

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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The effect of an unconstitutional statute in the law of public officers: Effect on official status. 13MinnLaw Rev439.

Removal from public office in Minnesota. 20MinnLaw Rev 721.

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

Evidence before administrative tribunals. 23MinnLaw Rev68.

6955. Special commissioner to take testimony.
179M337, 229NW313.

6957. Appointment—How long to continue—Impeachment.

Vacancies in elective county, municipal or school district offices may not be filled by the person having the power of appointment. Laws 1939, c. 249.

No lawful ballots can be cast for office of sheriff at a general election unless term of incumbent, whether elected or appointed, expires on first Monday of Janu-

ary following such election. State v. Borgen, 189M216, 248NW744.

"Next general election" means one occurring after there is sufficient time after vacancy to give notice required by law that vacant office is to be filled at election. State v. A., 202M50, 277NW357. See Dun. Dig. 7988(27).

There must be a vacancy before an election to fill it can be ordered, and an election to fill an anticipated vacancy may not be validly held unless there be constitutional or statutory authority for it. State v. Holm, 202M500, 279 NW218. See Dun. Dig. 7990.

The provisions of Laws 1929, c. 413, prevail over this section, and a person appointed to fill a vacancy in a village office holds until the expiration of the term, and not merely until the next municipal election. Op. Atty. Gen., Nov. 13, 1931.

Vacancy in office of county commissioner is to be filled by full membership of city council where district lies wholly within city, though only part of council are elected from district, and term of appointee expires at beginning of official year next following next general election. Op. Atty. Gen. (124k), Aug. 25, 1934.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oath of office.

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. 171M376, 214NW258.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. Op. Atty. Gen., Feb. 10, 1930.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. Op. Atty. Gen. (456g), Feb. 18, 1937.

Executive secretary of county welfare may not be required to execute a fidelity bond, but it would not be unlawful for board of control to pass a resolution providing that it is desirable that such secretary give a fidelity bond to be filed as other bonds and paid for by county, and a bond so voluntarily given would be enforceable. Op. Atty. Gen. (104a-2), Aug. 25, 1937.

6965. Forms of oath, etc.

Attorneys suspended for misconduct. 177M203, 225 NW97.

6967. By whom and how administered.

When signatures are proved it is presumed that an affidavit was actually sworn to by person who signed as affiant, and if proof does not embrace a fact necessary to negative taking of affidavit, presumption will save it. Siewert v. O., 202M314, 278NW162. See Dun. Dig. 139.

List of officers authorized to administer oaths and take acknowledgments and requirements as to attachment of seal stated. Op. Atty. Gen., Mar. 23, 1933.

ACKNOWLEDGMENTS

6970. Form of certificate.

Bond of city officer held sufficient to require its acceptance by city council though it contained no provision "for the use of all persons interested" and was executed for surety by "attorney" instead of "attorney-in-fact." State v. City of Eveleth, 196M307, 265NW30. See Dun. Dig. 82.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

A deed written in English language except as to acknowledgment which is in a foreign language, is not entitled to record. Op. Atty. Gen. (373b-9(a)), Jan. 7, 1937.

6971. Corporate acknowledgment—Evidence.

State v. City of Eveleth, 196M307, 265NW30; note under §6970.
Op. Atty. Gen., March 23, 1933; note under §6967.

6973. By whom taken in this state.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

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

Oath may not be administered by a postmaster on claim for gasoline tax refund. Op. Atty. Gen. (834), Jan. 16, 1939.

6974. Instruments legalized.

Acknowledgments legalized. Laws 1939, c. 47, app. March 4.

6977. In other states—By whom taken.

There is no requirement that fact of residence of notary be specifically stated in acknowledgment. Op. Atty. Gen. (410), Sept. 1, 1939.

6979. In foreign countries.

A deed written in English language except as to acknowledgment which is in a foreign language, is not entitled to record. Op. Atty. Gen. (373b-9(a)), Jan. 7, 1937.

6981. Execution according to foreign law.—All deeds and other instruments may be executed and acknowledged in a foreign country in accordance with the laws of the place of execution.

If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws, shall be proved as follows:

1. If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof.

2. If in a foreign country, by the certificate of an officer of the United States authorized by this chapter to take acknowledgments therein, under his seal of office, if there be one.

3. If there be no such officer of the United States therein, then by the certificate of a counselor or diplomatic officer of any other nation with which the United States has diplomatic relations, in which case, the seal of such consular or diplomatic officer shall be certified by his Foreign Office or by the diplomatic representative of such nation in the United States.

4. Any instrument heretofore or hereafter executed, acknowledged and certified as provided herein, shall entitle such instrument to be admitted and read in evidence in all courts and elsewhere without other proof of execution. (R. L. '05, §2691; G. S. '13, §5748; Apr. 18, 1931; c. 201.)

(1).

If an instrument is executed in accordance with the laws of the place of execution, it is entitled to record in this state, provided there is attached thereto a certificate of the clerk or other certifying officer of the court of record of the county or district so showing. Op. Atty. Gen., Aug. 7, 1931.

6983. Acknowledgments after expiration of commission—Curative.

Laws 1929, c. 169, and Laws 1929, c. 214, legalizes acknowledgments taken by person after expiration of term.

6985-2. Mortgages and satisfactions of same where seal of notary does not contain name of county legalized.—All mortgages on real estate and satisfactions of mortgages on real estate, heretofore duly made and executed and where such instrument has been acknowledged as provided by law, but the notarial seal affixed, thereto, did not bear the name of the county in which the notary resided, are hereby validated and legalized and the recording thereof, in cases where such mortgages on real estate or satisfactions of mort-

gages on real estate, have heretofore been recorded, are hereby validated and legalized. (Act Apr. 8, 1939, c. 151, §1.)

6985-3. Not to affect pending actions—Limitation.—Nothing herein contained shall affect any action now pending or commenced within 6 months from and after the passage of this act to determine the validity of any instrument validated hereby. (Act Apr. 8, 1939, c. 151, §2.)

CHAPTER 49

Fees

6987. Fees of clerk of district court.

In actions for partition of land or proceedings in assignments for the benefit of creditors, and proceedings under the right of eminent domain, the court, or a judge thereof, may by order from time to time fix the amount which may be charged and collected, which may be in excess of the amounts hereinbefore provided, except, however, no fee shall be allowed the clerk of court for receiving and paying over any money deposited with the clerk of court where the money is paid or deposited by or for the State of Minnesota, pursuant to Mason's Minnesota Statutes of 1927, Section 6546. (As amended Apr. 12, 1937, c. 187, §1.)

Sec. 2 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage.

Fees earned by clerk of district court, but outstanding on account should be included in the statement. Op. Atty. Gen., Jan. 7, 1932.

Fees received by clerk of district court under section 2097 should be included in the statement. Op. Atty. Gen., Jan. 7, 1932.

Clerk of court paid salary under Laws 1919, c. 229, which specifically excepts real estate tax proceedings, is entitled to fees set forth in §2125 in connection with answers in delinquent real estate tax proceedings. Op. Atty. Gen. (144b-15), July 1, 1936.

Prevailing county in pauper settlement cases is entitled to clerk costs. Op. Atty. Gen. (144b-15), Apr. 12, 1938.

Where person was convicted of violation of ordinance in municipal court and appealed and was found not guilty in district court, clerk of district court is entitled to his fees from city. Op. Atty. Gen. (144b-15), Apr. 14, 1938.

(24.) Judgment confessed under §2176-11 is not a judgment to which abstractor or clerk of court must certify as a judgment. Op. Atty. Gen. (520b), Apr. 20, 1936.

Each individual name submitted as part of an entity constitutes a single "judgment debtor." Op. Atty. Gen. (144b-15), Nov. 24, 1936.

(46.) This section applies to a default action to foreclose a real estate mortgage though the action is tried to the court, and clerk's fees are limited to \$4.00. Op. Atty. Gen., Apr. 27, 1931.

(47.) Amended Apr. 12, 1937, c. 187.

6987-1. Fees of the clerk of the District Court.—In any county of this state where incumbents of the office of clerk of the district court prior to the incumbent holding office at the time of the passage of this act have neglected for six years to enter or file papers or other documents or index the same in such office which should have been entered or filed by them, and as a result thereof the county records are incomplete, the board of county commissioners may agree with the clerk of the district court to properly enter or file all such papers and documents and index the same, and for such work may pay such clerk in addition to the salary and clerk hire provided by law, the fees provided for such work by General Statutes 1923, Section 6987; provided, that no such extra fee shall be paid for the doing of any work which should have been done by such incumbent. (Act Apr. 16, 1929, c. 207.)

6990. Clerks' fees to be retained in certain counties.

Op. Atty. Gen., Jan. 15, 1934; note under §2720-127.

6991. Fees, when paid—other fees.

In order to effect a change of venue, the deposit fee must be paid within the prescribed time. 178M617, 225 NW926.

Deposit of plaintiff is liable for filing fee incurred by defendant and fee for swearing witnesses, irrespective of entry of judgment taxing such items of disbursement after verdict for defendant. Op. Atty. Gen. (144b-9), Dec. 2, 1935.

Clerk is not entitled to deposit under §6991 for entering confessed judgment under Laws 1939, c. 91, §4. Op. Atty. Gen. (144B-16), April 27, 1939.

6992. Fees to be paid by the appellant, etc.

State appealing direct to supreme court from order of probate court determining inheritance taxes may not pay fee to the supreme court. Op. Atty. Gen. (6m), Aug. 3, 1936.

On appeal by the state to the supreme court from probate court, state need not pay the \$10 to cover fees in supreme court but must pay \$5 covering return of certified copy of notice of appeal and bond, and must pay fees for transcript, certified copies, etc., such fees not going to the state. Op. Atty. Gen. (346c), Aug. 12, 1936.

6993. Fees of sheriffs.

Special Laws 1887, c. 363, creates a fee bill for Ramsey County. It was repealed by Laws 1911, c. 147.

Special Laws 1891, c. 373, §3, establishes a fee bill for Hennepin County. This act has never been repealed. See notes under §923 enumerating local laws affecting fees and compensation of sheriffs and their deputies.

Sheriff is entitled to mileage both going and returning from serving papers. Op. Atty. Gen., Feb. 14, 1929.

Sheriff in selling pledged property at auction under Mason's Stat. 1927, §8561, is entitled to \$1.50 for posting notices and \$3.00 for the sale. Op. Atty. Gen., May 20, 1929.

Deputy sheriff is not entitled to compensation to which the sheriff is not entitled. Op. Atty. Gen., May 17, 1930.

Sheriff is entitled to mileage for distance actually traveled, and where he receives flat rate for use of his automobile he is not entitled to mileage. A per diem is not allowable unless given by statute. Op. Atty. Gen., June 17, 1930.

County clerk is charged only with duty of preparing original citations in delinquent personal property tax proceedings, and it is the duty of the sheriff to prepare such copies as he needs for service, for which he may be allowed a reasonable compensation. Op. Atty. Gen., Aug. 1, 1930.

Sheriff is not entitled to a fee from the county for selling property on execution under a judgment in favor of county against sureties on a depository bond. Op. Atty. Gen., Dec. 23, 1930.

Sheriff is not entitled to charge any fees for time spent in appearing in habeas corpus proceedings. Op. Atty. Gen., May 6, 1931.

This section is affected as to the sheriffs of some counties by Laws 1931, c. 331, ante §§254-47, 254-48. Op. Atty. Gen., May 23, 1931.

A sheriff transporting a feeble-minded person to a state institution is entitled to reimbursement for his actual expenses in transporting the person mentioned, and where he uses his own car the expense may exceed seven cents per mile while the feeble-minded person is in the car. Op. Atty. Gen., June 15, 1931.

The general fee statute with reference to sheriffs is superseded by Laws 1917, c. 312, fixing the salaries of sheriffs in certain counties, and the sheriff of a county under that law is not entitled to fees or mileage for serving a criminal warrant. Op. Atty. Gen., Nov. 27, 1931.

Limit of indebtedness which may be contracted by county in anticipation of uncollected taxes pursuant to