

130278

1941 Supplement

To

**Mason's Minnesota Statutes**

**1927**

**1939 to 1941**

**(Supplementing Mason's 1940 Supplement)**

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by  
the  
Publisher's  
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St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

Minnesota Statutes of 1927, as amended. For recording any assignment or other instrument affecting the title to any permit or lease, or for furnishing certified copies of the records, the commissioner of conservation may charge a fee of ten cents per folio. All such fees shall be turned into the state treasury. (As amended Act Apr. 28, 1941, c. 546, §7.)

**6417-1. Separability clause.**—The provisions of this act [6404 to 6406, 6408, 6409, 6416, 6417] shall be severable, and if any provisions or application hereof be held invalid, it shall not affect any other provision or application which can be given effect without the invalid provision or application. (Act Apr. 28, 1941, c. 546, §8.)

#### OTHER LANDS

##### **6442. Certain other lands—How sold—Appraisal.**

This and succeeding sections furnish procedure for sale by the state of land which it has acquired on execution sale on judgment for personal property taxes. Op. Atty. Gen., (421a-8), Sept. 25, 1939.

**6442-1. Sale of escheated property.**—The state auditor shall report immediately to the state board of investment all property other than money received by the state of Minnesota as escheated property. Whenever the state board of investment shall determine that it is for the best interest of the state to sell such property, it shall direct the state treasurer to sell the same to the highest bidder in such manner and upon such terms and conditions as it may prescribe. (Act Apr. 10, 1941, c. 198, §1.)

##### **6445. Certificate of sale.**

State auditor's certificate of escheated real estate re-instated in certain city of the fourth class. Act Feb. 28, 1941, c. 40.

##### **6452-7. Lands to be held by estate.**

Ditch liens upon forfeited lands within a conservation area are to be cancelled. Op. Atty. Gen., (921g), Sept. 28, 1939.

##### **6452-13. Provisions separable.**

Act Apr. 21, 1941, c. 357 authorizes the county board of Roseau county to sell certain tax forfeited lands within the boundaries described in the above act in the same manner as provided by law for the sale of agricultural lands in the same area.

#### STATE PARKS, STATE PUBLIC CAMP GROUNDS AND STATE MONUMENTS

##### **6508-31. Act void under certain conditions.**

Agreement by county board pursuant to construction of a dam as a W.P.A. project in connection with estab-

lishment of a state park to hold harmless to state and federal government from any and all claims of any kind, was ultra vires and county was not liable for damages to crops caused by collapse of dam. Op. Atty. Gen. (844C), Feb. 14, 1941.

**6508-34. Father Hennepin State Memorial Wayside.**—There is herby created Father Hennepin State Memorial Wayside. Said park shall consist of the following described lands lying in Township 42 North, Range 25 West, County of Mille Lacs, State of Minnesota, when and as acquired in accordance with the terms of this act, more fully described as follows:

Government Lots 2, 3, 4 and 5, Section 3, Township 42 North, Range 25 West, all of the above described lands comprising 129.75 acres. (Act Apr. 28, 1941, c. 520, §1.)

**6508-35. Same—Dedication of lands.**—All lands within the area described in Section 1 which have forfeited to the state for non-payment of taxes, are hereby declared vested in the State of Minnesota, free of any trust or interest in favor of the taxing units thereof and are hereby dedicated to the purposes of said State Memorial Park. (Act Apr. 28, 1941, c. 520, §2.)

**6508-36. Same—Control and management.**—Said State Memorial Wayside shall be under the control and management of the division of state parks, department of conservation. (Act Apr. 28, 1941, c. 520, §3.)

**6508-37. Same—Acceptance of funds and services for state.**—The director of the division of state parks is hereby authorized to accept in the name of the state of Minnesota any funds or services donated for the purpose of improvement of said lands for park purposes. (Act Apr. 28, 1941, c. 520, §4.)

**6508-38. Same—State funds—Expenditure delayed.**—No funds of the state of Minnesota shall be expended upon the maintenance of said park for a period of five years. (Act Apr. 28, 1941, c. 520, §5.)

#### STATE FORESTS

##### **6513-9 to 6513-12. [Repealed.]**

Repealed. Laws 1941, c. 548.

##### **6536-2. May expend money on leased land.**

Act Apr. 14, 1941, c. 215 approves and ratifies leases covering Beltrami and Pine Island areas and provides for Conservation projects in such areas.

## CHAPTER 41

### Eminent Domain

##### **6537. Right of eminent domain.**

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

There is no expressed legislative authority for an independent school district to exercise right of eminent domain for play ground and recreational purposes, if property involved is separated from, and cannot be made a part of school house site. Op. Atty. Gen., (817o), Feb. 6, 1940.

County board in establishing a county road under §2582 should proceed entirely under that section, and not under this statute. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

##### **6551. Judgment—Possession.**

If property taken was actually occupied by former owner between filing of first award and payment of damages, rental value may be offset against award. Op. Atty. Gen. (817r), Sept. 16, 1940.

##### **6552. Interest—Award, when payable; etc.**

Proceeding to condemn a right of way for highway purposes may be abandoned and discontinued by state in exercise of its legislative function at any time prior to making of an award where state has not entered into possession of the property or appropriated it to its purposes. State v. Appleton, 294NW418. See Dun. Dig. 3091.

**6555. Notice of condemnation proceedings in certain cases to be filed with the register of deeds of the county.**—Whenever the State of Minnesota or any city, county, village, town, board of park commissioners or board of public works in this state shall hereafter take or acquire, by condemnation proceedings or dedication, any land or lands or any easement or interest therein for laying out, opening, widening, extending or establishing any public street, road, highway or alley, or for public parks, parkways or other public purposes, or shall vacate or abandon any public street, road, highway, alley, park or public grounds or any portion thereof, or any easement or interest therein, a notice in writing of the completion of every such condemnation proceeding and of every such dedication, vacation or abandonment of any public street, road, highway, alley, park or public grounds or any portion thereof, shall be forthwith filed for record with the register of deeds of the county within which the lands and premises are located. Provided that such notice shall first be presented to the county auditor who shall enter the same in his

transfer records and shall note upon the instrument, over his official signature, the words "entered in the transfer record." Such notice shall be prepared and filed by the state department administrator, clerk, auditor, recorder or other person charged with the duty of keeping the records of the state or such city, county, village, town, board of park commissioners or board of public works so acquiring any such lands or vacating or abandoning any such street, road, highway, park or public grounds, and such notice shall contain a statement of the time of the completion of such condemnation proceedings or of such vacation or abandonment, as the case may be, and the name of the state, city, county, village, town, or board by whom such proceedings are prosecuted or such vacation is made, or to whom such dedication is made, and a description of the real estate and lands affected thereby. Any failure to file such notice shall not invalidate or make void any such condemnation proceeding for such vacation or abandonment of any public street, road, highway, park or public grounds or any portion thereof. (As amended Act Apr. 16, 1941, c. 252, §1.)

**6557-1. Eminent domain proceedings by state or its agencies—Procedure.**—In eminent domain proceedings instituted by the state or by its agencies or political subdivisions as petitioners under the provisions of Chapter 41, General Statutes 1923, the procedure shall be as follows:

(a) The report of commissioners shall be filed with the clerk of district court within 90 days from the date of the order appointing such commissioners, but for cause shown the court upon such notice as the court may determine may extend the time for making and filing said report.

(b) At any time within 30 days from the date of the filing of such report, any party to the proceeding may appeal from any award of damages embraced in said report, or from any omission to award damages, by filing with the clerk a notice of such appeal. Such notice of appeal shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and the grounds of the appeal. Upon appeal the prevailing party shall recover costs and disbursements.

(c) Payment of the damages awarded may be made or tendered at any time after the filing of said report. The duty of the public officials to pay the amount of any award or final judgment upon appeal shall for all purposes be held and construed to be full and just compensation to the respective owners or the persons interested in the lands.

(d) The notice of filing of report provided for in Section 6545, General Statutes 1923, shall be dispensed with; as shall also the final decree provided for in Section 6553, General Statutes 1923, provided the attorney for the petitioner make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of payment of all awards or judgments in relation thereto, which certificate upon approval thereof by the court shall establish the rights of the petitioner in the lands taken and shall be filed with the clerk and a certified copy thereof filed for record with the register of deeds. Such record shall be notice to all parties of the title of the state or of its agency or political subdivision to the lands therein described.

(e) The commissioner of highways may except as to lands already devoted to a public use, at any time after the filing of a petition for the condemnation of any land for a trunk highway, or for material for the construction or improvement thereof, take possession of such land; and may at any time enter upon any lands and make surveys and examinations thereof in the location of trunk highways or in the acquisition of material for the construction or improvement thereof. (As amended Apr. 18, 1941, c. 307, §1.)

One occupying premises under a revocable license with unconditional right to remove house if license were revoked, was not entitled to any part of an award in a highway condemnation proceeding, and owner of land can claim no greater sum than value of the land without house. *State v. Riley*, 293NW95. See Dun, Dig. 3051.

(e). Proceeding to condemn a right of way for highway purposes may be abandoned and discontinued by state in exercise of its legislative function at any time prior to making of an award where state has not entered into possession of the property or appropriated it to its purposes. *State v. Appleton*, 294NW418. See Dun, Dig. 3091.

**6569. Answer—Ascertainment of damages.**

*Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

## CHAPTER 42

### Water Powers

#### MILLS AND DAMS

**6579. Dams—For what purposes—Eminent domain.** *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

#### UNIFORM STAGE OF WATER IN LAKES AND STREAMS

**6588. County board may establish—Eminent domain.**

County board should not appropriate money for digging of a well to pump large quantities of water into a lake lying wholly in the county until they have adopted a resolution for maintenance of lake level pursuant to §6588, and if this is done it is not necessary to adopt a more complicated proceeding of §6602-13. *Op. Atty. Gen.* (125a-59), Aug. 8, 1940.

County board may appropriate funds for digging of well and maintenance of pumping station to pump water into a lake, and may receive donations or gifts to be used toward the expensive work. *Id.*

County board may make appropriation for digging of well to maintain water level in a lake without consent of commission of conservation. *Id.*

**6602-12. Commissioner may construct dams; etc.**

Property owner damaged by flooding caused by construction of dam and receiving satisfaction from the state and executing a release of damages could not recover damages for the same injury from another prop-

erty owner who constructed the dam. *Driessen v. M.*, 294NW206. See Dun, Dig. 10187.

**6602-13. Owners may initiate proceedings.**

County board should not appropriate money for digging of a well to pump large quantities of water into a lake lying wholly in the county until they have adopted a resolution for maintenance of lake level pursuant to §6588, and if this is done it is not necessary to adopt a more complicated proceeding of §6602-13. *Op. Atty. Gen.* (125a-59), Aug. 8, 1940.

#### TRI-STATE AREA

**6602-41. Tri-state waters commission created.**

Members of tri-state waters commission who served intermittently and are paid on a per diem basis are not "state employees", but persons who are regularly employed and whose salaries are paid by warrants of state auditor and who serve continuously are entitled to membership in retirement association. *Op. Atty. Gen.*, (331a-7), Jan. 30, 1940.

#### WATER CONSERVATION

**6602-51. Declaration of purpose.**

Whether a lake may be "lowered" or "drained" in any given case depends for its validity upon statutory authority properly invoked and exercised. *Lake Elysian High Water Level*, 293NW140. See Dun, Dig. 10187.

Long delay occurring between establishment of ditch and institution of proceedings to restore lake level does not limit right of state so to proceed since no prescrip-