

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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CHAPTER 46

Notaries Public

6938. Term—Bond—Oath.

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

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

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

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

6939. Seal—Register.

A notary's certificate of acknowledgment without the seal is a nullity, and filing of chattel mortgage in office of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in good faith. *Hartkopf v. F.*, 191M595, 256NW169. See *Dun. Dig.* 71, 1445.

Great seal of Minnesota is not necessary on tax deed. *Op. Atty. Gen.* (410), Sept. 1, 1939.

Certificate of acknowledgment without official seal is a nullity. *Op. Atty. Gen.* (320f), Sept. 8, 1939.

6940. Powers.

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

Where notary of one county takes acknowledgment in another county the venue of the certificate should be entitled in the county where taken, and the recital and designation should be of the county for which he holds the commission. *Op. Atty. Gen.*, Feb. 10, 1933.

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

An acknowledgment on a tax deed taken in Ramsey County before a Notary Public who resides in Hennepin County is valid. *Op. Atty. Gen.* (410), Sept. 1, 1939.

6942. Record of commission—Certificates.

Acknowledgments taken by a notary who has not filed his commission with clerk of district court are valid. *Op. Atty. Gen.* (320f), Dec. 8, 1938.

6945. Seal.

Mortgages legalized where notarial seal did not bear county name. *Laws* 1939, c. 151.

6946. Misconduct.

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

6951-3. Certain acknowledgments legalized.—All acknowledgments within and upon legal documents of every kind and nature heretofore taken by persons as notaries public residing in any one of the counties of this state, who were not citizens of the United States, acting in good faith under a void appointment to the office of notary public by the governor of this state between April 18, 1932, and the date of the approval of this act, together with the record of such acknowledgments and the documents containing the same, are hereby legalized and made valid and effective to all intents and purposes as though the appointment of such persons to the office of notary public had been in all respects lawful and valid. (Act Mar. 4, 1939, c. 47, §1.)

6951-4. Not to apply to pending actions.—This act shall not apply to any pending actions and no action shall be maintained questioning the validity of any acknowledgment coming within the purview of Section 1 of this act unless said action be brought within 6 months after its enactment. (Act Mar. 4, 1939, c. 47, §2.)

CHAPTER 47

Resignations—Vacancies—Removals

6952. Resignations.

A resignation of public office is not complete and operative unless there be an intention to relinquish a part of term, accompanied by act of relinquishment. *Hosford v. B.*, 201M1, 275NW81. See *Dun. Dig.* 7989.

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

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

Resignation of member of dental board must be submitted to governor in order to be effective. *Op. Atty. Gen.* (139b), Jan. 12, 1938.

Acceptance of second incompatible office vacates first office. *Op. Atty. Gen.* (358f), Jan. 18, 1938.

6953. Vacancies.

Where village recorder resigned a few weeks before regular election, and trustee of village was appointed to perform duties of recorder until election, and he accepted only on understanding that he did not have to vacate his office as trustee and did not take oath of office of recorder or accept compensation, court did not abuse its discretion in denying petition for leave to file an information in nature of quo warranto on ground that respondent forfeited his office as trustee by performing incompatible duties of office of recorder. *State v. Ingelbretson*, 201M222, 275NW686. See *Dun. Dig.* 7990(35).

Const., art. 6, §10, furnishes the only guide in determining when and under what circumstances governor may appoint a judge to fill a vacancy, but power to fill va-

cancy does not include power to declare one. *State v. Holm*, 202M500, 279NW218. See *Dun. Dig.* 4954, 7990.

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

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

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

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

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

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

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

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

Civil service rule requiring chief of police to be resident of city is valid. *Op. Atty. Gen.* (735b-3), June 25, 1936.