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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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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 Parle 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 commissioner. 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

assign to the operator a number covering the registered descriptions; such assignment to be for the period of one year and such number may be used to mark products being transported, in lieu of the legal descriptions. (Act Mar. 28, 1941, c. 83, §1.)

6627-2. Same—Timber products manufactured on land where cut.—Any load of lumber or timber products which have been manufactured on the land where cut shall, while being transported from said land, be conspicuously marked on each side as provided hereinbefore. (Act Mar. 28, 1941, c. 83, §2.)

6627-3. Same—Stored timber.—Any load of logs, square timbers, piling, pulpwood, bolts, ties, poles, posts, mining timber, and lagging being transported from a point of temporary storage other than the land from which said products were cut, shall be conspicuously marked on each side with the name of the person, firm or corporation sending such products and the location of the point of storage from which said load is being hauled. (Act Mar. 28, 1941, c. 83, §3.)

6627-4. Same—False marks.—No person, firm or corporation shall affix or use for identification purposes any legal description of land other than that

from which the timber or timber products were cut or removed. (Act Mar. 28, 1941, c. 83, §4.)

6627-5. Same—Violations of law—Inspection of loads.—Any forest officer or any officer with police authority shall have the authority

(a) to arrest, with or without warrant, any person violating any provision of this act.

(b) to stop any truck or vehicle and to inspect any such load wherever found and to make such investigation with reference thereto as may be necessary for the purpose of determining whether the provisions of this act have been complied with. (Act Mar. 28, 1941, c. 83, §5.)

6627-6. Same—Offenses and punishment.—Any person who shall violate any of the provisions of this act shall upon first conviction be guilty of a misdemeanor and shall be punished by a fine of not less than \$10.00 nor more than \$100.00 or by imprisonment in the county jail for not less than ten days nor more than ninety days, and in case of a subsequent conviction of the same or any other offense under this act shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$100.00 or by imprisonment in the county jail for not less than ninety days or by both such fine and imprisonment. (Act Mar. 28, 1941, c. 83, §6.)

CHAPTER 44

Drainage

COUNTY DRAINS AND DITCHES [COUNTY DRAINS AND JUDICIAL DRAINS]

6784. County board may raise, lower or alter damages or benefits; etc.

There is no authority for reassessing benefited property to make up a deficit caused by nonpayment of some of special assessments, and bonds should be paid from proceeds of a general levy upon all property of county or counties. Op. Atty. Gen. (38B), Sept. 26, 1940.

6807. Establishment of district—Classes.

Supervision and control of county drainage ditches within village limits may be transferred from board of county commissioners to governing body of village. Laws 1941, c. 54.

By establishment of a county ditch pursuant to Law 1905, c. 230, land benefited and assessed acquired a property right, appurtenant to land, not to be taken away or impaired, except by due process, but where only relief sought in construction was to so enlarge outlet as to more effectually drain slough lands lying adjacent to outlet and to control sudden rises and floods that overflowed low lands lying adjacent to shores of a lake, landowners' rights are limited to benefits accruing within stated purposes and subsequent erosion of the lake outlet whereby natural water level was much lowered cannot be claimed to be a barrier against state in now seeking restoration of lake level to its natural and normal height. Lake Elysian High Water Level, 293NW140. See Dun. Dig. 2824.

6820. When contracts may be made.

County and village adjacent to a county ditch may not enter into contract whereby village would take over a ditch and use it for a sewer drain or overflow from septic tanks and installation of disposal plant at outlet of ditch. Op. Atty. Gen., (387G-3), Sept. 20, 1939.

6829. Upkeep and repair of district.

While county has implied power to clean bed of judicial ditch, and use persons on relief for that purpose, any wood removed therefrom belongs to owner of land and cannot be given to workers. Op. Atty. Gen., (150C), Oct. 10, 1939.

6840-2. Powers of county boards; etc.

County commissioners cannot turn over a ditch to a village which has been using the ditch as a sewer. Op. Atty. Gen. (148a-6), Aug. 15, 1940.

6840-23. Bridges and culverts; etc.

Township must repair or rebuild bridges on township road, and county must repair or rebuild bridges on county road, though constructed for and still used for crossing judicial ditches. Op. Atty. Gen. (148-a-3), Aug. 9, 1940.

6840-43. Bond issues by county boards; etc.

There is no authority for reassessing benefited property to make up a deficit caused by nonpayment of some of special assessments, and bonds should be paid from proceeds of a general levy upon all property of county or counties. Op. Atty. Gen. (38B), Sept. 26, 1940.

6840-49. Liens—Supplementary liens.

Where actual cost of construction exceeded original estimate and levy, a supplemental assessment should be made, but if this is not done drainage bonds are general county obligations. Op. Atty. Gen. (901b), Feb. 25, 1941.

6840-50. Same—Interest on.

Where county refunded its judicial ditch bonds and obtained a lower interest rate, and landowners contend they are entitled to difference in interest being charged on their liens and interest county is paying on bonds, court might have power to modify order previously made fixing and determining rate of interest, but it is questionable that county could refund interest payments made prior to such court order, if the same is secured. Op. Atty. Gen. (821f), Jan. 11, 1941.

6840-50a. Same—Payment of interest deficiency—Reassessment of land.—Whenever a ditch has been established by county or judicial proceedings and the county board has issued and sold bonds to pay a part or the entire cost thereof, and has assessed the lands benefited, which assessments have been paid and there are insufficient funds to pay the interest due or to become due upon such bonds, said county board is authorized to determine the amount that each piece, parcel or tract of land shall bear to pay such interest deficiency and to assess the same according to the rules which governed the first assessment. (Act Apr. 10, 1941, c. 173, §1.)

6840-51. Same—Payment of.

(8).

Small acre tracts owned by different owners would each be considered as a separate tract, and a section of land in name of one owner would be considered as four different tracts, as affecting fees of register of deeds for releasing ditch liens. Op. Atty. Gen., (373B-10(G)), May 13, 1940.

6840-53. Repairing and cleaning—Etc.

Act Mar. 11, 1941, c. 54, §1 provides: Certain counties may transfer supervision, maintenance, and control of county drainage ditch situated within village to village authorities.

Where petition was filed for a clean out of a judicial ditch at cost of about 12% of entire cost of original ditch, and later another petition was filed for another