

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 52

### Partition Fences

#### 7249. One barbed wire permitted with woven wire as a legal fence.

Latter part of section refers only to woven wire fences, but several definitions of a legal fence contained in first part of section do not limit obligation of sharing expense only in case of woven wire fences. Op. Atty. Gen. (631f), Sept. 27, 1940.

Owner of property bounded on one side by a lake, 2 sides by a woven wire fence, can force adjoining landowner to erect a woven wire fence on his half of common boundary without fencing along lake. Op. Atty. Gen. (631J), Feb. 24, 1941.

mon boundary without fencing along lake. Op. Atty. Gen. (631J), Feb. 24, 1941.

#### 7250. Occupants to maintain.

Land owner fencing farm on 3 sides with a 2-wire barb wire fence may compel adjoining owner to share in construction of a 3-wire barb wire fence on adjoining side. Op. Atty. Gen. (631f), Sept. 27, 1940.

School district owning a school house site and adjoining farmer come within general provisions of law, and department advises against barbed wire around school grounds. Op. Atty. Gen. (631L), Oct. 23, 1940.

## CHAPTER 53

### Estrays and Beasts Doing Damage

#### MISCHIEVOUS DOGS

#### 7284. Owners or keepers of dogs liable for damage done.

Owner of a dog was not liable where it voluntarily went upon property of another and jumped upon possessor, causing her to fall and to sustain person injuries, unless dog was vicious or had a propensity to cause such harm to owner's knowledge or notice. Olson v. P., 288 NW856. See Dun. Dig. 275.

#### RUNNING AT LARGE OF CERTAIN ANIMALS

#### 7295. Permitting to run at large unlawful.

Rule that owner of live stock is bound at his peril to keep them from straying on lands of others and is liable for such trespasses and any harm done to land possessor or members of his household without regard to negligence or scienter on his part, does not apply to dogs. Olson v. P., 288NW856. See Dun. Dig. 275.

#### 7297-1. County board to license dogs. [Repealed.]

Act does not apply to a county which has not adopted the same. Olson v. P., 288NW856. See Dun. Dig. 275.

#### 7297-41. County board to license dogs.

Owner of a dog was not liable where it voluntarily went upon property of another and jumped upon possessor, causing her to fall and to sustain person injuries, unless dog was vicious or had a propensity to cause such harm to owner's knowledge or notice. Olson v. P., 288 NW856. See Dun. Dig. 275.

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County board may establish system immediately and charge a tax pro rata according to proportion of taxable year which remains after date of establishment. Op. Atty. Gen. (146d-2), March 11, 1940.

Upon filing of petition it is mandatory that county board establish system. Op. Atty. Gen. (146d-2), Feb. 28, 1941.

#### 7297-42. Dogs must have licenses.

County board may not prorata license fee according to time of year when system is made effective, but same result may be reached by setting license fee for first year at less amount than for subsequent years. Op. Atty. Gen. (146d-2), Feb. 28, 1941.

#### 7297-43. Assessor to list dogs—Kennels—Issuance of license.

Village assessor need not gather data mentioned in this section if system is not adopted. Op. Atty. Gen. (146a-2), Feb. 28, 1941.

#### 7297-49. May kill dogs in certain cases.

This section is effective even though county dog licensing system is not established. Op. Atty. Gen. (146a-2), Feb. 28, 1941.

## CHAPTER 54

### Unclaimed Property

#### COMMON LAW DECISIONS RELATING TO CHAPTER IN GENERAL

#### 2. Unclaimed stolen property.

Disposal of stolen and abandoned property by bureau of criminal apprehension. Laws 1941, c. 389.

Apparently stolen property coming into hands of bureau of criminal apprehension and unclaimed should be turned over to sheriff of county where taken, to be disposed of as unidentified stolen property. Op. Atty. Gen. (985), Jan. 15, 1940.

## CHAPTER 56

### Auctioneers

**7322. Licenses—Persons entitled to.**—The county board or auditor may license any voter in its county, as an auctioneer. Such license shall be issued by the auditor and shall authorize the licensee to conduct the business of an auctioneer in the State of Minnesota for the period of one year. It shall be recorded by the auditor in a book kept for that purpose. Before such license is issued the licensee shall pay into the county treasury a fee of (\$10.00). Provided, that any person may be licensed as an auctioneer for the purpose of making sales of purebred or grade livestock only upon the payment of the fee and the giving of the bond as above provided. Provided,

further, that any person resident in an adjoining state which issues auctioneers' licenses to residents of Minnesota on the same basis as to the residents of such adjoining state, may be licensed as an auctioneer upon payment of the fee required therefor in such adjoining state and giving an approval of a bond as provided in Mason's Minnesota Statutes of 1927, Section 7323. (As amended Act Apr. 10, 1941, c. 170, §1.)

An auctioneer residing in and licensed in Wisconsin permitting to secure a license in Minnesota for purpose of making sales at auction of property other than livestock, but must pay license fee of \$25.00. Op. Atty. Gen. (16c), Oct. 12, 1939.

An auctioneer residing and licensed in Wisconsin, which has no statute giving reciprocity, is permitted to secure a license in this state to make sales at auction of property other than livestock upon payment of a fee of \$25. Op. Atty. Gen. (16c), Oct. 22, 1939.

A firm or company or a family cannot be licensed as an auctioneer. Op. Atty. Gen., (16B), April 10, 1940.  
A minor is not a "voter" and cannot be licensed. Id.  
A corporation is not a "voter," and is not eligible for a license. Op. Atty. Gen. (16B), Nov. 20, 1940.

## CHAPTER 56A

### Hawkers, Peddlers, and Transient Merchants

#### HAWKERS AND PEDDLERS

##### 7332. Right of municipalities, etc., to regulate.

City ordinance requiring hawkers and peddlers taking orders for future delivery to have a license and pay a tax imposed an unlawful burden upon interstate commerce, as applied to local agent with local business receiving goods from employer in another state. City of Waseca v. B., 288NW229. See Dun. Dig. 4146.

A "Green River Ordinance", making it a nuisance for solicitors or peddlers to call at private residences without having been requested or invited so to do, has been held valid by some courts and invalid by others. Op. Atty. Gen., (59a-32), Dec. 22, 1939.

Assuming but not deciding that Green River ordinances

are valid, it is a violation for a solicitor to first make a call upon home owner for purpose of obtaining an invitation, to later return and solicit an order for goods. Op. Atty. Gen., (62B), April 30, 1940.

#### TRANSIENT MERCHANTS

##### 7340. Transient merchant defined.

Necessity for obtaining license by local jeweler leasing an additional building to auction off merchandise which he has shipped in from other cities where he has maintained similar stores depends upon whether business to be conducted in leased building is of a transient or temporary nature, or a part of his regular business. Op. Atty. Gen. (16B), Feb. 17, 1940.

## CHAPTER 56B

### Trade and Other Names

#### 7346. Commercial business—Trade and individual names; etc.

Use by others of name and mark "Aquatennial" of Minneapolis aquatennial association, forbidden. Laws 1941, c. 202.

#### 7352-1. Lodge and society emblems may be registered.

Act Apr. 10, 1941, c. 202, makes it a misdemeanor for anyone to use the name and mark "Aquatennial" of the Minneapolis Aquatennial Association without its permission, and provides for enjoining such use, except where the act would interfere with an established right.

## CHAPTER 57

### Limited Partnership

#### 7353. Limited partnership defined.

There can be no "limited" partner, unless there actually exists a partnership, and no partnership can exist unless there be at least one "general" partner. Tatum v. A., (DC-La), 35FSupp40.

## CHAPTER 57A

### Partnership

#### PART II

##### NATURE OF A PARTNERSHIP

##### 7389. Partnership defined.

A partnership with only general partners, or a limited partnership with one or more general partners may be adjudged bankrupt, independently of the partners—be they general or limited, and, conversely, a general partner, as such, may be adjudged bankrupt aside and apart from the partnership, but a limited partner unless he be individually liable for any of the partnership debts, may not, as partner, be adjudged bankrupt. Tatum v. A., (DC-La) 35FSupp40.

The partnership is a distinct legal entity, separate and apart from the individuals who compose it. Id.

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. Kansas v. W., 291NW292. See Dun. Dig. 7372.

The fact that a mortgagor and mortgagee maintained a joint bank account in which rent money collected by the mortgagor was deposited, that both parties signed and countersigned checks drawn on this account, and that to maintain the equity which he had in the property the mortgagor took care of the actual management, repairs, maintenance etc., of the property, did not constitute a partnership between the mortgagor and mortgagee. Schanerman v. L., 16Atl(2d)(NJ)551.

Pennsylvania Uniform Partnership Act. Nolan v. D., 13Atl(2d)(Pa)59.

#### PART III

##### RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

##### 7392. Partner agent of partnership; etc.

Negligence of one member of the joint enterprise or his contributory negligence is imputable to all other members. Ruth v. H., 296NW136. See Dun. Dig. 4949.

As to third persons, each member of a joint enterprise is agent of others, and act of one within scope of enterprise are acts of all. Id.

Where copartnership conveyed all of assets to a non-functioning corporation acquired by copartners, and later under name of another corporation of the copartners executed a lease of oil station and contract containing an agreement to pay indebtedness of copartners to lessee, any formal declarations of policy which corporation may have made in its attempt to disclaim liability cannot prevail in face of contractual admission. Range Ice & Fuel Co. v. B., 296NW407. See Dun. Dig. 2016.

Guaranty and warrant to confess judgment is not in the ordinary course of a partnership business, and where but two of three partners sign, the third is not bound except on a showing of authority from him to sign for