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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.

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in this Act, and upon the payment of a fee of \$1.00 at the time the initial application is made. Such permit shall be renewed annually upon the furnishing of evidence satisfactory to the said Department, that the holder thereof is complying with the minimum requirements of this Act and upon the payment of a renewal fee of \$1.00. (Act Apr. 26, 1941, c. 475, §3.)

3156-14A(4). Gratuitous service—Cities of the first class—Common carriers.—The provisions of this Act shall not apply to the rendering of a gratuitous service, or to busses operated within cities of the first class, as common carriers of passengers and licensed under the jurisdiction of the Railroad and Warehouse

Commission, and which on certain occasions are used and operated as school busses, wholly within the limits of said cities. (Act Apr. 26, 1941, c. 475, §4.)

3156-14A(5). Practice of healing or medicine.—Nothing herein shall authorize any person, firm, association or corporation to engage, in any manner, in the practice of healing or the practice of medicine as defined by law. (Act Apr. 26, 1941, c. 475, §5.)

3156-14A(6). Violations of Act.—Every person, firm, association or corporation that violates any of the provisions of this Act shall be guilty of a misdemeanor. (Act Apr. 26, 1941, c. 475, §6.)

CHAPTER 15

Relief of the Poor

GENERAL PROVISIONS

3157. Support of poor.

Any county, county welfare board, city, town, village, or other subdivision of the state or any relief or welfare agency, may act as agent of federal, state or local government in furtherance of commodity stamp plans. Laws 1941, c. 98.

Laws 1941, c. 99, validates participation in federal commodity stamp plans.

Notes of Decisions

Humphrey v. T., 295NW53; note under §3159.

Welfare board may consider earnings of National Guardsmen on same basis as other earned income in determining eligibility for public relief, and computing the same, and cannot pass a rule absolutely disregarding such earnings. Op. Atty. Gen., (3391), April 19, 1940.

3159. Liability of county, town, etc.

Surgeon cannot recover from town for emergency operation upon a minor in absence of refusal of father charged with his support to pay therefor, though father is a poor tenant farmer. Humphrey v. T., 295NW53. See Dun. Dig. 7433.

Where poor person resident in county under township system is injured in auto accident in county other than that of his settlement, hospital should look to township of settlement for compensation. Op. Atty. Gen., (339G-2), Oct. 27, 1939.

Absolute duty to adequately provide for the poor and needy prevents a limitation on levy for poor purposes, and townships, especially under township system, should levy sufficient for their needs, and county auditor should permit such assessment to stand. Op. Atty. Gen., (5191), March 5, 1940.

Where young girl was found delinquent by juvenile court of Rice County and committed to guardianship and custody of House of Good Shepherd at St. Paul in Ramsey County and she was treated for venereal disease by Ancker Hospital after refusal by University Hospital to accept her, township of girl's legal settlement is liable for cost of her treatment. Op. Atty. Gen., (340A-5), March 20, 1940.

In case of emergency operation upon a person residing in another county, but not in state long enough to acquire a legal settlement, county where operation is performed must pay the expense. Op. Atty. Gen., (339G-3), April 25, 1940.

Decision on application for poor relief should be made on an individual basis having regard to needs of applicant and his family and to surrounding circumstances, and the granting of relief may not be avoided by means of arbitrary rules and regulations. Op. Atty. Gen., (339), June 10, 1940, July 16, 1940.

A village charged with support of a poor family may support it in the county, or if this is unfeasible because of housing shortage it may be possible to arrange to support the family elsewhere. Op. Atty. Gen., (339), Oct. 21, 1940.

3161. Legal settlement of paupers.

1. In general.

Fact that county welfare board gave relief to a person living in another county and thus caused certain month to be deducted from period in which such person could gain settlement in the other county, resulting in person being moved back to county, did not throw burden of supporting such poor person on county instead of township which was his legal place of settlement. Op. Atty. Gen., (3390-4), Nov. 29, 1939.

2. Husband and wife.

A husband is under no disqualification from acquiring a new settlement where his family is temporarily residing elsewhere with his parents. Op. Atty. Gen., (3390-2), March 11, 1940.

Upon marriage a woman takes settlement of her husband. Op. Atty. Gen. (339d-3), Oct. 21, 1940.

It is probable that wife and children may have settlement separate from that of husband regardless of cause of separation, but if wife and children rejoin husband their settlement becomes that of the husband immediately. Op. Atty. Gen. (3390-2), Nov. 4, 1940.

3. Parent and child.

Ordinarily, domicile of an infant is same as father's, if living. State v. School Board of Consol. School Dist. No. 3, 287NW625. See Dun. Dig. 2815.

Legal settlement of infant was in county where he was left under care of a family by his widower father and remained there after his death, never having lived more than a year any other place with his foster parents. Op. Atty. Gen., (3390-2), Oct. 30, 1939.

An illegitimate child takes the settlement of his mother and when mother marries and retains custody of child, settlement of child is that of husband. Op. Atty. Gen. (339d-3), Oct. 21, 1940.

Upon emancipation of a minor by marriage he takes settlement of his father and retains it until he had acquired a new one. Op. Atty. Gen. (339d-4), Jan. 27, 1941.

After Apr. 22, 1939, a change of settlement by parents will not change legal settlement of a minor who is under guardianship of State Board of Control or Director of Social Welfare or one of its institutions as a feeble-minded delinquent, or dependent person. Op. Atty. Gen. (679K), Feb. 5, 1941.

Settlement of children in custody of mother under divorce decree is settlement of mother, and that settlement remains the same though she has abandoned her children, unless it appears that she has left the state for a period of one year with an intent to abandon residence. Op. Atty. Gen. (339d-4), Feb. 26, 1941.

4. Computation of time of residence.

Laws 1939, chapter 398, amending this section, is not retroactive, but applies to one who moved into township prior to its effective date and resided there for less than one year. Op. Atty. Gen., (3390-2), Oct. 26, 1939.

Settlement of wife and children becomes that of the husband immediately upon their removal to his abode following a separation and separate settlement. Op. Atty. Gen. (3390-2), Nov. 4, 1940.

Two periods of less than a year each separated by four weeks in another county, even on work of a temporary nature, cannot be combined so as to comply with statutory requirements of a residence for one year. Op. Atty. Gen. (3390-2), Nov. 14, 1940.

A period of residence prior to a return following a warning to depart may not be tacked to a subsequent resident in same city in order to fill out balance of 2-year period. Op. Atty. Gen. (3390-2), Feb. 6, 1941.

A pauper having a settlement in one township retains it until he has acquired a new settlement by living a greater portion of two years in some other township within same county or a period of two years in some other county. Op. Atty. Gen. (3390-5), Mar. 12, 1941.

5. Receipt of relief in general.

Months to be tolled in ascertaining settlement for poor relief purposes are those during which relief was actually received by poor person rather than those in which parties supplying goods and services at request of a township were paid. City of Minneapolis v. C., 288NW706. See Dun. Dig. 7430.

Receipt of surplus commodities constitutes relief. Op. Atty. Gen., (3390-4), Sept. 18, 1939.

Receipt of surplus commodities constitutes relief under present set up. Op. Atty. Gen., (339s), Oct. 3, 1939.

Laws 1939, chapter 398, amending this section, is not to be given a retroactive effect, but applies to resident who had not established settlement under old law before April 23, 1939, except that receipt of old age assistance or aid to dependent children before that date would not extend time required for acquisition of settlement, though if any such assistance was received at any time from April

23 to April 30, 1939, entire month should be excluded. Op. Atty. Gen., (3390-2), Oct. 25, 1939.

Months in which subsistence grants from federal Farm Security Administration are made must be excluded in determining legal settlement, if there is no obligation to repay the same. Op. Atty. Gen., (3390-2), Nov. 8, 1939.

Employment by National Youth Administration does not amount to a grant of federal or state funds for relief, and time should not be excluded in determining legal settlement. Op. Atty. Gen., (3390-2), Nov. 20, 1939.

Distribution of federal surplus commodities under direction of state relief agency to meet actual need of destitute persons whose eligibility for relief has been officially determined, constitutes receipt of relief. Op. Atty. Gen., (3398), Feb. 7, 1940.

An employee of the Emergency Relief Administration may acquire settlement. Op. Atty. Gen. (3390-2), July 9, 1940.

6. —Old age assistance.

Where recipient of old age assistance and his wife moved to another county in March, 1938, and moved back in Oct., 1939, wife acquired legal settlement for poor relief purposes in other county prior to effective date of Laws 1939, c. 398, settlement being quite different for poor relief purposes than for purposes of old age assistance. Op. Atty. Gen., (521t-2), Feb. 28, 1940.

Prior to April 23, 1939, settlement could be acquired by one receiving old age assistance, and one year residence fixed such settlement, and Laws 1939, c. 398, was not retroactive. Op. Atty. Gen. (3390-2), Oct. 7, 1940.

9. —Persons committed but at large.

Where a person committed as a feeble-minded person to the guardianship of the state board of control went to another county and married, she gained a new legal settlement, as did an illegitimate daughter who accompanied her. Op. Atty. Gen., (679k), Sept. 22, 1939.

After Apr. 22, 1939, a change of settlement by parents will not change legal settlement of a minor who is under guardianship of State Board of Control or Director of Social Welfare or one of its institutions as a feeble-minded delinquent, or dependent person. Op. Atty. Gen. (679K), Feb. 5, 1941.

10. —Inmates of public institutions.

Insane person discharged from institution in care of son, but not restored to capacity, may acquire a settlement, depending upon capacity to have an intent and nature of legal restraint of liberty. Op. Atty. Gen., (248B-7), Jan. 29, 1940.

Settlement of a person who is not dependent or a pauper cannot be changed from one county to another in less than 2 years, as affecting liability of county for expenses of commitment for an insane person. Op. Atty. Gen. (248B-3), Jan. 10, 1941.

11. —Federal work or conservation projects.

Work received on W.P.A. by minor son held to constitute as to his family work on a relief basis and in lieu of direct relief. City of Minneapolis v. C., 288NW706. See Dun. Dig. 7430.

Months in which relief was received through the WPA are excluded in determining residence. Op. Atty. Gen. (3390-4), Oct. 5, 1939.

Where wife and child acquired settlement separate from that of husband and lived with wife's father who was on WPA relief, whether such relief would toll time for acquisition of settlement of woman and child, would depend upon whether certifying authorities considered family group as a unit. Op. Atty. Gen. (3390-2), Oct. 1, 1940.

14. Loss of settlement.

A resident of county in state who went to another state with intent not to return and lived there for more than one year and then returned to a different county in Minnesota and resided there for 16 months, had no settlement in any county within the state. Op. Atty. Gen., (3390-2), Nov. 14, 1939.

One leaving township and residing in other counties for more than 2 years but less than 2 years in any one county retains settlement in original township. Op. Atty. Gen. (3390-1), Jan. 22, 1941.

3162. Removal of poor person.

A poor person who has purchased a house on land contract owns a freehold equity and cannot be removed to county of legal settlement. Op. Atty. Gen. (3390-3), July 24, 1940.

County cannot remove female to county from which she came where she has married another poor person who came from a third county. Id.

3164. Change of system.

Part of village situated within county having a township system of relief is governed by laws pertaining thereto, and portion of village situated in another county which operates under a county system is governed by laws applicable to county system, and each county auditor should make his own levy for that portion of the village within his county. Op. Atty. Gen., (519J), Dec. 16, 1939.

3164-2. Municipalities may borrow funds for poor relief.

In determining amount of warrants to be issued for poor relief, county auditor may anticipate aid from the state, but of \$10,000.00 levied for direct relief he may only issue such warrants as are limited by §1938-21, being average collections in county for past three years

plus 10 per cent, and where such limitations have been exhausted county may issue bonds or other evidence of indebtedness. Op. Atty. Gen., (107a-10), Dec. 4, 1939.

3164-8. Effective date.

Act Apr. 24, 1941, c. 403 is a reenactment of Laws 1933, c. 120 [Mason's 1940 Supplement §§3164-1 to 3164-8] and provides that the act shall be in force until Dec. 31, 1943.

3164-19. County board to provide hospitalization for indigent persons.

—The county board of any county in this state is hereby authorized to provide for the hospitalization in hospitals within the county or elsewhere within the state, of indigent residents of such county who are afflicted with a malady, injury, deformity, or ailment of a nature which can probably be remedied by hospitalization and who are unable, financially, to secure any pay for such hospitalization or, in the case of a minor, whose parent, guardian, trustee or other person having lawful custody of his person, as the case may be, is unable to secure or provide such hospitalization. (As amended Act Apr. 26, 1941, c. 473, §1.)

Op. Atty. Gen., (339g-2), March (May) 20, 1940; note under §3164-21.

Laws 1935, c. 359, was passed as a supplemental measure to §§4577 to 4585, and does not amend §4579, and gives option of sending its patients to Minnesota General Hospital or to some other hospital. Op. Atty. Gen., (1001c), March 8, 1940.

Probate court jurisdiction in proceeding under §§4577 to 4585 is transferred to county board and if proceeding is under Laws 1935, c. 359 (§§3164-19 to 3164-22), county board has jurisdiction. Id. But see §4590.

In counties operating under township system of relief, expense of medical attendance given to indigents and not provided in a hospital pursuant to §§3164-19 and 4580, must be paid by local governmental unit, subject to any right of reimbursement from county under §3195. Op. Atty. Gen. (1001d), June 17, 1940.

Total expense is charge upon county, and no local governmental unit of a county operating under township system may be compelled to pay any portion of hospitalization expense. Id.

"Hospitalization" includes drugs, laboratory, X-rays, board and room of special nurses and professional services of the doctor. Op. Atty. Gen. (339g-2), July 5, 1940.

Birth of a child is not a malady, deformity or ailment, though hospitalization may be granted if complications are anticipated. Op. Atty. Gen. (1001d), July 10, 1940.

3164-20. Application to be filed.—

Subdivision 1. Whenever the existence of a case described in Section 1 of this act shall come to the notice of the sheriff, town clerk, health officer, public health nurse, peace officer, public official, or physician or surgeon it shall be his duty to, and any other person may, file with the county auditor of the county of the legal residence of such indigent person requiring care an application for the hospitalization of such indigent person. Such application shall be made in such form as the county board of such county may prescribe, and shall contain the name, age, residence, and physical condition of the person sought to be hospitalized and shall contain also a full statement of his financial situation and of the persons, if any, legally charged with his care and support, and such application shall be verified.

The county board shall make a careful investigation of the matter in such manner as it shall deem advisable and expedient, and it shall be the duty of any public official of any county, city, village, or town of the residence of the person sought to be hospitalized to supply the county board on a request therefor all the information within his knowledge relative to the financial condition of the person sought to be hospitalized and of all persons, if any there be, who are legally liable for the support of such person. If after such investigation the county board shall be satisfied that the person on whose behalf the application is made is not financially able to provide himself with such hospitalization or in case of a minor, his parents, guardians, trustee, or other person having legal custody over him or legally responsible for his support and maintenance is not financially able to provide such hospitalization, then said county board shall direct the county physician or some other physician, to make an examination of the person on whose behalf such

application was made. Such physician shall make and file with the county board a verified report in writing setting forth the nature and history of the case and such other information as will likely aid in the medical and surgical treatment of the disease, malady, injury, deformity, or ailment affecting such person, and shall state in such report his opinion whether or not the condition of such person can probably be remedied at a hospital. Such report shall be made in duplicate, one copy of which shall be filed with the county auditor and the other shall be transmitted to the hospital at which such afflicted person is hospitalized; such report shall also give any information the examining physician shall have or acquire relative to the financial ability of the afflicted person to pay for the hospitalization and treatment of his disease, malady, injury, deformity, or ailment, together with any other information such physician may deem helpful to the county board or the physician attending him.

Subdivision 2. If upon filing of such report and a full investigation of the applicant the county board shall be satisfied that the case is one which could be remedied by hospital treatment and that such afflicted person is financially unable to secure or provide the same for himself, and that the persons legally charged with the support and maintenance of such person, if any there be, are financially unable to provide such hospitalization, the county board may grant or approve said application. If the county board is not so satisfied, it may take additional testimony or make such further investigation as it shall deem proper and shall reject any application if it finds that the facts do not merit the expenditure of public money for the relief of such afflicted person. Upon the approving and granting such application and the relief therein prayed for the chairman of such county board shall arrange for the hospitalization of such afflicted person. If the county board shall find that the applicant or the person legally responsible for his support and maintenance is not able to pay in full but is able to pay in part for such hospitalization at such hospital the county board may approve such application of such afflicted person on such terms of division of hospital charges and costs as it may deem equitable and just. The county board shall provide for taking such afflicted person to the hospital. Provided, however, that when a physician certifies that an emergency exists in any case, and that he believes that the person suffering is unable to pay for hospitalization, such person shall be admitted to any such hospital upon the order of the chairman of the county board or upon the order of the county commissioner of the district in which such alleged indigent person resides; and thereafter an investigation shall be made in the manner hereinbefore provided. Provided further, that when a physician certifies in a case of an injury (or an emergency), that immediate surgical or medical treatment is necessary, the patient shall forthwith be admitted to any such hospital upon said certificate for a period not to exceed seventy-two (72) hours; and thereafter an investigation shall be certified and made in the manner hereinbefore provided. (As amended Act Apr. 26, 1941, c. 473, §2.)

The \$5.00 fee to be paid an examining doctor under Laws 1921, c. 41, §3, is applicable to Laws 1935, c. 355, §2, and examination under the 1935 law entitles doctor to flat fee of \$5.00, providing examining doctor was appointed by judge of probate court. Op. Atty. Gen., (1001c), Dec. 11, 1939.

3164-21. Costs.—The cost of hospitalization of such indigent persons exclusive of medical and surgical care and treatment shall not exceed in amount the full rates fixed and charged by the Minnesota general hospital under the provisions of Mason's Minnesota Statutes of 1927, Sections 4577 to 4586, inclusive, for the hospitalization of such indigent patients. The cost of the hospitalization of indigent persons under the provisions of this act shall be paid by the county of the legal residence of such indigent persons at such times as may be provided for in such contract; and

in case of an injury or emergency requiring immediate surgical or medical treatment, for a period not to exceed 72 hours, the cost shall be paid by the county from which such patient, if indigent, is certified. (As amended Act Apr. 26, 1941, c. 473, §3.)

State has no authority to reimburse county for charges to patients referred to Minnesota General Hospital, which was unable to receive them, necessitating treatment in other hospitals. Op. Atty. Gen., (1001c), Dec. 9, 1939.

Cost of hospitalization locally must not exceed rate of Minnesota General Hospital. Op. Atty. Gen., (339g-2), March (May) 20, 1940.

Where poor person residing in one county was subjected to an emergency appendectomy and hospitalized, and proper local authorities of county of settlement ratified hospitalization and medical care, county in which operation and hospitalization were had could pay the bill and recover from county of settlement, notwithstanding that it had an arrangement whereby cases taken care of in the hospital were in lieu of hospitalization in University Hospital. Op. Atty. Gen., (339g-2), May 31, 1940.

Cost of hospitalization is paid by county of residence rather than county of settlement, so in proper case reimbursement may be had from county of legal settlement. Op. Atty. Gen. (339-G-2), July 19, 1940.

STATE RELIEF ACTS

Act Apr. 28, 1941, c. 525.

COUNTY SYSTEM

3173. Settlement in another county.

Where poor person residing in one county was subjected to an emergency appendectomy and hospitalized, and proper local authorities of county of settlement ratified hospitalization and medical care, county in which operation and hospitalization were had could pay the bill and recover from county of settlement, notwithstanding that it had an arrangement whereby cases taken care of in the hospital were in lieu of hospitalization in University Hospital. Op. Atty. Gen., (339g-2), May 31, 1940.

Cost of hospitalization is paid by county of residence rather than county of settlement so in proper case reimbursement may be had from county of legal settlement. Op. Atty. Gen. (339-G-2), July 19, 1940.

A period of residence prior to a return following a warning to depart may not be tacked to a subsequent resident in same city in order to fill out balance of 2-year period. Op. Atty. Gen. (339O-2), Feb. 6, 1941.

3174. Board to appoint physician.

Where services of doctor and nurse are rendered for a pauper family ill with scarlet fever, any part thereof that could reasonably be necessary to protection of public from contagion should be paid for in accordance with §5352, but any portion inuring solely to benefit and care of patients would be chargeable to poor relief. Op. Atty. Gen., (611a-6), Feb. 29, 1940.

3176. Burial at expense of county.

Obligation is on county and not on town to bury pauper dead, even though county is operating under township system. Op. Atty. Gen., (339c), Jan. 22, 1940.

Amount to be spent for burial rests in discretion of county board. Id.

Expense of burial of pauper having settlement in state is to be paid by county or town of settlement. Op. Atty. Gen., (339c), March 6, 1940.

There is no statute authorizing county board to appropriate money for purpose of maintenance and care of pauper graves in a private cemetery. Op. Atty. Gen., (125B), April 26, 1940.

Where a person without legal settlement in state dies and leaves insufficient means to defray expense of burial, law imposes obligation to pay upon county, though operating under township system. Op. Atty. Gen. (339c-1), June 6, 1940.

Expense of burial of paupers having settlement in state are to be paid by township of settlement in county operating under township system. Id.

3177. Tax for support of poor.

Part of village situated within county having a township system of relief is governed by laws pertaining thereto, and portion of village situated in another county which operates under a county system is governed by laws applicable to county system, and each county auditor should make his own levy for that portion of the village within his county. Op. Atty. Gen., (619J), Dec. 16, 1939.

3177-3. Same; fund; distribution.

Legislature intended to limit supplemental aid to distressed counties to sum of \$250,000 each year, and when such fund was exhausted supplemental aid terminated. Op. Atty. Gen., (521z), Nov. 29, 1939.

3177-4. Same; certification of distress; payment.

County may not be reimbursed where \$250,000 set aside for supplemental aid has been exhausted. Op. Atty. Gen., (521z), Nov. 29, 1939.

Aid granted to county based upon anticipated tax delinquencies should be adjusted when actual tax delinquencies are known, and if county in good faith levied an amount which, if collected, would have been sufficient to pay old age assistance according to reasonable estimates available at the time, law is satisfied. Op. Atty. Gen. (521W), Nov. 14, 1940.

3177-5. Same; certification as to levy of tax excused in certain cases.

County having assessed value of \$3,250,000, more than 95 townships, and population of 15,000 to 18,000 excused from certifying for year 1939.

TOWN SYSTEM

3184. Town board and councils to be superintendents—Relief.

Conduct of one purporting to act for township board may be ratified in which case his authority so to act relates back and is equivalent to prior authority. City of Minneapolis v. C., 288NW706. See Dun. Dig. 191(72).

Expense of burial of pauper having settlement in state is to be paid by county or town of settlement. Op. Atty. Gen., (339c), March 6, 1940.

Expense of burial of paupers having settlement in state are to be paid by township of settlement in county operating under township system. Op. Atty. Gen. (339c-1), June 6, 1940.

Where a person without legal settlement in state dies and leaves insufficient means to defray expense of burial, law imposes obligation to pay upon county, though operating under township system. Id.

Board of public welfare may avail itself of surplus commodities food stamps and is not required to certify to good quality and reasonable prices of food received by clients. Op. Atty. Gen. (339), June 28, 1940.

This section would not authorize expenditure from poor fund for work project. Op. Atty. Gen. (339m), July 10, 1940.

County board in county under township system can create a revolving fund for purchase of "food stamps" for distribution of surplus commodities, and their resale to municipalities, and may provide clerical help and offices in connection with administration of the plan. Op. Atty. Gen. (125a-64), Nov. 1, 1940.

Township may not enter into a contract with a firm of physicians for medical needs of a poor family for a term of one year payable in advance. Op. Atty. Gen. (339g-1), Jan. 14, 1941.

3186. Relief and transportation.

A resident of county in state who went to another state with intent not to return and lived there for more than one year and then returned to a different county in Minnesota and resided there for 16 months, had no settlement in any county within the state. Op. Atty. Gen., (339o-2), Nov. 14, 1939.

In counties operating under township system of relief, expense of medical attendance given to indigents and not provided in a hospital pursuant to §§3164-19 and 4580, must be paid by local governmental unit, subject to any right of reimbursement from county under §3195. Op. Atty. Gen. (1001d), June 17, 1940.

Cost of hospitalization is paid by county of residence rather than county of settlement so in proper case reimbursement may be had from county of legal settlement. Op. Atty. Gen. (339g-2), July 19, 1940.

(2).

Where poor person residing in one county was subjected to an emergency appendectomy and hospitalized, and proper local authorities of county of settlement ratified hospitalization and medical care, county in which operation and hospitalization were had could pay the bill and recover from county of settlement notwithstanding that it had an arrangement whereby cases taken care of in the hospital were in lieu of hospitalization in University Hospital. Op. Atty. Gen., (339g-2), May 31, 1940.

It would be well for undertaker to secure authority for burial from political subdivision of proper settlement, but if such authority cannot be obtained it is still duty of local subdivision in which person dies to bury him. Op. Atty. Gen. (339c), Sept. 11, 1940.

Where non-resident pauper was injured on a county line highway and was taken into a hospital in a third county as an emergency case, place of accident was not controlling as to which county should pay the expense, county wherein pauper is "found" being liable. Op. Atty. Gen. (339G-2), Nov. 1, 1940.

(4).

Application for relief within 90 days is necessary to render one guilty of misdemeanor. Op. Atty. Gen., (339o-3), Feb. 8, 1940.

3188. Taxes, how levied.

Part of village situated within county having a township system of relief is governed by laws pertaining thereto, and portion of village situated in another county which operates under a county system is governed by laws applicable to county system, and each county auditor should make his own levy for that portion of the village within his county. Op. Atty. Gen., (519J), Dec. 16, 1939.

3195. Counties to pay portion, etc.

As soon as city has exhausted amount raised by one mill levy county becomes liable for amount of reimbursement and may after that time reimburse city to extent of 75 per cent on each month's relief payments without waiting until expiration of calendar year. Op. Atty. Gen. (339m), Oct. 11, 1940.

3195-1. Liability of counties for care of poor by towns.

Laws 1937, chapter 286, reenacting §3195, which was held unconstitutional, was not retroactive, and a village cannot file a claim against county for reimbursement. Op. Atty. Gen., (339m), Oct. 10, 1939.

Act to provide for reimbursement for expenditures authorized by §3184, which would not authorize expenditure from poor fund for work project. Op. Atty. Gen. (339m), July 10, 1940.

COUNTIES EXCEEDING 75,000

3199. Tax levy for poor relief.—On or before October 1, in each year, such board shall determine by resolution the amount of tax to be levied for the ensuing year for the support of the poor, as well as all forms of public and social assistance as defined and required by Laws 1937, Chapter 343, to be administered by this board, the maintenance of the poor-house and other places provided for the reception of the poor, and the erection of any buildings or improvements, and the adoption of such resolution shall constitute a levy on the property taxable in the county of the amount named therein; but the amount so levied for all purposes, except for the erection or repair of buildings, shall not exceed an amount equal to five mills on each dollar of assessed valuation. On or before October 5, thereafter, the board shall file a certified copy of such resolution with the county auditor who shall enter the amount upon the tax lists after said levy shall have been submitted to the board of county commissioners of said county for its approval but not exceeding the amount approved by said county board after any reduction. Such tax, when collected, shall be credited to the county welfare fund. Provided, in each of the years 1941 and 1942 the amount of such levy for all such purposes, except for the erection or repair of buildings, may exceed three mills but shall not exceed eight mills. If at any time during the years 1941 and 1942 such board shall determine that the amount previously levied will be inadequate to meet the minimum requirements of any activity for the balance of the year, it shall present such information to the board of county commissioners. Whereupon the said county board may authorize the expenditure of additional sums in specific itemized amounts and when so authorized such board may expend such additional amounts, and all acts or parts of acts prohibiting or placing a penalty on such expenditures shall be of no effect in such cases. Immediately upon authorizing such additional expenditures, the board of county commissioners shall provide for the financing of such expenditures and for such purposes it shall first transfer any amounts remaining unencumbered in any county fund levied for specific items, which in the judgment of the county board can be diverted therefrom without serious detriment to the efficiency of county government or to the public health and safety; second, if the amounts so available for transfer shall be less than the contemplated deficit, the county board shall levy a tax to finance the remaining deficiency of not to exceed two mills on each dollar of assessed valuation, to be spread by the county auditor for the ensuing year, which levy may be in addition to any authorized tax levy for the county welfare fund for such ensuing year; third, if the amounts transferred and the amount calculated to be received from the maximum deficiency tax levy hereby authorized shall not be sufficient to finance such contemplated deficit, then any remaining deficiency may, upon resolution adopted by a five-sevenths vote of the county board, be financed by the issuance and sale of county welfare deficiency bonds, said bonds to be issued and sold subject to the provisions of Laws of 1927, Chapter 131, as amended, ex-

cept that a vote of the people shall not be required and the last maturity of said bonds shall not be later than five years from the date of issue. (As amended Act Apr. 15, 1941, c. 227, §1.)

A deficit occurring in county welfare fund in 1939 as a result of inadequacy of 1938 tax levy and authorization of additional expenditures by St. Louis county board under §3199, as amended, may be regarded as a deficit carried over from a previous year within meaning of §813, and county board may issue certificates of indebtedness in 1939 in anticipation of proceeds of a deficiency tax levy which will be collected in 1940. Op. Atty. Gen., (107a-1), Sept. 30, 1949.

Board of Poor and Hospital Commissioners, created by Laws 1917, c. 187, as amended by Laws 1931, c. 60, may not hire an attorney to take care of the business. Op. Atty. Gen., (125a-64), Aug. 22, 1940.

The "poor and hospital commission" of Itasca county, created by Laws 1917, c. 187, as amended by Laws 1931, c. 60, cannot employ a special attorney to enforce claims against other counties, enforcement of such claims being a duty of the county attorney. Op. Atty. Gen., (121a), Sept. 30, 1940.

STATE WIDE SYSTEM OF OLD AGE ASSISTANCE

3199-11. System established; etc.

Laws 1941, c. 2, appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

West Virginia Income Tax Act allowing deduction from gross income of "ordinary and necessary" expenses of business, does not authorize deduction as such expenses, of taxes paid by taxpayer on account of either (1) old age benefits and unemployment compensation under Social Security Act, (2) the Bituminous Coal Act, (3) state unemployment insurance, (4) state gross sales. *Christopher v. J.*, 12SE(2d)(WVaApp)813.

Homesteads up to \$4000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245 and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen., (519), Nov. 22, 1940.

3199-12. Definitions.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-13. State agency—Duties.—The state agency shall:

(a) Supervise the administration of old age assistance by the county agencies under this act.

(b) Make uniform rules and regulations, not inconsistent with law, for carrying out and enforcing the provisions of this act in an efficient, economical and impartial manner, and to the end that the old age assistance system may be administered uniformly throughout the state, having regard for varying costs of living in different parts of the state, and in all things to carry out the spirit and purpose of this act. Such rules and regulations shall be made by the Director of the Division of Social Welfare, with the approval of the Attorney General as to form and legality, and shall be furnished immediately to all county agencies and shall be binding on such county agencies.

(c) Prescribed the form of, print, and supply to the county agencies, blanks for applications, reports, affidavits and such other forms as it may deem necessary or advisable, and establish a uniform system of accounting.

(d) Co-operate with the Federal Social Security Board, created by Title 7 of the Social Security Act, Public No. 271, enacted by the 74th Congress of the United States and approved August 14, 1935, in any reasonable manner as may be necessary to qualify for federal aid for assistance including the making of such reports in such form and containing such information as the Federal Social Security Board may from time to time require, and comply with such provisions as such board may from time to time find necessary to assure the correctness and verifications of such reports.

(e) Within 60 days after June 30, 1936, and within 60 days after the close of each fiscal year thereafter, prepare and print for said fiscal year a report which shall include a full account of the operation of this act, the expenditure of all funds under this act, adequate and complete statistics divided by coun-

ties, concerning all old age assistance within the state, and such other information as it may deem advisable.

(f) Prepare and release a summary statement monthly showing by counties the amount paid under this act, the total number of persons assisted, and the total administrative cost of the state agency.

(g) Furnish information to acquaint aged persons and the public generally with the old age assistance plan of this state.

(h) Co-operate with other state agencies in establishing reciprocal agreements to provide for payment of old age assistance to recipients who have moved from Minnesota to another state, consistent with the provisions of this act. (As amended Act Apr. 26, c. 466, §1.)

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

It is not legal duty of county attorney to handle any legal proceedings in connection with a guardian for a recipient of old age assistance, required by state regulations on demand of federal authorities, but he may voluntarily assist in securing appointment of a guardian, provided he makes no charge for his services and does not act as attorney for recipient or guardian in any capacity which might conflict with his duties as attorney for the county welfare board. Op. Atty. Gen., (521J-4), Oct. 20, 1939.

3199-14. County agencies—Duties.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

A county welfare board, subject to supervisory regulations by state agency, may compromise its claim against estate of a deceased old age assistance recipient if circumstances warrant a compromise. Op. Atty. Gen., (521g), Oct. 2, 1939.

3199-15. Qualifications of pensioners—Amount of pension—Other assistance.—(a) Any resident of this state who shall comply with the provisions of this act shall be eligible for old age assistance while continuing to reside in this state. Temporary absences from the state may be allowed a recipient in accordance with regulations established by the state agency.

(b) The amount and manner of payment of old age assistance shall be fixed with due regard to the conditions of each case and shall be an amount which, when added to the net income of the applicant, including subsistence or service reasonably available to less such portion of applicant's income as is reasonably necessary for the support of needy dependents of such applicant, which deductions shall not exceed an allowance as such dependents would otherwise be entitled to receive for direct relief, does not exceed a maximum of \$30.00 per month, subject, however, to the following:

(1) The annual income of any property which is not so utilized as to produce reasonable returns shall be deemed to be the net income which would be available if the property were suitably used. Due consideration shall be given to the current or prevailing conditions affecting the use of such property.

(2) An amount not to exceed \$100 received during a calendar year as gifts or as a result of personal labor may be excluded, in the discretion of the county agency, in determining the amount of the old age assistance grant.

(c) While a recipient is receiving old age assistance, he shall not receive any other relief from the state or from any political subdivision thereof, except for medical, dental, surgical or hospital assistance, or nursing care. (As amended Act Apr. 26, 1941, c. 466, §2.)

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

Evidence held insufficient to show that applicant was entitled to old age assistance. *Johns v. S.*, 143SW(2d) (MoApp)161; *Clay v. S.*, 143SW(2d) (MoApp)165; *Clay v. S.*, 143SW(2d) (MoApp)167; *Redmon v. S.*, 143SW(2d) (Mo App)168.

Missouri social security act fixes rule for determining whether applicant for old age assistance has sufficient earnings to prevent assistance, but this rule should not

be applied to question of whether son is financially able to support father. *Howlett v. S.*, 146SW(2d)(MoApp)94. Under Missouri old age assistance law if child is able to, and is, supporting parent, parent cannot get assistance from state. *Id.*

Missouri old age assistance act does not place upon son unqualified duty to support indigent father. *Id.*

(b). Action of state agency in disallowing application for old age assistance was not arbitrary or unreasonable where there had been no attempt to repudiate or avoid an agreement entered into by applicant and a private charitable corporation whereby he turned over proceeds of his property to institution and it promised to care for applicant for remainder of his life, and no indication that charitable corporation was either unwilling or unable to continue supporting applicant in future. Application of *Rasmussen*, 289NW773.

(b)(2). Fact that a son-in-law is voluntarily providing poor person with subsistence of character described by South Dakota Social Security Act, foreclosed claim for assistance. *Wood v. W.*, 293NW(SD)188.

3199-16 and 3199-17.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-18. Disqualification of pensioners.—No old age assistance shall be paid to a person:

(a) While or during the time he is an inmate of, and receives gratuitously all the necessities of life from any public charitable, custodial or correctional institution maintained by the United States, or any state or any of the political subdivisions of the state; provided, in the case of temporary medical or surgical care in a hospital or infirmary, part or all of any old age assistance may be paid at the discretion of the county agency subject to rules and regulations made by the state agency;

(b) If the net value of his property or the net value of the combined property of husband and wife exceeds \$5,000; or if the net value of his assets convertible into cash exceeds \$300 or the combined convertible assets of husband and wife exceed \$450. The county agency in its discretion may permit eligibility of an applicant having liquid assets in excess of this amount when the liquidation of the assets would cause undue loss; provided, however, that household goods and furniture in use in the home, wearing apparel and a lot in the burial ground may be owned in addition to the property limitation provided in this subsection.

(c) Who has after the passage of this act or within two years prior thereto deprived himself, directly or indirectly, of any property for the purpose of qualifying for old age assistance;

(d) Whose spouse, living with said person, has made an assignment or transfer, directly or indirectly, of any property for the purpose of qualifying either person for old age assistance under this act. (As amended Act Apr. 26, 1941, c. 466, §3.)

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-19. Legal settlement—Application to county agency—Verification—Hearing appeal.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

(a). Insane person discharged from institution in care of son, but not restored to capacity, may acquire a settlement, depending upon capacity to have an intent and nature of legal restraint of liberty. *Op. Atty. Gen.*, (248B-7), Jan. 29, 1940.

Where recipient of old age assistance and his wife moved to another county in March, 1938, and moved back in Oct., 1939, wife acquired legal settlement for poor relief purposes in other county prior to effective date of Laws 1939, c. 398, settlement being quite different for poor relief purposes than for purposes of old age assistance. *Op. Atty. Gen.*, (521t-2), Feb. 28, 1940.

3199-20. Investigations—Determination—Renewal of application.—The county agency shall promptly make or cause to be made such investigation as it may deem necessary; the object of such investigation shall be to ascertain the facts supporting the application

made under this act and such other information as may be required by the rules of the state agency. Upon the completion of such investigation, the county agency shall promptly decide upon the application, and fix the amount of old age assistance, if any, and issue to each applicant to whom old age assistance is allowed, a certificate stating the date upon which old age assistance payments shall commence and the amount of each installment, which shall be paid monthly. (As amended Act Apr. 26, 1941, c. 466, §4.)

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-21. Appeal to state agency—Notice—New hearing by county agency—Review—Etc.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

Where person whose social security assistance had been discontinued had failed to pursue administrative appeal required by state act, it was error to issue mandamus to compel commission to resume payments. *Oklahoma Public Welfare Comm. v. S.*, 105Pac(2d)(Ok1)547.

(b). Action of state agency in disallowing application for old age assistance was not arbitrary or unreasonable where there had been no attempt to repudiate or avoid an agreement entered into by applicant and a private charitable corporation whereby he turned over proceeds of his property to institution and it promised to care for applicant for remainder of his life, and no indication that charitable corporation was either unwilling or unable to continue supporting applicant in future. Application of *Rasmussen*, 289NW773.

While district court is permitted to hear new or additional evidence if necessary to a more equitable disposition of appeal, its scope of review is limited to a determination of whether or not decision of state agency was fraudulent, arbitrary, or unreasonable. *Id.* See *Dun*, Dig. 397b.

3199-22. Attorney general and county attorney to act for state and county agencies respectively.

Laws 1941, c. 2, appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

It is not legal duty of county attorney to handle any legal proceedings in connection with a guardian for a recipient of old age assistance, required by state regulations on demand of federal authorities, but he may voluntarily assist in securing appointment of a guardian, provided he makes no charge for his services and does not act as attorney for recipient or guardian in any capacity which might conflict with his duties as attorney for the county welfare board. *Op. Atty. Gen.*, (521J-4), Oct. 20, 1939.

County attorney cannot represent a purchaser of tax title in action to quiet title where land involved prior to expiration of redemption was owned by old age assistance recipient and state is made a party defendant. *Op. Atty. Gen.* (121B), Sept. 12, 1940.

Where time of county attorney is taken up with other county work it is not permissible for county welfare board to appoint a special attorney to be paid from its funds to represent county at hearing on appeal from determinations of old age assistance grants, although it might be permissible for county board to employ an assistant to the county attorney. *Op. Atty. Gen.* (121a), Sept. 30, 1940.

It would be improper for a county attorney who has duty to enforce and collect claims for old age assistance to represent an administrator of estate. *Op. Atty. Gen.* (121B), Jan. 22, 1941.

3199-23. Subpoenas—Administration of oaths.

Laws 1941, c. 2, appropriates, \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-24. Death of recipient—funeral expenses—claim against estate.—On the death of a recipient, the county agency may pay an amount for reasonable funeral expenses, not exceeding \$100. No funeral expenses shall be paid if the state of the deceased is sufficient to pay such expenses, or if the children, or spouse, who were legally responsible for the support of the deceased during his lifetime, are able to pay such expenses, provided that the additional payment or donation of the cost of cemetery lot, interment, religious service, or for the transportation of the body into or out of the community in which deceased

resided, shall not limit payment by the county agency as herein authorized. Provided, further, that freedom of choice in the selection of a funeral director shall be granted to persons lawfully authorized to make arrangements for the burial of any such deceased recipient. In determining the sufficiency of such estate due regard shall be had for the nature and marketability of the assets of the estate. The county agency may grant funeral expenses where the sale would cause undue loss to the estate. Any amount paid by the county as funeral expenses shall be a prior claim against the estate, as provided in Laws 1935, Chapter 72, Section 108, and any amount recovered shall be paid to the treasury of the county which paid said expenses and be deposited in the county old age assistance fund, and 50 per cent thereof shall be paid to the state agency. (As amended Apr. 1, 1941, c. 112, §1.)

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

Action cannot be maintained against old age assistance recipient who has come into an inheritance, during his lifetime, unless old age certificate was improperly obtained. Op. Atty. Gen. (521g), Dec. 3, 1940.

3199-25. Same—Claim against estate; etc.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

Op. Atty. Gen. (521g), Dec. 3, 1940; note under §3199-24.

3199-26. Liability of recipient or his child or spouse—Sale of land outside state—Lien on property within state—Certificate of county agency—Filing lien—Priority.—

(1). * * * * *

(9) Whenever the county agency of the county granting assistance to a recipient is satisfied that the collection of the amount paid him as old age assistance will not be jeopardized or that the release of the lien against his property in whole, or in part, is necessary for the maintenance or support of the recipient, his spouse, minor or incapacitated children, or whenever the county agency is satisfied by competent evidence that the major portion of the investment in the recipient's homestead was made by the children of the recipient by personal services in the home or otherwise and that substantial justice can only be done by the release of said lien, it may, with the approval of the state agency, release such lien with respect to all or part of the real property of the recipient, and such release, or a certified copy thereof, shall be filed with the register of deeds of each county where the lien certificate is filed. (As amended Act Apr. 25, 1941, c. 453, §1.)

(10). * * * * *

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

Laws 1939, c. 315, §1, amending this section so as to provide for a lien upon real estate of old age assistance recipients, is constitutional. *Dimke v. F.*, 295NW75.

Op. Atty. Gen. (521g), Dec. 3, 1940; note under §3199-24. State statute relinquishing liens previously given to county by statute upon property of old age assistance recipients, is not impairment of contract where return by recipient of amount of lien is condition precedent to relinquishment, the state having right to change contractual rights of its political subdivisions. *Alameda County v. J.*, 106Pac(2d)(Cal)11.

A county welfare board, subject to supervisory regulations by state agency, may compromise its claim against estate of a deceased old age assistance recipient if circumstances warrant a compromise. Op. Atty. Gen. (521g), Oct. 2, 1939.

Purchasers of Torrens titles are not bound by record of lien statements for old age assistance filed with register of deeds. Op. Atty. Gen. (521p-4), Dec. 11, 1939.

No lien will arise against property owned by recipient spouse. Op. Atty. Gen. (521p-4), Dec. 26, 1939.

County agency, with approval of state agency, may compromise claims, notwithstanding amendment of 1939. Op. Atty. Gen. (521G), May 13, 1940.

(4).

Section 893 is applicable so as to require recording of old age lien certificates in Hennepin County. Op. Atty. Gen. (521p-4), Dec. 9, 1939.

Registrar of titles need not memorialize lien certificates upon owner's duplicate certificate of title. Op. Atty. Gen. (521p-4), Jan. 8, 1940.

(5).

Daughter of recipient furnishing money for purchase of homestead is entitled to a prior lien. Op. Atty. Gen. (521p-4), Nov. 16, 1939.

Claims of children for taxes and improvements take priority whether paid before or after Jan. 1, 1940. Op. Atty. Gen. (521p-4), Nov. 24, 1939.

If child can prove that he actually paid taxes, fact that recipient of assistance had been given money by county for purpose of paying taxes, but used money for other purposes, would not defeat priority unless child connived with recipient in such diversion, or knew of the diversion and took no steps to prevent it. Id.

Claims of children for taxes and improvements may be supported by any evidence properly admissible in a court of law. Id.

Effect of mortgage subsequent to filing of state's lien. Op. Atty. Gen. (521p-4), March 30, 1940.

Where land is purchased by the state for taxes, and state has lien on land for old age assistance, notice of expiration of redemption should be served upon the state through the attorney general. Op. Atty. Gen. (419f), May 4, 1940.

Where land standing in name of married woman was sold for taxes to her daughter who paid subsequent taxes, and old age assistance was thereafter furnished surviving husband of owner and lien filed, on expiration of period of redemption taxpayer acquires title free from any claim on part of state, and further old age recipient has only a life estate which will terminate upon his death and render lien of state unenforceable. Op. Atty. Gen. (521p-4), May 10, 1940.

Lien of state may not be enforced in property held in joint tenancy where old age assistance recipient dies prior to co-tenant, unless there has been some act working a severance. Op. Atty. Gen. (521p-4), May 20, 1940.

Where recipient of old age assistance became sole heir at law of a one-half interest in common in land and such interest was sold for \$300 by order of probate court, purchaser took land free and clear from any lien of the state, and lien of state was transferred to recipient's interest in proceeds of sale, but where inherited interest in real estate was homestead of recipient who made his home on it with minor children, liens should be released so that proceeds might be used for support of dependents. Op. Atty. Gen. (521p-4), May 1, 1940, June 7, 1940.

State's lien for taxes is paramount, and upon sale for delinquent taxes state as holder of old age assistance lien, as distinguished from state as trustee for itself and various taxing subdivisions, has same interest in property as any other lienholder whose lien is junior to tax lien. Op. Atty. Gen. Jan. 15, 1941.

(6).

Notwithstanding §893, register of deeds of St. Louis County may not charge a fee for filing certificates for old age lien law. Op. Atty. Gen. (521p-4), Jan. 29, 1940.

Notwithstanding section 8328(4) register of deeds paid only on a fee basis is entitled to a fee of only 25 cents, though certificate necessitates entry of a memorial on register or a cancellation thereof in connection with registered land. Op. Atty. Gen. (521p-4), Jan. 31, 1930.

No fee shall be charged for filing of releases of liens, except in counties where register of deeds is compensated otherwise than by a salary, and in such counties a fee of 25 cents shall be paid. Op. Atty. Gen. (521p-4), March 20, 1940.

Certificates and release or satisfactions are to be permanently filed. Op. Atty. Gen. (521p-4), May 29, 1940.

(9).

Amended. Laws 1941, c. 453 set out above.

Op. Atty. Gen. (521p-4), May 1, 1940, June 7, 1940; note under subsec. (5).

Lien may be released in favor of a mortgage given to refinance a mortgage prior to state's lien. Op. Atty. Gen. (521p-4), July 16, 1940.

(11).

Recipient of assistance executing mortgage running to daughter in an amount equal to money furnished by her for purchase of homestead would not disqualify mortgagor from receipt of assistance. Op. Atty. Gen. (521p-4), Nov. 16, 1939.

3199-27. Reimbursement of United States out of amounts collected.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-28. Payment to guardian of recipient.—All payments of old age assistance must be issued to the recipient except in those instances in which a legal guardian has been appointed by the court having jurisdiction to make such appointments. (As amended Act Apr. 26, 1941, c. 466, §5.)

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

It is not legal duty of county attorney to handle any legal proceedings in connection with a guardian for a recipient of old age assistance, required by state regulations on demand of federal authorities, but he may voluntarily assist in securing appointment of a guardian, provided he makes no charge for his services and does not act as attorney for recipient or guardian in any capacity which might conflict with his duties as attorney for the county welfare board. Op. Atty. Gen., (521J-4), Oct. 20, 1939.

3199-29. Assignability of pension—Exemption.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-30. Reports by recipients—Modification, suspension, or revocation of assistance—Excessive payments.—Each recipient shall file such reports with the county agency as the county agency or the state agency may from time to time require. The county agency may modify, suspend or cancel any old age assistance certificate issued to any recipient, on the basis of findings obtained during investigations by a representative of such county agency. If on inquiry it appears that a certificate which was suspended pending inquiry, was properly obtained, the suspended installment shall be payable in due course. Any old age assistance paid in excess of the amount due shall be returned to the county and may be recoverable as a debt due the county. (As amended Act Apr. 26, 1941, c. 466, §6.)

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

A certificate directing payments, issued because of a mistaken interpretation of law, was "improperly obtained". Application of Rasmussen, 289NW773.

Provision of Missouri Social Security Act providing for cancellation of benefits subsequent to death of beneficiary construed to mean that benefits prior to beneficiary's death were not to be cancelled. Hughes v. S., 142SW(2d)(Mo)672.

Action cannot be maintained against old age assistance recipient who has come into an inheritance, during his lifetime, unless old age certificate was improperly obtained. Op. Atty. Gen. (521g), Dec. 3, 1940.

3199-31. Unlawful obtainment of assistance gross misdemeanor.

See note under §3199-32.

Word "entitled" is equivalent of word "eligible", as applied to age. State v. Jansen, 290NW557.

An amendment of an indictment which alleges that old age assistance was obtained "by means of a false representation" in language of statute, so as to amplify and state in detail nature of false representations and reliance thereon, does not allege a new offense, but merely restates with particularity original one. Id.

Evidence held to sustain a conviction. Id.

3199-32. Same—Cancellation of certificate.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

3199-33. Payment by county—Cost, how distributed; etc.

Laws 1941, c. 2 appropriates \$1,200,000 for old age assistance and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

Names of all persons receiving old age assistance or other payments from county welfare funds and amounts paid to each must be published in annual county financial statement. State v. Heffelfinger, 296NW181. See Dun. Dig. 2280b.

3199-34. County budget—Levy of tax—Transfer from other funds—Etc.

Appropriating money for old age assistance, providing for a tax levy therefor and the issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes. Act Jan. 17, 1941, c. 2, §§1-4.

(b).

It is legal to revise welfare fund budget so that more money can be allocated to old age assistance and less to poor account. Op. Atty. Gen., (521l-2), Oct. 11, 1939.

3199-35 to 3199-47.

Laws 1941, c. 2, appropriates \$1,200,000 for old age assistance, and provides for a tax levy therefor and issuance and sale of certificates of indebtedness in anticipation of the collection of such taxes.

PENSIONS FOR THE NEEDY ADULT BLIND

3199-66. Public assistance.—Assistance shall be given under this act to any person who;

(a) Is an adult blind person found, by the state agency, to be in need of financial assistance to enable him to pay for his maintenance or for other purposes;

(b) Has lost his eyesight while a resident of the state, or shall have resided in the state for a period of five years during the nine years immediately preceding the filing of the application for assistance, the last year of which shall be continuous and immediately precede such application;

(c) Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(d) Is not an inmate of, or being maintained by any municipal, county, state, or national, or institution at the time of receiving assistance. An inmate of an institution may, however, make application for such assistance, but the assistance, if granted, shall not begin until after he ceases to be an inmate of such institution;

(e) Has not made an assignment or transfer of property so as to render himself eligible for assistance under this act, at any time within two years immediately prior to the filing of application for assistance pursuant to the provisions of this act;

(f) Is not, because of his physical or mental condition in need of continuing institutional care;

(g) Is not, while receiving assistance under this act, soliciting alms;

(h) Is not, while receiving assistance under this act, receiving old age assistance. (As amended, Act Apr. 21, 1941, c. 352, §1.)

3199-68. Amount of assistance—Where other public relief is received.—The amount of assistance which any recipient shall receive shall be determined by the State Agency, with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case and in accordance with the rules and regulations made by the State Agency, and shall be sufficient, when added to all other income and support of the recipient to provide him with a reasonable subsistence compatible with decency and health.

In the event the family or dependents of a needy blind person receive any other form of public relief, the State or any instrumentality or political subdivision thereof shall exclude in determining the amount of assistance to be allotted such family or dependents the amount of \$16.00 per month from any sums granted to a needy blind person hereunder, but if such grant to a needy blind person hereunder is less than \$25.00 per month the whole amount shall be so excluded. (As amended, Act Apr. 28, 1941, c. 486, §1.)

3199-75. Appeals—Payment while pending.—If an application is not acted upon within 60 days after the filing thereof, the applicant may appeal to the state agency in the manner and form prescribed herein. Any applicant who is aggrieved by any order or determination of the state agency may request a reconsideration of his application and shall be entitled to a fair and impartial hearing before the state agency. All requests for reconsideration by the state agency shall be made in writing.

The state agency may make such additional investigation as it may deem necessary, and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as, in its opinion, is justified and in conformity with the provisions of this act.

If any final decision or determination by the state agency is not, in the opinion of the applicant or recipient, in conformity with this act, either may within 30 days after such decision appeal from the decision or determination of the state agency to the district court of the county in which the application

was filed or in which the applicant resides, by serving a copy of a written notice of such appeal upon the state agency and filing the original of such written notice, together with proof of service, with the clerk of the district court of the said county. Such appeal may upon not less than ten days' written notice, be brought on for hearing by either party before said district court at any general or special term, out of term, or in chambers; and in judicial districts having more than one judge, the senior or presiding judge shall hear the same or, if unable, shall refer the matter to some other judge in said district. Upon serving of such notice, the state agency shall furnish all parties in interest a concise statement of the issues involved copies of all supporting papers, a transcript of the testimony taken at the hearing before the state agency and a copy of its decision. The court shall summarily, upon 10 days' written notice, try and determine the said appeal upon the record of the state agency as certified to it and in said determination shall be limited to the issue as to whether the order of the state agency is fraudulent, arbitrary or unreasonable. No new or additional evidence shall be taken on such appeal or introduced by any party to such hearing on appeal in the district court, unless such new or additional evidence, in the opinion of the court, is necessary to a more equitable disposition of the appeal. If the court shall find the order of the state agency fraudulent, arbitrary or unreasonable, the court shall make an order declaring the order of the state agency null and void, giving its reasons therefor, and shall order the state agency to take further action in said matter not inconsistent with the determination of the court.

During the pendency of said appeal, if the state agency has awarded assistance to a recipient, said assistance shall be paid to him pending the determination, of said appeal. The state agency and the district court shall construe the act liberally in favor of the blind applicant to the end that the applicant shall be awarded sufficient assistance compatible with decency and health. (As amended, Act Apr. 21, 1941, c. 352, §2.)

3199-76. Reconsideration of assistance grants.—

All assistance grants made under this act shall be reconsidered as frequently as may be required by the rules of the state agency. After such reconsideration, the grant of assistance may be modified, suspended or revoked, as indicated by a reinvestigation of the recipient's financial circumstances as determined upon his living needs. (As amended, Act Apr. 21, 1941, c. 352, §3.)

DEPARTMENT OF SOCIAL SECURITY

3199-102. Powers and duties—Director of social welfare—As "state agency" within federal act.

Powers and duties respecting children committed to state training school for boys and Minnesota home school for girls vested in state director of public institutions, state board of parole, director of social welfare, or any other state agency are transferred to the director of public institutions. Laws 1941, c. 356.

Responsibility for selecting proper persons to examine patients, for causing sterilization operation upon the feeble-minded, and for consenting thereto is imposed upon director of social welfare. Op. Atty. Gen., (6799), Dec. 22, 1939.

Services of notices of restoration to capacity of five classes of mentally defective patients following reorganization act of 1939 stated. Op. Atty. Gen. (640), July 17, 1940.

(a) (2).

Child born to prisoner at Women's State Reformatory may not be placed in a private charity or boarding home by director of public institution or superintendent of reformatory, but case should be referred to director of social welfare, who should institute a proceeding in juvenile court for commitment if child is a dependent. Op. Atty. Gen. (840a-6), July 13, 1940.

(a) (4).

Bureau of crippled children may comply with request of local club for names and addresses of crippled children in community so that they may be notified that club will furnish necessary transportation. Op. Atty. Gen. (851r), Aug. 19, 1940.

Bureau of Crippled Children may furnish to commissioner of education name, address, and diagnosis of each

crippled child in state for purposes of statistical information and preparation of courses of teaching in physical education department of university, identity of crippled children not appearing in final form. Id.

3199-103. Powers and duties vested in Board of Control transferred to director of public institutions—Etc.

Act Apr. 1, 1941, c. 358, appropriates money for the Division of public institutions and activities under its control and authorizes the Commissioner of administration to transfer certain funds.

In proceeding for restoration to capacity of a man committed to state hospital as insane notice should be given both to director of social welfare and to director of public institutions if patient is on parole, but only upon director of public institutions if patient is an actual inmate of state hospital. Op. Atty. Gen., (248B-8), May 9, 1940.

Child born to prisoner at Women's State Reformatory may not be placed in a private charity or boarding home by director of public institution or superintendent of reformatory, but case should be referred to director of social welfare, who should institute a proceeding in juvenile court for commitment if child is a dependent. Op. Atty. Gen. (840a-6), July 13, 1940.

Services of notices of restoration to capacity of five classes of mentally defective patients following reorganization act of 1939 stated. Op. Atty. Gen. (640), July 17, 1940.

3199-106. State Board of Parole continued—Limitations.

Powers and duties respecting children committed to state training school for boys and Minnesota home school for girls vested in state director of public institutions, state board of parole, director of social welfare, or any other state agency are transferred to the director of public institutions. Laws 1941, c. 356.

Section transfers to board of parole, in addition to its previous functions with respect to the prison and reformatory, all functions formerly assigned to state board of control with respect to supervising persons on parole from the state training school for boys and the state home school for girls, state hospitals for the insane, and state school for feeble-minded and the colony for epileptics, but the authority of the board of parole does not extend to dependent children placed out from state public school at Owatonna, authority to place children out from that school being vested entirely in director of social welfare as guardian. Op. Atty. Gen., (640), Dec. 5, 1939.

Supervisory powers transferred to board of parole include all powers formerly vested in State Board of Control to appoint agents, whether state or local to supervise persons on parole, but qualifications for such agents are governed by existing statutes. Id.

Transfer of functions to board of parole "in respect to supervising persons on parole" gave board no greater power to grant paroles than it already had, though power to revoke paroles is impliedly vested in board as a necessary incident of power of supervision, subject to certain exceptions and qualifications arising under laws relating to various classes of persons. Id.

In proceeding for restoration to capacity of a man committed to state hospital as insane notice should be given both to director of social welfare and to director of public institutions if patient is on parole, but only upon director of public institutions if patient is an actual inmate of state hospital. Op. Atty. Gen., (248B-8), May 9, 1940.

Services of notices of restoration to capacity of five classes of mentally defective patients following reorganization act of 1939 stated. Op. Atty. Gen. (640), July 17, 1940.

3199-106a. Further powers and duties transferred to director of public institutions.—All powers and duties respecting children committed to the state training school for boys and the Minnesota home school for girls heretofore vested in or imposed upon the state director of public institutions, the state board of parole, the director of social welfare, or any other agency of the state except the director of public institutions, under Mason's Minnesota Statutes of 1927, Sections 4472, 4473 and 8648, and Mason's Supplement 1940, Sections 3199-102 and 3199-106, and acts amendatory thereof or supplementary thereto, are hereby transferred to, vested in, and imposed upon the director of public institutions. (Act Apr. 21, 1941, c. 356, §1.)

3199-106b. Unexpended appropriations, records, etc., transferred.—All unexpended appropriations made to any agency of the state except the director of public institutions for any of the purposes mentioned in Section 1, together with all records, equipment, and other property pertaining to such purposes

in the hands of such other agency, are hereby transferred to the director of public institutions. (Act Apr. 21, 1941, c. 356, §2.)

Sec. 3, Act Apr. 21, 1941, c. 356, provides that the act shall take effect from July 1, 1941.

FEDERAL COMMODITY STAMP PLANS

3199-108. Public assistance and co-operation.—Any county, county welfare board, city, town, village, borough, or other subdivision of the State of Minnesota or any public relief or social welfare agency or representative of any one of them may, in the furtherance of any federal commodity or commodity stamp plan or program, assist, actively co-operate with and act as agent of the federal, state or local governments or any agency of any one of them. (Act Mar. 28, 1941, c. 98, §1.)

3199-109. Boards of public welfare—Commodity stamp fund—Contracts—Agencies to dispense relief.

—(a) Any county, county welfare board, city, town, village, borough or other subdivision of the State of Minnesota or any agency of any one of them authorized to expend public moneys for the direct relief of the poor is hereby empowered to acquire and distribute to its poor, federal commodities and commodity stamps in lieu of other relief for the same needs, to transfer or deposit therefor cash in advance and to defray administrative expenses incurred in such acquisition and distribution including bond and insurance premiums from moneys available for direct relief and social welfare purposes.

(b) In any county operating under the township system of caring for the poor, and containing a city of the first class operating under a home rule charter, wherein there is established in such city a Board of Public Welfare for the administration of poor relief in such city, such Board of Public Welfare shall be the exclusive agency to acquire and dispose of such federal commodities and commodity stamps in such city. Such city of the first class is hereby empowered to create and establish a commodity stamp fund. Moneys for said fund shall be made available from the poor fund of such city and by contributions from federal and state funds, if any, made available for direct relief purposes. Said commodity stamp fund shall not exceed the sum of \$150,000. In such counties the township system of caring for the poor shall be continued, and the towns, villages and cities of the third and fourth class therein desiring to participate in said federal commodities and commodity stamp plans, are hereby empowered to contract with each other and with the federal government or any agency thereof to create and establish a central representative agency to be designated as the suburban agency. Said suburban agency shall be empowered to acquire and dispose of federal commodities and commodity stamps in the manner provided for in Section 2, subdivision (a), and Section 3 of this act, and to perform all other acts, obligations and duties undertaken by the terms of any agreement authorized in this section. The participating towns and municipalities are hereby empowered to create and establish a commodity stamp fund, and to establish a fund to defray administration expenses of said suburban agency, and to transfer said funds to the exclusive custody of said agency. Cost of administration and other expenses of said agency, including bond and insurance premiums, shall be paid on a pro rata basis. Moneys for the commodity stamp fund established by such participating towns and municipalities shall be made available by contributions from their respective poor funds, and from contributions from federal and state funds, if any, made available for direct relief purposes. Said stamp fund shall not exceed the sum of \$30,000. The suburban agency shall quarterly give a full and complete accounting and report to the participating towns and municipalities in the manner and form as prescribed by the public examiner and approved by the attorney general. Both the commodity stamp fund of said city of the

first class and the commodity stamp fund for said suburban agency shall consist of the original moneys transferred to it, the stamps acquired and the proceeds of disposition. Such commodity stamp funds shall remain inviolate during the operation of said stamp plan program, and that no part thereof shall be used to defray administration or any other expenses whatsoever. The Board of Public Welfare and the suburban agency, or their respective designees, may act as stamp issuing officer and shall have the power to do all other acts necessary to the proper administration of their respective stamp funds. In such counties neither the Board of County Commissioners nor the County Welfare Board shall levy, contribute or expend any moneys in the furtherance of any stamp plan program, however operating in said county. In such counties the provisions contained in Section 4, subdivisions (a), (b), (d), (e), and (f) of this act shall not apply. (Act Mar. 28, 1941, c. 98, §2.)

3199-110. Same—Acquiring federal commodity stamps.—Any county welfare board within the State of Minnesota, any city of the first class and any suburban agency referred to in Section 2, subdivision (b) is hereby authorized to acquire federal commodity stamps by means of the commodity stamp fund hereinafter established, to dispose of them to persons and governmental subdivisions qualified to acquire them under state and federal law and regulations and to receive cash and deposits therefor in advance. No commodity stamps so acquired may be disposed of except upon the receipt of cash upon delivery or cash transferred or deposited in advance in accordance with Section 2 of this act. Any contribution to the principal of the commodity stamp fund by a governmental subdivision of the State of Minnesota as authorized by this act shall not constitute a transfer or deposit. (Act Mar. 28, 1941, c. 98, §3.)

3199-111. Commodity stamp fund in certain cities and counties—Contributions—Borrowing—Stamp issuing officers—Expenses—Accounting.—(a) Any county within the State of Minnesota, regardless of the system under which provision is made for the relief and support of its poor, and any city of the first class, is hereby authorized to create and establish a commodity stamp fund, hereinafter referred to as the fund, for the acquisition under Section 3 of this act of federal commodity stamps, which fund shall not exceed the minimum necessary to qualify under federal rules, regulations and law and in no event shall exceed \$150,000 for cities of the first class and \$150,000 for counties in which they are located, and in all other counties \$50,000. The fund shall consist of the original moneys transferred to it, the stamps acquired and the proceeds of disposition. It shall always remain inviolate.

(b) Moneys may, in addition to such other methods as may exist, be made available for the fund in any one or more of the following ways:

(1) By the same method as moneys are made available for defraying expenses of the county welfare board under Sections 974-11 to 974-22 of Mason's Supplement 1940, or as such sections may be amended or supplemented.

(2) By contribution from the federal, state or governmental subdivisions thereof of moneys available for direct relief or social welfare purposes.

(3) By borrowing and transferring to the fund. In counties operating under the county system of poor relief, borrowing shall be in the manner provided by law for direct relief or social welfare purposes or both. In counties operating under the township system of poor relief in the manner provided in Sections 1938-3 through 1938-13 of Mason's Minnesota Statutes of 1927, as heretofore or hereafter amended. Provided, however, that for the purpose of computing statutory debt limits, the money borrowed under the authority of this subdivision for the purpose of contribution to

the fund shall not be considered to constitute indebtedness, bonded or otherwise.

(c) No moneys shall be transferred to the fund until after all bonds have been posted and insurance acquired.

(d) The county welfare board, its executive secretary or other designee may act as stamp issuing officer and shall have power to do all other acts necessary to the proper administration of the fund.

(e) Expenses incident to the creation and administration of the fund, including bond and insurance premiums may be defrayed in the same manner as other expenses of the county welfare board under Sections 974-11 to 974-22 of Mason's Supplement 1940, or as such sections may be amended or supplemented.

(f) Accounting shall be as follows:

(1) With respect to the fund, by such method or methods as the public examiner by regulations, duly approved as to legality by the attorney general, may direct. Semi-annually or at such other times as the board of county commissioners may designate the county welfare board shall give an accounting and report to the county auditor.

(2) With respect to any transfer or deposit made in advance by a governmental subdivision of the State of Minnesota to any county welfare board or its stamp issuing officer, by accounts and reports to the transferring or depositing subdivision made monthly or at such times and in such manner as the public examiner, by regulations duly approved as to legality by the attorney general, may direct. The duly approved regulations of the public examiner under this subsection (f) shall be sent to all county welfare boards within the state.

(g) At the termination of any plan all commodity stamps shall be disposed of and the fund in cash shall be returned to the contributors thereto. (Act Mar. 28, 1941, c. 98, §4.)

3199-112. Borrowing money.—The government subdivisions named in Section 2 of this act may, for the purposes of that section, borrow money in the manner provided by law for direct relief or social welfare purposes or both. (Act Mar. 28, 1941, c. 98, §5.)

3199-113. Same — Contributions.—Any governmental subdivision of the State of Minnesota au-

thorized to expend public moneys for the direct relief of its poor is hereby empowered to contribute to the fund and, for such purpose may borrow money in the manner provided by law for direct relief or social welfare purposes or both. (Act Mar. 28, 1941, c. 98, §6.)

3199-114. Custodians—Surety bonds — Insurance against loss.—Any person or persons into whose care and custody there comes any cash, stamps or other property used in any federal commodity or commodity stamp plan or program shall post a bond running to the State of Minnesota approved by and in such sum as the board of county commissioners or other governing body of the responsible governmental subdivision or authorized representative agency shall deem adequate protection for all stamps, cash and property in such person's or persons' care and custody. All stamps, cash and property in the possession of any governmental subdivision of the state or any agency thereof shall be insured against loss or deposited with a depository of public funds in the manner provided by law. (Act Mar. 28, 1941, c. 98, §7.)

3199-115. Construction of act.—This act shall be construed so as to further its purpose which is to enable governmental subdivisions of the State of Minnesota to participate in federal commodity and commodity stamp plans and programs. (Act Mar. 28, 1941, c. 98, §8.)

3199-116. Federal Commodity Stamp Plans—Validating act.—In all cases in which any county within the State of Minnesota or any agency thereof has created or caused to be created a revolving fund for the acquisition and disposition of federal commodity stamps pursuant to arrangements with the United States Department of Agriculture or any agency thereof and in all cases in which any county, town, city, village or other subdivision of the State of Minnesota or any agency of any one of them has obtained or caused to be obtained commodity stamps for distribution, in lieu of other relief, to the poor, such expenditures, distributions, acquisitions and dispositions and all acts incident and necessary to participation in any such commodity stamp plan are hereby legalized and declared to be valid. (Act Mar. 28, 1941, c. 99, §1.)

CHAPTER 16

Intoxicating Liquors

BEER BILL

3200-5. Municipalities may issue licenses for sale of non-intoxicating beverages.

Permit to drug store in dry territory to sell liquor on prescription is authorized, and does not prevent issuance of 3.2 beer license. Op. Atty. Gen., (218J-3), Sept. 28, 1939.

There is no state law which prohibits a gift of intoxicating liquor or nonintoxicating malt beverages, but it may be argued that a gift of liquor or beer with a meal by a hotel or restaurant would be a mere subterfuge. Op. Atty. Gen., (217), Nov. 4, 1939.

There is no state statute prohibiting granting of license near a public school. Op. Atty. Gen., (217f-1), Dec. 14, 1939.

Town board may limit number of 3.2 beer licenses, but has no right to refuse to approve all applications for licenses without cause. Op. Atty. Gen., (217B-8), Jan. 10, 1940.

Electors of a township do not have right to vote on question of issuing license. Op. Atty. Gen., (218g-9), April 18, 1940.

In absence of any provision requiring mayor to approve or affix his signature to a 3.2 non-intoxicating malt liquor license, it is duty of city clerk to issue license when granted by city council. Op. Atty. Gen., (217-B-4), July 18, 1940.

Town board's authority is limited to approval or disapproval of application, and town board has no right to regulate conduct of licensee's business after a license has been issued by county board, nor can it require

county board to regulate establishment. Op. Atty. Gen. (217B-8), Nov. 22, 1940.

An ordinance regulating sale of nonintoxicating malt liquors may prohibit sales of carbonated beverage or soft drink, excepting therefrom ice cream sodas and malted milk, during hours of sale of malt liquors, and make it a misdemeanor to permit bottles or containers of malt liquors to remain on bars or tables or shelves or fixtures during closing hours, and may make it a misdemeanor for a person to drink malt liquors in a licensed place during closing hours. Op. Atty. Gen. (217C), Nov. 26, 1940.

Authority of city to "regulate" authorizes city to require a \$1000 bond. Op. Atty. Gen. (217C), Jan. 9, 1941.

3200-6. Unlawful to sell unless licensed.

Village council may not charge a fee in excess of \$5.00 for an "off-sale" license. Op. Atty. Gen., (217c), Dec. 18, 1939.

Whether county agricultural society, or county fair association, is eligible for an "off sale" malt liquor license is a question of fact to be decided by village council. Op. Atty. Gen., (218J-1), March 29, 1940.

There is no statute authorizing a search warrant for places selling 3.2 beer without a license. Op. Atty. Gen. (218f-3), May 28, 1940.

Sale of 3.2 beer without a license may be restrained by injunction as a nuisance. Id.

On sale licenses for non-intoxicating liquor may be issued to persons who already have on sale hard liquor establishment, but they must be drug stores, restaurants, hotels, or bona fide clubs. Op. Atty. Gen. (217B-5), June 8, 1940.