

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.

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CHAPTER 5

Judicial Department

SUPREME COURT

132. Writs—Process.

Prohibition is an extraordinary remedy not to be used where there is an adequate remedy by appeal or certiorari. *State v. District Court*, 237NW491. See *Dun. Dig.* 7842.

District court had jurisdiction to enter judgment against village and also to determine and enter judgment in favor of attorney for judgment creditor for a certain sum as a lien upon the first judgment, and to permit village to deposit the amount of the judgment with the clerk of court when a judgment creditor of the first judgment creditor attempted to levy execution on the judgment against the village, based upon its judgment, and an assignment of the attorney's judgment, and a receiver of the first judgment creditor was not entitled to prohibition to prevent the court from considering proceedings on order to show cause why money deposited with clerk should not be paid to second judgment creditor. *Id.* See *Dun. Dig.* 7845.

MINNESOTA REPORTS

150. Printing and binding reports of decisions—Etc.

Secretary of state is not required to furnish a copy of Mason's Minnesota Statutes to municipal court. *Op. Atty. Gen.*, (306), Dec. 14, 1939.

DISTRICT COURT

154. Jurisdiction.

Once a court of competent jurisdiction acquires jurisdiction of subject-matter and parties to a cause its authority continues until matter is finally disposed of, and no court of co-ordinate authority is at liberty to interfere with its action. *Shapiro v. L.*, 239NW48. See *Dun. Dig.* 7774(95).

A state may exercise through its courts jurisdiction over a foreign corporation insofar as latter has consented to exercise thereof, whether or not corporation is doing business within state, and whether or not cause of action arose out of business done within state. *Farmers Educational, Etc. v. F.*, 289NW884. See *Dun. Dig.* 2185, 2345a.

Repeal by implication is not favored by the courts, nor is the ousting of jurisdiction of a court. *State v. Weed*, 294NW370. See *Dun. Dig.* 2345.

District court, not probate court, has jurisdiction of an action for damages for fraud in inducing a party not to file a claim against estate of a deceased person. *Bulau v. B.*, 294NW845. See *Dun. Dig.* 2759.

Immunity of judicial officers to civil action for judicial acts cannot be avoided by pleading that acts complained of were results of a conspiracy previously entered into. *Linder v. F.*, 295NW299. See *Dun. Dig.* 4959.

Whether state court has jurisdiction of prosecution for crime committed on a C.C.C. camp depends upon whether conveyance, legislative act, or treaty expressly excludes the state's jurisdiction. *Op. Atty. Gen.*, (605B-23), Feb. 24, 1941.

Indian rights and the federal courts. 24MinnLawRev 145.

156. Writs.

Writ of quo warranto is not remedy for official misconduct, and is not to be employed to test legality of official action, such as a proposed purchase of material by commissioner of administration without competitive bidding. *State v. Gravlin*, 295NW654. See *Dun. Dig.* 8060.

TERMS OF COURT

162. Times for holding general terms.

Nineteenth Judicial District.

The general terms of the district court to be held each year in the several counties constituting the nineteenth judicial district of the state of Minnesota shall be held commencing on the days hereinafter set forth, as follows, to-wit:

In Chisago County on the third Monday in April and the second Tuesday in October;

In Kanabec County on the third Monday in January and the third Monday in June, but no petit jury shall be drawn or summoned in Kanabec County unless the court shall so direct on written order made and filed with the clerk of said court at least 20 days before the dates herein fixed for holding said court;

In Pine County on the third Monday in March and the third Monday in September;

In Washington County on the second Tuesday in May and the fourth Tuesday in November. (*Act Apr. 15, 1941, c. 232, §1.*)

Act Apr. 15, 1941, c. 232, §3, repeals all acts and parts of inconsistent acts. Section 4 of such act makes it effective and in force from and after July 1, 1941.

163. Nineteenth Judicial District—Special terms in Washington County.—In addition to the general terms of the district court in Washington County, special terms of said court shall be held in said county on the second Monday of each month for the trial of issues of fact by the court, the trial of issues of law, the hearing of motions and applications, and all matters except the trial of issues of fact by a jury. (*Act Apr. 15, 1941, c. 232, §2.*)

See note to §162.

CLERK

193. Deputies.

A woman under 21 years of age may not be appointed deputy clerk. *Op. Atty. Gen.*, (144-a-1), July 30, 1940.

196. Index to records.

Clerk is not entitled to charge 20 cents for indexing each plaintiff and each defendant in actions to quiet title where there are a great number of defendants, without a rule or order of the court. *Op. Atty. Gen.* (144B-15), Sept. 19, 1939.

197. Return in criminal cases to county attorney.

There is no statutory requirement that any judge or officer of the municipal court file certificate of conviction in same manner as a justice of the peace. *Op. Atty. Gen.*, (306a), Aug. 9, 1940.

SALARIES OF CLERKS AND DEPUTIES AND CLERK HIRE IN CERTAIN COUNTIES

Under Laws 1919, chapter 229, clerk is not entitled to receive fees in personal property tax cases, while clerks governed by Laws 1937, chapter 19, are entitled to receive and retain fees in such cases. *Op. Atty. Gen.* (144B-21), Sept. 30, 1939.

Salary paid to clerk under Laws 1919, chapter 229, is in full compensation for all services rendered county, except in real estate tax proceedings, naturalization and board of audit matters, and issuance of passports, fees for which services are to be retained by clerk. *Op. Atty. Gen.* (144B-15), Nov. 9, 1939.

Fees earned by clerk in confession of judgment matters under §2176-14 should be included by clerk in his report of fees under Laws 1919, chapter 229. *Op. Atty. Gen.*, (144B-3), Feb. 6, 1940.

Fees received for confessions of judgments are to be disposed of as are other fees received by officers, under Laws 1933, c. 143. *Op. Atty. Gen.*, (144B-3), May 23, 1940.

Laws 1933, c. 76, as amended by Laws 1935, chs. 70 and 278 as amended by Laws 1939, c. 286. Amended. Laws 1941, c. 208.

Laws 1933, c. 166. Repealed. Laws 1941, c. 295. Extra Session 1935, c. 27, §3. Amended. Laws 1941, c. 10.

Act Feb. 13, 1941, c. 10, §1, amends *Acts Ex. Sess. 1935, c. 27, §3*.

Act Apr. 18, 1941, c. 311, §4, authorizes salaries for clerks of district courts of from \$1,800 to \$2,200, in certain counties having populations of from 20,000 to 22,500.

Notes of Decisions

Where salary of clerk is governed by Laws 1919, ch. 229, court's determination of salary on an appeal from adverse action of county board is only "for the term of office" during which salary was so fixed, and for new term of office it is necessary that clerk make another showing that salary fixed by law is inadequate. *Op. Atty. Gen.*, (144a-4), Dec. 9, 1940.

STENOGRAPHIC REPORTERS

205. Compensation of court reporters in certain districts.—The judges, by an order filed with the county auditors annually on or before the first Monday in May, 1941, and on or before the first Monday in January, annually thereafter, shall fix and establish the salary of the court reporter at an amount not exceeding \$3,000.00 per year, and in such order shall apportion the salaries of the reporters in their re-

spective districts among the several counties, and each county shall be required by such order to pay a specified amount thereof in monthly installments which amount shall be such proportion of the whole salary as the number of days work actually done by the reporter in the trial of cases in said county during the preceding year bears to the whole number so performed in the district. Each reporter shall have and maintain his residence in the district in which he is appointed, but if any reporter be appointed in two or more districts he may reside in either or any of them.

The reporter in addition to his salary, shall be paid such sums as he shall pay out as necessary railway, traveling and hotel expenses while absent from the city or village in which he resides in the discharge of his official duties, such expenses to be paid by the county for which the same were incurred upon presentation of a verified, itemized statement thereof approved by the judge; and the county auditor of such county upon presentation of such approved statement shall issue his warrant in payment thereof.

This act shall not apply to any county containing a city of the first class.

This act shall not apply to any judicial district in which the salary of the court reporter has been heretofore fixed in excess of the salary herein set forth by special statute. (As amended Act Apr. 25, 1941, c. 442, §1.)

Court reporter's salary not to exceed \$3,200, annually, in judicial districts with only one judge and composed of four counties having an aggregate population of not less than 72,000 nor more than 75,000 inhabitants. Laws 1941, c. 80.

MUNICIPAL COURTS

212. Existing courts confirmed.

There is no specific statute requiring a city to furnish Mason's Minnesota Statutes for use of municipal court, but that is the general practice. Op. Atty. Gen. (306), Dec. 14, 1939.

MUNICIPAL COURTS IN CITIES AND VILLAGES

215. Municipal courts.

Municipal court of Duluth. Laws 1941, c. 300.
Municipal court for village of Gaylord. Act Apr. 10, 1941, c. 187.

Municipal court of Minneapolis.—
Special Laws 1889, c. 34, §6, as amended by Laws 1917, c. 407, §6. Amended. Laws 1941, c. 156, §2.
Special Laws 1889, c. 34, §18, as amended by Sp. Laws 1901, c. 387, §2; Sp. Laws 1903, c. 412, §1; Laws 1907, c. 465, §2; Laws 1911, c. 126, §1; Laws 1917, c. 482, §1; Laws 1919, c. 303, §1; Laws 1921, c. 201, §1; Laws 1923, c. 413, §1; Laws 1927, c. 424, §3; and Laws 1929, c. 129, §1; Laws 1937, c. 273, §1. Amended. Laws 1941, c. 156, §1.

Special Laws 1889, c. 34, §20 as amended by Laws 1927, c. 424, amended, Laws 1941, c. 91.

Special Laws 1889, c. 351, §52, as amended by Laws 1907, c. 302, Laws 1913, c. 430, §1, Laws 1919, c. 308, §2, Laws 1921, c. 362, §4, Laws 1927, c. 317, §2 and Laws of 1929, c. 423, §2. Amended. Laws 1941, c. 536.

Laws 1909, c. 225, §1, as amended by Laws 1913, c. 517, §1, by Laws 1919, c. 331, §1, and by Laws 1929, c. 128, §1, as affecting the appointment, compensation, and duties of stenographic reporters, is amended by Act Feb. 27, 1941, c. 30.

Act Mar. 28, 1941, c. 91, §1 amends Special Laws 1889, c. 34, §20 as amended by Gen. Laws 1909, c. 20; 1917, c. 407; 1927, c. 424.

Laws 1941, c. 156, §6a, provides for a traffic violations bureau in the municipal court for Minneapolis and for clerk hire therein.

Municipal court of St. Cloud.—Established in counties of Stearns, Benton and Sherburne. Laws 1941, c. 223.

Municipal Court of St. Paul. Sp. L. '89, c. 351, revises former laws.

Act Apr. 28, 1941, c. 536, §1, amending Special Laws 1889, c. 351, §52, as amended by Laws 1907, c. 302, Laws 1913, c. 430, §1, Laws 1919, c. 308, §2, Laws 1921, c. 362, §4, Laws 1927, c. 317, §2, Laws 1929, c. 423, §2.

Notes of Decisions

Judge of a municipal court need not be an attorney at law and legislature cannot so require. State v. Weiter, 293NW914. See Dun. Dig. 4953.

Laws 1933-1934, Ex. Sess. c. 35, establishing a municipal court for village of Perham, was not passed by two-thirds vote of each house and it is a nullity. State v. Weiter, 296NW582. See Dun. Dig. 6899a.

Municipal judge appointed by governor to fill vacancy in municipal court of Tower established by Laws 1929,

chapter 4, holds office only until next regular election. Op. Atty. Gen., (307), Jan. 11, 1940.

Municipal court may be created by resolution of city council though city charter does not provide for creation of such court, and it is not necessary to amend city charter. Op. Atty. Gen., (306a-4), April 4, 1940.

Judgments of a municipal court attempted to be established by unconstitutional law are valid. Op. Atty. Gen., (306a-4), Feb. 21, 1941.

216. Application to existing courts.

Council may fix a salary for clerk in lieu of all fees and provide for payment of all fees into city treasury. Op. Atty. Gen., (308c), Jan. 2, 1940.

217. Municipal judges—Election—Term—Salary.

Section 9221, Mason's Minn. Stat. 1938 Supp., is not applicable to an action or proceeding pending in the municipal court of the city of Minneapolis. State v. Anderson, 289NW883. See Dun. Dig. 4962.

Judge of a municipal court need not be an attorney at law and legislature cannot so require. State v. Weiter, 293NW914. See Dun. Dig. 4953.

Notwithstanding provisions of any statute or charter to contrary, term of a person appointed to fill a vacancy in office of municipal judge extends only until next regular election. Op. Atty. Gen., (307), Jan. 11, 1940.

Notwithstanding new election law, it is probable that the term of a municipal judge begins on first Monday in January rather than on first secular day. Op. Atty. Gen., (307K), Dec. 16, 1940.

218. Jurisdiction.

Judgments of a municipal court attempted to be established by unconstitutional law are valid. Op. Atty. Gen., (306a-4), Feb. 21, 1941.

221. Criminal jurisdiction; etc.

Alexandria being a home-rule charter city and its charter providing for justice of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. State v. Weed, 294NW370. See Dun. Dig. 5263.

Where village had fewer than 5000 inhabitants with both municipal and justice courts, cases arising under village ordinances may not be prosecuted in justice court. Op. Atty. Gen., (847A-8), Jan. 14, 1941.

223. Clerks and deputies—Process.

Bond of judge of municipal court of Ortonville, also acting as clerk of that court, should run to the city and be filed with secretary of state. Op. Atty. Gen. (307a), Nov. 28, 1939.

224. Clerk to receive and pay over fines; etc.

Op. Atty. Gen., (199B-4), Aug. 12, 1940; note under §225.

225. Weekly report of clerk.

Each week clerk is to file with city treasurer a weekly report and pay over all sums collected from fines, except those he is entitled to retain as part of his compensation, and it is then duty of city treasurer to pay over such fines to state or county, whichever is entitled thereto, and there is no requirement that clerk of municipal court shall pay such sum into either county or state treasury. Op. Atty. Gen., (199B-4), Aug. 12, 1940.

226. Court officers.

If none of named officers was reasonably available for service of a warrant of arrest involving a village ordinance, it is probable that a police officer other than chief of police could properly act as officer of court. Op. Atty. Gen., (847a-8), Jan. 14, 1941.

In a village of less than 5000 with a municipal court, a police officer making an arrest in his capacity as a peace officer, without a warrant, may not collect a fee, but if he makes an arrest upon a warrant he may charge fee allowed constable. Op. Atty. Gen., (847a-8), Jan. 14, 1941.

228. Powers and duties—Practice—Rules—Fees.

Council may fix a salary for clerk in lieu of all fees and provide for payment of all fees into city treasury. Op. Atty. Gen., (308c), Jan. 2, 1940.

232. Drawing jury—Fees—Special venire.

Court cannot compel defendant in a criminal case to pay jury fee. Op. Atty. Gen., (260a-4), March 21, 1940.

233. Fees in criminal cases, etc.

Municipal court of Willmar is governed by §233 or 237, and not by §239, as to fees to be charged. Op. Atty. Gen., (303c), Jan. 2, 1940.

235. Lien of judgments—Transcripts—Execution, etc.

Municipal court judgment docketed by transcript in district court ceases to be a lien 10 years after its entry, rather than 10 years after docketing in district court. Op. Atty. Gen., (520d), Jan. 25, 1940.

236. Appeals to district court.

Provision that time for appeal shall not start to run until notice of judgment is served upon adverse party

applies only to civil cases. Op. Atty. Gen., (6h), Feb. 25, 1941.

237. Courts in cities of third and fourth class, etc.

Apparently the last paragraph of this section regulates clerk fees in criminal cases in the municipal court of Willmar. Op. Atty. Gen., (308c), Jan. 2, 1940.

Municipal court of Willmar is governed by §233 or §237, and not by §239, as to fees to be charged. Id.

Municipal court may be created by resolution of city council though city charter does not provide for creation of such court, and it is not necessary to amend city charter. Op. Atty. Gen., (306a-4), April 4, 1940.

239. Fees to be charged by municipal courts.

Council may fix a salary for clerk in lieu of all fees and provide for payment of all fees into city treasury. Op. Atty. Gen., (308c), Jan. 2, 1940.

Municipal court of Willmar is governed by §233 or §237, and not by §239, as to fees to be charged. Id.

A charge of 15 cents per folio for testimony taken at a preliminary hearing is a proper charge, but an additional charge of 15 cents per folio for a copy of the transcript to accompany return to district court is not proper. Op. Atty. Gen., (306B-4), May 13, 1940.

COURT COMMISSIONER

247. Qualification and powers.

A court commissioner is a judicial officer and as such is not liable in a civil action to anyone for his judicial acts. Linder v. F., 295NW299. See Dun. Dig. 4959.

JUDICIAL COUNCIL

251-2. Membership in judicial council.

Members of legislature are eligible for membership on judicial council, overruling opinion of Nov. 16, 1940. Op. Atty. Gen., (280h), Jan. 21, 1941.

REVISOR OF STATUTES

251-19. Printing and distribution of Minnesota Statutes.—On receipt of printer's copy described in Mason's Supplement 1940, Section 251-14, the commissioner of administration shall print and distribute, as soon as possible, an edition sufficient to supply the demand. (Act Apr. 16, 1941, c. 254, §1.)

251-20. Same—Binding—Style of printing.—Minnesota Statutes shall be bound in one volume. Each full page of printed matter shall be eight and one-half inches high and five inches wide, and shall be printed in such style, on such paper, and with such type as the commissioner of administration shall determine. (Act Apr. 16, 1941, c. 254, §2.)

251-21. Same—Purchase of copies.—Subdivision 1. The commissioner of administration shall purchase 1,000 copies of Minnesota Statutes, to be distributed by him as follows:

- 3 copies to each justice of the supreme court;
- 1 copy to each judge of a district court;
- 1 copy to the clerk of each district court for use in the court room of the district court of his county, and where there is more than one district court room, in the court-house of his county, as many copies as there are court rooms, one copy for each court room;

- 50 copies to the state law library;

- 50 copies to the law school of the university of Minnesota;

- 20 copies to the office of the attorney general;

- 1 or more copies, as they may be required, to the various executive officers, heads of departments, administrative boards and societies of the state government;

- 1 copy to each member of the legislature;

- 1 copy to each legislative committee as required;

- 4 copies to the secretary of the senate;

- 4 copies to the chief clerk of the house of representatives;

- 1 copy to each judge, district attorney, clerk of court of the United States and the deputy clerk of each division of the United States district court in this state, the secretary of state of the United States, the library of congress, and the state historical society.

Subdivision 2. Each county shall purchase from the commissioner of administration one copy each for the use of the judge of probate, county attorney, auditor, treasurer, register of deeds, and superintendent of schools.

Subdivision 3. Each city, village, borough, and town shall purchase from the commissioner of administration, for use of each justice of the peace, judge of the municipal court, clerk of the municipal court, and clerk of the city, village, borough, or town, as the case may be, such number of copies as the city, village, borough or town shall determine is needed. (Act Apr. 16, 1941, c. 254, §3.)

251-22. Same—Marking volumes.—All volumes of Minnesota Statutes distributed to any state or other public officer, except members and officers of the legislature and officers of the United States, shall have stamped or written thereon the name of the office, together with the words, "state property," and shall be kept for the use of such office. (Act Apr. 16, 1941, c. 254, §4.)

251-23. Same—Ownership of type, matrices, plates, etc.—The type, stereotype matrices, electrotypes, or stereotype plates and the linotype matrices thereof of the Minnesota Statutes shall be and remain the property of the state of Minnesota. The commissioner of administration shall store and safely keep all type, matrices, electrotype or stereotype plates and the linotype matrices thereof of the Minnesota Statutes in such manner that they may be readily accessible at all times. (Act Apr. 16, 1941, c. 254, §5.)

251-24. Same—Sale of statutes.—The commissioner of administration may sell the Minnesota Statutes to the state or any political subdivision thereof or to any person at the estimated cost thereof. The estimated cost of Minnesota Statutes shall not include any cost of revision, nor shall it include the original cost of the metal type, matrices, electrotype or stereotype plates, or the cost of storage thereof. (Act Apr. 16, 1941, c. 254, §6.)

251-25. Same—Pamphlets for public officers and departments.—The commissioner of administration is required to print and deliver in pamphlet form such editions or parts of the Minnesota Statutes as may be necessary for the use of public officers and departments. Such printing shall be discretionary, shall be limited to the actual needs as shown by experience or other competent proof, and the printing shall be done from the plates from which the Minnesota Statutes have been printed, so far as can be done. (Act Apr. 16, 1941, c. 254, §7.)

251-26. Same—Codes and parts of statutes—Pamphlets and separate books.—When there is a sufficient demand for the printing of codes or parts of the Minnesota Statutes in separate book or pamphlet form the commissioner of administration may print and sell such books or pamphlets. (Act Apr. 16, 1941, c. 254, §8.)

251-27. Correction of typographical errors.—In the Minnesota Statutes the revisor of statutes shall cause all words and names to be correctly spelled as printed, and shall also correct such words as "previous" for "previously", "consequent" for "consequently", "is" for "are," "affect" for "effect," and the like, where such errors occur in any enrolled act; and no such correction shall be deemed an alteration of or a departure from the enrolled copy. On questions of orthography Funk & Wagnalls New Standard Dictionary of the English Language shall be taken as the standard. (Act Apr. 16, 1941, c. 255, §1.)