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To

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**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 5A

## Salaries of Certain State Officers and Employees

## 252. Amount—Payment.

1. \* \* \* \* \*

## 22. District Court Judges

The judges of the District court, six thousand dollars each from the state and fifteen hundred dollars additional, payable monthly from each county in their respective districts having a population of seventy-five thousand or more and three hundred dollars additional in each judicial district having an area of more than fifteen thousand square miles, payable monthly from the counties comprising such judicial district in such proportion as the assessed valuation of each county bears to the total assessed valuation of such

judicial district in the preceding year; provided, however, that whenever any district judge shall preside upon the trial or hearing of any cause outside of his resident judicial district, wherein the district judge receives a larger salary, he shall receive as additional compensation during the period of such trial or hearing the difference between his fixed compensation and the compensation of the district judge of the district where he has been so engaged, the same to be paid by the county wherein said trial or hearing was held upon certification of the senior resident district judge thereof. (As amended Act Apr. 10, 1941, c. 195, §1.)

## CHAPTER 5B

## Public Officers and Employees in General

## STATE EMPLOYEES' RETIREMENT ASSOCIATION

**254-1. Definitions.**—Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases shall, for the purposes of this act, be given the meaning subjoined to them.

Subd. 2. "State Employee" shall mean any person holding a state office or regularly employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor or from the fees or income of any department or agency of the state, excepting elective state officers, court commissioners, district judges, the members of the board of Tax Appeals, the Civil Service Board and the members of any other State Board or Commission who serve the state intermittently and are paid on a per diem basis, and the president, deans, professors, and instructors in the state university and in the state teachers' colleges, and teachers in state institutions who are eligible to membership in the Teachers' Retirement Fund, but shall not include students who secure employment with the state or a state institution, incidental to and in furtherance of their education. Temporary employees as defined by the civil service act shall not be eligible to membership, but probationers thereunder and temporary employees in the unclassified service shall become members at the expiration of six months continuous employment, and deductions shall be made from the salaries of such employees beginning on the first day of the calendar month following the completion of six months continuous employment. Permanent seasonal employees in either the classified or unclassified service shall in no event be considered temporary employees.

Employees of the department of education who are eligible to membership in the Teachers' Retirement Fund shall have the option of electing whether to be a member of the State Employees Retirement Association or the Teachers' Retirement Fund.

Subd. 3. "Head of Department" shall mean the head of any department, institution, or branch of the state service which directly pay salaries out of its income or which prepares, approves and submits salary abstracts of its employees to the state auditor and state treasurer.

Subd. 4. "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member, and the total amount of assessments paid by a member in lieu of such deductions prior to July 1, 1939, and credited to his individual account in the retirement fund, without interest.

Subd. 5. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, prior to July 1, 1939, and all other moneys paid into the state treasury or received by the retirement board pursuant to the provisions of this act, together with all income and profits therefrom and interest thereon, including contributions on the part of the state and departments thereof.

Subd. 6. "Monthly Deductions from Salaries" shall mean the actual receipts received or credited to the fund from salary deductions in any calendar month.

Subd. 7. "Prior Service" shall mean the service of a member rendered before the first day of July, 1929, and shall include the service during the world war of officers, soldiers, sailors, marines, and army nurses who were "State Employees" at the time of enlisting or being drafted into the military service of the United States, and who returned directly to the service of the state upon returning from the world war.

Subd. 8. "Proportional Deferred Annuity" shall mean an annuity beginning at the time the member would have been eligible to receive an annuity for superannuation if his state service had not terminated, the amount of which is in the same proportion as the number of years service, for which the member is entitled to credit, is to the number of years service required had the member continued in the state service until eligible to receive a full superannuation annuity as provided by this act. (As amended Act Apr. 23, 1941, c. 391, §1.)

(a). An employee engaged in welfare work, receiving part of compensation from state and federal funds and part from county is not eligible for membership in state employees retirement association but is eligible as a county employee to membership in public employees retirement association. Op. Atty. Gen. (331B-1), Dec. 14, 1939.

Employee of department of education summer teacher training schools, six weeks each summer from 1900 to 1914, was entitled to credit as an employee. Op. Atty. Gen., (331a-7), Jan. 29, 1940.

Members of tri-state waters commission who serve 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.

Child welfare worker in county which has elected to come under Retirement Act, who receives her full compensation from the state, is not eligible under either the state employees retirement act or the municipal employees retirement act. Op. Atty. Gen., (331B-1), Aug. 27, 1940.

**254-2. State employees' retirement association created.**—Subdivision 1. There is hereby established a state employees' retirement association the membership of which shall consist only of state employees. Membership in such association shall be optional on the part of persons in the employ of the state on July 1, 1929, but all new state employees entering the service of the state thereafter, except elective state officers, shall become members of the association by acceptance of state employment and the head of the department shall thereupon cause deduction to be made from the salary of such new employees. No person in the employ of the state on July 1, 1929, shall be eligible to apply for membership in the retirement association after July 1, 1931, except as provided in this act.

Subd. 2. Any person employed by the state on July 1, 1941, who was a "state employee" on July 1, 1929, and did not exercise his option to become a member of the association on or before July 1, 1931, shall become a member as of July 1, 1941, the same as though he had on that day become a "new state employee". Such persons and any person who has prior to July 1, 1941, or may thereafter become a member by reason of being a "new state employee" shall have the option of electing to become a member as of July 1, 1929, by making payments in lieu of salary deductions from July 1, 1929, to the date of becoming a member, at the rate required for the person's age on July 1, 1929, according to the rate schedule in effect at the date of becoming a member, plus interest at four per cent per annum compounded annually. Such payments to be based upon the salary, wages or compensation actually received, subject to the \$300 maximum provision, including any allowance for maintenance or housing not in excess of \$50.00 a month. Nothing herein shall give any person required to become a member on July 1, 1941, or any person electing to become a member as of July 1, 1929, credit for any service prior to July 1, 1929, nor shall any person becoming a member as provided herein have the right to make any payments in lieu of salary deductions, or receive credit for service for any period he was out of the state service or when he was on leave of absence or lay-off from July 1, 1929, to the date of becoming a member; and beginning with the date of his return to the state service, or active service as the case may be, payments shall be at the rate required for his age at the date of returning to work. All payments provided for in this section must be paid not later than twenty-seven months from the date of becoming a member, and shall be paid in either a lump sum or in monthly instalments by payroll deductions. Any person who has not completed the payments provided for in this section within twenty-seven months from the date of becoming a member, shall have returned to him the sums paid less \$10.00 and shall thereupon be a member from July 1, 1941, or the date of becoming a member by reason of being a "new state employee". (As amended Act Apr. 23, 1941, c. 391, §2.)

Executive council has no authority to approve or put into operation a welfare group plan of accident, health, and surgical benefits sponsored by an insurance company, whereby deductions are to be made from salaries of state employees for payment of premiums. Op. Atty. Gen. (249B-9), Feb. 27, 1940.

**254-3. Board of managers—Officers.**—The management of the state employees' retirement fund is hereby vested in a board of seven members, who shall be known as the State Employees' Retirement Board. This board shall consist of the state auditor, the state treasurer, the insurance commissioner, and four state employees who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of the board so elected shall hold office for a term of four years and until their successors are elected and qualified. A state employee on leave of absence shall not be eligible for election or re-election to membership on the retirement board; and the term

of any board member who is on leave for more than six months shall automatically terminate upon the expiration of such period. Any vacancy in the board caused by the death, resignation, or removal of any member so elected shall be filled by the retirement board for the unexpired portion of the term in which such vacancy occurs. The members of the retirement board shall serve without compensation, but shall be reimbursed out of the retirement fund for expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and appoint a secretary and such other employees as may be necessary, and fix their compensation. The board shall, from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions of this act and for the transaction of its business. (As amended Act Apr. 23, 1941, c. 391, §3.)

**254-4. Payments into retirement fund.**—Subdivision 1. Persons in the employ of the state on July 1, 1929, who exercised their option to become members pursuant to Laws 1929, Chapter 191, Section 2 (O 254-2), shall pay into the retirement fund, beginning July 1, 1939, according to their age on July 1, 1929, and persons entering or re-entering the state service and becoming members of the association after July 1, 1929, shall pay into the retirement fund, beginning July 1, 1939, according to their age at the date of becoming or last becoming members of the association in accordance with the following schedule; those under 30 years of age, three and one-half per cent; those 30 years of age and under 40 years of age, four per cent; those 40 years of age and under 45 years of age, four and one-half per cent; those 45 years of age and under 50 years of age, five per cent; those 50 years of age and under 55 years of age, five and one-half per cent; and those 55 years of age or over, six per cent of the compensation paid them including compensation for overtime, and any allowance for maintenance or housing. Such payments shall be made by deduction thereof from salary: provided however, that no deduction shall be made from salaries on any amount thereof in excess of \$300.00 per month. The head of each department is hereby required to cause such deduction to be made from the salary of each member of the retirement association on every payroll abstract and to approve one voucher payable to the state treasurer for the aggregate amount so deducted from the salaries covered by the payroll abstract; provided, that deductions from salaries of employees paid direct by any department, institution, or agency of the state shall be made by the officer or employee authorized by law to pay such salaries, and remitted by him to the secretary of the retirement association with a statement showing the amount of each of such deductions and the names of the employees on whose account the same have been made.

Every department, bureau, division, commission, committee, or board which functions regularly as a permanent unit of the state government, and which controls the expenditure of its income or revenue shall pay to the state treasurer, for the uses and purposes of the state employees retirement fund, in the manner and at the times hereinafter specified, the amount of money hereinafter provided for, which payments shall be credited to the retirement fund by the state treasurer.

Every such unit of the state government which is wholly or substantially financially self-sustaining by reason of income or revenue derived from its own activities shall, beginning with the state's fiscal year ending June 30, 1940, and continuing with each fiscal year thereafter, allocate to the state employees retirement fund an amount equal to one-half of the total amount of superannuation annuities paid during the fiscal year to employees who were retired by such

unit of the state government. Within 60 days after the end of each fiscal year, the secretary of the state employees retirement association shall compute the amounts due from such units of state government and certify the same to the state auditor who shall immediately transfer the amounts involved from the unit accounts to the state treasurer to the credit of the retirement fund, and notify the unit head of such transaction and this authority of the state auditor to transfer shall include all sums not transferred prior to the passage of this act.

The secretary of the retirement board shall also compute and certify to the state auditor within 60 days of the close of each fiscal year, the total sum paid during the preceding fiscal year to the retired employees of all other units of the state government, and the state auditor shall immediately credit to the retirement fund from the general revenue fund an amount equal to one-half of the superannuation annuities paid during the preceding fiscal year to employees who were retired by all other units of the state government.

The moneys necessary to provide for the contributions to the retirement fund by the state from the general revenue fund are hereby appropriated out of any funds in the state treasury not otherwise appropriated.

The moneys necessary to provide for contributions to the retirement fund by the various units of the state government which are wholly or substantially financially self-sustaining by reason of income or revenue derived from their own activities are hereby appropriated for such purpose out of any funds derived by such units of government as income or revenue from their own activities.

If an employee has worked in departments other than the one in which he was last employed, that portion of the annuity herein provided to be paid by the department, shall be paid by the department where he was last employed.

All such salary deductions and the contributions herein provided by the state shall be credited to a fund to be known as the retirement fund and all interest and other income of the association shall be credited to this fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of the association and the annuities herein provided upon retirement shall be paid only from such fund. Under the direction of the retirement board the head of each department shall furnish such information and keep such records as the board may require for the discharge of its duties.

Subd. 2. In computing the length of service of members for retirement purposes, who were required to pay a membership fee full credit shall be given for prior service, and in computing the length of service of those entering the state service after July 1, 1929, who have had service prior to July 1, 1929, full credit shall be given for prior service, but no credit for service rendered prior to the date of becoming a member by reason of being a "new state employee" shall be given to any person who was a state employee on July 1, 1929, and did not exercise his option to become a member; except that a person electing to become a member as of July 1, 1929, as herein provided, shall be entitled to credit for service subsequent but not prior to July 1, 1929.

Subd. 3. No credit for service shall be allowed any member for periods such member may have been a state employee from June 30, 1929, to July 1, 1939, unless deductions shall have been made from the salary of such member or he has made payment in lieu thereof. From and after July 1, 1939, no credit for service shall be allowed any member for any calendar month in which he receives no salary or wages unless the head of the department gives notice, in writing, to the secretary of the retirement board within or prior to the calendar month when no salary or wages are received, that the member is on leave, or

is on sick leave, or is inactive because of the seasonal nature of his work, as the case may be; unless the member's name is carried on the department payroll abstract marked "on leave," "sick leave," or "inactive". From and after July 1, 1939, no member shall be entitled to make payments in lieu of salary deductions for periods no salary or wages are received the deductions made from the compensation received shall cover periods of inactivity, provided notice is given or the payroll abstract is marked as provided herein. From and after July 1, 1941, employees in the classified service shall be given credit for service during leave of absence, sick leave, or inactivity because of the seasonal nature of the work, as shown by the records of the civil service department. Salaries paid for a fractional part of any calendar month shall be considered the compensation for the entire calendar month unless state service has terminated.

Subd. 4. No member shall be entitled to credit for former service upon entering the employ of the state after having received a refundment of accumulated deductions pursuant to the provisions of this act, unless he shall restore the amount thereof to the fund as provided by this act.

Subd. 5. The final power to determine the status of any individual in the employ of the state for the purposes of this act is hereby vested in the retirement board. (As amended Act Apr. 23, 1941, c. 391, §4.)

Provisions by which units of state government which are wholly or substantially financially self-sustaining by reason of revenue derived from their activities are required to pay into fund an amount equal to one-half of total amount of annuities paid during fiscal year to employees who are retired by such departments, are applicable to Railroad and Warehouse Commission. Op. Atty. Gen., (331a-12), Sept. 20, 1940.

Where an employee has contracted tuberculosis in line of his employment and is being hospitalized at expense of his department and is carried on department's payroll on a leave of absence with pay, deductions for retirement fund should be based only on amount of salary employee is actually receiving, and money paid for hospitalization is no part of salary. Op. Atty. Gen., (331a-12), Jan. 15, 1941.

(c). Credit for service should be given for fractional portions of month, but no credit should be given suspension when without pay. Op. Atty. Gen., (331a-8), March 11, 1940.

Contribution by state departments or units which are wholly or substantially financially self-sustaining determined. Op. Atty. Gen., (331a-4), April 11, 1940.

Where employee has no stated salary but is paid on a percentage basis, such as district boiler inspectors, deductions are to be computed upon average salary. Op. Atty. Gen., (331a-12), July 16, 1940.

Contributions by self-sustaining units of government are not obviated by fact that unit borrows money from time to time. Op. Atty. Gen., (331a-12), Aug. 22, 1940.

Sections 254-4 and 254-19a are to be construed together as requiring contributions from general revenue fund to extent of one-half of annuities paid during any fiscal year to retired employees of non-self-sustaining unit, but not exceeding \$50,000 for each year, and contribution from self-sustaining unit to extent of one-half of annuities paid during each fiscal year to the retired employees of such units, without any maximum limit, and deduction proviso of §254-19a should be disregarded. Op. Atty. Gen., (331a-4), Aug. 31, 1940.

Absence for military service is a leave of absence without pay and upon employee's restoration to status, he may continue his membership in the retirement fund, as provided by law and rules thereunder. Op. Atty. Gen., (331a-9), Sept. 20, 1940.

**254-5. State Treasurer to be treasurer of association.**—The state treasurer shall be ex-officio treasurer of the retirement funds of the association, and his general bond to the state shall cover all liability for his acts as treasurer of these funds. All moneys of the association received by him shall be set aside in the state treasury to the credit of the proper fund. He shall deliver to the secretary of the retirement board each month copies of all payroll abstracts of the state together with the state auditor's warrants covering the deductions made on these payroll abstracts for the retirement funds; whereupon the secretary shall cause to be made, in triplicate, a list of the auditor's warrants and these warrants shall then be deposited with the state treasurer to be credited to the retirement fund. He shall pay out

of this fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that vouchers for investments may be signed by the secretary of the state board of investment. (As amended Act Apr. 23, 1941, c. 391, §5.)

After board of directors of retirement fund has certified to Railroad and Warehouse Commission total sum paid in superannuation annuities during preceding year to employees who were retired by commission, it is mandatory upon such commission to issue a warrant to the state treasurer, but state auditor is not authorized to transfer and credit contribution to fund, if commission does not issue a warrant. Op. Atty. Gen., (331a-12), Sept. 20, 1940.

**254-6. Investment board to invest funds.**—The retirement board shall, from time to time, certify to the state board of investment for investments such portions of the retirement fund as in its judgment may not be required for immediate use. The state board of investment shall thereupon invest the sum so certified in such securities as are duly authorized legal investments for savings banks and trust companies, and shall sell any such securities upon request of the retirement board. (As amended Act Apr. 23, 1941, c. 391, §6.)

**254-7. Status of state employees—Civil service department to furnish list.**—Upon the request of the retirement board, the civil service department shall furnish such information relative to the status of state employees as may be required by the board in the performance of its duties. (As amended Act Apr. 23, 1941, c. 391, §7.)

**254-9. Amount paid to be refunded in certain cases.**—Should a member before becoming eligible to receive a superannuation annuity become separated from the state service by resignation or dismissal, and have no right of re-instatement or re-employment under the civil service act, or have pending any action claiming the right thereto not finally adjudicated, he shall be entitled to the return of the full amount of the accumulated deductions standing to the credit of his individual account upon making application therefor on blanks furnished by the retirement board. Any such person who has been a member of the retirement association for not less than ten years may, in lieu, thereof, elect, in writing, within 90 days from the termination of his employment to take a proportional deferred annuity beginning at the date he would have been eligible to receive an annuity if his state service had not been terminated. Such proportional deferred annuities to begin on the first day of the calendar month. Instead of taking a refundment or a proportional deferred annuity as provided in this act, any person who has been a member of the retirement association five years or more may elect in writing within 90 days from the termination of his employment to take for each year of service during which he has made payments to the retirement fund and for which he is entitled to credit on the records of the retirement association, an annuity equal to one-seventieth of his average salary upon which deductions for the retirement fund have been made while a "state employee"; these annuity payments may be either immediate or deferred and shall begin on the first day of the calendar month following that in which the member attains the age of 65, or if state service does not terminate until after the age of 65, on the first day of any calendar month thereafter. Any member who elects to take a deferred annuity cannot thereafter make application for refundment unless he shall again become a "state employee" and his state service shall again terminate. In the event of the death of a member who has elected to take either a proportional deferred annuity or a deferred annuity, refundment shall be made as provided by this act. The right to a proportional deferred annuity or a deferred annuity shall be evidenced by a certificate signed by the chairman and secretary of the retirement board. Members who have elected to take either

a proportional deferred annuity or a deferred annuity who again become "state employees" shall surrender their certificates and shall be entitled to full credit for the service covered by the surrendered certificate. Salary deductions are to be made according to the age at the time of again becoming a "state employee".

No annuity provided for in this section shall exceed the maximum provided by this act. (As amended Act Apr. 23, 1941, c. 391, §8.)

So long as a state employee has any right to reinstatement or carries his name at head of any employees register, as available for state employment, no refund of salary deduction should be granted. Op. Atty. Gen. (331a-11), Oct. 26, 1939.

**254-10. Members may be reinstated.**—Whenever a state employee who has so withdrawn his accumulated deductions, shall re-enter the employment of the state and shall restore to the retirement fund his accumulated deductions that were withdrawn, with interest from the date of withdrawal to the date of repayment at four per cent per annum, compounded annually, the annuity rights forfeited at that time shall be restored. If the amount so withdrawn is not restored within one year from the date of again becoming a member of the retirement association the employee becomes a member but not entitled to credit for former service. In the case of a member returning to the service of the state without restoring a refundment and again leaving and having a refundment and later returning, such member can only restore the last refundment and will not be entitled to credit for service prior to that covered by the last refundment; provided, that if any member who has received a refundment from the retirement fund has not repaid it upon again becoming a member, and later becomes eligible to receive an annuity, a proportional deferred annuity, or a deferred annuity, such annuities shall be computed on the compensation upon which deductions for the retirement fund were based after June 30, 1929, including that covered by the refundment or refundments, and then reduced in the same proportion as the number of years service covered by the refundment or refundments is to the total service.

Any member who returned to the state service prior to January 1, 1941, who failed to repay his refundment or refundments upon again becoming a member of the association as provided by laws in effect at the time of again becoming a member, shall be given a period of one year from May 1, 1941, in which to make such repayment. Such repayment to be the amount of the refundment or refundments plus interest at four per cent per annum compounded annually from the date of withdrawal to the date of re-payment. Should any former member who has received either an annuity, a proportional deferred annuity, or a deferred annuity again be employed by the state his annuity shall cease during the period of employment and deductions shall be made from his earnings. Upon the termination of his employment annuity payments shall be resumed and there shall be no change in the amount of such annuity because of such employment. (As amended Act Apr. 23, 1941, c. 391, §9.)

**254-11. Retirement age — Annuities.**—Whenever any member of the retirement association has been an employee of the state for a period of 20 years and has attained the age of 65 years, or when any such employee has been in the service of the state for a period of 35 years, he shall be eligible for retirement for superannuation, but such retirement shall not be compulsory prior to attaining the age of 70; provided that in computing such term of service the time during which any member of the association shall have maintained his membership by the payment of assessments during the period July 1, 1929, to July 1, 1939, shall be included.

Members who have left the service of the state to serve in the military forces of the United States or of

the State of Minnesota, subsequent to July 1, 1940, shall be considered as on leave of absence; and in computing the amount of annuities of such members, the period of such leave shall be included in computing time of service for the state, and excluded in computing the annuity, so that no reduction will be made in the amount of the annuity by reason of such military service. Such retirement may be made upon application of the member or of some one acting in his behalf, or in case of an employee in active service, upon the application of the head of the department in which the member is employed. Upon retirement the member shall receive an annuity for the remainder of his life equal to 50 per cent of his average salary upon which deductions for the retirement fund have been based while a state employee; provided, that no such retirement annuity shall exceed the sum of \$100.00 per month. If the total of annuities shall during any month become greater in amount than the monthly deductions from salaries and contributions made by the state, the board shall proportionally reduce the amount of annuities for that month. In determining the contributions made by the state in any month, it shall be considered that one-twelfth of the amount appropriated for the fiscal year is the amount of the contributions made by the state for that month; provided, such one-twelfth does not exceed 50 per cent of the annuities paid and payable for that month. If such one-twelfth exceeds 50 per cent of the annuities paid and payable for that month, then, in that case, 50 per cent of the annuities paid and payable for that month shall be considered the amount of the contributions made by the state for that month. The balance of any annuities heretofore not paid in full by reason of the fact that the total of annuities and refundments were greater than the monthly deductions from salaries, shall be paid proportionally in the first and subsequent months when the salary deductions exceed the total of annuities and refundments. Any annuity payments which may subsequent to July 1, 1939, be proportionally reduced by reason of the fact that annuities exceed the salary deductions and contributions made by the state, shall be paid proportionally in the first and subsequent months when the salary deductions and contributions by the state exceed the annuity payments. In making proportional annuity payments for prior months in which the annuities were not paid in full, full payments shall be made for the first month in which annuities were proportionally reduced before any proportional payments shall be made to apply on subsequent months when annuity payments were reduced, and this method shall be followed for each month when only proportional annuity payments were made. (As amended Act Apr. 23, 1941, c. 391, §10.)

A pensioner or beneficiary has no vested right in a pension granted by government except as payments become due him absolutely under the law. *Johnson v. S.*, 292NW767.

Pension accruing for first 22 days of April, 1939, should be computed at rate fixed by statute in effect prior to taking effect of Laws 1939, c. 432. *Id.*

#### **254-12. [1940 Supp. Repealed.]**

Repealed Apr. 22, 1935, c. 238, §2.

**254-12. Surviving spouse or legal representative of deceased member to receive lump sum.**—Whenever a member of the association shall die without having received an annuity, or without having received in annuities an amount equal to the total amount of the accumulated deductions from his salary, the full amount of the accumulated deductions, less the annuity payments, if any, as have been paid to such member shall be paid in one lump sum to the beneficiary or beneficiaries designated by the member, or, if none, to the surviving spouse, or, if none, to the legal representatives of the member, upon the establishment of a valid claim therefor. Any annuity payment to which a member is entitled at the time of his death shall be paid in the same manner. Any

member who dies without having designated a beneficiary, or if the beneficiary should die before making application for refundment or annuity payment as the case might be, and there is no surviving spouse and no legal representative of such member, the accumulated deductions to the member's credit and any annuity payment to which he was entitled at the time of death shall, after five years, be credited to and become a part of the retirement fund. (As amended Act Apr. 23, 1941, c. 391, §11.)

**Editorial note.**—This section was formerly section 254-14, of Supp. 1940. It was amended and rearranged as 254-12 by Act Apr. 23, 1941, c. 391, §11.

#### **254-13. [1940 Supp. Repealed.]**

Repealed Apr. 22, 1935, c. 238, §2.

**254-13. To be paid in monthly installments.**—All annuities granted under the provisions of this act shall be paid in equal monthly installments, and shall not be increased, decreased, or revoked except as provided herein. (As amended Act Apr. 23, 1941, c. 391, §12.)

**Editorial note.**—This section was formerly section 254-15 of Supp. 1940. It was amended and rearranged as 254-13 by Act Apr. 23, 1941, c. 391, §12.

#### **254-14. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-12 by Act Apr. 23, 1941, c. 391, §11.

#### **254-14. Annuities—When members may receive.**—

No member of the retirement association shall be entitled to receive an annuity until he shall have paid into the retirement fund, by deductions from salary for a period of five years after becoming a member. (As amended Act Apr. 23, 1941, c. 391, §13.)

**Editorial note.**—Subject matter of this section was formerly under 254-16. It was amended and rearranged as 254-14, by Act Apr. 23, 1941, c. 391, §13.

Words "one lump sum", mean that money is payable at one time and if there are two or more beneficiaries they shall receive their money at one time, and does not mean that money may not be divided in equal amounts in accordance with deceased member's instructions. *Op. Atty. Gen.*, (331B), June 10, 1940.

Where deceased annuitant left no children, brothers or sisters and no estate to be probated, and designated beneficiary had pre-deceased him, and annuity payment due him at time of his death could not be paid his sister-in-law who had cared for him and was named in a separate instrument as sole beneficiary. *Op. Atty. Gen.*, (331A-1), Dec. 10, 1940.

#### **254-15. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-13 by Act Apr. 23, 1941, c. 391, §12.

**254-15. Funds not subject to process.**—None of the moneys, annuities, or other benefits mentioned herein shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process, nor shall they be subject to any state income tax. (As amended Act Apr. 23, 1941, c. 391, §14.)

**Editorial note.**—Subject matter of this section was formerly under 254-17. It was amended and rearranged as 254-15, by Act Apr. 23, 1941, c. 391, §14.

#### **254-16. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-14 by Act Apr. 23, 1941, c. 391, §13.

**254-16. Insurance laws not to apply.**—None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. (As amended Act Apr. 23, 1941, c. 391, §15.)

**Editorial note.**—Subject matter of this section was formerly under 254-18. It was amended and rearranged as 254-16, by Act Apr. 23, 1941, c. 391, §15.

#### **254-17. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-15 by Act Apr. 23, 1941, c. 391, §14.

**254-17. May receive gifts and bequests.**—The retirement board is hereby authorized and empowered to credit to the retirement fund any moneys received in the form of donations, gifts, appropriations, bequests, or otherwise, or derived therefrom. (As amended Act Apr. 23, 1941, c. 391, §16.)

**Editorial note.**—Subject matter of this section was formerly under 254-19. It was amended and rearranged as 254-17, by Act Apr. 23, 1941, c. 391, §16.

**254-18. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-16 by Act Apr. 23, 1941, c. 391, §15.

**254-18. Appropriation for fund.**—There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of \$50,000 for each year for the biennium ending July 1, 1943 or as much thereof as may be necessary to carry out the provisions of this act. (As amended Act Apr. 23, 1941, c. 391, §17.)

**Editorial note.**—Subject matter of this section was formerly under 254-19a. It was amended and rearranged as 254-18, by Act Apr. 23, 1941, c. 391, §17.

Contribution by state departments or units which are wholly or substantially financially self-sustaining determined. Op. Atty. Gen., (331a-4), April 11, 1940.

Sections 254-4 and 254-19a are to be construed together as requiring contributions from general revenue fund to extent of one-half of annuities paid during any fiscal year to retired employees of non-self-sustaining unit, but not exceeding \$50,000 for each year, and contribution from self-sustaining unit to extent of one-half of annuities paid during each fiscal year to the retired employees of such units, without any maximum limit, and deduction proviso of §254-19a should be disregarded. Op. Atty. Gen., (331a-4), Aug. 31, 1940.

**254-19. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-17 by Act Apr. 23, 1941, c. 391, §16.

**254-19. Board of directors may make rules and regulations.**—Any changes or additions which may be found necessary or advisable for the management of the retirement fund, may be made by a majority vote of the board of directors, provided no increase is made in the amount of deductions from salaries, or decrease in the amount of benefits paid. (As amended Act Apr. 23, 1941, c. 391, §18.)

**Editorial note.**—Subject matter of this section was formerly under 254-22. It was amended and rearranged as 254-19, by Act Apr. 23, 1941, c. 391, §18.

Act Apr. 23, 1941, c. 391, §19 provided that Mason's Supplement 1940, Sections 254-20, 254-21 and 254-22a, are hereby repealed.

**254-19A. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-18, by Act Apr. 23, 1941, c. 391, §17.

**254-20. Provisions separable. [Repealed.]**

Repealed. Act Apr. 23, 1941, c. 391, §19.

**254-21. Payments to begin July 1, 1929. [Repealed.]**

Repealed. Act Apr. 23, 1941, c. 391, §19.

**254-22. [1940 Supp. Amended and rearranged.]**

Subject matter amended and rearranged as 254-19, by Act Apr. 23, 1941, c. 391, §18.

**254-22a. Rights not affected by this act. [Repealed.]**

Repealed. Act Apr. 23, 1941, c. 391, §19.

### MUNICIPAL EMPLOYEES' RETIREMENT ASSOCIATION

**254-23. Definitions.**—The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meaning:

1. "Public Employee" shall mean any person holding a position, either by election, appointment or contract in and for any of the several counties, cities, villages or school districts which are now or hereafter may be affected by the provisions of this act, whose salary is paid, in whole or in part, through taxation, or by fees, assessments or revenue from any one or more of the governmental subdivisions hereinbefore enumerated, irrespective of whether or not such person is directly employed by the authority of, or is under the control and supervision of the governing body of any such county, city, village or school district, except (a) any temporary employee, as hereinafter defined; (b) any employee of any governmental subdivision affected by the provisions of this act, who, by virtue of his former employment in the public

service is a beneficiary of, or a contributing member to, or who has an unrealized interest in, or is designated as a future beneficiary by the rules of, any pension, relief or retirement fund established and maintained by authority of the laws of this state, provisions of any municipal charter, or ordinance of any municipality or other governmental subdivision thereof; or (c) any employee of any governmental subdivision who by virtue of his present employment is required to contribute to, or is eligible for membership in, or to be designated as a future beneficiary of, any retirement, relief or pension system established and maintained by authority of and pursuant to any one or more of the following sections of the 1940 Supplement to Mason's Minnesota Statutes for 1927, to-wit: 254-1 to 254-22, relating to retirement annuities for state employees; 1264-6 to 1264-13½j, relating to police pensions in certain villages; 1358 to 1366, relating to pensions for teachers in certain cities; 1432 to 1442, relating to police pensions in cities of the first class; 1442-1 to 1442-10, relating to pensions for employees of the bureau of health in certain cities of the first class; 1442-11 to 1442-56, relating to pensions and retirement allowances in certain cities of the first class; 1643-1 to 1643-9, relating to police pensions in cities of the second class; 1716-4 to 1716-18, relating to police pensions in certain cities of the third class; 1828-16½, relating to pension funds in cities of the fourth class; 1828-16% to 1828-16%n, relating to police relief associations in cities of the fourth class; 1828-16% to 1828-16%j, relating to firemen's relief associations in cities of the fourth class; 2950-1 to 2950-16, relating to teachers' pensions; 3723 to 3728, relating to the establishment of firemen's relief associations; 3728-1 to 3728-7, relating to firemen's relief associations in cities of the third class; and 3750-1 to 3750-38, relating to firemen's relief associations in cities of the first class. The term "public employee" shall also be construed to mean any person appointed as a district court reporter in this state.

2. "Head of Department" shall mean the head of any department, institution, office or branch of service of any governmental subdivision which directly pays salaries out of its revenue or is empowered to authorize the payment of such salaries.

3. "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member and the total amount of assessments paid by a member in lieu of such deductions and credited to his or her individual account in the retirement fund, without interest.

4. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, and all other monies paid into the state treasury or received by the retirement board pursuant to the provisions of this act, together with all income and profits therefrom and interest thereon.

5. "Governmental Subdivision" shall mean a county, or a city, or a village, or a school district, as the case may be.

6. "City" shall be deemed to mean and include any incorporated city of this state, whether operating under a home rule charter or otherwise.

7. "Village" shall be deemed to mean and include any incorporated village of this state now or hereafter having a population of more than five thousand (5,000) inhabitants.

8. "School District" shall be deemed to mean and include any independent, common or special school district of this state, which is now or hereafter may be wholly or partly within the limits of any such city, or any such village, and shall also mean any unorganized school territory governed by any county board of education.

9. "Salary" shall mean the periodical compensation of any public employee and shall also be deemed



to mean "wages," and, in case of officers elected to a fee office, shall be deemed to include the term "fees".

10. "Present Public Employee" shall mean any public employee receiving salary from any county, city, village or school district on the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed or from whose funds his salary is paid.

11. "New Public Employee" shall mean any public employee who enters the public service in any county, city, village or school district subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed, or from whose funds his salary is paid.

12. "Temporary Employee" shall mean any person employed by or for any of the governmental subdivisions affected by the provisions of this act, who holds any position for a period not exceeding six (6) months within any twelve (12) month period as (a) a substitute for another regularly employed and on leave of absence, or (b) any employee holding any position of an essentially temporary character, excepting seasonal employment. The term "temporary employee" shall also be deemed to mean any part-time employee whose compensation does not exceed three hundred (\$300.00) dollars per annum, but shall not be construed to include any person employed in the classified civil service of any such governmental subdivision, whether as a probationer or otherwise. (As amended Act Apr. 17, 1941, c. 285, §1.)

Child welfare worker in county which has elected to come under Retirement Act, who receives her full compensation from the state, is not eligible under either the state employees retirement act or the municipal employees retirement act. Op. Atty. Gen., (331B-1), Aug. 27, 1940.

(1). An employee engaged in welfare work, receiving part of compensation from state and federal funds and part from county is not eligible for membership in state employees retirement association but is eligible as a county employee to membership in public employees retirement association. Op. Atty. Gen. (331B-1), Dec. 14, 1939.

**254-24. Public employees' retirement association established.**—There is hereby established a public employees retirement association, the membership of which shall consist only of public employees, and employees of said association. Membership in said association shall be optional on the part of the present public employees, but all new public employees except elective public officers shall become members of said association by acceptance of public employment. In all governmental subdivisions, heretofore operating under and affected by the provisions of this act prior to January 1, 1933, present public employees who apply for membership therein after January 1, 1932, shall pay a membership fee of ten (\$10.00) dollars, but no present public employee shall be eligible to apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition to such membership fee, every present public employee who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employee become a member of the retirement association July 1, 1931, with interest thereon at the rate of five per cent (5%) per annum compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, present public employees who apply for membership in the retirement association after January 1, 1934, shall pay a membership fee of ten (\$10.00) dollars, but no such present public employee shall be eligible to apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition

to such membership fee every such present public employee who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such public employee become a member of the retirement association July 1, 1933, with interest thereon at the rate of five per cent (5%) per annum compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to May 1, 1935, present public employees may apply for membership in said association at any time within a period of two (2) years from the first (1st) day of the first (1st) calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such present public employee who shall apply for membership in said association shall be required to pay a membership fee of ten (\$10.00) dollars. In addition thereto, any such present public employee shall pay into the retirement fund a sum equal to all accrued deductions which would have been made had such present public employee become a member of said association on the first (1st) day of the first (1st) calendar month next succeeding the date of acceptance of the terms of this act by the governing body of the governmental subdivision concerned, together with interest thereon at the rate of five per cent (5%) per annum, compounded annually.

An elected public officer, eligible for membership in said association, may exercise his option to become a member thereof, but such option, once exercised, may not be withdrawn during the incumbency of such officer in the office to which he was elected or re-elected. If holding office at the time of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, the terms and conditions of membership pertaining to a present public employee shall govern the admission of such elected public officer to membership in said association. Any person elected to a public office in any governmental subdivision affected by the provisions of this act, subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, may apply for membership in said association at any time within a period of two (2) years from the date he first became eligible for membership in said association, and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such person who applies for membership in said association shall be required to pay a membership fee of ten (\$10.00) dollars. In addition thereto, any such elected public officer shall pay into the retirement fund a sum equal to all accrued deductions which would have been made had such elected public officer become a member of said association on the first (1st) day of the first (1st) calendar month next succeeding the date he first assumed the office to which he was elected, together with interest thereon at the rate of five per cent (5%) per annum, compounded annually.

Any person appointed to fill a vacancy in an elective office and becomes eligible thereby to membership in said association may likewise exercise his option to become a member thereof under the terms and conditions that govern the admission of elective public officers to membership in said association.

Except as in this act otherwise provided, membership in said association may not be terminated by resignation, or in any manner other than by death, or by leaving the employ of the governmental subdivision concerned. On or after the passage of this act, no employee of any governmental subdivision shall be required to become a member of any retirement fund or relief association, or to contribute to any fund



established for such purpose, except the retirement fund established pursuant to the provisions of this act. (As amended Act Apr. 17, 1941, c. 285, §2.)

Absence for military service is a leave of absence without pay and upon employee's restoration to status, he may continue his membership in the retirement fund, as provided by law and rules thereunder. Op. Atty. Gen., (331a-9), Sept. 20, 1940.

**254-26. Retirement fund.**—Every member of the retirement association shall pay into the retirement fund three and one-half per cent ( $3\frac{1}{2}\%$ ) of his salary as a public employe as and when paid. Such payment shall be made by deduction thereof from such salary, provided, however, that under such regulations as the retirement board may by general rule prescribe, any member may, at his option, continue to make contributions to the retirement fund on the basis of his last regular salary, in case said salary is diminished or reduced for any cause and thereby become entitled to the same annuity as though there had been no diminution or reduction in such salary. The head of each department is hereby directed to cause such deductions to be made at least once each month from the salary of each member of the retirement association and to issue or approve one voucher payable to the state treasurer for the aggregate amount so deducted from such salaries and to cause the same to be remitted within fifteen (15) days thereafter to the secretary of the retirement board together with a statement showing the amount of each of such deductions, the amount of salaries from which such deductions have been made and the names of the employes on whose accounts the same have been made. Such statement may be furnished in the form of a carbon or duplicate copy of departmental payroll abstracts and if not submitted in such form, the head of each department of any governmental subdivision affected by the provisions of this act is hereby required to furnish the secretary of the retirement board a carbon or duplicate copy of his departmental payroll abstract for the first (1st) pay period during the months of January and July, respectively, in each year and it shall be the duty of said secretary to check the copies of all such payroll abstracts against the membership records of said association so as to ascertain whether or not any omissions have been made by the several department heads in the reporting of any new public employes as required by the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-29. All remittances so received by the secretary of the retirement board shall be promptly deposited with the state treasurer. Deductions from the salaries of district court reporters shall be made by the several county auditors of the state. Each county auditor of the state shall make such deduction from the amount of each warrant issued by him in payment of the salary of a district court reporter and shall on or before the fifteenth (15th) day of each month issue a warrant to the order of the state treasurer for the aggregate amount of all such deductions made by him during the preceding month and shall transmit the same to the secretary of the retirement board with a statement showing the amount of each of such deductions and the names of the district court reporters on whose account the same have been made, provided that the deductions from the salary of a district court reporter in a judicial district consisting of two or more counties shall be made by the auditor of the county in which the bond and official oath of such district court reporter are filed from the portion of his salary paid by such county. All salary deductions shall be credited to a fund to be known as the retirement fund and all interest and other income of said association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from said fund. (As amended Act Apr. 17, 1941, c. 285, §3.)

**254-29. Heads of departments to make monthly statements.**—Within ninety (90) days after the acceptance of the terms of this act by the governing body of any governmental subdivision, the heads of departments affected shall submit to the retirement board a statement showing the name, age, sex, title, compensation, and length of service in his department of every public employe in his department as defined in the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-23, and on the first (1st) day of each calendar month thereafter shall furnish the retirement board a like statement of all new officers or employes who have entered the public service as public employes in his department, and at the same time shall notify the board of all removals, withdrawals and changes in salaries of any members of the retirement association which have occurred during the preceding month, and shall furnish to said board a like statement of all new officers or employes who have entered the service as public employes. (As amended Apr. 17, 1941, c. 285, §4.)

**254-33. Retirement—Tax levies.**—Except as in this act otherwise provided, whenever any member of the retirement association has been a public employe for a period of twenty (20) years and has attained the age of sixty-five (65) years, or when any such employe has been a public employe for a period of thirty-five (35) years, he shall be eligible for retirement, provided that in computing such terms of service, the time during which any member of the association shall have maintained his membership by the payment of assessments after leaving the service as a public employe, in lieu of deductions, shall be included. Provided, however, that no person admitted to membership in said association after May 1, 1937, shall be entitled to receive a retirement annuity unless he has either attained the age of sixty-five (65) years and has been a public employe for a period of twenty (20) years, or has attained the age of sixty (60) years and has been a public employe for a period of at least thirty-five (35) years. Such retirement shall be made upon application of the member or of some one acting in his or her behalf, or in the case of any employe in active service upon the application of the head of the department in which such member is employed. Except as in this act otherwise provided, upon such retirement such member shall receive an annuity for the remainder of his or her life equal to fifty (50) per centum of the average annual salary received for the entire period of his or her membership in said association, provided, that in computing the average annual salary of members who have contributed by assessments, in lieu of salary deductions or otherwise, the average annual salary received while such member was in the public service as a member of said association shall, for the purpose of construing this section, be considered the salary of such member for that period of his membership in said association during which he made contributions to the retirement fund by assessments, in lieu of salary deductions or otherwise, and provided, further, that in computing the period of past service, employment by or for any of the governmental subdivisions as defined and enumerated by this act shall be counted, irrespective of whether or not the governing body of such governmental subdivision has qualified its public employes for membership in said association, and provided further, that no such retirement annuity shall, in any event, exceed the sum of one thousand eight hundred (\$1,800.00) dollars per annum. Membership in said association for any present public employe shall commence upon the date of the acceptance of the application for membership by the retirement board and, in no event, shall said retirement board grant to any member any pro rata annuity, as herein-after provided for in the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-38, until and unless four (4) full years of membership in said as-

sociation shall have elapsed, nor shall said retirement board grant any pro rata annuity based on a greater number of years of contributions to the retirement fund than then stand on the credit of such member on the books of said association, or any full retirement annuity, as hereinafter provided, until and unless five (5) full years of membership have so elapsed. No taxes shall be levied or raised for the aid of said retirement association or the membership thereof by any governmental subdivision of this state affected by the provisions of this act, unless the governing body of any such governmental subdivision, or any agency, board or commission thereof, shall by enactment of any ordinance, resolution, rule or regulation, cause the retirement of any public employe, as herein defined, solely by reason of having attained any fixed age. In the event that any such governmental subdivision shall adopt, by appropriate local legislation, compulsory retirement ages for public employes, as herein defined, then such governmental subdivision shall also assume the liability to pay one-half of the cost of all annuities thereafter granted by the retirement board pursuant to the provisions of this act to any public employe affected by such compulsory retirement requirements. The total amount of such contributory share of such annuities shall before September 30th of each year be duly determined by the said retirement board and certified to any such governmental subdivision for the period of the previous twelve months ending June 30th immediately preceding. Said amount so certified by said retirement board shall be included in the next budget of any such governmental subdivision subsequent to the certification by said retirement board and shall be levied, collected and apportioned in the same manner as other taxes are levied, collected and apportioned, and for the express purposes of this section, the payment of all such annuities are hereby made obligations of the governmental subdivisions concerned in the proportion and to the extent provided. Any levy authorized under this section shall be in addition to and exclusive of all levies authorized for other purposes. (As amended Act Apr. 17, 1941, c. 285, §5.)

**254-36. Heirs or legal representatives to receive benefit of funds.**—Whenever any member of said association shall die without having received an annuity or without having received in annuity payments an amount equal to the total amount of the accumulated deductions from his or her salary, and such additional accumulated deductions, if any, as may have been paid into the retirement fund under and pursuant to the provisions of the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-38, exclusive, however, of any payments representing accrued interest, the full amount of such total accumulated deductions and additional accumulated deductions, if any, less such annuity payments, if any, as have been paid to such member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or, if none, to the legal representatives of such member, upon establishment of a valid claim therefor. Provided, however, if no valid claim is established therefor, the said accumulated deductions shall remain with and become the property of said retirement association. (As amended Act Apr. 17, 1941, c. 285, §6.)

**254-37. Annuities payable monthly.**—All annuities granted under the provisions of this act shall commence with the first (1st) day of the first (1st) calendar month next succeeding the date of termination of public service for the purpose of retirement, and shall be paid in equal monthly installments commencing one month thereafter, and continuing only during the lifetime of the annuitant, and shall not be increased, decreased or revoked, except as provided in this act. (As amended Act Apr. 17, 1941, c. 285, §7.)

**254-38. Retirement to begin July 1, 1935.**—No retirement annuity shall be granted under the provisions of this act until July 1, 1935, nor shall any member of the retirement association be entitled to receive a retirement annuity until he shall have contributed to the retirement fund either by salary deductions or otherwise for a period of four (4) full years, and unless he shall have been a member of said association for a like period. Provided, however, that if any member who is eligible for retirement and who has attained to the age of sixty-five (65) years has contributed to the retirement fund for a period of less than twenty (20) years he shall be entitled to receive a pro rata retirement annuity for the remainder of his life in an amount bearing the same ratio to the full retirement annuity that the period of his salary deductions, or assessments in lieu thereof bears to twenty (20) years, but fractional parts of a year shall not enter into the computation of such pro rata retirement annuity. Provided, further, that whenever any such member shall have become eligible to receive a pro rata retirement annuity, as hereinbefore provided, and shall have contributed to the retirement fund for a period of five (5) full years, and shall have been a member of said association for a like period, such member may, if he shall so elect at any time before making application for such pro rata retirement annuity make application for a full retirement annuity, or for a pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then stand to his credit on the books of said association, and, in either case, the same shall be granted to him, upon compliance with the following terms and conditions, to-wit:

(a) In case such member shall make application for a full retirement annuity, the retirement board, before granting said application, shall do the following things, to-wit:

1. Determine the number of full years of contributions required of such member to make a total of twenty (20) full years of contributions by him to the retirement fund.

2. Determine the average annual amount of the accumulated deductions of such member for the period of his membership in said association.

3. Determine the amount of the additional accumulated deductions to be required of such member by multiplying the number of years as determined by the method prescribed in sub-paragraph one (1) hereof by the average annual amount of his accumulated deductions, as determined in the manner prescribed by sub-paragraph two (2) hereof.

4. Require that such member shall pay into the retirement fund, before such full retirement annuity shall be granted, the total amount of his additional accumulated deductions, as determined by the methods prescribed by subparagraph three (3) hereof, and, in addition thereto, a further amount representing an accrued interest payment, to be determined as follows: In the case of fifteen (15) years of additional contributions required an amount equal to forty-eight (48%) per cent of the total accumulated deductions required for such period, and in case of fourteen (14) years of additional contributions required, or less, an amount to be determined in like manner, based on percentages of the total accumulated deductions required in each instance, as hereinafter set forth, to-wit: Fourteen (14) years, fifty (50%) per cent; thirteen (13) years fifty-two (52%) per cent; twelve years, fifty-four (54%) per cent; eleven (11) years, fifty-six (56%) per cent; ten (10) years, fifty-eight (58%) per cent; nine (9) years, sixty (60%) per cent; eight (8) years, sixty-two (62%) per cent; seven (7) years, sixty-four (64%) per cent; six (6) years, sixty-six (66%) per cent; five (5) years, sixty-eight (68%) per cent; four (4) years, seventy (70%) per cent; three (3) years, seventy-two (72%) per cent; two (2) years, seventy-four (74%) per cent; one (1) year, seventy-six (76%) per cent.

Provided, that after the total amounts required of such member have been determined, as hereinbefore set forth, credit thereon shall be allowed such member for the amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for a full retirement annuity.

(b) In case such member shall make application for a pro rata retirement annuity based on a greater number of full years of contributions than then stand to his credit on the books of said association, the retirement board, in the manner hereinbefore provided, shall determine the amount of the additional accumulated deductions required under such application and shall require that such applicant shall pay into the retirement fund before such greater pro rata retirement annuity is granted, all additional accumulated deductions required, and, in addition thereto, such further and additional amounts representing accrued interest payments as may be determined in the manner hereinafter set forth, to-wit:

In case of one (1) additional year's credit, an amount equal to that percentage of the total accumulated deductions required for one (1) year as may be determined by multiplying the number of full years such member has contributed to the retirement fund by four (4%) per cent. In case of two (2) additional years' credit, an amount equal to that percentage of the additional accumulated deductions required as in the case of one (1) additional year's credit, and, in addition thereto, a further amount equal to two (2%) per cent of the total accumulated deductions required. In like manner for three (3) additional years' credit, or more, an amount equal to that percentage required as in the case of one (1) additional year's credit, and, in addition thereto, a further amount computed on the following percentage of the total accumulated deductions required in each instance as hereinafter set forth, to-wit: Three (3) additional years' credit, four (4%) per cent; four (4) additional years' credit, six (6%) per cent; five (5) additional years' credit, eight (8%) per cent; six (6) additional years' credit, ten (10%) per cent; seven (7) additional years' credit, twelve (12%) per cent; eight (8) additional years' credit, fourteen (14%) per cent; nine (9) additional years' credit, sixteen (16%) per cent; ten (10) additional years' credit, eighteen (18%) per cent; eleven (11) additional years' credit, twenty (20%) per cent; twelve (12) additional years' credit, twenty-two (22%) per cent; thirteen (13) additional years' credit, twenty-four (24%) per cent; fourteen (14) additional years' credit, twenty-six (26%) per cent; fifteen (15) additional years' credit, twenty-eight (28%) per cent. Provided that after such total amount required of such member has been determined, as hereinbefore set forth, credit thereon shall be allowed such member for any amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for such greater pro rata retirement annuity. Provided further, nothing done under the terms of this act shall create or give any contract rights to any person, except the right to receive back upon withdrawal from the association, through separation from the public service any salary deductions made or assessments paid hereunder.

As hereinbefore provided, the minimum requirements for a retirement annuity for any applicant who has attained to the age of sixty-five (65) years, shall be twenty (20) years of contributions to the retirement fund, or its equivalent, with an amount representing accrued interest earnings, as hereinbefore set forth. In the case of any member who becomes eligible for retirement at any age earlier than sixty-five (65) years, the said minimum requirements as to years of contributions before any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than then

stand to his credit on the books of said association shall be granted, shall be twenty (20) years increased by one (1) year for each year that the said applicant is under the age of sixty-five (65) years, in accordance with the following schedule, to-wit: Age sixty-four (64), twenty-one (21) years; age sixty-three (63), twenty-two (22) years; age sixty-two (62), twenty-three (23) years; age sixty-one (61), twenty-four (24) years; age sixty (60), twenty-five (25) years, provided, however, that in the case of any member who shall have reached the age of sixty (60) years on May 1, 1937, and who, prior to June 1, 1936, shall have left the public service and maintained membership by payment of assessments, the minimum requirements for a full retirement annuity shall be twenty (20) years, regardless of the attained age at the time of any such retirement.

From and after May 1, 1937, no full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than the number of years he shall have been a member of said association shall be granted to any member of said association who has not attained to the age of sixty (60) years, and with respect to any such member said retirement board may grant only a pro rata annuity in an amount bearing the same ratio to a full retirement annuity as the period of full years of salary deductions or assessments received in lieu thereof during his membership in the association, or its equivalent, with an additional amount representing accrued interest earnings, shall bear to the number of years expressed in the following schedule of requirements as to the years of contributions for a pro rata retirement annuity at any given age of the applicant, to-wit: Age fifty-nine (59), twenty-six (26) years; age fifty-eight (58), twenty-seven (27) years; age fifty-seven (57), twenty-eight (28) years; age fifty-six (56), twenty-nine (29) years; age fifty-five (55), thirty (30) years; age fifty-four (54), thirty-one (31) years; age fifty-three (53), thirty-two (32) years; age fifty-two (52), thirty-three (33) years; age fifty-one (51), thirty-four (34) years, and age fifty (50), thirty-five (35) years.

The retirement board shall by general rule adopt regulations and schedules of rates of payments required of applicants who shall become eligible for retirement at ages earlier than sixty-five (65), which regulations shall provide for the granting of pro rata retirement annuities in amounts bearing the same ratio to a full retirement annuity as the period in full years of salary deductions, or assessments received in lieu thereof, or its equivalent with an additional amount representing accrued interest earnings, shall bear to the number of years expressed in the above schedule of minimum requirements as to years of contributions for a full retirement annuity at any given age of the applicant. Provided, however, that the retirement board shall not grant any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then stand to the credit of the applicant until such member shall have been a member of said association for a period of five (5) full years. The total amount available from the retirement fund for distribution in annuity payments during any one month shall in no event exceed the total amount received from salary deductions and assessments in lieu thereof during the preceding month and should the total of annuities previously granted and then in force exceed such amount, it shall be the duty of the retirement board to restrict the total amount available for distribution in annuities for any such month accordingly and all annuities payable shall be proportionately reduced. The balance of any annuities not paid in full by reason of such restriction shall be paid proportionately during the first and subsequent months when such salary deductions and assessments exceed the total of all outstanding an-

nuities then payable. (As amended Apr. 17, 1941, c. 285, §8.)

**254-44. Board may make regulations.**—All matters and administrative details not specifically provided for in this act shall be governed by rules and regulations issued and promulgated by the retirement board. The final power to determine the status of any individual in the employ of any governmental subdivision, for the purposes of this act, is hereby vested in said board. (As amended Act Apr. 17, 1941, c. 285, §9.)

**254-46. Application of the act.**—The provisions of this act shall not apply to any county, city, village or school district, or the employees thereof, until and unless the governing body of any such county, city, village or school district shall have duly approved by a majority vote and by a resolution in writing of salary deductions for public employees, as contemplated by the 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 254-46, and shall have filed a duly certified copy of such resolution of approval with the proper officials of the county, city, village or school district, whose duty it is to pay or authorize the payment of salaries, and one (1) such certified copy with the secretary of the retirement board. Salary deductions for present public employees in all governmental subdivisions heretofore operating under and affected by the provisions of this act prior to January 1, 1933, shall be computed from the first (1st) day of July, 1931, and in all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, shall be computed from the first (1st) day of July, 1933. Salary deductions for present public employees in all governmental subdivisions wherein the governing body thereof has duly accepted the terms and provisions of this act subsequent to May 1, 1935, and who shall thereafter become members of the retirement association shall be computed from the first (1st) day of the first (1st) calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned. (As amended Act Apr. 17, 1941, c. 285, §10.)

#### MISCELLANEOUS PROVISIONS

##### **254-47. Auto hire for municipal employees.**

County auditor attending meeting called by tax commission in his own automobile is limited to a mileage of 5 cents per mile. Op. Atty. Gen., (104a-8), Mar. 12, 1941.

##### **254-49. Certain persons ineligible to appointment to office.**

Position of manager of municipal liquor store is not an elective municipal office. Op. Atty. Gen., (471J), May 22, 1940.

A town office is a "municipal office" within this section. Op. Atty. Gen., (47a-21), Jan. 10, 1941.

**254-50. Sales by public officers.**—No department or agency of the State of Minnesota, or any political subdivision thereof, or member or officer, acting in such capacity, of any town or county board or common council of any village or city, or any purchasing agent or purchasing agency of the state or any political subdivision thereof, shall sell or procure for sale or have in its possession or under its control for sale to any employees of the state or of any political subdivision thereof, any article, material, product or merchandise of whatsoever nature, except any article, material, product or merchandise, the sale or distribution of which is or may hereafter be specifically authorized by law or ordinance. (Act Mar. 12, 1941, c. 58, §1.)

**254-50a. Same—Misdemeanor—Separate offenses.**—Any person violating the provisions of Section (1) shall be deemed guilty of a misdemeanor. Each act prohibited by this Section shall constitute a separate violation and offense thereunder. (Act Mar. 12, 1941, c. 58, §2.)

#### MILITARY AND NAVAL SERVICE

**254-50b. State officers and employees—Military or naval service—Leave of absence—Reinstatement.**—Subdivision 1. Subject to the conditions hereinafter prescribed, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who shall be a member of the national guard, the naval militia, or any other component of the militia of the state now or hereafter organized or constituted under state or federal law, or who shall be a member of the officers' reserve corps, the enlisted reserve corps, the naval reserve, the marine corps reserve, or any other reserve component of the military or naval forces of the United States now or hereafter organized or constituted under federal law, shall be entitled to leave of absence from his public office or employment without loss of pay, seniority status, efficiency rating, vacation, sick leave, or other benefits for all the time when he is engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding a total of 15 days in any calendar year. Such leave shall be allowed only in case the required military or naval service is satisfactorily performed, which shall be presumed unless the contrary is established. Such leave shall not be allowed unless the officer or employee (a) returns to his public position immediately on being relieved from such military or naval service and not later than the expiration of the time herein limited for such leave, or (b) is prevented from so returning by physical or mental disability or other cause not due to his own fault, or (c) is required by proper authority to continue in such military or naval service beyond the time herein limited for such leave.

Subdivision 2. In case any such officer or employee shall be required by proper authority to continue in such military or naval service beyond the time for which leave with pay is allowed, he shall be entitled to leave for absence from his public office or employment without pay for all such additional service, with right of reinstatement thereafter upon the same conditions as hereinafter provided for reinstatement after active service in time of war or other emergency. (Apr. 4, 1941; c. 120, §1.)

**254-50c. Same—Conditions.**—Subdivision 1. Subject to the conditions hereinafter prescribed, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who engages in active service in time of war or other emergency declared by proper authority in any of the military or naval forces of the state or of the United States for which leave is not otherwise allowed by law shall be entitled to leave of absence from his public office or employment without pay during such service, with right of reinstatement as hereinafter provided. This shall not be construed to preclude the allowance of leave with pay for such service to any person entitled thereto under Section 1 of this act.

Subdivision 2. Except as otherwise hereinafter provided, upon the completion of such service such officer or employee shall be reinstated in the public position which he held at the time of entry into such service at the same salary which he would have received if he had not taken such leave, upon the following conditions: (1) that the position has not been abolished or that the term thereof, if limited, has not expired; (2) that he is not physically or mentally disabled from performing the duties of such position; (3) that he makes written application for reinstatement to the appointing authority within 45 days after termination of such service; (4) that he submits an honorable discharge or other form of release by proper authority indicating that his military or naval service was satisfactory. Upon such reinstatement the officer or employee shall have the same rights with

respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if he had been actually employed during the time of such leave. No officer or employee so reinstated shall be removed or discharged within one year thereafter except for cause, after notice and hearing; but this shall not operate to extend a term of service limited by law.

**Subdivision 3.** Any public officer elected or appointed for a definite term who, before the expiration of such term, returns from military or naval service under leave of absence without pay under this act, in lieu of making written application for reinstatement as hereinbefore provided, shall file in the same office where his official oath is filed within 45 days after termination of such military or naval service a verified certificate that he has complied with the conditions for reinstatement hereinbefore prescribed, and he shall thereupon be deemed to have resumed his office, with all the rights and privileges granted by this act; provided, that any false statement in such certificate shall be ground for his removal.

**Subdivision 4.** No person who is engaged in active service in any of the military or naval forces of the state or of the United States within or without the state shall thereby be disqualified from being a candidate for or from being elected or appointed to any public office within the state if he is otherwise eligible therefor. A person who is elected or appointed to any such office and who at the commencement of the term thereof is engaged in any such active military or naval service shall not thereby be disqualified from assuming and holding such office if he is otherwise eligible therefor and if his military or naval service is not constitutionally or legally incompatible therewith. Such person, if prevented by his military or naval duties from taking office in person, may file his oath of office, also his bond, if required, by mail or other means of transmittal, and shall thereupon be deemed to have assumed office, subject to all the provisions of this act, so far as applicable. (Apr. 4, 1941, c. 120, §2.)

**254-50d. Rights accrued.**—Any public officer or employee receiving leave of absence under this act and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all such rights accrued up to the time of taking such leave, and shall have all rights subsequently accruing under such system as if he had been actually employed during the time of such leave, provided, that so far as any increase in the amount of money benefits accruing with respect to the time of such leave is dependent upon the payment of any contributions or assessments, the right to such increase shall be conditioned upon the payment of such contributions or assessments within such reasonable time after the termination of such leave and upon such terms as the authorities in charge of such system may prescribe. (Apr. 4, 1941, c. 120, §3.)

**254-50e. Acting incumbent.**—In any case where a public officer or employee is absent with leave under the provisions of this act and where it is necessary in the public interest to provide for the performance of the duties of his position during such absence, the authority having power to fill a vacancy in the position may appoint a substitute, to be known as acting incumbent, who shall qualify as required for the regular incumbent, shall receive the same compensation as fixed by law, otherwise such compensation as may be fixed by proper authority, and shall have all the powers and perform all the duties of the position until the return of the regular incumbent; provided, that this shall not preclude the making of any other provision for the discharge of the duties of the position which may be otherwise authorized by law. (Apr. 4, 1941, c. 120, §4.)

**254-50f. Right and privileges not exclusive.**—The rights and privileges granted by this act shall be

supplementary to and not exclusive of any other rights or privileges conferred by law on public officers or employees, but shall not obtain in any case where the military or naval service is constitutionally or legally incompatible with the public office or employment. (Apr. 4, 1941, c. 120, §5.)

Act Apr. 4, 1941, c. 120, §6, repeals *Masons Supp.*, 1940, §2425.

## OFFICIAL RECORDS

**254-50g. Public officers to keep records—Manner.**—All officers and agencies of the state, and all officers and agencies of the counties, cities, villages, and towns, shall make and keep all records necessary to a full and accurate knowledge of their official activities. All such public records shall be made on paper of durable quality and with the use of ink, carbon papers, and typewriter ribbons of such quality as to insure permanent records. Every public officer and agency is empowered to record or copy public records by any photographic device, approved by the Minnesota Historical Society, which clearly and accurately records or copies them. (Act Apr. 28, 1941, c. 553, §1.)

**254-50h. Duty of administrative officers.**—The chief administrative officer of each public agency shall be responsible for the preservation and care of the agency's public records, which shall include written or printed books, papers, letters, contracts, documents, maps, plans and other records made or received pursuant to law or in connection with the transaction of public business. It shall be the duty of each such agency, and of the chief administrative officer thereof, to carefully protect and preserve public records from deterioration, mutilation, loss or destruction. Records of record books may be repaired, renovated, or rebound when necessary to preserve them properly. (Act Apr. 28, 1941, c. 553, §2.)

**254-50i. Same—Delivery of public records to successors.**—Every legal custodian of public records, at the expiration of his term of office or authority, or on his death his legal representative, shall deliver to his successor in office all public records in his custody; and the successor shall receipt therefor to his predecessor or his legal representative and shall file in his office a signed acknowledgment of the delivery. Every public officer shall demand from his predecessor in office, or his legal representative, the delivery of all public records belonging to his office. (Act Apr. 28, 1941, c. 553, §3.)

**254-50j. Arrangement — Inspection — Certified copies.**—Every custodian of public records shall keep them in such arrangement and condition as to make them easily accessible for convenient use. Except as otherwise expressly provided by law, he shall permit all public records in his custody to be inspected, examined, abstracted, or copied at reasonable times and under his supervision and regulation by any person; and he shall, upon the demand of any person furnish certified copies thereof on payment in advance of fees not to exceed the fees prescribed by law. (Act Apr. 28, 1941, c. 553, §4.)

## STATE CIVIL SERVICE

**254-51. Civil Service Board created—Members, etc.** Act Apr. 24, 1941, c. 403 provides for the creation of a county civil service commission in counties having a population of over 150,000 and an area of over 5,000 square miles, and sets out the powers and duties of such commission.

Act Apr. 28, 1941, c. 515, creates a county civil service commission in counties having populations of between 250,000 and 450,000, and prescribes duties of city civil service bureaus therein.

**254-52. Director of State Civil Service—Appointment, qualifications, examination—Etc.**

This section is not a legislative recognition of continuance of the veterans' preference act. *State v. Stassen*, 294NW647. See *Dun. Dig.* 7986.

Director of civil service is an officer of the state. *Op. Atty. Gen.*, (644), May 9, 1940.

It is neither mandatory nor permissible for a bond to be required or authorized from the director. *Id.*

**254-53. Director to be administrative and executive head; etc.**

(2) (b).

Whether or not Civil Service Board may authorize payment of difference between military pay and state salary to an employee ordered into military service, its order or rule therefor would be ineffective without an appropriation for that purpose. Op. Atty. Gen., (644), Oct. 28, 1940.

**254-54. Duties and powers of civil service board.**

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or for political reasons. Op. Atty. Gen. (644), Nov. 22, 1939.

(g).

Civil service board has power to determine status of an individual claiming to be entitled to a permanent civil service status growing out of a wrongful discharge of a veteran prior to effective date of act. State v. Stassen, 294NW647.

**254-57. Classified and unclassified service.**—The civil service of the state of Minnesota is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

a. Chosen by election or appointed to fill an elective office;

b. Heads of departments required by law to be appointed by the governor or other elective officers and the executive or administrative heads of departments, divisions and institutions specifically established by law, except that with respect to state institutions, the provisions of Mason's Minnesota Statutes of 1927, Section 4405, are hereby continued in effect; provided, this subsection shall not apply to heads of divisions now existing in the department of labor and industry.

c. Except as herein otherwise enlarged, one private secretary to each of the elective officers of this state, and in addition thereto, one deputy, clerk or employee to the secretary of state, state auditor and state treasurer;

d. All deputy registrars of motor vehicles, and seasonal help employed by the registrar and his deputies to assist in the issuance of motor vehicle licenses;

e. One executive secretary and five other confidential employees in the office of the governor, and one confidential employee for the governor in the office of the adjutant general;

f. Officers and employees of the senate and house of representatives of the legislature;

g. Teachers, research assistants, student employees on less than half-time pay basis, presidents, deans, and administrative officers in the teachers' colleges; but this subdivision shall not be construed to include the custodial, clerical, or maintenance employees, or any administrative officers, or clerical workers performing duties in connection with the business administration of such institutions;

h. Officers and enlisted men in the national guard and the naval militia;

i. Election officers;

j. Persons engaged in public work for the state but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority;

k. Persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make or conduct a special inquiry, investigation, examination or installation;

l. Deputy attorneys general, assistant attorneys general, legal assistants, examiners, three confidential employees, and special counsel to state departments appointed by the attorney general or employed with his authorization;

m. All courts and all employees thereof, referees, receivers, jurors and notaries public, except referees and adjusters employed by the industrial commission;

n. Patient and inmate help in state charitable, penal and correctional institutions;

o. State highway patrolmen now operating under the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, sections 2554 ½, 2554 ½ a, 2554 ½ b, 2554 ½ c, 2554 ½ d and 2554 ½ e; providing, however, that with respect to the method of selection and appointment only, all state highway patrolmen who shall be appointed subsequent to the effective date of this act shall be selected and appointed in accordance with the provisions hereof relating to the classified service, but in all other respects the provisions of this act shall not apply to state highway patrolmen.

(2) All positions involving unskilled labor shall constitute a labor service: The civil service board shall designate the class or classes of positions which shall comprise the labor service and shall create rules for that service designed to expedite and make more economical the personnel processes in such service. Such rules shall provide, among other things, for: (a) certification of the entire list of eligibles, which list may be supplemented by eligibles certified by any appointing authority, to appointing authorities from which selection and appointment to positions in the labor service may be made without limitation; (b) layoff and reemployment of employees within the discretion of the appointing authority without recourse and without regard to factors considered in similar transactions in classified positions in other than the labor service; (c) simplified and expedient procedures of effecting and reporting personnel transactions concerning employees in the labor service; (d) temporary demotion and promotion of employees in the labor service as the needs of the service may require; (e) control, in the labor service, of leaves of absence with and without pay, sick leave and hours of employment by the appointing authority; provided that any proposed deviation from the rules on these subjects governing the classified service other than the labor service shall be subject to the approval of the civil service board; (f) appointments of special labor, under project or other unusual employment circumstances, to positions in the labor service; without regard to existing reinstatement, reemployment, and original entrance lists, for such periods of time as the needs of the service may require as approved by the civil service board; (g) certification as to physical fitness of eligibles by persons having knowledge of the facts. Any such appointments which shall be for a total period of not to exceed five months in any calendar year may be made by the appointing authority not subject to other approval, providing payroll notice of such employment is regularly made to the department of civil service.

(3) The classified service shall include the labor service and shall consist of all positions now existing or hereafter created and not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible lists prepared upon the basis of examination which so far as practicable shall be competitive. No person shall be appointed, transferred, promoted, reduced or discharged as an officer, clerk, employee, or laborer in the classified service in any manner or by any means other than those prescribed in this act and the rules adopted in accordance therewith.

(4) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of this act because of the constitutional status of such departments or institutions shall be permitted to make appointments from appropriate registers of eligibles maintained by the department of civil service.

(5) The state civil service act shall not be deemed to have been heretofore or hereafter applied to the Regents of the University of Minnesota, nor to persons, institutions or employees under their control. (As amended Act Apr. 28, 1941, c. 533, §1.)



Persons employed by commissioner of banks and statutory liquidator in liquidating business of a particular bank or banks are employees of bank on behalf of which their services are rendered and are not state employees under the civil service act. Op. Atty. Gen., (644), April 22, 1940.

Employee in classified service may act as secretary of volunteer fire department or firemen's relief association. Op. Atty. Gen., (644), June 17, 1940.

Consulting physicians, dentists, surgeons, ophthalmologists, oculists and aurists rendering special medical services to patients and inmates at state institutions are in the classified service where they serve part time and make regular calls and receive flat monthly compensation, but persons called in for special services and receiving flat sums for each day or trip called into service are independent contractors and not employees and should be paid on vouchers, rather than from payroll. Op. Atty. Gen. (644), Oct. 8, 1940.

Employees in various offices of deputy registrars of motor vehicles, including those in Minneapolis, are not state employees, even though paid in part by state warrants. Op. Atty. Gen., (644), Jan. 8, 1941.

(1). Secretary to Railroad and Warehouse Commission is within classified service. Op. Atty. Gen., (644), Jan. 21, 1941.

(1) (b). Position of secretary to soldiers' home board is within classified service. Op. Atty. Gen. (644), Dec. 6, 1939.

The hotel inspector, now referred to as director of division of hotel inspection under the department of health, is head of a division established by law and is of the unclassified service. Op. Atty. Gen. (644), Sept. 20, 1940.

Deputy Commissioner of Agriculture is within classified service. Op. Atty. Gen., (644), Jan. 21, 1941.

(1) (g). Librarians in teachers' colleges should be considered teachers and in the unclassified service. Op. Atty. Gen. (644), Nov. 9, 1939.

(1) (h). Employees of railroad and warehouse commission engaged in special telephone investigation and doing work of a specialized nature, come within the unclassified service, unless they are regular employees assigned to aid in such investigations from time to time. Op. Atty. Gen. (644), Nov. 3, 1939.

"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence discussed. Op. Atty. Gen. (260), Nov. 27, 1939.

An employee of the department of education in the classified service cannot be given leave of absence to serve as executive secretary of interim committee of legislature on education, but could be continued on pay roll of department of education and his services be made available to interim committee on education, and could probably be paid extra compensation by the committee for extra and more arduous work. Op. Atty. Gen. (644), Dec. 14, 1939.

(2). Consulting physicians, dentists, surgeons, ophthalmologists, oculists and aurists rendering special medical services to patients and inmates at state institutions are in the classified service where they serve part time and make regular calls and receive flat monthly compensation, but persons called in for special services and receiving flat sums or each day or trip called into service are independent contractors and not employees and should be paid on vouchers, rather than from payroll. Op. Atty. Gen. (644), Oct. 8, 1940.

**254-58. Existing positions—Persons with five years service to hold over—Persons with five years service or who have taken a civil service examination—Classification—Probationary period—"Employed by the state"—Incumbents placed in classified service—Qualifying examinations.**—(1) All persons holding offices or employments in the classified service on the effective date of this act who have been employed by the state, which employment need not be continuous, for a total of five years or more prior to the effective date of this act; and persons holding offices or employments in the Minnesota State Employment Service (a division of the Industrial Commission, not however including the employees of the Unemployment Compensation division) who have taken and passed a civil service examination conducted by the United States Employment Service, and who are employed by the state on the effective date of this act, shall automatically receive a civil service status without examination and shall be subject to and protected by the provisions of this act, but shall first be subject to the following: (a) the general classification directed to be made by section 12 of this act; and (b) the six months' probationary period provided by section 21 of

this act. The probationary period in the case of persons holding offices or employments covered by this section shall begin to run on the effective date of this act. The words "employed by the state" as used in this subsection shall include persons employed by joint federal and state agencies administering state and federal relief funds; and persons employed by the commissioner of banks in the liquidation of closed banks under the provisions of Mason's Supplement 1940, Section 7689, with the exception of deputy bank examiners, the supervisor and the special attorney provided, however, that any status which may accrue under this section to employees of the Liquidation Unit of the Banking Department shall be limited to statewide reinstatement or reemployment status as defined in this act and the rules made thereunder. (As amended Act Apr. 28, 1941, c. 533, §2.)

(6) **Status of incumbents.**—Incumbents of positions placed in the classified service by amendments to the state civil service act shall take such status as would have accrued to them had such amendments been originally contained in this act.

(7) **Qualifying examinations.**—The rights, privileges and obligations concerning qualifying examinations as defined in subsection (2) of this section shall be extended to all persons holding offices or employment in the classified service on June 1, 1941, who have been continuously employed by the state for six months or more prior to said date and who do not have a probationary or non-probationary civil service status, and who are not subject to qualifying examinations under subsection (2) of this section. The additional qualifying examinations prescribed by this section shall be administered before January 1, 1942, and the probationary period shall be applicable to such persons from the date they are certified as having passed the qualifying examination. (As added Act Apr. 28, 1941, c. 533, §3.)

A person who was employed during 1938-1939 re-registration of motor vehicles period, who executed an agreement that employment must be terminated after work diminished with no preference or right to future employment, and who was not working on Apr. 22, 1939, was not entitled to status of a permanent employee by virtue of being a veteran, a 5-year employee subject to probation, or an employee subject to qualifying examination, and a person who was employed during 1938-1939 re-registration period under such an agreement and who was not working on Aug. 1, 1939, was not entitled to status of an employee subject to a qualifying examination. Op. Atty. Gen., (644), Jan. 8, 1941.

An employee who was engaged from year to year during rush period in motor vehicle division of office of Secretary of State, and who was actually working on April 22, 1939, and had a total previous employment, not continuous, equal to 60 months on that date, was entitled to status of a 5-year employee subject to 6 months probationary period. Id.

Certification at end of probation period as unsatisfactory, done in error and mistake, may be corrected and proper entry made in record. Op. Atty. Gen., (644), Feb. 6, 1941.

(1). A person employed by the CWA and the FERA and assigned to work for the state, and receiving his compensation entirely from federal funds, was not an employee of the state. Op. Atty. Gen., (644), March 11, 1940.

Where certain persons were in employ of state on Apr. 22, 1939, and on that date had 5 years or more previous service with state and consequently would otherwise have come within provision of §10, thereby beginning a 6 months probationary period on Apr. 22, 1939, but were wrongfully considered to possess permanent status by virtue of military service, appointing authority should now be given opportunity to certify either as satisfactory or unsatisfactory such employees, and employees should not be made to suffer thereby nor apply rights to which he might not have been entitled. Op. Atty. Gen., (644), Feb. 12, 1941.

"State employment" as applied to: Students working part time; services performed by other than students where no salary or fee has been made but which involves grant of room or board, or both, in exchange for part or full time services performed; county employees under the County Reimbursement Plan; employment in positions now in unclassified service including those under the legislative, judicial, and executive jurisdictions; university employees; Fellowships at University of Minnesota; Fellowships at colleges and universities other than the University of Minnesota; persons not actually performing services for the state but receiving compensa-



tion payments for injury received while performing state duties; employments where payment may have been made by state, federal, municipal or county warrant or a combination thereof, including administrative or project pay-roll; State Emergency Relief Administration and S.R.A. and F.E.R.A. and E.R.A. and C.C.C. and E.C.W. and C.W.A. and S.C.W.A. and N.Y.A. and N.R.S. and W.P.A. and P.W.A. and L.E.C.; employees of Executive Council; State Forest Service Cooperation under the National Industrial Recovery Act; National Park Service on Minnesota State High Projects; State Highway Personnel paid by both county and state; highway employees loaned to county and paid by county. Op. Atty. Gen., (644), Mar. 4, 1941.

Dormitory employees of teachers' colleges not paid by regular state warrants are "employed by the state". Id. (2).

Where it was intention of appointing authority that employees should be employed on August 1, 1939, but due to press of work and other circumstances they were not attached to payroll until middle of August, 1939, they are not eligible to take qualifying examinations. Op. Atty. Gen., (644), June 11, 1940.

Termination of employment by mistake just before August 1, 1939 should not deprive employee of right to take qualifying examinations. Id.

Chainmen and checkers used in survey crews in construction division on a temporary and local basis by the highway department are not entitled to take qualifying examinations, though employed August 1, 1939. Op. Atty. Gen., (644), June 21, 1940.

(3). Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. State v. Hoffman, 296NW24.

If deputy oil inspector discharged before Civil Service Act went into effect had a civil service status under existing statute, such status was abolished by going into effect of such act and mandamus would not lie to enforce such right, though petition was filed and alternative writ was issued prior to effective date. Reed v. T., 296NW535.

Dismissal of an employee on July 31, 1939, under clear mistake of fact as to his work and conduct, at which time he had worked for the state more than five years and at time of dismissal was on probation, may be treated as a complete nullity and certification for permanent service status be accepted nunc pro tunc as of date of expiration of his probationary period, though there cannot be a restoration of probationary status. Op. Atty. Gen., (644), Feb. 15, 1940.

A member of classified service who had been employed for more than five years in service of state could be discharged in June, 1939, without cause, although he was then a probationer under act. State v. Gravlin, 293NW 257.

Legislature possessed power to incorporate a provision in state civil service act completely shearing old employees of any protective quality for six months following passage of act. Id.

(5). Op. Atty. Gen., (644), Mar. 4, 1941; notes under §254-71. Employees with permanent civil service status take precedence over employees who have not yet fulfilled requirements for such status. Op. Atty. Gen., (644), Feb. 15, 1940.

#### 254-59. Temporary employment in absence of available eligibles.

A provisional employee, whether employed on basis of a monthly salary or at an hourly rate, is not entitled to privileges accorded a classified employee such as annual leave, sick leave and other allowances. Op. Atty. Gen. (644), Nov. 28, 1940.

Provisional employees are entitled to privileges conferred under laws existing prior to enactment of Civil Service Act, such as annual leave, sick leave, and other allowances, until such time as they acquire civil service status or are replaced by employees certified according to provisions of Civil Service Act. Op. Atty. Gen. (644), Dec. 20, 1940.

#### 254-60. Classification and grading of employees; etc.

As to the first salary and wage schedules of employees, legislative emergency committee must take classifications as they have been prepared by director of civil service and approved by civil service board, and has no authority to modify the classifications or to create any new classifications. Op. Atty. Gen. (644), Oct. 14, 1940.

Commission of administration has control over employment and compensation of agents of Railroad and Warehouse Commission in weighing and inspection of grain, but power to approve salaries and salary schedules is vested in director of civil service, to be thereafter approved by civil service board, and thereafter approved by commissioner of administration, but after salary schedules have once been approved, commissioner of administration has no power or right to change or reduce individual salaries within classification and schedules. Op. Atty. Gen., (644), Aug. 22, 1940.

(4).

Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. State v. Hoffman, 296NW24.

#### 254-64. Oath of office.

Oaths of officers or employees are to be filed with secretary of state, and may be taken as a part of application for employment. Op. Atty. Gen., (644), Jan. 30, 1940.

#### 254-68. Positions filled without competition.

A position is "permanent" when work will continue indefinitely and is temporary when, at the completion of the work, such additional employees will no longer be needed, and "provisional" appointments are usually made in absence of eligible list to meet emergencies until civil service commission can fill position by competitive examination. Op. Atty. Gen. (644), Dec. 5, 1939.

A provisional employee, whether employed on basis of a monthly salary or at an hourly rate, is not entitled to privileges accorded a classified employee such as annual leave, sick leave and other allowances. Op. Atty. Gen. (644), Nov. 28, 1940.

#### 254-69. Appointments for probationary period.

State v. Gravlin, 293NW257; note under §254-58(3).

Employees who were serving their probationary period beginning April 22, 1939, and who were dismissed as permanent employees July 31, 1939, by a letter which re-employed them as temporary employees effective August 1, 1939, have no rights as to seniority or restoration of probationary status and are not eligible for a qualifying examination. Op. Atty. Gen. (644), Nov. 3, 1939.

Certification at end of probation period as unsatisfactory, done in error and mistake, may be corrected and proper entry made in record. Op. Atty. Gen., (644), Feb. 6, 1941.

Where certain persons were in employ of state on Apr. 22, 1939, and on that date had 5 years or more previous service with state and consequently would otherwise have come within provision of §10, thereby beginning a 6 months probationary period on Apr. 22, 1939, but were wrongfully considered to possess permanent status by virtue of military service, appointing authority should now be given opportunity to certify either as satisfactory or unsatisfactory such employees, and employees should not be made to suffer thereby nor apply rights to which he might not have been entitled. Op. Atty. Gen., (644), Feb. 12, 1941.

Dismissal of an employee on July 31, 1939, under clear mistake of fact as to his work and conduct, at which time he had worked for the state more than five years and at time of dismissal was on probation, may be treated as a complete nullity and certification for permanent service status be accepted nunc pro tunc as of date of expiration of his probationary period, though there cannot be a restoration of probationary status. Op. Atty. Gen., (644), Feb. 15, 1940.

254-70. Transfers—Leaves of absence.—(1) Transfers in the classified service may be made from a position in one grade and class to a position in another grade and class when the duties and compensation are similar and when such action is specifically approved by the director of the civil service.

(2) Any person holding a permanent position in the classified service of this state may be granted a leave of absence on the grounds of sickness, disability or other good and sufficient reason; provided, however, that no leave except military leave and leave to accept an appointive position in the state unclassified service shall exceed one year, except as provided in subsection (4) of this section.

(3) Leave of absence shall be granted to an officer or employee holding a position in the classified service to enable such person to take an appointive position in the state unclassified service. Persons having accepted or accepting appointive positions in the unclassified service shall upon the termination thereof be restored to the status and position which they last held at any time within one year after the termination of their appointment in the unclassified service upon application therefor to the director of civil service.

(4) Any person who has held a position by permanent appointment in the classified service under the civil service law and rules and who has been separated from the service without any delinquency or misconduct on his part or who has been granted a leave of absence under subsection (2) of this section, may be reinstated within one year from the date of such separation or within one year from the expiration of an approved leave of absence, to a position in the same

or similar grade or class in the classified service, but such action shall be subject to the approval of the director of civil service. (As amended Act Apr. 28, 1941, c. 533, §4.)

A provisional employee, whether employed on basis of a monthly salary or at an hourly rate, is not entitled to privileges accorded a classified employee such as annual leave, sick leave and other allowances. Op. Atty. Gen. (644), Nov. 28, 1940.

Where an employee has contracted tuberculosis in line of his employment and is being hospitalized at expense of his department and is carried on department's payroll on a leave of absence with pay, deductions for retirement fund should be based only on amount of salary employee is actually receiving, and money paid for hospitalization is no part of salary. Op. Atty. Gen. (331a-12), Jan. 15, 1941.

(2). "Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence discussed. Op. Atty. Gen. (250), Nov. 27, 1939.

Annual leave and sick leave should be based on employment prior to effective date of act as well as after. Op. Atty. Gen. (644), Feb. 23, 1940.

In event it becomes necessary to grant a leave of absence without pay under civil service rule, pending recovery from disabling illness or some disease contracted in line of duty, leave of absence is restricted to a period of one year, subject to provision that employee may be reinstated within one year from expiration of an approved leave of absence. Op. Atty. Gen. (644), June 4, 1940.

There is no restriction on period of time that an employee may receive continued payment at full or partial rates for illness or injury suffered or contracted in line of duty, under civil service rules. Id.

Hospitalization may be provided by state under Laws 1939, c. 116 during same period of time that employee is receiving salary or sick leave allowance under a rule of the civil service director. Id.

Employee of state hospital contracting tuberculosis in line of duty need not use his accumulated sick leave as a classified employee before hospitalization is used under Laws 1939, c. 116, but must use his accumulated sick leave before continued payment for sick leave and a full or partial rate permitted under civil service rule. Id.

Employee in classified service, who is being paid for jury duty, can also be granted full salary payment by state during time involved in jury duty. Op. Atty. Gen. (644), June 17, 1940, June 18, 1940.

(3). An employee of the department of education in the classified service cannot be given leave of absence to serve as executive secretary of interim committee of legislature on education, but could be continued on payroll of department of education and his services be made available to interim committee on education, and could probably be paid extra compensation by the committee for extra and more arduous work. Op. Atty. Gen. (644), Dec. 14, 1939.

#### 254-71. Lay-offs—Seniority rights—Notice—Certification of reasons—Etc.

Where function and personnel are transferred from one department to another by legislative action, period of service of employees in previously-existing department or agency should be included in computation of their seniority in department or agency to which they have been transferred, but where function was transferred by legislative action with no specific provision as to personnel, period of service in former department or agency need not be included in computation of seniority and this also applied to administrative transfer of function, and in case of consolidated departments or agencies period of employment in all departments and agencies entering into consolidation should be included in computation of seniority. Op. Atty. Gen. (644), Mar. 4, 1941.

Where services are performed in one department but payment for services is made by another department, seniority of employees is acquired within department by which he was paid. Id.

Where payment of compensation was made out of relief funds, employee acquired seniority in department or agency wherein he was working rather than in department or agency by which he was paid by state warrants. Id.

In computation of seniority within a department there should be included period of employment in unclassified service of such department. Id.

(1). An employee having a permanent civil service status takes precedence over one having only a civil service status, in matter of seniority. Op. Atty. Gen. (644), Dec. 1, 1939.

Employees with permanent civil service status take precedence over employees who have not yet fulfilled requirements for such status. Op. Atty. Gen. (644), Feb. 15, 1940.

Rules as to seniority should consider period of employment prior to effective date of civil service act well as thereafter, and employees should be laid off in in-

verse order of employment in department in which they are employed at time of lay-off. Op. Atty. Gen. (644), Feb. 23, 1940.

(2). Fifteen days' notice required in case of a lay-off is confined to permanent officers and employees. Op. Atty. Gen. (644), Nov. 3, 1939.

Fifteen days' notice is only required as to officers and employees who have a permanent civil service status. Op. Atty. Gen. (644), Dec. 1, 1939.

There is no statutory authority for ordering of pay during period that an employee has been improperly laid off, but there is authority to reimburse for loss of pay where lay-off has become a dismissal because of non-compliance with this section. Op. Atty. Gen. (644), March 9, 1940.

#### 254-72. Not to be removed or suspended except for cause—Hearing—Time for—Etc.

Classified employees are not barred from appearing before legislative bodies or their committees by the act as individuals or in a representative capacity. Op. Atty. Gen. (644), Dec. 12, 1939.

Dismissal of an employee on July 31, 1939, under clear mistake of fact as to his work and conduct, at which time he had worked for the state more than five years and at time of dismissal was on probation, may be treated as a complete nullity and certification for permanent service status be accepted nunc pro tunc as of date of expiration of his probationary period, though there cannot be a restoration of probationary status. Op. Atty. Gen. (644), Feb. 15, 1940.

(1). A war veteran having permanent employment status under division of unemployment compensation and who obtained leave of absence and filed as a candidate for office prior to effective date of civil service law did not lose his status of permanent employment, though he continued his candidacy for office after effective date of that act, without filing of charges and a hearing. Op. Atty. Gen. (644), Oct. 18, 1939.

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or for political reasons. Op. Atty. Gen. (644), Nov. 22, 1939.

This section authorizes board to order restoration and pay where there is non-compliance with §254-71(2), or a lay-off has become a dismissal for religious or political reasons. Op. Atty. Gen. (644), March 9, 1940.

Employee's demand for hearing must be made upon board within 30 days of effective date of action to which he complains. Op. Atty. Gen. (644), March 26, 1940.

254-74. Unauthorized expenditures—Directors shall certify payrolls.—(1) Certified payrolls.—Neither the state auditor nor other fiscal officer of this state shall draw, sign or issue, or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing office of the state, nor shall the treasurer or other disbursing officer of the state pay any salary or compensation to any persons in the classified or unclassified service of the state; unless an estimate payroll or account for such salary or compensation containing the name of every person to be paid shall bear the certificate of the director of the civil service that the persons named in such estimate, payroll or account have been appointed, employed, reinstated or promoted and are performing service as required by law and the rules established hereunder and that the salary or compensation is within the salary or wage schedule fixed pursuant to law, provided that this provision shall not apply to positions defined in subdivisions (a), (d), (f), (h), (i), (j), (k), (m), (n), and (o), of subsection 1 of section 9 of this act, nor to teachers, research assistants, student employees on less than half time pay basis, presidents, deans, and administrative officers in the teachers' colleges. (As amended Act Apr. 28, 1941, c. 533, §5.)

Act Apr. 28, 1941, c. 533, §6, provides that the director shall have power to make special rules and regulations for matters requiring conformance to federal law or regulations.

#### 254-77. Political activities and executions—Etc.

An employee in classified service who is also a member of a Bill Posters' Union, may stamp and post bills, including those of candidates for political offices, during his vacation and spare time. Op. Atty. Gen. (644), April 26, 1940.

Classified employee may pay for and sign political newspaper advertisement for a friend. Op. Atty. Gen. (644), Sept. 5, 1940.

(1). Provision does not act as a complete bar to membership in a political party or an organization whose purposes may be political, unless membership necessarily entails participation in some prohibited activity. Op. Atty. Gen. (644), Oct. 13, 1939.

Inspectors employed by a state board should not campaign for or promote candidacy of a member of the board for reappointment. Op. Atty. Gen. (644), Nov. 17, 1939.

(2). A classified employee may not accept appointment to unexpired term of an elective office without resigning from public service, though office is one that would not interfere with performance of work in classified service. Op. Atty. Gen. (644), Oct. 13, 1939.

A war veteran having permanent employment status under division of unemployment compensation and who obtained leave of absence and filed as a candidate for office prior to effective date of civil service law did not lose his status of permanent employment, though he continued his candidacy for office after effective date of that act, without filing of charges and a hearing. Op. Atty. Gen. (644), Oct. 13, 1939.

"Public office" includes nonsalaried public offices. Op. Atty. Gen., (644), April 29, 1940.

#### 254-79. Veterans' preference.

State Veterans' Preference Act does not give a veteran a vested right in his employment and such employment may be abolished by legislative act. State v. Stassen, 294NW647. See Dun. Dig. 7986.

Whatever rights a veteran has in his employment must be found in civil service act once his status matured under that act. Id.

Repeal of veterans' preference act by civil service act took away statutory remedy of mandamus for a wrongfully discharged state employee, including a pending action in mandamus which was not perfected by final judgment, even though trial had been had before repeal, and a cause of action for damages, as long as it remained inchoate and not merged in final judgment, was equally destroyed by repeal of statute which created it. State v. Railroad and Warehouse Com'n, 296NW906. See Dun. Dig. 8923.

Employees of the state in the unclassified service are still entitled to soldier's preference, subject to limitations upon its application which have heretofore existed. Op. Atty. Gen., (644), May 10, 1940.

A veteran employed after Apr. 22, 1939, and prior to Aug. 1, 1939, would have had to take a qualifying examination under the act, and 5-year residence period would apply to him, and veterans employed after Aug. 1, 1939, would have to take a competitive examination, and would also be subject to requirement of 5-year residence unless they had been residents of state at time of their enlistment or entry into service so that their services could be credited to the state, and date to be used for calculation of required 5-year residence is date of application. Op. Atty. Gen., (644), Feb. 12, 1941.

Five-year residence period does not apply to veterans who were in employ of state on April 22, 1939, as they did not have to take an examination. Id.

Veteran's discharge from draft is not "honorable discharge" within meaning of this act. Op. Atty. Gen., (644), Mar. 24, 1941.

#### 254-86. Laws superseded.

Where a veteran would have been blanketed into civil service on effective date of civil service act if he had not been discharged prior to that date, he is entitled to be placed in same position as he would have been had he not been discharged, if discharge was unlawful. State v. Stassen, 294NW647. See Dun. Dig. 7986.

Where a veteran was discharged prior to passage of civil service act, he could not maintain mandamus for reinstatement after passage of that act, mandamus being only available by statutory grant and such statutes being repealed by the civil service act so far as he was concerned. Id.

Whatever rights a veteran has in his employment must be found in civil service act once his status matured under that act. Id.

Repeal of veterans' preference act by civil service act took away statutory remedy of mandamus for a wrongfully discharged state employee, including a pending action in mandamus which was not perfected by final judgment, even though trial had been had before repeal, and a cause of action for damages, as long as it remained inchoate and not merged in final judgment, was equally destroyed by repeal of statute which created it. State v. Railroad and Warehouse Com'n, 296NW906. See Dun. Dig. 8923.

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or for political reasons. Op. Atty. Gen. (644), Nov. 22, 1939.

Soldiers' preference applies only to those of the World War who served between sixth day of April, 1917, and eleventh day of November 1918, and date of enlistment on discharge papers controls. Op. Atty. Gen. (644), Dec. 21, 1939.

Employees of the state in the unclassified service are still entitled to soldier's preference, subject to limitations upon its application which have heretofore existed. Op. Atty. Gen., (644), May 10, 1940.

A person who was employed during 1938-1939 re-registration of motor vehicles period, who executed an agreement that employment must be terminated after work diminished with no preference or right to future employment, and who was not working on Apr. 22, 1939, was not entitled to status of a permanent employee by virtue of being a veteran, a 5-year employee subject to probation, or an employee subject to qualifying examination, and a person who was employed during 1938-1939 re-registration period under such an agreement and who was not working on Aug. 1, 1939, was not entitled to status of an employee subject to a qualifying examination. Op. Atty. Gen., (644), Jan. 8, 1941.

A war veteran engaged in motor vehicle division during re-registration period to assist in handling increased volume of work, signing an agreement that work was only for that particular period each year and employment might be terminated as the work diminished with no preference or right to future employment was entitled to permanent civil service status if he was working on April 22, 1939. Id.

Where certain persons were in employ of state on Apr. 22, 1939, and on that date had 5 years or more previous service with state and consequently would otherwise have come within provision of §10, thereby beginning a 6 months probationary period on Apr. 22, 1939, but were wrongfully considered to possess permanent status by virtue of military service, appointing authority should now be given opportunity to certify either as satisfactory or unsatisfactory such employees, and employees should not be made to suffer thereby nor apply rights to which he might not have been entitled. Op. Atty. Gen., (644), Feb. 12, 1941.

If persons claiming preference as members of S.A.T.C. have a certificate or instrument indicating membership in that organization subsequent to its recognition as a unit of the United States Army, for service during period entitling them to preference and such service was under honorable condition, they are entitled to preference. Id.

A copy of resignation of a midshipman in 1920 indicating payment of bonus for war service constituted an "honorable discharge", if separation from service was under honorable conditions. Id.

A veteran employed after Apr. 22, 1939, and prior to Aug. 1, 1939, would have had to take a qualifying examination under the act, and 5-year residence period would apply to him, and veterans employed after Aug. 1, 1939, would have to take a competitive examination, and would also be subject to requirement of 5-year residence unless they had been residents of state at time of their enlistment or entry into service so that their services could be credited to the state, and date to be used for calculation of required 5-year residence is date of application. Id.

Veteran's discharge from draft is not "honorable discharge" within meaning of this act. Op. Atty. Gen., (644), Mar. 24, 1941.

#### 254-87. Laws to be continued in force.

Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. State v. Hoffman, 296NW24.

War veterans serving as first class guards at Stillwater penitentiary on date act became effective were employees with a permanent classified status, and if they were reduced to second and third class guards, with reduction in pay, civil service department has jurisdiction and should reinstate them with lost pay if reduction was for religious or for political reasons. Op. Atty. Gen. (644), Nov. 22, 1939.

### DECISIONS

#### RELATING TO OFFICERS AND EMPLOYEES IN GENERAL

##### 1. In general.

Contracts by state or political subdivisions must contain provision against discrimination on account of race, creed or color in hiring labor. Laws 1941, c. 238.

A public officer or employee appointed pursuant to statutory authority does not have a vested right to continue in his position, and legislature may abolish and modify any civil service or preference rights which it has granted as well as remedies for enforcement of them. Reed v. T., 296NW535. See Dun. Dig. 1619.

##### 6. Wages and salaries.

Officers and employees of municipal corporation who, knowing city's financial straits and the need for retrenchment, have acquiesced in contributions from their salaries to the city by accepting pay checks and signing the payroll, are estopped from subsequently seeking to recover the amounts by which their salaries had been reduced, although the reductions were acted upon by the city by resolution of council, rather than by municipal ordinance. Pratts v. C., 289NW788. See Dun. Dig. 8007.

Unearned compensation of state institutional employees cannot be assigned, and it is not possible to make deductions for insurance premiums from pay roll checks upon written request and authorization by employee. Op. Atty. Gen., (88a-19), Feb. 14, 1940.