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To

Mason's Minnesota Statutes

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(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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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.

6560. 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-

tive right can be obtained against sovereign, absent any statutory time limit within which to act. *Id.*
 County board may make appropriation for digging of well to maintain water level in a lake without consent of commission of conservation. *Op. Atty. Gen.* (125a-59) Aug. 8, 1940.

6602-53. Shall develop water conservation program for state.

Act Apr. 28, 1941, c. 518, authorizes sale, lease or other disposition to United States of certain lands acquired for the Lac Qui Parie river water conservation project.

6602-58. Shall investigate evidence.

Upon facts stated commissioner of conservation was justified in ordering restoration of lake level to the height stated in his order. *Lake Elysian High Water Level*, 293NW140. See *Dun. Dig.* 10187.

6602-62. Appeals to district court.—Any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partially located or to the district court of Ramsey County. Appeals may likewise be taken from the judgments of the district court to the supreme court of the state. Such appeal may be taken and the rules of pleading and procedure on such appeal shall be the same as now provided by law for appeals from orders of the railroad and warehouse commission of this state as provided in Mason's Minnesota Statutes of 1927, Section 5308, and on the trial or appeal the judge of the district court having jurisdiction, or the supreme court, may set aside, modify or confirm such determination as the evidence or law may require. The pendency of any such appeal shall not of itself stay or suspend the operation of the order or determination of the commissioner, but the district court, or the supreme court, in their discretion may restrain or suspend, in whole or in part, the operation of the commissioner's determination pending the final hearing and determination of the appeal by requiring the filing of an appropriate bond or other undertaking by the appellant conditioned that the appellant shall answer for all damages caused by the delay in the enforcement of the determination of the commission. The court may, in lieu of such bond, require or permit of such other security as it may deem proper. (As amended Mar. 28, 1941, c. 86.)

Court does not try matter anew as an administrative body, substituting its findings for those of the commissioner. *Lake Elysian High Water Level*, 293NW140. See *Dun. Dig.* 10187.

6602-63. Violation a misdemeanor.—Any person or persons, partnership, association or corporation, public or private, that shall do or cause to be done, any act or thing contrary to or required by the provisions of this act, or that shall fail, neglect or refuse to do or cause to be done any act required by the provisions of this act; or that shall violate or fail to comply with any order of the commissioner of which due notice shall be given; or that shall violate any of the provisions of this act, shall be guilty of a gross misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than \$1,000.00, or, in the discretion of the court, such person or persons, or the members of such partner-

ship or association, or the officers and directors of such corporation, public or private, may be sentenced to imprisonment for a period not exceeding one year, either or both, in the discretion of the court. In the case of the state or any agency thereof, counties, municipalities, and other political subdivisions of the state, the officials responsible for the violation shall, after hearing, be subject to removal from office by the governor of the state. (As amended Act Mar. 17, 1941, c. 71, §1.)

6602-66. Dams to be maintained by state.—All dams owned by the state or erected upon lands owned by the state or for which the state has acquired permanent easement, shall be maintained by the state from funds appropriated by the legislature directly for such purpose or from such other sources as may be provided by law. Whenever in the interest of public health or welfare, it may be necessary to acquire dam sites, flowage rights or rights-of-way for the construction, operation and maintenance of water control works and other appurtenant construction for the development of water conservation program of the state, the commissioner of conservation, subject to the provisions of Section 6602-67, Mason's Minnesota Statutes, 1940 Supplement, is authorized to acquire such lands or any necessary interest therein by purchase, gift or condemnation whenever the necessary funds have been provided by legislative appropriation or from such other sources as may be provided or authorized by law. The commissioner is authorized to accept from local governments and civic agencies, or persons, funds for the purpose of maintaining or constructing such dams and appurtenant or control structures, or the lands required therefor. (As amended Mar. 28, 1941, c. 88, §1.)

**COMMON LAW
 DECISIONS RELATING TO WATERS
 AND WATER COURSES
 IN GENERAL**

2. Riparian rights.

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.

Private ownership of property on banks and in beds of navigable streams is subject to the public right of navigation and government control and regulation necessary to make that right effective but such public right of navigation is limited to the natural state of the stream. *U. S. v. Chicago, M. St. P. & P. R. Co.*, (CCA 8), 113F(2d)919. *Cert. gr.*, 61SCR318.

The fee title of a riparian owner extends to ordinary low-water mark subject to the paramount public right of navigation under the natural conditions of the stream. *Id.*

Title, points and lines in lakes and streams. 24Minn LawRev305.

3. Surface waters.

Rule of Sheehan v. Flynn, 59 Minn. 436, 61 N. W. 462, 26 L. R. A. 632, that by reasonable drainage works on his own premises, a landowner may dispose of surface waters as best he can, so long as he does not unreasonably injure his neighbor, applies only to private rights and exercise thereof, and has no application to a public drainage proceeding wherein statute requires compensation to all who suffer damages. *Town Ditch No. 1 v. B.*, 295NW47. See *Dun. Dig.* 2841a, 10165.

Interference with surface waters. 24MinnLawRev891.

CHAPTER 43

Logs and Lumber

6618. Recording; etc.

Logs, posts, and certain other lumber products in transportation must be marked with description of land from which cut. *Laws* 1941, c. 83.

6627-1. Identification of timber being transported

—**Nature of marks used.**—Within the forest areas of this state, all loads of logs, square timbers, piling, pulpwood, bolts, ties, poles, posts, mining timber, and lagging shall, while being transported from the place where such products were cut, be conspicuously marked on each side with the legal description of

the land from which said products were cut, provided, however, that where timber is being cut from more than one 40-acre tract in a single logging operation, the loads of products from such operation may be marked with the legal description of all the lands being cut upon such operation, or the operation may register with the department of conservation, division of forestry, a list of the legal descriptions of lands to be cut over in such single operation, and the director of the division of forestry shall then