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Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

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CHAPTER 101

Crimes Against Property

10304. Misappropriation, etc., by county treasurer.

A member of village council may not lawfully act as manager of a municipal liquor store, and council is under no obligation to appoint a bookkeeper, and if village recorder is willing to do the work, there is no reason for appointment of any one else, and raising salary of recorder by reason thereof would not constitute violation of law forbidding public officers from being interested in contract. Op. Atty. Gen., (470g), Jan. 15, 1941.

10305. Officer interested in contract.—Every public officer who shall be authorized to sell or lease any property, to make any contract in his official capacity, or to take part in making any such sale, lease, or contract, and every employe of such officer, who shall voluntarily become interested individually in such sale, lease, or contract, directly or indirectly, shall be guilty of a gross misdemeanor; provided, however, that any village or city council, town board, or school board, of any town, village or city of the fourth class, otherwise having authority to designate depository for village, city, town or school district funds, of any town, village or city of the fourth class, may designate a bank in which a member of such board is interested as a depository for village, city, town or school funds of any town, village or city of the fourth class by a two-thirds vote of such board. Provided, further, that any school board is hereby authorized and permitted to contract with co-operative associations in which one or more members of such council or board is a share or stockholder, but not an officer or manager thereof, if such contract is authorized by the unanimous vote of the entire council or board. (As amended Act Apr. 15, 1941, c. 228, §1.)

Possession or sale of any article, material or merchandise by state agencies, officers or employes of the state is unlawful. Laws 1941, c. 58.

Laws 1931, chapter 212, amending this section, is unconstitutional and designation of bank as a depository of which school district board member is an officer is a complete nullity and does not protect school treasurer. Op. Atty. Gen., (90c-2), Oct. 3, 1939.

Member of village council taking part in issuing relief orders violates this section by honoring them at his store, though he charges wholesale price and receives no profit. Op. Atty. Gen., (90a), Oct. 27, 1939.

City cannot enter into a contract with a cooperative society in which councilman is a stockholder, and member of board of directors. Op. Atty. Gen., (90e), Jan. 15, 1940.

Employee of Rural Electrification Association receiving straight salary may be elected to office of city councilman, though city and association are parties to a contract. Op. Atty. Gen., (90e), March 18, 1940.

City treasurer as agent for fire insurance company would violate section by renewing old policy. Op. Atty. Gen., (90c-3), March 19, 1940.

Clerk of an independent school district cannot act as agent for insurance company selling insurance to the district. Op. Atty. Gen., (90c-5), July 12, 1940.

It is not legal for husband of schoolboard member acting as cashier of a local bank to sell insurance to school, though commission goes directly to bank, where cashier draws a salary and as a stockholder participates in dividends at bank and husband supports family. Op. Atty. Gen. (90-C-5), July 30, 1940.

Member of city commission employed at part time work in publishing concern owned by his father does not violate the section if his salary does not depend upon contract between city and publishing concern. Op. Atty. Gen. (90E-5), Aug. 5, 1940.

This section is not applicable in the matter of employment by county commissioners of coroner to examine indigent persons for purposes of hospitalization, but such employment is prohibited by §990. Op. Atty. Gen. (103-E), Aug. 9, 1940.

Member of South St. Paul Sewage Disposal Plant Commission cannot enter into contract with commission for purchase of supplies from his store. Op. Atty. Gen. (90e-5), Aug. 21, 1940.

Board of Education of special school district of Rochester may contract with city aldermen for insurance. Op. Atty. Gen. (90c-5), Aug. 23, 1940.

Purchase of village certificates of indebtedness by a bank, one of whose officers and stockholders is president of council, violates this section, and president's absence from meeting which decides matter does not alter this. Op. Atty. Gen. (90a-1), Dec. 17, 1940.

This section prohibits any school board member from having a pecuniary interest in any contract with school district, and whether local agent of oil company has a pecuniary interest in a contract between school district and oil company is a question of fact. Op. Atty. Gen. (90c-4), Oct. 29, 1940.

Village recorder cannot be appointed manager of municipal liquor store. Op. Atty. Gen. (218g-13), Dec. 17, 1940.

Owing to peculiar features of charter of City of West St. Paul, management of schools being vested in city council and school members not being members of that council, awarding of a contract by council for publication of school proceedings to a newspaper in which a member of school board has a financial interest is not a violation of this section. Op. Atty. Gen., (90E), Jan. 4, 1941.

Member of a school board is prohibited from entering into a contract with district, and this prohibition would be violated if a member acted as supervisor or employee on a W.P.A. project and received compensation therefor. Op. Atty. Gen., (90c-3), Jan. 4, 1941.

Village Treasurer cannot lawfully give bond written by insurance agency in which he has an interest. Op. Atty. Gen., (90E-3), Jan. 14, 1941.

It would be illegal for county board to buy a truck from a company whose local dealer was a member of the county board, even though such member would not receive anything out of the sale. Op. Atty. Gen., (90b), Mar. 27, 1941.

10306. Fake statement regarding taxes.

Form provided for application for reduction in assessed valuation of personal property. Op. Atty. Gen., (421a-15), Nov. 23, 1939.

COUNTERFEITING—FRAUDULENT PRACTICES

10336. Possession of counterfeit coin.

Manufacturer and sale of tokens or slugs for use in lieu of lawful coin in vending machines, parking meters, or other coin receptacles is unlawful. Laws 1941, c. 132.

10348. Registration.

Sheet printed on both sides offering instructions as to use and comments on worth of product is not a trademark which may be registered. Op. Atty. Gen., (385a-7), Mar. 21, 1941.

10357-1. Issuance of labor check without funds a misdemeanor.

Where a check was made out and signed in Ramsey County and delivered to an employee in Todd County and was drawn on a Wisconsin bank, any prosecution must necessarily be had in Ramsey County. Op. Atty. Gen. (133B-43), Aug. 10, 1940.

LARCENY

10358. What constitutes.

THE STATUTE GENERALLY

1a. Elements of offense.

Evidence held to sustain conviction of transportation of motor vehicle from Minnesota into Iowa knowing the same to have been stolen within meaning of controlling Minnesota larceny statute. *Carpenter v. U. S.*, (CCA8), 113F(2d)692.

A contractor securing from owner a real estate mortgage for an unpaid balance under building contract by means of false itemized statements of materials claimed to be used cannot be prosecuted for larceny but may be guilty of obtaining a signature to a written instrument by false pretenses. Op. Atty. Gen., (133B-45), Sept. 27, 1939.

SIMPLE LARCENY

2. What constitutes.

One having knowledge that others intended to commit larceny was guilty of that offense himself where he assisted them, though only out of curiosity. *State v. Eggermont*, 288NW390. See Dun. Dig. 5487.

In prosecution for larceny wherein it appeared that property was returned to owner voluntarily, it was proper to instruct that act of returning property did not wipe slate clean. Id.

EMBEZZLEMENT

10. Indictment of officer, agent, clerk, servant or bailee. *State v. McGunn*, 294NW208; note under §10662.**10361. Giving check without funds.**

Where a check was made out and signed in Ramsey County and delivered to an employee in Todd County and was drawn on a Wisconsin bank, any prosecution

must necessarily be had in Ramsey County. Op. Atty. Gen. (133B-43), Aug. 10, 1940.

10373. Intent to restore property.

In prosecution for larceny wherein it appeared that property was returned to owner voluntarily, it was proper to instruct that act of returning property did not wipe slate clean. State v. Eggermont, 288NW390. See Dun. Dig. 5487.

10376. Restoration of stolen property—Duty of officers.

Apparently stolen property coming into hands of bureau of criminal apprehension and unclaimed should be turned over to sheriff of county where taken, to be disposed of as unidentified stolen property. Op. Atty. Gen., (985), Jan. 15, 1940.

EXTORTION OR OPPRESSION

10378. Interfering with employee or membership in union.

The labor injunction in Minnesota. 24MinnLawRev757. The state legislature unionism. 38MichLawRev987.

FALSE PERSONATION, ETC.

10386. Obtaining signature by false pretenses.

In an information charging obtaining of signatures to mortgages and notes by false pretenses, it is not necessary to set out specific invoices and memoranda whereby signatures were obtained where false documents are described in general terms, defendant having right to demand a bill of particulars, unless documents are in his possession. State v. Gottwalt, 295NW67. See Dun. Dig. 3736.

Information charging obtaining of signatures to mortgages and notes by false pretenses held to sufficiently charge knowledge on part of defendant of falsity of documents used to obtain signatures and reliance of victims on false representations. Id.

An information charging that two mortgages and two notes were obtained by same false pretenses in one transaction, does not charge more than one offense though separate notes and mortgages bear different dates. Id.

A contractor securing from owner a real estate mortgage for an unpaid balance under building contract by means of false itemized statements of materials claimed to be used cannot be prosecuted for larceny but may be guilty of obtaining a signature to a written instrument by false pretenses. Op. Atty. Gen., (133B-45), Sept. 27, 1939.

10392. False statements as inducement to entering employment.

The state legislatures and unionism. 38MichLawRev 987.

10395. Selling or concealing mortgage chattels.

If mortgage could have been enforced by mortgagee or its assigns in a civil action, property was "mortgaged" within meaning of statute. State v. Rivers, 287NW790. See Dun. Dig. 1486.

Where Minnesota resident attended auction sale of cattle in Wisconsin and borrowed money there to pay purchase price, executing there a note and mortgage, held that note and mortgage were governed by usury statute of Wisconsin and not Minnesota, though mortgagee knew that cattle were to be taken to Minnesota and mortgage was filed there. Id. See Dun. Dig. 1540.

"Presumption of innocence" does not conflict with presumptions used to decide law to be adopted in judging whether mortgage involved is void because note secured thereby is usurious. Id. See Dun. Dig. 9993.

Complaint or indictment should not overlook element of "intent to place mortgaged personal property beyond the reach of the mortgagee". Op. Atty. Gen., (133B-59), Feb. 6, 1940.

MALICIOUS MISCHIEF—INJURIES TO PROPERTY

10419. Injuring highways; etc.

Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. Op. Atty. Gen. (377a-5), Aug. 14, 1940.

10431. Coercion.

The labor injunction in Minnesota. 24MinnLawRev757. The state legislatures and unionism. 38MichLawRev 987.

10432. Injury to other property.

One removing buildings, fences, timber, etc., from lands forfeited to state for nonpayment of taxes may be prosecuted under this section. Op. Atty. Gen. (412a-24), June 6, 1940.

10440. Injury to buildings.

One removing buildings, fences, timber, etc., from lands forfeited to state for nonpayment of taxes may be prosecuted under this section. Op. Atty. Gen. (412a-24), June 6, 1940.

10441-1. Willful trespass a misdemeanor.

If a person has been notified to depart from property forfeited to state for non-payment of taxes, he may be prosecuted for willful trespass, for removal of buildings, fences, timber, etc. Op. Atty. Gen. (412a-24), June 6, 1940.

CHAPTER 103

Miscellaneous Crimes

10455-11. Application of act.—Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

Administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, not more than one grain of codeine or of any of its salts.

The exemptions authorized by this section shall be subject to the following conditions:

(a) That the medicinal preparation administered, dispensed, or sold, shall contain in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(b) That such preparation shall be administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this act.

Nothing in this section shall be construed to limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this act.

(c) No person shall administer, dispense or sell, under the exemption of this section, any preparation included within this section, when he knows, or can by reasonable diligence ascertain, that such adminis-

tering, dispensing or selling will provide the person to whom or for whose use such preparation is administered, dispensed or sold, within any 48 consecutive hours, with more than six grains of codeine or any of its salts. (As amended Apr. 9, 1941, c. 157, §1.)

10463. Trusts and combinations in restraint of trade prohibited.

Anti-Trust Laws have been adopted in Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. (1940).

The labor injunction in Minnesota. 24MinnLawRev757. Monopolies—restraint of trade—price and production control through trade associations. 25MinnLawRev208.

10503. Indians located on reservations.

Indian rights and the federal courts. 24MinnLawRev 145.

10536-5. Visitors at tourist camps, etc., to register.

A group of 10 cabins on one 50-foot lot conducted as rental property where overnight guests or guests for 2 or 3 days or by week were registered and accommodated was a tourist camp and not a "place of residence" within meaning of building restriction, registers being kept as provided by this act. Cantieny v. B., 296NW491. See Dun. Dig. 2393.

10536-17 and 10536-18. [Repealed.]

Repealed. Laws 1941, c. 495.