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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 95

Crimes Against the Sovereignty of the State

9970. Wilful neglect of official duty.

It is malfeasance in office for a police officer to give gamblers information and advice which is valuable to them in illegal operations. *State v. Raasch*, 201M158, 275 NW620. See Dun. Dig. 6589.

It was not prejudicial that those parts of telephone conversations which did not relate to subject-matter of accusation against defendant police officer were not recorded, or that defendant was not permitted to show that his actions in assisting and advising gamblers were under instruction from a superior officer. *Id.*

Village officers refusing to comply with section 1175 requiring publication of annual financial statement, would violate this section. *Op. Atty. Gen.*, Sept. 30, 1931.

Mayor of Minneapolis has no power to remove civil service commissioner from office. *Op. Atty. Gen.*, July 12, 1932.

Proper procedure with reference to improper conduct of justice of peace would be to advise with county attorney. *Op. Atty. Gen.*, Jan. 24, 1933.

President of water, light, power and building commission, may be compelled by mandamus to sign contract, voted by commission. *Op. Atty. Gen.* (469b-6), Apr. 11, 1934.

This section is violated by mayor who refuses to sign orders audited and allowed by city council. *Op. Atty. Gen.* (361f), Jan. 2, 1936.

City council has no authority to remove members of water and light commission, at least in absence of a conviction of an offense involving violation of official oath. *Op. Atty. Gen.* (358c-1), May 15, 1937.

9971. Acting in public office without having qualified.

Where a justice of the peace was elected in 1929 and due to the change in date of village elections his term expired and no successor was elected, and during such vacancy he continued to act and collect fines which he refused to turn over to the village, he might technically be prosecuted under §9971, but preferably under §10302. *Op. Atty. Gen.*, Jan. 6, 1932.

CHAPTER 96

Crimes Against Public Justice

BRIBERY AND CORRUPTION

9980. Bribery of public officer or legislator.**1. What constitutes.**

Knowledge that offeree is an officer is an essential element of crime of bribing an officer. *State v. Lopes*, 201M20, 275NW374. See Dun. Dig. 1103.

2. Indictment.

An information for bribery, averring official character of offeree and that bribe was offered to him "as such officer," held good as against objection that it did not charge that accused knew that offeree was "such officer," overruling *State v. Howard*, 66Minn309, 68NW1096, 34LRA 178, 61AmStRep403. *State v. Lopes*, 201M20, 275NW374. See Dun. Dig. 1103.

Information is not defective because its charge was that offeree of bribe "was about to charge" defendant with crime, it being averred in that connection that offer was on condition that offeree, an officer, "would not arrest" and would "not prosecute" defendant. *Id.*

Evidence held to show offer of money and so a thing of value as charged. *Id.*

9982. Bribery of public officer or legislator.

This section is constitutional. 176M308, 223NW144. Variance between allegations and proof; admissibility of evidence. 180M450, 231NW225.

9983. Asking or receiving bribes.**½. In general.**

Person convicted under §9983 in 1925 and incarcerated in the state penitentiary is not entitled to restoration of civil rights under §9944. *Op. Atty. Gen.* (1841), Mar. 29, 1935.

2. Indictment.

Indictment charging that defendant did "ask, agree to receive, and receive" a bribe, was not duplicitous or repugnant, and state need not elect. 178M437, 227NW497.

Proof of acceptance of credit on price of automobile not fatal variance from allegation of acceptance of money. 178M437, 227NW497.

Admissibility of evidence, and variance between allegations and proof. 180M450, 231NW225.

RESCUES AND ESCAPES

10005. Taking property from office.

Owner of growing crops levied on by officer violates this section by feeding the crops to his live stock. *Op. Atty. Gen.*, Mar. 9, 1929.

10012-1. Jumping bail a gross misdemeanor.—Any person charged with or convicted of a felony who has been admitted to bail or released on recognizance in connection with such felony, and who wilfully fails to appear as required and thereby incurs a forfeiture of his bond or recognizance is guilty of a gross misdemeanor, if he does not appear or surrender himself within thirty days thereafter. (Act Apr. 17, 1935, c. 196.)

PERJURY AND OTHER CRIMES

10016. Perjury defined.**1. What constitutes.**

No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.

Person intentionally making a false return in listing property for money and credits tax, if made under oath, is guilty of perjury, and one making false returns may also be guilty of a gross misdemeanor. *Op. Atty. Gen.* (133b-53), June 15, 1938.

5. Evidence.

Evidence held to sustain verdict of guilty of perjury. *State v. Olson*, 186M45, 242NW348. See Dun. Dig. 7476.

10018. Knowledge of materiality not necessary.

No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.

10028. Neglect of duty by officers, trustees, etc.

If a recorder of a village fails to perform his duties, he may be prosecuted under this section, and his conviction would create a vacancy in his office under section 6953(5). *Op. Atty. Gen.*, Oct. 20, 1931.

This section is violated by mayor who refuses to sign orders audited and allowed by city council. *Op. Atty. Gen.* (361f), Jan. 2, 1936.

10030. Arrest without authority.

Railroad held liable for unlawful arrest by special agent at depot. 176M203, 223NW94.

If an intoxicating liquor inspector is rightfully within a place where non-intoxicating liquors are sold, he may seize intoxicating liquor for purpose of using same for evidence in a prosecution, but he may not search premises for intoxicating liquors, and in such case a search warrant is not necessary. *Op. Atty. Gen.* (218f), Feb. 5, 1935.

10033. Resisting public officer.

A sheriff cannot enter a home by force for purpose of levying an execution, but debtor is guilty of resisting an officer in refusing to give up the property. *Op. Atty. Gen.* (390a-6), Feb. 7, 1935.

State fire marshal may not use force to effect entry on premises for purpose of making inspection, but owner padlocking premises so that inspection may not be made is guilty of offense of resisting, delaying and obstructing a public officer in discharge of his duties. *Op. Atty. Gen.* (197c), May 9, 1935.

10034. Compounding crimes.

Complaint held not bad for duplicity, and evidence held to support conviction. 181M106, 231NW804.

10042. Criminal contempts.

Writ of prohibition will not be granted upon contention that criminal complaint does not charge a public offense for reason that alleged contemptuous publication related to matters which had been finally determined by court, since court had jurisdiction of person and of offense attempted to be charged and of determination of whether or not complaint stated a public offense. *State v. Laughlin*, 204M291, 283NW395. See Dun. Dig. 1703a.

10044. Misconduct by attorneys.

This section troubles damages in actions therein referred to, but does not create any new cause of action. 181M322, 232NW515. See Dun. Dig. 674.

10047. Punishment for prohibited acts.

This section provides penalties for those sections in Laws 1931, c. 70, for which no penalty is provided in section 9 of such act. Op. Atty. Gen., Oct. 19, 1931.

If neither owner nor operator of a vehicle is a party to a strike, it is unlawful to interfere in any manner with operation of vehicle or operator thereof whether it be upon any of the public streets or highways or upon premises of any business establishment or elsewhere, and such violation is a misdemeanor within meaning of §10047 with punishment prescribed by §9922. Op. Atty. Gen. (270d-7), August 11, 1939.

10052. Other false certificates.

Civil liability for false certificate as to tax liens. 181 M334, 232NW359. See Dun. Dig. 2314a.

10053. Falsely auditing and paying claims.

County auditors and other officers issuing certificates for payment of wolf bounties on fox violate both §6258 and §10053 and may be removed from office. Op. Atty. Gen. (47f), Mar. 17, 1938.

10055. Conspiracy defined—How punished.

An uneducated widow reposing confidence in a lawyer having reputation for ability and integrity was not estopped to claim conspiracy and fraud against lawyer and corporation of which he was president because she retained stock of the corporation for some years and received dividends thereon. Scheele v. U., 200M554, 274 NW673. See Dun. Dig. 1562.

An uneducated investor had right to repose confidence in a lawyer having reputation for ability and integrity, as affecting conspiracy and fraud in purchase and sale of stock of a corporation of which lawyer was president. Id.

A conspiracy to defraud is ordinarily provable only by circumstantial evidence. If in end there is a completed structure of fraudulent result frame of which has been furnished piecemeal by several defendants, parts when brought together showing adaptation to each other and end accomplished, it is reasonable to draw inference of conspiracy and common intent to defraud. Id. See Dun. Dig. 1566b.

10060-1. Printing and circulating certain documents prohibited.—Any person who, not being otherwise authorized by law to do so, drafts, prepares, prints, multigraphs, mimeographs, typewrites, writes, or otherwise transcribes or duplicates; for sale, gift, distribution or other disposal, or who circulates, gives away, distributes, publishes, or offers for sale any paper or document, or any blank form of paper or document which, when the blanks thereof have been filled in, simulates or is intended to simulate a summons, complaint, writ, final or other notice, or legal, judicial or court process of any kind, shall be guilty of a misdemeanor. (Act Mar. 18, 1939, c. 69, §1.)

10060-2. Exceptions.—Nothing herein contained shall prohibit the printing, publishing, giving away, sale, circulation or distribution of blank forms of legal documents for use by attorneys at law. (Act Mar. 18, 1939, c. 69, §2.)

CHAPTER 97

Crimes Against the Person

HOMICIDE

10065. Defined and classified.

Evidence that defendant was the possessor of a weapon of the kind with which a homicide was committed is not rendered incompetent by reason of the fact that it tends incidentally to prove the commission of other and unrelated offenses. 172M106, 214NW782.

State's rebuttal evidence was admissible. 172M106, 214 NW782.

A conviction for homicide cannot stand on evidence of motive with nothing more; there must be enough additional evidence so that whole shows guilt beyond reasonable doubt. State v. Waddell, 187M191, 245NW140. See Dun. Dig. 4247.

10066. Proof of death, and of killing by defendant.

Burden is upon state to prove each element of corpus delicti beyond a reasonable doubt, and necessary elements are death of a human being and that a criminal agency produced it. State v. Voges, 197M85, 266NW265. See Dun. Dig. 4247.

In prosecution of mother of girl having a baby, evidence held insufficient to warrant a finding of any degree of homicide, there being no evidence of any one seeing the child, that it was alive when born, and was not dead when thrown into stove. Id.

It is identity of offense, and not of act, which is referred to in constitutional guarantee against putting a person twice in jeopardy. Where two or more persons are injured in their persons, though it be by a single act, yet, since consequences affect, separately, each person injured, there is a corresponding number of distinct offenses, as in separate prosecutions for homicide where two persons in same automobile were killed. State v. Fredlund, 200M44, 273NW353. See Dun. Dig. 2426.

Failure of specific proof of exact manner of death should not prevent conviction where adequate proof that death was caused by acts of accused in some manner is available. State v. Poelaert, 200M30, 273NW641. See Dun. Dig. 4247.

10067. Murder in first degree.**4. Premeditation.**

Murder in the first degree requires a premeditated design to effect death of person killed or another. State v. Norton, 194M410, 260NW502. See Dun. Dig. 4232b.

8. Evidence.

No reversible error found in reception of evidence of conversation between killer and defendant after arrest. 176M562, 223NW917.

Finding that defendant, with knowledge of killer's intent to kill, encouraged and abetted him, held justified by the evidence. 176M562, 223NW917.

Dying declarations, res gestae, and sufficiency to support conviction. 180M221, 230NW639.

Circumstantial evidence held to support conviction for first degree murder of one upon whom accused carried life insurance. State v. Waddell, 187M191, 245NW 140. See Dun. Dig. 4247.

Testimony of accomplice held sufficiently corroborated to sustain conviction of murder. State v. Jackson, 198 M111, 268NW924. See Dun. Dig. 4247.

Evidence supported admission of a scoop shovel with which state contended murder was committed. State v. Rowe, 280M172, 280NW646. See Dun. Dig. 4246.

That some hair similar to that of deceased was not discovered on shovel until some months later went to weight but not to admissibility of such discovery. Id.

Evidence justified conviction of murder in first degree. Id. See Dun. Dig. 4247.

10068. Murder in second degree.

Evidence sustained finding of murder in second degree. State v. Quinn, 186M242, 243NW70. See Dun. Dig. 4233.

Murder in the second degree requires a design to effect death of person killed or another, but without deliberation or premeditation. State v. Norton, 194M410, 260NW502. See Dun. Dig. 4233.

Evidence held sufficient to sustain a verdict of guilty of murder in second degree. State v. Poelaert, 200M30, 273NW641. See Dun. Dig. 4233.

10070. Murder in third degree.**1. What constitutes.**

One killing another with an automobile while recklessly driving it in an intoxicated condition may be convicted of murder in the third degree. 171M414, 214NW 280.

Evidence held not to require an instruction that defendant should be acquitted if he was so drunk that he did not know what he was doing. 171M414, 214NW 280.

Murder in the third degree is killing of a human being, when perpetrated by acts eminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect death of any individual, or without a design to effect death, by a person engaged in committing or attempting to commit a felony either upon or affecting the person killed or otherwise. State v. Norton, 194M410, 260 NW502. See Dun. Dig. 4234.

Where the verdict was of murder in second degree, but evidence sustains conviction only in third degree, supreme court has power to direct entry of judgment accordingly. State v. Jackson, 198M111, 268NW924. See Dun. Dig. 2501.

It is identity of offense, and not of act, which is referred to in constitutional guarantee against putting a person twice in jeopardy. Where two or more persons are injured in their persons, though it be by a single act, yet, since consequences affect, separately, each per-