs may be killed—when.—It shall be lawful for any person to kill a dog, although licensed and wearing a collar with license tag attached, when such dog is caught in the act of worrying, chasing or injuring sheep or other livestock, including poultry. (Act Apr. 21, 1931, c. 295, §28.)

7297-29. Owner to be liable.—The owner of any dog, whether licensed or not, shall be liable to the party injured for all damages done by such dog, except when the party damaged is doing an unlawful act directly contributing to said injury. This section shall not apply to any damage done by a dog affected with hydrophobia unless the owner of such dog has reasonable ground to know that such dog was afflicted with said malady and by reasonable effort might have prevented the injury. (Act Apr. 21, 1931, c. 295, §29.)

Board cannot make statute retroactive so as to authorize payment for damage or injury to livestock occurring prior to adoption of appropriate resolution. Op. Atty. Gen., May 15, 1931.

7297-30. Claims for damages may be filed.—Any person damaged by the killing or injury of his livestock, including poultry by wolves or by dogs not owned by said person, may within ten days, from the time he or his agent has knowledge of such killing or injury, and not thereafter, file with the county auditor in which such killing or injury occurred a claim for such damage. (Act Apr. 21, 1931, c. 295, §30.)

Where county board adopted act on November 13, 1934, claims arising between January 1, 1935, and July 15, 1935, were eligible to participate in indemnity funds, though owners of dogs did not have to procure licenses until July 15, 1935. Op. Atty. Gen. (146d-2), July 24, 1935.

7297-31. Claims to contain detailed statement.—Such claims for damage shall state the amount of the damage and shall contain a detailed statement of the facts attending the killing or injury and be verified [Sic] by affidavit of at least two disinterested persons not related to claimant. (Act Apr. 21, 1931, c. 295, §31.)

7297-32. Claims to be presented to county board.—The county auditor shall present such claim to the County Board which shall act thereon within a reasonable time, and allow such part thereof as it may deem just, but not exceeding 80% of the actual loss or damage sustained. When a claim is allowed, the value of each animal or fowl killed or injured shall be entered of record. (Act Apr. 21, 1931, c. 295, §32.)

Claims may not be accepted and paid out of fund after board has abandoned provisions of act. Op. Atty. Gen., Mar. 15, 1933.

7297-33. Warrants in payment of claims.—Warrants in payment of claims shall be issued payable

January 1st following their issuance and not before, and to be paid out of the livestock indemnity fund. (Act Apr. 21, 1931, c. 295, §33.)

7297-34. Auditor to certify amount to treasurer.—The auditor shall, prior to the first Monday in January, of each year, certify to the treasurer an itemized list of all warrants issued during the preceding year on said indemnity fund, except warrants issued to pay the fees of assessors, and compensation of the county auditor and the necessary cost of publication. If said fund is sufficient in amount, the treasurer shall pay said warrants on presentation, but if it is insufficient in amount to pay all warrants in full, then he shall pro rata the same, as compared and certified by the county auditor, and pay only the pro rata share thereof. (Act Apr. 21, 1931, c. 295, §34.)

7297-35. County board to transfer excess to revenue fund.—When the balance in said indemnity fund, after payment of all warrants issued in any one year, exceeds the sum of \$500.00, the county board may by resolution direct and order the excess thereof transferred to the general revenue fund of the county. If the amount in the indemnity fund is insufficient in any one year to pay all duly allowed claims and the other items properly payable out of said fund as hereinbefore provided, the county board shall transfer from said general revenue fund an amount, not exceeding the amount previously transferred thereto from said indemnity fund, sufficient funds to pay the unpaid balance of said warrants. (Act Apr. 21, 1931, c. 295, §35.)

Upon abandonment of act by board fund may be transferred to general revenue fund. Op. Atty. Gen., Mar. 15, 1933.

7297-36. Provisions separable.—In the event that any section, provision or part of this act shall be declared unconstitutional, it shall not in any way affect any other section, provision or part thereof. (Act Apr. 21, 1931, c. 295, §36.)

7297-37. Act supplemental.—This act is supplemental to all other laws relating to dogs, and to all laws relating to taxation of dogs as personal property, and shall not be construed as to modify, repeal or in any wise affect any part or provision of any such laws nor so as to prevent municipalities from prohibiting or licensing or regulating the running at large of dogs within their respective limits as by law or ordinance now or hereafter provided. (Act Apr. 21, 1931, c. 295, §37.)

7297-38. County board authorized to pay claims for death or injury to live stock in certain cases.—The Board of County Commissioners of any county in this state, where said county adopted Laws 1931, Chapter 295, licensing dogs, and later discontinued the same and transferred the money in the livestock indemnity fund provided for in said chapter to the general revenue fund of such county, shall have the authority to pay any claims arising by reason of the death or injury of livestock during the time that such law was in force in said county, or thereafter, from the general revenue fund in the proportion authorized by Laws of 1931, Chapter 295, Section 32 [7297-32], provided that such claims are presented to said board by January 1, 1934. (Act Apr. 15, 1933, c. 265.)

7297-39. Claims for death or injury to livestock.—The county board of county commissioners of any county in this state, where said county adopted Laws of 1931, Chapter 295 [§§7297-1 to 7297-38], licensing dogs, and later discontinued the same, and transferred the money from the livestock indemnity fund, provided for that purpose, to the general revenue fund of such county, shall have authority to pay any claims arising by reason of the death or injury of livestock during the time that such law was in force in said county, or thereafter, from the general revenue

fund, in the proportion authorized by the Laws of 1931, Chapter 295, Section 32 [§7297-32], provided that such claims are presented to said board prior to January 1st, 1936. (Act Apr. 24, 1935, c. 243, §1.)

7297-40. Limitation in amount of payments.—No claims shall be paid by said county board pursuant

to this act which will exceed the total sum transferred from the livestock indemnity fund to the general revenue fund after deducting therefrom the amount of claims theretofore paid by such county under the provisions of this act or any heretofore existing law. (Act Apr. 24, 1935, c. 243, §2.)

CHAPTER 54

Unclaimed Property

COMMON LAW DECISIONS RELATING TO CHAPTER IN GENERAL

1. Lost property in general.

Rights of finder and owner of locus in quo in lost personal property. 21MinnLawRev191.

CHAPTER 55

Hotels and Public Resorts

7312. Hotel and innkeepers to have safes.

Where a hotel accepted ring for delivery to a guest, a manufacturing jeweler who had long been one of its regular patrons, well known to the management, resulting bailment was for benefit of both bailor and bailee. *Peet v. R.*, 191M151, 253NW546. See Dun. Dig. 732, 4511.

Guest having delivered a valuable ring to hotel, claim that no contract of bailment resulted because of hotel's ignorance of value of article was untenable. *Id.* See Dun. Dig. 728, 4511.

7316. Lien of inn keeper.

Right to lien upon baggage is not predicated on license. *Op. Atty. Gen.*, Mar. 19, 1934.

7318. Violation a misdemeanor.

There is no law making registration at a hotel under assumed name a crime. *Op. Atty. Gen.* (494a), Aug. 3, 1934.

7321. Equal rights in hotels, etc.

A complaint, charging that the plaintiff, on entering a cafeteria for the purpose of being served food, was told that he was too dirty to be served and would have to get out, and was refused service, when in fact his clothing and person were clean, does not state a cause of action either for slander or for deprivation of any civil rights. *Larson v. W.*, 183M28, 235NW393. See Dun. Dig. 4509.

CHAPTER 56

Auctioneers

7322. Licenses—Persons entitled to.—The county board or auditor may license any voter in its county, or any person from another state, as an auctioneer. Such license shall be issued by the auditor and shall authorize the licensee to conduct the business of an auctioneer in the state of Minnesota for the period of one year. It shall be recorded by the auditor in a book kept for that purpose. Before such license is issued the licensee shall pay into the county treasury a fee of ten dollars (\$10.00), provided, however, that for a nonresident the license fee shall be \$25.00. Provided, that any person may be licensed as an auctioneer for the purpose of making sales of pure-bred or grade livestock only upon the payment of the fee and the giving of the bond as above provided. Provided, further, that any person resident in an adjoining state which issues auctioneers' licenses to residents of Minnesota on the same basis as to the residents of such adjoining state, may be licensed as an auctioneer upon payment of the fee required therefor in such adjoining state and giving an approval of a bond as provided in the next succeeding section. (As amended Apr. 21, 1937, c. 313, §1.)

An ordinance for regulating of auctions and auctioneers, imposing a minimum license fee of \$250, is so unreasonable as to be invalid. *Orr v. C.*, 193M371, 258NW 569. See Dun. Dig. 716, 6794.

Specific delegation to a municipal corporation of power, by ordinance, to license and regulate auctions and auc-

tionneers does not include, by implication, power to prohibit an established retail jeweler from selling his own merchandise at auction. *Id.*

Any person may be licensed as an auctioneer to make sales of livestock without regard to his residence. *Op. Atty. Gen.*, Dec. 10, 1929.

Minnesota cannot license a resident of Iowa. *Op. Atty. Gen.*, Feb. 27, 1931.

Non-residents from an adjoining state which does not issue auctioneers' licenses to residents of this state on the same basis as to residents of such adjoining state cannot be licensed to conduct auction sales of goods other than live stock. *Op. Atty. Gen.*, Feb. 3, 1932.

The holder of a void auctioneer's license could not rely upon such license as a defense to a criminal action. *Op. Atty. Gen.*, Feb. 3, 1932.

Resident of Iowa is not entitled to a license in this state. *Op. Atty. Gen.* (16c), Dec. 31, 1935.

License held by Iowa resident in this state being void, it would constitute defense to criminal prosecution. *Id.*

Resident of another state may be licensed in any county to conduct sales of pure bred and grade livestock upon paying fee and putting up bonds. *Op. Atty. Gen.* (16c), Mar. 8, 1937.

A nonresident auctioneer cannot legally be teamed up with Minnesota licensed auctioneer and conduct sales as agent of Minnesota licensee under his license. *Id.*

License may cover both pure bred and grade livestock. *Id.*

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

7327. Unlicensed sales.

Owner of goods may not sell them at auction without license. *Op. Atty. Gen.*, Oct. 5, 1929.

CHAPTER 56A

Hawkers, Peddlers, and Transient Merchants

HAWKERS AND PEDDLERS

7328. Engaging in business without license, etc.

Op. Atty. Gen., June 5, 1933; note under §4367.
A salesman representing a wholesaler dealing exclusively with retail merchants and not consumers is not a "peddler." *Op. Atty. Gen.*, July 2, 1930.

One holding a wholesale produce dealer's license is not thereby relieved from the necessity of taking out a peddler's license. *Op. Atty. Gen.*, Mar. 12, 1931.

Persons who sell to dealers only are not peddlers. *Op. Atty. Gen.*, July 8, 1933.

7332. Right of municipalities, etc., to regulate.

Ordinances regulating hawkers and peddlers and solicitors must be reasonable and not prohibitory. *Op. Atty. Gen.* (477b-21), Sept. 30, 1935.

A municipality may ordain that practice of peddlers and solicitors in going upon private premises and homes and soliciting orders without an invitation by occupants thereof is a nuisance. *Op. Atty. Gen.* (477b-21), Oct. 16, 1935.

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell product may be exercised, so long as no