

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

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.

Edited by
the
Publisher's
Editorial Staff

*Minnesota State Library
St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

Where a number of school districts consolidate, first income tax money must be used to retire bonded indebtedness of old districts, then bonded indebtedness of new districts, before any part can be used for school maintenance. Op. Atty. Gen., (531i), April 30, 1940.

Boys in state training school at Red Wing may not be counted for purposes of income tax distribution. Op. Atty. Gen. (56B), June 5, 1940.

(c) (3).

After all bonded indebtedness is retired it is contemplated that tax on real and personal property will be replaced by income tax money, or at least reduced by amount received from income tax fund. Op. Atty. Gen., (519m), Feb. 19, 1940.

2394-57a. Use of money received by cities of the first class.—

Section 1. All money received by any city of the first class maintaining its own schools, or by any

school district or districts covering the territory of any such city, on distribution by the state of Minnesota of money derived from payment of income taxes, may be used for current maintenance and operating expenses to the extent required by the governing body charged by law with the control and maintenance of such schools. (Act Feb. 25, 1941, c. 21, §1.)

Sec. 2 of Act Feb. 25, 1941, c. 21, cited, provides that the Act shall take effect and be in force from and after its passage.

ARTICLE X

2394-59. Effective date.

(a).

Byard v. C., 296NW10; note under §2394-32a.

CHAPTER 12

Military Code

Editorial note:—Remedies against soldiers and sailors, including draftees, are affected by the Selective Training and Service Act of 1940, §13, and the new Soldiers' and Sailors' Civil Relief Act of 1940. See Mason's U. S. Code, October, 1940 Pamphlet.

MILITIA

2395. Military code.

Acquisition of land for military or naval training purposes. Laws 1941, c. 496.

2399. Militia—Constitution—Officers and personnel—Exemptions.

Purchase of materials. State v. Gravlin, 295NW654. See Dun. Dig. 6118.

2404. Governor may call out militia.

Purchase of materials. State v. Gravlin, 295NW654. See Dun. Dig. 6119.

2407. Governor to be commander-in-chief of military forces; etc.

Purchase of materials. State v. Gravlin, 295NW654. See Dun. Dig. 6118.

2425. State and municipal officers; etc. [Repealed.]

Repealed. Laws 1941, c. 120, §6.

Said chapter 120 prescribes conditions for leaves of absences to public officers and employees serving in the military or naval forces of the government.

A teacher under contract called into active service in national guard or officers' reserve corps is entitled to a military leave of absence without pay, and to be reinstated within a reasonable time after termination of active military service, and another teacher may be hired as a substitute in the interim. Op. Atty. Gen. (172c-2), Sept. 6, 1940.

Absence for military service is a leave of absence without pay and upon employee's restoration to status, he may continue his membership in the retirement fund, as provided by law and rules thereunder. Op. Atty. Gen. (331a-9), Sept. 20, 1940.

2502. State to assist in building armories.

City may furnish a site for an addition to armory without vote of electors, and pay for it out of any funds available. Op. Atty. Gen. (59B-1), Aug. 13, 1940.

2517-5. City shall provide site.

Act Apr. 4, 1941, c. 121, §1, authorizes conveyance to City of St. Cloud of site of present armory in said city.

2517-13. Construction in municipalities having national guard units; etc.

Laws 1941, c. 73, authorizes conveyance of the old capitol building site to the state armory building commission for armory purposes, and revokes prior authorization for conveyance of said site.

2517-14. Corporation created—Commission.—Subdivision 1.

For the purpose of constructing armories as provided by Section 12 of this act, there shall be created a corporation to be known as the "Minnesota State Armory Building Commission." The persons holding the following offices and their respective successors in office shall be, ex officio, the members and governing body of such corporation, namely: The adjutant general and the general officers of the line

of the National Guard of the state. The adjutant general shall be chairman of such commission. Such commission shall elect a secretary and treasurer from the members thereof other than the adjutant general. The officers of such commission shall have like powers and duties as are vested in or imposed upon the corresponding officers of the commission referred to in Section 2 of this act.

Subdivision 2. Upon the filing with the secretary of state of a certificate by the adjutant general reciting the existence in any such municipality of the conditions specified in Section 12 of this act, naming the persons authorized to compose such commission and corporation as provided in this section, and declaring them to be constituted a commission and corporation hereunder, such persons shall forthwith become and be such commission and corporation without further proceeding. In case of a vacancy in the membership of such commission and corporation, the remaining members, provided there be not less than two, shall have power to act and to elect such temporary acting officers as may be necessary during the existence of the vacancy. In case at any time there shall not be at least two qualified officers of the National Guard in addition to the adjutant general eligible to serve ex officio as members of such commission as provided by Subdivision 1 of this section, the adjutant general may appoint a member or members of such commission from the colonels of the line of the National Guard of the state so as to provide not more than two members of such commission in addition to himself. The membership of the member last so appointed shall automatically terminate upon the appointment and qualification of an officer of the National Guard eligible to serve ex officio as a member of such commission as provided by Subdivision 1 of this section, providing the total membership of such commission be not thereby reduced to less than three. All officers of the National Guard eligible to be members of such commission as provided by Subdivision 1 of this section shall automatically become such members forthwith upon their appointment and qualification as such officers. In case of a vacancy in the office of adjutant general, or in case of the incapacity of the adjutant general to act as a member and chairman of such commission, the officer who is appointed or authorized according to law to exercise the powers of the adjutant general for the time being shall, during the existence of such vacancy or incapacity, act as a member and chairman of such commission and have all the powers and duties herein vested in or imposed upon the adjutant general as a member and chairman of such commission. The adjutant general shall certify to the secretary of state all changes in the membership of the commission, but failure on his part so to do shall not affect the authority of any new member

of the commission or the validity of any act of the commission after accession of a new member.

Subdivision 3. In case at any time all or all but one of the line officers of the National Guard who are members of the commission or who are eligible to serve as such are in active service outside the state, or where for any other reason there are not at least two qualified line officers of the National Guard available within the state to serve as members of the commission, the adjutant general, or in case of his incapacity or of a vacancy in that office, the officer who is appointed or authorized according to law to exercise the powers of the adjutant general for the time being, shall become trustee of the commission and shall have all the powers and perform all the duties of the commission and its officers so long as such conditions exist. Upon the occurrence of such conditions the officer becoming trustee shall file with the secretary of state a certificate reciting the circumstances and declaring that he assumes office as such trustee, and thereupon he shall be deemed to have qualified as such, with all the authority hereby conferred. Any change in such office shall be likewise certified by the officer succeeding as trustee. Upon the termination of such conditions the adjutant general or his authorized substitute shall certify the circumstances in like manner, with the names of the officers then authorized by law to compose the commission, and thereupon such officers shall constitute the commission, and the authority of the trustee shall terminate. (As amended Act Mar. 5, 1941, c. 44, §1.)

Laws 1941, c. 73, authorizes conveyance of the old capitol building site to the state armory building commission for armory purposes, and revokes prior authorization for conveyance of said site.

2517-15. Same—Powers of corporation and municipalities; etc.

Laws 1941, c. 73, authorizes conveyance of the old capitol building site to the state armory building commission for armory purposes, and revokes prior authorization for conveyance of said site.

2517-16. Acquisition of land for military and naval training purposes.—The adjutant general is hereby authorized to acquire in the name of the state by purchase, gift, or condemnation such lands as he deems necessary for military or naval training purposes adjacent to or in the vicinity of the military field training center at Camp Ripley or at other suitable places in this state, subject to the approval of the executive council and subject to the limitations of funds appropriated and available therefor. Such authority shall continue until and including June 30, 1943, and shall then terminate; provided, that any proceedings for the condemnation of land commenced on or before said date may be prosecuted to completion thereafter. (Act Apr. 28, 1941, c. 496, §1.)

2517-17. Creation of Military and Naval Land Fund.—There is hereby created a special fund to be known as the Military and Naval Land Fund, to be used for the purposes hereinafter specified. To provide money for said fund the state auditor is hereby authorized and directed to levy upon all taxable property in the state in the manner in which other state taxes are levied in the taxable years 1943, 1944, 1945, 1946, and 1947, such sums as may be necessary to meet the appropriations and pay the certificates of indebtedness hereinafter authorized, not exceeding \$200,000 for each of said taxable years, and not exceeding \$1,000,000 in the aggregate, and to levy and collect annually such additional sum or sums as may be necessary to meet the interest on said certificates of indebtedness. In case of a deficiency in the proceeds of such tax levy for any year, the auditor shall levy sufficient additional amounts in succeeding years to compensate therefor until the full amount herein authorized has been raised. The proceeds of such taxes shall be credited to said Military and Naval Land Fund. (Act Apr. 28, 1941, c. 496, §2.)

2517-18. Certificates of indebtedness.—Pending the levy and collection of such taxes, upon request of the adjutant general, with the approval of the executive council, the state auditor is hereby authorized and directed to issue and sell certificates of indebtedness of the state as funds are needed for the purposes of this act, not exceeding the amounts required from time to time to meet the appropriations hereinafter made and not exceeding \$1,000,000 in the aggregate. Such certificates shall be known as Military and Naval Land Fund Certificates of Indebtedness, shall be numbered consecutively, and shall be issued and sold at not less than par upon sealed bids after two weeks published notice, unless sold to the State Board of Investment as hereinafter provided. Such certificates shall be in such form and of such denominations and shall mature at such times as the auditor may determine, not exceeding the time when funds shall be available for the payment thereof from the tax levies herein authorized. Such certificates shall bear such rate of interest, payable semi-annually, and shall contain such other terms and provisions, not inconsistent herewith, as the auditor may determine. Such certificates shall be signed by the state treasurer and attested by the state auditor under their official seals, and the auditor and treasurer shall keep records thereof. Such certificates shall be a charge upon and lien against the taxes herein authorized. The principal and interest of such certificates shall be payable only from the proceeds of such taxes, and so much thereof as may be necessary is hereby appropriated for such payments; provided, that such interest as may become due at any time when there is not on hand a sufficient amount from the proceeds of such taxes to pay the same shall be paid out of the general revenue fund, and the amount necessary therefor is hereby appropriated, to be reimbursed from the proceeds of such taxes when received. All moneys received from the sale of such certificates shall be credited to said Military and Naval Land Fund. (Act Apr. 28, 1941, c. 496, §3.)

2517-19. Purchase of certificates by State Board of Investment.—The State Board of Investment is hereby authorized to invest any funds under its control or direction in any certificates of indebtedness issued hereunder and to purchase such certificates at a rate of interest not exceeding three per cent per annum, and such certificates may be issued and sold to said board without advertising for bids. (Act Apr. 28, 1941, c. 496, §4.)

2517-20. Appropriation.—There is hereby appropriated to the adjutant general out of said Military and Naval Land Fund such sums as he, without the approval of the executive council, may request from time to time after the passage of this act until and including June 30, 1943, for the cost of acquisition of lands hereunder and expenses incident thereto, not exceeding \$1,000,000 in the aggregate. Any balance of the sums so requested remaining unexpended at the end of any fiscal year shall be carried over and be available for the next and succeeding fiscal years until all proceedings for acquisition of lands authorized hereunder have been completed and until all obligations incurred hereunder have been paid. (Act Apr. 28, 1941, c. 496, §5.)

2517-21. Condemnation, how governed.—Proceedings for the condemnation of lands hereunder shall be governed by the provisions of Mason's Minnesota Statutes 1927, Chapter 41, and acts amendatory thereof and supplementary thereto, so far as applicable, subject to the further provisions of this act. (Act Apr. 28, 1941, c. 496, §6.)

2517-22. Immediate possession, certificate of taking—Award, how made.

Subdivision 1. If the adjutant general shall determine that it is necessary to take immediate possession of any land which is under condemnation hereunder prior to the vesting of title thereto in the state in the

regular course of proceedings, he may, at any time after the filing of the petition for condemnation, file with the court a certificate of taking, describing the land and declaring that the same is taken for the purposes herein authorized. At the time of filing such certificate he shall deposit with the clerk of the court such sum of money as the court may approve to secure payment of the final award for the land to the person or persons entitled thereto. The court's approval of the amount of the deposit shall be indorsed upon the certificate of taking. A certified copy of such certificate and indorsement shall be recorded with the register of deeds. Thereupon title to the land described in the certificate shall become vested in the state, and the adjutant general may take possession thereof in behalf of the state.

Subdivision 2. The final amount of the award shall bear interest at the rate provided by law from the time of the filing of the certificate of taking, except such sum as may be certified for immediate payment as hereinafter provided.

Subdivision 3. The adjutant general shall file with every such deposit a separate certificate stating the amount which he deems to be just compensation for the land taken and authorizing immediate payment of such amount under the order of the court. After the filing of such certificate no interest shall be allowed upon that part of the award represented by the amount so certified. Upon application of any party interested and upon notice and hearing as in case of distribution of an award paid into court, the court shall order the amount so certified by the adjutant general to be paid over to the person or persons entitled to compensation for the land taken according to their respective interests. Every such payment shall be applied and credited on the award.

Subdivision 4. Upon the determination of the final award any amount thereof not already paid as hereinbefore provided shall be paid from the amount deposited hereunder upon like proceedings as in case of an award paid into court. Any deficiency shall be payable as in other cases of awards.

Subdivision 5. The provisions of this section shall not preclude the application of any other provision of law which may be applicable in the premises. (Act Apr. 28, 1941, c. 496, §7.)

2517-23. Lease to the United States.—The adjutant general, with the approval of the executive council, may lease any lands now owned or hereafter acquired by the state for military or naval training purposes, including the military training center at Camp Ripley, or any part thereof, to the United States for military or naval training purposes during such times and upon such terms as they deem proper, provided, that no lease shall be made for a term longer than 20 years, and sufficient facilities at said training center shall be reserved for the maintenance and field training of the national guard of the state. (Act Apr. 28, 1941, c. 496, §8.)

2517-24. Requisition of tax forfeited land—approval—Lease—Relief from tax trust—Reversion to original status—Incidental expenses.—

Subdivision 1. The adjutant general, with the approval of the executive council, may requisition for military or naval training purposes any tax-forfeited land in the state or any state land in the custody or under the control of the commissioner of conservation or any agency of the department of conservation, subject to the conditions hereinafter prescribed. Such requisition shall be made by filing a certificate thereof executed by the adjutant general, together with a certified copy of the resolution of the executive council approving the same, as follows:

(a) With the county auditor of the county in which the land is situated in the case of tax-forfeited land held subject to any control or authority of the county board;

(b) With the officer having custody of the state land records in the department of conservation in the case of any tax-forfeited land or other state land not subject to any control or authority of a county board.

Subdivision 2. No such requisition shall be made in the case of any state land which has been designated or set apart for any specific public use without the approval of the commissioner of conservation.

Subdivision 3. No such requisition shall be made in the case of any tax-forfeited land within the limits of any city or village without the approval of the governing body thereof.

Subdivision 4. Land so requisitioned may be leased to the United States for military or naval training purposes as hereinbefore provided.

Subdivision 5. Land so requisitioned, so long as used by the state or by the United States for military or naval training purposes, shall be relieved from any trust in favor of any taxing district and from any control or authority of any other public agency for any other purposes. In case the use of such land for military or naval training purposes should cease it shall revert to its status immediately prior to being requisitioned for such purposes, and shall be subject to all the conditions and incidents attached to such status.

Subdivision 6. Expenses incident to the requisitioning of land for military or naval training purposes hereunder, to the leasing of such land to the United States, and to proceedings to perfect the title to such land, if necessary, shall be payable from the appropriations hereinbefore made for acquisition of land. (Act Apr. 28, 1941, c. 496, §9.)

2517-25. Assurance of military use.—No land or lands may be acquired, requisitioned or leased, nor may any other powers be exercised under this act unless and until the executive council has received reasonable assurance from the duly authorized representative or representatives of the federal government that such land or lands are to be used solely for military purposes. (Act Apr. 28, 1941, c. 496, §10.)

CHAPTER 13

Roads

GENERAL HIGHWAY ACT

2542. Scope of act.

4. "Town roads."
Op. Atty. Gen., (642a-12), April 2, 1940; note under § 2552.

2543. "Road" and "Highway" defined.

Op. Atty. Gen., (642a-12), April 2, 1940; note under § 2552.

2551. County roads.

Towns and counties, being charged with highway construction and maintenance, are liable in damages to prop-

erty owners if and when such owners' property rights are invaded, to protect owners against illegal exercise of power of eminent domain. *Westerson v. S.*, 291NW900. See Dun. Dig. 8475.

As a general rule counties are not liable for negligent acts of their employees committed in exercise of duties of a governmental nature, such as grading a road. Op. Atty. Gen. (844c-5), March 7, 1940.

Fact that county approved plat does not make it liable for maintenance of highways dedicated. Op. Atty. Gen. (377b-10h), July 29, 1940.

On establishment of a county road under §2582, county must construct road as well as acquire right of way. Op. Atty. Gen. (377B-3), Nov. 2, 1940.