

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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9706. Actions for fines, forfeitures, and penalties, etc.

Actions with respect to money found in forfeited gambling devices. Op. Atty. Gen., June 19, 1931.

9707. Fines, how disposed of.

Amount of forfeited bail bond paid into municipal court must be paid into county treasury. Op. Atty. Gen., Oct. 5, 1929.

Fine of one under complaint of inspector in department of agriculture, dairy and food, was properly remitted to county of conviction. Op. Atty. Gen., July 9, 1932.

Fines provided for in Laws 1933, c. 170 (§5015-40), are "not specially granted or appropriated by law," and in absence of any agreement, by charter or otherwise, between city of South St. Paul and County of Dakota, they shall be paid into the treasury of the county. Op. Atty. Gen., Dec. 18, 1933.

Fines and costs in state cases in municipal courts, such as misdemeanors, are to be paid to county treasurer. Op. Atty. Gen. (306b-6), Apr. 6, 1934.

Fines collected under §835-3 should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

Justice of the peace is personally responsible for check taken in payment of fine. Op. Atty. Gen. (266b-9), Sept. 5, 1934.

Fines collected under §5015-40 are to be paid to county treasurer and not credited to railroad and warehouse commission fund. Op. Atty. Gen. (306h-6), Dec. 15, 1936.

Fine voluntarily paid and transmitted to state treasurer cannot be refunded. Op. Atty. Gen. (199b-7), Aug. 13, 1937.

Fines collected for violations of Veterinarians' Act. Op. Atty. Gen. (465a), May 15, 1939.

Fines collected for violation of ordinances or by-laws of a town regulating traffic on town roads must be paid into county treasury. Op. Atty. Gen. (989B-4), May 20, 1939.

Subject to Laws 1939, c. 359, amending Mason's Stat., §202-158, town of Minnetonka in Hennepin County through its board may enact and enforce ordinances or by-laws relating to streets and highways, vehicles thereon, parking, and traffic, and fines for violation should be paid into town treasury, and not into county treasury. Op. Atty. Gen. (989B-4), July 13, 1939.

9708 1/2. * * * * *

DECISIONS RELATING TO CHAPTER IN GENERAL

1. Liability in general.

Official bond covering term of officer and "until successor is elected and qualified" extends only for a reasonable time after expiration of term. American Surety Co. v. Independent School Dist. (CCA8), 53F(2d)173. Cert. den., 284US683, 52SCR200. See Dun. Dig. 8021.

CHAPTER 86

Actions to Vacate Charters, Etc., and to Prevent Usurpations

9709. To annul act of incorporation—Fraud.

179M373, 229NW353.

9710. To vacate charter, etc.

179M373, 229NW353.

9711. For Usurpation of office, etc.

Action by quo warranto to test title to office in private corporation may be brought in the district court by other officers and stockholders of the corporation without application to, or action by, the attorney general. 179M373, 229NW353.

On respondents' motion, court properly vacated an ex parte order issuing a writ of quo warranto directing respondents to show by what warrant they claimed right to act as trustees of a named religious corporation, organized under laws of this state, it conclusively appearing from petition, writ and affidavits filed that respondents were in fact and law such trustees, and hence that writ had been improvidently issued. Dollenmayer v. R., 286NW297. See Dun. Dig. 8065.

Attorney General will not institute quo warranto proceedings against one in possession of a public office and discharging the duties thereof unless there exists very

substantial ground for believing his possession to be unlawful. Op. Atty. Gen. (63b-3), Jan. 17, 1939.

Statutory provisions for quo warranto are not exclusive, since common law proceedings for same writ may be brought by any taxpayer in either district court or supreme court. Op. Atty. Gen. (361e-2), Jan. 24, 1939.

9713. Relator to be joined.

Title of proceeding in quo warranto. Dollenmayer v. R., 286NW297. See Dun. Dig. 8070.

9717. Judgment for usurpation—Fine.

Where a county commissioner accepts an incompatible office and enters upon the performance of the duties of such office, a vacancy as county commissioner exists, and he may not reassume the duties of the office of county commissioner after having resigned the incompatible office before the board of appointment had acted. Op. Atty. Gen., Feb. 8, 1932.

Where office of county commissioner is rendered vacant by officer's acceptance of an incompatible office, such officer may not be reappointed even after he has resigned the incompatible office. Op. Atty. Gen., Feb. 8, 1932.

CHAPTER 87

Special Proceedings

MANDAMUS

9722. To whom issued.

1. When will lie.

Where commerce commission suspends sale of registered securities pending a hearing to show cause why registration should not be cancelled, and before the hearing the corporation requests a cancellation of the registration, the commission has no right to compel the production of its records and papers, in the absence of some specific allegation of a violation of the Blue Sky Law. 172M328, 215NW186.

A writ will not be granted where, if issued, it would prove unavailing or where lapse of time has rendered the relief sought nugatory. 173M350, 217NW371.

Petitioner must show he is entitled to relief sought but where he seeks to compel public officials to form a governmental duty they are presumed able to perform and the burden is upon them to show the contrary. 173M350, 217NW371.

Where discretion of town supervisors with respect to the opening of a road has been exercised in an arbitrary and capricious manner, the court may exercise control, but it must be made to appear that there are not only available funds but also sufficient available funds to do whatever else may, in the reasonable judgment of the board, be needful on the other town roads. 175M34, 220NW166.

When an executive or administrative body determines a matter involving the exercise of its discretionary power the courts do not interfere. 175M583, 222NW286.

Mandamus is not the proper remedy to correct an error in fixing the time of trial, but if the trial court refuses to proceed with trial, mandamus is the remedy. State ex rel. Collins v. Dist. Ct. of Ramsey County, 176M636, 222NW931.

Power given by §2609 to town board to determine necessity of cutting down hedges and trees in highway is discretionary and cannot be controlled by mandamus. 177M372, 225NW296.

Mandamus does not issue from this court to review a judgment of the district court entered upon the hearing of a motion to dismiss an action brought by the relator, a resident and citizen of another state, under the Federal Employers' Liability Act to recover damages sustained while in the employ of a railroad engaged in interstate commerce in such other state. State ex rel. Boright v. Dist. Ct. Steele County. 178M236, 226NW569.

The writ will not lie to compel the attorney general to try a civil action brought by the state at the "next term" of court. 178M442, 227NW891.

Will not be granted to compel county to publish annual statement in newspaper unlawfully entering into agreement with other papers to obtain contract. 178M484, 227NW499.

The duties imposed on the governor by Mason's Minn. St., §56954, 6955, relating to the removal of officers, is discretionary and not ministerial, and mandamus will not lie. 179M337, 229NW313.

Where town board was without funds, and agreement between towns as to allotment of town road for repairs