

1940 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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000 for the entire term to which they are elected, payable as follows: \$250 on the first day of February, \$250 on the fifteenth day of March of each year in which a regular legislative session is held, and \$500 on the last day of such regular legislative session; provided, however, that in the event of extra legislative sessions, members of the legislature shall receive and be entitled to additional compensation at the rate of \$10.00 per day for each day while so engaged in extra session provided, further, that the maximum amount for each member of the Legislature shall not exceed the sum of \$300 for each extra session. Said additional compensation shall be paid to the members of the Legislature every ten days and on the last day during such extra legislative session.

This act shall take effect and be in force from and after the first Tuesday after the first Monday in January, 1937. ('07, c. 229, §1; '09, c. 132, §1; [35]; Jan., 24, 1936, Ex. Ses., c. 67.)

Legislature at special session may adopt an act increasing compensation of both representatives and senators to become effective first day of next session, though members of senate who helped pass bill will still have two more years to serve after increase becomes effective. Op. Atty. Gen. (280d), May 26, 1937.

40. Members of Legislature excused from court duties.—No member or officer of the Legislature shall be compelled to attend as a witness in any court of this state during the session of the legislature; unless the court in which the action is pending upon sufficient showing shall otherwise order with the consent of the presiding officer of the body of which such witness is an employee or the consent of the body of which such witness is a member. No cause or proceeding, civil or criminal, in court or before any commission or officer or referee thereof or motion

or hearing therein, in which a member or officer of the legislature is a party, attorney or witness shall be tried or heard during such session of the legislature, but shall be continued until the legislature shall have adjourned. Such member or officer of the legislature may, with the consent of the body of the legislature of which he is a member or officer, waive such privilege and in such case such cause or proceeding, motion, or hearing may be tried or heard at such time as will not conflict with legislative duties. ('09, c. 51, §1; G. S. '13, §40; '25, c. 18; '27, c. 47; Feb. 14, 1929, c. 19.)

Extradition is governed by the Constitution and laws of the United States, and Chapter 19, Laws 1929, cannot interfere or delay its operation. State ex rel. v. Moeller, 182M369, 234NW649. See Dun. Dig. 1721, 8835.

AMENDMENTS TO THE CONSTITUTION

45. Form of act—Submission.

The proposed constitutional amendments appearing in Laws 1931, Chapters 417 to 420, should appear on the ballot in November in the following order: Chapter 420, No. 1; Chapter 418, No. 2; Chapter 417, No. 3; Chapter 419, No. 4. Op. Atty. Gen., Jan. 19, 1932.

48. "Standing appropriation" defined.

Act providing for state's participation in Century of Progress Exposition at Chicago in 1933, and appropriation therefor. Laws 1931, c. 415.

Appropriation of \$15,000. Laws 1933, c. 299.

49. Standing appropriations repealed.

Act Ex. Ses. Dec. 23, 1933, c. 16, §2, post §5887-11a, amends this section insofar as it is inconsistent with §5887-11.

Wholesale dealer's license fees are to be paid to general revenue fund. Op. Atty. Gen., Jan. 15, 1934.

Liquor control commission has power to expend money from sale of tax stamps to administer various acts but cannot use revenue obtained by issuance of licenses, permits and sale of labels. Op. Atty. Gen., Feb. 20, 1934.

CHAPTER 3A

Organization of State Government.

ARTICLE I.—DEPARTMENTS OF STATE GOVERNMENT

53-1. Departments of the state government.—The following departments and agencies of the state government are hereby created and established, to be designated and known respectively as follows: The Executive Council, the Department of Administration and Finance, the Department of Conservation, the Department of Drainage and Waters, the Department of Dairy and Food, the Department of Agriculture, the Department of Commerce, the Department of Health, the Department of Education, the Department of Highways, the Department of Labor and Industry, the Department of Public Institutions, the Department of Taxation, the Department of Rural Credit, and the Department of Civil Service. (As amended Apr. 22, 1939, c. 441, §1.)

The title of this act satisfies the requirements of the constitution. 171M191, 213NW904.

Where contract is let to lowest bidder, who later discovers that he has omitted certain items in his calculations, officers may not modify the contract by adding the amount of such items, even though the total sum would be less than the next lowest bid, but must either let the contract to the next lowest bidder or call for new bids. Op. Atty. Gen., July 21, 1931.

Employees of state relief agency created for temporary purposes are employees of a department of state entitled to benefits of workmen's compensation act payable out of state compensation revolving fund. Op. Atty. Gen. (523g-19), Apr. 1, 1936.

State relief agency should submit abstract of expenditures to commission of administration and finance for pre-audit, but such department has no authority to substitute its opinion or judgment for that of council or relief agency as to advisability of any expenditures. Op. Atty. Gen. (980c-32), Sept. 15, 1937.

Act applies to all state departments or agencies whether in existence at time act was passed or thereafter created, unless inconsistent with statute respecting creation or maintenance of such after created departments or agencies. Op. Atty. Gen. (980c-32), Oct. 11, 1937.

"Soldiers' welfare division" should use facilities so far as not inconsistent. Id.

53-1a. Departments of state government.—The following departments and agencies of the state government are hereby created and established, to be designated and known respectively as follows: The Department of Administration, the Department of Public Examiner, the Department of Social Security, and the Department of Taxation. All of said departments and all officials and agencies of the state government shall be subject to the provisions and limitation of this act. [§§53-1a to 53-1s, 53-4a-53-4b, 53-18b to 53-18u, 80-2 to 80-7, 2362-1 to 2362-31, 3199-101 to 3199-107, 3286-8 to 3286-16.] (Act Apr. 22, 1939, c. 431, Art. 1, §1.)

Editorial note.—The provisions relating to the Department of Administration are classified herein as §53-4a, 53-4b, 53-18b to 53-18u.

The provisions relating to the Department of Public Examiner appear herein as §§3286-8 to 3286-16.

The provisions relating to the Department of Social Security appear herein as §§3199-101 to 3199-107.

The provisions relating to the Department of Taxation appear herein as §§2362-1 to 2362-31.

This section and §53-1, as amended, were approved on the same day. They are partially inconsistent with respect to the enumeration and designation of the departments of the state government.

53-1b. Salaries of commissioners, directors and employees—Political activities—Bonds—Cost.—The salaries of the commissioners, directors and all employees shall be chargeable against the appropriations of their respective departments. Each commissioner shall devote his entire time to the duties of his office, and shall not participate in any political campaign or be a candidate for any public office. Except as otherwise provided, each commissioner shall give a corporate surety bond of \$10,000 to the state for the faithful discharge of his official duties. The cost of

all bonds of officers and employes hereunder shall be charged to the appropriations for their respective departments or agencies. (Act Apr. 22, 1939, c. 431, Art. 8, §1.)

Commissioner of administration has no authority to require a bond of directors of the several divisions comprising the department of social security. Op. Atty. Gen. (640), July 6, 1939.

53-1c. Departments to furnish information.—Whenever in this act power is vested in a department or an official to inspect, examine, secure data or information, or to procure assistance from another department, a duty is hereby imposed upon the department upon which the demand is made to make such power effective, and to furnish such data or information or the opportunity for inspection and examination. (Act Apr. 22, 1939, c. 431, Art. 8, §2.)

53-1d. State Auditor and Commissioner of Administration to have access to books and records—Contempt.—The state auditor and the commissioner of administration and their designated agents shall have free access to the records of all state departments and agencies, and may issue subpoenas for and compel the attendance of witnesses and the giving of testimony and the production of books, records, accounts, documents, and papers; and may administer oaths to witnesses or take their affirmation. If any person shall fail or refuse to appear or testify regarding that upon which he may be lawfully interrogated, or to produce any books, records, accounts, documents or papers material in the matter under consideration, after having been lawfully required by order or subpoena, any judge of the district court in any county of the state where the order or subpoena was made returnable, on application of the state auditor or commissioner of administration, as the case may be, shall compel obedience or punish disobedience as for contempt, as in the case of disobedience of a similar order or subpoena issued by such court. (Act Apr. 22, 1939, c. 431, Art. 8, §3.)

53-1e. Transfer of powers.—Except as otherwise herein provided, all the powers and duties and functions conferred by law upon and required to be performed by the several state departments, bureaus, divisions, and other administrative agencies mentioned in this act at the time of the passage of this act shall hereafter be exercised, performed, and administered by the commissioners of the several departments and the boards, commissions, and agencies herein specified. (Act Apr. 22, 1939, c. 431, Art. 8, §4.)

53-1f. Existing powers continued.—All now existing powers, duties, and functions heretofore exercised by any department, division, bureau, or other agency abolished by this act, or by the chief of any such division, bureau, or agency, shall be exercised by the head of the department or by the agency to which the same are herein assigned. (Act Apr. 22, 1939, c. 431, Art. 8, §5.)

53-1g. Powers of heads of departments.—Except as otherwise expressly provided by law, the commissioner or head of any state department or agency shall have the following powers:

(1) To designate a division director or other subordinate as his deputy, to serve as such at his pleasure, with full authority to act for him, but subject to his control; and in case of a vacancy in the office of such commissioner or head, such deputy shall discharge the necessary duties of the office until the vacancy be filled.

(2) To delegate to any of his subordinate officers or employes the exercise of such of his powers or duties as he may deem advisable, subject to his control; provided, that every such delegation shall be made by written order, filed with the secretary of state.

(3) To appoint all subordinate officers and employes in his department or agency and to prescribe their duties and fix their compensation; provided,

that all departments and agencies hereunder shall be subject to the provisions of any civil service law now or hereafter enacted, so far as applicable.

(4) With the approval of the commissioner of administration, to establish within his department or agency such bureaus or subdivisions as he may deem advisable in the interests of economy and efficiency.

(5) To prescribe rules and regulations, not inconsistent with law, for the conduct of his department or agency and other matters within the scope of the functions thereof, including the custody and preservation of books, records, papers, documents, and other property, and the certification of copies of papers, and documents; provided, that every rule or regulation affecting any person or agency other than a member of the department or agency concerned shall be filed with the secretary of state. (Act Apr. 22, 1939, c. 431, Art. 8, §6.)

53-1h. Meaning of words.—Whenever in any other general law, or resolution of the legislature heretofore or hereafter adopted, or in any document, record, or proceeding authorized by the same, any word or phrase is used in reference to or descriptive of any department, agency, or officer, or employe thereof, or their respective activities, whose powers, duties, or activities are by this act assigned or transferred, such word, phrase, or reference shall hereafter, unless the context or provisions of this act otherwise require, be deemed to refer to, include, and describe such department, agency, officer, or employe as by this act is charged with carrying out said powers, duties, and activities, as the context and provisions of this act may require. (Act Apr. 22, 1939, c. 431, Art. 8, §7.)

53-1i. Shall be deemed to constitute continuance of powers.—Any department or other administrative agency to which the functions, powers, and duties of a previously existing department or other agency are by this act assigned and transferred shall be deemed and held to constitute a continuation of the former department or agency as to matters within the jurisdiction of the former department or agency, and not a new authority, for the purpose of succession to all rights, powers, duties, and obligations of the former department or agency as constituted at the time of such assignment or transfer, except as otherwise provided by this act, with the same force and effect as if such functions, powers and duties had not been assigned or transferred. (Act Apr. 22, 1939, c. 431, Art. 8, §8.)

53-1j. All proceedings, etc., shall be continued.—Any proceeding, court action, prosecution, or other business or matter undertaken or commenced prior to the passage of this act by a department or other agency, the functions, powers, and duties whereof are by this act assigned and transferred to another department or agency, and still pending at the time of the passage of this act, may be conducted and completed by the new department or agency in the same manner and under the same terms and conditions and with the same effect as though it were undertaken or commenced and were conducted or completed by the former department or agency prior to said transfer. (Act Apr. 22, 1939, c. 431, Art. 8, §9.)

53-1k. Books and records and property to be delivered by old to new heads of departments.—The head of a department or other agency whose functions, powers, and duties are by this act assigned and transferred to another department or agency shall transfer and deliver to such other department or agency all contracts, books, maps, plans, papers, records, and property of every description within his jurisdiction or control, and shall also transfer thereto any or all employes engaged in the exercise of such functions, powers, or duties. The head of such other department or agency to which such assignment or transfer is made is hereby authorized to take possession of said property, and shall take charge of said employes and shall

employ them in the exercise of their respective functions, powers, and duties transferred as aforesaid, without reduction of compensation, subject, however, to change or termination of employment or compensation as may be otherwise provided by law. (Act Apr. 22, 1939, c. 431, Art. 8, §10.)

53-11. Commissioner to assign office space.—The commissioner of administration shall assign and reassign the office space in the capitol and other state buildings so far as necessary to carry out the purposes of this act and to make an equitable division of available space among the several departments and agencies. (Act Apr. 22, 1939, c. 431, Art. 8, §11.)

53-1m. Not to apply to State Agricultural Society—Exceptions.—The provisions of this act shall not apply to the state agricultural society, except as hereinafter provided, and such society shall continue to be subject to and shall continue to have and possess all powers, rights, and privileges granted by any and all laws applicable thereto in force at the time of the passage hereof, subject, however, to the following: (1) that the society shall comply with the provisions of this act relating to budgets, allotments, and encumbering of funds; (2) the society shall be subject to the supervision of the commissioner of administration in the erection and construction of any new building, the estimated cost of which shall be \$5,000 or more; (3) the books and accounts of said society shall be subject to examination by the public examiner at any time, as in case of other state agencies. (Act Apr. 22, 1939, c. 431, Art. 8, §12.)

53-1n. Not to apply to Board of Regents.—The provisions and limitations of this act shall not be applicable to the Regents of the University of Minnesota nor to persons, institutions, or employees under their jurisdiction, nor to the professional and regulatory examining and licensing boards enumerated in Mason's Minnesota Statutes of 1927, Chapter 35, and the 1938 Supplement to Mason's Minnesota Statutes of 1927, Chapter 35; provided, that their books and accounts shall be subject to examination by the public examiner at any time, as in case of other state agencies. (Act Apr. 22, 1939, c. 431, Art. 8, §13.)

Grain inspection and weighing functions of railroad and warehouse commission are subject to supervision and control of commissioner of administration, especially with reference to expenditure of funds and appointment of personnel. Op. Atty. Gen. (640a), July 29, 1939.

53-1o. Laws repealed.—All other acts or parts of acts now in effect inconsistent with the provisions of this act are hereby repealed, superseded, modified, or amended so far as necessary to conform to and give full force and effect to the provisions of this act. (Act Apr. 22, 1939, c. 431, Art. 8, §14.)

53-1p. Application of act.—Except as hereinbefore otherwise provided, the provisions and limitations of this act [§§53-1a to 53-1s, 53-4a, 53-4b, 53-18b to 53-18u, 80-2 to 80-7, 2362-1 to 2362-31, 3199-101 to 31199-107, 3286-8 to 3286-16] shall be applicable to and shall govern each and every department, bureau, commission, board, agency, and institution of the state government, including state teachers' colleges, state hospitals, and other state institutions, wherever located, and all elected or appointed officers, officials, and employes of the state government. No provision of any subsequent act shall be construed as inconsistent with the provisions of this act or shall operate to limit or abrogate the effect of any provisions thereof or to remove any person, officer, or agency from the operation thereof unless and except only so far as it may be expressly provided in such subsequent act that the provisions of this act shall not be applicable, or shall be superseded, modified, amended, or repealed. (Act Apr. 22, 1939, c. 431, Art. 8, §15.)

53-1q. Unexpended funds re-appropriated.—All unexpended funds appropriated to any department or agency for the purposes of any of its functions, powers, or duties which are transferred by this act to an-

other department or agency are hereby transferred to such other department or agency. (Act Apr. 22, 1939, c. 431, Art. 8, §16.)

Appropriations to attorney general for gift tax administration should be transferred to department of taxation. Op. Atty. Gen. (640a), July 18, 1939.

53-1r. Provisions severable.—In case any section, provision, or part of this act, or any application thereof, shall be declared unconstitutional or invalid, it shall not in any way affect any other section, provision, or part hereof or any other application hereof. (Act Apr. 22, 1939, c. 431, Art. 8, §17.)

53-1s. Act to take effect—When.—Except as otherwise provided herein, this act [§§53-1a to 53-1s, 53-4a, 53-4b, 53-18b to 53-18u, 80-2 to 80-7, 2362-1 to 2362-31, 3199-101 to 3199-107, 3286-8 to 3286-16] shall take effect and be in force from and after its passage; provided, that no transfer of functions, rights, powers, duties, or funds made by this act shall take effect until the commissioner or other head of the department or agency to whom the same are transferred shall have been appointed and shall have qualified, and until then the former department or agency vested therewith shall continue to exercise and perform such functions, rights, powers, and duties, and to have charge of such funds. (Act Apr. 22, 1939, c. 431, Art. 8, §18.)

ARTICLE II.—EXECUTIVE COUNCIL

53-2. Executive council, how composed.

See text in 1927 edition, and see 53-2a, post. Laws 1935, c. 30. \$500,000 for Drouth Relief, by State Executive Council.

Laws 1935, c. 33. Disabled Veterans' Relief, by State Executive Council.

Laws 1935, c. 51. "Minnesota Public Relief Fund."

Laws 1935, c. 380. Executive council to provide additional funds for trunk highway fund to obtain funds from U. S. Government.

Laws 1935, c. 383. State hospital for insane authorized.

53-2a. Executive council continued.—The executive council as now constituted shall continue with all its present rights, powers, and duties, but subject to the limitations and provisions of this act; provided, that if prior to the passage of this act the executive council shall have been abolished, the provisions of this section shall apply to any agency which has succeeded to its rights, powers, and duties in existence at the time of the passage of this act. (Act Apr. 22, 1939, c. 431, Art. 5, §1.)

53-3. Powers and duties of council—meetings.

See text in 1927 edition, and see 53-2a, ante.

Act authorizing Executive Council to accept title to certain lands on behalf of state. Laws 1931, c. 235.

Act authorizing Executive Council to permit diversion or drainage of public waters. Laws 1931, c. 286, post. §§6430-1 to 6430-3.

Laws 1935, c. 233. Relief funds may be spent for safety inspection work on relief projects.

Mineral leases may be executed by executive council against land acquired by state under §2139-2. Op. Atty. Gen. (928c-13), June 1, 1937.

53-3½a. Capitol grounds commission abolished.

The Capitol Grounds Commissioners, created by Chapter 281, General Laws 1907, are hereby abolished. All duties conferred upon said Commissioners by said Chapter 281 and by Chapter 348, General Laws 1913, are hereby transferred to the Executive Council. (Act Apr. 1, 1929, c. 124, §1.)

Editorial note.—Sections 53-3½a to 53-3½g relate to the Capitol Grounds Commissioners. See 53-18u, post, transferring the powers vested in the "governor" to the Commissioner of Administration.

The powers and duties of the governor with respect to the capitol and grounds are transferred to the commissioner of administration by 53-18u, post.

State Executive Council has power to petition for vacation of city street for extension of capitol grounds. Op. Atty. Gen., Mar. 8, 1933.

53-3½b. Disposition of funds.—All funds to the credit of said commissioners and any additional funds which may accrue subsequent to the passage of this act shall be used in improving and beautifying the New Capitol grounds, expenditures to made by the

custodian of the New Capitol when authorized by the Executive Council. This act shall be subject to the provisions of Chapter 426, General Laws 1925. (Act Apr. 1, 1929, c. 124, §2.)

53-3½c. Capitol grounds commissioners to be appointed by the governor—rules governing same.—That within 30 days after the passage of this act, the governor shall appoint three resident freeholders of the State of Minnesota, for the term of three years, or such time as may be necessary for them to complete their duties as herein prescribed, who, together with the governor as an ex-officio member, shall constitute a board to be known as the "Capitol Grounds Commissioners." The persons so appointed shall within 10 days after their appointment, file with the secretary of state their written acceptances of such appointment, together with an oath to faithfully and honestly discharge the duties imposed upon them by this act. Said appointees shall forthwith, after their qualification, upon call of the governor, meet and organize. The governor shall be ex-officio president of said board and they shall elect from their number a vice president and secretary, and shall keep a record of their proceedings, which shall, after the completion of their duties, be returned to and filed with the secretary of state.

A majority of said commissioners shall constitute a quorum for the transaction of business, and they shall hold such stated and special meetings as they may by rule prescribe.

The members of said commission shall serve without compensation but shall be entitled to be paid from the state treasury the actual and necessary expenses incurred by them in the transaction of their business, upon the due audit and allowance of such expenditures by said commissioners and upon due certification thereof to the state auditor.

It shall be the duty of the governor to fill all vacancies occurring in the membership of said board, prior to the making of its final report, with persons of like qualifications. (Act Apr. 22, 1907, c. 281, §1.)

53-3½d. Capitol commission given right to sell or remove buildings upon lands acquired for beautifying capitol grounds.—It shall be the duty of said board of capitol grounds commissioners to proceed as soon as may be to take the necessary steps as herein authorized to acquire and secure by purchase or by condemnation under the right of eminent domain, or both, such lands adjoining or adjacent to the present new state capitol grounds as will, in their judgment, be requisite and necessary for the proper extension and enlargement of the grounds for the new state capitol building of Minnesota, and in such manner as to render the same more symmetrical in form, provided, however, that said commissioners shall incur no obligation in that behalf beyond the limit of the appropriation or appropriations which shall be made therefor. Said commissioners shall have the right, if in their judgment it is necessary, in and about the acquisition and improvement of such lands, to sell, remove or dispose of any building or buildings situated upon the lands so purchased and to grade, improve and beautify such grounds, and to call to their assistance the services of a landscape artist or architect, and any moneys heretofore or hereafter received by said commissioners on account of rents received from said buildings, or from the sale thereof, may be expended in the improvement of said grounds by said commissioners.

Said commissioners are authorized to enter into contracts with the owners of the land sought to be acquired for the sale and conveyance thereof, to the state of Minnesota for the purpose aforesaid, when in their judgment the same can be secured at a fair and reasonable price, they are authorized to proceed to acquire the same for the state by condemnation under the right of eminent domain, in the manner

and under and pursuant to the terms and provisions of Chapter 41 of the Revised Laws 1905, and it shall be the duty of the attorney general to render all legal assistance necessary to carry out such condemnation proceedings as said commissioners may desire to institute in that behalf. (Laws 1907, c. 281, §2, as amended by Act Apr. 18, 1913, c. 348, §1.)

53-3½e. Auditor to draw warrants.—When lands are acquired under the provisions of this act, either by purchase or by condemnation, said board of capitol grounds commissioners shall certify to the state auditor the purchase price thereof, or the amount of damages awarded, and thereupon the state auditor shall draw his warrant therefor, payable to the owner or persons interested in the land so acquired, out of any moneys which may have been appropriated for that purpose, the same to be delivered upon receipt of a proper deed of conveyance to the state, of the lands so purchased, or upon delivery of a proper receipt for the damages awarded in cases of condemnation. (Act Apr. 22, 1907, c. 281, §3.)

53-3½f. If insufficient appropriation is made.—In case the appropriation or appropriations made shall not be sufficient to pay for all lands purchased and the award for all lands condemned, or in case the awards or any of them are of such amount that said commissioners shall desire not to take the responsibility for the payment thereof, said commissioners shall report the same to the legislature at its next session after final confirmation of all the awards made, including any which may be made upon re-trial after appeal, and upon such report, if the legislature shall fail to approve the same, or to make the necessary appropriation to pay such award at the same or the next session to which such report is made, then all the proceedings which may have been taken for the acquiring of the lands so reported, the award for which has not been previously paid, shall be void and of no effect, but in such case the parties whose lands have been condemned in pursuance of this act, shall be paid the reasonable disbursements expended by them in such proceedings, the amount of such disbursements to be fixed and allowed by the court in which such condemnation proceedings are had and the same shall be paid out of any moneys in the treasury not otherwise appropriated. (Act Apr. 22, 1907, c. 281, §4.)

53-3½g. Vacation of streets.—In case any lands are acquired hereunder, which are separated from the present capitol grounds by any street or streets in the city of St. Paul, such streets shall be re-located upon the outer portion of the land so acquired, and that portion of such street or streets as at present located which separate the lands so acquired from the present capitol grounds shall be vacated and discontinued as public streets, and the same shall become a part of the capitol grounds, provided the city of St. Paul shall have the right to maintain and use all sewers and water pipes now constructed and laid therein. (Act Apr. 22, 1907, c. 281, §5.)

ARTICLE III.—DEPARTMENT OF ADMINISTRATION AND FINANCE

53-4. Department of administration and finance; etc. [Superseded.]

Editorial note.—Act Apr. 22, 1933, c. 431, art. 2, §§1, 2, post, §§53-4a, 53-4b, supersedes this section by creating the department of administration under the management of a commissioner of administration. Another act approved on the same date, but bearing a later chapter number (441) amends §53-1 and continues the designation "Department of Administration and Finance."

The offices of comptroller, commissioner of budget, and commissioner of purchases are abolished by §53-18u, post.

175M583. 222NW285; note under §53-6.

53-4a. Department of Administration.—Commissioner of Administration.—(a) The Department of Administration shall be under the supervision and control of a Commissioner of Administration, in this ar-

title also referred to as to the commissioner, who shall be ex officio the state budget director and state purchasing agent.

(b) The commissioner of administration shall be appointed by the governor, by and with the advice and consent of the senate. The term of the first commissioner appointed hereunder shall expire February 1, 1941, and succeeding terms shall be two years thereafter. The governor may remove the commissioner at any time for cause, after notice and hearing. The commissioner shall receive a salary of \$6,000 a year, payable semi-monthly. (Act Apr. 22, 1939, c. 431, Art. 2, §1.)

53-4b. State agencies are included in act.—As used in this article, [§§53-4a, 53-4b, 53-18b to 53-18u] the term "agency of the state" or "state agency" shall mean and include every department, board, commission, officer, employe, and other agency of the state, including, without limiting the general effect of the foregoing, state teachers' colleges, state hospitals, state penal institutions, and other state institutions, enterprises, and activities, wherever located, but excepting the regents of the state university and persons and institutions under their control, and excepting all cities, villages, boroughs, towns, counties, school districts, and other municipal corporations or political subdivisions of the state and excepting the professional and regulatory examining and licensing boards enumerated in Mason's Minnesota Statutes of 1927, Chapter 35, and the 1938 Supplement to Mason's Minnesota Statutes of 1927, Chapter 35. (Act Apr. 22, 1939, c. 431, Art. 2, §2.)

Municipal employees retirement association is not subject to reorganization act. Op. Atty. Gen. (640), July 7, 1939.

Provision relating to Soldiers' Home Board has no reference as to effect of civil service act upon board or its employees. Op. Atty. Gen. (644), July 26, 1939.

Grain inspection and weighing functions of railroad and warehouse commission are subject to supervision and control of commissioner of administration, especially with reference to expenditure of funds and appointment of personnel. Op. Atty. Gen. (640a), July 29, 1939.

Professional and regulatory and examining licensing boards enumerated in chapter 35 of Mason's Minnesota Statutes 1927, and 1938 Supp. thereto, may make their own purchases without respect to state purchasing agency and without first having funds encumbered by state auditor. Op. Atty. Gen. (640), Sept. 7, 1939.

Sibley House Association is not a state agency whose funds are subject to laws relating to purchases by state agencies, notwithstanding that appropriations are made to it. Op. Atty. Gen. (640a), Sept. 9, 1939.

53-5. Commission of Administration and Finance—Appointment, terms of office, removal, and salaries—Vacancies—Quorum—Board of audit abolished and duties of vested in comptroller.

Editorial note.—The commission of administration and finance is abolished by §53-18u, post, and its powers and duties transferred to the commissioner of administration.

Governor's constitutional powers of appointment and removal. 22MinnLawRev451.

53-6. Powers and duties of commission of administration and finance [commissioner of administration].

Editorial note.—The powers enumerated in this section, so far as not inconsistent with Act Apr. 22, 1939, c. 431, are transferred to the commissioner of administration by §53-18u, post.

The board of regents, in the management of the University, is constitutionally independent of all other executive authority, and Laws 1925, c. 426, is unconstitutional insofar as it attempts to subject the control of University finances to the commission of administration and finance, in view of Laws 1851, c. 3. 175M259, 220N W951.

Laws 1925, c. 246 (§§53-1 to 53-2), modifies and amends the prior Highway Act to the extent of placing the making of contracts for constructing state highways under the control of the Commission of Administration and Finance. 176M583, 222NW285.

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.

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

Op. Atty. Gen. (517n), June 7, 1934; note under § 53-16.

State department may not enter into agreement with federal government to assume liability for injuries to federal emergency administration workers. Op. Atty. Gen. (523g-6), June 4, 1934.

Acceptance of proposal of dealer by purchase of installment of goods resulted in binding contract to take all of goods. Op. Atty. Gen. (707b-11), Aug. 3, 1934.

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

State board of control is proper state agency to enter into necessary contracts for erection of proposed state hospital and other buildings and improvements, and to make arrangements and enter into necessary contracts with federal government with reference to securing grants of aid, subject to power of commission of administration and finance to exercise supervision and control. Op. Atty. Gen. (88a-7), July 10, 1935.

Law does not permit commission of administration and finance to write a blanket fidelity insurance policy to cover employees in more than one department, but each department head shall procure and keep in effect such a policy, and commissioner of banks, commissioner of insurance and commissioner of securities are each directing heads of a department within such rule. Op. Atty. Gen. (980a-8), May 10, 1937.

Contracts for printing of certification labels for use in administering liquor control act are to be let by state treasurer. Op. Atty. Gen. (454k), Mar. 4, 1938.

Sale by the state of fish reduction plant standing upon leased grounds. Op. Atty. Gen. (928c), Aug. 4, 1938.

Structures on tax forfeited lands within state forests may be sold, leased, or razed pursuant to regulations established by commissioner of conservation, at public or private sales, money to be paid into designated funds, and where no designation is made are required to be paid into general revenue fund. Op. Atty. Gen., (700d-21), Aug. 31, 1938.

53-7. Classification, grading, titles, and salaries of state employes.—The commission shall have the following powers: to approve or reject the compensation schedules submitted by the civil service board for the various classes, grades and titles of the employees of the various officials, department, and agencies of the state government and institutions under their control; to require a complete record of the officers, assistants, and employees appointed thereby or employed therein, and to require the salaries of the same to be in conformity with the scale of compensation established pursuant to law; to prepare and prescribe classes of expenditures and revenue for the purpose of budget-making and accounting; to procure by lease, with the approval of the governor, office space and buildings for the use of the state government or any department, office, or institution thereof; to purchase, except as otherwise herein provided, all supplies and equipment for all state officials, departments and agencies of the state government, including tools, machinery, and materials to be used by the state in the construction and maintenance of state highways; but the commission in its discretion may designate an officer or employee of any such department to make, under the general supervision and direction of the commission such purchases for the department in which such designation is so made as the commission may specify.

The authority of the commission to approve or reject a scale of compensation therefor shall not apply to the unclassified service as prescribed by the state civil service act. (As amended Apr. 22, 1939, c. 441, §39.)

Editorial note.—See note under §53-6, ante, which is also applicable to this section.

175M583, 222NW285; note under §53-6.

The commission of administration and finance may increase or diminish the compensation of the secretary-treasurer and his stenographer or assistant, whose offices are created by §§5706, 5712, but the compensation of "such officers, agents, assistants, clerks and other employees" of the board of medical examiners provided for by Laws 1929, c. 347, §§10, 13, are to be fixed by the board of medical examiners, within the limitations of Laws 1929, c. 347, §13. Op. Atty. Gen., Oct. 16, 1929.

Industrial commission has power without restriction or restraint to appoint and remove certain designated employees or officials. Op. Atty. Gen., May 10, 1933.

Op. Atty. Gen., May 24, 1933; note under §53-6.

State board of medical examiners is not subject to supervision and control of department of administration and finance with respect to employment of attorney at law to procure evidence or fixing compensation. Op. Atty. Gen., Oct. 24, 1933.

Commission of Administration and Finance cannot change salary of secretary-treasurer of State Board of Hairdressing and Beauty Culture Examiners. Op. Atty. Gen. (33b-2), Feb. 25, 1935.

Commission of administration and finance has no authority to fix salary scale for secretary and other employees of State Employees' Retirement Association. Op. Atty. Gen. (331e), Feb. 25, 1935.

If particular state official department, agency or institution has authority, either pursuant to constitution, or pursuant to statutory provision apart from this act, to enter into a contract of employment or other obligation, commission of administration and finance has no authority to disallow salary claimed. Op. Atty. Gen. (980a-14), Apr. 12, 1935.

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.

Required notice before letting of contract for trunk highway construction work and before making purchases of materials, machinery, and supplies, is governed by §2554(6) rather than §53-10. Op. Atty. Gen. (707a-13), Aug. 31, 1938.

Commissioner of administration is in charge of personnel until a director of civil service has been appointed and has made available list of eligibles for appointment. Op. Atty. Gen. (644), June 13, 1939.

53-8. Approval of appropriations and expenditures.

See note under §53-6, ante, which is also applicable to this section.

175M583, 222NW285; note under §53-6.

State relief agency should submit abstract of expenditures to commission of administration and finance for pre-audit, but such department has no authority to substitute its opinion or judgment for that of council or relief agency as to advisability of any expenditures. Op. Atty. Gen. (980c-32), Sept. 15, 1937.

Public employees' retirement association is under control of state and must furnish budget. Op. Atty. Gen. Aug. 8, 1933.

53-8a. To be expended subject to provisions of law.—All the foregoing appropriations herein contained are to be expended subject to the provisions of Chapter 426, Session Laws of 1925 [§53-8]. No appropriation shall become available for expenditure until such estimates as required by Section 5, Article III of such act, shall have been approved by the Commissioner of Administration. No obligation involving expenditure of money shall be entered into unless there is a balance in the appropriation available not otherwise encumbered to pay obligations previously incurred. (Act Apr. 22, 1939, c. 422, §40.)

53-9. Supervision of construction of buildings.

See note under §53-6, ante, which is also applicable to this section.

Op. Atty. Gen. (707a-13), July 13, 1934; note under §53-6.

Federal process taxes apply on commodities purchased by board for state institutions. Op. Atty. Gen., Aug. 7, 1933.

This section is hopelessly inconsistent with and repugnant to Laws 1935, c. 383, §§4, 5, and the later act controls. Op. Atty. Gen. (88a-7), July 10, 1935.

State board of control may contract for railroad spur at St. Cloud Reformatory, subject to approval by commission of administration and finance. Op. Atty. Gen. (88a-10), Nov. 5, 1935.

Where contract for oil provides definite price, board of control may not pay more by reason of increase in freight rates. Op. Atty. Gen. (88a-10), Jan. 13, 1938.

53-10. Powers as to purchase of supplies, etc.

For text see this number in 1927 edition. See note under §53-6, which is applicable to this section also.

Bids for construction of public works. Op. Atty. Gen., July 21, 1931; note under §53-1.

As affecting question whether commission of administration and finance is subject to federal excise tax upon tires purchased by it, the commission is performing an essential governmental function and is not operated for profit. Op. Atty. Gen. (980a-11), June 20, 1934.

Commission of administration and finance has no authority to fix kind of telephone service to be rendered to various departments of state government and to fix amount of charges to be paid. Op. Atty. Gen. (980a-9), Oct. 25, 1935.

If commission finds that physical nature of waterbearing sands is such that construction of a well involves exercise of ordinary technical and engineering skill and precludes setting forth of specifications or letting of a contract on bids, an emergency may be declared and contract for drilling well let without advertising or bids. Op. Atty. Gen. (980h), Nov. 28, 1936.

Purchase of supplies and equipment for soldier's home is to be made under direction and with approval of department of administration and finance. Op. Atty. Gen. (980a-12), Aug. 30, 1937.

State relief agency should make use of facilities of state purchasing department, but state department of administration and finance has no right to substitute its opinion or judgment for discretion of executive council or relief agencies as to advisability or necessity of any expenditure by such agencies. Op. Atty. Gen. (980c-32), Oct. 11, 1937.

State relief agency should use state printer's office when it has printing done. Id.

Word "may" should be construed as "shall", and it is mandatory that commission make rules. Op. Atty. Gen. (980a-11), July 23, 1938.

Published notice in newspaper in county is essential to validity of contract for labor and materials used in construction of a state teachers' college. Id.

Executive council and state relief agency are not subject to requirements of reorganization act with respect to notice before purchases, under the Emergency Relief Act. Op. Atty. Gen., (928c-17), Aug. 8, 1938.

Purchase of supplies and materials may be made in emergency situations without published advertisement. Op. Atty. Gen., (980a-11), Aug. 24, 1938.

Required notice when purchases are made under emergency conditions. Op. Atty. Gen., (980a-11), Nov. 10, 1938.

There is no need for competitive bidding in purchase of certain materials for construction work on state teachers' college building in case of emergency where delay would result in irreparable damage to building by approaching cold weather. Op. Atty. Gen. (980a-11), Aug. 10, 1938.

University of Minnesota purchasing procedure, including manner of securing competitive bids, is vested in Board of Regents. Op. Atty. Gen. (618a-5), Aug. 11, 1938.

No advertised notice is required in purchasing mechanical device for sale by one vendor only. Op. Atty. Gen. (980a-11), Aug. 11, 1938.

Board of control in purchasing supplies, materials, furnishings and equipment to be used in or about institutions should give notice of purchases in accordance with §4420 and not §53-10. Op. Atty. Gen. (88a-22), Aug. 19, 1938.

Required notice before letting of contract for trunk highway construction work and before making purchases of materials, machinery, and supplies, is governed by §2554(6) rather than §53-10. Op. Atty. Gen. (707a-13), Aug. 31, 1938.

"Special cases" permitting purchase without advertising for bids should be confined to purchases of such a character that advertising could not stimulate competition. Op. Atty. Gen. (980a-11), Sept. 9, 1938.

(16) Waiver of rules in special cases.

Whether exchange of old generator for new generator may be made without advertising for bids is a matter within discretion of commission. Op. Atty. Gen., (980a-11), Oct. 7, 1938.

Contracts for improvement of rural credit farms are not subject to provisions of this section. Op. Atty. Gen. (770f), Sept. 13, 1938.

Where concrete mixer was purchased by state under a contract void for noncompliance with laws, paying part of the purchase price, state cannot return the machine, and, though seller has a claim against state, it has no remedy in the courts and its only recourse is to the legislature. Op. Atty. Gen. (980b-32), Feb. 9, 1939.

53-11. Same—director of personnel—powers. [Repealed.]

Repeated Apr. 22, 1939, c. 441, §44.

Op. Atty. Gen., May 10, 1933; note under §53-7.

Commissioner of administration is in charge of personnel until a director of civil service has been appointed and has made available list of eligibles for appointment. Op. Atty. Gen. (644), June 13, 1939.

53-12. Commissioner of budget.

Editorial note.—The office of commissioner of the budget is abolished by §53-18u, post.

For text see this number in 1927 edition. See note under §53-6 which is applicable to this section also.

State relief agency does not come under jurisdiction of department of administration and finance as respects preparation and submitting of budget. Op. Atty. Gen. (549), Apr. 15, 1936.

State relief agency is not required to submit budgets to Department of Administration and Finance. Op. Atty. Gen. (980c-32), July 2, 1936.

It is not necessary for board of medical examiners to file budget with budget commissioner. Op. Atty. Gen. (303a-7), Nov. 10, 1936.

53-13. Comptroller.

Editorial note.—The office of comptroller and board of audit are abolished by §§53-18u, 3286-16, post.

See note under §53-6, which is applicable to this section also. The office of public examiner is restored by Act Apr. 22, 1939, c. 431, art. I, §1, ante, §53-1a, and post, §§3286-8 to 3286-16.

State relief agency should have personnel records established in files and payroll records of department of administration and finance so that an intelligent audit

of all payroll abstracts can be made. Op. Atty. Gen. (980c-32), Oct. 11, 1937.

53-14. State auditor—duties.

Act appropriating money for payment of claims against state. Laws 1931, c. 416.

Duties of state auditor and comptroller under this section. Op. Atty. Gen., Mar. 18, 1931.

State relief agency should submit abstract of expenditures to commission of administration and finance for pre-audit, but such department has no authority to substitute its opinion or judgment for that of council or relief agency as to advisability of any expenditures. Op. Atty. Gen. (980c-32), Sept. 15, 1937.

53-15. Expenditures without appropriation.

See note under §53-6 which is applicable to this section also.

No money belonging to or for use of state shall be expended or applied by any official, department, agency or institution except in pursuance of an appropriation by law. Op. Atty. Gen. (9a-9), Aug. 8, 1938.

53-16. Contracts involving expenditures without appropriation.

See note under §53-6 which is applicable to this section also.

State officers could not lawfully stipulate that a void contract should be performed and a percentage of contract price be paid from state funds. *Regan v. B.*, 188M 192, 247NW12. See *Dun. Dig.* 8828.

State department may not enter into agreement with federal government to assume liability for injuries to federal emergency administration workers. Op. Atty. Gen. (523g-6), June 4, 1934.

Signing of application for approval of emergency relief administration work projects, containing an agreement to carry workmen's insurance to protect workers, would be entering into a contract between the state and the federal government, which contract must be signed by the department of administration and finance and no other department of the state government, and even such department would have no authority to sign such an application in the absence of an appropriation by the legislature. Op. Atty. Gen. (517n), June 7, 1934.

Subject to this section adjutant general may under §2450 and Laws 1931, ch. 223, §3, pay part of costs of moving high tension lines crossing Camp Ripley. Op. Atty. Gen. (2c), Dec. 16, 1936.

53-17. Original papers to be kept in auditor's office.

See note under §53-6, which is applicable to this section also.

Duties of state auditor and comptroller under this section. Op. Atty. Gen., Mar. 18, 1931.

Matter of compromising claims of state is for the executive council and not the secretary of state or attorney general. Op. Atty. Gen. (928c-9), Dec. 20, 1935.

53-18. Orders and rulings of commission [commissioner] reviewed by governor.

See note under §53-6, which is applicable to this section also.

53-18a. Grants from U. S. to be used for stated purposes only.—All funds received by the state from the government of the United States as grants-in-aid for the purpose of assisting in paying old age benefits, or aid to dependent children commonly called "mothers' pensions", or aid to the blind, or for maternal and child health services, or for the care of crippled children, or for the care of neglected children and child welfare generally, or for vocational rehabilitation, or for the extension of public health services, or for any other public assistance or public welfare purpose shall be used solely for the purpose for which the grant was made, and any interest or income arising from the funds so granted shall be accredited by the State Treasurer to the particular account for which such grant was made, and shall be used solely for the purpose of such grant or shall be repaid to the United States Treasury as the proper authorities of the government of the United States may require. (Feb. 10, 1937, c. 25, §1.)

Sec. 2 of Act Feb. 10, 1937, cited, provides that the Act shall take effect from its passage.

53-18b. Powers and duties of the commissioner.—Subject to other applicable provisions of this chapter [§§53-1a to 53-1s, 53-2a, 53-4a, 53-4b, 53-18b to 53-18u, 80-2 to 80-7, 2362-1 to 2362-31, 3199-101 to 3199-107, 3286-8 to 3286-16] and to other laws not inconsistent herewith, the commissioner shall have the following powers and duties respecting all agencies of the state:

(1) To purchase, rent, or otherwise provide for the furnishing of all supplies, materials, equipment, printing, and utility services, prescribe standard specifications therefor, to provide for inspecting and testing the same, and otherwise to enforce compliance with such specifications;

(2) To prescribe time, manner, authentication and form of making requisitions for supplies, materials, equipment, printing, and utility services, and the manner and form in which claims therefor shall be submitted, allowed, and paid;

(3) To supervise and control the making of all contracts for building, highways, and other improvements, and to prescribe the amount of certified checks, deposits, or bonds to be submitted in connection with bids and contracts, when not otherwise provided for by law;

(4) To cause to be prepared plans and specifications for the construction, alteration, or enlargement of all state buildings, structures, and other improvements except highways and bridges; to approve such plans and specifications; to advertise for bids and award all contracts in connection with such improvements; to supervise and inspect all work relating thereto; after any contract for such an improvement is let, to approve all lawful changes in plans and specifications; to approve estimates for payment; and to accept such improvements when completed according to such plans and specifications.

(5) To maintain and operate the state capitol building, state office building, historical society building, and the grounds appertaining thereto, also, where deemed advisable and practicable by the commissioner, any other building or premises owned or rented by the state for the use of any state department or other administrative agency; provided, that this shall not apply to state hospitals or to educational, penal, correctional, or other institutions the control of which is vested by law in some other agency.

(6) To provide for the periodical inspection and appraisal of all state property, real and personal, and for keeping current and perpetual inventories thereof, and to require all departments and agencies to make reports of the real and personal property in their custody at such intervals and in such form as he may deem necessary;

(7) To inspect all state power, heating, and lighting plants, and to make such rules regulating the operation thereof and to recommend such improvements therein as will promote economical and efficient operation;

(8) To supervise and control the making of necessary repairs to all state buildings and structures, except structures, other than buildings, under the control of the state highway department;

(9) To rent land and other premises when necessary for state purposes; provided, that no such land or premises shall be rented for a term exceeding two years at a time; except that, with the approval of the legislative emergency committee, the commissioner may lease land or premises for a term not exceeding five years, subject to cancellation upon 30 days' written notice by the state for any reason except rental of other land or premises for the same use;

(10) To prepare a biennial budget, under the supervision of the governor-elect;

(11) To operate the allotment system;

(12) To provide for the printing and distribution of the session laws, the legislative manual, the capitol guide book, official reports, and other publications of all kinds, and to supervise and control the form of such reports and publications so as to coordinate the same, avoid duplications, and make the same useful and informative to the public;

(13) To rent out, with the approval of the governor, any state property, real or personal, not needed for public use, the rental of which is not otherwise provided for or prohibited by law; provided, that this

shall not apply to state trust fund lands, or other state lands under the jurisdiction of the department of conservation, or to property under the jurisdiction of the department of rural credit, or to lands forfeited for delinquent taxes; provided further, that no such property shall be rented out for a term exceeding two years at a time;

(14) To have charge of all central store rooms and supply rooms serving more than one department now or hereafter established and operated by the state;

(15) To maintain and operate a central mimeograph, multigraph, and mailing service for state departments and agencies;

(16) To distribute all public printing to officers, organizations, agencies, and persons entitled thereto;

(17) To sell all public books and documents which are subject to sale;

(18) To transfer to or between state departments and agencies or to sell supplies, materials, and equipment which are surplus, obsolete, or unused, making proper adjustments in the accounts and appropriations of the departments or agencies concerned;

(19) To purchase from the state penal institutions and other state institutions all articles manufactured by them which are usable by the state;

(20) To make rules and regulations relative to travel of state officers and employes on state business and the expenses incurred thereon. (Act Apr. 22, 1939, c. 431, Art. 2, §3.)

Society for prevention of cruelty is subject to provisions of act with respect to purchases. Op. Atty. Gen. (640), Sept. 7, 1939.

Professional and regulatory and examining licensing boards enumerated in chapter 35 of Mason's Minnesota Statutes 1927, and 1938 Supp. thereto, may make their own purchases without respect to state purchasing agency and without first having funds encumbered by state auditor. Id.

(11) 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, 1949.

53-18c. Definitions.—The terms "supplies," "materials," and "equipment" as used herein shall mean and include any and all articles and things used by or furnished to any department or agency of the state government, including printing, binding, and publication of books and records, repairs, and improvements. The term "utility services" shall mean and include any and all telephone, telegraph, postal, electric light, and power service, and any and all other services required for the maintenance, operation, and upkeep of buildings and offices. The enumeration of the things specified in this section shall not be deemed exclusive. (Act Apr. 22, 1939, c. 431, Art. 2, §4.)

Blanket fidelity bonds or insurance procured by state under Mason's Stat., §9677-1 are "supplies, materials, and equipment", but individual bonds furnished by an employee as required by specific statutes under which employee has right to select his own surety, subject to approval as provided by law, are not. Op. Atty. Gen. (640), July 6, 1939.

53-18d. Commissioner to make and amend rules.—The commissioner shall have power, with the approval of the governor, to make and amend rules and regulations, not inconsistent with law, respecting any matter within the scope of the powers and duties hereby conferred, which rules and regulations shall have the force and effect of law; provided, that every such rule or regulation affecting any person or agency other than a member of the department of administration shall be filed with the secretary of state, and shall not take effect until so filed. (Act Apr. 22, 1939, c. 431, Art. 2, §5.)

Commissioner may by rule or regulation prescribe maximum limits for liability which any one company may assume upon a single bond or upon different bonds in the aggregate, providing such limitation is reasonable, and is based upon considerations of financial responsibility. Op. Atty. Gen. (640), July 6, 1939.

53-18e. To purchase supplies and materials.—(a) Under rules and regulations prescribed by him, the commissioner may authorize any agency of the state

government to purchase directly specified supplies, materials, equipment, and utility services; provided, that in making such purchases the authorized agency shall call for bids and proceed otherwise in like manner as herein required in case of purchases by the commissioner.

(b) Under rules and regulations prescribed by him, the commissioner may purchase or may authorize any agency to purchase directly any supplies, materials, equipment, or utility services for immediate use in emergencies, without calling for bids; provided, that the conditions constituting an emergency shall be defined by regulation.

(c) All regulations made by the commissioner under this section shall prescribe the manner in which purchases shall be made, not inconsistent herewith, and the manner of accounting for and reporting the same to the commissioner and the auditor; provided, that every such purchase shall be so reported within three days. (Act Apr. 22, 1939, c. 431, Art. 2, §6.)

53-18f. To receive competitive bids.—(a) Except as otherwise provided by this act, all contracts for construction or repairs and all purchases of and all contracts for supplies, materials, purchase or rental of equipment, and utility services shall be based on competitive bids, and all sales of property shall be to the highest responsible bidder after advertising for bids as herein provided; provided, that competitive bids shall not be required for utility services where no competition exists, or where rates are fixed by law or ordinance.

(b) If the amount of the expenditure or sale is estimated to exceed \$500, sealed bids shall be solicited by public notice inserted once each week for two successive weeks in a newspaper or trade journal of general circulation in the territory from which bids are likely to be received before the final date of submitting bids. The commissioner shall designate the newspaper or trade journal for such publication, and may designate different newspapers or journals according to the nature of the purchase or contract. The commissioner shall also solicit sealed bids by sending notices by mail to all prospective bidders known to him, and by posting notice on a public bulletin board in his office at least five days before the final date of submitting bids. All bids shall be sealed when received, shall be opened in public at the hour stated in the notice, and all original bids together with all documents pertaining to the award of a contract shall be retained and made a part of a permanent file or record, and shall be open to public inspection.

(c) All purchases or sales estimated to exceed in amount \$200 but not to exceed \$500 shall be made after receipt of sealed bids following at least three days notice posted on a public bulletin board in the office of the commissioner. The commissioner shall also solicit sealed bids by mail in such cases, in like manner as hereinbefore provided.

(d) All purchases or sales the amount of which is estimated to be less than \$200 may be made either upon competitive bids or in the open market, in the discretion of the commissioner, but so far as practicable shall be based on at least three competitive bids which shall be permanently recorded.

(e) Contracts and purchases shall in all cases be based on the standard specifications prescribed by the commissioner in accordance with this act, unless otherwise expressly provided, and shall be accompanied by a certified check in such amount as the commissioner shall prescribe.

(f) Notwithstanding anything herein to the contrary, all contracts for the repair, improvement, maintenance, or construction of highways or highway bridges shall be advertised and let as now or hereafter provided by law for highway construction contracts. (Act Apr. 22, 1939, c. 431, Art. 2, §7.)

Tourist bureau can not place advertising through use of an advertising agency since it would constitute delegation to agency of power to make purchases of space

in periodicals and newspapers and other services and materials incident to advertising, act requiring all purchases to be made by Commissioner of Administration in manner prescribed by this act. Op. Atty. Gen. (640), Sept. 7, 1939.

(a). Bids may not be required for use of patented time keeping machines and record cards, if patented right is under the exclusive control of one person or company. Op. Atty. Gen. (707a-13), June 8, 1939.

(d). Commissioner may spread insurance coverage on employees by selection of such companies as he may see fit where premium rate is equal to and not in excess of standard rate prescribed by National Underwriting Board. Op. Atty. Gen. (640), August 2, 1939.

Commissioner is not obliged to accept bid of a mutual company qualified to do business in the state and approved by commissioner of insurance where such acceptance would require state to become a party to an assessment plan. Id.

(e). Section applies to bids of companies on blanket fidelity bonds. Op. Atty. Gen. (640), July 6, 1939.

53-18g. Same—Lowest bidder.—All contracts and purchases made by or under the supervision of the commissioner or any state department or agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids. The commissioner of administration shall have power to decide as to the lowest responsible bidder for all purchases. As to contracts other than for purchases, the head of the interested department or agency shall make the decision, subject to the approval of the commissioner of administration. Any or all bids may be rejected, and a bid shall be rejected if it contains any alteration or erasure. The commissioner may reject the bid of any bidder who has failed to perform a previous contract with the state. A record shall be kept of all bids, with names of bidders and amounts of bids, and with the successful bid indicated thereon. Such record shall be open to public inspection. In any case where competitive bids are required and where all bids are rejected, new bids shall be called for as in the first instance, unless otherwise expressly provided by law. (Act Apr. 22, 1939, c. 431, Art. 2, §8.)

In purchasing blanket fidelity bonds or insurance, if commissioner of administration has reasonable grounds to believe that any company bidding is not responsible, whether it has otherwise complied with law or not, it is within his power to determine that such company is not responsible and to reject its bid, but in absence of any substantial evidence to contrary, approval of insurance commissioner should be accepted as establishing responsibility. Op. Atty. Gen. (640), July 6, 1939.

53-18h. Contracts and leases shall be approved by Attorney General—Filing with state auditor.—All contracts and leases shall be approved as to form and execution by the attorney general. A copy of every such contract or lease extending for a term longer than one year shall be filed with the state auditor. All purchase orders shall be made on a form prescribed by the attorney general. (Act Apr. 22, 1939, c. 431, Art. 2, §9.)

All contracts and leases to which state is a party must be filed with state auditor if they extend for a term longer than one year, if made by an agency of the state within definition found in Article II, §2, irrespective of any requirements to expend state funds thereunder. Op. Atty. Gen. (640a), Sept. 7, 1939.

53-18i. Shall be signed by head of department commissioner and state auditor.—Except as otherwise herein provided, every contract shall be signed in behalf of the state by the head of the interested, department or agency, and no purchase order or contract shall be valid or effective without the approval and signature of the commissioner and the countersignature of the auditor who shall certify thereon that the appropriation and allotment have been encumbered for the full amount of the contract liability. (Act Apr. 22, 1939, c. 431, Art. 2, §10.)

All purchase orders and contracts involving expenditure of funds in state treasury credited to accounts of state agencies not specifically exempted from operation of act, regardless of source from which funds are derived, must

bear countersignature and certificate of state auditor, though possibly there may be exceptions in case of federal fund under federal law which would not permit of application of section. Op. Atty. Gen. (640a), Sept. 7, 1939.

This section has no relation to question of filing documents in office of state auditor. Id.

53-18j. Not to be interested in any contracts—Felony.—Neither the commissioner, nor any member of his department, nor any member of a standardization committee, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or utility services used by or furnished to any department or agency of the state government, nor shall such commissioner, member of his department, or member of a standardization committee accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract or purchase order may be awarded, by rebate, gift, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Any violation of this section shall be a felony and shall be punishable accordingly. (Act Apr. 22, 1939, c. 431, Art. 2, §11.)

53-18k. Commissioner to establish and enforce standards.—The commissioner is authorized to establish from time to time and to enforce standards for all supplies, materials, and equipment in common use by officers and departments of the state; to make or cause to be made any test, examination, or analysis necessary therefor; to require the assistance of any and all officers and departments therefor; to prepare or cause to be prepared proper and uniform specifications therefor; and to classify the requirements of the various agencies of the state government for the purpose of the use and application of such standard specifications. (Act Apr. 22, 1939, c. 431, Art. 2, §12.)

53-18l. May transfer employees from one department to another.—With the approval of the governor and the executive head of the department of civil service, if there be such a department, the commissioner may, in order to expedite the necessary work of any department or agency, or to eliminate duplication and promote economy and efficiency, transfer employes from one department or agency to another; provided, that no necessary work of the department or agency from which the transfer is made shall thereby be curtailed, and provided further, that the salaries of such employes shall be charged to the department or agency to which they are transferred. (Act Apr. 22, 1939, c. 431, Art. 2, §13.)

53-18m. Commissioner to prepare budget—Estimates—Report to governor-elect.—(a) It shall be the duty of the commissioner or his designated deputy to prepare the budget for all state departments and agencies, subject to the approval of the governor. The commissioner shall furnish every department, official, and agency of the state authorized to expend state moneys with a sufficient number of budget estimate forms for its use by September 1 of each even numbered year. The budget forms shall be so drawn as to show actual expenditures for the two preceding fiscal years, estimated expenditures for the current fiscal year and estimates for each fiscal year of the succeeding biennium, the same data in respect to departmental receipts and an estimated appropriation balance at the end of the current fiscal year. The estimated expenditures shall be classified to set forth the data by funds, organization units, character, and objects of expenditures, and the organization units may be subclassified by functions and activities. The department revenue estimates shall show the basis upon which the estimates were made and the factors involved in the same, and shall be classified so as to show receipts by funds, organization units, and sources of income.

(b) Each such department, official, or agency shall, not later than the first day of October preceding the convening of the legislature, file with the commissioner its estimates in the form provided, including a full explanation of its requests for any increased appropriations and for the expansion of services and the addition of new activities, a statement of the work accomplished during the preceding biennium and the work proposed to be done for the next biennium, and a list of all employes, their titles, and their salaries. The commissioner shall prepare estimates for all departments, boards, and agencies that fail to file requests.

(c) The commissioner of administration shall report the budget estimates to the governor-elect immediately after his election, and shall make available to him all information, staff, and facilities in the department relating to the budget. (Act Apr. 22, 1939, c. 431, Art. 2, §14.)

Society for the prevention of cruelty still comes under budget allotment requirements. Op. Atty. Gen. (644), June 5, 1939.

53-18n. Governor to submit budget to the legislature—Message—Detailed statement—Additional information.—(a) The governor shall, within three weeks after his inauguration, submit the budget to the legislature. The budget shall include two parts.

(b) Part 1 of the budget shall consist of a budget message prepared by the governor, including his recommendations with reference to the fiscal policy of the state government for the coming biennium, describing the important features of the budget plan, embracing a general budget summary setting forth the aggregate figures of the budget so as to show the balanced relation between the total proposed expenditures and the total anticipated income, with the basis and factors on which the estimates are made, the amount to be borrowed, and other means of financing the budget for the ensuing biennium, compared with the corresponding figures for at least the last two completed fiscal years and the current year. The budget plan shall be supported by explanatory schedules or statements, classifying the expenditures contained therein by organization units, objects, and funds, and the income by organization units, sources, funds, and the proposed amount of new borrowing, as well as proposed new tax or revenue sources. The budget plan shall be submitted for all special and dedicated funds as well as the general revenue fund, and shall include the estimated amounts of federal aids, for whatever purpose provided, together with estimated expenditures therefrom.

(c) Part 2 of the budget shall embrace the detailed budget estimates both of expenditures and revenues. It shall also include statements of the bonded indebtedness of the state government, showing the actual amount of the debt service for at least the past two completed fiscal years, and the estimated amount for the current fiscal year and for the next two fiscal years, the debt authorized and unissued, the condition of the sinking funds, and the borrowing capacity. It shall also contain any statements relative to the financial plan which the governor may deem desirable or which may be required by the legislature.

(d) The commissioner shall, upon request, furnish the governor or the legislature with any further information required concerning the budget, and shall, upon request, attend hearings of committees of the legislature in regard thereto. (Act Apr. 22, 1939, c. 431, Art. 2, §15.)

53-18o. Year to be divided into quarterly allotment periods.—(a) For the purposes of the quarterly allotment system, each fiscal year shall be divided into four quarterly allotment periods, beginning respectively on the first days of July, October, January, and April; provided, that in any case where the quarterly allotment period is impracticable, the commissioner may prescribe a different period suited to the circum-

stances not exceeding six months nor extending beyond the end of a fiscal year.

(b) Except as otherwise expressly provided herein, the provisions of this chapter relating to the allotment system and to the encumbering of funds shall apply to appropriations and funds of all kinds, including standing or annual appropriations and dedicated funds from which expenditures are to be made from time to time by or under the authority of any agency, but shall not apply to appropriations for the courts or the legislature, nor to payment of unemployment compensation benefits. In the case of construction contracts and transactions for the acquisition of real estate for public purposes, where periodical allotments are impracticable, the commissioner may dispense therewith and prescribe such regulations as will insure proper application and encumbering of funds. Contingent funds appropriated for the governor or the attorney general shall not be subject to the provisions hereof relating to allotment, but shall be subject to the other provisions hereof relating to expenditure and encumbering of funds.

(c) No appropriation to any agency shall become available for expenditure thereby during any allotment period until such agency shall have submitted to the commissioner an estimate in advance, in such form as the commissioner shall prescribe, for such allotment period next ensuing, of the amount required for each activity to be carried on and each purpose for which money is to be expended during said period, and until such estimate shall have been approved, increased, or decreased by the commissioner and funds allotted therefor as hereinafter provided.

(d) If the estimate is within the terms of the appropriation as to amount and purposes, having due regard for the probable further needs of the agency for the remainder of the fiscal year or other term for which the appropriation was made, and if there is a need for such appropriation for the next ensuing allotment period, the commissioner shall approve the same and allot the estimated amount for expenditure. Otherwise the commissioner shall modify the estimate so as to conform with the terms of the appropriation and the prospective needs of the agency, and shall reduce the amount allotted accordingly. The commissioner shall act promptly upon all estimates, and shall notify every agency of its allotments at least five days before the beginning of each allotment period, and shall notify the state auditor. The total amount allotted to any agency for the fiscal year or other terms for which the appropriation was made shall not exceed the amount appropriated for such year or term.

(e) The commissioner shall also have authority at any time to modify or amend any allotment previously made by him, upon application of or upon notice to the agency concerned, and upon a showing of emergency or other cause, provided no deficit or undue reduction of funds to meet future needs of such agency will result therefrom.

(f) In case the commissioner shall discover at any time that the probable receipts from taxes or other sources for any appropriation, fund, or item will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, he shall, with the approval of the governor, and after notice to the agency concerned, reduce the amount allotted or to be allotted so as to prevent a deficit. In like manner he shall reduce the amount allotted or to be allotted to any agency by the amount of any saving which can be effected upon previous estimates through a reduction in prices or other cause.

(g) There shall be kept in the office of the state auditor an accounting system showing at all times, by funds and items, the amounts appropriated for and the estimated revenues of such agency, the amounts allotted and available for expenditure, the amounts of expenditures or obligations authorized to be incurred,

actual receipts and disbursements, actual balances on hand, and the unencumbered balances after deduction of all actual and authorized expenditures.

(h) No payment shall be made and no obligation shall be incurred against any fund, allotment, or appropriation unless the state auditor shall first certify that there is a sufficient unencumbered balance in such fund, allotment, or appropriation to meet the same. Every expenditure or obligation authorized or incurred in violation of the provisions of this chapter shall be void. Every payment made in violation of the provisions of this chapter shall be deemed illegal, and every official authorizing or making such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received. If any appointive officer or employee of the state shall knowingly incur any obligation or shall authorize or make any expenditure in violation of the provisions of this chapter, or take part therein, it shall be ground for his removal by the officer appointing him, and if the appointing officer be other than the governor and shall fail to remove such officer or employe, the governor may exercise such power of removal, after giving notice of the charges and opportunity for hearing thereon to the accused officer or employe and to the officer appointing him. (Act Apr. 22, 1939, c. 431, Art. 2, §16.)

Insufficiency of state appropriations for aid to defendant children does not relieve county of primary duty to pay aid as provided by law, and state may not exceed the appropriation, and insufficiency of state funds does not affect amount of federal aid, which is based upon aggregate of aid furnished by state and county. Op. Atty. Gen. (640a), June 28, 1939.

Commission has no power to reduce expenditure for aid to fire departments under §§3347, 3725, 3739, and 3750-10. Op. Atty. Gen. (640a), Sept. 2, 1939.

(d). Commissioner is not absolutely required to authorize expenditures up to full amount appropriated by legislature for a particular item. Op. Atty. Gen. (640a), June 26, 1939.

(e). Commissioner has power to reduce an allotment after it is made, but this cannot be done arbitrarily. Op. Atty. Gen. (640a), June 26, 1939.

(f). It is mandatory that commissioner in event of contingency initiate procedure which will lead to reduction by informing governor of circumstances, and if governor approves reduction, it becomes mandatory for commissioner to reduce amount and to notify agency concerned. Op. Atty. Gen. (640a), June 26, 1939.

"At any time" is without limitation and necessarily includes before beginning of fiscal year as well as after. Id.

This subsection is superseded by Laws 1939, c. 437, §7, to the extent that supplemental aid to schools must be paid on a basis of at least 65%. Op. Atty. Gen. (640), August 9, 1939.

This subsection applies to appropriation for state aid, special school aid, and additional school aid, except certain priorities fixed by statute. Id.

Income tax distribution to schools as provided by Laws 1939, c. 438 (§2394-57), is subject to provisions of this subsection. Id.

53-18p. Appropriations to revert to State Treasury—Exceptions.—(a) Except as specifically provided for in appropriation acts every appropriation or part thereof of any kind hereinafter made subject to the provisions of this section remaining unexpended and unencumbered at the close of any fiscal year shall lapse and be returned to the general revenue fund; provided, that an appropriation for construction or other permanent improvement shall not lapse until the purposes for which the appropriation was made shall have been accomplished or abandoned unless such appropriation has stood during an entire fiscal biennium without any expenditure therefrom or encumbrance thereon.

(b) Except as otherwise expressly provided by law, the provisions of this section shall apply to every appropriation of a stated sum for a specified purpose or purposes heretofore or hereafter made from the general revenue fund, but shall not, unless expressly so provided by law, apply to any fund or balance of a fund derived wholly or partly from special taxes, fees,

earnings, fines, Federal grants, or other sources which are by law appropriated for special purposes by standing, continuing, or revolving appropriations. (Act Apr. 22, 1939, c. 431, Art. 2, §17.)

(a). Balance remaining in fund appropriated for disabled American veterans carries over into fiscal year beginning July 1, 1939, and does not revert to general revenue fund. Op. Atty. Gen. (640a), July 19, 1939.

53-18q. Receipts to be deposited with the State Treasurer—Credit to proper fund.—All receipts from any source whatever shall be deposited with the state treasurer each day, except as otherwise provided by law, and at the same time a report of all receipts since the last previous report and of the disposition thereof shall be made to the auditor by the depositing agency. All moneys received by the treasurer during any month shall be credited by him and by the state auditor to the proper funds not later than the first day of the following month. (Act Apr. 22, 1939, c. 431, Art. 2, §18.)

Money received from federal government for caring for federal boys in state training school must be paid into the state treasury, and cannot be expended by school authorities to pay cost of transporting inmates to their destination or to supply homeless boys with transportation or a necessity. Op. Atty. Gen. (9a-10), August 3, 1939.

53-18r. Treasurer to establish suspense funds.—The state treasurer is hereby authorized, subject to approval of the commissioner of administration, to establish suspense funds for the purpose of making refunds therefrom when authorized by law, but such refunds shall be vouchered and audited as provided by this act for other state disbursements. (Act Apr. 22, 1939, c. 431, Art. 2, §19.)

Refunds of amounts paid as taxes for 1939 on Class "T" trucks in excess of new rates under Laws 1939, c. 253, must be made in manner provided by this section. Op. Atty. Gen. (632e-25), August 4, 1939.

53-18s. Five per cent of receipts to be set aside for expenses—General administration fund—Appropriations—Federal accounts.—It is hereby determined that a charge of five per cent of the amounts received from the taxes and fees specified in this section does not exceed the reasonable cost and value of the services rendered or to be rendered by the governor, the secretary of state, the state treasurer, the state auditor, the attorney general, the department of administration, the public examiner, the courts, and the legislature, in connection with the collection of such taxes and fees and the maintenance of the agencies concerned therewith. There is hereby imposed upon the gross receipts beginning July 1, 1939, from (1) all fishing licenses, (2) all hunting licenses, (3) all motor vehicle registration taxes credited to the trunk highway fund, (4) all gasoline taxes credited to the trunk highway fund, a charge of five per cent, such charge to be determined at the end of each quarter on the gross receipts for such period. The proceeds of such charge shall be paid into the state treasury and credited to a special fund to be known as the general administration fund. All moneys in said fund shall be subject to appropriations by the legislature for salaries and other regular maintenance expenses for the offices of the governor, the secretary of state, the state treasurer, the state auditor, the attorney general, the department of administration, the public examiner, the courts, and the legislature. All appropriations made for any of said purposes, if no other special fund be specified therefor, shall first be charged against said general administration fund in the order in which the appropriations were made as long as any moneys are available in said fund, but this shall not preclude the use of other authorized and available funds for such appropriations after the moneys in said general administration fund have been exhausted. In case the charge imposed by this section against any of said kinds of funds or receipts shall be held invalid, it shall not affect any other charge hereunder. In case any such charge shall be held, by any final determi-

nation by competent Federal authority, to conflict with the requirements of any federal grant so as to reduce the amount to which the state would otherwise be entitled thereunder, so much of the proceeds of such charge as may be necessary to comply with the requirements of such grant is hereby re-appropriated to the agency concerned for the same purposes as the funds against which such charge was made. (Act Apr. 22, 1939, c. 431, Art. 2, §20.)

53-18t. Contingent appropriations—Transfer from appropriation determined by legislative emergency committee—Separate fund for governor and attorney general—Salary and wage schedules—Transfer of employees.—(a) There is hereby authorized one general contingent appropriation for each year of the biennium in such amount as the legislature may deem sufficient. Transfers from such appropriation to the appropriations of the various departments and agencies may be made with the approval of the legislative emergency committee herein created, subject to the following provisions:

(1) Transfers may be authorized by the commissioner of administration not exceeding \$2000, but limited to one such transfer for the same purpose for each quarterly period;

(2) Transfers exceeding \$2000 but not exceeding \$5000 shall be approved by the commissioner of administration and the governor;

Transfers exceeding \$5000 shall be made only with a four-fifths vote of the legislative emergency committee hereinafter provided for.

(b) The chairman of the senate committee on taxes and tax laws, the chairman of the senate committee on finance, the chairman of the house committee on taxes and tax laws, the chairman of the house committee on appropriations, and the governor shall constitute a committee to be known as the legislative emergency committee, of which committee the governor shall be chairman. If any of the legislative members elect not to serve on the committee, the house of which they are members, if in session, shall select some other member for such vacancy. If the legislature is not in session, vacancies in the legislative membership of the committee shall be filled by the last speaker of the house or, if he be not available, by the last chairman of the house rules committee, in case of a house vacancy, and by the last senate committee on committees, in case of a senate vacancy. The commissioner of administration shall act as secretary of the committee and shall keep a permanent record and minutes of its proceedings, which shall be made available for examination upon request of any interested citizen. The commissioner of administration shall transmit a report to the next legislature of all actions of said committee. Traveling and subsistence expenses of all legislative members in attending meetings of the committee shall be chargeable against the appropriation of the department of administration. The committee shall meet from time to time upon the call of the governor or upon the call of the secretary at the request of three or more of its members.

(c) The provisions of this act shall not be construed to prevent the appropriation of separate contingent funds to the governor and the attorney general, or to limit the use of said funds as otherwise authorized by law.

(d) The first salary and wage schedules of employees prepared as provided by law after the taking effect of this act shall be submitted to the legislative emergency committee, which may approve or modify such schedules, subject to the limitations of the appropriations therefor. On the approval of the legislative emergency committee, such salary and wage schedules shall be placed in effect at a date fixed by said committee and shall remain in effect until changed as provided by law.

(e) With the approval of the governor and by agreement of the heads of the departments or agen-

cies concerned, any appointive subordinate officer or employe of a department or agency may be employed by or assigned to perform duties under another department or agency. (Act Apr. 22, 1939, c. 431, Art. 2, §21.)

53-18u. Rights and powers transferred to commissioner—Exceptions.—All the rights, powers, and duties now by law imposed upon and vested in the commissioner of administration and finance, the constituent members thereof, the state printing commission, and the state expert printer, except those transferred by this act to the state auditor and the public examiner, are hereby transferred to and imposed upon the commissioner of administration. The commissioner of administration shall appoint a qualified printer, who shall be known as the state printer, and may delegate to him the exercise of the existing rights, powers, and duties heretofore appertaining to the state printing commission and the state expert printer, subject to the control of the commissioner. The commission of administration and finance is hereby abolished. The state printing commission is hereby abolished. The officers of comptroller, commissioner of the budget, commissioner of purchases, and state expert printer are hereby abolished. All the rights, powers and duties of the governor relating to the control, care, operation and maintenance of the State Capitol and grounds and to the appointment of employes therefor are hereby transferred to, vested in, and imposed upon the commissioner of administration. (Act Apr. 22, 1939, c. 431, Art. 2, §22.)

Commissioner of administration is in charge of personnel until a director of civil service has been appointed and has made available list of eligibles for appointment. Op. Atty. Gen. (644), June 13, 1939.

ARTICLE IV—DEPARTMENT OF CONSERVATION

53-19 to 53-21.

Superseded by Laws 1931, c. 186, post, §§53-23½ to 53-23½k, which are in turn superseded by §§53-23½l to 53-23½u.

53-22. Department of conservation—powers, etc.

Superseded in part by Laws 1931, c. 186, post §§53-23½ to 53-23½k, which is superseded in part by Laws 1937, c. 310, post §§53-23½l to 53-23½u.

Tourist bureau is a full-fledged division in conservation department, and director must be appointed by commissioner in like manner as other division directors. Op. Atty. Gen. (983f), Nov. 30, 1937.

53-23. Same—co-operation of employees—rules, etc.

See Laws 1931, c. 186, post, §§53-23½ to 53-23½k.

53-23½. [Superseded.]

Superseded by Act Apr. 21, 1937, c. 310, post §§53-23½l to 53-23½u.

This act is constitutional. State v. Finnegan, 188M54, 246NW521. See Dun. Dig. 8846d.

The Minnesota Tourist Bureau may not impose a fee for services rendered by it. Op. Atty. Gen., Feb. 21, 1935.

Every member of conservation commission is entitled to take part in determining whether commissioner shall be removed for cause and no member may be barred under claim of prejudice. Op. Atty. Gen., Mar. 24, 1933.

Powers of commission defined as including supervision and control over execution of policies. Op. Atty. Gen., Aug. 10, 1933.

Commission may formulate policies relating to personnel and exercise supervisory power over execution of such policies and may make regulations concerning manner of appointment and removals. Op. Atty. Gen. (983 l), Nov. 4, 1935.

Conservation commission has no power to make regulations concerning taking of migratory waterfowl. Id.

53-23½a. Commissioner—powers and duties.—The commissioner of conservation shall have and exercise all of the powers and shall perform all of the duties now by law vested in or imposed upon the commissioner of forestry and fire prevention, the commissioner of game and fish, the commissioner of drainage and waters, the department of drainage and waters, and the department of conservation, as provided by Chapter 426, Laws 1925 [§§53-1 to 53-52], and acts amendatory thereof, or by any other existing

law. Said existing offices and departments, the powers and duties of which are vested in or imposed upon the commissioner by this section, are hereby abolished. (Act Apr. 17, 1931, c. 186, §2.)

Superseded by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 to 53-23 1/2 u.

No public officer may prohibit the landing of aeroplanes in public water within game refuges for the purpose of conservation. Op. Atty. Gen., Sept. 26, 1931.

53-23 1/2 b. Commissioner to be Commissioner of State Lands, etc.—Except as herein otherwise provided, the commissioner of conservation shall also have all of the powers and perform all of the duties now vested in or imposed upon the state auditor, acting as auditor, as commissioner of the state land office, or in any other capacity, ex-officio or otherwise, with respect to the public lands, timber, waters, and minerals of the state. (Act Apr. 17, 1931, c. 186, §3.)

Superseded by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 to 53-23 1/2 u.

Authority to scale state timber is still vested in the surveyor general of logs and lumber, but is now subject to supervision of commissioner of conservation and director of division of forestry instead of state auditor. Op. Atty. Gen., June 27, 1933.

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

53-23 1/2 c. Organization of department.—(a) The department of conservation shall be organized with a division of forestry, a division of drainage and waters, a division of game and fish, and a division of lands and minerals and a division of state parks. Each division shall be under the immediate charge of a director, subject to the general supervision and control of the commissioner. The directors shall be appointed by the commissioner, to serve at his pleasure and shall be chosen with respect to their knowledge, experience and ability.

(b) Each division shall have charge of administering the activities indicated by its title and such other activities as may be assigned by the commissioner, subject to the right of the commissioner to revise and change assignments of any and all activities among the several divisions at any time as he may see fit; provided, that the administration of all state forests and other state lands acquired or set apart for forestry purposes, and the sale of all state timber, whether upon such lands or other state lands, shall be in charge of the division of forestry, and all necessary authority therefor is hereby vested in the director of said division and shall be exercised by him, and in that behalf the director of said division shall have all of the powers and perform all of the duties now vested in or imposed upon the state auditor, acting as auditor, as commissioner of the state land office, or otherwise, under the existing laws, relating to the sale of state timber; provided further, that except as otherwise provided by the state constitution or by law, the director shall classify all the state lands and determine which thereof shall be administered for forestry purposes and which for agricultural or other purposes, subject to change from time to time as the director in his discretion may determine. The director of state parks shall acquire, maintain, and make available to the public, under such rules and regulations as may be established by the conservation commission, suitable places for recreation; to rent, lease or operate public service privileges and facilities in any state park or parks; to take in the name of the state for the benefit of the public, by purchase, condemnation or devise, lands and rights for public parks; preserve and care for such public parks and, on the approval and direction of the conservation commission and upon such terms as it may determine, acquire such other suitable lands or park properties within the state, as may be entrusted, donated, or devised to the state by the United States,

or by counties, cities, towns and villages; corporations or individuals, for the purpose of public recreation, or for the preservation of natural beauty or natural features possessing historic value: Provided, that said director shall not take or contract to take by purchase or condemnation, any land or property for an amount or amounts beyond that which has been approved by the conservation commission.

(c) Before entering upon the duties of his office each director shall take and file an oath of office in the same manner and form as other state officers, and shall give a bond to the state in the sum of \$5,000, conditioned as provided by law for other official bonds.

(d) Each director shall receive an annual salary of \$4,000.

(e) Each director, with the advice and approval of the commissioner, may appoint a deputy to serve at the pleasure of the director, and such deputy may exercise all the powers of the director, whether delegated from the commissioner or otherwise, subject to the direction and control of the director. Each director, subject to the approval of the commissioner, may employ such other assistance as may be necessary to carry on the work of his division, as far as funds may be available therefor.

(f) The compensation of deputy directors and of division employees shall be fixed by the respective directors, within the limitations of available funds, subject to the approval of the commissioner.

(g) In case of a vacancy in the office of commissioner or of any director, his deputy shall become acting incumbent of the office and shall have and exercise all the powers and perform all the duties thereof until a successor is regularly appointed and qualified, except that such acting incumbent shall have no power to appoint another deputy, nor shall any such acting incumbent of the office of commissioner have power to appoint directors or to revise or change the assignments of activities among the divisions of the department. Before taking office every such acting incumbent shall take and file an oath of office as such and give bond to the state in the same amount and upon the same conditions as required for the regular incumbent of the office. While acting as such incumbent, such deputy shall receive the same salary as a regularly appointed incumbent of the office. All other subordinate officers and employees appointed by any commissioner or director whose office has become vacant shall continue to hold their respective positions and to exercise the powers and discharge the duties thereof, notwithstanding such vacancy, until their respective successors are appointed and qualified or until their services are regularly terminated according to law. (Act Apr. 17, 1931, c. 186, §4.)

If director of division of parks of department of conservation desires to operate concession in interstate park for sale of non-intoxicating malt liquor, state must have a license to sell, and village of Taylors Falls has right to refuse license. Op. Atty. Gen. (217b-10), June 28, 1937.

Superseded in part by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 to 53-23 1/2 u.

Classification of state land as under authority of conservation department—public parks. Op. Atty. Gen. (330c-1), June 9, 1936.

Counties have no authority to permit cutting of timber upon tax delinquent lands within boundaries of state forests or game refuges, even though contract is let for purpose of obtaining money for relief of poor. Op. Atty. Gen. (27g), Dec. 10, 1936.

(h) Division of game and fish has no authority to clean out and deepen an old county ditch, though improvement is sought by sportsmen to furnish more ready flow of water from one lake to another. Op. Atty. Gen., Apr. 10, 1933.

(i) If raising water level in a lake will result in making a state park bordering on such lake a suitable place for recreation, conservation department may take steps to assist in making improvements and may contract with federal government to maintain improvements. Op. Atty. Gen. (330b-12), July 11, 1936.

53-23 1/2 d. Commissioner may delegate powers.—

(a) The commissioner of conservation may by written

order filed in his office delegate to the director of any division of the department any of the powers or duties vested in or imposed upon the commissioner by this act, upon such conditions as he may prescribe, and subject to modification or revocation at his pleasure. Such delegated powers and duties may be exercised or performed by the respective directors in their own names or in the name of the commissioner, as the commissioner may direct. (Act Apr. 17, 1931, c. 186, §5.)

Superseded in part by Act Apr. 21, 1937, c. 310, post, §§53-23 1/2 l to 53-23 1/2 u.

53-23 1/2 e. Department to have seals.—The department of conservation and the several divisions thereof shall have seals. The seal of the department shall have thereon the words, "State of Minnesota, Department of Conservation," with such suitable symbol or device as the first commissioner serving under this act shall prescribe, and may be used to authenticate the official acts of the commissioner when performed by him or his deputy. The seal of each division shall be in like form, with the addition of the title of the division, and may be used to authenticate the official acts of the director of the division, whether acting in his own name or in the name of the commissioner, and whether performed by the director or his deputy. Provided, that the omission or absence of a seal shall not effect the validity or force of any act done or instrument executed by the commissioner or by any director. (Act Apr. 17, 1931, c. 186, §6.)

Superseded in part by Act Apr. 21, 1937, c. 310, post, §§53-23 1/2 l to 53-23 1/2 u.

53-23 1/2 f. To be under provisions of existing law.—So far as not inconsistent herewith, all matters governed by this act shall be subject to the provisions of Chapter 426, Laws 1925 [§§53-1 to 53-52], and acts amendatory thereof, so far as applicable; and provided further, that the compensation of all officers and employees under this act shall be payable in the same manner as the compensation of other state officers and employees (Act Apr. 17, 1931, c. 186, §7.)

Superseded in part by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 l to 53-23 1/2 u.

53-23 1/2 g. Orders and documents to be filed.—Except as otherwise prescribed or required by law, the originals of all official orders and other official documents issued or executed by the commissioner of conservation or by the directors of the several divisions of said department shall be filed in the offices of the respective officers issuing or executing the same. The commissioner and the several directors may also keep such records of their official acts and other activities of their respective offices as they deem necessary. Such original orders, documents, and records shall have like force and effect as prima facie evidence in all cases as original records and documents made by other public officers in the performance of their official duties, and certified copies thereof made in the manner provided by law shall have like force and effect as certified copies of records or documents required or permitted to be kept by other public officers. (Act Apr. 17, 1931, c. 186, §8.)

Superseded in part by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 l to 53-23 1/2 u.

Op. Atty. Gen. (980b-31), May 13, 1935; note under 53-23 1/2 b.

53-23 1/2 h. Appropriations.—All existing appropriations for any activities or purposes which by this act are placed in charge of the department of conservation or any division thereof are hereby transferred to said department or to the respective divisions having charge of such purposes—or activities, as the case may be, to be used for the same purposes as provided by the laws whereby such appropriations were made and in accordance with the provisions of said laws so far as not inconsistent herewith; provided, that the game and fish fund and all other funds now by law appropriated for any activity or purpose under the commissioner of game and fish are hereby trans-

ferred to the director of game and fish under this act, and said respective funds shall be continued and all moneys hereafter received for the purposes thereof shall continue to be placed therein as now provided by the laws relating thereto, and all of said funds are hereby appropriated and shall continue to be appropriated to said director of game and fish for the same purposes and under the same conditions as now provided by the laws relating thereto under the commissioner of game and fish. (Act Apr. 17, 1931, c. 186, §9.)

Superseded in part by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 l to 53-23 1/2 u.

State auditor may not transfer appropriations to department of conservation, such appropriations being made to state auditor for support of activities now within jurisdiction of department of conservation. Op. Atty. Gen., Feb. 10, 1933.

The Minnesota Tourist Bureau in the conservation department may not accept contributions to augment appropriations for magazine and newspaper advertising of state's natural resources. Op. Atty. Gen., Feb. 21, 1933.

53-23 1/2 i. [Superseded.]

Superseded by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 l to 53-23 1/2 u.

53-23 1/2 j. [Superseded.]

Superseded by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 l to 53-23 1/2 u.

Budget Commissioners may make available to the Conservation Commission from the salary and administrative appropriations of the various departments, an amount which would be the fair pro rata share of supervisory expense of the conservation commission. Op. Atty. Gen., July 24, 1931.

53-23 1/2 k. [Superseded.]

Superseded by Act Apr. 21, 1937, c. 310, post §§53-23 1/2 l to 53-23 1/2 u.

Laws 1931, c. 263, post, §§6513-1 to 6513-8, places the state forests under the control of the commissioner of forestry and fire prevention.

53-23 1/2 l. Department of conservation organized.—

(a) There is hereby created a Department of Conservation to be organized and administered as hereinafter provided under the supervision and control of a Commissioner of Conservation.

(b) The Commissioner shall be appointed by the Governor, by and with the consent of the Senate, for a term of six years and at an annual salary of not to exceed \$6,000.00 per year.

(c) The Conservation Commissioner shall be a trained executive with proven experience, education and skill in conservation work. The Commissioner shall be subject to removal by the Governor only for malfeasance or misfeasance in office and shall first be entitled to written notice of the charges against him and allowed a reasonable opportunity to be heard thereon.

(d) Before entering upon the duties of his office, the Commissioner shall take and file an oath of office in the same manner and form as other state officials, and shall give a surety bond to the State in the sum of \$25,000.00.

(e) The Commissioner may appoint a deputy, to serve at his pleasure, who may exercise all the powers of the Commissioner, subject to his direction and control. Such deputy shall receive the same salary as hereinafter prescribed for Directors of Divisions. The Commissioner may employ such other assistants as may be necessary to carry on the work of the Department, and may fix the compensation of the persons employed as far as funds may be available therefor. (Apr. 21, 1937, c. 310, §1; Apr. 22, 1939, c. 441, §40.)

Archaeologic and paleontological features of state under control of department of conservation. Laws 1939, c. 207.

Commissioner may require medical examination for game wardens under merit system. Op. Atty. Gen. (2081), Feb. 11, 1938.

(e). Orders establishing merit system are not required to be published in a newspaper. Op. Atty. Gen., (9831), Nov. 28, 1938.

53-23 1/2 m. Commissioner of Conservation—duties and powers.—(a) The Commissioner of Conservation shall have and exercise all of the powers and shall per-

form all of the duties now by law vested in or imposed upon the Conservation Commission, as created under Chapter 186, Session Laws of 1931, and acts amendatory thereof, or by any other existing law. Said existing offices and departments, the powers and duties of which are vested in or imposed upon the Commissioner by this section are hereby abolished.

(b) The Conservation Commissioner shall be the administrative and executive head of the Department of Conservation and shall be responsible for the development of its program and the execution of its policies. He shall be responsible for a proper accounting subdivision within the Department of Conservation and shall be responsible for all receipts and disbursements of the Department and its subdivisions. On the first of each calendar year he shall make an annual report of all departmental activities to the Governor. The financial records of his office shall be open, at all reasonable times, to the State Auditor and to the State Comptroller, and he shall biennially submit a proposed budget to the State Budget Commissioner. (Apr. 21, 1937, c. 310, §2.)

53-23 ½ n. Divisions of department.—(a) The Department of Conservation shall be organized with a Division of Forestry, a Division of Drainage and Waters, a Division of Game and Fish, a Division of Lands and Minerals, and a Division of State Parks. Each Division shall be under the immediate charge of a Director, subject to the general supervision and control of the Conservation Commissioner. The Directors shall be appointed by the Commissioner to serve at his pleasure.

(b) Every such Division shall have charge of administering the activities indicated by its title, together with such other activities as may be assigned by the Commissioner, subject to the right of the Commissioner to revise and change assignments of any and all activities among the several Divisions at any time as he may see fit; provided that in general the Division activities shall be as follows:

1. **DIVISION OF FORESTRY** . . . shall have the administration of all State Forests and other State lands acquired or set apart for forest purposes, including Fire Prevention, appraisal and sale of State timber as hereinafter provided.

2. **DRAINAGE & WATERS** . . . shall have administration over State waters and water power, including regulation of drainage, elimination of stream and lake pollution, and the establishment and maintenance of minimum lake levels and water storage basins, such minimum levels, however, at no time to be lower than the natural level in its original state of nature.

3. **DIVISION OF GAME & FISH** . . . shall have administration over game and fish, its propagation and protection, and the maintenance and development of public shooting grounds and game refuges.

4. **DIVISION OF LANDS & MINERALS** . . . shall have administrative authority over all State lands and minerals, the appraisal thereof, together with the sale or lease thereof as hereinafter provided.

5. **DIVISION OF PARKS** . . . shall have administration of existing or acquired State Parks and the Director of such Division shall have the power to acquire, maintain and make available to the public under such rules and regulations as may be established by the Conservation Commissioner, suitable places for public recreation; to rent, lease or operate public service privileges and facilities in any State Park or Parks; to take, in the name of the State for the benefit of the public, by purchase, condemnation, or devise, lands and rights for public parks; to preserve and care for such public parks and by direction of the Conservation Commissioner and upon such terms as he may determine, acquire such other suitable lands or park property within the State as may be entrusted, donated or devised to the State by the United States, or by counties, cities, towns and villages, corporations or individuals for the purpose of public

recreation, or for the preservation of natural beauty or natural features possessing historic value; provided that said Director shall not take or contract to take by purchase or condemnation any land or property for an amount, or amounts, beyond that which has been approved by the Conservation Commissioner.

6. Timber sales shall be had only after appraisal of the timber is made by the Division of Forestry and approved by the Conservation Commissioner. Land sales shall be had only after appraisal by the Division of Lands and Minerals, and the approval of the Conservation Commissioner. The actual sale of both land and timber as provided herein shall be held by the Conservation Commissioner in the County Seats of the Counties in which the land or timber is situated and at such times as recommended by the Commissioner of Conservation.

7. The Commissioner of Conservation shall classify all the State lands and determine which thereof shall be administered for forestry purposes and which for agricultural or other purposes.

(c) Every Division Director shall be a person who, by education, training, and experience is especially qualified to administer the duties of his individual Division.

(d) Before entering upon the duties of his office, every Director shall take and file an oath of office in the same manner and form as other State officers, and shall give a surety bond to the State in the sum of \$5,000.00, excepting that the bonds for the Directors of Forestry and of Game and Fish shall be each and separately \$15,000.00

(e) Every Director shall receive an annual salary of not more than \$4,000.00.

(f) Every Director, with the advice and approval of the Conservation Commissioner, may appoint a deputy to serve at the pleasure of the Director, and such deputy may exercise all the powers of the Director, whether delegated from the Commissioner or otherwise, subject to the direction and control of the Director. Every Director, subject to the approval of the Commissioner, may employ such other assistants as may be necessary to carry on the work of his Division, as far as funds may be available therefor.

(g) The compensation of deputy directors and of division employees shall be fixed by the respective directors, within the limitation of available funds, subject to the approval of the Commissioner.

(h) In case of a vacancy in the office of Commissioner, or any Director, his deputy shall serve in his place and exercise all the powers and perform all the duties thereof until a successor is regularly appointed and qualified, excepting that such acting commissioner, or director, shall have no power to appoint another deputy nor to appoint any director nor to revise or change the assignments of activities among the several divisions of the Department. The salary of such acting incumbent shall be the same as that drawn by the Commissioner or Director whose place he temporarily takes. (Apr. 21, 1937, c. 310, §3.)

Tourist bureau is a full-fledged division in conservation department, and director must be appointed by commissioner in like manner as other division directors. Op. Atty. Gen. (9831), Nov. 30, 1937.

Acting commissioner of conservation appointed by governor to serve pending suspension of regular commissioner during investigation of charges against him has authority to remove from office director of division of game and fish. Op. Atty. Gen. (9837), June 15, 1939.

(b) (1). Division of Forestry may destroy old records. Laws 1939, c. 41, app. Mar. 4.

53-23 ½ o. Delegation of powers.—The Commissioner of Conservation may, by written order filed in his office, delegate to the Director of any Division of the Department any of the powers or duties vested in or imposed upon the Commissioner by this act. Such delegated powers and duties may be exercised or performed by the respective Directors in their own names, or in the name of the Commissioner, as the Commissioner may direct. (Apr. 21, 1937, c. 310, §4.)

Commissioner of conservation has authority to delegate some of the duties and functions imposed upon him by Laws 1937, c. 468 (§§6602-51 to 6602-69). Op. Atty. Gen. (983d), Aug. 3, 1938.

53-23 1/2 p. Seals, badges and uniforms.—(a) The Department of Conservation and the several Divisions thereof shall have seals. The seal of the Department shall have thereon the words "STATE OF MINNESOTA, Department of Conservation," with such suitable symbol or device as has been established under the provisions of Chapter 186, Session Laws of 1931 [§§53-23 1/2 to 53-23 1/2 k], and such seal or seals may be used to authenticate the official acts of the Commissioner when performed by him or his deputy. The seal of every Division shall be in like form, with the addition of the title of the Division, and may be used to authenticate the official acts of the Director of the Division; provided that the omission or absence of the seal shall not affect the validity or force of any act done or instrument executed by the Commissioner or by any Director.

(b) The Conservation Commissioner shall provide for the issuance of such badges and uniforms, at department expense, and regulate the use thereof, as may be necessary and suitable for the identification of employees under the separate Divisions of the Department of Conservation. (Apr. 21, 1937, c. 310, §5.)

Department may provide for purchase of uniforms by increasing salary of game wardens. Op. Atty. Gen., (2081), Dec. 2, 1938.

53-23 1/2 q. Order, etc., to be filed with commissioner.—Except as otherwise prescribed or required by law, the original of all official orders and other official documents issued or executed by the Commissioner of Conservation, or by the Directors of the several Divisions of the Conservation Department, shall be filed in the offices of the Department and shall be the property of the State of Minnesota. Such original orders, documents, and records shall have like force and effect as prima facie evidence in all cases as original records and documents made by other public officers in the performance of their official duties. (Apr. 21, 1937, c. 310, §6.)

Orders establishing merit system are not required to be published in a newspaper. Op. Atty. Gen., (983f), Nov. 28, 1938.

53-23 1/2 r. Appropriations transferred.—All existing appropriations for any activity or purpose of the Department of Conservation, or of any Division thereof, are hereby transferred to said Conservation Department and to its respective Divisions, to be used for the purposes for which such appropriations were originally made. (Apr. 21, 1937, c. 310, §7.)

53-23 1/2 s. Provisions severable.—The provisions of this act shall be separable and if any provision hereof shall be declared invalid it shall not invalidate the transfer of any other power, duty, or right hereby established, or any other provision hereof. (Apr. 21, 1937, c. 310, §8.)

53-23 1/2 t. Inconsistent Acts repealed.—All acts, or parts of acts, inconsistent herewith are hereby superseded, modified, or amended so far as may be necessary to give full force and effect to the provisions of this act, provided, however, that nothing herein shall operate to exclude the application of Mason's Minnesota Statutes of 1927, Sections 4368 and 4369, and acts amendatory thereto, known as the Veterans' Preference Law. (Apr. 21, 1937, c. 310, §9.)

Veteran must be appointed if he possesses required degree of fitness, even though his non-veteran competitor has a higher rating or grade. Op. Atty. Gen. (85e), Aug. 4, 1937.

Seniority rule applies to qualified non-veteran employees and their positions may not be vacated for purpose of permitting initial appointment of qualified soldier applicants, who are not in employ of state, under merit system proposed to be established. Id.

53-23 1/2 u. Effective July 1, 1937.—This act shall take effect and be in force from and after its passage with respect to the making of all appointments herein provided for, but with respect to the taking of office

by the appointees and of all other matters, it shall take effect and be in force from and after July 1, 1937. (Apr. 21, 1937, c. 310, §10.)

53-23 1/2 v. Certain records may be destroyed.—That the director of the division of forestry be and he hereby is authorized with the consent and approval of the commissioner of conservation and the Department of Administration and Finance, to divest his files of records and other papers and documents in his office at the time and under the conditions herein specified:

1. Claims and vouchers paid by the division of forestry more than fifteen years prior to such destruction;

2. Miscellaneous documents, papers and correspondence bearing dates more than fifteen years thereto.

Provided, however, that said director, instead of personally destroying any such claims, vouchers, miscellaneous papers and correspondence or any other documents, instruments or papers which may be of historical value, shall forward the same to the Minnesota Historical Society, St. Paul, Minnesota, and such society is authorized to permanently preserve any matter found therein deemed by it to be of historical value and to destroy all other documents, papers and matters so received by it. (Act Mar. 4, 1939, c. 41.)

ARTICLE V.—DEPARTMENT OF DRAINAGE AND WATERS

53-24. Department of drainage and waters—commissioner, etc.

Superseded by Laws 1931, c. 186, §§53-23 1/2 to 53-23 1/2 k. Laws 1931, c. 186 superseded by Act Apr. 21, 1937, c. 310, ante, §§53-23 1/2 l to 53-23 1/2 u.

ARTICLE VI.—DEPARTMENT OF DAIRY AND FOOD

53-25. Department of Dairy and Food, etc.

See §53-27 1/2 combining the Departments of Agriculture and of Dairy and Food.

ARTICLE VII.—DEPARTMENT OF AGRICULTURE

53-26. Department of Agriculture, etc.

Department of Dairy and Food and Department of Agriculture are consolidated. See Laws 1929, c. 387, ante, §53-27 1/2.

Office of Chief Oil Inspector is transferred from Director of Standards to Commissioner of Agriculture, who may also appoint a Deputy Chief Oil Inspector. See Laws 1929, c. 403, post, §53-27 1/2 a. See also Laws 1929, c. 425, post, §§3787-1 to 3787-21.

53-27. Commissioner of Agriculture, etc.

Department of Dairy and Food and Department of Agriculture are consolidated. See Laws 1929, c. 387, post, §53-27 1/2 to 53-27 1/2 b.

53-27 1/2. Department of agriculture and department of dairy and food consolidated.—The departments of agriculture and dairy and food are hereby consolidated into a single department to be known as the department of agriculture and dairy and food. The department shall be under the supervision and control of a single commissioner appointed in the manner, for the term, and with the compensation now provided by law for the commissioner of agriculture, and all rights, powers and duties now vested in and imposed by law upon the commissioner of agriculture and all duties imposed by law upon the commissioner of dairy and food are hereby transferred to and vested in such single commissioner under the title of Commissioner of Agriculture and Dairy and Food, subject, however, to the provisions of Chapter 426, Laws 1925 [§§53-1 to 53-52]. (Act Apr. 26, 1929, c. 387.)

Commissioner of agriculture has charge of removal of oil inspectors, and they are subject to his directions and orders. Op. Atty. Gen. (325a-10), Dec. 28, 1934.

53-27 1/2 a. Oil inspection department transferred to department of agriculture.—The office of the Chief Oil Inspector, as created by Article 12, Section 2, Chapter 426, General Laws 1925 [§53-38], is hereby transferred to the Department of Agriculture, and all the powers in relation to the Chief Oil Inspector

conferred upon the Director of Standards are hereby transferred to and conferred upon the Commissioner of Agriculture. (Act Apr. 26, 1929, c. 403, §1.)

53-27 1/2 b. Commissioner of agriculture to appoint deputy chief oil inspector.—The Commissioner of Agriculture may appoint a Deputy Chief Oil Inspector and prescribe his powers and duties. (Act Apr. 26, 1929, c. 403, §2.)

ARTICLE VIII.—DEPARTMENT OF COMMERCE

53-28. Department of Commerce—Commission—Commissioner of banks—etc.

Banking division of department of commerce created pursuant to Laws 1909, ch. 201, as amended by Laws 1925, ch. 426, art. 8, is a department of state government within meaning of §9677-1, and legislature contemplated administration of amount of fidelity bond for those for whom legislature has not fixed amount. Op. Atty. Gen. (980a-8), May 5, 1937.

Where a variable clause appears in certificate of incorporation, commissioner of banks may insist on adoption of by-law fixing definite number of directors. Op. Atty. Gen. (29a-13), June 2, 1937.

53-29. Commissioners—Appointment, etc.

Act creating securities commission. Laws 1931, c. 382, post, §§2996-29 to 3996-35.

It is not necessary that a formal commission of appointment be issued to acting commissioner of bank. Op. Atty. Gen. (29a-6), July 14, 1939.

53-30. Commissioners—Powers and duties enumerated—Colonization commission.

Op. Atty. Gen. (249b-16), June 25, 1934; note under §3340.

Where corporation amended its articles of incorporation so as to reduce par value of stock from \$100 per share to \$10 per share, and issued to its stockholders certificates for 10 shares of new stock in place of each share of \$100 par value of old stock, this was not a sale of shares of new stock and did not come within law requiring registration of stock. Mertz v. H., 194M636, 261 NW472. See Dun. Dig. 1125a.

State commerce commission created pursuant to this act, and not commission under §3340, has jurisdiction of consolidation and re-insurance of domestic insurance companies. Op. Atty. Gen. (249b-16), Apr. 6, 1938.

ARTICLE IX.—DEPARTMENT OF HEALTH

53-34. Same—Powers and duties—Hotel inspectors and agents—Inspections and reports.

Director of division of hotel inspection of Department of Health has right to issue order that all persons handling food and catering to public in a bakery and cafe keep his or her person clean and sanitary. Op. Atty. Gen. (238j), July 10, 1936.

ARTICLE XI.—DEPARTMENT OF HIGHWAYS

53-36. Department of Highways.

Laws 1925, c. 426 (§§53-1 et seq.) modifies and amends the prior Highway Act to the extent of placing the making of contracts for constructing state highways under the control of the Commission of Administration and Finance. 175M583, 222NW285.

Required notice before letting of contract for trunk highway construction work and before making purchases of materials, machinery, and supplies, is governed by §2554(6) rather than §53-10. Op. Atty. Gen., (707a-13), Aug. 31, 1938.

ARTICLE XII.—DEPARTMENT OF LABOR AND INDUSTRY

53-38. State industrial commission—Division of standards—etc.

Editorial note.—The office of chief oil inspector is abolished and his powers and duties transferred to the commissioner of taxation by §2362-4.

See §53-27 1/2 a, 53-27 1/2 b, transferring the office of Chief Oil Inspector to the Department of Agriculture.

Where lands are purchased by commissioner of highways for a use other than trunk highway purposes, state auditor has no right or authority to issue a warrant on trunk highway fund in payment thereof. State v. District Court, 196M44, 264NW227. See Dun. Dig. 8849.

ARTICLE XIII.—DEPARTMENT OF PUBLIC INSTITUTIONS

53-39. Department of Public Institutions—State Board of Control—Advisory commission of state sanatorium for consumptives abolished.

Editorial note.—Functions of society are retransferred to the society by Act Apr. 22, 1939, c. 431, art. 7, §7, post, §3199-107.

The text of the latter act erroneously refers to the subject matter of this section as "section 53-59."

ARTICLE XV.—DEPARTMENT OF RURAL CREDIT

53-41. Department of rural credits, etc.

Act authorizing Department of Rural Credits to insure farm property acquired through foreclosures in certain mutual and township insurance companies. Laws 1931 c. 245, post, §6057-2.

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.

Employees of department of rural credit cannot be garnished. Op. Atty. Gen. (3431), Nov. 25, 1936.

ARTICLE XV(A).—DEPARTMENT OF CIVIL SERVICE

53-41a. Personnel of department.—The Department of Civil Service shall consist of the civil service board and director of the state civil service and all officers and employees appointed by the director pursuant to law. ('25, c. 426, §41a; added Apr. 22, 1939, c. 441, §2.)

Editorial note.—This section is not mentioned in the enumeration of amendments set out in the title of Act Apr. 22, 1939, c. 441, cited.

ARTICLE XV(B).—DEPARTMENT OF PUBLIC EXAMINER

Editorial note.—This department is created by §53-1a, ante. See, also, §§53-1b to 53-1s, ante, and 3286-8 to 3286-16, post.

ARTICLE XV(C).—DEPARTMENT OF SOCIAL SECURITY

Editorial note.—This department is created by §53-1a, ante. See, also, §§3199-101 to 3199-107, post.

ARTICLE XVI.—LIVE STOCK SANITARY BOARD

See §§5395 to 5460, post.

ARTICLE XVII.—STATE AGRICULTURAL SOCIETY

See §7860 et seq., post.

ARTICLE XVIII.—ORGANIZATIONS ABOLISHED; OATH OF OFFICE

53-44. Office of public examiner abolished—Powers, etc.

See Art. XV(B) of this chapter and note thereunder. **Editorial note.**—By Act Apr. 22, 1939, c. 431, Art. 1, §1, ante §53-1a, the department of public examiner is created, and by Art. IV of the same act (§§3286-8 to 3286-16) the powers and duties of the public examiner, the head of the new department, are set forth.

The appointment of an assistant public examiner is at the pleasure of the comptroller, and an honorably discharged soldier was not entitled to a preference. State v. Rines, 185M49, 239NW670. See Dun. Dig. 7986.

A county may not hire a private auditor to investigate ditch account. Op. Atty. Gen., Apr. 13, 1933.

A village may not employ a private auditor to examine alleged shortage in office of treasurer. Id.

53-45. Board of Visitors, etc., abolished.—The soldiers' bonus board, the Minnesota land and lakes attraction board, the land improvement board, the state forestry board, the state board of immigration, the horse-shoers' board of examiners, the statute compilation commission, the farmers institute, the colonization commission, the department of drainage and waters, and the offices of the state game and fish commissioners, state forester, commissioner of immigration, commissioner of drainage and waters, and the offices of secretary of the state board of pardons and secretary of the state board of investment are hereby abolished. ('25, c. 426, Art. XVIII, §2; Apr. 20, 1929, c. 272.)

Laws 1917, c. 182 (§§4484, 4485), is repealed by Laws 1929, c. 273.

Laws 1929, c. 268, repeals Laws 1907, c. 441, relating to the State Board of Visitors.

53-46. Oath of office and bonds of officers enumerated in law.

Since the office of public examiner was abolished by §53-44, no part of §3275 is longer in effect, and amount of bond of comptroller is to be fixed by commission of administration and finance pursuant to §53-46. Op. Atty. Gen. (980a-8), May 6, 1937.

**ARTICLE XIX.—RECORDS AND FUNDS
OF VARIOUS STATE AGENCIES**

53-47. Registration records of certain examining boards, etc.

Minnesota Historical Society may use certain funds. Laws 1933, c. 31.

Fees collected by State Board of Accountancy are state funds from which authorized expenditures of the board may be made. Op. Atty. Gen. (8821-3), Dec. 10, 1934.

Receipts of state board of electricity should be deposited with state treasurer, from which disbursements must be made in payment of members of board and employees. Op. Atty. Gen. (290u), May 14, 1937.

ARTICLE XX.—GENERAL PROVISIONS

53-48. Terms of office of officers, etc.

See §§53-1b to 53-1s, classified to Art. I of this chapter as seemingly limited to the particular departments created by §53-1a.

The commission may discharge employees of the Department of Labor and Industry without cause. Op. Atty. Gen., July 3, 1931.

Industrial commission has power without restriction or restraint to appoint and remove certain designated employees or officials. Op. Atty. Gen., May 10, 1933.

Removal from public office in Minnesota. 20MinnLaw Rev721.

Governor's constitutional powers of appointment and removal. 22MinnLawRev451.

ARTICLE XXI

**MINNESOTA COMMISSION ON INTERSTATE
COOPERATION**

53-61. Senate committee on interstate cooperation established.—There is hereby established a standing committee of the Senate of this state, to be officially known as the Senate Committee on Inter-state Cooperation, and to consist of five senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairman of other standing committees of the Senate. In addition to the regular members, the president of the Senate shall be ex-officio an honorary non-voting member of this committee. (Apr. 21, 1937, c. 315, §1.)

53-62. House committee on interstate cooperation established.—There is hereby established a similar standing committee of the House of Representatives of this state, to be officially known as the House Committee on Inter-state Cooperation, and to consist of five members of the House of Representatives. The members and the chairman of this committee shall be designated in the manner as is customary in the case of the members and chairmen of other standing committees of the House of Representatives. In addition to the regular members, the Speaker of the House of Representatives shall be ex-officio an honorary non-voting member of this committee. (Apr. 21, 1937, c. 315, §2.)

53-63. Governor's committee on interstate cooperation established.—There is hereby established a committee of administrative officials and employees of this state to be officially known as the Governor's Committee on Inter-state Cooperation, and to consist of five members. Its members shall be: the Budget Director or the corresponding official of this state, ex-officio; the Attorney General, ex-officio; the chief of the staff of the State Planning Board or the corresponding official of this state, ex-officio; and two other administrative officials or employees to be designated by the Governor. If there is uncertainty as to the identity of any of the ex-officio members of this committee, the Governor shall determine the question, and his determination and designation shall be conclusive. The Governor shall appoint one of the five members of this Committee as its chairman. In addition to the regular members, the Governor shall be ex-officio an honorary non-voting member of this committee. (Apr. 21, 1937, c. 315, §3.)

53-64. Minnesota commission on interstate cooperation.—There is hereby established the Minnesota Commission on Interstate Cooperation. This Commission

shall be composed of fifteen regular members, namely:

The five members of the Senate Committee on Inter-state Cooperation,

The five members of the House Committee on Inter-state Cooperation, and

The five members of the Governor's Committee on Inter-state Cooperation.

The Governor, the President of the Senate and the Speaker of the House of Representatives shall be ex-officio honorary non-voting members of this Commission. The Chairman of the Governor's Committee on Inter-state Cooperation shall be ex-officio Chairman of this Commission. (Apr. 21, 1937, c. 315, §4.)

53-65. Senate council and House council of American legislators.—The said standing Committee of the Senate and the said standing Committee of the House of Representatives shall function during the regular sessions of the legislature and also during the interim periods between such sessions during the term of their respective offices and until their successors are designated by the President of the Senate and the Speaker of the House, respectively; and they shall respectively constitute for this state the Senate Council and House Council of the American Legislators' Association. The incumbency of each administrative member of this Commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed. (Apr. 21, 1937, c. 315, §5.)

53-66. Functions of committees.—It shall be the function of this Commission:

(1) To carry forward the participation of this state as a member of the Council of State Governments.

(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other States, of the Federal Government, and of local units of government.

(3) To endeavor to advance cooperation between this State and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts,

(b) The enactment of uniform or reciprocal statutes,

(c) The adoption of uniform or reciprocal administrative rules and regulations,

(d) The informal cooperation of governmental offices with one another,

(e) The personal cooperation of governmental officials and employees with one another, individually,

(f) The interchange and clearance of research and information and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this Commission, enable this State to do its part, or more than its part in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose. (Apr. 21, 1937, c. 315, §6.)

53-67. Powers and duties.—Commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure interstate harmony, and may perform other functions for the Commission in obedience to its decisions. Subject to the approval of the Commission, the member or members of each such delegation or committee shall be appointed by the Chairman of the Commission. State officials or employees who are not members of the Commission on Inter-state Cooperation may be appointed as members of any such delegation or committee, but private citizens holding no govern-

mental position in this state shall not be eligible. The Commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The Commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards. (Apr. 21, 1937, c. 315, §7.)

53-68. Shall report to Governor.—The Commission shall report to the Governor and to the Legislature within fifteen days after the convening of each regular legislative session, and as such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this act. The Commission may employ a secretary and a stenographer, it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the Council of State Governments, participate with other states in maintaining the said Council's district and central secretariats, and its other governmental services. (Apr. 21, 1937, c. 315, §8.)

53-69. Informal titles.—The Committees and the Commission established by this Act shall be informally known, respectively, as the Senate Cooperation Committee, the House Cooperation Committee, the Governor's Cooperation Committee and the Minnesota Cooperation Commission. (Apr. 21, 1937, c. 315, §9.)

53-70. To be joint governmental agencies.—The Council of State Governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it. (Apr. 21, 1937, c. 315, §10.)

53-71. Secretary of State to inform other officials of Act.—The Secretary of State shall forthwith communicate the text of this measure to the Governor, to the Senate and to the House of Representatives, of each of the other states of the Union, and shall advise each legislature which has not already done so that it is hereby memorialized to enact a law similar to this measure, thus establishing a similar commission, and thus joining with this State in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict. (Apr. 21, 1937, c. 315, §11.)

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

53-73. Acts severable.—If any clause or other portion of this Act is held to be invalid, that decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that all such remaining portions of this Act are severable, and that it would have enacted such remaining portions if the invalid portions had not been included in this Act. (Apr. 21, 1937, c. 315, §13.)

COMPACT WITH SOUTH DAKOTA AS TO WATER LEVELS

53-81. South Dakota, Minnesota boundary waters commission created.—There is hereby created an Inter-State Commission to be known as the South Dakota-Minnesota Boundary Waters Commission, which shall consist of the Director of the Game and Fish Commission of South Dakota and the Commissioner of Conservation of Minnesota, or their legal successors, and an engineer appointed by the mutual consent of the Governors of South Dakota and Minne-

sota for a period of four years. (Act Mar. 15, 1939, c. 60, §1.)

53-82. Powers and duties of Commission.—Said Commission shall have power and authority:

(a) To investigate and determine the most desirable and beneficial levels of boundary waters artificially controlled and to prescribe a plan for controlling and regulating said levels.

(b) To prescribe and promulgate rules and procedure for the conduct of its investigations, surveys and hearings.

(c) To make such orders as may be necessary to further the purposes of this act.

(d) To hold hearings and take such evidence as may be presented either after complaint or upon its own initiative as to the desirability of any water level and plan of regulation and to make such orders concerning the same as in the opinion of the Commission is for the best interests of the public. (Act Mar. 15, 1939, c. 60, §2.)

53-83. Hearings—Publications.—Said hearings shall be held at such time and place as may be designated by the Commission, in either state in any county affected by the subject matter. At least two weeks notice of said hearings shall be published in a legal newspaper in each county of whichever state may be affected by the subject matter of said hearing by publication once each week for two consecutive weeks and notice by mail shall be sent to all property owners in any way affected whose addresses are known or obtainable. All final orders of the Commission shall be published once each week for two consecutive weeks in a legal newspaper in each county of whichever state may be affected thereby. (Act Mar. 15, 1939, c. 60, §3.)

53-84. Organization.—The Commission shall meet and organize within 30 days after the effective date of this compact. (Act Mar. 15, 1939, c. 60, §4.)

53-85. Not to incur obligations.—The Commission shall not incur any obligation for expenses except after an adequate legislative appropriation. (Act Mar. 15, 1939, c. 60, §5.)

53-86. Commission may secure injunctions.—The Commission may, upon verified petition, apply to the District Court or circuit court in either state, as the case may be, in any county affected by the subject matter, for an injunction restraining the violation of any order, notice, rule or regulation made by it pursuant to the provisions of this act. The Attorneys General of both states shall act as legal advisors to the Commission. (Act Mar. 15, 1939, c. 60, §6.)

53-87. Act to become effective—When.—This act shall become effective immediately after the passage of an act in substantial conformance herewith by the legislature of South Dakota. (Act Mar. 15, 1939, c. 60, §7.)

53-88. Appeals to District Court.—Any party aggrieved by any order or determination of the Commission establishing or regulating water levels as above provided for may appeal therefrom to the district court or circuit court, as the case may be, of any county in either state in which the subject matter of the order of determination is wholly or partially located or to the district court of the county in either state where the capitol thereof is located. Notice of appeal must be served upon the Commission or any member thereof within 30 days from the last date of publication of the order appealed from. Appeals may likewise be taken from the judgments of the District Court to the Supreme Court of its respective State. (Act Mar. 15, 1939, c. 60, §8.)