

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.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

feet of floor space; a standard globe valve shall be placed in the steam service line or lines connected to this perforated steam pipe outside of the building, and to be accessible for operation in case of fire. The steam supply for such pipes shall be continually available for service while the plant is in operation, and shall be sufficient to completely fill the room space in less than one minute, and continue the flow of steam sufficient to keep the room space filled with steam for a period of at least thirty minutes.

This section shall not apply to any business or establishment where the dry cleaning or dry dyeing is accomplished by a non-flammable liquid, or liquids having a flash point exceeding 187 degrees Fahrenheit or 86 degrees Centigrade, product or substance. (As Am. Apr. 14, 1937, c. 225, §5.)

6001. Use of gasoline engines forbidden in certain cases.—No gas or gasoline engine, steam generator or heating device nor any electrical dynamo or motor except such motors as have been approved as explosion-proof by the State Fire Marshal shall be located, maintained or used inside of, nor within a distance of ten feet of any building used for the business of dry cleaning and dry dyeing as above defined except that an electrical motor may be placed within such ten feet, but without a solid fireproof wall.

Any dry cleaning or dry dyeing business located in any village or city of the fourth class may install and maintain two 2½-gallon fire extinguishers of anti-freezing liquid, to be approved by and installed as directed by the state fire marshal, in lieu of compliance with the provisions of Section 13 of this chapter providing for the extinguishment of fire in such business or establishment. ('21, c. 459, §18; Laws 1927, c. 402; Apr. 20, 1931, c. 268.)

6001-1. Must have fire extinguishers.—Any dry cleaning or dry dyeing business located in any village or city of the fourth class may install and maintain two 2½ gallon fire extinguishers of anti-freezing liquid to be approved by and installed as directed by the State Fire Marshal, in lieu of compliance with the provisions of this chapter providing for the prevention of fire in such business or establishment. (Act Apr. 26, 1929, c. 402, §2.)

6012. Separate buildings for gas, etc.—No carbon bi-sulphide, gasoline, naphtha, benzol or light petroleum or coal tar product used in the dry cleaning and dry dyeing business shall be distilled or redistilled in connection with the said dry cleaning or dry dyeing business except in a building of fire-proof construction, which building must be located more than fifteen (15) feet from any other building or lot, except the buildings used in said dry cleaning and dry dyeing business, unless separated therefrom by an unpierced fire wall. But in no event shall more than two sides of such building have walls without open-

ings. The roof of such building shall be of fire-resistant construction. (As Am. Apr. 14, 1937, c. 225, §6.)

6014. Abandoned buildings.—Should any building, business or establishment of dry cleaning or dry dyeing as herein defined, be discontinued or not carried on in any building which does not conform to the provisions herein set forth, for a period of ninety (90) days, such business shall be considered as having been abandoned, and before the same can again be carried on in such building, the said building must be so constructed, repaired or rebuilt as to conform to the provisions of this act.

The period of ninety (90) days herein stated is not to be construed as such period when the plant is under construction or repair or operated in its regular capacity as a going business. Operation of the plant for short periods of time within the said period of ninety (90) days with the intent to evade the provisions of this section shall be considered as an attempt to interfere with the operation of this act. (As Am. Apr. 14, 1937, c. 225, §7.)

6017. Fire marshal to enforce act.—It shall be the duty of the state fire marshal, his deputies and assistants, to enforce the provisions of this act, and he shall have the same power and authority in the enforcement of the provisions hereof as are given to the state fire marshal under the provisions of the state fire marshal law, namely, sections 5129-5166 of the General Statutes of Minnesota, 1913.

They shall administer and enforce the laws relating to the construction, regulation, safety, and operation of dry cleaning and dry dyeing establishments; investigate, ascertain, declare and prescribe what reasonable standards for the adoption of improvements or other means or methods including the prescribing, modifying and enforcement of reasonable orders pertaining thereto, necessary to prevent fires and explosions and for the protection and safety of employees and the public in dry cleaning and dry dyeing establishments, not inconsistent with this act, and in particular, provisions of Mason's Minnesota Statutes for 1927, Section 6013, but such requirements and regulations shall also be required of alterations and changes undertaken by existing dry cleaning and dry dyeing establishments. (As Am. Apr. 14, 1937, c. 225, §8.)

6018. Disposition of fines.—All fees, penalties or forfeitures collected by the state fire marshal, his deputies or assistants under the provisions of this act, shall be paid into the state treasury and be credited to the State Fire Marshal Fund, and shall be disbursed in the same manner as other moneys in said fund are disbursed. (As Am. Apr. 14, 1937, c. 225, §9.)

Fees for licenses issued previous to passage of Laws 1937, c. 225, should be certified to general revenue fund. Op. Atty. Gen. (290e), July 22, 1937.

CHAPTERS 37-38

Agriculture and Rural Credits

DEPARTMENT OF AGRICULTURE

6023. Creation.

Seed loans for 1937 crop. '37, c. 65.
Cook v. T., 274NW165; note under §6025.

6024. Powers and duties.

(b)
Town assessor is entitled to \$4.00 for each day's services including time spent in taking farm census. Op. Atty. Gen., July 5, 1933.

Assessor is entitled to compensation for extra time spent in taking farm census, but such services must be performed during the months of May and June. Op. Atty. Gen. (12c-1), July 10, 1934.

6025. Commissioner of Agriculture to enforce acts.

Commissioner of Agriculture, Dairy and Food in discharging the duties incumbent upon him under §10390

may exercise the powers conferred by this section. Op. Atty. Gen., Oct. 15, 1931.

Duty imposed on commissioner of agriculture, generally to enforce law against wholesale dealers in produce, as in case of one unlawfully doing business without a license, involves exercise of judgment and discretion and so is not in class of ministerial official duties, nonperformance of which may result in liability to one proximately damaged by nonfeasance. Cook v. T., 274NW165. See Dun. Dig. 8001.

6026. Attorney general to advise Commissioner.

Op. Atty. Gen., Oct. 15, 1931; note under §6025.

6027. Commissioner to publish information.

Op. Atty. Gen., Oct. 15, 1931; note under §6025.
Department may not charge for pamphlets issued. Op. Atty. Gen. (322), Sept. 15, 1938.

6029 1/2. Minnesota State Horticultural Society.

Executive Board has no authority to permit annual member to remain in good standing with no loss of voting privileges for 30 days following expiration of membership. Op. Atty. Gen. (236), July 29, 1936.

RURAL CREDITS

6030. Definitions.—The following words and phrases in this act shall unless the same be inconsistent with the context be construed as follows:

The word "Department" shall mean the "Department of Rural Credit," and the word "Conservator" shall mean the "Conservator of Rural Credit."

The terms "bond," "certificate of indebtedness" and "tax levy certificate" shall include all such evidences of indebtedness issued under authority of this act, whenever issued.

The term "loan" shall mean loans made by the state under authority of this act, and the term "mortgage" shall mean mortgages taken by the state to secure such loans.

Whenever used in this act the masculine gender shall be held to include the feminine gender. ('23, c. 225, §1; Apr. 22, 1933, c. 429, §1.)

6031. Purposes.—(a) The Department of Rural Credit created and established by this act, as amended by Article XV of Chapter 426, Laws 1925, is hereby continued. The rural credit bureau created by said article shall hereafter be known as the Conservator of Rural Credit and shall consist of a single member. The offices of chairman, secretary and assistant attorney general heretofore constituting the rural credit bureau are hereby abolished.

(b) The Conservator shall be a person well qualified to perform the duties of the office, shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of six years at an annual salary of \$7,000 payable in semi-monthly instalments, and may be removed for cause after notice and hearing on the charges made against him. He shall before entering upon his duties take and subscribe the oath prescribed by law and give a bond to the State in the sum of \$25,000 or such larger sum as the Governor may at any time determine to be necessary to indemnify the State against loss, which bond shall be conditioned, approved and filed as now provided by law.

(c) In all matters arising under this act the State may sue and be sued as a natural person. ('23, c. 225, §2; Apr. 22, 1933, c. 429, §2.)

Assistant attorney general member of rural credit bureau holds an office created by statute and thereby designated as "without term," and serves at pleasure of Attorney General. State v. Poirier, 189M200, 248NW747.

The provision creating original rural credit bureau fixing stated terms of office for members, and providing for their removal only on charges made, notice, and hearing, is in conflict with Reorganization Act and was repealed thereby. Id.

6032. Appointment of conservator.—The Conservator shall have the power to provide such furniture, fixtures, stationery and supplies and to employ three assistants at annual salaries not exceeding \$3,000 each and such clerks, laborers, and other employes and engage such legal assistance as are actually necessary for the conduct of the business of said Department, to fix all fees, costs and charges incident to the administration of this act, and to define the duties of the officers, agents and employes of said Department; and all such officers, agents and employes shall be under the direction and authority of said Conservator in all matters not inconsistent with the provisions of this act, and shall give such bonds for the faithful performance of their duties as the Conservator may require. The Conservator shall exercise strict economy in the operation and administration of the Department. ('23, c. 225, §3; Apr. 22, 1933, c. 429, §3.)

Conservator of rural credit may purchase printing independent of state printer. Op. Atty. Gen., May 24, 1933, Aug. 31, 1933.

6033. Powers and duties of Conservator.—(a) The Conservator shall have power:

(1) To adopt such rules and regulations as may be necessary for the proper conduct of the business of the Department;

(2) To issue certificates of indebtedness and tax levy certificates subject to the limitations of Section 12 of this act, to issue bonds payable by the State of Minnesota, bearing interest at a rate not to exceed 3% per annum, in an aggregate amount not to exceed \$60,000,000, said bonds to be issued only for the purpose of refinancing present outstanding indebtedness which is now bearing interest at a considerably higher rate, said bonds to be issued in denominations as the Conservator deems advisable.

(2-a) The State Board of Investment is authorized and directed to sell such securities issued by the Department of Rural Credit, now held by it, to said Department of Rural Credit, and the Conservator of Rural Credit is authorized and directed to issue bonds payable by the State of Minnesota, bearing interest at the lowest market rate not to exceed 3% per annum for a term of not to exceed twenty years for the purpose of refinancing present outstanding indebtedness; provided, however, the Conservator may refinance 25% of the total authorized indebtedness by issuing short term certificates of indebtedness bearing interest at not to exceed 1.50% per annum which may be renewed from time to time.

(3) [Repealed.]

Subd. (a) (3) is repealed Apr. 20, 1939, c. 309, §2.

(4) To sell, grant and convey to any person, firm or corporation who shall apply therefor a right of way or easement to lay, maintain, operate and keep up pipe lines for the transportation and transmission of gasoline and other petroleum products over and across lands subject to rural credit mortgages, and over and across such mortgage lands acquired by the State by foreclosure or deed, upon such terms and conditions as he shall deem advisable;

(5) To insure buildings and structures upon any such mortgaged property acquired by the State against loss by fire, tornado, windstorm and/or hail, in any insurance company or association, however organized, authorized to do business in this State, and to pay the premiums, assessments and dues thereby accruing; and to make such repairs and improvements upon such property as are essential to the operation and preservation thereof;

(6) To do all things that may be necessary and proper in carrying out the provisions of this act.

b. It shall be the duty of the Conservator:

(1) To maintain the office of the Department at the seat of government;

(2) To keep such books and records as are necessary for the conduct of the business of the Department and to keep in his custody all promissory notes, mortgages, securities, evidences of indebtedness, muniments of title, and all other papers, records and instruments of every kind now in the possession of or hereafter received or acquired by the Department.

(3) To diligently collect all moneys due the State under this act and to sell all property acquired by it but subject to the limitations herein provided, with a view to the complete and speedy liquidation of the business of the Department.

(4) To promptly meet all obligations of the Department to the end that no default shall occur in the payment of principal or interest on its bonds or certificates.

(5) To submit an annual report to the Governor. ('23, c. 225, §4; '25, c. 270; Apr. 22, 1933, c. 429, §4; Apr. 25, 1935, c. 298; Apr. 26, 1937, c. 469, §1.)

Bonds can only be issued for total amount of cash on hand, mortgages, real property taken under foreclosure, notwithstanding it amounts to less than \$70,000,000. Op. Atty. Gen., Feb. 21, 1933.

Certificates of indebtedness and tax levy certificates hereby authorized are not bonds within limitation as to outstanding bonds which department of rural credits may issue. Op. Atty. Gen., Mar. 24, 1933.

Laws 1933, c. 429, supersedes and excludes Laws 1925, Art. 3, §§3 and 4, and gives conservator full authority to buy its own supplies, equipment, etc., and to hire, control and regulate its own employees. Op. Atty. Gen., May 24, 1933.

Rural credit bureau has authority to issue bonds to refund maturing bonds. Op. Atty. Gen., June 24, 1933.

Power of bureau to issue bonds is not affected by Laws 1933, c. 386. Op. Atty. Gen., June 26, 1933.

Rural credit department may refinance mortgages by taking federal land bank bonds. Op. Atty. Gen., July 7, 1933.

Where borrower divides land and deeds it to several sons, department of rural credits is not authorized by Laws 1933, c. 429, amending this section, to divide the loan. Op. Atty. Gen., Sept. 16, 1933.

Under this section, as amended by Laws 1933, c. 429, §4, commission is not authorized to exchange lands acquired by state under rural credit act for lands within conservation or forest areas. Op. Atty. Gen., Sept. 28, 1933.

Lease held to give tenant right to possession of land sold until crop was harvested and threshed. Op. Atty. Gen., Mar. 9, 1934.

Conservator of rural credit has authority to loan money to tenants on foreclosed lands to be used to buy seed to be planted on such land provided he take security in the way of notes or contracts. Op. Atty. Gen. (770i), Apr. 30, 1934.

Conservator of rural credit department, as owner of farm marketing grain, may accept membership in co-operative through whom grain is sold. Op. Atty. Gen. (770i), Sept. 7, 1934.

Conservator has no authority to waive priority rights of state under Frazier-Lemke Act or the Agricultural Compositions and Extensions Act. Op. Atty. Gen. (770E), Oct. 16, 1934.

Conservator may enter into oil and gas lease of rural credit land. Op. Atty. Gen. (770i), Sept. 24, 1935.

Conservator cannot waive interest and extend time of payment or institute a plan for amortization of delinquent installments without interest. Op. Atty. Gen. (770g), July 13, 1936.

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

Property rented by conservator for use as offices must be located in St. Paul. Id.

Department may not expend money for construction or improvement of a public road. Op. Atty. Gen. (770f), Sept. 10, 1937.

Department may cancel all bonds acquired by it prior to maturity and make final entry in books of money paid as premium. Op. Atty. Gen. (770b), Dec. 29, 1937.

Conservator may sell mortgages for full amount due. Op. Atty. Gen. (770e), Dec. 20, 1938.

(a) (3).

Conservator has authority to purchase property of a comparatively limited area upon which there are buildings that are adapted for use in connection with operation of an adjoining farm owned by state upon which there are no buildings. Op. Atty. Gen. (770i), Apr. 4, 1938.

(a) (6).

Under this section, as amended by Laws 1933, c. 429, conservator may waive enforcement of mortgage lien for period of three years. So construed this act is not in conflict with Laws 1933, c. 403. Op. Atty. Gen., Aug. 9, 1933.

6033-1. As to acquisition, lease, or sale property—Powers and duties of conservator.—The Conservator of Rural Credits may, in the name of the State, acquire, own, hold, lease, sell and convey such property, real, personal or mixed, as may be necessary, convenient and proper for the transaction of the business of the Department; and to effect the sale of such property may, in his discretion, engage the services of brokers or agents to sell real estate and pay a commission for services so rendered of not to exceed 4% of the sale price covering such real estate provided that at least 40% of the purchase price is paid at time of sale, and provided further that no commission shall be paid unless a sale is actually effected by said agent. (Act Apr. 20, 1939, c. 309, §1.)

6034. Seal.—The Conservator shall provide himself with and keep a seal. The design of this seal shall be as follows: a circle within which shall appear the word "seal." Between the lower and upper halves of the circle properly divided shall appear the words "Department of Rural Credit, State of Minnesota." Every instrument or paper heretofore executed by said Department to which has been affixed a seal

either in said form or in the form prescribed by this section prior to its amendment by Section 1 of Chapter 421, Laws 1929, is hereby legalized and declared to have been duly executed. ('23, c. 225, §5; Apr. 27, 1929, c. 421, §1; Apr. 22, 1933, c. 429, §5.)

6035. [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½, post.

6036. State Treasurer to be custodian of funds.—All moneys of the Department, whether resulting from the sale of certificates or otherwise, shall be paid into the state treasury and be disbursed by direction of the Conservator in the same manner as other state funds are disbursed. The auditor and treasurer shall keep separate account of said moneys as herein provided. Proceeds from the sale of certificates of indebtedness and tax levy certificates when issued to provide money for the payment of maturing bonds and certificates of indebtedness, and payments of principal upon loans, shall be credited to a Rural Credit Fund. The Conservator shall determine and set apart the proportion of interest collected upon loans available for operating expenses, which shall be, as near as practicable, the difference between the interest paid by the state for money borrowed on its bonds and the interest paid by the borrower. The interest set apart for such purpose, and all fees and other receipts in connection with the making of loans, shall be credited to a Rural Credit Expense Fund. All interest collected and not credited to the Expense Fund shall be credited to a Rural Credit Interest Fund. The division of interest collected as herein provided shall be made at least once each month. Premiums and accrued interest collected in connection with the sale of certificates, and proceeds from the sale of certificates of indebtedness and of tax levy certificates when issued to provide money for the payment of interest, shall be credited to the Interest Fund. All administrative expenses shall be paid out of the Expense Fund; all maturing bonds and all maturing certificates of indebtedness issued to provide money for the payment of the principal of bonds and certificates shall be paid out of the Rural Credit Fund. All interest obligations and all maturing certificates of indebtedness issued to provide money for the payment of interest shall be paid out of the Interest Fund. ('23, c. 225, §7; '25, c. 244, §1; Apr. 22, 1933, c. 429, §6.)

Under Laws 1933, c. 429, amending this section a clearing account carried with bank pending collection and clearance of checks could be drawn on by conservator for transfer to state treasurer but not to pay expenses of department. Op. Atty. Gen., Aug. 11, 1933.

Department of rural credits does not have authority to spend money to pay salaries of its employees transferred to another department. Op. Atty. Gen. (770c-5), May 13, 1936.

Proceeds from sale of land, including earnest money down payment, should be paid into rural credit fund, and refund of earnest money may be made therefrom. Op. Atty. Gen. (770d), Oct. 18, 1937.

6037. [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½, post.

6038. Assumption of mortgage by purchaser of land—acceleration of maturity—Interest, Insurance, taxes and repairs—Impairment of mortgage.—a. In case of the sale of the mortgaged land the Conservator may permit said mortgage of the vendor to be assumed by the purchaser or by the heirs of the deceased mortgagor. In case the mortgagor shall vacate or cease to occupy and use in good faith for the purposes specified in this act such mortgaged land without written permission of the Conservator, and the security thereby is impaired, the Conservator may at his option declare the whole amount of the loan thereon to be due and payable, provided there is a default in payment according to the terms of the loan or failure of payment of taxes on the land mortgaged.

b. Every borrower shall pay simple interest on defaulted payments at the rate of seven per cent per

annum and by express covenant in his mortgage deed shall pay when due all taxes, liens, judgments, assessments and insurance, which may be lawfully assessed against the mortgaged land; and by such covenant shall agree to and shall keep insured against fire and the elements in any insurance company or association, however organized, authorized to do business in this state, to the satisfaction of the Conservator all buildings, the value of which was a factor in determining the amount of the loan. Insurance shall be made payable to the mortgagee, as its interest may appear at the time of loss; and at the option of the mortgagor and subject to the general regulations of the Department, sums so received may be used to pay for reconstruction of the buildings destroyed. Taxes, judgments, assessments and other liens, affecting the security of the mortgage, and not paid when due, may be paid by the mortgagee at the option of the Conservator, and, when any buildings shall not be insured or kept insured as aforesaid, the Conservator, at his option, may obtain such insurance and pay the cost thereof, and any payments by the Department for any of the purposes aforesaid shall thereupon become a part of the debt secured by the mortgage, and shall bear simple interest at the rate of seven per cent per annum. The disbursements under this subdivision prior to the date when the state acquires title to the real estate covered by mortgage under foreclosure proceedings or by deed in lieu of foreclosure proceedings shall be paid from the Rural Credit Fund, and all disbursements in connection with such real estate after such date shall be paid from the Rural Credit Expense Fund. Provided disbursements for building and other improvements of a permanent nature shall be paid from the Rural Credit Fund.

c. No loan or mortgage securing same shall be impaired or invalidated by reason of any act of any agent of said Department in excess of his powers herein granted or in any limitation thereon or in excess of the powers granted by said Conservator. ('23, c. 225, §9; pars. b, h, and i by '25, c. 244, §2; pars. e and g by '25, c. 226, §2; pars. g and i by Act Apr. 27, 1929, c. 241, §2; pars. f, i and r by Act Apr. 22, 1933, c. 429, §7.)

Act Apr. 22, 1933, c. 429, §7, repeals subdivisions a, b, c, d, e, g, h and j, and amends subdivisions f, i and k to read as above.

Conservator under Laws 1933, c. 429, may not waive premium provided for during first 5 years of loan. Op. Atty. Gen., Oct. 11, 1933.

Conservator has no authority to waive priority rights of state under Frazier-Lemke Act or the Agricultural Compositions and Extensions Act. Op. Atty. Gen. (770E), Oct. 16, 1934.

Insurance purchased by department of rural credits must be purchased on a contract open to public bidding as provided by reorganization act. Op. Atty. Gen. (770c), July 13, 1933.

6039. Satisfaction of mortgages.—When the mortgagor or his successor in interest has fully paid any mortgage, it shall be the duty of the Conservator to furnish him with a proper release or satisfaction of said mortgage executed in the name of the state by him and attested by his official seal, and the mortgage papers belonging to such loan including abstract of title and insurance policies assigned, shall be returned to such person. Upon payment of any sum by a borrower under the provision of this act the Conservator shall furnish the payer with a receipt showing the nature of such payment and the date on which interest was paid and the balance of the principal remaining unpaid. ('23, c. 225, §10; Apr. 22, 1933, c. 429, §8; Apr. 29, 1935, c. 367.)

The title to Act Apr. 29, 1935, cited, purports to amend "sections 8 and 9 of chapter 429 of the session laws of 1933" while the enacting parts of the amendatory act purport to amend specified sections of chapter 225 of the laws of 1923, as amended by the 1933 act.

Where mortgagor to state deeded land to it and took contract back and later conveyed property to another, contract was valid and could be terminated on thirty days' notice. *McKinley v. S.*, 188M325, 247NW389. See *Dun. Dig.* 6150, 6166, 10091.

Conservator has right to treat delivery of federal land bank bonds at their face value in an amount equivalent to full indebtedness owing the department as payment in full of mortgage. Op. Atty. Gen. (770i), Apr. 20, 1934.

Conservator should not turn federal land bank bonds taken in payment of rural credit mortgages over to the state treasurer but should keep them in his custody until they are disposed of and converted into cash. *Id.*

Crop payment plan is not repealed by Laws 1937, c. 465, §4. Op. Atty. Gen. (770e), May 5, 1937.

6039-1. Compositions with mortgagors—Application to district court—review.—Whenever the Conservator upon his own initiative or upon an application by a mortgagor is of the opinion that real estate held as security by the State of Minnesota is worth less than the amount due on the indebtedness secured by the same, and the Conservator is able to liquidate said indebtedness by a satisfactory cash settlement, he shall present a verified petition to the Judge of the District Court of the County where such lands are located setting forth the facts, and said judge, if satisfied that it is for the best interest of the state, may hear such petition, either with or without notice, and make his order granting such petition, and authorizing the Conservator to compromise said indebtedness as requested in said petition. Said petition shall be verified by the Conservator and shall contain a complete recital of all the material facts, including an appraisal of the premises in question, made under the direction of the Conservator, accompanied by photographs of all the buildings, said appraisal shall set forth in detail the type and nature of the land, the condition and state of repairs of the buildings, and other improvements, its location with reference to highways and markets, the amount of crops raised on said premises during the past five years immediately preceding the filing of said petition whenever available, and all such other facts as may aid said judge in arriving at a conclusion, including a report of the State Tax Commission as to the value of the land. There shall also be attached the offer of composition by the debtor and his statement setting forth his assets and liabilities signed and verified by him. The Conservator shall add his recommendation to the petition relating to the offer of the debtor. The petition and all other papers in the matter, including the orders of the court shall be filed with the clerk thereof. The Conservator shall prepare the necessary blanks for use in preparing offers and financial statements by the debtors. The court may request the debtor to be present when his offer is being considered and he may be examined with reference to it. A notice stating the time and place when the petition shall be submitted to the court shall be given by the Conservator to the debtor. Such notice shall be mailed to said debtor not less than five days previous to the court hearing of such bids. The said court may order an additional appraisal of such land, and the same shall be made and filed with the court. Such appraisal shall be made independently of appraisals theretofore made at the direction of the Conservator.

The judge of said court is hereby authorized on his own motion and the request of the Conservator to request some outside judge to assist him with a prompt disposition of the proceedings under this act. The said court shall pass on and determine all proceedings submitted to it under this act at any general of [or] special term or in chamber or during vacation of the court and all orders shall be filed within five days after the matter has been submitted. Arbitrary action of the Conservator may be reviewed by a writ of certiorari returnable in the District Court of Ramsey County, Minnesota. (Added by Act Apr. 29, 1935, c. 367, §1, (10A).)

Mortgagor may obtain action by district court only by certiorari, and can get assistance only on refusal of conservator to present matter to district court by showing that he has no reasonable ground. Op. Atty. Gen. (770d), July 27, 1935.

Conservator possesses power with approval of district court to effect compromises during period of redemption and to issue assignments of share of certificates where amount paid is less than the amount of indebtedness. Op. Atty. Gen. (770c), June 6, 1936.

6039-2. Same—Chattel mortgage on crops—Default.—But if the mortgagor cannot liquidate his indebtedness by a cash settlement, and the Conservator shall determine that the current earnings of a certain tract of land held as security by the State of Minnesota, the major portion of which is in productive land, is not sufficient to maintain the farm and to liquidate the annual taxes, interest and insurance charges, then and in such case the Conservator may in his discretion enter into an agreement with the borrower for a period not to exceed five years, whereby the borrower agrees to turn over to the Conservator and the Conservator agrees to accept, in liquidation of the borrower's annual installments of interest and principal, one-third of all crops raised on said premises during the crop year during which said interest and principal installments will be due, and in addition said borrower shall agree to pay the real estate taxes duly levied and assessed against said premises during said year and keep said premises in repair and fully insured against fire and tornadoes, and upon a full and complete accounting and delivery by the borrower to the Conservator, at a place designated by the Conservator, of one-third of the annual crops so raised on said premises, the Conservator shall apply said amount so received in the following manner:

(a) To the payment of interest as far as possible.

(b) The remainder to the payment of principal.

(c) Should there be a surplus remaining after the distribution hereinbefore provided, then the surplus shall be applied to the liquidation of the installments of principal to become due in the future. Provided that if the proceeds of the sale of one-third of the crop so delivered to the Conservator shall be insufficient to pay said amount of interest, the Conservator shall deliver a receipt in full for the amount of interest then due during said year, but the Conservator shall not give a receipt for any principal sums due except as actually paid by the borrower.

Said payments shall all be secured by a chattel mortgage on the entire crop, but the Conservator is authorized, whenever he deems it necessary in the interests of the borrower, to permit the borrower to use such portion of the crop so mortgaged to the State of Minnesota, as may be necessary for seed and feed.

Should the borrower fail or neglect to keep premises in repair and/or pay said taxes or insurance premiums on said premises whenever the same become due, or should he fail or neglect to promptly make and furnish to the Conservator a full and complete accounting, or fail or neglect to promptly turn over to the Conservator the one-third of all crops so raised on said premises, as hereinbefore provided for, then said agreement shall automatically become null and void without any further action on the part of the Conservator. Upon application in writing by the borrower, and for good cause shown, the Conservator is authorized to reinstate such contract, providing said application is made by the borrower within thirty days after notice of default is forwarded to him by the Conservator by registered letter. (Added by Act Apr. 29, 1935, c. 367, §1, (10B).)

Conservator cannot waive interest and extend time of payment or institute a plan for amortization of delinquent installments without interest. Op. Atty. Gen. (770g), July 13, 1936.

An owner of real estate on which state holds a rural credit mortgage, to whom an extension has been given under Laws 1935, c. 341, has a contract right with which legislature cannot interfere, but since the contract rights are incompatible with provisions of Laws 1937, c. 465, such owner must waive his right under his extension agreement if he desires to avail himself of advantages of such c. 465. Op. Atty. Gen. (770e), May 5, 1937.

6040. Title to property to run to the state of Minnesota.—a. The title to all property taken by the Department shall run to the State of Minnesota.

b. The property, real, personal and mixed, acquired by the Department shall be sold by the Conservator at its fair value at time of sale, in such manner and on such terms as may be provided by the regulations adopted by him. In making sales of real

estate the Conservator shall have regard for the state of the market and shall make sales thereof in such manner and at such times as not to depress unduly the market for farm lands, and shall, in his judgment the best interests of the State and of the public will be served thereby, defer such sales until such time as they may be made without undue loss to the State or undue impairment of the market value of farm lands within the state. No land shall be sold by the conservator for an amount less than the indebtedness accrued thereon at the time of the acquisition of title by the Department, together with interest thereon at the rate provided for in the mortgages now held by the department of Rural Credit until sold, less the net income derived therefrom after such acquisition of title; but if the Conservator shall determine that a sale of any such land cannot be made for the full amount accrued against it and that further loss to the state would probably result if it be not then sold he may sell any such land for less than said amount upon the approval of such sale by a judge of the District Court of Ramsey County, Minnesota, in the same manner as provided by Section 10A [§6039-1], hereinbefore stated.

If a former owner desires to repurchase a farm heretofore mortgaged by him to the State of Minnesota and acquired by the state, either through mortgage foreclosure or by the taking of a deed, the Conservator is hereby authorized to sell said farm for an amount equal to the reasonable long term contract of the same, on a crop payment plan as provided in Section 10B [§6039-2], hereinbefore stated, provided the state is still the owner of said farm and has not conveyed the same either by deed or by contract for deed. In such cases the former owner shall make application in writing to the Conservator for the purchase of said farm, stating whether or not he desired to buy the same on a crop share payment plan, and after the filing of said application the Conservator shall not consider bids from other prospective purchasers until he has first disposed of said application either by accepting or rejecting the same.

Should the former owner not avail himself of the crop payment plan, as provided in Section 10B hereinbefore stated, then and in that event the Conservator is hereby authorized to offer said farm for sale on a crop payment plan within thirty days after being inbefore stated, with a down payment of at least fifteen per cent, to any bona fide farmer who, in his opinion, is capable of operating said farm in a good and husbandlike manner, for an amount equal to the reasonable value of the same. No crop payment contract is assignable, except in case of death or incapacity of the vendee, and then it may be assigned only to one or more of the immediate heirs, providing however, said heir or heirs are bona fide farmers, subject only to the consent of the Conservator.

c. All contracts for the sale of property and all conveyances thereof shall be executed in the name of the State by the Conservator and attested by his official seal, and all mortgages or other security taken in connection therewith shall run to the State of Minnesota.

d. All sales and compromises in connection with the crop payment plan must be approved by the judge of the district where the farm involved is located." ('23, c. 225, §11; '25, c. 244, §3; Apr. 22, 1933, c. 429, §9; Apr. 29, 1935, c. 367, §2.)

Act Apr. 29, 1935, c. 367, §2, adds a section 12 to Laws 1923, c. 225, which provides that the amendatory act shall take effect from its passage.

Sec. 2 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

As to title to amendatory act, see note under §6039. Conservator of rural credit may buy and sell real estate and pay commissions for its sale. Laws 1939, c. 309.

Conservator of rural credit may compromise contracts for deed. Laws 1939, c. 417.

Specific performance will not be granted of a contract to repurchase a farm for which a former owner negotiated with the conservator of rural credit where the

negotiations fail by the conservator's exercise of his power to reject such party's offer. *Bjerke v. A.*, 203M 501, 281NW865. See Dun. Dig. 8788.

The conservator's consideration in violation of the statute of other bids before disposing of plaintiff's offer to repurchase, if true, does not entitle the latter to a decree for a contract since the purchaser is only entitled to have his offer disposed of before other bids are considered and not to a contract which can be had only by agreement with the conservator. *Id.* See Dun. Dig. 8788.

Department of rural credits may sell real estate at an amount less than full amount accrued against it, provided bureau shall determine that sale cannot be made for full amount. Op. Atty. Gen., Feb. 8, 1933.

Rural Credits Board may sell land acquired by foreclosure on long term installment contract for deed, in accordance with this section. Op. Atty. Gen., Mar. 23, 1933.

As affecting taxes, contract for deed executed by state takes effect on date of delivery, although contract bears earlier date. Op. Atty. Gen. (301c-1), July 11, 1934.

Words "former owner" cannot be construed as including "heirs of the former owner" in case he is deceased, or to mean "sons of the former owner" in case of his incapacity. Op. Atty. Gen. (770e), Apr. 1, 1938.

Deeds are not subject to federal documentary stamp tax. Op. Atty. Gen. (532a-6), July 17, 1939.

6040-1. Department of Rural Credit may assign mortgages in certain cases.—In the event of the death of a mortgagor to whom a loan has been granted by the Department of Rural Credit and whose surviving spouse and/or children desire to continue the ownership and in the possession of the premises pledged as security for such loan, the Department of Rural Credit may, in its discretion, upon payment in full of any such loan and the accrued interest thereon, assign and transfer the mortgage given to secure such loan, to the surviving spouse and/or children of such decedent mortgagor. (Act Mar. 16, 1933, c. 83, §1.)

Sec. 2 of Act Mar. 16, 1933, cited, provides that the act shall take effect from its passage.

6041. Certificates of indebtedness.—Certificates of indebtedness and tax levy certificates provided for in this act shall be issued in such denominations, mature at such times and be sold and redeemed in such manner as the Conservator shall determine, and the Conservator shall have full authority to prescribe such other rules and regulations as may be necessary or advisable in connection with the issuance of said certificates. Certificates of indebtedness shall be issued only when there is insufficient money in the Rural Credit Fund available for the payment of the principal of, or in the Rural Credit Interest Fund available for the payment of interest upon, outstanding bonds or certificates when due, and the issuance of certificates of indebtedness shall be limited to an amount sufficient to cover such deficiencies. The Conservator may refund any outstanding certificates of indebtedness at maturity subject to the limitations hereof. All certificates shall be sold upon competitive bids after proper notice unless they are sold to the state's trust funds. Certificates issued by the Conservator shall designate on their face the purpose for which they are issued and shall be signed by the Conservator in behalf of the Department and attested by the Secretary of State, and be in such form as shall be approved by the Attorney General and shall bind the State to pay the same according to the terms thereof. Facsimile signatures of the Conservator and Secretary of State shall be sufficient upon interest coupons. Before issuance all certificates to be issued by the Department shall be presented to the State Auditor, who shall make a record showing the number, amount, date of issue and date of maturity of each certificate and the auditor or his deputy shall certify thereon that such record has been made. If at any time there is insufficient money in the Rural Credit Fund to pay any bonds or certificates of indebtedness at maturity, or in the Rural Credit Interest Fund to pay the interest upon bonds or certificates when due, and which cannot otherwise be paid under the limitations of this act, the Department shall issue its tax levy certificates in an amount sufficient to cover said deficiencies, but no tax levy cer-

tificates shall be issued unless and until, by reason of the condition of the securities market or for other valid reasons, the Department is unable to sell its certificates of indebtedness in amounts sufficient to cover such deficiencies, provided, however, that for the payment of \$1,250,000 in bonds and certificates of indebtedness maturing in February and March, 1935, and the interest thereon the Conservator shall during the year 1934 issue tax levy certificates in the amount of such principal and interest and the State Auditor shall levy a tax therefor payable in the year 1935. Such tax levy certificates shall mature at the earliest practicable date and be sold in the same manner as other certificates issued by the Department. Upon the issuance of such tax levy certificates the Department shall certify the amount thereof and the maturity dates to the State Auditor, who shall thereupon make a tax levy against all the taxable property of the state, in the same manner as other taxes are levied, in an amount sufficient to pay said certificates at maturity together with interest thereon. The moneys derived from said tax levy shall be credited to the appropriate fund or funds and shall be applied to the payment of the deficiencies on account of which they were issued. Payment of interest falling due upon said certificates prior to the collection of said tax levy shall be made from the Rural Credit Interest Fund. The Conservator may direct the State Auditor to cancel any tax levy prior to the date of certifying same to the several county auditors, if money is available in the proper fund, or funds, for the payment of said tax levy certificates. If a tax is ordered cancelled subsequent to the issuance of tax levy certificates a sum necessary to pay said certificates at maturity shall be set aside from any available money in the proper fund, or funds, and such sums shall be used for no other purpose. Said certificates may be redeemed before maturity by consent of the holders thereof. If a tax levy is cancelled interest upon outstanding tax levy certificates shall be paid from the Rural Credit Interest Fund. After the issuance of tax levy certificates and the levy of the tax to pay said tax levy certificates, the Department shall from the first money available in the proper fund, or funds, after provision has been made for the payment of principal and interest on outstanding bonds and certificates of indebtedness repay the state the amount of money received by it from the sale of tax levy certificates with interest at four per cent from the date when interest started to run upon said certificates. Partial payments may be made upon such amount from time to time as funds become available. Such repayment shall be credited to the Revenue fund, if there are no outstanding tax levy certificates, otherwise such payment shall be credited to a Tax Levy Certificate fund and shall be available for the payment of outstanding tax levy certificates or interest thereon. The State Auditor shall credit all taxes collected under the provisions of this section to the Tax Levy Certificate fund, and all tax levy Certificates and interest thereon shall be paid therefrom. Any surplus remaining after the payment of all outstanding tax levy certificates shall be transferred to Revenue fund.

The Conservator shall first offer to the state board of investment any certificates issued by him, and said board is requested, but not directed, to purchase such certificates. ('23, c. 225, §12; '25, c. 244, §4; Apr. 27, 1929, c. 421, §3; Apr. 22, 1933, c. 429, §10.)

Statute requires rural credit bonds to be sold only upon competitive bidding. *Rockne v. O.*, 191M310, 254NW 5. See Dun. Dig. 245d.

The limitations contained in this section do not limit the amount of bonds which the department may issue. Op. Atty. Gen., Mar. 24, 1933.

Certificates of indebtedness are direct obligations of the state. Op. Atty. Gen. (770b-3), July 27, 1934.
"Proper notice" means "reasonable notice," and while requirements as to notice of sale of bonds set up in §1943 are not binding in sale of certificates under this section, it would be wise to follow those requirements. *Id.*

6042 to 6044 [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½, post.

6045. Administrative expenses.—The Department may transfer from the Expense Fund to the Rural Credits Interest Fund any surplus not required for administrative expenses. Temporary loans also may be made from the Expense Fund to meet maturing obligations to be paid out of the Rural Credit Fund or the Rural Credit Interest Fund, such loans to be returned as soon as practicable. The Department shall from time to time set aside from the interest or expense fund any surplus not required for the payment of operating expenses, interest, or outstanding certificates. Such surplus shall be credited to a Rural Credit Reserve fund. Said fund shall, upon request of the bureau, be invested by the state board of investment in the same class of securities in which the trust funds of the state may be invested. Said board shall have authority to sell any securities purchased for said fund, when authorized by the Conservator, for the purpose of providing funds with which to pay maturing bonds, or interest upon outstanding bonds, or to make up any loss resulting from the operations of the Department, or for purchasing other securities. All losses upon loans shall be a charge against the reserve fund and all profits resulting from the sale of real estate acquired through foreclosure proceedings or otherwise, after deducting accrued interest and expenses, shall be credited thereto. All interest earned upon the reserve fund shall be credited to such fund and become a part thereof. The Conservator may authorize the state board of investment to invest for short periods any temporary cash surplus in the Rural Credit fund, such investment to be restricted to United States Government or State of Minnesota obligations. If at any time a surplus shall accrue in the Rural Credit fund the Conservator may invest such surplus in the same manner as any money in the Reserve fund is to be invested. Any securities purchased by said board of investment with any money in the Rural Credit fund, as herein provided, shall be sold at the request of the Conservator. ('23, c. 225, §16; '25, c. 244, §6; Apr. 22, 1933, c. 429, §11.)

Losses on sale of federal land bank bonds received in payment of rural credit mortgages should be charged against the rural credit reserve fund, and any profit should be accredited thereto. Op. Atty. Gen. (770b), June 21, 1934.

6046. [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½, post.

6047. Mortgages, loans and lands to be held as security for bonds. [Repealed.]

Amended Apr. 22, 1933, c. 429, §12.

Repealed Apr. 20, 1939, c. 309, §2.

Conservator may sell mortgages for full amount due. Op. Atty. Gen. (770e), Dec. 20, 1938.

6048. All property shall be exempt from taxation.—All mortgages, real estate and other property owned and held by said Department in its business of loaning and all certificates or bonds issued by said Department in the transaction of the business shall be free from all general taxes, state, county, and municipal, and shall not be subject to State Income Tax. Such mortgages shall be exempt from any registration tax. ('23, c. 225, §19; Apr. 22, 1933, c. 429, §13.)

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. State, appeal of, 182M437, 234NW691. See Dun. Dig. 9151a.

As affecting taxes, contract for deed executed by state takes effect on date of delivery, although contract bears earlier date. Op. Atty. Gen. (301c-1), July 11, 1934.

Mortgages or contracts for deed running to the state or to federal land banks may be recorded without payment of mortgage registration fee. Op. Atty. Gen. (418a-14), July 7, 1938.

6049. Foreclosure, how made—power of attorney—crops or chattel mortgages—taking deed—costs and attorney's fees.—Any foreclosure of any of the mortgages provided for by this act shall

be made in the usual manner, either by action or by advertisement, as the Conservator may direct, but it shall not be necessary to record any power of attorney and the Conservator or an employee of the Department designated by him may act in lieu of an attorney in foreclosures by advertisement. When default shall exist in the payment of amortized installments of principal and interest or either thereof, the Conservator, if he shall determine that the best interests of the state so require, may take and accept crop or chattel mortgage security or both, in lieu of present foreclosure. The Conservator, at his option, may take and accept deed to the mortgaged lands in lieu of foreclosure. All deeds which may have been heretofore so taken and accepted are hereby legalized and confirmed. In case of foreclosure the costs and expenses that are now or may hereafter be provided by law, in the foreclosure of real estate mortgages may be taxed in the foreclosure of any mortgage in like manner and to the same effect as if the State of Minnesota were a natural person, but no attorney's fee shall be collected upon any such foreclosure. ('23, c. 225, §20; Apr. 27, 1929, c. 421, §4; Apr. 22, 1933, c. 429, §14.)

Act authorizing Department of Rural Credits to insure farm property acquired through foreclosures in certain mutual and township insurance companies. Laws 1931, c. 245.

Rural credit bureau possesses power to execute waiver agreeing not to foreclose mortgages for a period of three years. Op. Atty. Gen., July 15, 1933.

Land acquired by state through foreclosure of mortgage is not taxable to pay bonded indebtedness of school district. Op. Atty. Gen., Aug. 1, 1933.

State has right to accept deed in lieu of foreclosure of a rural credit mortgage. Op. Atty. Gen. (373b9(e)), May 9, 1934.

Conservator has no authority to waive priority rights of state under Frazier-Lemke Act or the Agricultural Compositions and Extensions Act. Op. Atty. Gen. (770E), Oct. 16, 1934.

Deeds are not subject to federal documentary stamp tax. Op. Atty. Gen. (532a-6), July 17, 1939.

6049-1. Deficiency judgments on state mortgages prohibited.—The department of Rural Credit, under the supervision and control of the Rural Credit Bureau, is hereby directed in case of foreclosure of any real estate mortgage acquired by the state through the operations of said department to bid the full amount due the state at any mortgage foreclosure sale. Hereafter no judgment shall be taken by the state for any deficiency remaining unpaid upon the debt secured by such a mortgage after foreclosure. (Act Apr. 15, 1933, c. 247.)

6049-2. Extension of payments on rural credit mortgages.—Any owner of real estate, on which the state of Minnesota, department of Rural Credit holds a mortgage, may make verified application to the conservator of said department of Rural Credit asking that said department refrain from the collection of installments now past due, or which may become past due, prior to November 1, 1937, but in no event until after said installment or installments shall have become due, on said mortgage, and taxes and insurance theretofore advanced and paid on said premises by the state. Such application shall set out that the owner of said real estate is unable to pay the installment or installments then due on the principal and interest of said mortgage without becoming delinquent in the payment of taxes; that the applicant will pay the taxes and insurance then due and owing, or thereafter to become due during the extended period, on said real estate, and the installments thereafter to become due, in accordance with the terms of the mortgage; that the applicant will not commit or permit waste or deterioration on the premises; that the applicant will annually execute and deliver to said department, a first mortgage on all of the crops to be raised and harvested on said premises, and furnish the department of Rural Credit promptly with a full and complete report of all crops raised by him so secured by said mortgage, until there shall be no further amount unpaid which shall have become past due, or which shall have been extended, on said mort-

gage; and that if said applicant fails to pay said taxes and insurance and installments then due or thereafter to become due, or commits or permits waste or deterioration or fails to execute and deliver such crop mortgage and crop report, then and in that case the said department shall not be bound by the terms of any extension granted and may pursue its remedies under the mortgage as though no extension had been granted; and applicant shall state such other facts as the department shall deem advisable.

Upon the filing of such application, the department of Rural Credit shall cause investigation to be made, and if the facts as stated in such application shall be found to be true, the conservator of Rural Credit may grant the application and may refrain from the collection of past due installments on the principal and interest of the mortgage, and taxes and insurance theretofore advanced or paid by the state, and extend the time for the payment thereof, and may waive payment of interest on such portions of said installment or installments which constitute interest, from the date of said application, as long as the applicant shall comply with the terms of the extension granted and promptly make payments as extended when due.

The conservator of Rural Credit shall have the right, in any case where he considers it necessary, in the interest of the applicant, upon application from him to permit the applicant to use such portion of any crop mortgaged to the state, as the conservator shall consider necessary, for seed and feed purposes. (Act Apr. 22, 1933, c. 403, §1; Apr. 29, 1935, c. 341, §1.)

The title of Laws 1933, c. 403, declares that its purpose is to grant a "three" year extension while the body of the act limits the extension to two years.

The title of Laws 1935, c. 341, purports to amend §6038, Sub. sec. 1, and Laws 1933, c. 403 [§§6049-2 to 6049-4]. Only the latter seems to have been amended.

This act does not conflict with Laws 1933, c. 429, construed as empowering conservator to waive enforcement of mortgage for three years. Op. Atty. Gen., Aug. 9, 1933.

On extension of installments, interest should be computed at rate of 7% on each past due suspended installment of principal and interest from the date the said installment originally became due to date of granting of application and from and after date of granting application to date when installment becomes due, interest should be charged only on that part of installment which represents the principal of mortgage. Op. Atty. Gen. (770e), June 12, 1934.

Past due installments on mortgages may be extended without extending current installments. Id.

Conservator may grant a five and one-fourth percent rate of interest on state advances for taxes and insurance only to borrowers who make application under §6049-5, but must charge 7% to those borrowers who make applications under §6049-2. Op. Atty. Gen. (770e), June 7, 1935.

An owner of real estate on which state holds a rural credit mortgage, to whom an extension has been given under Laws 1935, c. 341, has a contract right with which legislature cannot interfere, but since the contract rights are incompatible with provisions of Laws 1937, c. 465, such owner must waive his right under his extension agreement if he desires to avail himself of advantages of such c. 465. Op. Atty. Gen. (770e), May 5, 1937.

6049-3. Extension revoked in certain cases.—Should the owner of said real estate fail to pay the taxes and insurance on said premises, or fail to pay installments thereafter to become due, or commit or permit waste or deterioration thereon, or fail to execute and deliver to the state a mortgage or mortgages on crops and furnish crop reports as specified in section 1 thereof, during the said period of extension, the conservator of Rural Credit shall have the right to revoke such extension, and to require performance and enforce the terms of the mortgage. Upon the commencement of proceedings to foreclose any mortgage, where an extension of payments has been granted, the mortgagor may petition the district court of the county wherein the mortgaged real estate is situated for an order restraining said foreclosure, setting forth that he has lived up to the terms of the extension agreement, and should the court find and adjudge that said mortgagor has substantially lived up to the terms of the extension agree-

ment, the court shall order the discontinuance of said foreclosure. After the filing of said verified petition, and during the pendency of said cause, all proceedings for the foreclosure of said mortgage shall be held in abeyance until the final determination of the court. (Act Apr. 22, 1933, c. 403, §2; Apr. 29, 1935, c. 341, §2.)

6049-4. Payment of unpaid installments, taxes and insurance.—The unpaid installments, and taxes and insurance advanced or paid by the state, which may be extended, shall be paid by pro rating and adding the same to installments due after November 1, 1937. (Act Apr. 22, 1933, c. 403, §3; Apr. 29, 1935, c. 341, §3.)

6049-5. Interest waived in certain cases.—From and after the passage and approval of this act interest to be paid by every borrower of the department of Rural Credit on defaulted installments of interest, which have not been hereinbefore provided for, may be waived for a period of not to exceed one year; provided, however, that said interest shall not be waived unless the borrower, at the time said installments become delinquent, or immediately thereafter, makes an application to the department of Rural Credit requesting that said interest be waived and offering to furnish the department of Rural Credit with a first mortgage on the crops to be raised on the premises secured by the real estate mortgage held by the state of Minnesota, during the year following the date said application is made; provided further that in such case the department of Rural Credit shall charge interest during said year at the rate of five and one-fourth per cent per annum on all delinquent installments of principal, and at the rate of five and one-fourth per cent on all moneys advanced by the department of Rural Credit for the payment of taxes and insurance premiums.

The conservator of Rural Credit shall have the right, in any case where he considers it necessary, in the interest of the applicant, upon application from him to permit the applicant to use such portion of any crop mortgage to the state, as the conservator shall consider necessary, for seed and feed purposes. (Added by Act Apr. 29, 1935, c. 341, §4.)

Conservator may grant a five and one-fourth percent rate of interest on state advances for taxes and insurance only to borrowers who make application under §6049-5, but must charge 7% to those borrowers who make applications under §6049-2. Op. Atty. Gen. (770e), June 7, 1935.

6049-6. Rate of interest on rural credit mortgages and contracts for deed; re-writing outstanding contracts.—The rate of interest on all outstanding mortgages and contracts for deed held by the Department of Rural Credit is hereby reduced to four (4%) per cent per annum from and after the adoption of this act. The Conservator of Rural Credit is authorized and directed to re-write present outstanding mortgages or contracts for deed or make proper endorsements thereon to give effect to this reduction in interest rate, and in re-writing the same or in making endorsements thereon shall add to the principal thereof any delinquent interest so that such rate of interest shall apply to the total thereof. (Apr. 26, 1937, c. 465, §1; July 14, 1937, Sp. Ses., c. 17, §1.)

Principal may be added to unamortized principal as elements of new principal. Op. Atty. Gen. (770e), May 5, 1937.

6049-7. Same; rate of interest on defaulted payments.—The rate of interest on defaulted payments on such mortgages or contracts for deed held by the Department of Rural Credit shall be five (5%) per cent per annum from the date of default. (Apr. 26, 1937, c. 465, §2; July 14, 1937, Sp. Ses., c. 17, §2.)

6049-8. Same; rate of interest on taxes, liens, judgments, assessments, or insurance paid.—The rate of interest on taxes, liens, judgments, assessments or insurance paid by the Department of Rural Credit or the Conservator thereof on any lands against which such Department hold mortgages or contracts for deed shall

hereafter be five (5%) per cent per annum. (Apr. 26, 1937, c. 465, §3; July 14, 1937, Sp. Ses., c. 17, §3.)

6049-9. Same; other statutes amended.—All statutes prescribing any different rate of interest for such mortgages, contracts, taxes, liens, judgments, assessments or insurance are hereby amended to conform herewith provided, however, that Chapter 367 of General Laws of Minnesota for 1935 [§§6039 to 6040] and all amendments thereto shall remain in full force and effect. (Apr. 26, 1937, c. 465, §4; July 14, 1937, Sp. Ses., c. 17, §4.)

Crop payment plan is not repealed. Op. Atty. Gen. (770e), May 5, 1937.

6049-10. Transfer of funds; amount; effective date.—The Conservator is hereby authorized to transfer back to the Rural Credit Expense Fund such moneys heretofore transferred from the Rural Credit Expense Fund, Fund to the Rural Credit Interest Fund, as may be needed for administrative expenses; provided that the amount so transferred shall not exceed \$500,000 and shall be transferred in such amounts as may from time to time be necessary.

This act shall take effect and be in full force from and after its passage. (July 14, 1937, Sp. Ses., c. 17, §5.)

6050. Interest on deposits.—Interest shall be allowed upon any moneys in the funds of the Department at the rate received by the state from its depositories. The Conservator shall have authority to determine the amount of moneys in the Department funds which shall be kept in active depositories and the amount in inactive depositories. As soon as practicable after the state has collected interest for any stated period, the state treasurer shall credit to the Interest Fund the amount of interest due and make a statement thereof to the Department. ('23, c. 225, §21; '25, c. 244, §8; Apr. 22, 1933, c. 429, §15.)

6051. Clerical assistants in auditors and treasurers office.—If it shall become necessary to employ additional clerical assistance in the office of the State Auditor or State Treasurer by reason of the additional duties imposed upon said offices by this act, the actual expense thereof shall be charged to and be borne by the Department in such amounts as from time to time may be ascertained and certified in writing by such officers and approved by the Conservator. ('23, c. 225, §22; Apr. 22, 1933, c. 429, §16.)

6052. Surety bonds.—Whenever a bond or undertaking is required by this act or by the Conservator to be given, it shall be held to mean a surety bond furnished by a surety company authorized and qualified to do business in this state. Such bonds shall run to the State of Minnesota, shall be as nearly as applicable in the form prescribed by the laws of this State and the form thereof shall be approved by the Attorney General. ('23, c. 225, §23; Apr. 22, 1933, c. 429, §17.)

6053. Cost to be borne by Department.—The cost of surety bonds provided by this act, furnished by the officers or employees of said Department, shall be a part of the general expense of administration and paid by the Department. ('23, c. 225, §24; Apr. 22, 1933, c. 429, §18.)

6054. [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½, post.

6055. Sums reappropriated.—Any sums received and paid into the state treasury under any of the provisions of this act are hereby appropriated and made available for disbursement for the purposes and in the manner provided herein. ('23, c. 225, §26; Apr. 22, 1933, c. 429, §19.)

6056. [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½.

6057-½. Laws repealed.—(a) Chapters 148 [6057-1] and 245 [6057-2], Laws 1931, and the following numbered Sections of Chapter 225, Laws 1923: Section 6 [6035], Section 8 [6037] as amended by Section 1, Chapter 226, Laws 1925, Sections 13 [6042] and 14 [6043], Section 15 [6044] as amended by Section 5, Chapter 244, Laws 1925, and Sections 17 [6046], 25 [6054] and 27 [6056], and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

(b) All rights and obligations heretofore arising, vested or accrued under the provisions of Chapter 225, Laws 1923, or any amendment thereof, or under Chapters 148 [6057-1] and 245 [6057-2], Laws 1931, and all remedies for the enforcement thereof, shall remain unimpaired and are hereby confirmed. (Act Apr. 22, 1933, c. 429, §20.)

6057-½ a. Effective July 1, 1933.—This Act shall take effect and be in force from and after July 1, 1933; provided, however, that a Conservator may be appointed and the appointment confirmed prior to July 1, 1933, but he shall not assume office until that date. (Act Apr. 22, 1933, c. 429, §21.)

6057-1. [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½, ante.

6057-2. [Repealed].

Repealed Apr. 22, 1933, c. 429, §20, effective July 1, 1933. See §6057-½, ante.

6057-3. Farm mortgage loans by rural credit department limited.—The power and authority of the Department of Rural Credit to make rural credit loans is hereby limited to the making and completion of all such loans applications for which have heretofore been approved by the Rural Credit Bureau; but the aggregate amount of the loans so to be made shall not exceed \$600,000. All said loans and the disbursement by the Department of the proceeds thereof shall be completed before July 1, 1933; provided, that where the proceeds of said loans or of any rural credit loans heretofore made are withheld pending the making of improvements on the mortgaged premises, the moneys so withheld may be disbursed after June 30, 1933, by the Rural Credit Bureau, or its successor. (Act Apr. 21, 1933, c. 386, §1.)

Requirement that all loans and disbursements shall be completed before July 1, 1933, is directory merely, especially with respect to loans that cannot be closed before that date due to irregularities in title. Op. Atty. Gen., May 25, 1933.

Refinancing of an existing loan is not making of a rural credit loan, and is permissible. Id.

Power of rural credit bureau to issue bonds is not affected by this act. Op. Atty. Gen., June 26, 1933.

6057-4. Refundment of fees paid—Appropriation.

—The Department of Rural Credit is hereby authorized to refund all fees heretofore paid it by applicants for rural credit loans and covered into the State Treasury where expense has been incurred by the Department in connection with said application and the application is still pending and has not been acted on by the Bureau. There is hereby appropriated out of any moneys in the Rural Credit Expense Fund available therefor such sum as may be required for the making of such refunds. (Act Apr. 21, 1933, c. 386, §2.)

Sec. 3 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage.

6057-5. Conservator of Rural Credits may compromise indebtedness.—Whenever the Conservator of Rural Credit is of the opinion that it is for the best interest of the State to compromise with the vendee named therein or his heirs, the indebtedness on a Contract for Deed, by a satisfactory cash settlement, which said Contract for Deed has heretofore been issued by the State of Minnesota, or which may hereafter be issued, he may present a verified petition to make composition on the contract indebtedness, to a Judge of the District Court of Ramsey County setting forth the facts, and said judge, if satisfied that it is for the best interest of the State, may hear such peti-

tion, either with or without notice, and make his order granting such petition, and authorizing the Conservator of Rural Credit to compromise said indebtedness as requested in said petition. Said petition shall be verified by the Conservator of Rural Credit and shall contain a complete recital of all the material facts. The court may request the contract purchaser to be present when said matter is being considered. (Act Apr. 22, 1939, c. 417.)

Sec. 2 of Act Apr. 22, 1939, cited, provides that the act shall take effect from its passage.

THE CO-OPERATIVE MARKETING ACT

6079. Declaration of policy.

Co-operative association transporting property for members must obtain permits and are subject to regulation under the motor carrier laws. Op. Atty. Gen. (93b-34), Apr. 23, 1936.

Co-operative association organized under Laws 1923, c. 326 (§7834, et seq.), may by taking appropriate steps bring themselves under provisions of Laws 1923, c. 264 (§6709, et seq.). Op. Atty. Gen. (93a-2), May 6, 1936.

6081. Who may organize.

Members of a nonstock, co-operative marketing corporation have right at common law to inspect books, records and papers of corporation in proper cases and under reasonable circumstances. State v. St. Cloud Milk Producers' Ass'n., 200M1, 273NW603. See Dun, Dig. 2070.

Members of co-operative are not entitled to mandamus to compel corporation to permit inspection and examination of record where the purpose is to benefit other companies who have interfered with contractual relations existing between association and its members. Id.

6083. Powers.

A creamery corporation may not enter into an agreement with cooperative marketing association to fix the price of milk, but such a contract may be entered into by one cooperative marketing association with other cooperative associations. Op. Atty. Gen. (93a-14), Sept. 15, 1934.

A foreign cooperative marketing association may become a member, provided its amended articles of incorporation and by-laws conform to this act. Op. Atty. Gen. (93a-14), Sept. 15, 1934.

An ordinary corporation engaged in creamery business does not have the right to become a stockholder in a cooperative marketing association. Id.

6085. Articles of incorporation.

(f).

Op. Atty. Gen. (93a-2), Apr. 5, 1935; note under §6086.

6086. Amendments to articles of incorporation.

Amendments to articles, including provision (f) of §2085, which is made a part of the articles for the first time, must first be approved by two-thirds of directors and then adopted by a vote representing a majority of all members of association. Op. Atty. Gen. (93a-2), Apr. 5, 1935.

6087. By-laws.

(i).

Members of a nonstock co-operative marketing corporation have right at common law to inspect books, records and papers of corporation in proper cases and under reasonable circumstances. State v. St. Cloud Milk Producers' Ass'n., 200M1, 273NW603. See Dun, Dig. 2070.

Power to expel members and stockholders from a corporation exists in virtue of statute under which corporation is organized, or its articles of incorporation; and, when the right exists, it is in membership and can be exercised by board of directors only when it has been delegated to board pursuant to statute or articles of incorporation. Id. See Dun, Dig. 2098.

6098. Annual reports.

Members of a nonstock co-operative marketing corporation have right at common law to inspect books, records and papers of corporation in proper cases and under reasonable circumstances. State v. St. Cloud Milk Producers' Ass'n., 200M1, 273NW603. See Dun, Dig. 2070.

6104. Misdemeanor—Breach of marketing contract, etc.

Whether suggestion to members of co-operative that another co-operative can handle milk with larger return to farmer is an attempt to induce breaking of marketing contract, is a question of fact. Op. Atty. Gen., Feb. 25, 1933.

6106. Association not in restraint of trade.

A creamery corporation may not enter into an agreement with cooperative marketing association to fix the price of milk, but such a contract may be entered into by one cooperative marketing association with other cooperative associations. Op. Atty. Gen. (93a-14), Sept. 15, 1934.

ACCOUNTING OF CO-OPERATIVE ASSOCIATIONS

6122. County board to incur expenses.

County board may rescind appropriation and county auditor may retransfer funds. Op. Atty. Gen., Jan. 16, 1933.

6124. Appropriations to be expended by, etc.

Funds provided for the maintenance of county co-operative extension service in agricultural and home economics cannot be used to pay the compensation of a caretaker for land donated under Laws 1925, c. 13 [§§669-12, 669-13]. Op. Atty. Gen., Jan. 15, 1930.

6125. County budget committee.

Funds provided for the maintenance of county co-operative extension service in agriculture and home economics cannot be used to pay the compensation of a caretaker for land donated under Laws 1925, c. 13 [§§669-12, 669-13]. Op. Atty. Gen., Jan. 15, 1930.

Upon discontinuation of county extension office supplies and equipment should be turned over to county auditor or county board for safe keeping pending re-establishment of extension work. Op. Atty. Gen. (107b-1), June 1, 1936.

MISCELLANEOUS

6131-1. Indians to raise and harvest wild rice in certain lakes.—The exclusive right of collecting wild rice on lower Rice Lake in Clearwater County is hereby granted the Chippewa Band of Indians residing in the State of Minnesota, and the Indians and all other persons are hereby prohibited from the shooting of migratory birds on said lake during each season until the Indians have completed their rice collecting operations; provided, that such date of completion of rice collecting operations shall be determined by the Commissioner of Game and Fish and a Council appointed by the Band of Chippewa Indians so engaged in collecting of the rice upon said lake. (Act Mar. 30, 1929, c. 120, §1.)
See §§5556-1 to 5556-4.

6131-2. Water level to be maintained.—The existing water level in said lake shall not be changed by any public or private agency so as to interfere with the growth or harvesting of wild rice in said lake. (Act Mar. 30, 1929, c. 120, §2.)

6131-3. Provisions severable.—The provisions of this act shall be severable, and if any provision shall be held invalid it shall not affect any other provision hereof. (Act Mar. 30, 1929, c. 120, §3.)

Act Apr. 15, 1933, c. 276, provides that counties having area of over 5,000 square miles and assessed valuation of over \$200,000,000 may provide free seed to amount not to exceed \$25,000 for each of years 1933 and 1934.

Act Apr. 1, 1939, c. 130, authorizes county board in counties having not less than 200 congressional townships, population not less than 200,000, assessed valuation including moneys and credits, of not less than \$270,000,000, and 35% of land vacant and unimproved, to establish a revolving fund for clearing of such unimproved land.

6131-4. Conservation of wild rice.—From time immemorial the wild rice crop of the waters of the state of Minnesota has been a vital factor to the sustenance and the continued existence of the Indian race in Minnesota. The great present market demand for this wild rice, the recent development of careless, wasteful and despoiling methods of harvesting together with water conditions of the past few years, have resulted in an emergency, requiring immediate stringent methods of control and regulation of the wild rice crop. The traditional methods of the Indian in such harvesting are not destructive. On the other hand, the despoilation of the rice fields as now progressing under commercial harvesting methods will result in imminent danger of starvation and misery to large bands of said Indians. They are in danger, therefore, of becoming relief charges upon the state and the counties, many of which are over burdened with relief loads now. It is further true that many of the reservation lands which were ceded in trust for the said Indians have never been sold and others are reverting because of non-payment by the purchasers. It is therefore the declared purpose of this act to meet said emergency and to discharge in part a moral obligation to said Indians of Minnesota by strictly regulating

the wild rice harvesting upon all public waters of the state and by granting to the said Indians the exclusive right to harvest the wild rice crop upon all public waters within the original boundaries of the White Earth, Leach Lake, Nett Lake, Vermillion, Grand Portage, Fondulac and Mille Lacs Reservations. (Act Apr. 13, 1939, c. 231, §1.)

6131-5. To be harvested by Indians only in certain Indian Reservations.—It shall be unlawful prior to November 1, 1941, for any person to take wild rice grain from any of the waters within the original boundaries of the White Earth, Leach Lake, Nett Lake, Vermillion, Grand Portage, Fondulac and Mille Lacs Reservations, except said persons be of Indian blood, or residents of the reservation upon which said wild rice grain is taken. (Act Apr. 13, 1939, c. 231, §2.)

6131-6. Unlawful to harvest with boats exceeding certain size.—It shall be unlawful to use in harvesting wild rice in any public waters of this state, any water craft other than a boat, skiff or canoe propelled by hand, which boat, skiff or canoe has a top width of not more than 30 inches or any machine or mechanical device for gathering or harvesting the grain other than with flails not over 30 inches in length nor over one pound in weight, which flails must be held and operated by hand. (Act Apr. 13, 1939, c. 231, §3.)

6131-7. Must have license to harvest.—It shall be unlawful for any person to take from any of the public waters of this state any wild rice grain either for commercial or domestic use, unless such person shall first have obtained from the director of game and fish a license so to do. It shall be unlawful for any person in his wild rice harvesting, to operate more than three boats at any given time. (Act Apr. 13, 1939, c. 231, §4.)

6131-8. Definitions.—For the purposes of this act the word "person" shall include any firm, corporation, association or co-partnership. (Act Apr. 13, 1939, c. 231, §5.)

6131-9. License fees.—The fee for such license shall be \$.50. The applicant for such license shall make an application to the director of game and fish upon forms furnished by the director, which application shall give the name of the applicant, his place of residence, whether of Indian blood, tribal relation, if any, names of members of his family and ages thereof who are to engage in wild rice harvesting and the names of bodies of water and counties in which applicant proposes to operate. Licenses shall be granted for the calendar year only and all members of a family shall be entitled to engage in the harvesting of wild rice under a license issued to the head of the family, provided said members procure an identification card which shall be issued for each member upon request to the director. (Act Apr. 13, 1939, c. 231, §6.)

6131-10. No license to be issued to non-resident.—No license to harvest wild rice grain shall be issued to a non-resident of the state. (Act Apr. 13, 1939, c. 231, §7.)

6131-11. Wholesale dealers to be licensed.—No person shall buy wild rice grain for the purpose of re-sale from any person who has harvested the same without first having obtained a license so to do from the director of game and fish. The fee for such license shall be five dollars. (Act Apr. 13, 1939, c. 231, §8.)

6131-12. Unlawful to harvest green rice.—It shall be unlawful to harvest, sell or purchase green wild rice. For the purpose of this act, green wild rice shall be defined as any wild rice containing more than 15 per cent of grain still in the milk, said 15 per cent to be determined by volume. (Act Apr. 13, 1939, c. 231, §9.)

6131-13. Not to harvest at night.—It shall be unlawful to harvest any wild rice grain between the hours of six p. m. and eight a. m. of the day following, nor shall any rice pole be used for propelling boats used in the harvesting of wild rice grain which is not forked at the end with each fork less than 12 inches in length. (Act Apr. 13, 1939, c. 231, §10.)

6131-14. Commissioner to appoint director.—The commissioner of conservation shall appoint a director of the wild rice harvest, who shall be a man of proven experience in the actual harvesting of wild rice for a period of not less than 20 years. The said director shall serve at the will of the commissioner and be paid a salary annually of the sum of \$300 and reasonable traveling expenses, from any sums available to the division of game and fish. Said director shall have the duty of investigating the conditions affecting the crop of wild rice upon any waters that are proposed to be harvested. Said director with the approval of the conservation commissioner shall prescribe such further rules and regulations as may be necessary to properly carry out the purposes of this act and to properly regulate the harvest. He may with the approval of the conservation commissioner appoint deputies to serve without pay to assist him in any or all of his duties. The commissioner of conservation is hereby authorized to designate the season for the harvesting of the wild rice in each of said lakes or rice beds upon the recommendation and report of the said director of rice harvest. (Act Apr. 13, 1939, c. 231, §11.)

6131-15. May restrict or prevent harvest.—The commissioner of conservation may in his discretion restrict or prohibit the harvesting of wild rice grain on public waters of any designated area when upon investigation of conditions it shall be determined necessary or advisable to protect against undue depletion of the crop so as to retard reseeding or restocking on such areas. (Act Apr. 13, 1939, c. 231, §12.)

6131-16. Definition.—The term "family" for the purposes of this act is defined as the immediate family, i. e., husband and wife or guardian and minor children having their abode and domicile with such parent or guardian. (Act Apr. 13, 1939, c. 231, §13.)

6131-17. Fees to be deposited with State Treasurer.—All fees collected by virtue of this act shall be deposited with the state treasurer to be credited by him to the game and fish fund. (Act Apr. 13, 1939, c. 231, §14.)

6131-18. Not to apply to director of game and fish.—Nothing in this act shall apply to harvesting or be construed to prevent harvesting of wild rice grain by the director of game and fish or his agents for the purpose of restocking depleted public waters with wild rice grain or wild rice plants from available sources. (Act Apr. 13, 1939, c. 231, §15.)

6131-19. Violations—Penalties.—Any person or persons violating any of the provisions of this act or any of the orders of the conservation commissioner promulgated in pursuance of the provisions hereof shall be guilty of a misdemeanor and upon conviction his license shall become null and void and no license of the same kind shall be issued to him for one year after the date of such conviction and any person violating or threatening to violate any provisions of this act may be restrained by injunction proceedings brought in the name of the state by the attorney general or by any county attorney. (Act Apr. 13, 1939, c. 231, §16.)

6131-20. 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. (Act Apr. 13, 1939, c. 231, §17.)

6131-21. Laws repealed.—Laws 1931, Chapter 373 [5556-1 to 5556-4], are hereby expressly repealed. (Act Apr. 13, 1939, c. 231, §18.)

POTATO SEED INSPECTION

6139-3. Duties of commissioner—Forms—Records, etc.

Records of Seed Inspection Division are open to inspection by any one having a legitimate interest therein. Op. Atty. Gen. (136e), July 29, 1936.

6139-10. Terms unlawfully used.

Potato tags containing information that they have been "certified" by shipper or "inspected" by shipper violate this section, where no inspection has been had under this act. Op. Atty. Gen., Jan. 31, 1933.

Words "seed certificate" were objectionable as falsely implying that potatoes had been registered and certified pursuant to statute. Op. Atty. Gen., Jan. 26, 1934.

6139-12. Prosecutions for violations of law.

Wholesale dealers shipping potatoes in violation of labeling act should be prosecuted in county where potatoes are loaded and billed. Op. Atty. Gen., Mar. 21, 1933.

INSPECTION OF NURSERIES, NURSERY STOCK, PLANTS AND PLANT PRODUCTS—QUARANTINES—INSECT OR ANIMAL PESTS AND PLANT DISEASES

6145-1. Inspection of nurseries.—The state entomologist employed by the commissioner of agriculture is hereby designated as state inspector of nurseries and is authorized, either himself or by deputies duly appointed by him, to inspect all premises in Minnesota where nursery stock is grown or held for sale, and further to inspect all orchards or any premises whatsoever within the state, where he has reason to suspect the presence of injurious insects or injurious and contagious plant diseases. Nursery stock shall be regarded as including all field-grown plants (except herbaceous annuals) of any kind, also trees, field-grown shrubs, vines, cuttings, buds, grafts and scions. For this purpose he or his deputy or deputies shall have free access to any field, ground, packing ground, buildings, cellars, orchard, garden, elevator, warehouse, freight or express office or car, freight yard, vehicle, vessel, boat, container, and other places where the carrying out of the provisions of this act shall make necessary. The state inspector of nurseries is empowered and required to grant certificates upon request to such nurseries as he may find free from injurious insects and contagious plant diseases. Such certificates shall be good for one year unless revoked by him. This inspection of nurseries shall take place between May 1st and September 30th and at such other times as may be necessary to comply with the provisions of this act. Nurserymen or others having stock to inspect shall make application to the state nursery inspector for the inspection of stock so far as practicable on or before May 1st of each year. It shall be the duty of the inspector or his deputy to make the inspection as soon thereafter as possible.

For inspection of nurseries the fee shall be \$10.00 per annum for inspection of strawberry plants, evergreens, herbaceous plants, bulbs and roots; \$15.00 for inspection of other small fruit plants together with any or all of the plants mentioned heretofore; \$25.00 for inspection of general nursery stock including any or all of the plants mentioned heretofore. The determination of the charge or fee as per above schedule by the state inspector shall be conclusive on the question of amount of fee that shall be paid. The fee for inspection shall be paid at time of inspection or not later than April first following the date when inspection is completed and before a certificate is granted. If a dangerous insect pest or plant disease is found by the inspector on the premises inspected, and if in his judgment such pest or disease can be eradicated, he may direct the owner or his representative in writing what means shall be employed; in case any trees, shrubs or plants are so infested that treatment would be ineffectual he may direct the owner or his representative to have them destroyed.

Said order shall be issued in writing. If the order be not obeyed within ten days after service thereof, the state inspector shall cause the work to be done and render to the owner or persons in charge an itemized bill of the cost; and if such cost shall not be paid within sixty days thereafter the bill shall be reported to the County Attorney, who shall forthwith collect same in civil action in the name of the state and shall turn same over to the State Treasurer to be credited to the inspection fund.

Whenever the state inspector of nurseries is requested to perform or supervise any inspection, fumigation or other service for which a fee or charge is not otherwise provided, he may charge and collect for such inspection or other service performed, two dollars for each carload or fraction thereof, lot, orchard or planting. Said fee shall be collected from the person making application and shall be paid within sixty days from date of said service. The necessary traveling expenses of the inspector shall be paid by said applicant in addition to the prescribed fee unless said service can be performed at a time when the inspector is in the same vicinity for the performance of his regular duties. ('27, c. 108, §1; Mar. 9, 1929, c. 59, §1.)

Greenhouse crops or plants grown in greenhouse proper or otherwise, including herbaceous annuals, are taxed as other property and not exempt. Op. Atty. Gen., July 10, 1933.

State owned tree nursery need not be inspected because state is not permitted to sell any of the stock and nursery is not required to pay an inspection fee. Op. Atty. Gen. (923a), June 26, 1934.

Fees charged for services rendered are not a tax, and are not a tax by state against federal government as applied to inspection of federal nursery. Op. Atty. Gen. (923e), Feb. 1, 1938.

6145-2. Diseased or infested trees, shrubs or plants—Destruction—Orders for, etc.—When any tree, shrub or plant, not itself diseased or infested, which is a host for any organism inducing a plant disease, new to or not heretofore widely prevalent or distributed within or throughout this state, or host for any destructive insect, new to or not heretofore widely prevalent or widely distributed throughout this state is situated within three thousand feet of any tree, plant or shrub which is infested with any such organism or insects, the state inspector of nurseries may for the purpose of preventing the spreading of such organism or insect cause such tree, plant or shrub not itself so diseased or infested, to be destroyed as herein-after provided:

(a) If the state inspector of nurseries shall find on examination, any orchard, small fruit planting, park, cemetery, or any private, public or quasi-public property which contains any tree, shrub, or plant, not itself infested or diseased, which is a host for any insect pest or for any organism inducing a plant disease, and which if infested or infected may spread such insect or disease to any plants in adjoining or nearby premises the state inspector of nurseries may for the purpose of preventing such damage, cause such tree, plant or shrub, even though itself not infested or infected, to be destroyed or treated as hereinafter provided.

(b) The state inspector of nurseries shall notify, in writing the owner or person having charge of such premises, or both of them, to that effect; and the owner or person having charge of the premises shall, within ten days after such notice, cause the removal and destruction of such plants, if incapable of successful treatment; otherwise cause them to be treated as the state inspector of nurseries may direct.

(c) No damages shall be awarded to the owner for the loss or destruction of plants designated under paragraphs (a) and (b). Such plants shall be deemed to be a public nuisance.

(d) In case the owner or person in charge of such premises shall refuse or neglect to comply with the provisions of paragraph (b) of this section within ten days after receiving written notice from the state inspector of nurseries, he shall be deemed guilty of a

violation of this act and thereafter the state inspector of nurseries may proceed to treat or destroy or cause such plants to be treated or destroyed in a manner prescribed by him.

(e) The expense of enforcing the provision of paragraph (d) shall be a lien upon the owners of such land. Such lien shall have the same effect and may be collected in the same manner as taxes on such land; or the inspector may render to the owner or persons in charge an itemized bill of the cost; and if such cost shall not be paid within thirty days thereafter the bill shall be reported to the county attorney, who shall forthwith collect same in a civil action in the name of the state.

(f) Any money collected in accordance with the provisions of paragraph (e) of this section shall be paid into the State Treasury and credited to the funds provided for this work.

(g) Upon the delivery to him of the appraisers' report the owner or lessee of the land on which the trees, plants or shrubs ordered to be destroyed are situate, shall forthwith destroy the same in the manner directed by the state inspector of nurseries, and within the time as specified in subdivision (b), and any owner or lessee who fails so to do within a period of five days after the expiration of said time specified in subdivision (b) shall be guilty of a felony and in addition to such criminal liability, the state inspector of nurseries may, after the failure of the owner or lessee for said five days to so destroy the same, cause the said trees, plants or shrubs to be destroyed at the expense of the owner, in the manner and as provided for in Section 1 of this act, and such expense in such case shall be deducted from the amount payable to the owner. Provided, that said owner, lessee or representative shall not be guilty of felony if within five days after receiving the notice for the destruction of such trees, plants and shrubs as provided for in subdivision (b) he shall notify said state inspector of nurseries in writing that he prefers to have said state inspector of nurseries destroy such trees, plants and shrubs as provided in this section.

(h) It shall be the duty of the executive board of the State Horticultural Society and the director of the experiment station each to furnish to the state inspector of nurseries a list of five practical horticulturists residing in several parts of the state who possess knowledge of the value of trees, plants and shrubs, from each of which the appraising committee is chosen.

(i) The state inspector of nurseries is hereby authorized and empowered to prohibit by proclamation, quarantine order, rules and regulations supplemental thereto the importation into this state or transportation from any area within this state of any plant, tree, shrub, plant product, or other material liable to be infested, which has been grown or propagated in any state, province, or county, or any place where it shall be determined by said state inspector of nurseries after due investigation that there exists and is prevalent to a dangerous extent white pine blister rust or any other plant disease, or any destructive insect which is liable to or capable of spreading to, and infecting the plants, trees, and shrubs of this state, and which may be carried and transported on or in trees, plants, shrubs, plant products or other material there grown. It shall be the duty of the state inspector of nurseries upon the making and promulgation by him of any such proclamation, quarantine order, or rules and regulations supplemental thereto, to forthwith mail a copy thereof to each certified nurseryman and to each railroad company doing business in this state, and to publish a copy thereof in a newspaper published at the city of Duluth and at the City of St. Paul, and any person, firm, or corporation, or common carrier which shall after thirty days from the date of said proclamation, quarantine order, rule or regulation, introduce or transport any tree, plant, shrub, plant product, or other material grown or prop-

agated in the territory described in such proclamation, or in any other manner fail to comply with the terms, provisions, and conditions of such proclamation, quarantine order, rules and regulations, shall be guilty of a gross misdemeanor, and in case the offender be a corporation shall be punished by a fine of not less than \$25.00 nor more than \$1,000 for each shipment so introduced, made or transported. For the purpose of enforcing any such proclamation, quarantine order, or rule or regulation, the state inspector of nurseries or any duly appointed deputy inspector may intercept, stop and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon or other vehicles or carriers, whether air, land or water, or any container believed or known to be carrying any plant, tree, shrub, plant product, or other material designated by said proclamation, quarantine order, rule or regulation and may seize, possess and destroy any such plant, tree, shrub, plant product or other material moved, shipped or transported in violation thereof.

(j) When the state inspector of nurseries finds or determines that there exists in any other state, territory, or district, or any part thereof, any dangerous plant disease or insect infestation with reference to which the secretary of agriculture of the United States has not determined that a quarantine is necessary and the state inspector of nurseries has duly established such quarantine, such state inspector of nurseries is hereby authorized to promulgate and to enforce by appropriate rules and regulations a quarantine prohibiting or restricting the transportation into or through the state, or any portion thereof, from such other state, territory, or district, of any class of nursery stock, plant, fruit, seed, or other article of any character whatsoever capable of carrying such plant disease or insect infestation.

(k) The state inspector of nurseries is hereby authorized to make rules and regulations for the seizure, inspection, disinfection, destruction, or other disposition of any nursery stock, plant, fruit, seed or other article of any character whatsoever capable of carrying any dangerous plant disease or insect infestation, whether or not a quarantine with respect to which shall have been established by the secretary of agriculture of the United States. (As amended Apr. 15, 1939, c. 266.)

This act provides a remedy for eradication of a buck-thorn hedge which is known to be a secondary host of crown rust of oats, and it is not necessary to wait until damage is done before action can be taken. Op. Atty. Gen. (215a-5), Apr. 8, 1935.

6145-5. Inspection of nursery stock—certificate.—All nursery stock transported from any point or points in the State of Minnesota to other points within the state must be accompanied by a valid certificate of inspection on the outside of each package. All nursery stock sold or offered for sale shall be in a sound healthy condition and shall be stored or displayed under conditions which will maintain its vigor. Nursery stock which is dead or so seriously weakened by drying, excessive heat or cold, or any other condition that in the judgment of the state inspector of nurseries or his deputy it will be unable to grow with normal vigor when given reasonable care shall not be sold or offered for sale. It shall be unlawful for any person, firm or corporation to sell or to offer for sale any nursery stock which has not within one year been officially inspected and found free from dangerous insect pests and plant diseases. ('27, c. 108, §5; Apr. 25, 1931, c. 365, §1.)

6145-6. Common carriers must not accept stock not tagged.—Railroad and express companies and all common carriers are hereby prohibited from accepting stock not tagged with certificate as above stated and must promptly notify the shipper. If the shipper does not furnish a certificate, such companies shall report said fact with the name and address of party offering said stock for shipment to the state

Inspector. ('27, c. 108, §6; Apr. 25, 1931, c. 365, §2.)

6145-8. Must obtain dealers certificate before sale.

—(a) Any person, firm or corporation before offering for sale nursery stock not grown by said person, firm or corporation, must obtain from the state inspector of nurseries a dealer's certificate unless otherwise granted a regular certificate of inspection, such dealer's certificate to be granted to such person, firm or corporation for nursery stock purchased from any inspected nursery or for foreign nursery stock inspected in this state. Such dealer's certificate must be obtained whether or not such nursery stock is actually owned by said person, firm or corporation except that this provision shall not apply to any bona fide agent of a nursery or bona fide agent of a dealer in nursery stock. The certificate or duplicate copy thereof shall be displayed in a prominent manner at each place where such nursery stock is offered for sale. All dealer's certificates shall expire September 15 of each year. The fee for issuing dealer's certificate as provided herein shall be \$10.00 and an additional fee of \$5.00 shall be paid for each additional branch store or other premises where such nursery stock is offered for sale by said person, firm or corporation, except that any landscape gardener or landscape architect before offering for sale such nursery stock shall obtain a dealer's certificate upon payment of a fee of \$5.00. Provided that nothing in this Act shall be construed as exempting any nursery branch or chain stores from the provisions of Chapter 213, Session Laws of Minnesota for 1933 [§5887-1 et seq.], and acts amendatory thereof. Only such persons, firms or corporations who plant all the nursery stock they furnish or sell to their clients shall be entitled to secure a certificate as a landscape gardener or landscape architect.

(b). Provided, that before such certificate is granted, the person, firm or corporation requesting the same shall furnish a sworn affidavit that said person, firm or corporation will buy and sell only nursery stock which has been inspected by an official state inspector and that said person, firm or corporation will maintain with the state inspector of nurseries a list of all sources from which nursery stock is secured.

(c). Non-resident nurserymen and dealers desiring to solicit or accept orders for nursery stock in the state shall, upon complying with all other provisions of Chapter 108, Session Laws 1927, as amended thereto, and all rules and regulations promulgated thereunder and upon payment of the registration fee in the like amount to any fee charged by his state to out-of-state nurserymen, agents or dealers, be entitled to a certificate permitting such persons to solicit or accept orders for nursery stock in this state.

(d). Notwithstanding the provisions of paragraph (c) of this section, the state entomologist may enter into reciprocal agreements with the responsible officers of other states under which nursery stock owned by nurserymen or dealers of such states may be sold or delivered in this State without the payment of a Minnesota registration fee, provided like privileges are accorded to Minnesota nurserymen, dealers, or agents in such other states, and provided, further, that the State Entomologist shall find that such other states before issuing their certificates, require inspections equal to those required under the Minnesota law and provided further, that the state entomologist may enter into reciprocal agreements with the responsible officers of other states under which nursery stock owned by nurserymen or dealers of such states may be sold or delivered in this State without furnishing bond, without special permit tags of all descriptions, without filing of special invoice, without fumigation of stock, without making special inspection at time of shipping, without signing of special statements concerning locations of stock, or without any other kind of special inspection other than that necessary for complying with the regular filing of the accepted certificate of inspection.

(e). If any of the exemptions provided for in paragraph (d) of this section shall be held invalid by any court of competent jurisdiction, the class or classes held to be invalidly exempted shall forthwith become subject to the provisions of paragraph (c) as if no exemptions had been provided for.

(f) All agents selling nursery stock, or soliciting orders for nursery stock shall secure for the state entomologist and carry an agent's certificate bearing a copy of the certificate held by the principal. Said agent's certificate shall be issued only to agents authorized in writing or upon request of their principal. ('27, c. 108, §8; Apr. 21, 1931, c. 365, §3; Mar. 20, 1935, c. 54, §1.)

Dealer's certificate is issued to the person and he may offer for sale at several places under one certificate. Op. Atty. Gen., Apr. 20, 1929.

The license of a dealer in nursery stock cannot be revoked for his act in purchasing uninspected nursery stock for sale. Op. Atty. Gen., July 29, 1930.

A person working in, or connected with a store to which nursery stock has been consigned for sale, by a nursery, is not a bona fide agent of a nursery, and must procure a dealer's certificate. Op. Atty. Gen., May 29, 1933.

6145-9. Violations—penalties.—Every person who shall violate any of the provisions of this act or of any quarantine order, rule or regulation issued hereunder, or who shall neglect or refuse to comply therewith, or with any notice issued hereunder, shall, except as hereinbefore otherwise provided, be guilty of a misdemeanor, and his certificate may be forthwith suspended, revoked or cancelled by the state inspector of nurseries upon five days' notice and opportunity to be heard. ('27, c. 108, §9; Apr. 25, 1931, c. 365, §4.)

6145-16. County board may appropriate money for control of insect pests, etc.—When recommended so to do by the State Commissioner of Agriculture, such recommendation being based on the expert opinion of the State Entomologist, the board of commissioners of any county of this State is hereby authorized and empowered to appropriate money for the control of insect pests, plant diseases, bee diseases or rodents. Such money shall be expended according to technical and expert opinions and plans as shall be designated by the State Entomologist. (Act Feb. 27, 1935, c. 29, §1.)

6145-17. Board may appoint supervisor.—The board of commissioners of any county of this state, where the State Commissioner of Agriculture has recommended appropriation of money for the control of insect pests, plant diseases, bee diseases or rodents may appoint, if the State Entomologist deems advisable, a part or full time supervisor, whose duty it shall be, acting under the direction of the State Entomologist, to institute and carry out such plans and procedures for effective control as said entomologist shall advise. (Act Feb. 27, 1935, c. 29, §2.)

6145-18. Board to fix compensation.—Any person so appointed under the provisions of this Act shall possess such qualifications, technical or expert training, as the State Entomologist shall deem necessary and shall receive such compensation as may be fixed and determined by the Board of County Commissioners of the county in which said supervisor is to serve. Such supervisor shall be paid mileage for travel and subsistence expense in accordance with the rules and laws pertaining to these items in the county. (Act Feb. 27, 1935, c. 29, §3.)

6145-19. Purposes for which appropriation may be used.—Money appropriated according to this act shall be used only for expenses and wages of a supervisor as provided in this act and for the purchase and transportation into the county of materials and equipment as recommended by the State Entomologist. (Act Feb. 27, 1935, c. 29, §4.)

6145-20. Organization must be completed before money expended.—The county supervisor with the support of the county commissioners shall organize

the owners, renters and lessees of land within the area infested or infested with diseases, insects or rodents according to the plan advocated by the State Entomologist. No material or equipment for control shall be distributed to any individual, organization or unit of organization until such organization has been perfected to meet the plans as outlined by the State Entomologist. (Act Feb. 27, 1935, c. 29, §5.)

6145-21. County board and county supervisors to supervise work.—The county supervisor and board of county commissioners shall determine what land within the infested or infested areas the control measures have not been carried out according to the rules and regulations, and it shall be their duty to employ competent persons in sufficient numbers to apply such control measures as may be provided for according to this act. The county commissioners shall have the power to fix the compensation of such persons so employed, which, however, shall not exceed the sum of four dollars for each day actually spent in such work and the necessary expenses incurred therein and such amount so expended for such labor and expenses may be by the county commissioners assessed against each respective tract of land to be collected in the same manner as taxes are collected. The county commissioners, when necessary, may order the same paid out of the general fund of the county until such time as the tax levy for that purpose has been collected, when it shall be the duty of the county treasurer, upon order of the county commissioners to reimburse the general fund for such advances. (Act Feb. 27, 1935, c. 29, §6.)

6145-22. Owners and renters to organize.—It shall be the duty of all owners, renters and lessees of land within such infested or infested areas as designated by the State Entomologist to organize, and through such organization apply for, obtain and distribute, the control materials furnished by the counties for the control of said diseases, insects or rodents, in strict conformity with the provisions of this act and the rules and regulations promulgated by the county commissioners as herein provided for. It shall likewise be the duty of every owner, renter or lessee of land within such county, who resides elsewhere but who has notice of the distribution of such poison or other material or equipment, to apply for, obtain and distribute the same as is required by resident owners, renters or lessees. (Act Feb. 27, 1935, c. 29, §7.)

6145-23. Certain acts to be misdemeanors.—Any person who shall prevent, obstruct or in any manner interfere with the county authorities or their agents in carrying out the provisions of this act, or neglects to comply with the rules and regulations of the county commissioners promulgated under authority of this act, shall be deemed guilty of a misdemeanor. (Act Feb. 27, 1935, c. 29, §8.)

6145-24. Definitions.—The term "Insect Pest" as used in this act shall include grasshoppers, cut-worm, army worm, European corn borer, Japanese beetle, chinch bug, bee moths and any other insect which the State Entomologist may designate as dangerous to agricultural and horticultural crops. (Act Feb. 27, 1935, c. 29, §9.)

6145-25. Definitions.—The term "Rodents" as used in this act shall include such rodents as rats, gophers, mice and others which the State Entomologist may designate dangerous to the welfare of the people. (Act Feb. 27, 1935, c. 29, §10.)

6145-26. Definitions.—The term "Diseases" in this act shall refer to dangerous plant diseases and bee diseases as the State Entomologist may designate are dangerous to agriculture, horticulture and forestry. (Act Feb. 27, 1935, c. 29, §11.)

NOXIOUS BUSHES AND WEEDS

6146. Certain bushes declared nuisance.

Eradication of Indian hemp (Marijuana). Sec §§10278-11 to 10278-16.
174M457, 219NW770.

6148. Destruction of bushes.
Agents may enter upon premises to destroy barberry bushes. Op. Atty. Gen. (322g), Sept. 10, 1938.

6152. Definitions.—In this act unless the context otherwise requires the expression.

(a) "Municipality" means a city, village or borough.

(b) "Non-resident lands" shall refer to all lands which are unoccupied, and the owner of which does not reside within the county.

(c) "Resident lands" shall refer to all lands which are occupied or which are owned by persons resident within the county.

(d) "Noxious weeds" means the annual, biennial and perennial plants herein named under classes I and II and such other plants as are or may be injurious to public health, public roads or crops.

(e) "Commissioner" means commissioner of agriculture.

(f) "Otherwise destroy" has reference to killing weed plants above the surface of the ground..

CLASS I

COMMON NAME	BOTANICAL NAME
Perennial sow thistle	<i>Sonchus arvensis</i> L.
Leafy spurge	<i>Euphorbia esula</i> L.
Toad-flax (Butter and Eggs)	<i>Linaria vulgaris</i> Hill
Canada Thistle	<i>Carduus arvensis</i> L.
Oxeye (white) Daisy	<i>Chrysanthemum leucanthemum</i> L.
Dodders	<i>Cuscuta</i> Sps.
Common Barberry	<i>Berberis vulgaris</i> L.
Horse Nettle	<i>Solanum carolinense</i> L.
Austrian Field Cress	<i>Roripa austriaca</i>
Creeping Jennie	<i>Convolvulus arvensis</i> L.
Perennial Pepper Grass	<i>Lepidium draba</i> L.
Sheep Sorrel	<i>Rumex acetosella</i>
Quack Grass ¹³	<i>Agropyron repens</i> L. ¹³

CLASS II

COMMON NAME	BOTANICAL NAME
Blue Lettuce	<i>Lactuca pulchella</i> P.
False Flax	<i>Camelina sativa</i> L.
Wild (common) Mustard	<i>Brassica arvensis</i> L.
Tumbling Mustard	<i>Sisymbrium altissimum</i> L.
Hare's Ear Mustard	<i>Conringia orientalis</i> L.
French (stink) Weed	<i>Thlaspi arvense</i> L.
Curled (yellow or sour) Dock	<i>Rumex crispus</i> L.
Burdock	<i>Actium minus</i> Schk.
Cockle Bur	<i>Xanthium</i> Sps. L.
Giant Ragweed	<i>Ambrosia trifida</i> L.
Common Ragweed	<i>Ambrosia artemisiifolia</i> L.
Wild (pea) Vetch	<i>Vicia angustifolia</i> L.
Buckhorn (Plantain)	<i>Plantago lanceolata</i> L.
Annual Sow Thistle	<i>Sonchus oleraceus</i> L.
Spiny Sow Thistle	<i>Sonchus asper</i> L.
Russian Thistle	<i>Salsola kali</i> (var) <i>tragus</i> L.
Prickly Night Shade	<i>Solanum rostratum</i> L.
Hedge Buckwheat	<i>Polygonum scandens</i> L.
Wild Buckwheat	<i>Polygonum convolvulus</i> L.
Morning Glory	<i>Convolvulus arvensis</i> L.
Graveyard Spurge	<i>Suphorbia cyparissias</i> L.
Lady's Thumb	<i>Polygonum persicaria</i>
Wild Barley	<i>Hordium jubatum</i> L.
Darnel	<i>Lolium temulentum</i> L.
Cheat	<i>Bromus secalinus</i> L.
Sand Bur	<i>Cenchrus tribuloides</i> L.
Purple Cockle	<i>Agrostemma githago</i> L.
Sticky Cockle	<i>Silene noctiflora</i> L.
Bladder Campion	<i>Silene latiflora</i> B. and R.
Smart Weeds	<i>Polygonum</i> Spp.
California Puncture Vine	<i>Tribulus terrestris</i>
Hoary Alyssum	<i>Berteroa incana</i> D. C.
Wild Oats ²³ ✓	<i>Avena</i> Spp. L.
(As amended Apr. 23, 1937, c. 371, §1.)	

6153. Occupants or owners of land to destroy noxious weeds.

Adjacent landowners are required to cut down noxious weeds growing on shores of meandered lake where water has receded. Op. Atty. Gen. (322a-6), Aug. 1, 1934.

It is duty of occupant of land abutting drainage ditch to destroy weeds at his own expense down to center of drainage ditch, or if land is vacant it is obligation of owner, or if there is a road bordering ditch, responsibility is of town or county establishing road. Op. Atty. Gen. (322G), May 11, 1939.

6155. Destruction of noxious weeds on public highways.

Moorhead city ordinance respecting trees and grass plots along the public streets, and the cutting of weeds and grass, held faulty as to compelling a man to cut grass on a street or alley. Op. Atty. Gen., Apr. 10, 1931.

Townships and counties cannot appropriate funds for weed eradication other than provided for by Laws 1925, c. 377 (§6154 et seq.), and Laws 1935, c. 348 (§6164 et seq.). Op. Atty. Gen. (322b), Mar. 19, 1937.

6157. Local weed inspectors.

(b) Any town chairman may appoint a person to act as his assistant weed inspector, and such assistant inspector shall have all the powers and authority as the town chairman in the capacity of weed inspector and all conditions which apply to the remuneration of the inspector shall apply to the remuneration of the assistant inspector, and if the chairman appoints the other township supervisors, their compensation shall be the same as received for other township work executed by them, but shall be limited between 25 cents and 50 cents per hour, as specified in subsection (c) of this law. Such appointment may be for full time or any definite part of the time between the dates of May 15 and October 15 next following. Notice of such appointment together with a statement of the time for which appointment is made shall be delivered to the commissioner within ten days after the date the appointment was made (As amended Apr. 20, 1939, c. 330.)

173M598, 218NW562.

Town chairman acting as local weed inspector is not entitled to receive compensation or expenses until the completion of the year's work and the filing of the report referred to in §6160, and the obtaining of the certificate of the Commissioner. Op. Atty. Gen., July 23, 1931.

Local weed inspector in town is entitled to expenses of two or three trips to a farm if necessary in securing destruction of noxious weeds. Op. Atty. Gen., Sept. 30, 1932.

Township cannot pay cost of weed eradication on private land and supervisors are personally liable for expenditures so made. Op. Atty. Gen. (442a-11), Apr. 12, 1934.

Where commissioner does not request appointment of an inspector, chairman of town board does not become such inspector. Op. Atty. Gen. (322d), Oct. 22, 1937.

6158. Duties of local weed inspectors—Notices for destruction.—

(e) Except as herein otherwise provided, in all municipalities and in all townships the duration of employment of the weed inspector shall extend between the dates of May fifteenth and October fifteenth of each year. Except that the Commissioner, for the purpose of preventing the moving of seeds, feeds, forage and grains from lands infested with the primary noxious weeds, along public roads and to other farm lands, may either on his own initiative or upon request, extend the length of the period herein defined, in any county by directing that the work shall be continued later than the said October 15th or/and earlier than the said May 15th and the weed inspector shall thereafter act as the commissioner may direct. (As amended Apr. 23, 1937, c. 371, §2.)

Owner of land bearing noxious weeds has right to cross land of another for purpose of exterminating them on orders of proper authority, having no other access to the land. Op. Atty. Gen. (322g), Aug. 16, 1935.

Owner of land in lake bottom of meandered lake is under same duty to eradicate weeds as owner of other lands. Op. Atty. Gen. (322a-6), Sept. 9, 1936.

(b). One published notice is sufficient. Op. Atty. Gen. (605b-7), Sept. 6, 1938.

(d). Does not apply to state owned lands. Op. Atty. Gen. (322g), Nov. 16, 1936.

This subsection does not apply to tax forfeited lands. Op. Atty. Gen. (322g), Aug. 3, 1938.

6161. Notices—Expenses—Lien.

173M595, 218NW562.

Officer rendering services in connection with destruction of weeds in a township outside of an incorporated village should present his verified itemized statement to county auditor, who would pay him and extend amount thereof on tax books against land, but if services were performed within village or city, statement would be furnished clerk of such municipality and he would issue order for payment and certify amount thereof to county auditor, who would extend amount on tax books. Op. Atty. Gen., Aug. 29, 1932.

Weed lien is not subordinate to real estate mortgage. Op. Atty. Gen. (519r), June 7, 1935.

After tax representing expense of eradication of obnoxious weeds has been assessed against land, county board has no power to refund amount of money taxed. Op. Atty. Gen. (424a-3), June 24, 1936.

Wheat inspectors and supervisors of wheat inspectors do not have authority to take acknowledgment for purposes of presenting verified claim for weed eradication. Op. Atty. Gen. (322a-1), Nov. 1, 1937.

After a weed lien has been assessed and entered on tax books, it becomes a part of the taxes, and treasurer has no authority to accept part payment thereof, or to accept payment of general taxes or weed lien separately because owner wishes to contest lien. Op. Atty. Gen. (322a-2), June 3, 1939.

6163-1. Appropriation for extermination of noxious weeds.—

The commissioner of agriculture, dairy and food, hereafter referred to as commissioner, is hereby authorized and it shall be his duty to execute this law, and to that end he may make and enforce such regulations as in his judgment shall be necessary; he shall investigate the nature and extent of Austrian field cress in this state, and to that end may require information from any party or parties, public officer or official as to the presence of Austrian field cress and possible means for its eradication. For the purpose of performing his duties and exercising his powers herein he may enter, or have someone for him enter, upon any and all lands in the state and take such samples of Austrian field cress, soil or other material needed for said investigation and eradication of said noxious weed, and to these ends he may from time to time publish and circulate information through the press, publish bulletins and other publications.

It shall be the duty of the commissioner to take such steps as in his judgment may be necessary to place lands infested with the said Austrian field cress under his control for purposes of study and of practicing methods of eradication of Austrian field cress thereon. He shall have the authority to cooperate with local township and county boards, with individuals and other state officials in the exercise of his duty as herein described. (Act Apr. 25, 1931, c. 387.)

6164-1. County weed inspector may be appointed.

—The Board of County Commissioners, whenever requested by the Commissioner of Agriculture, may appoint by resolution one or more county weed inspectors whose duties and powers shall be the same as those of a local weed inspector, and who shall supervise the work of such local weed inspectors and cooperate with them. (Act Apr. 26, 1929, c. 399, §1.)

6164-2. County board may fix compensation.—

Such appointment shall be for full time employment for a period of not less than two months between the 15th day of May and 15th day of October next following and the Board of County Commissioners shall fix the compensation of said county weed inspectors and they shall be allowed their traveling and other expenses necessarily incurred in carrying out their work, such compensation and expense allowed be paid out of the county general Revenue Fund. (Act Apr. 26, 1929, c. 399, §2.)

6164-3. May employ assistants.—Such county weed inspectors shall, with the approval of the county board, have power to employ necessary help to assist in eradicating weeds and such help shall be compensated as provided in Chapter 377 of the Session Laws of 1925. [§§6151-6164] (Act Apr. 26, 1929, c. 399, §3.)

6164-4. Commissioner of Agriculture to enforce act—sale of produce from lands secured.—The commissioner of agriculture, dairy and food, hereinafter in this act called the commissioner, is hereby authorized and it shall be his duty to administer this act and he shall have the authority to make, promulgate and enforce such rules and regulations as he shall deem necessary to do so, and he shall cooperate with the dean of the department of agriculture of the University of Minnesota in the study of the life habits and eradication methods of primary noxious weeds and from time to time shall publish such information upon the subject as may be of public interest and value to the agricultural communities of the state.

When farm produce is grown on lands secured under the provisions of this act for the study of life habits and eradication methods, the commissioner, in cooperation with the dean of the department of agriculture of the University of Minnesota, is directed and authorized to sell such produce, and all moneys derived from such sale shall be deposited with the state treasurer in the same manner as other state receipts are, but shall be set aside and constitute a separate fund to be known as the Primary Noxious Weed Fund, and shall be used in the conduct of the studies provided for in this act. (Apr. 29, 1935, c. 348, §1; Mar. 19, 1937, c. 72, §1.)

This act applies to tax forfeited lands. Op. Atty. Gen. (322g), Aug. 3, 1938.

6164-5. May engage employees and purchase equipment.—The commissioner may engage such additional employees and may purchase such equipment and supplies as may be necessary to carry out the provisions of this act. (Act Apr. 29, 1935, c. 348, §2.)

Equipment includes plows, tractors, cultivators and other farm tools. Op. Atty. Gen. (322g), Mar. 25, 1938.

6164-6. What are noxious weeds.—The term primary noxious weeds, as used in this act, shall mean and shall refer to Creeping Jennie (*Convolvulus arvensis*), Leafy Spurge (*Euphorbia esula*), Horse Nettle (*Solanum carolinense*), Austrian Field Cress (*Roripa (Radicula) austriaca*), Perennial Pepper Grass (*Lepidium draba*), and other similar weeds propagated by seed and root stalk. (Act Apr. 29, 1935, c. 348, §3.)

6164-7. Commissioner may destroy weeds.—When from investigation or otherwise, it shall appear to the commissioner that upon any tract of agricultural land there is an infestation of primary noxious weeds beyond the ability of the land occupant or owner to eradicate, the commissioner, upon request of the owner, or upon his own motion, shall take such steps as may be necessary to prevent further spread of such weed growths and to this end shall quarantine such portion of each such tract of land as may be so infested and put into immediate operation the necessary means for the eradication of such weed growths. (Act Apr. 29, 1935, c. 348, §4.)

Act does not apply to railroad right of ways. Op. Atty. Gen. (322a-8), May 29, 1935.

Commissioner may take any steps that he deems necessary to eradicate noxious weeds on highway right of way, exclusive of placing land under quarantine. Op. Atty. Gen. (322b), March 22, 1938.

County employees using sprayers in weed eradication under contract between state and county were not "state employees." Op. Atty. Gen. (322b), March 22, 1938.

Act applies to rural credit lands and commissioner may quarantine such lands and eradicate weeds thereon. Op. Atty. Gen. (322g), May 3, 1938.

6164-8. Must give written notice.—The commissioner, upon entering upon any tract of land for the purposes of this act, shall give written notice to

the owner of such entry and quarantine, if established, and also shall give the owner written notice of the completion of his operations thereon. (Act Apr. 29, 1935, c. 348, §5.)

6164-9. Expenses to be paid from fund provided—territory within a municipality—

(a) The expenses of field operations, including cost of chemicals and other materials employed in weed eradication except machinery and other equipment, shall be paid from the fund herein provided, which fund shall be reimbursed not later than January first of each year, 20 per cent thereof by the county and ten per cent thereof by the township in which the land so quarantined and improved is situated.

(b) When the infestations of primary noxious weeds, against which the activities of the commissioner are directed, are found located on the sides of public highways, the expenses of eradication shall be paid, 50 per cent by the state from the fund herein provided, 50 per cent from the funds provided for the maintenance of the state highway department if the infestation is on a state highway, 50 per cent by the county if the infestation is on a county or state aid road, and 50 per cent by the township if the infestation is located on a township road or cartway.

(c) When infestations of primary noxious weeds, against which the activities of the commissioner are directed, are found located within the corporate limits of a municipality or on property used by a municipality, the expense of the eradication of such weeds shall be paid as follows: 50 per cent thereof by the state from the funds provided for in this act, and 50 per cent by the municipality from its general revenue fund. (Apr. 29, 1935, c. 348, §6; Mar. 19, 1937, c. 72, §2.)

Township and counties cannot appropriate funds for weed eradication other than provided for by Laws 1925, c. 377 (§6154 et seq.), and Laws 1935, c. 348 (§6164 et seq.). Op. Atty. Gen. (322b), Mar. 19, 1937.

6164-10. Appropriation.—There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of \$50,000.00 for the fiscal year ending June 30, 1936, and a like amount for the fiscal year ending June 30, 1937, and for the purpose of expediting the operations of the commissioner under the provisions hereof, the sum of \$10,000.00 thereof, shall become immediately available upon the passage of this act; provided, however, that not to exceed five per cent of the appropriation so made shall be used for experimental purposes. (Act Apr. 29, 1935, c. 348, §7.)

Rental and equipment expense of experimental farm must be paid for entirely from 5% set aside by this section. Op. Atty. Gen. (322g), Mar. 25, 1938.

6164-11. Trespass a misdemeanor.—Any person who shall intrude upon any lands, placed under quarantine by direction of the commissioner, or who shall interfere with the operation of any machinery or other equipment being employed by and in use by the commissioner or his duly authorized agents in carrying out the provisions of this act, shall be guilty of a misdemeanor. (Act Apr. 29, 1935, c. 348, §8.)

STATE TESTING MILL

6166. State testing mill.

State mill can be used only for testing and scientific purposes, and sale of surplus or by-products is merely incidental. Op. Atty. Gen., Apr. 11, 1933.

State is not liable to pay process tax imposed by federal adjustment act on account of the milling operations of the state testing mill. Op. Atty. Gen. (533d), Apr. 14, 1934.

6168. Sale of products.

State board of control has no authority to pay more for flour produced by mill than it can be bought for in open market. Op. Atty. Gen., Apr. 11, 1933.

Testing mill cannot retain current net profits to apply on previous losses on sales to board of control. Op. Atty. Gen. (88a-13), Apr. 4, 1936.

6169. Disposition of proceeds.

Though testing mill was not liable for federal process taxes and has no authority to collect the same from board of control, there is no law permitting refund of amount collected either from the board of control or private purchases. Op. Atty. Gen. (88a-13), Sept. 20, 1934.

COMMISSION MERCHANTS

6197. Definition—License—Bond.

Contract held one of sale and factorage, and the contract was not invalid for uncertainty. Marrinan Medical Supply, Inc. v. F., (USCCA8), 47F(2d)458.

Indemnity bond given by grain commission merchant is governed by the same rules of construction as are ordinary life and fire insurance policies. 178M136, 226NW396.

The consignors are the proper persons to bring suit against surety company for breach of conditions of a commission merchant's bond. Op. Atty. Gen., Feb. 26, 1932.

\$25,000 bond permits sale of hay and straw as well as grain and \$8,000 bond is required only where activities are limited to hay and straw. Op. Atty. Gen., July 1, 1933.

Whether an individual is in fact a grain merchant is a question of fact to be determined by commission, as affecting necessity of license and separate bond. Op. Atty. Gen. (215a-4), July 21, 1936.

6200. Statement to consignor.

Indemnity bond given by grain commission merchant is governed by the same rules of construction as are ordinary life and fire insurance policies. 178M136, 226NW396.

Sections 6197 to 6206 do not preclude a commission merchant accepting a bid for grain, at so much a bushel, upon understanding that seller has paid or will pay, or assumes, the interstate grain rate. Op. Atty. Gen. (371b-3), Apr. 30, 1936.

6202. Suit on bond, etc.

Provisions relative to filing of an affidavit with the commission are directory and not mandatory and suit may be instituted on the bond without such filing. 178M136, 226NW396.

COLD STORAGE

6207. Definition of "Cold Storage."

A creamery may not build and rent out cold storage lockers for storage of pheasants, ducks, deer or perishable game. Op. Atty. Gen. (645-25), Dec. 8, 1936.

6208. Licenses, fees, etc.

Operation of warehouse without license constitutes a gross misdemeanor but those guilty of the offense are not civilly liable for license fee. Op. Atty. Gen. (645b-8), Sept. 11, 1934.

Cold storage license is not required by operators of a cold storage plant consisting of a large number of lockers operated by both cooperative and private owners, lockers being rented by month to persons desiring to store articles of food for their own consumption. Op. Atty. Gen. (645b-8), Jan. 26, 1938.

6220. Penalties.

Operation of warehouse without license constitutes a gross misdemeanor but those guilty of the offense are not civilly liable for license fee. Op. Atty. Gen. (645b-8), Sept. 11, 1934.

WHOLESALE PRODUCE DEALERS

6240-1 to 6240-18 [Repealed].

Repealed Apr. 25, 1931, c. 394, §18, post, §6240-18½q.

Annotations under 6240-6.

In action on bond given under G. S. 1923, §6226, where a surety admitted execution of the bond and offered a settlement exclusive of interest, held that general default was properly stricken as sham and frivolous. 173M613, 216NW792.

Annotations under 6240-13.

Ammon v. W., 183M71, 235NW533.

6240-18½. Dealers at wholesale.—For the purposes of this act any person who shall buy or sell or contract to buy or sell, or who shall handle in wholesale lots for the purpose of resale, or who shall handle on account of or as an agent for another, any produce as herein defined, and any person who shall similarly engage in the business of assembling and trucking produce without an established place of business, shall be deemed a dealer at wholesale; provided that cooperative associations having not more than forty per cent (40%) of nonmember patrons shall not be deemed dealers at wholesale within the meaning of this Act. (Act Apr. 25, 1931, c. 394, §1; Apr. 14, 1939, c. 251, §1.)

One who hauls and sells eggs for an association of farmers and charges commission of 20c per case is required to have a wholesale dealer's license. Op. Atty. Gen., Mar. 20, 1933.

A produce company established for purpose of buying farm produce as subsidiary to a large store company is a wholesale dealer required to obtain license. Op. Atty. Gen., Mar. 28, 1933.

Law is just as applicable to out of state companies as domestic companies and one making purchases in state must obtain license and bond, though he makes no sales here. Op. Atty. Gen., June 22, 1933.

One acting as inspector of butter for foreign corporation and authorized to tell producers what company will pay for butter in New York but not authorized to enter into any contracts is not a wholesale dealer. Op. Atty. Gen., July 14, 1933.

Creamery that buys its milk and cream from farmers and manufactures same into butter is required to take out wholesaler's license. Op. Atty. Gen., Sept. 27, 1933.

Ice cream manufacturers buying their materials at wholesale but selling only at retail are not required to be licensed and can only be regulated under the general dairy and food laws. Op. Atty. Gen. (832j-2), May 24, 1935.

A merchant operating a small general store in a village purchasing eggs for cash, or exchanging merchandise for eggs as part of his regular business, and receiving five to ten crates of eggs weekly, retailing part of these to his customers and the surplus selling to produce houses, is not a wholesaler. Op. Atty. Gen. (290g), July 1, 1935.

Fact that produce business is operated in connection with retail business is immaterial if firm is actually handling produce in wholesale lots for purpose of resale. Op. Atty. Gen. (832h), Sept. 10, 1935.

Conservator of rural credit department does not need license. Op. Atty. Gen. (770i), Feb. 27, 1936.

Buyer of infertile eggs for use in making tanner's products is not a wholesale dealer. Op. Atty. Gen. (832h), Apr. 20, 1936.

One purchasing butterfat at wholesale and converting same into ice cream which is sold at wholesale is a dealer at wholesale who must have a license. Op. Atty. Gen. (832j-1), Jan. 19, 1937.

A person buying package cheese and mayonnaise from manufacturers and importing them into state and selling them off his truck to retail stores is a wholesale dealer who must obtain rights. Op. Atty. Gen. (832h), Feb. 18, 1937.

A person licensed as a fisherman pursuant to §5599 is not a dealer at wholesale within meaning of §6240-18½. Op. Atty. Gen. (196g), Mar. 31, 1937.

Foreign corporation serving its own retail establishment within state is not subject to act. Op. Atty. Gen. (832g), Mar. 28, 1938.

6240-18½a. Definitions.—The term "produce" as used in this Act shall mean and include the natural products of the farm, except hay, grain, straw and livestock, other than veal; the natural products of the orchard, vineyard, garden and apiary, raw and manufactured; the raw and finished products of the dairy, creamery, cheese factory, condensory and dry milk factory; the products of livestock, including wool, mohair, skin, hides, and meats; veal; poultry and poultry products; game and fish; and the timber products of the farm produced upon farms and sold as part of the farming operations thereof.

(a) The term "person" shall mean an individual, firm, co-partnership, corporation or association.

(b) The term "Commissioner" shall mean the Commissioner of Agriculture, Dairy and Food of the State of Minnesota.

(c) The term "voluntary extension of credit" shall be construed to mean a written agreement between the seller and the licensee wherein the time of payment for the purchase price of produce is extended beyond the due date.

(d) The term "due date" shall mean seven days from the date of delivery of produce by the seller to the licensee in the case of a sale; in all cases where produce is consigned seven days from the date the sale is made by the broker or handler, except as to creameries and ice cream manufacturers where the due date shall mean fifteen days following the monthly day of accounting subsequent to deliveries following the date fixed by each creamery for such accounting. (Act Apr. 25, 1931, c. 394, §2; Apr. 14, 1939, c. 251, §2.)

"Due date" means 15 days following day selected by particular creamery as day upon which payment shall be made on account of preceding deliveries. Op. Atty. Gen., Jan. 30, 1933.

Acceptance of postdated check constituted an act of extending voluntary credit providing datings were beyond due date. Op. Atty. Gen., Oct. 20, 1933.

Sections 5598(11), 5599(8), 6240-18½a are not inconsistent. Op. Atty. Gen., Jan. 13, 1934.

Chain store companies making purchases in large quantities at auctions and distributing the purchases only among their various retail stores for direct retail sales to the public are not wholesalers under this act. Op. Atty. Gen. (832h), July 12, 1934.

Due date for creameries is that fixed by licensee and not the seller. Op. Atty. Gen. (832h), Mar. 20, 1937.

"Other than veal" means "live calves," and jurisdiction of buyers thereof is under this act, and not under §5285-11. Op. Atty. Gen. (832j-8), Dec. 31, 1938.

6240-18½b. Dealers must be licensed.—No person shall engage in, or purport to be engaged in, or hold himself out as being engaged in the business of a dealer at wholesale, or as being a dealer at wholesale, as defined in this Act, unless he shall be licensed to carry on such business by the Commissioner. (Act Apr. 25, 1931, c. 394, §3.)

Wholesale dealer's license is necessary for broker dealing in fish. Op. Atty. Gen., May 19, 1933.

One may be in service of one wholesale fruit company and have a license and bond in his own name to operate another wholesale fruit company through employees, but if persons operating second fruit company are real owners thereof, old license should be cancelled and a new one obtained by true owners. Op. Atty. Gen., Nov. 29, 1933.

Discharged soldier is not entitled to wholesale produce dealer's license without payment of license fee. Op. Atty. Gen. (832i), Nov. 13, 1934.

Men who are transporting fish they have bought from north shore commercial fisherman and are selling direct to stores in wholesale lots are not required to secure a license under §5599(8). Op. Atty. Gen. (290j-2), Jan. 28, 1935.

Wholesale dealer in canned and barrelled fish from Norway must be licensed. Op. Atty. Gen. (832j-3), May 4, 1938.

6240-18½c. Licenses—fees—bonds.—License to engage in the business of a dealer at wholesale within the State of Minnesota shall be issued by the Commissioner to such reputable persons as shall apply therefor, pay the prescribed fee and comply with the conditions herein specified, to-wit:

(a) The application shall be in writing accompanied by the prescribed fee, and under oath and shall set forth the place or places where the applicant intends to carry on the business for which the license is desired, the estimated amount of business to be done monthly, the amount of business done during the preceding year, if any, the full names of the persons constituting the firm, in case the applicant is a co-partnership, the names of the officers of the corporation and where incorporated, if a corporation, and a financial statement showing the value and character in a general way of the assets and the amount of liabilities of the applicant.

(b) The applicant shall execute and file with the Commissioner a bond to the State of Minnesota with sureties to be approved by the Commissioner, the amount and form thereof to be fixed by the Commissioner, conditioned for the faithful performance of his duties as a dealer at wholesale, provided that any and all bonds heretofore executed and filed with the commissioner by dealers at wholesale containing substantially the requirements of this act are hereby confirmed and approved, for the observance of all laws relating to the carrying on of the business of a dealer at wholesale, for the payment when due of the purchase price of produce purchased by him when notice of default is given the commissioner within 30 days after the due date; provided that the bond shall not cover transactions wherein it appears to the commissioner that a voluntary extension of credit has been given on said produce by the seller to the licensee beyond the due date, for the prompt settlement and payment of all claims and charges due the State of Minnesota for services rendered or otherwise, for the prompt reporting of sales, as required by law, to all persons consigning produce to the licensee for sale on commission and the prompt payment to the persons entitled thereto of the proceeds of such sales, less lawful charges, disbursements and commissions. Such

bond shall cover all wholesale produce business transacted in whole or in part within the State of Minnesota, and the license, or a certified copy thereof, shall be kept posted in the office of the licensee at each place within the state where he transacts business. All licenses shall expire May 31 of each year. The fee for each license shall be \$12.50, and for each certified copy thereof one dollar. Whenever the licensee shall sell, dispose of or discontinue his business during the lifetime of his license, he shall at the time such action is taken notify the Commissioner in writing, and shall upon demand produce before the Commissioner a full statement of all assets and liabilities as of the date of transfer or discontinuance of said business.

(c) The applicant shall file with the Commissioner a schedule of his commissions and charges for services in connection with produce handled on account of or as agent for another.

(d) All moneys collected from license fees shall be deposited in the state treasury in a separate fund known as the Wholesale Dealers' Enforcement Fund, and shall be used by the produce inspection division of the department of agriculture, dairy and food for the purpose of supervising and regulating the provisions of this act. Such moneys shall only be expended upon the order of the Commissioner. (Act Apr. 25, 1931, c. 394, §4; Apr. 15, 1935, c. 186, §1.)

Marketing division on receiving duplicate license need not erase name so as to transfer it to another agent at another place, but should issue new duplicate license and collect fee therefor. Op. Atty. Gen., Aug. 23, 1933.

License fees are to be paid to general revenue fund. Op. Atty. Gen., Jan. 15, 1934.

Licensee corporation changing its name by amendment of articles of incorporation was not required to obtain license and bond. Op. Atty. Gen. (832a), Dec. 13, 1934.

Where a wholesale produce dealer's license was issued to a firm in connection therewith a duplicate license, identification card and truck plate for another person, and licensee never delivered the duplicate license, identification card and truck plate and never had such duplicate license canceled, licensee was not liable to producer receiving bad check from such other person, who was dealing on his own account. Op. Atty. Gen. (832b), Jan. 12, 1935.

Inspector of this division cannot be paid out of funds of this division during months which he is making inspection for the canning inspection division. Op. Atty. Gen. (135a-6), Apr. 26, 1935.

Fees deposited with application for licenses need not be paid to state treasurer until license has been issued. Op. Atty. Gen. (290q), Aug. 26, 1935.

Officers of corporation may act as sureties on bonds thereof within discretion of board. Op. Atty. Gen. (832a-9), July 20, 1937.

(a) Commissioner of agriculture has authority to recover property statement from sureties on bond. Op. Atty. Gen., June 6, 1933.

Department has no authority to require trucker coming from another state and purchasing cream to establish place of business in the state. Op. Atty. Gen. (832g), Sept. 21, 1934.

(b) Claim against licensee must be given to commissioner within 17 days after delivery. Op. Atty. Gen., Mar. 2, 1933.

6240-18½d. Commissioner may require additional bonds.—The Commissioner, whenever he is of the opinion that any bond theretofore given by any licensee is inadequate for the proper protection of the public, may require the licensee to give additional bonds in such amounts as from time to time he may determine and direct, with sureties to be approved by the Commissioner and conditioned as heretofore set forth. For the purpose of fixing or changing the amount of such bonds the Commissioner may require from a licensee verified statements of his business, and if the licensee fails to furnish such information or to furnish a new bond when directed by the Commissioner so to do, the Commissioner may forthwith suspend and after ten days' notice and opportunity to be heard revoke his license. (Act Apr. 25, 1931, c. 394, §5.)

6240-18½e. Aggrieved parties may file complaint with commissioner.—Any person claiming himself to be damaged by any breach to the conditions of a bond

given by a licensee as hereinbefore provided may enter complaint thereof to the Commissioner, which complaint shall be a written statement of the fact constituting said complaint. Upon filing such complaint in the manner herein provided, the Commissioner shall investigate the charges made, and at his discretion order a hearing before him, giving the party complained of notice of the filing of such complaint and the time and place of such hearing. At the conclusion of said hearing the Commissioner shall report his findings and render his conclusion upon the matter complained of to the complainant and respondent in each case, who shall have 15 days following in which to make effective and satisfy the Commissioner's conclusions. And if such settlement is not effected within the time aforesaid, either party, if aggrieved by any condition of the bond may upon first obtaining the approval of the Commissioner commence and maintain an action against the principal and sureties on the bond of the party complained of as in any civil action, provided no action against the bondsmen of a licensee shall in any instance be maintained without the written approval of the Commissioner, which shall be attached to and made a part of the original complaint in such action. Upon commencing such action a copy thereof shall be filed in the office of the Commissioner. The record of the hearing before the Commissioner shall be competent evidence in any court having jurisdiction. If such licensee has become liable to more than one person by reason of breaches of the conditions of the bond and the amount of the bond is insufficient to pay the entire liability to all persons entitled to the protection of the bond, the penalty of the bond as against the sureties shall be apportioned among the several claimants. In all cases where the liability of the licensee exceeds the amount of his bond, or where the amount of the claims do not exceed the amount of the bond, and the claimants so request in writing, the Commissioner shall commence an action for the recovery of the amount claimed and the surety or bondsman upon said bond shall be liable to the extent of the amount recovered not exceeding the amount of said bond and when recovered such amount shall be deposited with the Commissioner who shall in the same action, subject to the approval of the court, pass upon and allow or disallow all claims which may be presented to him for payment or apportioned thereunder, and to effect the purposes herein may employ counsel, the expense thereof to be paid out of the amount recovered on such bond. (Act Apr. 25, 1931, c. 394, §6; Apr. 15, 1935, c. 186, §2.)

Department of agriculture cannot enforce NRA code. Op. Atty. Gen., Oct. 19, 1933.

Wholesale dealer is allowed to file with mortgaging division a list of creditors from time to time with idea of holding that office responsible for claims which might arise because of creditors going into receivership, but that office may discourage its use as collection agency by calling a hearing on each complaint. Op. Atty. Gen., Oct. 20, 1933.

Where amount of claims greatly exceeds amount of bond, it is duty of commissioner to proceed in court for distribution. Op. Atty. Gen., Jan. 24, 1934.

Commissioner cannot compromise suit to detriment of creditors. Op. Atty. Gen., Mar. 12, 1934.

6240-18 1/2 f. Commissioner to establish grades.—The Commissioner shall have power to establish grades on all produce as herein defined, and when deemed necessary, shall provide for inspecting and grading produce subject to sale, at such marketing points within the state as the Commissioner may designate, and provide for the issuing of certificates of inspection showing the grade, quality and conditions of such produce, and may charge and collect a reasonable fee therefor, a schedule thereof to be adopted and published from time to time. Such certificates of inspection shall be prima facie evidence in all courts of this state as to the grade, quality and condition of such produce at the time such inspection was made. Whenever any person having produce desires to have it inspected he may apply to the Commissioner for the service of an inspector or inspectors, and if it

shall appear to the Commissioner that the volume of such produce is sufficient to justify such request, he may grant such service upon terms and conditions to be fixed by him, provided, however, that any inspection service so ordered and maintained shall be self-supporting. The Commissioner may require a deposit prior to the establishment of such inspection service in amount equal to the costs thereof as estimated by him, and he may further require that such deposits be renewed from time to time in such manner that a permanent account shall be maintained, sufficient at all times to pay the costs of such inspection service for a period of not less than 15 days in advance. Moneys placed in the hands of the Commissioner for the purpose aforesaid shall be placed in a separate account to be known as the "Produce Inspection Account" and the sums such persons shall contribute to each account shall be kept separate on the books of the Commissioner. No moneys shall be paid from said account for inspection services rendered to any person in excess of the moneys on hand accredited to his account. Said money shall be deposited in the state treasury in the same manner as other departmental receipts are deposited and shall be credited to the account herein created and shall be paid out only upon order of the Commissioner. Whenever any such agreement shall terminate by action of either party thereto, the Commissioner shall withdraw from such account the full amount of all such bills payable for services rendered, and shall return to the depositor any moneys remaining to his credit at the time such agreement terminates. Any sums deposited in the state treasury under the provisions of this act are hereby appropriated for the purposes set forth herein. (Act Apr. 25, 1931, c. 394, §7.)

Egg inspection fees may be collected under this section and it is not necessary to establish a separate regulation under §3935-16. Op. Atty. Gen. (135b-6(e)), Dec. 7, 1938.

6240-18 1/2 g. Dealers may file brands or labels.—Any person producing or manufacturing, or handling in this state any of the products mentioned in this act, except cheese and butter, and preparing, packing and offering the same for sale, may file with the commissioner a brand or label which shall thereafter be the exclusive property of said applicant, and he may place upon said brand or label such descriptive or locative matter as shall be approved by the commissioner. The commissioner may issue to such applicant for brands and labels a permit to use the same subject to such regulations and restrictions as to quality of product so branded as the commissioner may determine. Said brand or label shall be recorded in the office of the commissioner, and any person who shall without authority of the commissioner use any such brand or label, or shall brand and label therewith products or commodities of a quality below the standard permitted under the brand or label, shall be subject to the penal provisions of this act. (Act Apr. 25, 1931, c. 394, §8.)

6240-18 1/2 h. May secure inspection certificate.—Whenever produce is ready for sale, or is on its way to market, the owner thereof or the conveyor, or the prospective buyer, or any other interested party may call for and shall be entitled to inspection of such produce and to an inspection certificate as provided for in Section 7 [§6240-18 1/2 f] of this act. (Act Apr. 25, 1931, c. 394, §9.)

6240-18 1/2 i. Produce shall be examined in certain cases.—Whenever produce is shipped to or received by a dealer at wholesale for handling, purchase or sale in this state at any market point therein giving inspection service as provided for in Section 7 [§6240-18 1/2 f] of this act, and said dealer at wholesale finds the same to be in a spoiled, damaged, unmarketable or unsatisfactory condition, unless both parties shall waive inspection before sale or other disposition thereof, he shall cause the same to be examined by an in-

spector assigned by the commissioner for that purpose, and said inspector shall execute and deliver a certificate to the applicant thereof stating the day and the time and place of such inspection and the condition of such produce and mail or deliver a copy of such certificate to the shipper thereof. (Act Apr. 25, 1931, c. 394, §10.)

6240-18½j. Shipments on consignment.—Whenever any dealer at wholesale to whom produce has been shipped or consigned for sale on a commission basis or on consignment or under any circumstances wherein the title to said produce remains with the shipper, has received the same, he shall within a reasonable time thereafter make a written report to the shipper, which report shall include the exact time of arrival, quantity, quality and price per unit of the produce, and at the same time he shall pay the shipper the net amount due him. (Act Apr. 25, 1931, c. 394, §11.)

6240-18½k. Shipper may complain to commissioner.—Whenever a shipper, after demand therefor, shall have received no remittance or report of sale, or shall be dissatisfied with the remittance, sale or report, he may complain in writing to the commissioner, who shall investigate the matter complained of. (Act Apr. 25, 1931, c. 394, §12.)

6240-18½l. Commissioner to investigate complaints.—Said commissioner is authorized to receive complaints against any persons dealing in, shipping, transporting, storing or selling produce, and shall have authority to make any and all necessary investigations relative to the handling of or storing, shipping or dealing in produce at wholesale, and he shall at all times have access to all buildings, yards, warehouses, storage and transportation facilities in which any produce is kept, stored, handled or transacted. For the purpose of enforcing the provisions of this act, the commissioner shall have the authority, upon complaint being filed with him for any alleged violation of the provisions of this act or the regulations issued thereunder, or upon information furnished by an inspector of the Department of Agriculture, to forthwith suspend and upon ten days' notice and opportunity to be heard, revoke and cancel any license issued by him, and the commissioner shall have the power to revoke or cancel the license of any dealer who shall violate any of the provisions of this act. He shall have and is hereby granted full authority to issue subpoenas requiring the attendance of witnesses before him of books, papers and other documents, articles or instruments, and compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation, and shall have full authority to administer oaths, and to take testimony; and the commissioner shall thereafter give the complainant a written report of the investigation. Such report shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas of said commissioner shall be guilty of contempt as in proceedings in district courts of the state and may be punished in like manner. (Act Apr. 25, 1931, c. 394, §13.)

Suspension of licenses suspends all powers under license. Op. Atty. Gen., Feb. 9, 1934.

Department may charge for copies of transcript of proceeding, a reasonable basis being the same charge as a regular reporter, money received to be deposited with state treasurer. Op. Atty. Gen. (832k), Aug. 10, 1936.

6240-18½m. Commissioner to make rules and regulations.—The commissioner shall have power and it shall be his duty from time to time to make and publish uniform rules and regulations, not inconsistent with law, for carrying out and enforcing the provisions of this act and governing the rates charged by and the buying, selling, advertising and trading practices of dealers at wholesale, which rules and regulations shall be filed in the office of the commissioner, and published twice in a legal newspaper of general circu-

lation published at the capital of the state, and from and after the tenth day succeeding the date of the last such publication, such rules and regulations shall have the force and effect of law. An affidavit of such publication shall be kept on file in the office of the commissioner. A copy of such rules and regulations, certified by the commissioner shall be prima facie evidence of the facts therein contained, and of the due making and publication of such rules and regulations. (Act Apr. 25, 1931, c. 394, §14.)

Commissioner should promulgate a rule to display truck plate on trucks used in selling produce as well as trucks used in buying produce. Op. Atty. Gen., May 18, 1933.

6240-18½n. May cooperate with the United States department of agriculture.—The commissioner may cooperate with the United States Department of Agriculture and with other Federal authorities and with the state and municipal authorities of this and other states, and do and perform such acts and things as may be necessary and proper in carrying out the purpose of this act. (Act Apr. 25, 1931, c. 394, §15.)

6240-18½o. Violations—penalties.—Any person subject to the provisions of this act who shall:

- (a) Operate or advertise to operate as a dealer at wholesale without a license; or
- (b) Make any false statement or report as to the grade, condition, markings, quality or quantity of produce received or delivered, or act in any manner so as to deceive the consignor or purchaser thereof; or
- (c) Refuse to accept any shipment contracted for by him, unless such refusal is based upon the showing of a state inspection certificate secured with reasonable promptness after the receipt of such shipment showing that the kind and quality of produce is other than that purchased or ordered by him; or
- (d) Fail to account for produce or to make settlement therefor within the time herein limited; or who shall violate or fail to comply with the terms or conditions of any contract entered into by him for the purchase or sale of produce; or
- (e) Purchase for his own account any produce received on consignment, either directly or indirectly, without the consent of the consignor; or
- (f) Issue any false or misleading market quotations, or who shall cancel any quotations during the period advertised by him; or
- (g) Make or collect any commission or charge in excess of that shown in his schedule filed with the commissioner; or
- (h) Increase the sales charges on produce shipped to him by means of "Dummy" or fictitious sales; or
- (i) Receive produce from foreign states or countries for sale or resale, either within or without the state, and give the purchaser the impression through any method of advertising or description that the said produce is of Minnesota origin; or

(j) Whoever shall violate any provisions of this Act or any rule or regulation made or published thereunder by the commissioner shall be guilty of a misdemeanor, and his license may be forthwith suspended, revoked or cancelled by the commissioner upon ten days' notice and opportunity to be heard; but upon conviction of any such offense, or upon conviction of any federal court for violation of the federal statutes relative to the fraudulent use of the mails or of other criminal acts pertaining to the conduct of his business, it shall be the duty of the commissioner forthwith to revoke and cancel the license of the person so convicted. (Act Apr. 25, 1931, c. 394, §16.)

6240-18½p. Commissioner to enforce act.—The Commissioner shall be charged with the enforcement of the provisions of this Act and of the rules and regulations made and published thereunder. Upon complaint made it shall be the duty of the county attorney to prosecute all cases arising in his county

for violation of this act or of the rules or regulations made and published thereunder. The Commissioner and his duly authorized agents and inspectors appointed for the purpose of enforcing the provisions of this act shall have the power of police officers in the enforcement of this act. (Act Apr. 25, 1931, c. 394, §17; Apr. 15, 1935, c. 186, §3.)

Duty imposed on the commissioner of agriculture, generally to enforce law against wholesale dealers in produce as in case of one unlawfully doing business without a license, involves exercise of judgment and discretion and so is not in class of ministerial official duties, non-performance of which may result in liability to one proximately damaged by nonfeasance. *Cook v. T.*, 274 NW165. See *Dun. Dig.* 8001.

Wholesale dealers shipping potatoes in violation of labeling act should be prosecuted in county where potatoes are loaded and billed. *Op. Atty. Gen.*, Mar. 21, 1933.

Commissioner must delegate his duties to subordinates, and may divide duties of his employees in produce inspection division, and by removing enforcement duties from branch office to main office relieve branch office of duty of enforcing law, but he cannot divorce such duties from division as such and permit use of moneys collected by some other division. *Op. Atty. Gen.* (832n), Sept. 24, 1937.

6240-18 1/2 q. Law repealed.—Chapter 427, General Laws 1927 [§§6240-1 to 6240-18], and all other acts and parts of acts inconsistent with this Act are hereby repealed. (Act Apr. 25, 1931, c. 394, §18.)

INVESTIGATIONS

6241. Commissioner of agriculture authorized to make investigations.

Powers conferred upon the Commissioner under this section are not applicable to any investigation which the Commissioner may institute under §10390. *Op. Atty. Gen.*, Oct. 15, 1931.

FARM BUREAUS

6248. Fees.

Justice court has no jurisdiction where penalty exceeds three months' imprisonment. *Op. Atty. Gen.* (266b-21), July 15, 1937.

DISCRIMINATION IN PURCHASE OF FARM PRODUCTS

6248-1. Terms and phrases.

There is no violation of this law by a local wholesale egg dealer who refuses to buy eggs from merchant at as high a price as he pays to farmers. *Op. Atty. Gen.* (135a-3), Aug. 26, 1935.

6248-2. Definitions.—(a) The term "person" means as individual, firm, copartnership, corporation or association.

(b) The term "farm products" as used in this act shall mean and include butter, milk, cream, butterfat, cheese and other dairy products, honey, eggs, poultry and all livestock and products of livestock such as wool, mohair, hides and meats.

(c) The term "bona fide competitor" means a duly licensed dealer in farm products maintaining a place of business in the same trade territory. (As amended Apr. 24, 1937, c. 420, §1.)

Co-operative associations come under statute. *Op. Atty. Gen.* (681j), July 26, 1937.

6248-3. Discrimination prohibited.—Any person engaged in the business of buying any such farm products for manufacture or sale thereof, who shall discriminate between different sections, localities, com-

munities, cities or villages, or between persons in the same community, of this state, by purchasing any such farm products at a higher price or rate in one locality or from one person than is paid for such farm products of the same kind, quality and grade by such person in another section, locality, community, city or village, or than is paid to another person of the same community, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture or sale, or who shall fail to deduct full transportation costs from the purchase price paid; or who shall fail to deduct the actual costs of hauling when such products are gathered by wagon or truck; or who shall pay or offer to pay in trade or in exchange for goods, wares or merchandise a higher price for such farm products than the cash price paid or offered to be paid for such farm products, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful. Providing, however, that wherever the transportation costs actually charged for hauling cream shall be two cents or more per pound for butterfat therein contained, and 15 cents per 100 pounds for transportation of whole milk, such charge shall be deemed a compliance with the terms of this act. It shall not be unfair discrimination for any person to pay, in any section, locality, community, city, or village, a price equal to that actually paid on the same day by any bona fide competitor in such place for farm products of the same kind and grade, provided such price is paid in good faith effort to meet such competition, and the burden of proving such facts shall be upon the defendant. (As amended Apr. 24, 1937, c. 420, §2.)

Clause "or who shall fail to deduct the actual costs of hauling when such products are gathered by wagon or truck" is so vague, indefinite and uncertain as to deny due process of law. *State v. Northwest Poultry & Egg Co.*, 203M438, 281NW753. See *Dun. Dig.* 1647.

A creamery operating cream routes for only part of patrons and paying a portion of expense thereof out of general fund, held not guilty of discrimination between patrons. *Op. Atty. Gen.*, Nov. 24, 1933.

A person buying cream in connection with a grocery business can pay farmer two cents more for butter fat if he trades it out in groceries than if he were to pay it out in cash. *Op. Atty. Gen.*, Feb. 14, 1934.

This act has no application to a buyer of cream having his place of business in municipality and purchasing cream only at his place of business, but only as application to discrimination as between different communities. *Op. Atty. Gen.* (135a-3), Aug. 16, 1935.

An Iowa plant hauling eggs from their own stations in Minnesota to the locality of sale in Iowa should deduct all transportation costs from Minnesota stations to Iowa plant. *Op. Atty. Gen.* (681e), May 18, 1937.

Laws 1937, c. 420, amending this section is constitutional. *Id.*

Laws 1937, c. 420, does not permit meeting of competitor's transportation costs. *Op. Atty. Gen.* (135a-3), July 30, 1937.

6248-9. Construction of act.—Nothing in this act shall be construed as repealing any other act or part of any other act, unless inconsistent herewith, but the remedies herein provided shall be cumulative to all other remedies provided by law. If any section, subdivision, sentence or clause in this act shall, for any reason, be held to be unconstitutional or void, such judgment shall not affect the validity of any other portion of this act. (As amended Apr. 24, 1937, c. 420, §3.)

CHAPTER 39

Bounties and Rewards

6254. Bounties on wolves.—(a) Every person who shall kill a wild wolf in this state, not having at the time spared the life of any other such wolf he could have killed, shall upon compliance with the provisions of this act, be rewarded in the sum of fifteen dollars for each adult animal and six dollars for each cub, to be paid by the state out of the revenue fund or such

other funds as may be appropriated therefor by law.

(b) Any county board may add to such reward and appropriate county funds therefor.

(c) For the purposes of this act any wolf killed before September 1st of the year in which it was born shall be deemed to be a cub, and any wolf killed on or after said date, if physically mature, though not