

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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MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

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

branch of the same ditch, and cost of two cleanouts would total over 30% of original cost of entire ditch, each petition may be treated separately if they were both made in good faith, and all owners benefited by original construction will be assessed for repairs in same proportion as for original construction. Op. Atty. Gen., (901E), Oct. 6, 1939.

Where a judicial ditch was established and later a new ditch was established replacing a portion of original ditch with its outlet in original ditch, cost of later cleaning outlet of original ditch should be assessed against all lands benefited by the repair, including those drained by new ditch. Op. Atty. Gen., (425c-3), May 27, 1940.

If leveling off of bank along ditch is part of improvement or repair project, cost thereof may become part of contract for cleaning out and repair of ditch. Op. Atty. Gen. (602-J), July 2, 1940.

6840-54. Repair or improvement of drainage system—Petition—Engineer.

Where several parties petition for repairs, work to be done may not be divided into sections and be repaired individually so as to keep cost of each section under \$500.00, and avoid appointment of engineer, notice to property owners and letting of a contract. Op. Atty. Gen., (150-c), July 23, 1940.

6840-56. Same—Report of Engineer—Procedure.

—(a) * * * * *

(e). It shall be the duty of the auditor, in all such cases, to include in such statement and provide for the collection for the benefit of the county when funds have been advanced as herein provided, interest upon the total sum so advanced at a rate to be fixed by the county board but not to exceed six per cent per annum. And it shall be the duty of the county auditor and the county treasurer to levy, assess and collect the amounts included in such lien statement in the same manner as provided in Mason's Minnesota Statutes of 1927, Section 6840-51. (As amended Act Apr. 10, 1941, c. 211, §1.)

6840-60. Same—Liens—Statement of—Assessment and collection.—In all proceedings pending before the county board within ten days after the letting of the contract as provided in Mason's Minnesota Statutes of 1927, Section 6840-59 or in the proceedings pending before the district court, within ten days after filing of the order apportioning the costs and expense of the improvement among the several counties, the county auditor, or the county auditors, as the case may be, shall make and file in their respective offices a summary statement in form and substance as provided in Mason's Minnesota Statutes of 1927, Sections 6840-44 and 6840-45, and shall forthwith make a certified copy thereof and file the same for record in the office of the register of deeds of their county, as provided in Mason's Minnesota Statutes of 1927, Section 6840-45. Upon the filing and recording of such copy in the office of the register of deeds, the amount specified in such statement for lien shall constitute a lien against each tract of land and each public or corporate road or railroad, and such land, road or railroad will be liable for such sum and interest thereon, and the same shall be and remain a first and paramount lien on such land, public or corporate road or railroad until fully paid, and shall take precedence of all mortgages, charges, incumbrances or other liens whatsoever, except only a prior ditch lien and payment of the several installments of said lien may be made in the manner provided in Mason's Minnesota Statutes of 1927, Section 6840-51. Such filing shall be deemed notice to all parties interested of the existence of such lien; the fees of the register of deeds for such recording shall be paid by the county on the allowance of the board, and said lien statement after the same has been recorded shall be returned to the county auditor and be by him preserved as a part of the record of such proceedings. That the provisions of Mason's Minnesota Statutes of 1927, Section 6840-51, relative to the duties of the county auditor and the county treasurer governing the assessment and collection of such lien shall apply to and govern the acts of the county auditors and treasurers in the respective counties in this proceeding, provided that in all cases where the total cost of such improvement does not exceed the sum of \$3,000 said lien may, when ordered by the county board be collected in

equal annual installments for three or five years, and where the total cost shall exceed \$3,000 the county board may, and they shall have authority to provide the funds by the sale of county bonds as in the case of county or judicial drainage system, as provided in Mason's Supplement 1940, Section 6840-43, and it shall be the duty of the respective county boards to provide the funds for the payment of the cost and expense of such improvement, and they are hereby authorized so to do in accordance with the provisions of this act, and may pay such cost and expense out of the general ditch fund when funds are available therein, or out of the general revenue fund of the county, but in either case it shall be the duty of the county auditor to provide for and collect as part of the expense of such improvement, interest upon all sums advanced by the county at a rate to be fixed by the county board but not to exceed six per cent per annum, and it shall be the duty of the county auditor and county treasurer of the respective counties to extend such assessments upon the records of their office in accordance with the provisions of Mason's Minnesota Statutes of 1927, Section 6840-51, and collect the same as in case of other assessments against said property. (As amended Act Apr. 10, 1941, c. 211, §2.)

6840-61. Use of drainage systems as outlets.

An unassessed land owner cannot dig a private lateral ditch at his own expense to connect with a drainage system created prior to April 25, 1925, even though he is willing to enter into an agreement to pay his proportionate share of future assessments for cleaning and repairing the main ditch. Op. Atty. Gen. (602h), Nov. 20, 1940.

6840-85. Outlets in adjoining states.

This section is only applicable to original establishment of ditch. Op. Atty. Gen. (150-c), Sept. 5, 1940.

6840-88. Systems extending into; etc.

If there is no objection from persons or officials in adjoining states, drainage district in this state may be assessed and pay for deepening of watercourse in adjoining state. Op. Atty. Gen. (150-C), Sept. 5, 1940.

TOWN DITCHES

6842. Petition to be filed.

Public drainage proceedings are justified only to serve a public rather than private purposes. Town Ditch No. 1 v. B., 295NW47. See Dun. Dig. 2819.

6846. Report of engineer and action of viewers.

Rule of Sheehan v. Flynn, 59Minn436, 61NW462, 26LRA 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.

6847. Attorney-at-law.

In connection with proceedings to establish a town ditch, town board has no authority to employ an attorney not asked for in the petition. Op. Atty. Gen., (151B), Dec. 18, 1939.

6849. Benefits and damages, how ascertained.

Town Ditch No. 1 v. B., 295NW47; note under §6846.

CURATIVE AND MISCELLANEOUS PROVISIONS

6923-1. Validation of proceedings.—Where the county board of any county of this state or the judge of any of the district courts of this state in pursuance of any laws of the State of Minnesota governing the establishment, construction or repair of any drainage system or part thereof has established and ordered constructed any drainage system wholly within any county of this state or partly within two or more counties thereof, and such drainage system has been actually constructed and the proceedings for such establishment and construction are in all respects valid and according to law, and assessments or liens have been levied or created by the county auditor, county board, or judge of said court against all of the lands originally assessed for benefits in the proceedings for the establishment of such drainage system, for the purpose of collecting and paying a deficit in any such

drainage system due to the increased cost of construction of such drainage system, deficiency in interest payable on bonds issued for construction of such drainage system, the expense of improvement, maintenance and repair of same, or for any other reason, and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or

liens so levied or attempted to be assessed or levied for said purposes are hereby approved, legalized and declared to be valid, and in full force and effect and a lien upon and against said lands benefited by the establishment and construction of said drainage system until paid, at the time and in the manner as set forth in said act and amendments thereto. (Act Apr. 10, 1941, c. 174, §1.)

Act Apr. 10, 1941, §2 provides that this act shall not affect any action now pending.

CHAPTER 44A

Soil Conservation

6932-4. Creation of Soil Conservation Districts.

District may be organized exactly coinciding with boundaries of a county or township. Op. Atty. Gen., (705a-5), March 28, 1940.

A. Petition.

(3).

Where district takes in portions of certain townships, it is necessary to have a definite description by boundaries and metes and bounds. Op. Atty. Gen., (705a-5), April 26, 1940.

B. Notice—hearing—adjournment, etc.

It is not mandatory that state committee hold a public hearing, but it should hold hearings except in those instances where necessary facts and information may be

fully obtained in some other manner. Op. Atty. Gen. (705a-7), Mar. 7, 1941.

F. Supervisors, appointment and election, etc.

Certificate of officer authorized to take oath is necessary part of application. Op. Atty. Gen. (605a), May 22, 1940.

H. Annexation of territory, etc.

If a majority of those petitioning for attachment are not fee owners, it is necessary to first secure consent of the majority of fee owners before attachment may take place, but proposed amendment in 1941 would eliminate necessity for such consent. Op. Atty. Gen. (705a), Jan. 17, 1941.

Both state committee and district supervisors are to proceed in accordance with subsec. (F). Id.

CHAPTER 45

Seals

6933. Private seals abolished.

Requirement of a sealed instrument for conveying easement. 26 IowaLawRev 41.

CHAPTER 46

Notaries Public

6938. Term—Bond—Oath.

The only way a personal surety may be relieved of obligations is for him to prevail on notary to secure and file a new bond. Op. Atty. Gen., (320a), Dec. 2, 1939.

CHAPTER 47

Resignations—Vacancies—Removals

6952. Resignations.

Resignation by member of school board which has not become effective by an acceptance or by some act of relinquishment may be withdrawn. Op. Atty. Gen. (161a-22), Sept. 13, 1940.

6953. Vacancies.

Offices of school board member and president of village council are incompatible, and acceptance of a second incompatible office automatically vacates the first. Op. Atty. Gen., (358f), Feb. 9, 1940.

A city councilman may be a candidate for office of mayor without resigning, but election and acceptance of later office would work an automatic vacation of first office. Op. Atty. Gen., (358e-1), Feb. 16, 1940.

Subd. 2.

Resignation from town office does not become effective and no vacancy is created until accepted by town board. Op. Atty. Gen., (437a-18), March 9, 1940.

Subd. 4.

Whether absence of village president for six months in Florida vacates office is a question of fact. Op. Atty. Gen., (471h), Dec. 20, 1939.

If a vacancy in office of village president has been created by removal from village, no judicial action looking to removal is necessary, but council may adopt a

resolution declaring a vacancy and appointing a new president for remainder of term. Id.

Where a village president permanently removes outside village he automatically vacates his office and leaves a vacancy to be filled by council by appointment for balance of unexpired term. Op. Atty. Gen., (471h), Jan. 30, 1940.

Townships are included within meaning of statute. Op. Atty. Gen., (12c-4), March 21, 1940.

A supervisor who removes from township he serves thereby vacates his office, unless removal is only temporary. Op. Atty. Gen., (437a-21), April 1, 1940.

Mere incorporation of an area within a township as a village does not automatically affect a separation of such area from town, but separation must be voted on, and until there is such a vote town clerk residing in village may continue to act as town clerk. Op. Atty. Gen. (440f), June 10, 1940.

Subd. 5.

Violation of game and fish laws does not require removal of town supervisor. Op. Atty. Gen., (475G), April 25, 1940.

School board member convicted of misdemeanor of slander of women is not subject to removal. Op. Atty. Gen., (475E), May 2, 1940.

A county commissioner auditing and allowing a fraudulent claim is guilty of a felony and an infamous crime,