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.

Edited by

William H. Mason

Assisted by

The Publisher's Editorial Staff

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1940

on date of robbery defendant was in another state. State v. Chick, 192M539, 257NW280. See Dun. Dig. 8491.

There is a distinction between robbery and larceny, and the theft of several articles at the same time and place by the same act constitutes a single offense whether the articles belong to the same owner or to different owners. Op. Atty. Gen., Dec. 15, 1931.

Where partners in a store are robbed, and robber takes money from the persons of each and from the store till, three offenses are committed, and there should be three separate indictments. Op. Atty. Gen., Dec. 15, 1931.

Where two or more persons are robbed at the same time, a separate offense is committed as to each and separate indictments are necessary. Op. Atty. Gen., Dec. 15, 1931.

10102. In first degree, how punished.

Conviction for robbery in taking shotgun by force during attempt to rob held sustained by evidence. 173M232, 217NW104.

Evidence in relation to weapons and shells found at the time of defendant's arrest was properly received in prosecution for taking shotgun. 173M232, 217NW104.

Evidence held to support conviction and rulings on evidence approved. 179M301, 229NW99.

Evidence, held to present a question for the jury as to the identity of defendant. 181M203, 232NW111. See Dun. Dig. 2468d, 2477.

Evidence held to support verdict of robbery in first degree. *State v. Stockton, 186M33, 242NW344. See Dun.* Dig. 8491.

10103. Same.

179M532, 229NW787.

10104. In second degree, how punished.

A second degree conviction may be had under an indictment charging robbery in the first degree upon the customary allegation as to the use of force and violence. Op. Atty. Gen., Dec. 15, 1931.

10106. Life imprisonment for bank robbers.

Statute is constitutional. 171M158, 213NW735.

Charge held not objectionable as permitting conviction of crime other than that charged. 171M158, 213NW735.

Admissibility and sufficiency of evidence. 171M158, 213NW735.

Evidence justified in finding of participation in robbery of bank. 177M363, 225NW278.

Statute applies to bandits who enter bank when there is no human being there and commit robbery when employees arrive. Op. Atty. Gen., May 24, 1933.

Judge has power to fix a maximum sentence of less than life for robbery of a bank. Op. Atty. Gen., Nov. 25, 1933.

LIBEL AND SLANDER

10112. Libel defined—Gross misdemeanor, etc.

1. What constitutes.

See notes under §9164, note 22.

A paragraph in a letter to law firm "We now learn that said L. solicited each of these stockholders in an attempt to get them to entrust their affairs to you and L.", held not libelous per se as charging solicitation. Brill v. M., 200M454, 274NW631. See Dun. Dig. 5509, 5520.

A paragraph in a letter to law firm "It is obvious that the real purpose of L. and yourselves is to create all the trouble that you can and if your efforts should produce anything, the real beneficiaries would be L. and yourselves and not the stockholders whom you purport to represent," held libelous per se. Id.

Statements contained in letter held not to constitute criminal libel. Op. Atty. Gen., Sept. 1, 1933.

2. Indictment.

In a prosecution for criminal libel, where indictment charges that libelous matter was published of and concerning a person or persons named, it need not otherwise state the extrinsic facts to show that language used applied to person or persons named in indictment as being libeled. Such extrinsic facts are to be shown by evidence at trial. State v. Cramer, 193M344, 258NW525. See Dun. Dig. 4384.

Where a libelous article charges a named voluntary unincorporated association of persons with wrongdoing, the libel applies to the members of such association, although not specifically named in the article. Id. See Dun. Dig. 4360.

Where an indictment for libel sufficiently charges that libelous language tended to and did expose persons named therein as having been libeled, to hatred, contempt, ridicule, and obloquy, and caused them to be shunned and avoided, a further but insufficient charge as to injury to business and occupation of such persons may be disregarded as surplusage. Id. See Dun. Dig. 4364.

10114. Publication defined.

There is no liability for sending a libelous letter to the person defamed, though a third person reads the letter. 181M364, 232NW625. See Dun. Dig. 5507(67).

10115. Liability of editors and others.

Recent developments in newspaper libel. 13MinnLaw Rev21.

10120. Slander of women.

Op. Atty. Gen., Jan. 11, 1930.

10123. Slander.

Op. Atty. Gen., Jan. 11, 1930.

10123-1. Lewd, scandalous and defamatory newspaper.

Hague v. C.I.O., (CCA3), 101F(2d)774, aff'g (DC-NJ), 25FSupp127.

This act [§§10123-1 to 10123-3] does not violate Const., art. 1, §§3, 4. 174M457, 219NW770.

This act is constitutional. State v. Guilford, 179M40, 228NW326. Reversed by U. S. Sup. Ct., 283US697, 51SCR 625.

Power of state to enjoin publication of a newspaper as public nuisance. 14MinnLawRev787.

10123-3. Same—Trial—Injunction—Contempt.

There is no right to a jury trial. 174M457, 219NW770.

10123-4. Certain statements to be unlawful.—It shall be unlawful for any person, firm or corporation to falsely and maliciously state, utter, publish or cause to be falsely and maliciously stated, uttered, or published, any report, rumor or statement directly or indirectly tending to disclose that any bank, public or savings institution is in an existing or probable insolvent financial condition. (Act Apr. 17, 1929, c. 212, §1.)

10123-5. Violation a gross misdemeanor.—Any person, firm or corporation violating any of the provisions of Section 1 hereof shall be deemed guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail of any county wherein such false, slanderous declarations are made or published, for a term of not less than 30 days nor more than 6 months or by a fine of not less than $100.00 or both. (Act Apr. 17, 1929, c. 212, §2.)

Each single statement or utterance would constitute a separate offense. Disclosure of truth concerning a bank would not be an offense. The rules of law with respect to malice in the law of libel and slander applies. Form of complaint suggested. Op. Atty. Gen., Jan. 11, 1930.

CHAPTER 98

Crimes Against Morality, Decency, Etc.

RAPE—ABDUCTION—CARNAL ABUSE, ETC.

10124. Rape.

1. What constitutes.

One acquitted of charge of rape where age of female is not alleged in indictment may again be tried for same act on same facts under an indictment charging carnal knowledge and abuse of a female child under eighteen years of age. State v. Winger, 204M164, 282NW819. See Dun. Dig. 8229.

4. Evidence.

Guilt held for jury. 171M187, 213NW740.

Evidence held to warrant a conviction for attempt to rape 14 year old girl. 171M173, 213NW923.

Evidence held to sustain conviction. 172M226, 215NW189.

Defendant in rape prosecution who undertakes to prove unchastity of a young girl should be required to offer rather definite proof thereof. State v. Brown, 185M446, 241NW591. See Dun. Dig. 8243a.

In prosecution for rape, court did not err in refusing to admit evidence that complainant on some occasions drank liquor, smoked cigarettes and attended dances, and was somewhat indiscreet in her behavior. State v. Brown, 185M446, 241NW591. See Dun. Dig. 8231.

Evidence held to sustain conviction of attempt to rape. State v. Brown, 185M446, 241NW591. See Dun. Dig. 8235.

A paper charging defendant with conduct unbecoming a member of the church, signed by an officer of the church, held inadmissible. State v. Wulff, 194M271, 260 NW515. See Dun. Dig. 8231.

Evidence of specific acts, as distinguished from reputation evidence, showing or tending to show want of chastity on part of prosecutrix may be introduced to bear on question of consent. Id. See Dun. Dig. 8231.

Evidence held to create such a grave doubt of defendant's guilt as to require a new trial, despite conviction by jury. Id. See Dun. Dig. 8244.

10125. Carnal knowledge of children.

Op. Atty. Gen., May 25, 1932; note under §10132.

2. What constitutes.

Verdict of guilty sustained by evidence. 175M174, 220 NW547.

One acquitted of charge of rape where age of female is not alleged in indictment may again be tried for same act on same facts under an indictment charging carnal knowledge and abuse of a female child under eighteen years of age. State v. Winger, 204M164, 282NW819. See Dun. Dig. 8240.

6. Evidence.

Evidence held to warrant a conviction for attempt to rape. 171M173, 213NW923.

Evidence held to sustain a verdict of guilty. 172M372, 215NW514.

Verdict of not guilty in a proceeding to charge defendant with paternity is not admissible. 175M174, 220 NW547.

Evidence of illicit relations with others is not admissible in defense or in mitigation of punishment, but is only admissible in case of pregnancy to rebut the pregnancy as corroborative evidence. 175M174, 220NW 547.

Verdict held sufficiently supported. 176M604, 224NW 144.

Evidence in a carnal knowledge case held so consistent with the hypothesis of guilt as to sustain conviction. State v. Nelson, 185M351, 241NW48. See Dun. Dig. 8233.

Evidence held to support conviction for carnal knowledge of female less than fifteen years old. State v. Kosek, 186M119, 242NW473. See Dun. Dig. 8244.

Evidence held to support conviction for carnal knowledge of girl. State v. Marudas, 187M138, 244NW549. See Dun. Dig. 8244.

Evidence held sufficient to establish corpus delicti in prosecution for carnal knowledge of girl. State v. Bauer, 189M280, 249NW40. See Dun. Dig. 8244(13).

7. Trial.

Demonstration in court room by father of prosecutrix in prosecution for rape on girl under 18, held not ground for new trial in view of the admonition of the court to the jury. 172M372, 215NW514.

10128. Abduction—Evidence.

1. What constitutes.

Instructions were not erroneous which, in substance, stated that if defendant took girl to hotel with intent that she should have sexual intercourse with another and for that purpose persuaded and advised her to enter bedroom defendant procured, and said girl was then under age of 18 years, he, defendant, was guilty of abduction. State v. Ellis, 199M306, 271NW594. See Dun. Dig. 18.

Evidence sustains verdict that defendant abducted a female under 18 years of age for purpose of prostitution or sexual intercourse with another person. Id. See Dun. Dig. 22.

3. Corroboration.

Appearance of girl may be considered by jury in corroboration of her testimony as to her age. State v. Ellis, 199M306, 271NW594. See Dun. Dig. 20.

10132. Indecent assault.—Every person who shall take any indecent liberties with or on the person of any female, not a public prostitute, without her consent expressly given, and which acts do not in law amount to rape, an attempt to commit a rape, or an assault with intent to commit a rape, and every person who shall take such indecent liberties with or on the person of any female under the age of sixteen years, and every person who shall take any indecent liberties with or on the person of any male under the age of sixteen years, without regard to whether he or she shall consent to the same or not, or who shall persuade or induce any male or female under the age of sixteen years to perform any indecent act upon his or her own body or the body of another, shall be guilty of a felony. (R. L. '05, §4392; G. S. '13, §8663; '27, c. 394; Feb. 20, 1929, c. 27.)

State v. Winger, 204M164, 282NW819; note under §10124.

Title of laws 1927, c. 394, does not express the subject of the act in so far as it refers to change of age of consent, and act is ineffective to that extent. 173M 221, 217NW108.

Fact that girl assaulted made complaint of outrage is admissible, but neither the particulars of the offense nor the name of the person may be disclosed as a part of the complaint, except where the complaint is made as a part of the res gestae. 173M305, 217NW120.

This section applies only to conduct toward male and female persons under 14 years of age, as the amending statute of 1927 was invalid in that respect because having insufficient title. State v. Phillips, 176M234, 223NW 98.

Evidence held to sustain conviction for taking indecent liberties with sixteen year old girl. State v. Weis, 186M342, 243NW135. See Dun. Dig. 552a.

Offense of indecent assault or taking indecent liberties is lesser offense included within charge of carnal knowledge. Op. Atty. Gen., May 25, 1932.

Construed and distinguished from §10153. Op. Atty. Gen. (494b-4), May 25, 1934.

CRIMES AGAINST CHILDREN, ETC.

10135. Desertion of child and pregnant wife.—Every parent, including the duly adjudged father of an illegitimate child and a father who in an action for *divorce or separate maintenance has been judicially* deprived of the actual custody of his child, or other person having legal responsibility for the care or support of a child who is under the age of sixteen years and unable to support himself by lawful employment, who fails to care for and support such child with intent wholly to abandon and avoid such legal responsibility for the care and support of such child; and every husband who, without lawful excuse, deserts and fails to support his wife, while pregnant, with intent wholly to abandon her is guilty of a felony and upon conviction shall be punished therefor by imprisonment in the state prison for not more than five years. Desertion of and failure to support a child or pregnant wife for a period of three months shall be presumptive evidence of intention wholly to abandon and/or to avoid legal responsibility for the care and support of the child. (R. L. '05, §4933; '11, c. 144, §1; G. S. '13, §8666; '15, c. 336, §1; '17, c. 213, §1; Mar. 27, 1931, c. 94.)

Op. Atty. Gen., Oct. 11, 1933; note under §10136.

This section cannot be used merely to coerce the payment of money. 178M568, 227NW896.

The offenses under §§10135 and 10136 are continuing and former conviction does not preclude prosecution for subsequent violations. 179M32, 228NW337.

Illegitimate child failed to show that illegitimacy proceedings in Wisconsin were such as to meet requirements of statute. Reilly v. S., 196M376, 265NW284. See Dun. Dig. 826, 827.

Abandonment is a continuing offense and Laws 1931, c. 94, removed the declared limitation as to subsequently occurring abandonment. Op. Atty. Gen., Sept. 30, 1931.

Laws 1931, c. 94, permits conviction for abandonment of child though its custody has been placed in another by decree of court. Op. Atty. Gen., Sept. 30, 1931.

Abandonment is a continuing offense. Op. Atty. Gen., *Jan. 22, 1932.*

The crime of abandonment as defined in this act may be committed by a person who was not within the state at the time the law became effective and has never since returned to the state. Op. Atty. Gen., Jan. 22, 1932.

Offense of abandonment occurred in county wherein mother and child were living at time payment stopped and father formed intent to abandon and avoid legal responsibility. Op. Atty. Gen. (840a-1), Apr. 13, 1934.

Statute, as amended in 1931, is applicable to persons then absent from the state and who have never returned. Op. Atty. Gen. (840a-1), June 25, 1934.

Where following birth of illegitimate, father signed affidavit of admission of paternity and thereafter married mother and two years later a divorce was obtained, child was legitimate and father could be prosecuted for desertion. Op. Atty. Gen. (494b-27), Sept. 17, 1935.

One spending about one-half of his days from home and giving practically no money to his family for their support would not be guilty of desertion under §10135 but might be guilty of nonsupport under §10136. Op. Atty. Gen. (605b-16), Sept. 17, 1935.

Abandonment is an extraditable offense. Op. Atty. Gen. (193b-1), Mar. 26, 1936.

Father of illegitimate cannot be guilty of abandonment unless he has been duly adjudged to be father. Op. Atty. Gen. (840a-1), May 6, 1937.

Where desertion occurs in another state and wife and children subsequently move to this state, Minnesota warrant cannot issue. Op. Atty. Gen. (840a-6), Oct. 20, 1937.

Where woman and children resided in another state, and a divorce with custody of children was obtained from husband in that state, and mother voluntarily brought children into this state, father cannot be charged with criminal offense in this state. Op. Atty. Gen. (336b), Dec. 6, 1937.

A resident of this state who goes to Canada and marries a Canadian, and there abandons her, and returns to Minnesota, cannot be prosecuted in Minnesota. Op. Atty. Gen. (605a-19), Dec. 7, 1937.

Prosecution does not lie where father is deprived of custody of child by action other than divorce proceedings. Op. Atty. Gen. (840a-1), Mar. 16, 1938.

Abandonment is a continuing crime and prosecution may be had in any county in which wife and children lived after desertion. Op. Atty. Gen. (133b-1), July 15, 1938.

Whether extradition will lie depends on whether defendant has been in this state after date alleged in complaint. Op. Atty. Gen. (494b-15), Oct. 6, 1938.

A father who has been divorced, children being in custody of mother, and father under court order to make monthly payments for support of children, may be prosecuted under this section. Op. Atty. Gen. (133B-1), July 10, 1939.

10136. Failure to support wife or child.

178M568, 227NW896.

Justice has no jurisdiction of offense committed in Minneapolis. 174M608, 219NW452.

Evidence held not to show common-law marriage. 175 M547, 221NW911.

This section refers only to legitimate children. 175M 547, 221NW911.

The offenses under §§10135 and 10136 are continuing and former conviction does not preclude prosecution for subsequent violations. 179M32, 228NW337.

Where, after conviction, defendant was deprived of custody of child, a charge for abandonment thereafter occurring must be based on this section. 179M32, 228NW 337.

Duty of providing for child is cast upon father, although child is in custody of mother who refuses to live with husband. State v. Washnesky, 187M643, 246NW366. See Dun. Dig. 7302.

Neither wife nor minor child may recover damages for personal injuries to husband and father, remedy being solely in husband and father. Eschenbach v. B., 195M 378, 263NW154. See Dun. Dig. 4288b, 7305b.

A judgment obtained in a competent court of this state for payments due under a judgment entered by a competent court of a sister state under the illegitimacy statutes of the latter may be enforced, when so ordered by our court, by the same means as if the judgment had been originally obtained in this state and under our laws. Ladd v. M., 285NW281. See Dun. Dig. 850.

The offense herein defined is a continuing one. Op. Atty. Gen., Sept. 30, 1931.

Wife has right to establish residence within state after desertion by husband in another state and continued nonsupport would constitute crime under this section. Op. Atty. Gen., Oct. 11, 1933.

"Dependents" defined. Op. Atty. Gen., Dec. 16, 1933.

Whether husband and father abandoning wife and children in Chicago would be criminally liable because wife and children moved to Minnesota would depend upon whether wife and children were justified in coming to Minnesota after having been deserted and whether husband refused to furnish a home elsewhere. Op. Atty. Gen. (339n), July 13, 1934.

A resident of another state who sends wife and children into certain county in state with intent to follow but then neglects to support them commits crime of abandonment in such county in state, but cannot be extradited where he has never come into the state, as he is not a fugitive from justice. Op. Atty. Gen. (494b-15), Nov. 1, 1934.

One spending about one-half of his days from home and giving practically no money to his family for their support would not be guilty of desertion under §10135 but might be guilty of nonsupport under §10136. Op. Atty. Gen. (605b-16), Sept. 17, 1935.

Parents are not liable for support of child in state school and cannot be prosecuted for nonsupport. Op. Atty. Gen. (840a-9), Apr. 29, 1936.

Where court orders defendant to pay specified sum each month for support of wife, he cannot be prosecuted for failure to furnish more. Op. Atty. Gen. (494b-25), Nov. 25, 1936.

A husband deserting wife and children in county where he has an established home must be prosecuted in that county, and not in county into which wife subsequently moved, in absence of some subsequent conduct amounting to desertion in the new county. Op. Atty. Gen. (840a-1), Dec. 28, 1936.

Father cannot evade duty to children by agreement with wife in connection with a division of property. Op. Atty. Gen. (840a-1), Aug. 23, 1938.

A father who has been divorced, children being in custody of mother, and father under court order to make monthly payments for support of children, may be prosecuted under this section. Op. Atty. Gen. (133B-1), July 10, 1939.

10140. Keepers of public places to exclude minors.

In prosecution of tavern owner, acts and omissions of defendant's servants contributed to minor's delinquency, and court did not err in refusing to submit that question as a fact issue. State v. Sobelman, 199M232, 271NW 484. See Dun. Dig. 4465a.

Proof of criminal intent is unnecessary where statute makes commission of prohibited act a punishable offense. Id. See Dun. Dig. 4924.

10143. Keepers of public places to exclude—Penalty.

A student under 21 years of age is a "minor." Op. Atty. Gen. (829f-2), March 14, 1939.

10147. Harboring, etc.

Consent of parents is no defense and is only effective within privacy of their own home. Op. Atty. Gen. (829f-2), March 14, 1939.

10150. Sale of liquor within one mile of certain institutions.—Any person who shall sell any intoxicating liquor, or maintain a drinking place, within one mile of the university farm of the school of agriculture of the University of Minnesota, located in Ramsey County, Minnesota, on section 21, township 29, and range 23 west, or shall aid or abet another in either of such acts, shall be guilty of a gross misdemeanor and shall be punished for the first offense with a fine of not more than $100.00 or imprisonment for not less than sixty days nor more than ninety days; for each subsequent offense, by a fine of not less than $500.00 nor more than $1,000.00, or by imprisonment in the county jail for not less than six months nor more than one year, or by both. ('07, c. 378, §1; G. S. '13, §8680; Feb. 14, 1933, c. 27, §1.)

In view of amendment by Laws 1933, c. 27, cigarettes may be sold on state fair grounds, though within mile of University farm. Op. Atty. Gen., Aug. 25, 1933.

10151. Sale of liquor or cigarettes within 1,000 feet of certain institutions.

Malt liquors of 3.2 per cent alcoholic content may be sold within 1000 feet of state prison. Op. Atty. Gen. (217f), July 29, 1938.

10151-1. Peddling, canvassing or loitering on school grounds prohibited.—No person shall offer for sale, sell or peddle any goods, wares, books, newspapers, magazines or merchandise, insurance, course of instruction or any other thing whatsoever, or canvass or take orders therefor, or solicit the endorsement of any goods, wares, books, newspapers, magazines, merchandise, insurance or course of instruction or other thing or loiter for any of the purposes hereinbefore referred to in any public school building or upon any public school grounds not located within the limits of any city, village or borough whether or not such person has a license to offer for sale, sell, solicit or canvass for such goods, wares, books, newspapers, magazines, merchandise, insurance, course of instruction or any other thing whatsoever; provided this act shall not be construed as prohibiting the soliciting of or taking of such orders from, or making such sale to the school board or any member thereof, the board of education or any member thereof, or the superintendent of schools. (Act Apr. 13, 1929, c. 181, §1; Apr. 8, 1939, c. 155.)

Does not prohibit sale of Christmas seals. Op. Atty. Gen., Aug. 29, 1929.

10151-2.—Any person violating the provisions of this act shall be guilty of a misdemeanor. (Act. Apr. 13, 1929, c. 181, §2.)

10153. Cruelty to children.

Distinguished from §10132. Op. Atty. Gen. (494b-4), May 25, 1934.

HABITUAL OFFENDERS

10157. Habitual offenders defined—Penalties.

Conviction of vagrancy to cause one to become a habitual offender must be for violations of state laws and not municipal ordinances. Op. Atty. Gen. (605b-44), Dec. 19, 1936.

DANCE HALLS

10161. Definitions.

Op. Atty. Gen., June 5, 1933: note under §10171.

One charging only for checkroom and lunches, held guilty of maintaining dance hall without permit. 176M 86, 222NW575.

Defendant, held to have violated this section by permitting dancing with the aid of a piano and phonograph operated by placing a nickel in a slot. State v. Bennett, 179M289, 229NW88.

A club charging admission to a dance but using all proceeds for payment of debt on hall, without pecuniary gain to anyone, comes within definition and is controlled by §10162. Op. Atty. Gen., Feb. 26, 1933.

Whether operator of cafe permitting patrons to dance is operating public dance is a question of fact. Op. Atty. Gen., July 10, 1933.

A road house where proprietor permits dancing by persons placing coin in musical instrument is a public dance hall. Op. Atty. Gen., July 31, 1933.

One operating beer parlor and providing space for dancing is operating a public dancing place requiring license if patrons understand that they must make purchase to obtain dancing privileges. Op. Atty. Gen., Aug. 19, 1933.

A night club permitting dancing is a dance hall, though dancing is incidental to serving of beer and meals. Op. Atty. Gen., Dec. 22, 1933.

Whether proprietor of a non-intoxicating malt liquor business, who provides music to which his patrons may dance, is conducting a public dance for which a license would be required, is a question of fact. Op. Atty. Gen. (802a-7), Aug. 1, 1934.

Whether cover charge in dining room constituted a charge for dancing was a question of fact. Op. Atty. Gen. (802a-10), Sept. 7, 1935.

Whether church club dances were public dances requiring license, held question of fact. Op. Atty. Gen. (802a-2), Jan. 29, 1936.

What constitutes public or private dance is a question of fact. Op. Atty. Gen. (802a-10), July 13, 1937.

10162. Proprietors must obtain permits.

Op. Atty. Gen., Feb. 28, 1933; note under §10161.

10163. Issuance of permit.—In all cities, villages and boroughs of this state said permit must be procured from the governing body of the municipality provided, however, that in any county within which there now exists a city having a population of 225,000 inhabitants or more, such permits may be issued only by the town board of the town within which such public dance is to be held except when said public dancing place is owned by the municipality and the dance to be given or held therein is to be given by and under the supervision of the public authorities of said municipality. In all other cases such permit must be procured from the county board of the county in which said public dance is to be held. Such permits may be issued for one or more public dances or for a period of time not exceeding one year, provided that in any case where a permit for one single dance is desired, the town board of the town where the dance is to be held shall have a right to grant the same, but any person owning or operating a dance pavilion or dance hall in any such town where dances are regularly held during the year or a part thereof, must make application for such dance permit to the county commissioners and provided, that this shall not apply as hereinbefore stated to counties having a population of 225,000 or more. Said permit shall be issued at a fee and under such conditions as such governing body or county board may prescribe, not inconsistent with the provisions of this act. Provided no such permit shall be granted in any organized town outside of the limits of any city or village, in which town the town board shall pass a by-law or resolution prohibiting public dances therein. ('23, c. 139, §3; Apr. 20, 1929, c. 264, §1.)

Laws 1929, c. 264, amending §§10163 to 10165, had the effect of revoking all permits in effect at its passage. Op. Atty. Gen., May 8, 1929.

Town board can grant a permit for a single dance where county board has refused a permit. Op. Atty. Gen., May 21, 1929.

"Governing body of the municipality" has reference to dances in city, village or borough. Op. Atty. Gen., May 21, 1929.

Town board may prohibit dances though county board has given permit to give dances for a year. The licensee cannot recover fee paid. Op. Atty. Gen., July 19, 1929.

Village council need not pass ordinance regulating dancing in order to place village under operation of law. Op. Atty. Gen., June 4, 1930.

Under this section as amended by Laws 1929, c. 264, owner of dance pavilion licensed by county commissioners may lease premises to a third party who may conduct a single dance therein under permit from a town board. Op. Atty. Gen., Aug. 14, 1930.

Under this section as amended by Laws 1929, c. 264, town board may grant a permit for a single dance and the county commissioners cannot restrain or interfere with this permit. Op. Atty. Gen., Aug. 14, 1930.

Town board may grant a permit to a third person not connected with dancing pavilion in question to conduct a single dance at the pavilion on a date other than that licensed by the board of county commissioners to the pavilion owners. Op. Atty. Gen., July 7, 1931.

Statute does not prohibit issuance of permit to person or organization other than pavilion to hold more than one dance in a year. Op. Atty. Gen., Feb. 28, 1933.

Provision did not affect §10173. Op. Atty. Gen., Apr. 11, 1933.

Town clerk is not entitled to receive any fees for issuance of dance hall permits. Op. Atty. Gen., Apr. 11, 1933.

Permits for operating dance halls may be granted or rejected by village council under state law without enactment of an ordinance. Op. Atty. Gen. (63b-13), May 18, 1934.

Permits for dances to be held in a city, village or borough, must be obtained from the governing body of such municipality, and municipality may charge fee therefor. Op. Atty. Gen. (802a-22), May 23, 1934.

Permit for public dances must be obtained from county board of commissioners in all cases except: counties within which there exists a city having a population of 225,000 inhabitants or more; where dance is given under supervision of public authorities of a municipality; where dance is to be given in a city, village or borough; where a permit for one single dance only is desired, and a town board cannot permit holding dances regularly under successive for single dance. Op. Atty. Gen. (802a-17), June 18, 1935.

Refusal of county board to issue permit to company owning a dancing pavilion did not prevent town board from issuing single permits to individuals to hold dances in such pavilion. Op. Atty. Gen. (802a-19), Mar. 25, 1938.

Town board may properly issue a license to successive applicants, but if one person is in fact operating a dance hall and using others as nominal licensees, they are criminally liable, and town board may issue more than one permit to same person during a year if there is no intent to evade the statute. Op. Atty. Gen. (802a-20), May 25, 1939.

Op. Atty. Gen. (802a-14), June 14, 1939; note under § 10171.

Sections 10163 and 10164 are unaffected by Laws 1939, c. 255, amending §1049, and town board may issue permits only for one single dance, and any license or permit for more than one dance must be issued by county board. Op. Atty. Gen. (802a-20), August 15, 1939.

10164. Permit to be posted.—An person or person desiring a permit to hold, give, or conduct a public dance shall make application therefor by filing with the city clerk, village recorder, or county auditor, as the facts may require, a verified application, setting forth the name and address of the person, persons, committee or organization who are to give, hold, and conduct the same, the time and place where said public dance is to be held, and the area of the dance floor where dance is to be given. Said application shall thereupon be presented to said governing body or to said county board at its next meeting for action. Said governing body or said county board may refer said application to the chief peace officer of the municipality or to the sheriff of the county for investigation and report before granting the same. Said governing body or said county board shall thereupon act upon said application and either grant or reject the same. In case the same is granted, the governing body or the county board shall fix the fee to be paid by the applicant for such permit and shall direct the proper officers to issue the same upon the payment of said fee and upon payment of the expense of the investigation herein provided for in case such investigation is made. Said permit shall specify the names and addresses of the persons to whom issued, the amount paid therefor, and the time and place where said public dance is to be held. Said permit shall be posted in a public place in the dance hall described therein during the time the public dance mentioned therein is being given, and the persons named in said permit shall be responsible under the law for the manner in which said public dance is being held and conducted. Provided that such permit may be acted upon at any special meeting of said governing body or county board, whether included in the call for such special meeting or otherwise. ('23, c. 139, §4; Apr. 20, 1929, c. 264, §2.)

Village need not pass ordinance fixing schedule of fees in order to place village under operation of law. Op. Atty. Gen., June 4, 1930.

10165. Applications.—All applications for such permit shall be made upon blanks furnished by the city, village, or county as the case may be and shall be ac-

companied by the affidavit of two freeholders and shall affirmatively show by the application and affidavits that the applicant is a person of good moral character and reputation in the community in which he lives and that the applicant has not, within five years prior to the making of such application, been convicted of a felony, gross misdemeanor, or of any of the provisions of this act, and no such application shall be granted to any person of bad character or who has been so convicted as aforesaid, nor to any person who is keeper of any disorderly house of any kind nor for any place which has any direct or indirect communication with any room in which intoxicating liquor is sold, given away or otherwise used, nor for any place having any so-called "private apartments" or "private rooms" furnished or used for any other than legitimate business purposes which adjoin such dancing place or which may be reached by stairs, elevator or passageway leading from such dancing place. No permit shall be issued under the terms of this act unless the governing body or county board are satisfied that the place where said public dance is to be given or held is properly ventilated and equipped with necessary toilets, wash rooms, lighting facilities and that such place is not likely to become a public nuisance or detrimental to public morals. ('23, c. 139, §5; Apr. 20, 1929, c. 264, §3.)

Op. Atty. Gen. (63b-13), May 18, 1934; note under §10163.

No license may be issued in a city of the second class to a restaurant which holds an on-sale liquor license. Op. Atty. Gen. (802a-3), August 14, 1939.

10166. [Repealed].

Repealed Jan. 6, 1934, Ex. Ses., c. 46, §7, ante §3200-27.

Town board may require applicant for permit to patrol at his own expense within a radius of 1,000 feet to prevent sale of liquor. Op. Atty. Gen., June 4, 1930.

10170. Officer must attend all public dances.

Where dance is given by an organization, such as American Legion, one of its members may be appointed peace officer if he is not personally interested in the profits. Op. Atty. Gen., Dec. 13, 1929.

Marshal is not chief peace officer, and the council has power to appoint peace officers for dances. Council may appoint several for a dance, if necessary. Op. Atty. Gen., Apr. 3, 1929.

Applicant for permit may be required to patrol within radius of 1,000 feet to prevent sale of liquor. Op. Atty. Gen., June 4, 1930.

Peace officer is to be designated by sheriff of county and may be any citizen, town constable or deputy sheriff. Op. Atty. Gen., Apr. 11, 1933.

Promoter of dance or his employee cannot act as officer thereat. Op. Atty. Gen. (802a-16), Apr. 25, 1936.

One officer cannot be appointed for two dances held at same time at two different places. Op. Atty. Gen. (802a-16), Apr. 27, 1936.

Person designated by sheriff is not a public officer and is not deputized, and all liability for his acts falls upon operator of dance hall. Op. Atty. Gen. (802a-10), Jan. 28, 1938.

10171. Hours.

Defendant held to have violated this section by permitting dancing with the aid of a piano and phonograph operated by placing a nickel in a slot. State v. Bennett, 179M289, 229NW88.

"Night club" operated by hotel in which cover charge was made held a public dance hall in which dancing could not continue after 12 o'clock on Saturday. Op. Atty. Gen., June 5, 1933.

County board issuing license under §10163 may insert restriction that there shall be no dance on Sunday. Op. Atty. Gen. (802a-14), June 14, 1939.

10173. Revocation of permit.

Provision as to issuance and revocation of permits was not changed by Laws 1929, c. 264. Op. Atty. Gen., Apr. 11, 1933.

BIGAMY—ADULTERY, ETC.

10180. Bigamy defined—How punished—Exceptions.

One who married during the existence of a voidable marriage was guilty of bigamy. 175M498, 221NW867.

Honest and reasonable belief in divorce of former spouse as defense for bigamy. 15MinnLawRev470.

10182. Incest.

Cohabitation between first cousins is not incest. Op. Atty. Gen. (133b-36), Sept 7, 1935.

10183. Crime against nature.

Evidence abundantly sustains finding that defendant was guilty of sodomy. State v. Nelson, 199M86, 271NW 114.

Where entire course of trial not only indicates but compels conclusion that the only offense charged and involved at trial was that of sodomy, court did not err in refusing to submit to jury lesser offenses of indecent assault in third degree. Id. See Dun. Dig. 2486.

Where defendant procured Arthur, 19 years old, to bring his friend Allen, 16 years old, to defendant's apartment, where he, in presence of Arthur, committed sodomy with Allen, and then with Arthur in presence of Allen, and was indicted for act with Allen, both boys being witnesses called by state, court charged correctly that Allen was an accomplice, but erred in charging that Arthur was not an accomplice as a matter of law. State v. Panetti, 203M150, 280NW181. See Dun. Dig. 2415.

10184. Adultery.

Complainant cannot dismiss a prosecution once commenced. 175M218, 220NW563.

An admission or confession by one paramour is not admissible against the other. 175M218, 220NW563.

10185. Fornication.

173M158, 217NW146.

Where it appears that the woman was not the wife of the defendant, it is not necessary for the state, in the first instance, to prove the single state of the woman. 171M222, 213NW920.

Acts showing fornication prove a violation of an ordinance of the city of Minneapolis prohibiting lewdness and indecency. 171M505, 214NW479.

Statements of woman to police officers, made in the presence and hearing of defendant when he was apprehended in the act of violating the ordinance, were properly received. 171M505, 214NW479.

Evidence held to sustain finding that defendant lived with a prostitute and to sustain conviction for lewd and indecent conduct in violation of city ordinance. State v. Turner, 196M176, 264NW681. See Dun. Dig. 7860c.

10185A. Absconding by father to evade bastardy proceedings.

This section has no bearing upon question as to whether defendant in bastardy may be called by prosecution for cross-examination. State v. Jeffrey, 188 M476, 247NW692.

Venue of paternity proceedings is set by statute, but act of absconding from state with intent to evade proceedings to establish paternity determines venue for prosecution for felony. Op. Atty. Gen. (193b-20), Jan. 28, 1939.

Extradition may not be secured on a charge of illegitimacy, but may be secured for absconding from the state with intent to evade proceedings to establish paternity. Id.

OBSCENITY

10186. Indecent exposure—penalties.—Every person who shall wilfully and lewdly expose his person, or the private parts thereof, in any public place, or in any place where others are present, or shall procure another to so expose himself, and every person who shall be guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than hereinbefore specified, shall be guilty of a misdemeanor, and punished by a fine of not less than five dollars or by imprisonment in a county jail for not less than ten days.

Every person committing the offense herein set forth, after having once been convicted of such an offense in this state, shall be guilty of a gross misdemeanor. (R. L. '05, §4953; G. S. '13, §8704; Apr. 24, 1931, c. 321.)

Acts showing fornication prove a violation of Minneapolis ordinance prohibiting lewdness and indecency. 171M505, 214NW479.

10187. Obscene literature.

Magazine consisting of short stories and pictures of naked women in various poses and containing crudely written paragraphs concerning so-called "love and passion," held obscene literature. Op. Atty. Gen. (494b-37), May 29, 1934.

10188. Indecent articles, etc.

Prophylactics can only be sold under direction of registered pharmacist. Op. Atty. Gen. (337c), Dec. 16, 1938.

HOUSES OF PROSTITUTION, ETC.

10194. Keeper of disorderly resort.

Admissibility and sufficiency of evidence. 174M143, 218NW557.

Complaint charging keeping of disorderly house under city ordinance held sufficient, in view of fact that there

was but one ordinance to which it could apply. State v. McDow, 183M115, 235NW637. See Dun. Dig. 2754(94).

Evidence held sufficient to sustain a conviction for keeping a disorderly house. State v. McDow, 183M115, 235NW637. See Dun. Dig. 2756(99).

Evidence held to sustain conviction of keeping disorderly house. State v. Johnston, 189M546, 250NW366. See Dun. Dig. 2756.

Evidence sustains conviction of keeping and visiting a disorderly house. City of St. Paul v. M., 198M229, 269 NW408. See Dun. Dig. 2756.

10199. Houses of prostitution, etc., nuisances.

174M457, 219NW770.

10201. Trial—Action by citizen, etc.

Evidence held sufficient to connect defendant with nuisance. State v. Minneapolis Brewing Co., 189M147, 248NW715. See Dun. Dig. 2753a(92).

LOTTERIES

10209. Defined—A nuisance—Drawing, etc.

174NW457, 219NW770.

Automobile contest where votes given in accordance with purchases from merchants, did not constitute a lottery. 176M598, 224NW158.

Whether bank night at a theater constitutes a lottery is a question of fact. State v. Stern, 201M139, 275NW626. See Dun. Dig. 5719.

Fact that those who appear in lobby of theater and request chance obtain it free, could be found by jury a mere device to evade or circumvent law. State v. Schubert Theatre Players Co., 203M366, 281NW369. See Dun. Dig. 5719.

A person may distribute or give away his property or money by lot or chance provided he does so without a consideration. Id. See Dun. Dig. 5719.

A punch board under which prizes may be won held a gambling device, notwithstanding small bars of chocolate were given with every punch. Op. Atty. Gen., Nov. 28, 1933.

Punch boards are unlawful gambling devices. Op. Atty. Gen., Apr. 2, 1934.

Intoxicating liquor cannot be raffled at a bazaar or given as a prize in a drawing. Op. Atty. Gen. (218), May 5, 1934.

A nickel slot machine which always gives a package of gum considered worth $.05 violates this law where it does not always give out exactly the same merchandise. Op. Atty. Gen. (733l), Oct. 15, 1934.

Fraternal organization may not maintain slot machines in its club rooms. Op. Atty. Gen. (733d), Mar. 21, 1935.

Whether "bank night" constitutes a lottery is a question of fact. Op. Atty. Gen. (510a-1), Mar. 25, 1935.

A "suit club" of 100 members each paying in $1 per week, one member receiving a suit each week at a drawing, and remaining members receiving a suit at the end of 25 weeks, constitutes a lottery. Op. Atty. Gen. (510c-10), Apr. 30, 1936.

Attorney general cannot pass upon questions of fact in determining what constitutes lottery. Op. Atty. Gen. (510c-6), Sept. 25, 1936.

It is essential to a lottery that there be a prize, a chance to get it, and a consideration given for the chance. Op. Atty. Gen. (510c-9), Feb. 18, 1938.

Whether there is a consideration for a chance for a prize constitutes a question of fact which should be determined by county attorney in first instance. Op. Atty. Gen. (510c-9), Feb. 18, 1938.

It would seem that there was a lottery where car dealer having a sale of used cars gave tickets to purchasers of cars and after 50 cars were sold there would be a drawing and lucky number would be entitled to trade in old car for new. Op. Atty. Gen. (510c-9), Mar. 11, 1938.

Sale of admission tickets by a school district to a carnival, prizes to be given to purchasers whose names are drawn, constitutes a lottery. Op. Atty. Gen. (510a-1), July 28, 1938.

Bingo or corn game operated for prizes constitutes a lottery. Op. Atty. Gen. (510c-9), Aug. 18, 1938.

Whether "bank-nite" is a lottery is a question of fact. Op. Atty. Gen. (510-9), Dec. 20, 1938.

Three elements are essential to existence of a lottery, a prize, chance to get it, and a consideration given for chance. Op. Atty. Gen. (510B), Feb. 17, 1939.

Game of Hollywood played by patrons of theaters violates this section. Op. Atty. Gen. (510a), July 15, 1939.

Nature of consideration required—theatre "bank nights". 23MinnLawRev101.

10210. Selling tickets, advertising.

Evidence held not to warrant conviction for advertising a lottery. State v. Stern, 201M139, 275NW626. See Dun. Dig. 5719.

Tickets which will in effect operate like a punch board violate this section, whether prize is large or small. Op. Atty. Gen. (510c-4), August 14, 1939.

GAMING

10214. Gambling.

1. What is a gambling device.

There was no error in condemning and destroying slot machines, though there was no search warrant. 176M 346, 223NW455.

A nickel slot machine which always gives a package of gum considered worth $.05 violates this law where it does not always give out exactly the same merchandise. Op. Atty. Gen. (733l), Oct. 15, 1934.

Whether a "pin ball" game constitutes a gambling device is a question of fact. Op. Atty. Gen. (733d), Apr. 2, 1935.

Whether pin ball game is gambling device is question of fact. Op. Atty. Gen. (733d), Feb. 13, 1936.

Fact that a machine does not automatically take cash does not of itself determine whether or not it is a gambling device, and whether or not a particular device is one of skill or one of chance is a question of fact. Op. Atty. Gen. (733), Mar. 3, 1937.

1. What is a gambling device.

City council may refuse to grant license to pin ball machines if it believes it to be a gambling device, though ordinance permits license to game of skill. Op. Atty. Gen. (59a-26), May 10, 1938.

Whether pin ball machine is a gambling device is a question of fact. Op. Atty. Gen. (733d), June 17, 1938.

2. What constitutes gambling.

A contract in form for future delivery of personal property not intended to represent an actual transaction but merely to pay and receive difference between agreed price and market price at a future day is in nature of a wager on future market price of commodity and is void, but burden of establishing that such a contract is a wager is upon party who asserts fact. Peterson's Estate, 203M 491, 281NW877. See Dun. Dig. 10133.

Village may not license places for card playing, winner to be paid in chips which will be taken in trade by the house. Op. Atty. Gen. (733e), March 28, 1939.

10215. Gambling devices on premises.

176M346, 223NW455; note under §10214.

A gum vending machine, which also sets in motion discs which would entitle player to free glass of beer if letters spelled word "beer," was a gambling device, though there was no proof that any one ever succeeded in getting such combination. State v. La Due, 198M255, 269 NW527. See Dun. Dig. 3943.

Conviction of violating ordinance providing that: "No person shall keep or set up any gambling device whatever," held sustained by evidence. Id. See Dun. Dig. 3944.

A vending machine which delivers small package of mints valued at 5c and at irregular intervals chips which can only be used to insert in machine again and merely produce amusement is a gambling machine. Op. Atty. Gen., May 23, 1933.

A slot machine that pays nickels or chips for a jackpot is a gambling device though it pays a package of gum each time it is played. Op. Atty. Gen., June 6, 1933.

Games consisting of a board and slot for the deposit of a coin upon which balls are released for the purpose of attempting to place them in certain slots, the idea being to get a large score, are not gambling devices unless the proprietor offers prizes in the form of cash or merchandise for certain scores obtained. Op. Atty. Gen. (733), July 3, 1934.

Pin-ball machine passing non-redeemable chips is a gambling device. Op. Atty. Gen. (733d), May 26, 1939.

10223–1. Contracts for future delivery of wheat, grain or other farm produce, etc.

Transactions wherein options on wheat were purchased and sold held to constitute gambling. Deterling v. G., 192M60, 255NW484. See Dun. Dig. 1126.

Evidence held to show that transaction out of which arose alleged guaranty in grain transaction sued upon was a gambling transaction and not a contract by which parties contemplated actual delivery of grain. Becher-Barrett-Lockerby Co. v. H., 197M541, 267NW727. See Dun. Dig. 3941.

A contract in form for future delivery of personal property not intended to represent an actual transaction but merely to pay and receive difference between agreed price and market price at a future day is in nature of a wager on future market price of commodity and is void, but burden of establishing that such a contract is a wager is upon party who asserts fact. Peterson's Estate, 203 M491, 281NW877. See Dun. Dig. 10133.

RIGHTS OF SEPULTURE

10227. Dissection—When permitted.

Insurer, held entitled to disinterment of body of insured for autopsy, where demand was seasonably made; and refusal to grant consent to such autopsy, held to defeat right to recover on policy. Clay v. Aetna Life Ins. Co., (DC-Minn), 53F(2d)689. See Dun. Dig. 2599, 2599a.

Coroner possesses considerable discretion in performance of his duties and is the only person that can hold an inquest, though mandamus might lie to compel him to hold an inquest in a proper case. Op. Atty. Gen. (103f), Jan. 29, 1935.

SABBATH BREAKING, ETC.

10234. Definitions.

There is no statutory provision prohibiting distribution of campaign cards on Sunday. Op. Atty. Gen. (627f-2), May 11, 1934.

10235. Things prohibited—Exceptions.—All horse racing, gaming and shows; all noises disturbing the peace of the day; all trades, manufacturers, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day:

Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community, including the usual shoe shining service; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played between the hours of one p. m. and six p. m. on the Sabbath day. (R. L. '05, §4981; '09, c. 267, §1; G. S. '13, §8753; Apr. 23, 1929, c. 308, §1; Apr. 5, 1935, c. 129.)

Farmers may sell products on their properties near highways on Sundays. Op. Atty. Gen., Aug. 8, 1933.

CHAPTER 99

Crimes Against Public Health and Safety

10241. Public nuisance defined.

Act making possession of foul, offensive or injurious substance, compound or gas with wrongful intent a gross misdemeanor. Laws 1931, c. 86.

Logging railroad over highway under Mason's Minn. Stat. 1927, §25558-1, etc., is not a public nuisance under this section. 174M305, 219NW172.

A newspaper business conducted in violation of §§10123-1 to 10123-3 is a public nuisance. 174M457, 219 NW770.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098. 177M454, 225NW449.

Landowner removing rock on land supporting embankment for state highway is guilty of maintaining a public nuisance and is guilty of a misdemeanor. State v. Nelson, 189M87, 248NW751. See Dun. Dig. 7240n, 58.

Patch of ice on walk formed by melting of snow on cornice was not a public nuisance, for which building owner would be liable. Mesberg v. C., 191M393, 254NW 597. See *Dun. Dig. 6845.*

Section 5015-4 giving railroad and warehouse commission authority to require auto transportation company to maintain suitable depots, does not oust a city or village of jurisdiction to enjoin maintenance of a depot if it constitutes a nuisance. Village of Wadena v. F., 194M146, 260NW221. See Dun. Dig. 6752.

A truck warehouse and depot, located in Wadena, Minn., a block and a half from main business street and within a block of a public garage, a smiliar truck depot, a large warehouse, a furniture store and undertaking parlor, and on street running directly from railroad depot to main business street, is not a nuisance, either public or private. Id. See Dun. Dig. 7244.

Trap door in lavatory in restaurant held not a nuisance, nor so faulty in design or construction that landlord could be held responsible for creation of an unreasonable risk to patrons of lessee. Lyman v. H., 203M225, 280 NW862. See Dun. Dig. 5369(39).

Right to use a highway extends only to its use for communication or travel, and members of a labor union have no right to park an automobile on highway in night time for the purpose of signaling and stopping trucks, and such conduct constitutes a public nuisance and is a crime against order and economy of the state. Hanson v. H., 202M381, 279NW227. See Dun. Dig. 4168.

Violation of statute does not give a private individual a cause of action unless he has suffered some special damage. Id. See Dun. Dig. 7285.

Jury might reasonably find that violation of plaintiff's rights was proximate cause of damage where evidence would support findings that plaintiff was traveling at a lawful speed, turned into left lane of highway to pass a truck ahead of him in a lawful manner, was compelled to turn back into right lane because of defendant's obstruction of highway, and that as a result his truck collided with other truck and was damaged. Id. See Dun. Dig. 4168, 7002.

Where injury complained of is caused by defendant's intentional invasion of plaintiff's right of unobstructed travel on a public highway, plaintiff's contributory negligence is no defense. Id. See Dun. Dig. 4168.

When a small loan business, catering to the large class of the poor and necessitous wage earners, is so conducted that in every loan made usury statute is flagrantly and intentionally violated, and there is no adequate or effective remedy which borrowers are willing or able to use to obtain redress for violation, it constitutes a public nuisance which may be enjoined. State v. O'Neil, 286 NW316. See Dun. Dig. 7240.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

A misdemeanor. Op. Atty. Gen., June 20, 1930.

Village may refer buildings which are life and limb hazards to persons on sidewalks to state fire marshal or deal with owners thereof under nuisance statute. Op. Atty. Gen. (477b-20), Mar. 23, 1937.

Nuisance maintained by tenants by throwing of refuse on property forfeited to state for delinquent taxes may not be abated in proceedings against the state or tax commission, but may be corrected by criminal or civil proceedings against tenants. Op. Atty. Gen. (133b-2), May 22, 1937.

Council of Belle Plaine has no authority to enact ordinance requiring filling stations to close at night. Op. Atty. Gen. (477b-20), Aug. 25, 1937.

Automobile or general junk yards within a village are not a nuisance per se and may not be prohibited, though they may be regulated. Op. Atty. Gen. (477b-20), May 11, 1938.

Where walls of a vault under sidewalk are in such condition as to necessitate filling to protect new walk, doorways and window frames below sidewalk level may be declared a nuisance and property owners be compelled to fill them to protect inside of building and support walk. Op. Atty. Gen. (480), Aug. 4, 1938.

Whether a large sign on a small parcel of land at intersection of street constitutes a public nuisance is a question of fact. Op. Atty. Gen. (396c), Aug. 11, 1938.

If a hog feeding ranch is dangerous to health and constitutes a nuisance, nuisance may be abated and criminal proceedings instituted. Op. Atty. Gen. (225j), Dec. 31, 1938.

(3).

Op. Atty. Gen., Jan. 24, 1934; note under §2615(1).

City council may not grant a permit to erect a permanent outside stairway over a sidewalk. Op. Atty. Gen. (63b-17), June 23, 1938.

10242. Itinerant carnivals prohibited.

174M457, 219NW770.

10245. Maintaining or permitting building as a nuisance.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

10250. Adulteration or imitation of foods, etc.

Whether milk was free from adulteration held question for jury. 174M320, 219NW159.

10255. Deadly weapons.

There was no fatal variance where information charged carrying of a revolver and proof showed weapon to be an automatic pistol. 176M238, 222NW925.

There was no error in refusing to hold that weapon was not loaded nor admitting it in evidence against objection that, because the prosecuting witness had by force taken it from defendant, it would virtually be com-