

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 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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2394-96. Same—consideration and determination of report by tax commission.—Upon the receipt by the Minnesota Tax Commission of the report provided for in Section 5 of this act, it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such income or annuity recipient, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, and on or before the first day of May of each year file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided. (July 24, 1937, Sp. Ses., c. 91, §6.)

2394-97. Same—penalty for failure to make report—assessment by tax commission.—If any person subject to the tax provided by this act shall fail to make the report provided for in Section 5 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten percent of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the amount of the annuity or income paid or payable to such person, and shall fix the tax due thereon from such person together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person receiving such payment. (July 24, 1937, Sp. Ses., c. 91, §7.)

2394-98. Same—date of payment—penalty for nonpayment.—Such tax shall be due and payable to the state treasurer on the first day of June 1938, and annually thereafter on the first day of June, and if not paid on or before that date, a penalty of ten percent shall immediately accrue thereon. (July 24, 1937, Sp. Ses., c. 91, §8.)

2394-99. Same—withholding of tax by educational institution—liability on failure to withhold.—Every educational institution making such income or annuity payments which are subject to tax hereunder and upon which the tax has not been paid, shall at the time the payments are made, withhold and deduct therefrom the amount of the tax due thereon, and shall pay the same to the state treasurer. Failure to withhold the tax and to make payment at the time and in the manner hereinbefore required shall render the educational institution liable for the amount of the tax with interest at the rate of 12% per annum from the time the tax should have been paid, to be recovered in an action by the attorney general for and in behalf of the state. (July 24, 1937, Sp. Ses., c. 91, §9.)

2394-100. Same—draft on delinquent—evidence.—On or before the tenth day of June in each year the state auditor shall make his draft upon the person delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection. The draft of the state auditor for the

tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due from the person against whom the same is drawn. (July 24, 1937, Sp. Ses., c. 91, §10.)

2394-101. Same—Notice to taxpayer—action by attorney general—interest—lien of judgment—sale of property.—The state treasurer within ten days after the receipt of the draft mentioned in Section 10 of this act shall notify by mail the persons designated therein of the amount thereof, and if not paid within thirty days after presentation shall deliver the same to the attorney general, whose duty it shall be to bring an action thereon in the district court of the county wherein is the taxable status of the annuity or income, for the amount of such draft, together with interest and costs of the proceeding. Such tax shall draw interest at the rate of 12% per annum, commencing 30 days after the same falls due; and the judgment of the court when so obtained and properly docketed shall be a lien upon all right, title, and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limitation with interest at the rate of one percent per month and the said property may be sold in satisfaction of such judgment in the manner provided by law. (July 24, 1937, Sp. Ses., c. 91, §11.)

2394-102. Same—false report—perjury.—Any person who for the purpose of evading the payment of the tax herein provided or any part thereof, makes any false return or report, shall in addition to the tax provided by this act, pay a penalty of 50 percent of the amount of said tax; and any person who shall knowingly make under oath any false report or return required by this act, shall be guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law. (July 24, 1937, Sp. Ses., c. 91, §12.)

2394-103. Same—examination of books and papers—refusal as misdemeanor.—All books, contracts, deeds, instruments, correspondence and memoranda relating to or used in connection with the conveyance of any real property as set forth in section 1 of this act, shall upon request of the Minnesota Tax Commission be open to its inspection or examination. If any person shall neglect or refuse on request of the Minnesota Tax Commission access to the papers and books aforesaid, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law. (July 24, 1937, Sp. Ses., c. 91, §13.)

2394-104. Same—refund of tax erroneously collected—disposition of proceeds.—Out of the proceeds of the taxes imposed hereby, including penalties and interest, the Commission shall refund any tax erroneously paid or collected, and shall reimburse the revenue fund or any other fund of the state its proper proportion of the expense of administering this act. The balance of the proceeds of any such taxes shall be paid to the county treasurer of the county wherein the annuity or income taxed has a taxable status, and shall by him be placed to the credit of the proper funds and distributed as in the case of general taxes collected. (July 24, 1937, Sp. Ses., c. 91, §14.)

Sec. 15 of Act July 24, 1937, cited, provides that the act shall take effect from its passage.

CHAPTER 12

Military Code

MILITIA

2399. Militia—Constitution—Officers and personnel—Exemptions.—The militia shall consist of all able-bodied male citizens of the state and all other able-

bodied males, resident therein, who have or shall have declared their intention to become citizens of the United States, when so authorized by federal law, who shall be 18 or more years of age, and, except

as hereinafter provided, not more than 45 years of age, and said militia shall be divided into three classes, the national guard, the naval militia, and the unorganized militia.

The officers, judicial and executive, of the government of the United States and of the states; persons in the military or naval service of the United States; custom house clerks, persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots and mariners actually employed in the sea service of any citizen or merchant within the United States, shall all be exempt from militia duty without regard to age, and all persons who because of religious beliefs shall claim exemption from military service if the conscientious holding of such belief by such person shall be established under such regulations as the President of the United States shall prescribe, shall be exempt from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President of the United States shall declare to be noncombatant. (As amended Apr. 8, 1939, c. 175, §1.)

2404. Governor may call out militia.

Where mob was threatening irreparable injury to manufacturing plant and civil authorities were inadequate, mayor of Minneapolis was justified in requesting governor to send troops, and it was his duty to do so. *Strutwear Knitting Co. v. O.*, (USDC-Minn), 13FSupp384.

Governor and adjutant general were justified in sending troops to aid in preservation of law and order in Minneapolis, and it was their duty to take that course, where mobs were threatening violence and damage to property and civil authorities were inadequate. *Id.*

Governor, adjutant general, and mayor of city had right to place troops at and about manufacturing plant to prevent loss of life and destruction of property by a mob, and it was their duty to do so where civil authorities were inadequate. *Id.*

Governor, adjutant general, and mayor of Minneapolis, as a means of suppressing mob violence, had no right to use national guard to deprive manufacturer of its right to possess its own property, or to prevent it from using its property in the conduct of its lawful business. *Id.*

2405. Service—Duration—Organization—Age.—

The men whose names are so forwarded shall be mustered at once into the service of the state for such period as the governor shall direct, not exceeding three years. They shall be organized as prescribed for existing organizations of the national guard. Such new organizations shall be officered, equipped, trained, and commanded according to the laws governing the national guard, provided however that the age limit for initial appointment as an officer shall not apply. (As amended Apr. 8, 1939, c. 175, §2.)

2407. Governor to be commander-in-chief.

See notes under Const. Art. 5, §4. *Strutwear Knitting Co. v. O.*, (USDC-Minn), 13FSupp 384.

To justify a court in finding, where lawlessness and violence have made presence of troops necessary, that commander in chief of troops is violating his oath and prostituting his office to a purpose which has no relation to restoration of law and order, there must be clear and convincing proof. *Powers M. Co. v. O.*, (USDC-Minn), 7FSupp865. See *Dun. Dig.* 6118.

2408. Adjutant General—Appointment—Qualifica-

tions.—There shall be an adjutant general of the state who shall be appointed by the Governor, who shall be a staff officer, who at time of appointment shall be a commissioned officer of the National Guard of this state, with not less than ten years' military service in the armed forces of this state or of the United States, at least three of which shall have been commissioned and who shall have reached the grade of a field officer. He shall hold office as provided in Section 110, Act of Congress approved June 4, 1920, as amended, and shall not be removed from office except as provided by the military laws of this state. (As amended Apr. 8, 1939, c. 175, §3.)

Adjutant general is a soldier and bound to follow the orders of his commander-in-chief. *Strutwear Knitting Co. v. O.*, (USDC-Minn), 13FSupp384.

2409. Minnesota National Guard.

One who signed the enlistment contract and thereafter attended drill and received pay therefor, acquired the status of a soldier, although he may not have taken the enlistment oath. 174M82, 218NW542.

2412. Inactive guard.—The Inactive National Guard shall be organized and maintained under such rules and regulations as may be prescribed in accordance with federal law. (As amended Apr. 8, 1939, c. 175, §4.)

2413. Number and grades of officers and enlisted men—Increase—Retired officers—Age limit of officers.—The number and grades of officers and enlisted men in the staff corps and departments shall be as prescribed by federal law, but in case of war, invasion, insurrection, riot or imminent danger of either, the governor may temporarily increase such force to meet such emergency and retired officers, who are physically qualified, may be assigned to such duty. All officers of staff corps and departments appointed shall have had previous military experience and shall hold their positions until they shall have reached the age of 64 years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the national guard. (As amended Apr. 8, 1939, c. 175, §5.)

2417. Selection of line and field officers.—Line officers and field officers below the grade of colonel in the regiments and lesser separate organizations shall be selected and recommended by the commanders thereof respectively. Officers above the grade of lieutenant colonel shall be selected and appointed by the Governor upon the recommendation of the adjutant general. (As amended, Apr. 8, 1939, c. 175, §6.)

2418. Examination of officers—Brevet of retired or resigned officers—Assignment of retired officers to active duty—Assignment to active duty in the army.—Subdivision A. Any person hereinafter appointed, promoted and commissioned an officer of the national guard shall successfully pass such tests as to his physical, moral and professional fitness as shall be prescribed by federal law. The examination to determine such qualifications for commissions shall be as prescribed by federal law. Officers shall be commissioned by the governor, and the commission shall designate the arm, staff corps or department in which they are appointed. Officers will be assigned to regiments or lesser separate organizations by the adjutant general. They will be assigned to duty within the regiment or lesser organization by the immediate commander thereof.

General and field officers of the national guard, who have, after ten years active service, resigned or retired for physical disability or otherwise, may in the discretion of the commander-in-chief, on the recommendation of the adjutant general, be commissioned by brevet, in the next higher grade than that held by them at the time of their resignation or retirement, but not however above the grade of major general. Said brevet rank shall be considered strictly honorary and shall confer no privilege of precedence or command, nor pay and emoluments. Brevet officers may however wear the uniform of their brevet grade on occasions of ceremony.

The commander-in-chief may assign officers on the retired list, with their consent, to active duty in recruiting, upon courts martial, courts of inquiry and boards, to staff duty not involving service with troops, or in charge of a military reservation left temporarily without officers. Such officers while so assigned shall receive the full pay and allowances of their grades at time of retirement.

Subdivision B. When congress shall have declared a national emergency or shall have authorized the use of armed land forces of the United States for any

purpose requiring the use of troops in excess of those of the regular army, and the President has ordered into the active military service of the United States, to serve therein for the period of the war or emergency, any or all units and members of the national guard of this state, all forces so ordered into the active military service of the United States shall from the date thereof stand relieved from duty in the national guard of this state so long as they shall remain in the active military service of the United States, when so provided by federal law. Upon being relieved from such duty in the military service of the United States, all such individuals and units shall revert to their National Guard status. (As amended Apr. 8, 1939, c. 175, §7.)

2425. State and Municipal officers and employees not to lose pay while engaged in drill.—All officers and employees of the state or subdivision or municipality thereof who shall be members of the national guard or of the Officers Reserve Corps of the United States shall be entitled to a military leave of absence from their respective duties without loss of pay, status, vacation, or efficiency rating, on all days during which they shall be engaged in drills or parades during business hours ordered by proper authority or for field or coast-defense training or active service ordered or authorized under the provisions of state or federal law, or active duty ordered or authorized by state law; provided in the case of officers of the Officers Reserve Corps of the United States such leaves of absence shall not exceed 14 days in any calendar year. (As amended Apr. 8, 1939, c. 175, §8.)

Applicable to state naval militia. Op. Atty. Gen., June 18, 1929.

Statute does not apply to members of officers' reserve corps. Op. Atty. Gen. (310h), Feb. 28, 1939.

City under civil service ordinance cannot require employees who are members of National Guard or Naval Militia to take their vacations at the same time that they are engaged in military training. Id.

2437. Supplies—How issued.

Bathing suits were properly issued to national guard stationed at State Fair Grounds where there were no bathing facilities and local authorities would not permit use of bathing beaches without bathing suits. Op. Atty. Gen. (2a), Nov. 16, 1934.

Under Laws 1931, c. 223, §3, adjutant general may pay part of costs of moving high tension lines crossing Camp Ripley and maintained by a private utility under an easement in perpetuity. Op. Atty. Gen. (2c), Dec. 16, 1936.

2438. Officers to distribute.

Applicable to naval militia. Op. Atty. Gen., Nov. 13, 1929.

2440. Adjutant general—Chief of staff—Office—Reports—Seal—Powers and duties.

Correction. The seventh sentence of this section, as it appears in the 1927 edition, erroneously omits the words "and distributed to the commissioned officers." In the enactment the sentence reads: "He shall, whenever necessary, cause the military code, orders and regulations of the state to be printed and distributed to the commissioned officers and the several organizations of the national guard."

2447. Military camps.

Act authorizing governor and state auditor to convey on behalf of state real estate known as Camp Lakeview. Laws 1931, c. 54.

Laws 1931, c. 223, makes an appropriation for acquisition of land for a field training center at Camp Ripley.

2450. Camp grounds and military reservations.—The adjutant general shall have charge of the camp grounds and military reservations of the state and shall be responsible for the protection and safety thereof, and shall promulgate regulations for the maintenance of order thereon for the enforcement of traffic rules and for all other lawful regulations as may be ordered for the operation, care and preservation of existing facilities and installations on all state military reservations. He shall keep in repair all state buildings, and other improvements thereon, including water pipes laid by the state on highways leading thereto and of all military property connected with said grounds. He may make such further im-

provements thereon as the good of the service requires. Private property may be acquired by condemnation, upon the application of the adjutant general, for camp ground, rifle range and other military purposes. All damages, cost and expense incurred in condemning such property shall be paid by the state treasurer, upon certificates of the adjutant general and warrant of the State Auditor, from any unexpended balance of the military fund after meeting the demands of the National Guard. (As amended Apr. 8, 1939, c. 175, §9.)

Subject to §53-16 adjutant general has power to pay part of costs of moving of high tension line crossing Camp Ripley under an easement in perpetuity. Op. Atty. Gen. (2c), Dec. 16, 1936.

Adjutant general has authority to enter into contract for electric power to be supplied to camp for ten years. Op. Atty. Gen. (2c), Dec. 16, 1936.

Adjutant general may make arrangements with federal government for furnishing light and power for use by regular army and National Guard at Camp Ripley. Op. Atty. Gen. (2c), Apr. 3, 1937.

2454. Pay of officers.—Every commissioned officer of the national guard not salaried as such, shall receive from the state, while engaged in any service ordered by the governor, pay and allowance at the rate or allowed by law to officers of similar rank and length of service in the United States Army.

The necessary military expenses of divisions, brigades, regiments, separate battalions, companies, batteries or separate detachment, including clerk hire, office supplies, postage and other actual outlay, shall be paid by the adjutant general out of the national guard maintenance fund on vouchers duly sworn to by the commanding officer or the officer charged with the payment of such expenses, such expenses in no event to exceed \$500.00 a year for each brigade headquarters, \$2000.00 per year for each division headquarters and each regimental headquarters, \$500.00 for each battalion headquarters not a part of a regiment with headquarters within the state, and \$100.00 for incidental expenses of each company, battery or detachment. Provided, however, that all disbursements under this section shall be kept as prescribed by the commander in chief in orders or regulations and shall be examined annually by the public examiner.

Where the officers of the national guard are convened by the governor at an annual meeting of instruction, other than camp or active service, or where they are detailed under orders from regimental headquarters for the purpose of holding a quarterly inspection outside of their own station, they shall be allowed for traveling and incidental expenses, the sum of three dollars per day, not to exceed two days, in addition to transportation. (As amended Apr. 8, 1939, c. 175, §10.)

2460. Pay and allowance of Adjutant General—Assistant Adjutant General—Employees.—The adjutant general shall receive the pay and allowances of his grade as provided by the Act of Congress approved June 10, 1922. He may appoint an assistant adjutant general, a state quartermaster, and such administrative and clerical assistants as may be authorized by law, all at salaries which shall be currently fixed by law. In case of war, riot, insurrection or other emergency or when authorized by the Governor, such additional help as is necessary, may be temporarily employed, same to be paid from the amount appropriated for the maintenance of the National Guard. (As amended Apr. 8, 1939, c. 175, §11.)

2463. Courts-martial.

Where one was convicted by summary court-martial and habeas corpus issued and he was subsequently arrested under §2480 and sought to be relieved under a second writ of habeas corpus served the same day, military authorities did not lose jurisdiction by refraining from taking further action during the pendency of the habeas corpus proceeding. 174M82, 218NW542.

The only questions reviewable by habeas corpus are whether the military court has jurisdiction and power to impose the penalty inflicted. 174M82, 218NW542.

2466. Military offenses, how punished.

The fact that one was a member of the naval reserve at the time of enlistment in the National Guard did not render the enlistment void nor relieve him from liability for violations of military law. 174M82, 218NW542.

2469. Desertion.

Laws 1937, c. 232, amends this section and not §§2569-1 to 2569-7. Op. Atty. Gen. (122b-3), Oct. 27, 1937.

2480. Officers and men may be arrested, when.

Where one was convicted by summary court-martial and habeas corpus issued and he was subsequently arrested under §2480 and sought to be relieved under a second writ of habeas corpus served the same day, military authorities did not lose jurisdiction by refraining from taking further action during the pendency of the habeas corpus proceeding. 174M82, 218NW542.

2494. City or village armory commission.

Owatonna Armory may pay portion of expenses incurred in applying tarvia on street, if it so desires, but city may not enforce payment of assessment therefor. Op. Atty. Gen., May 18, 1932.

2505. Adjutant general to take possession of unused armories.

National Guard Armory at Pine River assigned to Village of Pine River. Laws 1939, c. 371.

2508. May receive state aid.

There is no statutory limitation upon what city may appropriate for maintenance and upkeep, but it must be a reasonable amount. Op. Atty. Gen. (59a-51), July 18, 1933.

2513. State aid for maintenance.

See §2517-6, post.

2517-2. Armory construction authorized.—In any municipality now or hereafter having an armory which at the time shall have been condemned by lawful authority as unfit or unsafe for use for armory or military purposes, or which shall have been determined by the adjutant general to be unfit, unsafe, or inadequate for armory or military purposes, in which municipality there shall at the time be stationed twenty or more units of the national guard and naval militia, a new armory may be constructed and the cost thereof may be paid as hereinafter provided. (Act Apr. 25, 1931, c. 398, §1; Apr. 20, 1933, c. 332, §2.)

Sec. 1 of Act Apr. 20, 1933, cited, amends the title of Laws 1931, c. 398, to read as follows:
"An act relating to armories."

2517-3. Armory building commission created.—(a) For the purposes herein provided there shall be created a corporation to be known as the Armory Building Commission of such city. The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: the adjutant general, the state auditor, the state treasurer, the senior in rank of the officers of the headquarters, organizations, or units of the national guard and naval militia stationed in such city, the mayor of such city, and two other representatives of such city chosen by the governing body thereof from their own number or otherwise, who shall serve at the pleasure of such governing body; provided, that in case of the failure of the governing body of such city to choose either or both of such representatives within thirty days after written notice to do so, given by the adjutant general to the presiding officer of such governing body, the other members aforesaid shall compose such commission and corporation; provided further, that if such senior officer of the national guard and naval militia is also an incumbent of any of the other offices aforesaid, the next officer in rank shall serve as a member of such commission and corporation.

(b) Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such city of the conditions specified in Section 1 of this act, naming the persons authorized to compose such commission and corporation as aforesaid, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of

a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than three, shall have power to act as such commission and corporation and to elect such temporary acting officers as may be necessary during the existence of the vacancy.

(c) The adjutant general shall be chairman, the state auditor shall be secretary, and the state treasurer shall be treasurer of such corporation. The treasurer shall give a bond to the corporation, with corporate surety approved by the chairman and secretary, to be filed with the secretary, in the sum of \$50,000.00. The premium on such bond shall be paid by the corporation. Such corporation shall issue no stock. No officer or member of such corporation shall have any personal share or interest in any funds or property of the corporation, or be subject to any personal liability on account of any liability of the corporation. (Act Apr. 25, 1931, c. 398, §2; Apr. 20, 1933, c. 332, §2.)

2517-4. Powers of corporation.—Such corporation, subject to the conditions and limitations herein prescribed, shall possess all the powers as a body corporate necessary and convenient to accomplish the objects and perform the duties prescribed by this act, including the following, which, however, shall not be construed as a limitation upon the general powers hereby conferred, to-wit:

(a) To acquire by lease, purchase, gift, or condemnation proceedings all necessary right, title, and interest in and to the lands required for a site for such new armory and all other real or personal property required for the purposes contemplated by this act, and to hold and dispose of the same, subject to the conditions and limitations herein prescribed; provided, that any such real or personal property or interest therein may be so acquired or accepted subject to any condition which may be imposed thereon by the grantor or donor and agreed to by such corporation not inconsistent with the proper use of such property by the state for armory or military purposes as herein provided.

(b) To exercise the right of eminent domain in the manner provided by Mason's Minnesota Statutes of 1927, Chapter 41, for the purpose of acquiring any property which such corporation is herein authorized to acquire by condemnation; provided, that the corporation may take possession of any such property so to be acquired at any time after the filing of the petition describing the same in condemnation proceedings; provided further, that this shall not preclude the corporation from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

(c) To construct and equip a new armory in such city upon a site to be secured as herein provided, at a total cost of such corporation for site, building, and equipment not exceeding \$1,500,000.00, to pay therefor out of the funds obtained as hereinafter provided, and to hold, manage, and dispose of such armory, equipment, and site as hereinafter provided.

(d) To sue and be sued.

(e) To contract and be contracted with in any matter connected with any purpose or activity within the powers of such corporation as herein specified; provided, that no officer or member of such corporation shall be personally interested, directly or indirectly, in any contract in which such corporation is interested.

(f) To employ any and all professional or nonprofessional services and all agents, employees, workmen and servants necessary and proper for the purposes and activities of such corporation as authorized or contemplated by this act and to pay for the same out of any portion of the income of the corporation available for such purposes or activities; provided, that the officers and members of such corporation shall receive no compensation therefrom, but may receive

their reasonable and necessary expenses incurred in connection with the performance of their duties.

(g) To borrow money and issue bonds for the purposes and in the manner and within the limitations herein specified, and to pledge any and all property and income of such corporation acquired or received as herein provided to secure the payment of such bonds, subject to the conditions and limitations herein prescribed, and to redeem any such bonds if so provided therein or in the mortgage or trust deed accompanying the same.

(h) To use for the following purposes any available moneys received by such corporation from any source as herein provided in excess of those required for the payment of the cost of such armory and for the payment of any bonds issued by the corporation and interest thereon according to the terms of such bonds or of any mortgage or trust deed accompanying the same, to-wit:

(1) to pay the necessary incidental expenses of carrying on the business and activities of the corporation as herein authorized;

(2) to pay the cost of operating, maintaining, repairing, and improving such new armory;

(3) if any further such excess moneys remain, to purchase upon the open market at or above or below the face or par value thereof any bonds issued by the corporation as herein authorized; provided, that any bonds so purchased shall thereupon be cancelled.

(i) To adopt and use a corporate seal.

(j) To adopt all needful by-laws, rules and regulations for the conduct of the business and affairs of such corporation and for the management and use of such armory while under the ownership and control of such corporation as herein provided, not inconsistent with the use of such armory by the state for armory or military purposes. (Act Apr. 25, 1931, c. 398, §3; Apr. 20, 1933, c. 332, §3.)

2517-5. City shall provide site.—(a) Any such city desiring to have such new armory constructed hereunder may provide a site therefor as hereinafter provided.

(b) If any such city shall desire to have such new armory constructed on the site of the existing armory, and if such site is approved by the adjutant general as suitable for such new armory, such city may convey by way of gift or sale to such corporation all right, title, and interest owned by such city in such existing armory and the lands whereon the same is situated and all adjoining lands required for constructing such new armory. Thereupon, in case any such lands or interests therein are owned or controlled by the board of park commissioners of such city or by any other governmental agency therein except the state or such city, such board of other agency may convey the same by way of gift or sale to such corporation. Such corporation may wreck and remove such existing armory and may sell all or any part thereof and may use any proceeds received therefrom for any authorized purpose or activity of the corporation hereunder.

(c) If such city shall not desire to have such new armory constructed on the site of the existing armory, or if such site shall not be approved by the adjutant general as herein provided, such city desiring to have such new armory constructed may secure by purchase, gift, or condemnation, and may convey to such corporation another site for such new armory approved as suitable therefor by the adjutant general. In case such site or any part thereof or interest therein is owned or controlled by the board of park commissioners of such city or by any other governmental agency therein except the state or such city, such board or other agency may convey the same by way of gift or sale to such corporation without charge.

(d) In case any person or corporation except such city or board of park commissioners or other governmental agency hereinbefore referred to shall own any lands required for such site, whether provided under

subdivision (b) or subdivision (c) of this section, or any interest in any such lands which would interfere with the use thereof by the state for armory or military purposes, such city or such board of park commissioners or other governmental agency may acquire such lands or interest by purchase, gift, or condemnation and may convey the same by way of gift or sale to such corporation; provided, that notwithstanding any such outstanding ownership or interest, such corporation may, in its discretion, with the approval of the adjutant general accept a conveyance of such lands and interests in lands for such site as may be owned or controlled by such city, board of park commissioners, or other governmental agency, and may acquire by purchase, gift, or condemnation any further lands or interests in lands that may be required for such site.

(e) The governing body of such city and such board of park commissioners and any other governmental agency concerned shall have power to exercise the right of eminent domain in the manner provided by Mason's Minnesota Statutes of 1927, Chapter 41, for the purpose of acquiring any lands or interests in lands authorized to be acquired as aforesaid.

(f) In the event that the state of Minnesota shall own any lands or interest in lands included in the site of such existing armory and required for the site for such new armory, such lands or interest therein shall be leased by the state to such corporation for a period of not exceeding 40 years for the purposes contemplated by this act, without any consideration other than the use of such property by the state for armory or military purposes as herein provided and the provisions hereof for the conveyance to the state of the new armory building and the site thereof. The adjutant general shall have power to execute such lease to such corporation in the name of the state. Provided, that such corporation shall have no power to mortgage or encumber any lands or interest so leased to it by the state except to the extent of such leasehold interest and subject to the conditions and limitations herein prescribed.

(g) In case any land acquired for armory site purposes hereunder has been donated to such corporation by such city or by any other governmental agency except the state, and in case such land or any part thereof shall thereafter not be used or shall cease to be used for armory purposes for a continuous period of more than five years, not including the period of any war or other emergency in which the armed forces of the state may be engaged, the title to such unused land or part thereof shall thereupon pass, revert and be vested as follows: An undivided one-half thereof in the state and an undivided one-half thereof in such city or other governmental agency which donated the same, subject to any encumbrances that may have been lawfully placed thereon by such corporation or otherwise. (Act Apr. 25, 1931, c. 398, §4; Apr. 20, 1933, c. 332, §4.)

2517-6. Funds for construction of armory—tax levy.—(a) The funds to be used by such corporation for the purposes of this act may be obtained as hereinafter provided.

(b) Such city desiring to have such new armory constructed hereunder may by resolution of its governing body irrevocably provide for levying and collecting annually for a specified period, not exceeding 40 years, a tax upon all taxable property therein of such amount as such governing body may determine, not exceeding five-tenths of a mill. The proceeds of such levy as collected shall be paid to such corporation for the purposes herein prescribed. Such city shall have power to make such tax levies and payments and to bind itself thereto by such resolution of its governing body. The provisions of such resolution may be made conditional upon the giving of an agreement by the adjutant general as authorized in subdivision (d) of this section. The obliga-

tions of such city to levy, collect, and pay over such taxes shall not be deemed or construed to constitute an indebtedness of such city within the meaning of any provision of law or of its charter limiting its total or net indebtedness, and such taxes may be levied and collected without regard to any statutory or charter provision limiting the amount or rate of taxes which such city is otherwise authorized to levy. The payment of the proceeds of such taxes up to an amount equal to the sum of \$250 per year, or such other amount as may hereafter be prescribed by law, for each company or other unit of the national guard or naval militia stationed in such city shall be deemed sufficient appropriation and payment by such city to authorize the payments to be made by the state annually for armory maintenance and equipment under the provisions of Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof or supplemental thereto, such payments to be made to such corporation and applied as herein provided. (As amended Apr. 20, 1933, c. 332, §5.)

(c) The annual payments by the state for armory maintenance and equipment authorized by Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof or supplemental thereto, shall be paid to such corporation and applied as herein provided. (As amended, Apr. 20, 1933, c. 332, §5.)

(d) In addition to the payments by the state under subdivision (c) of this section, the adjutant general is hereby authorized to pay to such corporation out of any moneys which may from time to time be appropriated to and for his department and not appropriated or set apart for any other specific purpose a sum not more than \$41,000 per year, and may bind himself and his successors in office by agreement with such corporation to make such payments in a specified amount or amounts out of such appropriations for a period of not more than forty years.

(e) Upon completion of such new armory such corporation shall lease the same to the state through the adjutant general, until such armory and site shall be conveyed to the state as hereinafter provided. Such lease shall be made upon such terms and conditions as shall secure to the state the full and complete use of such armory for armory and military purposes so far as may be required for the headquarters, organizations, and units of the national guard and naval militia stationed in such city, and upon such other terms and conditions not inconsistent therewith as may be agreed upon; provided, that except for such use of such property for armory and military purposes which shall be secured to the state as aforesaid, such lease shall be subject to any incumbrance placed upon the property to secure the payment of any bonds issued as herein provided. No further consideration for such lease shall be required than the payments to be made by the state as provided by subdivisions (c) and (d) and this section. Otherwise, and so far as it is not inconsistent with the terms and conditions of such lease to the state and so far as will not interfere with the use by the state of such property for armory or military purposes, such corporation may lease, rent, or otherwise make use of such new armory building or any part thereof for such purposes and upon such terms as such corporation may deem proper, and may use the rents and profits therefrom for the purposes herein provided. (Act Apr. 25, 1931, c. 398, §5; Apr. 20, 1933, c. 332, §5; Jan. 13, 1936, Ex. Ses., c. 12, §1.)

2517-7. Corporation may issue bonds.—(a) In anticipation of the receipt of such corporation of the tax proceeds, appropriations, rents, and profits specified in Section 5 hereof, and of income from any other source, and for the purpose of securing funds as needed for payment of the cost of such new armory and other purposes herein authorized, such corporation is hereby authorized to issue its bonds in an aggregate principal amount not exceeding \$1,500,000.00, bear-

ing interest at a rate not to exceed five per cent per annum, payable semi-annually.

(b) Such bonds shall be of such date, denominations, place of payment, form, and details as may be determined by such corporation not inconsistent with the provisions of this act. Such bonds shall mature serially, the first installment to fall due in not more than five years and the last in not more than forty years from their date, and no annual maturing installment shall exceed by two and one-half times the amount of the smallest annual maturing installment; provided, that the amount of such installments of principal may be such that the increase thereof from year to year shall approximately equal the decrease from year to year in the interest on the bonds remaining unpaid.

(c) Such bonds shall be signed by the adjutant general, attested by the state auditor, and countersigned by the state treasurer, in their respective positions as chairman, secretary, and treasurer ex officio of such corporation, and the interest coupons to be thereto attached shall be executed and authenticated by the printed, engraved, or lithographed facsimile signatures of such chairman and secretary.

(d) Such bonds shall be sold by such corporation upon such notice and upon such terms and at such times as the corporation shall deem best. Such bonds shall not be deemed or construed to be debts of the State of Minnesota or of the municipality in which such armory is situated, nor to impose any personal liability upon any member of such corporation, but shall be payable solely out of the income to be received by such corporation as specified in this act. Bonds legally issued pursuant to this act may be purchased by the State board of Investment for the Permanent School Fund, Permanent University Fund, Swamp Land Fund, Internal Improvement Land Fund, or any other trust fund of the State of Minnesota, or for any other fund administered by such board, and shall be deemed authorized securities within the provisions of Mason's Minnesota Statutes of 1927, Section 7714, and laws amendatory thereof and supplemental thereto, and shall be proper for the investment of capital, surplus or deposits of any savings bank or trust company, and for the investment of funds of any insurance company, and for the investment of any sinking funds held by any public or municipal corporation, and may be pledged by any bank or trust company as security for the deposit of public moneys therein in lieu of surety bonds. Such bonds shall be deemed and treated as instrumentalities of a public governmental agency, and as such shall be exempt from taxation. (Act Apr. 25, 1931, c. 398, §6; Apr. 20, 1933, c. 332, §6.)

2517-8. May give mortgage on armory and site.—To secure the prompt and full payment of such bonds and interest thereon such corporation may mortgage such armory building and/or the site thereof, and may pledge the income or any part thereof receivable by such corporation under this act to any trustee under such provisions that upon default in the payment of the principal or of interest on any such bonds all of such bonds may be declared due and payable, and such mortgage foreclosed in like manner as other mortgages are foreclosed in this state, subject to the provisions of this act. The purchaser at any sale upon such foreclosure shall acquire the right of possession and the right to operate such building under such terms and conditions as may be specified in said mortgage and not inconsistent with the use of the property by the state for armory and military purposes, such possession and right of operation to continue until the full principal and interest on such bonds or the amount bid upon such foreclosure sale shall have been paid out of the net rents and profits received from such operation or out of moneys otherwise provided as set forth in Section 5 [§2517-6] hereof. Such mortgage or deed of trust may contain any other provisions not inconsistent with the provisions of

this act or with the use of such building by the state for armory or military purposes as are customarily included for the benefit and protection of the parties to such instruments, including provisions for the insurance thereof, appointment of a receiver in the event of a default by the mortgagor, exemption of the members of such corporation from any personal liability, and other such provisions. Nothing contained in such mortgage shall be deemed or construed to constitute a liability of the State of Minnesota or of such city or any department, board or commission thereof, nor to impose any personal liability upon any member of such corporation. Such mortgage or deed of trust may be recorded in the office of the appropriate register of deeds without the payment of any mortgage registry tax. (Act Apr. 25, 1931, c. 398, §7.)

2517-9. Property to be conveyed to state.—Upon payment of all indebtedness incurred by such corporation hereunder, including the full principal and interest of all bonds issued by such corporation as herein provided, such corporation shall transfer and convey such armory building and the site thereof to the State of Minnesota for military purposes, and shall pay over to the state any unexpended moneys then held by such corporation, which moneys shall be appropriated to the adjutant general for the maintenance, repair, and improvement of such armory. (Act Apr. 25, 1931, c. 398, §8.)

2517-10. Limit of indebtedness.—Such corporation shall never be subject to an indebtedness in excess of \$1,500,000.00, nor shall it incur any indebtedness except as authorized herein. (Act Apr. 25, 1931, c. 398, §9; Apr. 20, 1933, c. 332, §7.)

2517-11. Books to be examined by state comptroller.—The books and affairs of such corporation shall be subject to examination by the state comptroller. (Act Apr. 25, 1931, c. 398, §10.)

2517-12. Provisions separable.—This act shall be held unconstitutional only in the event that some major provisions thereof are found unconstitutional and invalid which would make the act unworkable. Should any minor provisions of this act be held unconstitutional it shall in no way affect or invalidate any other provision or part thereof. (Act Apr. 25, 1931, c. 398, §11.)

2517-13. Construction in municipalities having national guard units—definition—Application of act.—(a) In any municipality of this state in which there shall at the time be stationed one or more units of the national guard or naval militia, and in which the adjutant general shall deem it necessary or expedient to construct an armory, an armory may be constructed and the cost thereof may be paid as hereinafter provided. The term "municipality" as used herein shall include cities of every class, villages, and boroughs. The provisions of this section and the following sections of this act shall be construed as supplemental to the preceding sections, and not as repealing or superseding the same or any part thereof.

(b) Whenever the adjutant general shall deem it necessary or expedient that an armory be constructed upon a state military camping ground to be used principally by any unit or units of the national guard stationed at a municipality in the vicinity thereof such armory may be constructed and the cost thereof may be paid in the manner hereinafter provided for the construction of armories in municipalities, and the annual payments hereafter to be made by the state for the maintenance and equipment of such armory, as authorized by Mason's Minnesota Statutes of 1927, Section 2513, and acts amendatory thereof and supplemental thereto, shall be payable to the Minnesota state armory building commission without the necessity of like appropriations by such municipality or any other party so long as any bonds issued for the construction of such armory shall be outstanding.

(Laws 1931, c. 398, §12; as added by Act Apr. 20, 1933, c. 332, §8; Jan. 13, 1936, Ex. Ses., c. 12, §2.)

2517-14. Corporation created—Commission.—(a) For the purpose of constructing armories as provided by Section 12 of this act, there shall be created a corporation to be known as the "Minnesota State Armory Building Commission." The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: The adjutant general and the general officers of the line of the national guard of the state. The adjutant general shall be chairman of such commission. Such commission shall elect a secretary and treasurer from the members thereof other than the adjutant general. The officers of such commission shall have like powers and duties as are vested in or imposed upon the corresponding officers of the commission referred to in Section 2 of this act.

(b) Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such municipality of the conditions specified in Section 12 of this act, naming the persons authorized to compose such commission and corporation as provided in this section, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than two, shall have power to act and to elect such temporary acting officers as may be necessary during the existence of the vacancy. In case at any time there shall not be at least two qualified officers of the national guard in addition to the adjutant general eligible to serve ex officio as members of such commission as provided by subdivision (a) of this Section, the adjutant general may appoint a member or members of such commission from the colonels of the line of the national guard of the state so as to provide not more than two members of such commission in addition to himself. The membership of the member last so appointed shall automatically terminate upon the appointment and qualification of an officer of the national guard eligible to serve ex officio as a member of such commission as provided by Subdivision (a) of this section, providing the total membership of such commission be not thereby reduced to less than three. All officers of the national guard eligible to be members of such commission as provided by Subdivision (a) of this section shall automatically become such members forthwith upon their appointment and qualification as such officers. In case of a vacancy in the office of adjutant general, or in case of the incapacity of the adjutant general to act as a member and chairman of such commission, the officer who is appointed or authorized according to law to exercise the powers of the adjutant general for the time being shall, during the existence of such vacancy or incapacity, act as a member and chairman of such commission and have all the powers and duties herein vested in or imposed upon the adjutant general as a member and chairman of such commission. The adjutant general shall certify to the secretary of state all changes in the membership of the commission, but failure on his part so to do shall not affect the authority of any new member of the commission or the validity of any act of the commission after accession of a new member. (Added as §13 to Laws 1931, c. 398, by Act Apr. 20, 1933, c. 332, §8; Mar. 11, 1935, c. 40, §1.)

Minnesota armory building commission is a public corporation. Op. Atty. Gen., Mar. 24, 1934.

2517-15. Same—powers of corporation and municipalities—laws applicable—definitions—limitation on cost—indebtedness.—For the purpose of constructing armories as provided in Section 12 of this act, the corporation referred to in Section 13 of this act shall have like powers and privileges and be subject to like

duties and obligations as are by this act vested in or imposed upon the corporation referred to in Section 2 of this act. Every municipality in which an armory may be constructed as provided in Section 12 of this act, and every governing body of and every other governmental agency in every such municipality, shall have like powers and privileges and be subject to like duties and obligations as are by this act vested in or imposed upon the respective cities, governing bodies, and other governmental agencies referred to in Sections 1 to 11 of this act, inclusive. All the provisions of this act relating to the construction of armories in the cities referred to in Section 1 of this act and to all other matters connected therewith, shall, so far as applicable, and not otherwise provided herein, apply to the construction of armories in the municipalities referred to in Section 12 of this act to all other matters connected therewith, and for such purposes the term "city" as used in Sections 1 to 11, inclusive, of this act shall be construed to refer to the municipalities referred to in Section 12 of this act, and the terms "commission" and "corporation" as used in Sections 1 to 11, inclusive, of this act, shall be construed to refer to the commission and corporation referred to in Section 13 of this act; provided, however, as follows:

(a) The total cost to the corporation of each armory constructed as provided in Section 12 of this act, including the site, building, and equipment, shall not exceed \$75,000.00 for each unit of the national guard or naval militia to be quartered therein, and the total amount of bonds issued on account of each such armory shall not exceed the amount of such cost.

(b) The adjutant general may pay under the provisions of subdivision (d) of Section 5 of this act on account of each armory constructed as provided by Section 12 of this act an amount not exceeding \$2,000.00 per year for each unit of the national guard or naval militia quartered in such armory.

(c) The corporation created under Section 13 of this act shall never be subject to an indebtedness on account of any armory constructed as provided by Section 12 of this act in excess of the cost of such armory as provided by this section, nor to a total indebtedness in excess of the aggregate cost of all armories so constructed.

(d) The treasurer of the corporation created under Section 13 of this act shall give a bond to the corporation in such sum and with such surety as the corporation may determine, conditioned in like manner as the bonds of treasurers of public bodies, to be approved and filed as the corporation may determine.

(e) The corporation created under Section 13 of this act may designate one or more state or national banks as depositories of its funds, and may provide, upon such conditions as the corporation may determine, that the treasurer of the corporation shall be exempt from personal liability for loss of funds deposited in any such depository due to the insolvency or other acts or omissions of such depository. (Laws 1931, c. 398, §14; Laws 1933, c. 332, §8; Mar. 11, 1935, c. 40, §2.)

Act Apr. 20, 1933, cited, adds sections 12, 13 and 14 to Act 1931, c. 398. The enacting part provides that the words "this act" shall be deemed to refer to the amended act as amended.

Commission cannot borrow from one fund to finance a different armory. Op. Atty. Gen. (310b), Mar. 2, 1936.

NAVAL MILITIA

2520. Naval Militia not to exceed eight companies.

—The Naval Militia shall consist of not to exceed eight divisions or companies and a squadron of air service, organized into such number of battalions as the tactical situation may require. ('99, c. 355; '05, c. 34, §1; '09, c. 389, §1; G. S. '13, §2473; '15, c. 353, §1; Apr. 23, 1929, c. 296.)

(e) The corporation created under Section 13 of this act may designate one or more state or national banks as depositories of its funds, and may provide, upon such conditions as the corporation may determine, that the treasurer of the corporation shall be exempt from personal liability for loss of funds deposited in any such depository due to the insolvency or other acts or omissions of such depository. (Added as §14, Laws 1931, c. 398, by Act Apr. 20, 1933, c. 332, §8; Mar. 11, 1935, c. 40, §2.)

WAR RECORDS

2535-1. Minnesota War Records Commission discontinued.

Op. Atty. Gen. (523g-17), May 2, 1934; note under § 4326(g)(1).

CHAPTER 13

Roads

GENERAL HIGHWAY ACT

2542. Scope of act.

175M583, 222NW385; note under §2554.

U. S. v. Wheeler Tp. (CCA8), 66F(2d)977.

A village approving plans of construction by state highway commissioner of a trunk highway upon a village street and authorizing a change of grade according to such plan, makes itself liable for the damage caused abutting property by such change, in the absence of assumption of such liability by the state. 178M144, 226 NW398.

Followed in Foss v. M., 178M430, 227NW357.

State cannot reimburse county out of trunk highway fund amount expended for right of way for new road built by county and later designated and taken over by state as trunk highway. State v. Babcock, 186M132, 242NW474. See Dun. Dig. 8452.

There is no statutory provision by which one town can compel another to maintain its half of a town line road where there has been no agreement for the division of the road for purpose of maintenance, the only remedy being application to the county board under §2607. Op. Atty. Gen., June 27, 1930.

Where "state rural highway" was established and constructed under Laws 1911, ch. 254, and was later designated as a temporary trunk highway and was turned back to county by state under §2554(4)(a) the highway could not revert to its former status of "state rural highway" but became a county road that could not be turned over to town to be maintained by it, except pursuant to §2582. Op. Atty. Gen. (377a-15), Nov. 7, 1935.

3. "County roads."

Order that portion of road within county should be set aside by the county for "opening and maintenance" simply had the effect of imposing upon the county the duty of opening the road, and upon the towns through which the road passes the duty of maintaining same. Op. Atty. Gen., Mar. 27, 1931.

4. "Town roads."

Petitioner for whose primary benefit a cartway is established cannot treat it as a strictly private way, and cannot keep the public off it. Op. Atty. Gen., June 10, 1931.

Town board has control over all town roads, including bridge culverts. Op. Atty. Gen., June 13, 1933.

2543. "Road" and "Highway" defined.

Op. Atty. Gen., July 19, 1930; note under §2552. Includes part of interstate bridge. Op. Atty. Gen., Apr. 11, 1929.

Where road extending into two counties over bridge across river, forming boundary between counties, was designated as a state aid road by both counties, each county is chargeable for the maintenance of that portion of the bridge within its territorial limits and no more, though county may expend money, if it desires, in the maintenance of bridge or road in another county. Op. Atty. Gen., Aug. 18, 1930.

Cartways may not be established between two parcels of land where it would not connect with a public road. Op. Atty. Gen. (377b-1), Sept. 28, 1934.

Commissioner of highways may install lights on trunk highways at intersections in cities and villages and pay for cost out of highway funds. Op. Atty. Gen. (229e-3), Feb. 3, 1937.