

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
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St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

Appendix No. 2

Session Laws

[Annotations to session laws not included in Mason's 1927 Minn. Stats. or the 1940 Supp.]

Laws 1854, c. 36.

Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727. Judgment aff'd 60SCR92. Reh. den., 60SCR135.

Laws 1854, c. 43.

No land owned by the trustees of Hamline University is subject to taxation, i. e., general taxes. Op. Atty. Gen., (414B-4), May 3, 1940.

Land acquired by Hamline University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-6), May 6, 1940.

Laws 1865, c. 30.

Vacancy on school board of Owatonna school district created by special laws is governed by special act and is to be filled by city council. Op. Atty. Gen., (161a-25), March 21, 1940.

Special Laws 1868, c. 30.

84.

Village election in Brownsville should be held on first Tuesday after first Monday in December, in view of Laws 1929, c. 413, §1. Op. Atty. Gen., (472f), Oct. 30, 1939.

Special Laws 1868, c. 36.

Borough of Belle Plaine has power to establish a fire department and make provisions for compensating its firemen and chief, but this must be done by appropriate resolution or ordinance. Op. Atty. Gen., (688J), May 3, 1940.

Candidate for office in borough of Belle Plaine, should be nominated by filing affidavit of candidacy or otherwise as provided by general election law and not as provided in incorporation act. Op. Atty. Gen. (472h), Jan. 9, 1941.

Special Laws 1869, c. 92.

Sauk Center School Dist.

District court has no jurisdiction of a contest of a school district election. Johnson v. D., 294NW839.

Laws 1870, c. 31.

Police civil service act applies to chief of police as well as other officers and employees of police department. Op. Atty. Gen., (785E-1), May 25, 1940.

While act fixes date of annual election, conduct thereof is governed by general election law, and while a candidate for office may withdraw, he is not entitled to refund of the filing fee. Op. Atty. Gen. (911q), Mar. 27, 1941.

Special Laws 1873, c. 51.

Time for school election is fixed by this act, and was not affected by Laws 1939, c. 62, amending §2793. Op. Atty. Gen., (187a-6), Jan. 8, 1940.

Special Laws 1874, c. 9.

Neither village council nor commission should engage a private auditor to audit books and records in reference to municipal light plant, at least in absence of special circumstances. Op. Atty. Gen., (476a-1), Dec. 5, 1939.

Compensation of president and trustees of Village of Blooming Prairie is governed by §1163-1(6). Op. Atty. Gen. (471K), Jan. 2, 1941.

Special Laws 1875, c. 19.

Village of Osseo is authorized to cause a village street to be repaired, paved or improved and charge cost thereof to lots fronting on the improvement, and procedure to be followed should be provided by ordinances. Op. Atty. Gen. (396G-7), Sept. 23, 1940.

Laws 1875, c. 130.

An assessor should have been elected in Heron Lake at Dec., 1938 village election to hold office for a 2-year term expiring first secular day in Jan. 1941, and any vacancies in such office should be filled by appointment by council for balance of any unexpired term. Op. Atty. Gen. (12B-5), Jan. 31, 1941.

84.

Recorder of village of Sauk Rapids is an officer and not an employee, and is entitled to his salary during illness and incapacity, and the council may employ and pay competent person to do his work in his absence. Op. Atty. Gen. (470B), Nov. 9, 1940.

Laws 1876, c. 28.

As affecting necessity for renewal of corporate existence of corporation for mining and smelting ores and for manufacturing iron, copper and other metals, this act was in existence in 1903. Op. Atty. Gen., (92a-9), Jan. 18, 1940.

Special Laws 1877, c. 18.

A city or village may issue bonds for purpose of refunding outstanding bonds which have not matured, if bondholders are willing. Op. Atty. Gen. (44B-12), Jan. 17, 1941.

Special Laws 1878, c. 69.

Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727, Judgment aff'd 60SCR92. Reh. den., 60SCR135.

Special Laws 1878, c. 157.

No emergency power resides in board of education of city of Minneapolis whereby levy limit imposed by charter may be exceeded. Board of Education v. Erickson, 295NW302. See Dun. Dig. 6579.

Laws 1878, c. 155.

Board of Education of Winona may not use regular school funds for purpose of football equipment and supplies, but could probably purchase such supplies from recreational fund pursuant to a program of public recreation and playgrounds. Op. Atty. Gen., (159B-1), May 31, 1940.

Special Laws 1881, c. 8.

A member of village council may not lawfully act as manager of a municipal liquor store, and council is under no obligation to appoint a bookkeeper, and if village recorder is willing to do the work, there is no reason for appointment of any one else, and raising salary of recorder by reason thereof would not constitute violation of law forbidding public officers from being interested in contract. Op. Atty. Gen. (470g), Jan. 15, 1941.

An assessor should have been elected in Heron Lake at Dec. 1938 village election to hold office for a 2-year term expiring first secular day in Jan. 1941, and any vacancies in such office should be filled by appointment by council for balance of any unexpired term. Op. Atty. Gen. (12B-5), Jan. 31, 1941.

Special Laws 1881, c. 27.

In view of Municipalities Emergency Act of 1935, provision requiring letting of contract to lowest responsible bidder is not violated by separate purchase of materials and performance of work by day labor in connection with federal grant. Op. Atty. Gen., (396c-6), Jan. 10, 1940.

Special Laws 1881, c. 376.

Amended. Special Laws 1889, c. 333, 350.

Special Laws 1881, Special Sess., c. 5.

Recorder of village of Sauk Rapids is an officer and not an employee, and is entitled to his salary during illness and incapacity, and the council may employ and pay competent person to do his work in his absence. Op. Atty. Gen. (470B), Nov. 9, 1940.

Special Laws 1887, c. 5.

In absence of any prohibition in city charter, city may lawfully expend public money for rental of quarters for relief agencies of federal government such as W.P.A. and N.Y.A., but cannot expend money for improvement of real estate owned by county. Op. Atty. Gen. (59a-3), Feb. 4, 1941.

Special Laws 1887, c. 27.

Date of annual village election in Litchfield is now governed by Laws 1939, chapter 345, part 11, chapter 2, §8, but offices to be filled thereat are those specified in special acts under which village is organized and operating. Op. Atty. Gen., (472a), Oct. 6, 1939.

Special Laws 1887, c. 315.

Amended. Special Laws 1889, c. 348.

Special Laws 1889, c. 34.

82.

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

Special Laws 1889, c. 40.

Date of annual village election in Litchfield is now governed by Laws 1939, chapter 345, part 11, chapter 2, §8, but offices to be filled thereat are those specified in special acts under which village is organized and operating. Op. Atty. Gen., (472a), Oct. 6, 1939.

Special Laws 1891, c. 45.

City may purchase a diesel unit without advertising for bids. Op. Atty. Gen., (707a-4), Dec. 20, 1939.

Laws 1894, c. 10.

§1087.

Statute seems to require only one publication in official newspaper of ordinances, regulations, resolutions and by-laws, but practical construction might require two publications in a weekly paper. Op. Atty. Gen. (277B-4), Dec. 16, 1940.

Laws 1895, c. 229.

§5.

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

Laws 1895, c. 306.

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

Laws 1903, c. 22.

This act did not validate a charitable trust even with city as trustee. Longcor v. C., 289NW570. See Dun. Dig. 9878.

Laws 1903, c. 382.

Village of Lindstrom may order improvement consisting of oiling streets without petition of property owners, pursuant to this act, but entire procedure provided herein must be followed, including determination of special benefits and making of assessments therefor, in addition to issuance of village order to pay excess of aggregate of assessment. Op. Atty. Gen. (396G-7), June 22, 1940.

Laws 1921, c. 414.

Repealed. Laws 1941, c. 169, except as therein provided.

Laws 1925, c. 392.

§74.

Property owner damaged by flooding caused by construction of dam and receiving satisfaction from the state and executing a release of damages could not recover damages for the same injury from another property owner who constructed the dam. Driessen v. M., 294NW206. See Dun. Dig. 10187.

Laws 1933, c. 213.

§2(b).

Chain store tax statute is unconstitutional. National Tea Co. v. State, 294NW230. See Dun. Dig. 1674, 9140.

Laws 1933-1934, Extra Session, c. 35.

Act was not passed by two-thirds of each house of legislature and is a nullity. State v. Welter, 296NW582. See Dun. Dig. 6899a.

§3.

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

Laws 1937, c. 480.

§1.

Act does not authorize suit against state by one injured in an explosion in a garage where trucks of maintenance department were stored and repaired. Underhill v. S., 294NW643. See Dun. Dig. 8331.

Laws 1937, Ex. Sess., c. 89.

State relief agency upon proper authorization by state executive council may lend property purchased by it from the government to counties operating transient camps. Op. Atty. Gen., (549B), Nov. 17, 1939.

Laws 1939, c. 185 [Repealed].

Repealed see §1152-12(N).

Laws 1939, c. 245.

Homesteads up to \$4000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

Laws 1939, c. 339.

§3.

Ladies of the G.A.R. Home receiving appropriation from the state must comply with requirements as to budget, purchases, etc. Op. Atty. Gen., (640a), Sept. 20, 1939.

§7(B).

Subject to approval of commissioner of conservation, tourist bureau may construct log cabin on capitol grounds. Op. Atty. Gen., (9831), Feb. 19, 1940.

Laws 1939, c. 365.

§1.

Under current appropriation act parole expenses incurred on account of inmates of hospitals for the insane, school for feeble-minded, and colony for epileptics, including compensation of parole agents, are to be paid from current expense fund of the respective institutions. Op. Atty. Gen., (640), Dec. 5, 1939.

§18.

State sanatorium cannot sell telephone equipment at private sale to telephone company, which will install new equipment, and if it did sell the equipment it could not retain the money received and use it to help defray expenses on telephone service to be rendered, authority to sell obsolete and surplus property being in the commissioner of administration, and sale on basis of competitive bids being necessary, and the proceeds thereof would go to general revenue fund of the state. Op. Atty. Gen. (640), Oct. 22, 1940.

Laws 1939, c. 367.

§4.

Aid granted to county based upon anticipated tax delinquencies should be adjusted when actual tax delinquencies are known, and if county in good faith levied an amount which, if collected, would have been sufficient to pay old age assistance according to reasonable estimates available at the time, law is satisfied. Op. Atty. Gen. (521W), Nov. 14, 1940.

Laws 1939, c. 420.

Provisions in act respecting liability on part of state and manner and means of enforcing payment are not so inseparably interwoven as to lead to conclusion that legislature would not have passed one without other, and part dealing with liability can and should be allowed to stand. Westerson v. S., 291NW900.

Whether Laws 1939, c. 420, violates art. 16, §2 of our constitution, as interpreted in State ex rel. Wharton v. Babcock, 181M409, 412, 232NW718, need not be determined, because not essential to decision on demurrer. Id.

Highway fines do not arise under or by virtue of Constitution article 16, and fund created by fines is subject to legislative control and may be used for same purposes for which constitutional fund is devoted, or put to use for some other purpose, such as is provided by Laws 1939, c. 420, relating to ascertainment of damages caused by construction of improvement of trunk highway. Id.

By Laws 1939, c. 420, the state waived its sovereign immunity to suit for damages caused by the location, relocation, construction, reconstruction, improvement, maintenance, and supervision of the trunk highways system to the extent and within the limits therein specified. Id. See Dun. Dig. 8331.

Laws 1939, c. 422.

§14(2).

Appropriation of \$124,000 for "probation" was intended to cover salaries of agents and other expenses incurred in performance of functions of board of parole with respect to rural probation, and also with respect to supervision of paroled inmates of state prison, reformatories for men and women, state training school for boys, and state home school for girls. Op. Atty. Gen., (640), Dec. 5, 1939.

Under current appropriation act parole expenses incurred on account of inmates of hospitals for the insane, school for feeble-minded, and colony for epileptics, including compensation of parole agents, are to be paid from current expense fund of the respective institutions. Id.

Laws 1939, c. 436.

Homesteads up to \$4000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

§12.

Township may not enter into a contract with a firm of physicians for medical needs of a poor family for a term of one year payable in advance. Op. Atty. Gen. (339g-1), Jan. 14, 1941.

Laws 1939, c. 447.

Statement by attorney general of purpose and effect of this proposed amendment. Op. Atty. Gen., (86a-38), Feb. 5, 1940.

If amendment of constitution proposed by this act is adopted, publication will be required in only one qualified newspaper in connection with amendment of home rule charter. Id.

Laws 1941, c. 169.

Art. 2, §9.

Amended. Laws 1941, c. 471.

Art. 6, §6(14).

Amended. Laws 1941, c. 516.

Art. 9, §8.

Amended. Laws 1941, c. 328.

Appendix No. 3

City Charters and Municipal Ordinances

ALBERT LEA.

Charter.

City of Albert Lea has authority to improve Fountain Lake, an unmeasured artificial lake within city limits, issue bonds therefor and sell them to the state. Op. Atty. Gen., (928a-8), Oct. 17, 1939.

City council may adopt an ordinance prohibiting playing of music or making of advertising announcements from aircraft flying over city at low altitude. Op. Atty. Gen. (234a), Nov. 8, 1940.

There is no authority, either in the statutes or charter of city of Albert Lea which would authorize city to spend general tax funds in paying a part of premium on group life insurance. Op. Atty. Gen. (249B-8), Nov. 28, 1940.

ALEXANDRIA.

Charter.

Offices of city justice and city assessor are not incompatible. Op. Atty. Gen., (385d-5), March 25, 1940.

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

In determining last day for filing for municipal office day of election should be counted and day of filing should be excluded and Sundays and holidays may be disregarded, except where day for doing of act falls on Sunday or a holiday. Op. Atty. Gen. (911a-1), Jan. 28, 1941.

C. 5.

§77.

City council may not appropriate money out of general fund towards buying of uniforms for city band. Op. Atty. Gen. (59B-3), Feb. 6, 1941.

§80.

Neither city park board, nor city council could borrow money from a bank and give a note therefore, without vote of electors, and note given by park board is void, but there may be a right in bank to recover from city under implied contract to extent that it has been benefited by money. Op. Atty. Gen., (59a-22), May 22, 1940.

ANOKA.

Charter.

C. 10.

§5.

Permanent improvement warrants do not constitute general obligations of city. Op. Atty. Gen., (59a-49), Feb. 16, 1940.

Ordinance.

No. 202.

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

AUSTIN.

Charter.

C. 6, §2.

Where lands were annexed to city of Austin by resolution adopted by city council of July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen., (59a-1), Sept. 27, 1939.

C. 11.

Board of water, electric, gas and power commissioners of a city cannot enter into a closed shop contract. Op. Atty. Gen., (270), Feb. 28, 1940.

BELLE PLAINE.

Charter.

Borough of Belle Plaine has power to establish a fire department and make provisions for compensating its firemen and chief, but this must be done by appropriate resolution or ordinance. Op. Atty. Gen., (688J), May 3, 1940.

Candidate for office in borough of Belle Plaine, should be nominated by filing affidavit of candidacy or other-

wise as provided by general election law and not as provided in incorporation act. Op. Atty. Gen. (472-h), Jan. 9, 1941.

BEMIDJI.

Charter.

Where city council had knowledge that operator of sewage disposal plant was an honorably discharged veteran when he was employed and where his employment was continuous, he could not be discharged without notice and a hearing, and did not waive right to hearing by filing a new application for appointment each year thereafter, including year when application was rejected. State v. City of Bemidji, 295NW514.

BLOOMING PRAIRIE.

Charter.

Neither village council nor commission should engage a private auditor to audit books and records in reference to municipal light plant, at least in absence of special circumstances. Op. Atty. Gen., (476a-1), Dec. 5, 1939.

BRAINERD.

Charter.

§131.

Sewage disposal plant is a "public utility" which should be operated by water and light board. Op. Atty. Gen., (387G-9), Oct. 27, 1939.

BROWNSVILLE.

Charter.

Village election should be held on first Tuesday after first Monday in December, in view of Laws 1929, c. 413. Op. Atty. Gen., (472f), Oct. 30, 1939.

CLOQUET.

Charter.

§51.

City cannot enter into a contract with a cooperative society in which councilman is a stockholder, and member of board of directors. Op. Atty. Gen., (90e), Jan. 15, 1940.

CROOKSTON.

Charter.

Angle-parking on state truck highways in cities is permissible, only with consent of Highway Commissioner, regardless of charter provision giving city control over city streets. Op. Atty. Gen., (989a-16), Sept. 26, 1939.

DETROIT LAKES.

Charter.

§53.

Provision with respect to compensation for publication is valid. Op. Atty. Gen. (277a-11), Mar. 14, 1941.

Ordinance.

City has no authority to donate money to Red Cross from profits of liquor store. Op. Atty. Gen., (59a-22), Nov. 1, 1939.

DULUTH.

Charter.

Notwithstanding that charter fixes salary of an officer or employee, those persons accepting checks for less than their salary during a financial emergency may be stopped to recover unpaid portion. Pratts v. C., 289NW 788. See Dun. Dig. 8007.

Provision of Corrupt Practices Act requiring filing of expense accounts does not apply to city elections in first class cities. Op. Atty. Gen. (627B-1), Jan. 6, 1941.

§1.

City council has no authority to refund unused portions of licenses voluntarily paid, or to authorize, by ordinance, or otherwise, payment of license fees by installments, in view of §64 (25) of Charter of 1900. Op. Atty. Gen. (59a-27), Sept. 17, 1940.

§81.

Where all eight bids for coal are identical city council may divide the purchases among bidders, if there is no collusion among bidders, but eight identical bids is a suspicious circumstance. Op. Atty. Gen. (707), July 5, 1940.

APPENDIX NO. 3—CITY CHARTERS AND MUNICIPAL ORDINANCES

It is mandatory upon city council to advertise for bids for purchase of coal where amount involves expenditure of more than \$100.00. Id.

EVELETH.

Charter.

City charter sets out no special qualifications for city engineer, but if he is to be placed in responsible charge of preparation of plans or specifications for any public work or public improvement, he must be registered. Op. Atty. Gen., (10a-3), Jan. 8, 1940.

City authorities may furnish water service to churches and charitable institutions at a lesser rate than charged other customers, but may not furnish free water service. Op. Atty. Gen. (624c-11), Feb. 25, 1941.

C. 10.

§90.

Granting unexclusive franchise to power and light company without receiving bids violated this section. Op. Atty. Gen., (707B-2), Feb. 5, 1940.

Ordinance.

City may not recover from innocent purchaser of premises water service charges against former occupant. Id.

EXCELSIOR.

Charter.

Salaries of officials are those fixed by Mason's Stat., §1163-1(7). Op. Atty. Gen., (471K), Sept. 22, 1939.

FAIRMONT.

Charter.

C. IX, §70.

City may by ordinance amend artificial gas franchise so as to permit distribution of natural gas without a vote of electors. Op. Atty. Gen., (624B-3), Oct. 26, 1939.

FERGUS FALLS.

Charter.

Charter may be amended so as to provide for annual payment to city of a franchise tax based on value of properties of water, light, power and building commission. Op. Atty. Gen., (624c-11), Dec. 5, 1939.

Offices of mayor and member of school board of district embracing city are incompatible. Op. Atty. Gen., (358f), Dec. 13, 1939.

§105.

Where commission has established four different rates based on nature of use of electricity, board cannot charge city a higher rate than is charged by the parties for a corresponding service. Op. Atty. Gen., (624c-11), Dec. 5, 1939.

Practice of commission in giving one month's free electric current each year, considered as a portion of the city rate, was not illegal, as failing to establish a uniform rate because some consumers have been out of the city during that month. Op. Atty. Gen. (624c-11), Aug. 27, 1940.

§122.

While mayor still nominates members of police department, he must make nominations from name or names certified to him by police civil service commission, provisions of this section being superseded where inconsistent with police civil service commission act. Op. Atty. Gen., (785E-2), April 20, 1940.

GILBERT.

Ordinance.

Mason's Minn. Stat. 1927, §2616, authorizing requirement from one about to move a building over a street or other public highway of a sum of money, sufficient to cover reasonable expense of removal, held to be a declaration of state law as against which a village ordinance requiring a substantial sum in excess is ultra vires. Moore v. V., 289NW837. See Dun. Dig. 6752, 6753.

HASTINGS.

Charter.

C. 3.

§2:

Charter does not require that an assessor be appointed in March, and city council may adopt an ordinance appointing an assessor and may fix his term of office in April, and if council fails to appoint an assessor present incumbent holds over and continues to exercise duties, until a successor is appointed. Op. Atty. Gen., (12a-3), April 25, 1940.

§5.

City clerk may not be paid additional compensation for work in making out report of city affairs upon request of state public examiner. Op. Atty. Gen., (60), March 1, 1940.

HERON LAKE.

Charter.

Independent school district No. 1 was established by special act, and time for school election is fixed by Special Laws 1873, c. 51, and was not affected by Laws 1939, c. 62, amending §2793. Op. Atty. Gen., (187a-6), Jan. 8, 1940.

A member of village council may not lawfully act as manager of a municipal liquor store, and council is under no obligation to appoint a bookkeeper, and if village recorder is willing to do the work, there is no reason for appointment of any one else, and raising salary of recorder by reason thereof would not constitute violation of law forbidding public officers from being interested in contract. Op. Atty. Gen. (470g), Jan. 15, 1941.

An assessor should have been elected in Heron Lake at Dec. 1938 village election to hold office for a 2-year term expiring first secular day in Jan. 1941, and any vacancies in such office should be filled by appointment by council for balance of any unexpired term. Op. Atty. Gen. (12B-5), Jan. 31, 1941.

HIBBING.

Charter.

Tax collected under Laws 1935, c. 192, may not be used for purpose of purchasing fire fighting equipment for fire department. Op. Atty. Gen. (198B-10(c)), Jan. 14, 1941.

HUTCHINSON.

Charter.

City may not lawfully purchase an automobile truck on an installment lease contract, though conditional sale contracts have been sustained where payment was not made out of proceeds of a tax levy. Op. Atty. Gen., (476a-6), Jan. 19, 1940.

Where home rule charter provides for selection of nominees at a primary city election but fails to provide for filling vacancies in such nominations, general law applies and person receiving next highest vote at primary automatically moves up and becomes candidate. Op. Atty. Gen., (186E), May 3, 1940.

JACKSON.

Charter.

§11.

Justices of the peace are state officers and their courts are state courts and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 288NW845. See Dun. Dig. 8011.

§13.

Employee of Rural Electrification Association receiving straight salary may be elected to office of city councilman, though city and association are parties to a contract. Op. Atty. Gen., (90e), March 18, 1940.

JANESVILLE.

Charter.

A city or village may issue bonds for purpose of refunding outstanding bonds which have not matured, if bondholders are willing. Op. Atty. Gen. (44B-12), Jan. 17, 1941.

LAKE CITY.

Charter.

City having accepted and used bathing beach for the public benefit could pay balance thereof due on notes executed by city, and release guarantors on the notes, which ran to the city and not to the payees of the notes. Op. Atty. Gen., (59a-22), Dec. 6, 1939.

Under city ordinance authorizing hospital board to operate hospital "for the practice of medicine and surgery", chiropractors and osteopaths may use hospital within limitations of their practice in absence of any rule or regulation to the contrary by the board. Op. Atty. Gen., (1001a), March 26, 1940.

LE SUEUR.

Charter.

City may purchase a diesel unit without advertising for bids. Op. Atty. Gen., (707a-4), Dec. 20, 1939.

LITCHFIELD.

Charter.

Date of annual village election in Litchfield is now governed by Laws 1939, chapter 345, part 11, chapter 2, §8, but offices to be filled thereat are those specified in special acts under which village is organized and operating. Op. Atty. Gen., (472a), Oct. 6, 1939.

LUVERNE.

Charter.

If city is not required to advertise for bids, it may accept a bid which is not in compliance with specifications. Op. Atty. Gen., (707a-4), Oct. 9, 1939.

Statute seems to require only one publication in official newspaper of ordinances, regulations, resolutions and by-laws, but practical construction might require

two publications in a weekly paper. Op. Atty. Gen. (277B-4), Dec. 16, 1940.

MANKATO.

Charter.

City may not fix prices in service trade where there is no express statute or charter provision as basis for exercise thereof. Op. Atty. Gen. (62c), Aug. 27, 1940.

C. 7.

§60(7).

Building code ordinance may not be passed by reference thereto rather than by publishing entire ordinance. Op. Atty. Gen., (59a-32), Jan. 24, 1940.

An ordinance, such as a large building code, may not be published by reference thereto, but it may be printed in smaller type in a special page insert in newspaper. Op. Atty. Gen., (59a-9), April 23, 1940.

C. 8, §69.

City council may appropriate funds to library board for purpose of constructing an addition to library building to house county historical society, though it has attempted to convey land to trustees of library. Op. Atty. Gen., (285a), Oct. 6, 1939.

MINNEAPOLIS.

Charter.

Judicial notice can be taken that Mississippi River at Minneapolis is a navigable stream, and that city cannot use public money to alter railroad bridges to make it possible for river traffic to ply the stream following improvements made by federal government, it being the legally enforceable and uncompensable duty of railroad to alter structure pursuant to command under the police power. *Bybee v. C.*, 292NW617. See Dun. Dig. 6944.

Certiorari in district court to review order of a civil service commission demoting superintendent of fire prevention bureau of Minneapolis Fire Department was not "an action" within meaning of §9498(1), and decision of court affirming action of the commission was "a final order, affecting a substantial right, made in a special proceeding" within §9498(7), and appeal therefrom must be taken within 30 days after service of written notice under §9497, and it is not contemplated that any judgment be entered in the certiorari proceeding. *Johnson v. C.*, 295NW406.

Board of education may not make compulsory assessments against school pupils to create a fund called a "laboratory fee" to supply pupils with things which are not usually purchased with school funds, but such a fund may be established through voluntary contributions. Op. Atty. Gen. (169), June 6, 1940.

C. 1.

1.

City of Minneapolis has power to lease land lawfully acquired for purposes of a river terminal, but thereafter found unnecessary for use as a part of public terminal facilities, it appearing that lease is adaptable to profitable private use in aid of and ancillary to public terminal, without interference with its efficient operation. *Penn-O-Tex Oil Co. v. C.*, 291NW131. See Dun. Dig. 6693.

C. 2.

§7.

Municipal primary election in Minneapolis should be held on second Monday in May, 1941, as provided by local charter, and not 7 weeks before Minneapolis city election as provided by state law. Op. Atty. Gen. (186E), Jan. 6, 1941.

C. 3.

§22.

Where city council on death of city treasurer is unable to agree on appointment of any person as city treasurer, charter is broad enough to authorize council to appoint an assistant city treasurer and vest such person with all powers and authority of a city treasurer. Op. Atty. Gen., (63a-1), Jan. 19, 1940.

C. 15.

§1.

Alderman who, as chairman of ways and means committee of city council, served as an ex-officio member of board of estimate and taxation of city of Minneapolis, is entitled to compensation for his services on board at full rate prescribed by 1931 Act up to maximum of \$500 per year, notwithstanding that compensation of aldermen has been increased to \$2400. Op. Atty. Gen. (63a-2), Nov. 6, 1940.

C. 18.

It is impossible for any territory to become a part of school district for Minneapolis without being annexed to that city for all purposes. Op. Atty. Gen. (59a-42), Oct. 10, 1940.

§6.

No emergency power resides in board of education of city of Minneapolis whereby levy limit imposed by charter may be exceeded. *Board of Education v. Erickson*, 295NW302. See Dun. Dig. 6579.

Ordinance.

Cutting off and cleaning out roots clogging tile connecting the house sewage system with city sewer by use of an electrically powered cutting device, involving no change or disturbance of tile or change or addition to structure thereof, are not "repairs" within the meaning of the plumbing ordinance, requiring license for such work. *State v. Gottstein*, 288NW221. See Dun. Dig. 6794.

One who bought property long after it was placed in light industrial zone could not install machinery and conduct a bag cleaning industry because at one time building had been used as a macaroni factory. *State v. Miller*, 288NW713. See Dun. Dig. 6525.

Complaint, charging defendant with conducting a bag cleaning industry in light industrial zone of city where such industry is prohibited by a duly enacted zoning ordinance, states a public offense. *Id.*

Exclusion of the bag cleaning industry from light industrial zone cannot be held unreasonable, arbitrary or discriminatory or violative of constitution. *Id.*

An excavating land owner cannot recover from the owner of adjoining burdened land sums expended by the former to brace and shore the latter's property when the expenditures were made voluntarily even though excavation could not be safely carried on without such precautions and the owner of the burdened land refused to provide necessary protection. *Braun v. H.*, 206Minn572, 289NW553, 129ALR618. See Dun. Dig. 96.

Conviction of disorderly conduct was sustained by evidence of indecent exposure. *State v. Mitchell*, 290NW222. See Dun. Dig. 2751a.

Ordinance for parking meters does not contemplate illegal appropriation of public funds because meters are to be paid for only from receipts. *Hendricks v. C.*, 290NW428.

Evidence held to sustain conviction for sale of liquor without a license in violation of city ordinance. *State v. Russell*, 296NW575.

MOORHEAD.

Charter.

Whether alderman leasing a building in another ward and moving his family there and leasing out his own home for 9 months, reserving a room therein for storage of his household goods, has changed his residence is a question of fact. Op. Atty. Gen. (63a-1), Nov. 4, 1940.

NASHWAUK.

Charter.

A primary election should be held in advance of village election in Nashwauk. Op. Atty. Gen., (186E), Oct. 27, 1939.

NEW ULM.

Charter.

City may not adopt and enforce a plan whereby it contracts for a group insurance policy covering all its employees and deduct from salary or wages sum required to pay premium, but this may be done for benefit of all employees consenting thereto. Op. Atty. Gen., (249B-9), Feb. 14, 1940.

§181.

Two mill tax authorized to be levied for municipal bond purposes may be levied over and above, and in addition to, 25 mill levy limitation set out in city charter. Op. Atty. Gen. (519h), Mar. 19, 1941.

§222.

A sewage disposal plant is a "utility" within this section, but a swimming pool and bath house are not. Op. Atty. Gen. (59B-11), Aug. 14, 1940.

Ordinance.

No. 160.

Provision requiring licensees under "beer bill" to furnish a \$1000 bond is valid. Op. Atty. Gen. (217C), Jan. 9, 1941.

Liquor Ordinance.

Provision in a liquor ordinance that "all requirements and provisions of the state laws concerning sale of intoxicating liquors are hereby incorporated into and made a part of this ordinance" is valid. Op. Atty. Gen., (62a), Feb. 1, 1940.

NEW YORK MILLS VILLAGE.

Village councilmen of New York Mills attending court in defense of action against village are not entitled to reimbursement for expenses, though they are eligible to receive witness fees and mileage outside of village. Op. Atty. Gen., (469a-8), Jan. 4, 1940.

NORTHFIELD.

Charter.

Library funds may be invested in special improvement certificates of the city. Op. Atty. Gen. (285), Oct. 11, 1940.

C. 3.

§15.

City treasurer as agent for fire insurance company would violate section by renewing old policy. Op. Atty. Gen., (90c-3), March 19, 1940.

APPENDIX NO. 3—CITY CHARTERS AND MUNICIPAL ORDINANCES

ORTONVILLE.

Charter.

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

OSSEO.

Charter.

Village of Osseo is authorized to cause a village street to be repaired, paved or improved and charge cost thereof to lots fronting on the improvement, and procedure to be followed should be provided by ordinances. Op. Atty. Gen. (396G-7), Sept. 23, 1940.

OWATONNA.

Charter.

Vacancy on school board of Owatonna school district created by special laws is governed by special act and is to be filled by city council. Op. Atty. Gen., (161a-25), March 21, 1940.

Ordinance prohibiting transfer of licenses is not inconsistent with state liquor law, and on sale of exclusive, liquor store business council has no authority to transfer license to purchaser, and cannot grant a license for unexpired term without a license fee. Op. Atty. Gen. (218G-10), Sept. 13, 1940.

C. III, §12.

Council may not fix compensation of city attorney at a nominal salary and an undetermined reasonable fee for unusual or unexpected work or services, but may fix a salary at a definite sum for routine work and a definite schedule for extraordinary services. Op. Atty. Gen., (59a-5), Dec. 12, 1939.

C. V.

§12.

In absence of any other provision authorizing transfer of moneys from one fund to another, this section is controlling. Op. Atty. Gen. (59a-22), Jan. 28, 1941.

C. XI, §3.

Op. Atty. Gen., (59a-5), Dec. 12, 1939; note under chapter III, §12.

PERHAM.

Charter.

Laws 1933-1934, c. 35, Ex. Sess., establishing a municipal court, was not passed by a two-thirds vote of each house of legislature and is a nullity. State v. Welter, 296NW582.

Municipal court.

Judge of municipal court need not be an attorney at law and legislature cannot so require. State v. Welter, 293NW914.

RED WING.

Charter.

Provisions of will and deed of trustee conveying auditorium to city of Red Wing created a gift on condition and not a charitable trust. Longcor v. C., 289NW570. See Dun. Dig. 9378.

Payment of members of the police department and fire department while on sick leave depends upon question whether particular member is an officer or an employee, officers being entitled to pay on sick leave while employees are not. Op. Atty. Gen. (785), July 19, 1940.

RICHMOND.

Ordinance.

No. 45.

Village ordinance requiring all places licensed to sell nonintoxicating malt liquors to close their stores between 1 a.m. and 6 a.m. is valid. Op. Atty. Gen. (218-3), Mar. 28, 1941.

ROBBINSDALE.

Charter.

§89.

Any newspaper of general circulation in city may be designated as official newspaper and, as such, is qualified to carry any public notice required by charter of any ordinance of city. Op. Atty. Gen. (314B-7), Oct. 16, 1940.

ROCHESTER.

Charter.

There is no authorization or requirement that a primary election be held for positions on school board, notwithstanding that school district holds its election at same time as city election, using same judges and clerks of election. Op. Atty. Gen., (187a-6), Jan. 17, 1940.

Board of Education of special school district of Rochester may contract with city aldermen for insurance. Op. Atty. Gen. (90c-5), Aug. 23, 1940.

§163(1).

Common council may transfer monies from general fund to park improvement fund. Op. Atty. Gen., (59a-22), May 2, 1940.

ST. PAUL.

Charter.

Civil service in Ramsey County and duties of city civil service bureau. Laws 1941, c. 513.

Contract of a teacher whose tenure rights have matured under Minn. Laws 1927, c. 36, 1 Mason's Minn. Stat. 1927, §§2935-1 to 2935-14, is subject to the legislative power of city council of St. Paul of amendment in respect to compensation. Doyle v. C., 289NW784, 785. Aff'd 60SCR1102.

An ordinance of city of St. Paul under which city officers employ city employees in trimming trees along telephone and electric power lines and charge expense thereof to utilities involved is within powers conferred by the welfare clause of city charter. Erny v. C., 290NW 427.

A school teacher unlawfully dismissed because she was married could not recover compensation for period during which she performed no service where she acquiesced by inaction during period of unemployment. Shinnery v. C., 292NW620. See Dun. Dig. 8638b.

C. 9.

§4.

Bonds issued for cost of a sewage disposal plant under Laws 1933, c. 341, §18a, must be taken into consideration in determining aggregate outstanding bonded indebtedness in connection with a proposal to issue bonds for construction of a trunk sewer, unless such trunk sewer may properly be considered a part of the sewage disposal plant. Op. Atty. Gen. (36c-8), Sept. 13, 1940.

§315.

General election law regulating the purchase of voting machines controls over city charter, and city of St. Paul could purchase voting machines under a contract to pay 10 annual installments. Rice v. C., 295NW529. See Dun. Dig. 6707.

Ordinance.

No. 7084.

Contract of a teacher whose tenure rights have matured under Minn. Laws 1927, c. 36, 1 Mason's Stat. 1927, §§2935-1 to 2935-14, is subject to the legislative power of city council of St. Paul of amendment in respect to compensation. Doyle v. C., 289NW784, 785. Aff'd 60SCR1102.

No. 7423.

Contract of a teacher whose tenure rights have matured under Minn. Laws 1927, c. 36, 1 Mason's Stat. 1927, §§2935-1 to 2935-14, is subject to the legislative power of city council of St. Paul of amendment in respect to compensation. Doyle v. C., 289NW784, 785. Aff'd 60SCR1102.

ST. PETER.

Ordinance.

No. 126.

Whether hospital created by city under ordinances is subject to unemployment compensation act is a question of fact. Op. Atty. Gen., (885d-7), Feb. 29, 1940.

SAUK RAPIDS.

Charter.

Village recorder is an officer and not an employee and is entitled to his salary during illness and incapacity, and Council may employ any competent person to perform his ministerial and routine duties. Op. Atty. Gen. (470B), Nov. 9, 1940.

SLEEPY EYE.

Charter.

C. 3.

§6.

Where mayor appointed a city attorney and council failed to approve appointment, old city attorney continues to hold office, and mayor may not appoint a city attorney to act from month to month, and there is no action that city council may take to force mayor to make appointment. Op. Atty. Gen., (59a-5), April 16, 1940.

Ordinance.

Ordinance limiting speed of trains to 6 miles per hour is valid. Lang v. C., 295NW57. See Dun. Dig. 8180.

SO. ST. PAUL.

Charter.

City desiring to use only natural gas as a fuel in operation of sewage disposal plant must call for bids though there is only one company in vicinity able to furnish such gas, but city council may award contract to one bidder. Op. Atty. Gen., (707a-4), March 18, 1940.

City has no authority to contribute to payment of premium upon policies of group health and accident insurance covering members of police and fire departments. Op. Atty. Gen., (59a-25), April 23, 1940.

Ordinance (Disposal Plant).

§8.

Member of South St. Paul Sewage Disposal Plant Commission cannot enter into contract with commission for purchase of supplies from his store. Op. Atty. Gen. (90e-5), Aug. 21, 1940.

STILLWATER.

Charter.

§5.

In absence of any charter or statute requirement to contrary, it is not necessary for a city to advertise for bids for sale of real estate belonging to municipality. Op. Atty. Gen. (59a-40), Sept. 23, 1940.

Article XI, §231.

A purchaser of land takes it free of assessment for improvements made by city while state was owner of land if assessment was made before purchase, but subject to assessment for improvements made while land was owned by state if such assessment was not finally confirmed and established until after purchase. Op. Atty. Gen. (412a-26), Dec. 2, 1939.

§272.

Installation of parking meters without any cost or obligation to city except that seller would take 60 per cent of receipts until agreed purchase price is paid, would constitute a "contract" for purchase of "commodity" and city must advertise for bids. Op. Atty. Gen. (707a-4), Nov. 19, 1940.

§317.

Resolution vacating streets must be passed by a vote of all of the members of the council and not all votes of members present at meeting. Op. Atty. Gen. (396c-18), Dec. 6, 1940.

§346.

Where a tenant occupies a dwelling house and there are no arrears in water rent, water board may not at instance of landlord turn off water over objection of tenant, unless it has reasonable grounds for believing that tenant will work a malicious damage to the premises. Op. Atty. Gen., (624d-3), Sept. 27, 1939.

TWO HARBORS.

Charter.

City has no authority to purchase uniforms for a private organization which has contracted to render concerts for the public. Op. Atty. Gen., (59B-3), April 26, 1940.

In absence of any charter provisions prohibiting it, city council may enter into contract with a person to reassess property in city for agreed compensation. Op. Atty. Gen. (12a), Feb. 4, 1941.

§4.

Board of Equalization is entitled to per diem from first Monday in June until Friday preceding first Monday in July, and can receive no further compensation because required to remain in session after that time to hear complaints. Op. Atty. Gen. (406c), Aug. 22, 1940.

VIRGINIA.

Charter.

Where a primary city election is held January 23, and a general city election on February 6, voters may be registered during 20 days preceding primary election for purpose of voting at general city election, provided they are registered in such a manner that they do not appear qualified to vote at primary election. Op. Atty. Gen., (183q), Dec. 15, 1939, overruling Op. Atty. Gen., (183q), Nov. 22, 1939.

§82.

A resolution awarding a contract for publication of council's proceedings in a sum exceeding \$100 requires a two-thirds vote of all members of city council. Op. Atty. Gen. (277B-1), Jan. 18, 1941.

§83.

Two-third vote of council is necessary for passage of a resolution for purchase of insurance. Op. Atty. Gen. (59a-25), Dec. 3, 1940.

Ordinance.

No. 165.

§4.

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

WABASHA.

Charter.

This charter makes no provision for appointment of a deputy assessor, general statutes must be looked to for authority, under which payment of a salary is discretionary with city council. Op. Atty. Gen. (12E), June 26, 1940.

§15.

Vacancy in office of alderman may be filled by a majority of a quorum present at meeting, and appointment need not be by resolution. Op. Atty. Gen., (63a-1), Jan. 3, 1940.

WASECA.

Charter.

C. II.

§3.

In view of amendment changing date of annual election from first Tuesday to first Monday in April, words "second Tuesday in April" should be construed as meaning "second Monday in April." Op. Atty. Gen. (64f), Mar. 24, 1941.

C. III.

§1.

In view of amendment changing date of annual election from first Tuesday to first Monday in April, words "second Tuesday in April" should be construed as meaning "second Monday in April." Op. Atty. Gen. (64f), Mar. 24, 1941.

§8.

In view of amendment changing date of annual election from first Tuesday to first Monday in April, words "second Tuesday in April" should be construed as meaning "second Monday in April." Op. Atty. Gen. (64f), Mar. 24, 1941.

C. IV, §1.

A resolution creating a civil service commission must be approved by the mayor. Op. Atty. Gen., (785E-1), Nov. 7, 1939.

Though duty of mayor in countersigning warrants drawn and authorized by council is perhaps more of a ministerial task than a discretionary one, he is justified in refusing to sign warrants if he has actual notice that ultimate recipients of a part of proceeds are indirectly interested in contract and are officers of the city. Id.

In absence of any provision requiring mayor to approve or affix his signature to a 3.2 non-intoxicating malt liquor license, it is duty of city clerk to issue license when granted by city council. Op. Atty. Gen. (217-B-4), July 18, 1940.

C. V, §19.

Though duty of mayor in countersigning warrants drawn and authorized by council is perhaps more of a ministerial task than a discretionary one, he is justified in refusing to sign warrants if he has actual notice that ultimate recipients of a part of proceeds are indirectly interested in contract and are officers of the city. Op. Atty. Gen., (785E-1), Nov. 7, 1939.

C. XI.

§1.

Where term of office of commissioner expired Dec. 31, term of one appointed Feb. 1, was for 3 years commencing Jan. 1. Op. Atty. Gen. (63B-17), Mar. 3, 1941.

Ordinance.

City ordinance requiring hawkers and peddlers taking orders for future delivery to have a license and pay a tax imposed an unlawful burden upon interstate commerce, as applied to local agent with local business receiving goods from employer in another state. City of Waseca v. B., 288NW229. See Dun. Dig. 4895.

Clause "for consumption off the premises," refers to particular place that applicant had leased on fair grounds as a concession and not the entire fair grounds. Op. Atty. Gen. (217-B-4), July 18, 1940.

An exclusive liquor store as defined by city ordinance could not sell non-intoxicating malt beverages without obtaining a non-intoxicating malt liquor license. Op. Atty. Gen. (218g-13), Mar. 3, 1941.

WATERVILLE.

Charter.

Police civil service act applies to chief of police as well as other officers and employees of police department. Op. Atty. Gen., (785E-1), May 25, 1940.

WEST ST. PAUL.

Charter.

Soldiers' Preference Act is without application to position of city attorney. Op. Atty. Gen. (85a), Dec. 31, 1940.

Owing to peculiar features of charter, management of schools is vested in city council and school board members are not members of that council, and awarding of contract by council for publication of school proceedings to a newspaper in which a member of school board has a financial interest is not violation of statute prohibiting a member of a school board from entering into a contract with district. Op. Atty. Gen. (90E), Jan. 4, 1941.

§31.

Penalty attaches only when installment remains unpaid on October 1 of each year. Op. Atty. Gen. (408c), June 18, 1940.

C. II.

§2.

Power to appoint certain city officers, including city attorney, is in common council, consisting of 7 aldermen, and mayor has no authority to veto council's appointment of city attorney. Op. Atty. Gen. (61J), Jan. 14, 1941.

WHITE BEAR LAKE.

Charter.

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

WILLMAR.

Charter.

Names of candidates on primary ballot of a city should be alphabetically arranged, unless otherwise provided by city charter. Op. Atty. Gen. (28B-2), Mar. 15, 1941.

WINDOM.

Charter.

§71.

City council may not pass ordinance granting natural gas company a franchise for a longer period than 10 years. Op. Atty. Gen., (624B-1), Sept. 26, 1939.

WINONA.

Charter.

Board of Education of Winona may not use regular school funds for purpose of football equipment and supplies, but could probably purchase such supplies from recreational fund pursuant to a program of public recreation and playgrounds. Op. Atty. Gen., (159B-1), May 31, 1940.

In absence of any prohibition in city charter, city may lawfully expend public money for rental of quarters for relief agencies of federal government such as W.P.A. and N.Y.A., but cannot expend money for improvement of real estate owned by county. Op. Atty. Gen. (59a-3), Feb. 4, 1941.

C. 4, §15.

City may lease for a reasonable time a building which is no longer needed for any public purpose. Op. Atty. Gen., (59a-40), Sept. 23, 1939.

Appendix No. 4 Court Rules

SUPREME COURT OF MINNESOTA

RULE II

Title of Cause—Certiorari and Mandamus

Trial of all cases under review shall be as in court below, including cases brought up on alternative writs of mandamus. *Sworski v. S.*, 295NW62. See Dun. Dig. 401.

RULE IV

Appellant to File Essential Parts of the Original Record Ten Days Before, Etc.

Where defendant's attorneys appealing from an order continuing in effect a temporary restraining order did not cause affidavit of plaintiff to be transmitted to supreme court because of belief that it was not filed, supreme court will consider the affidavit where trial judge endorsed thereupon a certificate that it was considered by him on hearing but that clerk had failed to file it. *McFadden Lambert Co. v. W.*, 296NW18. See Dun. Dig. 339.

Burden is upon appellant to cause clerk of court below to transmit files to supreme court prior to date set for hearing of an appeal, and court is entitled to all files deemed needful pending appeal, and is not restricted to that part which appellant has requested clerk below to transmit. *Id.* See Dun. Dig. 341.

RULE VIII

Printing, Service and Filing Records and Brief—Penalty

Argument should be in body of brief rather than in portion relating to assignment of errors. *Ness v. F.*, 292NW196. See Dun. Dig. 353.

Where there has been a general appearance by defendant below, it is improper to include summons in printed record on appeal. *Rigby v. N.*, 292NW751. See Dun. Dig. 353.

(3)(d).

An omnibus assignment of error against findings of fact consisting of several separately numbered paragraphs is not good. *Holzgraver v. S.*, 289NW881. See Dun. Dig. 361.

Where findings of fact consist of distinct numbered paragraphs, appellant, if desiring to challenge any find-

ing as not supported by the evidence, should designate the paragraph or parts of paragraph so challenged by an assignment of error. *Id.* See Dun. Dig. 361.

Errors not properly assigned under this rule were considered where appellant was represented by nonresident counsel unfamiliar with our practice. *Bishop v. L.*, 291NW297. See Dun. Dig. 353.

(3)(e).

Where appellant's brief made subdivisions of arguments, but did not precede each subdivision with a separate statement of proposition urged in what followed, statutory costs were denied, though judgment was reversed. *Liptak v. K.*, 293NW612. See Dun. Dig. 5964.

RULE XV

Costs and Disbursements—Prevailing Party

Where woman obtaining divorce was awarded \$650.00 as expense money to procure transcript and pay for necessary printing in presentation of her case on appeal, and there was much needless printing in record that easily could have been avoided in view of narrow issues properly brought up, no statutory costs or disbursements were allowed on appeal. *Burke v. B.*, 292NW426. See Dun. Dig. 2238.

RULE XXIV

Discipline of Attorneys

When personal service has been made upon accused and he defaults, an order of discipline will be entered upon assumption that he is guilty as charged. *Turnquist*, 287NW795. See Dun. Dig. 679a.

Supreme court will decide matter on findings of referee where no settled case has been provided. *Gennow*, 289NW887. See Dun. Dig. 343.

Where charges are made against attorney and he interposes an answer but withdraws it, case stands for determination as upon default as if allegations were admitted. *McCabe*, 295NW906. See Dun. Dig. 679a.

In proceeding for disbarment, when personal service has been made upon accused attorney and he defaults, an order of discipline will be entered upon assumption that he is guilty as charged. *Petri*, 296NW10. See Dun. Dig. 679a.

DISTRICT COURTS OF MINNESOTA

PART I.—GENERAL RULES

RULE 29.

Venue—Change

Where a change of venue will result in continuing a case over a regular term of the district court and there is no explanation of a delay of 2 months in making motion it is not an abuse of discretion to deny it. *Sworski v. S.*, 295NW62. See Dun. Dig. 10126.

PART II.—REGISTRATION OF LAND TITLES

Judge Cameron of the 7th Judicial District expresses the opinion, in a letter to the publisher, that the rules of the 7th District relating to the registration of land titles adopted April 20th, 1911, have been superseded by the general rules adopted by the District Judges of the State on July 10th, 1928, and amended July 5th and 6th, 1932, pg. 1758 of 1940 Supp. and that the general rules thus adopted have been followed in all of the counties of the 7th District except Stearns County, which follows the 1911 rules.

SPECIAL RULES APPLICABLE TO PARTICULAR DISTRICTS

SEVENTH JUDICIAL DISTRICT

Judge Cameron of the 7th Judicial District expresses the opinion, in a letter to the publisher, that the rules of the 7th District relating to the registration of land titles adopted April 20th, 1911, have been superseded by the general rules adopted by District Judges of the State on July 10th, 1928, and amended July 6th and 6th, 1932, pg. 1758 of 1940 Supp., and that the general rules thus adopted have been followed in all of the counties of the 7th District except Stearns County, which follows the 1911 rules.

EIGHTH JUDICIAL DISTRICT

(Carver, Le Sueur, McLeod, Scott and Sibley counties.)

The following rules were adopted and approved Dec. 27, 1939.

TERMS OF COURT

GENERAL TERMS

LE SUEUR COUNTY—

- 3rd Monday in April
- 3rd Monday in September

CARVER COUNTY—

- 1st Monday in March
- 2nd Monday in October

SCOTT COUNTY—

- 4th Monday in March
- 4th Monday in October

McLEOD COUNTY—

- 2nd Monday in May
- 2nd Monday in November

SIBLEY COUNTY—

- 1st Monday in June
- 1st Monday in December

SPECIAL TERMS

SCOTT COUNTY at SHAKOPEE—

- 2nd Monday in January
- 3rd Monday in June

McLEOD COUNTY at GLENCOE—

- 3rd Monday in January
- 4th Monday in June

LE SUEUR COUNTY at LE CENTER—

- 4th Monday in January
- 1st Monday in July

CARVER COUNTY at CHASKA—

- 1st Monday in February
- 2nd Monday in July

SIBLEY COUNTY at GAYLORD—

- 2nd Monday in February
- 3rd Monday in July

EXTRA SPECIAL TERMS FOR THE HEARING OF ALL MATTERS EXCEPT ISSUES OF FACT

CARVER COUNTY at CHASKA—

- 1st Saturday of each month

McLEOD COUNTY at GLENCOE—

- 2nd Saturday of each month

LE SUEUR COUNTY at LE CENTER—

- 3rd Saturday of each month

SIBLEY COUNTY at GAYLORD—

- 4th Saturday of each month

SCOTT COUNTY at SHAKOPEE—

- 5th Saturday of each month, if any

RULE 1.

Trial of cases. All Court and jury cases are set for trial on the first day of the General Term. The trial

of all Jury cases shall begin on the third day of a General Term of Court, and the trial of Court cases shall immediately follow the completion of the trial of all Jury cases. Trial of all cases begins at 10:00 o'clock A.M.

RULE 2.

Call of calendar. The call of the Calendar shall be had at the hour of ten o'clock A.M. on the opening day of each General and Special Term. There shall be a preliminary and a final call of the cases. On the preliminary call, counsel shall announce the nature of the disposition to be made of the case including motions to dismiss, strike, change the order on the calendar or such other motions as are proper to be noticed at said time. On the final call of the Calendar all motions and requests shall be disposed of by the Court in the order made on the preliminary call. All calendars shall be printed.

RULE 3.

Filing of pleadings. This Court deems the timely filing of pleadings an essential factor to the prompt and proper trial of cases. And mindful of the provision of Section 9244 of Mason's Minnesota Statutes for 1927, this Court directs that at least seven days before the term all pleadings shall be filed with the Clerk.

RULE 4.

Out of term trials. No action will be tried out of term unless in extraordinary situations. This rule may be relaxed in favor of attorneys from without the District.

RULE 5.

1. All exhibits introduced in evidence upon the trial of a cause shall, after being marked for identification by the court reporter, be delivered to the clerk, who shall file the same.

2. Models, diagrams, and exhibits of material forming a part of the evidence in any case pending or tried in this court shall, after being marked for identification, be placed in the custody of the clerk.

3. All models, diagrams, and exhibits of material placed in the custody of the clerk shall be taken away by the parties within seven months after the case is decided, unless an appeal is taken. In all cases in which an appeal is taken they shall be taken away within 30 days after the filing and recording of the mandate of the appellate court.

4. When models, diagrams, and exhibits of materials placed in the custody of the clerk and not taken away within the time specified in paragraph 3 of this rule, it shall be the duty of the clerk to notify counsel in the case, by mail or otherwise, of the requirements of this rule, and, if the articles are not removed within 30 days after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

RULE 6.

Stay of proceedings. Upon the filing of a verdict or a decision, the Court or Referee may order a stay of all proceedings for a period not to exceed 40 days, provided that within 20 days the moving party shall order from the reporter a transcript of the evidence, unless a motion is made on the minutes of the Court.

The Court Reporter shall, upon receiving an order for such transcript, immediately notify the Clerk of the receipt of such order and upon such notice to the Clerk a further stay of all proceedings shall be in effect until 30 days after said Reporter notifies the Clerk and requesting party in writing that such transcript has been completed and is ready for delivery. It shall be the duty of said Reporter to transcribe and prepare transcripts of evidence, taken in all trials

and proceedings, in the order requested and with reasonable dispatch.

Within said 30 days said requesting party shall bring on for hearing before the Court such motion or proceedings as it deems advisable and necessary preparatory to an appeal to the Supreme Court. Provided, however, in extraordinary cases, said 30-day period may be extended by application of either party to the Court. Upon submission of such motion or proceeding to the Court all proceedings shall be stayed up to and including the filing of the decision by the Court. The foregoing provisions apply to civil proceedings only.

NOTE. Neither the District or Supreme Court can give a party the right to appeal after the time for appeal, prescribed by the Statute, has expired. 53-431.

RULE 7.

Special term calendar. In each county in the district, the Clerk of Court shall keep a special term calendar on which he shall enter all actions or proceedings noticed for such special term according to the date of issue or service of motion. Notes of issue of all matters to be heard at a special term shall be filed with the Clerk one (1) day before the term. This rule shall not apply to cases noticed for a general term or continued for trial to a special term which shall be placed on the special term calendar without further notice.

RULE 8.

Sureties on bond. Recognizance or undertaking—affidavits of—Every personal bond or undertaking required by the statute in any Court proceedings of this Court, before same is submitted for approval to either the Judge, Clerk of the District Court, Sheriff or any Court Commissioner, shall be accompanied by an affidavit to be attached to such bond stating the full name, residence, and post office address of each surety; also setting forth the legal description of all real property owned by such surety and specifying as to each parcel thereof its fair market value, what liens or encumbrances, if any, exist thereon, and whether or not the same is his homestead or is otherwise exempt from execution and whether he is a surety upon other bond, recognizance or undertaking and the extent of the stated obligation under such bond, recognizance or undertaking.

RULE 9.

Filing papers. (a) All affidavits, notices and other papers designed to be used in any cause, shall be filed with the clerk prior to the hearing of the cause unless otherwise directed by the Court.

(b) All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall be filed forthwith in the office of the clerk. Orders required to be served shall be so filed within three days after the service thereof, and, unless seasonably served and filed may be vacated.

(c) All orders and findings, whether prepared by the judge or by counsel by direction of the judge, shall be typewritten in manifold and when the original is filed a copy shall be furnished to each attorney or firm of attorneys appearing in the case. The observance of this rule shall not be deemed a substitute for statutory notice of the filing of a decision or order.

(d) No papers on file in any case in the office of the Clerk of Court shall be taken from the custody of the Clerk, except by the District Judge for his own use, or by a Referee appointed to try the action, or by attorneys appearing of record in the case for the purpose of delivering to the Court at the time of trial. Before the Referee or attorney shall take any files in said action the Clerk shall require a receipt therefor filed by the Referee or attorney specifying each paper so taken.

(e) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of section 9256, Mason's Statutes 1927, such promissory note, draft or bill of exchange shall be filed with the clerk and made a part of the files of the action.

RULE 10.

Service of briefs. In all cases tried to the Court without a Jury, if submitted on briefs, the party having the burden of proof shall have fifteen (15) days within which to serve his brief after the submission of the case, and the other party shall have fifteen (15) days within which to serve his brief from and after the service of the brief on him, and the party serving the first brief shall have ten (10) days in which to reply to the answer brief on him. At the expiration of forty (40) days the case will be considered as submitted to the Court for its decision whether briefs have been served or not, provided that where a transcript of the evidence is to be furnished, the time for serving briefs shall commence to run from the date of delivery of the transcript by the Court Reporter.

RULE 11.

Reports of trustee and receivers. The following dates are hereby set, in the respective Counties, for hearing on the accounts of all trustees, receivers and other persons in the court charged with the administration of any trust: Shakopee, the second Monday in January; Glencoe, the third Monday in January; Le Center, the fourth Monday in January; Chaska, the first Monday in February; and Gaylord, the second Monday in February; each being the County seat of the respective counties of Scott, McLeod, Le Sueur, Carver, and Sibley.

It will be the duty of the Clerk to notify, in each county, all trustees and receivers as soon as possible after receiving this notice and failure of a trustee or a receiver or other fiduciary to report on said day and annually thereafter will be sufficient justification for removal by this Court.

1. Receivers, trustees, and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest and shall be selected by the court with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that it is for the best interests of all parties, no person who is or has been during the preceding year a stockholder, director, or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court, but if it shall be clearly shown that an emergency exists requiring immediate appointment of a receiver, such appointment may be made ex parte.

2. Compensation of receivers and of their attorneys shall be allowed only upon special order of this court.

RULE 12.

Clerks fees to be paid. No case will be placed upon the calendar by the clerk of this court unless the deposit fee of three dollars is first paid, and no case will be finally disposed of by this court until the court is first satisfied that the clerk's fees are paid in full.

RULE 13.

The conferring of citizenship is deemed by this Court to be one of its most solemn powers, and it is hereby made the duty of the clerk of this court to arrange suitable and proper patriotic ceremony to accompany the conferring of such citizenship.

RULE 14.

Special rule in Torrens Titles. Pursuant to Chapter 160, Session Laws of Minnesota for the year 1933, the following rule is promulgated in relation to—

istration of land titles in the County of Scott, in addition to the General Rules of District Court as published in 175 Minnesota Reports, page LIIII, to-wit:

Where a certificate of title is outstanding in favor of two or more joint tenants and when there is filed for registration a certified copy of a certificate of death showing death of one of said joint tenants survived by the other or others, together with an affidavit identifying the party named in the said death certificate with one of the joint tenants as named in the certificate of title, the Registrar of Titles may without an order of court, other than this rule, cancel the outstanding certificate of title, and enter a new certificate for the land therein described in favor of the joint tenants surviving, or in favor of the sole survivor, as the case may be. However, "when said certificate of death and affidavit shall show that the decedent died on or after the 29th day of April, 1935, the Registrar shall refrain from taking the foregoing action, until there is also filed with him a certificate from the Attorney General of the State of Minnesota, showing either that the inheritance tax due under the provisions of the Laws of 1935, chapter 334, has been paid or that there is no tax due."

RULE 15.

Conduct. 1. The regular convening hours of the court shall be 10 o'clock a.m. and 1:30 o'clock p.m. The court will recess at 12:00 noon each day, and adjourn for the day at 5 o'clock p. m. Regular convening, recessing, and adjourning hours may be varied by special directions of the court.

2. The court crier, bailiffs, and the clerk, or one of his deputies, shall be in their places in the court room promptly at the time for convening of court.

3. When the court is about to convene, the crier will by a stroke of the gavel command attention and announce the approach of the judge. Thereupon the members of the bar present and spectators will promptly and quietly arise and remain standing until the crier shall have, by appropriate proclamation, convened the court, and the judge shall have taken his seat.

4. At the close of each session as announced by the presiding judge, the crier will by a stroke of the gavel command attention and announce the recess or adjournment, and all persons in the court room will

remain seated until the crier shall have completed his announcement.

5. All persons entering the court room while court is in session shall immediately be seated and shall conduct themselves in a quiet and orderly manner. The reading of newspapers, books, or magazines in the court room shall not be permitted while court is in session.

6. Counsel, when addressing the court, shall arise, and all statements and communications by counsel to the court shall be clearly and audibly made from the counsel's table, and counsel shall not approach the judge's desk, while court is in session, for inaudible communications, unless requested so to do by the judge.

7. The examination of witnesses shall be conducted from the counsel's table, except when necessary to approach the witness or the reporter's table for the purpose of presenting or examining exhibits. When examining witnesses counsel shall remain seated in the chairs provided for them at the counsel's table, or, if they prefer, may stand immediately in front of their chairs during such examination. But one counsel on each side shall be permitted to examine witnesses unless by permission of the Court.

8. Counsel will observe the assignment of cases and keep advised of the progress of business in court and be ready when cases are reached. No arrangement as to time or order of trial will be recognized unless approved by the court.

RULE 16.

Right reserved. The Court shall reserve the right to relax the provisions of any of the foregoing rules in the interest of Justice.

It is hereby ordered, That the foregoing sixteen Special Rules are hereby adopted and approved this 27th day of December, 1939, as the Special Rules of this Court in addition to the rules which are applicable generally to District Courts throughout this State. All Special Rules heretofore made in said District are hereby annulled.

Dated the 27th day of December, 1939.

JOS. J. MORIARTY,

Judge of the District Court
Eighth Judicial District.

**RULES OF PRACTICE OF THE PROBATE COURTS
OF THE
STATE OF MINNESOTA**

(Formulated and adopted January 9, 1924, and as amended in 1937, 1938, and 1940 under and pursuant to Chapter 400, Laws 1923)

At a meeting of the Probate Judges of the State of Minnesota held on January 13th and 14th, 1937, pursuant to Chapter 400, Laws 1923 and acts amendatory thereto, rules heretofore formulated and adopted were amended and as amended were adopted as the Probate Court Rules:

RULE I—PAPERS

Every paper used in any proceeding shall be legible, properly entitled, and so endorsed as to show the character of the paper.

RULE II—INHERITANCE TAX

In every estate subject to an inheritance tax, the petitioner or representative shall, in addition to filing the originals, furnish the court with one copy of the initial petition, of the will if there be one, of the inventory, and of the inheritance tax return. (As amended Jan. 10, 1940.)

RULE III—CUSTODY OF FILES

No file nor any part thereof shall be taken from the custody of the court.

RULE IV—WITHDRAWAL OF PAPERS

No part of any file shall be withdrawn except upon petition and order.

RULE V—ATTORNEYS

No person not duly admitted to practice law shall appear as attorney or counsel in any action or proceeding in this court except in his own behalf when a party thereto; provided that only a person beneficially interested as an heir, devisee, legatee, or as a creditor in relation to his own claim, shall be considered such party.

Upon a showing of necessity therefor, the judge may appoint an attorney for any party. Attorneys so appointed shall serve without compensation, unless it be thereafter other wise ordered by the court.

APPENDIX NO. 4—COURT RULES (PROBATE COURTS)

No attorney shall appear for, or represent, conflicting interests. No attorney shall become a surety upon a bond in any proceeding.

RULE VI—PETITIONS

Every petition for administration or for probate of a will shall contain the exact names, ages, residences and post office addresses, so far as can be ascertained, of the heirs, devisees and legatees, and the citizenship of the decedent.

Every petition by a creditor for administration or for probate of a will shall be accompanied by an itemized and verified statement of his claim or account.

RULE VII—MAILED NOTICE IN ESTATES OF DECEDENT

In every case where published notice of hearing is required by law, a copy of such notice shall be mailed by the petitioner, his agent or attorney, at least fourteen days before the day of hearing, to each of the heirs, legatees and devisees of the decedent, whose names and addresses are known or appear from the files of the court.

Proof of such mailing shall be made by affidavit, filed before the time of hearing.

RULE VIII—HEARINGS

In every case where a hearing is required by law upon a petition, the petitioner shall first introduce evidence; the adverse party, if any, shall then introduce evidence in opposition; and the petitioners may then introduce evidence in rebuttal or avoidance of new matter offered by the adverse party. The petitioner shall have the opening and closing of the argument.

RULE IX—INVENTORY AND APPRAISAL

All property shall be described in detail and with such certainty that it can be identified and so that only the interest of the estate therein shall be appraised. The description of any note or other obligation, the property of the state, shall include names and addresses of parties thereto, the amount, date of maturity, rate and time of payment of interest, accrued interest to date of death of the decedent, endorsements and credits, if any. The description of any mortgage, in addition to the foregoing, shall include date and place of record, if any, and description of property covered. The description of any bond, share of stock, or other evidence of interest, shall include numbers and other marks of identification. Property specifically bequeathed or devised shall be listed and appraised separately. Whenever household goods shall have a value of more than five hundred dollars (\$500), the items thereof shall be separately listed and appraised. Encumbrances against the property of the decedent shall be set forth in detail. Upon the return of the inventory, the court may, on its own motion, or at the request of any interested person, examine the representative on oath in regard to the property of the estate.

Every representative shall file an inventory and appraisal within the time provided by law.

RULE X—SALES

No property of an estate shall be sold until after an inventory is filed.

RULE XI—CLAIMS

No claim objected to in writing by the representative or by an interested party shall be allowed against an estate except upon competent evidence adduced at the hearing. Claims of the representative against the estate shall be allowed only upon such evidence.

When a hearing on claims is continued and objections have been filed thereto the representative or the attorney for the estate shall, unless said claimants are in court on the day of such continuance, give

notice to the claimants of the date of such continuance.

RULE XII—EX PARTE ORDERS

Any party applying to the court for an order to be granted without notice, except an order to show cause, shall state in his petition whether he has made any previous application for such order.

Every order presented to the court shall contain all of the essential facts contained in the petition for said order.

RULE XIII—MONEY RECOVERED FOR DEATH BY WRONGFUL ACT

Money recovered in any action for death by wrongful act shall be inventoried by the representative, with the notation that such funds are not a part of the estate.

No representative shall be discharged until a certified copy of the order of distribution is filed in the Probate Court, together with proper proof of compliance therewith.

RULE XIV—CONFIRMATION OF SALE

In case of private sale of any interest in real property under license, the representative shall, before confirmation thereof, give to all persons interested in the estate such notice as the court shall direct; provided, however, that the court may, in its discretion, proceed without such notice.

RULE XV—REPORT OF MORTGAGING OF LAND

Upon mortgaging land, the representative shall make a verified report, setting forth the description of the land mortgaged, the name of the mortgagee, the date, amount, terms, and conditions of the mortgage.

RULE XVI—RETURN ON APPEAL

On appeal to the District Court, or upon certiorari, before the return is made the moving party shall pay for the return required by statute at the same rate as is provided by law for other certified copies.

RULE XVII—FINAL SETTLEMENT

Every petition for final settlement shall recite the performance by the representative of all acts required by law. The petition and account shall show the amount of property of the decedent which has come into the hands of the representative and the disposal thereof. The petition shall also show, with the same detail as is required for the description of property in the inventory under RULE IX, the kind and nature, of the property remaining in his hands for distribution.

Vouchers for all disbursements charged except amounts not actually paid shall be filed with the final account, each voucher shall be numbered and the numbers of the vouchers placed opposite each disbursement as listed in the account.

RULE XVIII—BONDS

Bonds with personal sureties thereon where one or more of the bondsmen reside in a county other than the county having jurisdiction shall first be approved as to the sureties, by the Probate Judge of the county of residence of such surety, or shall have attached to said bond justifications showing the real and personal property of said surety.

RULE XIX—FORMS

That forms used by the Probate Courts of the State shall be those adopted by the duly appointed Forms Committee of the Probate Judges Association and approved by the Probate Judges Association. (As adopted Jan. 12, 1938.)

RULE XX—NON-RESIDENTS

No non-resident of the State of Minnesota shall be appointed representative of the estate of a deceased person or guardian of the estate or person of any ward. (As adopted Jan. 10, 1940.)

MUNICIPAL COURT RULES

RULES OF PRACTICE OF THE MUNICIPAL COURT OF THE CITY OF MINNEAPOLIS

RULE 18

General Terms.—(a) A General Term of the civil division * * * * *

(b) Notices of Setting Cases. The Clerk will mail to the attorneys a notice, 15 days in advance of the date on which the case is set for trial. If the clerk does not receive within five days after the mailing of said notice, written information from one or both of the attorneys that the case will be tried on said day, it will be deemed that said case has been settled or abandoned, and said Notice of Trial will be cancelled.

(c) In order to eliminate the necessity of attorneys waiting in the court rooms for their cases to be reached, and allowing them to be excused to their offices, that the Judge in charge of the civil calendar shall, so far as is practicable, assign two cases to each Judge trying civil cases; the first case for immediate trial and the second case to be held in readiness to follow, and the attorneys, through the cooperation of the Clerk, shall keep in touch with the progress of the preceding case and be in readiness to proceed with their cases without delay. (As amended Jan. 9, 1941.)

RULE 25

Affidavit of Prejudice.—Any party, or his attorney, to a cause pending in the Municipal Court, either civil or criminal, or at a hearing of a motion, order to show cause or demurrer, may make and file with the Clerk of Court and serve on the opposing party, or his or its attorney, an affidavit stating that on account of prejudice or bias on the part of a said Judge he has good reason to believe and does believe that he cannot have a fair trial or hearing thereof. Thereupon such Judge shall forthwith, without any further act or proof, secure some other Judge of the Municipal Court to preside at the trial of said cause or hearing, or motion, or demurrer, or order to show cause, and shall continue the case on the calendar until such Judge can conduct the trial or hearing.

In civil actions and unlawful detainer proceedings such affidavit shall be made and filed after such Judge has been ascertained and before the case is reached for trial.

In criminal cases such affidavit shall be made or filed not later than two o'clock of the day that the case is first called for trial.

Not more than one such affidavit shall be filed by any party to an action. (Added Feb. 7, 1941.)

**Appendix No. 5
Curative Acts**

(Continuing Stalland's Minnesota Curative Acts)

1. Acknowledgments.

Certain foreign acknowledgements Act Apr. 21, 1941, c. 340.

1 1/2. Actions.

Proceedings in Municipal Court in city of St. Cloud, established by Extra Session Laws 1935, c. 88 legalized, Act Apr. 14, 1941, c. 223, §10.

9. Cities and villages.

Payment of salaries of certain village officers, §1163-1 (N).

Village waterworks proceedings, §§1235-3 to 1235-7. Contracts of fourth class cities, or their water, light, power and building commissions, or both jointly, §1828-105 (N).

Act Jan. 31, 1941, c. 5, validates street improvement proceedings by fourth class city operating under home rule charter, and issuance and sale of certificates of indebtedness.

Act Feb. 13, 1941, c. 6, legalizes bonds voted upon in villages for street improvements. For text see §§1968-32, 1968-33.

Act Feb. 25, 1941, c. 23 validating proceedings for issuance and sale of sewer district bonds in cities of fourth class.

Proceedings involving sewage disposal in villages and contracts relating thereto, validated. Act Mar. 5, 1941, c. 41, §3.

Proceedings of fourth class cities in connection with construction of water-mains and sewers, and bonds, not exceeding \$15,000, validated. Act Mar. 6, 1941, c. 50.

Act Mar. 28, 1941, c. 100, validates certificates of indebtedness and sewer warrants in certain cities of fourth class having home rule charters.

Act Apr. 4, 1941, c. 119, validates proceedings and revenue certificates given in connection with purchase of electric and water utilities by villages.

Cities and villages, proceedings for construction of sewage systems and sewage disposal plants validated. Act Apr. 10, 1941, c. 181, §1.

Proceedings and bonds of certain villages for improvements to municipal waterworks system. Act Apr. 18, 1941, c. 312.

Proceedings by villages in certain cases for construction of sanitary sewers and treatment plant. Act Apr. 19, 1941, c. 319.

10. Corporations and corporate conveyances.

Act Feb. 25, 1941, c. 20, §2, validates certain proceedings for renewal of periods of corporate existence of co-operative associations.

Act Apr. 9, 1941, c. 127, legalizes proceedings to renew corporate existence of private corporations.

Corporate transfers after termination of corporate existence. Act Apr. 9, 1941, c. 128, §3.

Act Apr. 9, 1941, c. 147, §2, validates certain corporate acts and contracts of agricultural societies taking steps to renew their corporate existence.

Act Apr. 10, 1941, c. 166, §2, validates acts and contracts of certain co-operative corporations taking steps to renew their corporate existence.

Act Apr. 10, 1941, c. 167, validates certain corporate acts and contracts of corporations taking steps to renew their corporate existence.

Corporations and Corporate Conveyances, incorporations of religious societies where records of meeting were not kept nor certificates filed validated. Act Apr. 10, 1941, c. 174, §1.

Corporate acts of certain social and charitable corporations. Act Apr. 19, 1941, c. 314.

11. County commissioners proceedings.

Participation in federal commodity stamp plans. Act Mar. 28, 1941, c. 99, §1.

12. Decrees.

Act Apr. 28, 1941, c. 540, §1, validates final decrees of adoption heretofore entered pursuant to sections 8624 to 8634, inclusive.

15. Drainage proceedings.

Drainage proceedings, assessments, or liens to pay deficit in drainage system, validated. Act Apr. 10, 1941, c. 174, §1.

21. Mortgages and mortgage foreclosure sales.

Act Apr. 18, 1941, c. 305, reads as follows:

Section 1. Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against any or all of the following objections, viz:

Subdivision 1. That the power of attorney, recorded or filed in the proper office prior to the passage of this act, to foreclose the mortgage, provided for by Mason's Minnesota Statutes of 1927, Section 9606:

(a) Did not definitely describe and identify the mortgage.

(b) Was not sufficiently witnessed or acknowledged, or was witnessed, and/or the acknowledgment of the execution of the same was taken, by the person to whom such power was granted, or if executed by a corporation that the corporate seal was not affixed thereto.

(c) Had not been executed and recorded or filed prior to sale, or had been executed prior to, but not recorded or filed until after, such sale.

(d) Was executed before there was default, or was executed subsequent to the date of the printed notice of sale or subsequent to the date of the first publication of such notice.

(e) Did not definitely describe and identify the mortgage, but instead described another mortgage between the same parties.

Subdivision 2. That the notice of sale:

(a) Was published only five times, or that it was published six times but not for six weeks prior to the date of sale.

(b) Properly described the property to be sold in one or more of the publications thereof but failed to do so in the other publications thereof, the correct description having been contained in the copy of said notice served on the occupant of the premises.

(c) Was published for six full weeks and the mortgage sale was postponed and the original notice, together with notice of postponement, was regularly published in at least one issue of the same newspaper intervening between the last publication of the original notice, and the date to which the sale was postponed.

(d) Correctly stated the date of the month and hour and place of sale but named a day of the week which did not fall on the date given for such sale, and/or failed to state or state correctly the year of such sale.

(e) Correctly described the real estate but omitted the county and state in which said real estate is located.

(f) Did not state the amount due or failed to state the correct amount due or claimed to be due.

(g) Described the place where the sale was to take place as a city instead of a village; or village instead of city.

(h) In one or more of the publications thereof, designated either a place or a time of sale other than that stated in the certificate of sale.

(i) Failed to state the names of one or more of the assignees of the mortgage and described the subscriber thereof as mortgagee instead of assignee.

(j) Failed to state or incorrectly stated the name of the mortgagor, the mortgagee or assignee of mortgagee.

(k) Was not served upon persons whose possession of the mortgaged premises was otherwise than by their personal presence thereon, if a return or affidavit was recorded or filed as a part of the foreclosure record that at a date at least four weeks prior to the sale the mortgaged premises were vacant and unoccupied.

(l) Was not served upon all of the parties in possession of the mortgaged premises provided it was served upon one or more of such parties.

(m) Was not served upon the persons in possession of the mortgaged premises, if, at least two weeks before the sale was actually made, a copy of the notice was served upon the owner in the manner provided by law for service upon the occupants, or the owner received actual notice of the proposed sale.

(n) Gave the correct description at length, and an incorrect description by abbreviation or figures set off by the parentheses, or vice versa.

(o) Where the notice of mortgage foreclosure sale of the premises described in the notice was served personally upon the occupants of the premises as such but said service was less than four weeks prior to the appointed time of sale.

Subdivision 3. That distinct and separate parcels of land were sold together as one parcel and to one bidder for one bid for the whole as one parcel.

Subdivision 4. That no authenticated copy of the order appointing, or letters issued to a foreign representative of the estate of the mortgagee or assignee, was properly filed or recorded, provided such order or letters have been filed or recorded in the proper office prior to the passage of this act.

Subdivision 5. That said mortgage was assigned by a decree of a probate court in which decree the mortgage was not specifically or sufficiently described.

(a) That the mortgage foreclosed had been assigned by the final decree of the probate court to the heirs, devisees or legatees of the deceased mortgagee, or his assigns, and subsequent thereto and before the representative of the estate had been discharged by order of the probate court, the representative had assigned the mortgage to one of the heirs, devisees or legatees named in

such final decree, and such assignment placed of record and the foreclosure proceedings conducted in the name of such assignee and without any assignment of the mortgage from the heirs, devisees or legatees named in such final decree, and the mortgaged premises bid in at the sale by such assignee, and the sheriff's certificate of sale, with accompanying affidavits, recorded in the office of the register of deeds of the proper county.

Subdivision 6. That the sheriff's certificate of sale and/or any of the accompanying affidavits and return of service were not executed, filed or recorded within 20 days after the date of sale but have been executed and filed or recorded prior to the passage of this act.

Subdivision 7. That the sheriff's certificate of sale described the sale as being held in the city of Hennepin whereas the sale was actually conducted in a city of the county of Hennepin.

Subdivision 8. That the hour of sale was omitted from the notice of sale, or from the sheriff's certificate of sale.

Subdivision 9. That prior to the foreclosure no registration tax was paid on the mortgage, provided such tax had been paid prior to the passage of this act.

Subdivision 10. That an insufficient registration tax had been paid on the mortgage.

Subdivision 11. That the date of the mortgage or any assignment thereof or the date, the month, the day, hour, book and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the register of deeds or registrar of titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments.

Subdivision 12. That the mortgage foreclosure sale was held upon a legal holiday.

Subdivision 13. That no notice of the pendency of the proceedings to enforce or foreclose the mortgage as provided in Mason's Minnesota Statutes of 1927, Section 8303, was filed with the registrar of titles and a memorial thereof entered on the register at the time of or prior to the commencement of such proceeding.

Subdivision 14. That the power of attorney to foreclose or the notice of sale was signed by the person who was the representative of an estate, but failed to state or correctly state his representative capacity.

Subdivision 15. That the mortgage deed contained the word "Minn." immediately following the true and correct name of the corporate mortgagee, and the power of attorney to foreclose such mortgage, and the notice of mortgage foreclosure sale were executed by the corporate mortgagee in its true and correct name, omitting therefrom the word "Minn." as recited and contained in the mortgage immediately following the name of the corporate mortgagee.

Subdivision 16. That the complete description of the property foreclosed was not set forth in the sheriff's certificate of sale, if said certificate correctly refers to the mortgage by book and page numbers and date of filing and the premises are accurately described in the printed notice of sale annexed to said foreclosure sale record containing said sheriff's certificate of sale.

Subdivision 17. That the seal of the notary was omitted from the certificate of acknowledgment of the sheriff or deputy sheriff, or the affidavit of costs and disbursements attached to the mortgage foreclosure record, the said affidavit of costs and disbursements being otherwise properly executed.

Subdivision 18. That the year of recording of the mortgage was improperly stated in the sheriff's certificate of mortgage foreclosure sale, the mortgage being otherwise properly described in said sheriff's certificate of mortgage foreclosure sale and said certificate of mortgage foreclosure sale further referring to the printed notice of mortgage foreclosure sale attached to said sheriff's certificate of mortgage foreclosure sale, in which printed notice the mortgage and its recording was properly described.

Subdivision 19. That prior to the first publication of the notice of sale in foreclosure of a mortgage by advertisement, an action or proceeding had been instituted for the foreclosure of said mortgage, or the recovery of the debt secured thereby and such action or proceeding had not been discontinued.

Subdivision 20. Every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes as against the objection that at the time and place of sale the sheriff considered and accepted a bid submitted to him prior to the date of sale by the owner of the mortgage and sold the mortgaged premises for the amount of such bid, no other bid having been submitted, and no one representing the owner of the mortgage being present at the time and place of sale.

Subdivision 21. Every mortgage foreclosure sale by advertisement, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes, as against the objection that such sale was postponed by the sheriff to a date subsequent to the one specified in the notice of sale but there was no publication or posting of a notice of such postponement.

Subdivision 22. That in all mortgage foreclosure sales by advertisement by a representative appointed by a

court of competent jurisdiction in another state or county and an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county such foreclosure sale and the record thereof are hereby legalized and confirmed as against any objection that there was not recorded with such letters or other record of authority the further certificate that said letters or other record of authority were still in force and effect.

Subdivision 23. That the sheriff's affidavit of sale correctly stated in words the sum for which said premises were bid in and purchased by the mortgagee, but incorrectly stated the same in figures immediately following the correct amount in words.

Subdivision 24. That prior to the year 1913, the mortgagee failed to execute and cause to be filed a power of attorney.

Section 2. Subdivision 1. In all mortgage foreclosure sale by action wherein heretofore the report of sale has been confirmed by order filed in the action and a certificate of sale was thereafter executed in proper form but not recorded or filed within 20 days thereafter such certificate and the later record thereof are hereby legalized with the same effect as if such certificate had been executed, acknowledged and recorded or filed within such 20 days.

Subdivision 2. In all mortgage foreclosure sales by action wherein heretofore the report of sale was made and presented to the court and the sale confirmed by an order filed in the action, but the report was not filed with the clerk until after the filing therein of the order of confirmation, and in which the certificate of sale was executed in proper form but recorded more than 20 days after such confirmation, but within one year from the date of sale, such certificate and the record thereof and the subsequently filed report of sale are hereby legalized with the same effect as if such certificate had been executed, acknowledged, and recorded within such 20 days and as if such report of sale had been filed in the action at the time of filing the order of confirmation.

Section 3. In any mortgage foreclosure sale of real estate subsequent to the enactment of Laws 1933, Chapter 339, where before the expiration of the period of redemption, the purchaser at foreclosure sale without court order, entered into an agreement with the mortgagor, extending the period of redemption, such foreclosure proceedings, sale, and sheriff's certificate, issued therein, are hereby validated to the same extent as they would have been if such extension had been granted by court order, as against the objection or claim that such agreement waived or annulled the sale.

Section 4. All acknowledgements of the execution of any power of attorney, and the witnessing of the execution thereof, in which power of attorney the attorney authorized to foreclose said mortgage, acted as one of the witnesses on said power of attorney and as a notary public, under which power of attorney, said attorney so acting as a witness and notary public also acted as the attorney in charge of said foreclosure proceedings, are hereby legalized and declared in all respects valid as against the claim that said attorney had no legal right to act as a witness on the execution of said power of attorney, or to act as a notary public in taking the acknowledgment of the execution of said power of attorney.

Section 5. That every mortgage foreclosure sale by advertisement by a representative appointed by a court of competent jurisdiction in another state or county in which before sale an authenticated copy of his letters or other record of his authority has been filed for record in the office of the register of deeds of the proper county but no certificate was filed and recorded therewith showing that said letters or other record of his authority were still in force, is hereby legalized and made valid and effective to all intents and purposes notwithstanding such omission.

Section 6. That every mortgage foreclosure sale by advertisement heretofore made in this state under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized, made valid, and effective to all intents and purposes as against the objection that the notice of mortgage foreclosure sale correctly described the land by government subdivision, township and range, but described it as being in a county other than that in which said mortgage foreclosure proceedings were pending, and other than that in which said government subdivision was actually located.

Section 7. Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections that the date of the recording or filing of the mortgage in the office of the register of deeds or registrar of titles is incorrectly noted, on the mortgage by the officer recording or filing the same and is likewise incorrectly stated in the notice of sale or in the certificate of sale or both, or

in any of the foreclosure papers, affidavits or instruments pertaining thereto.

Section 8. Every real estate mortgage foreclosure sale by advertisement made in this state prior to January 1, 1933, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county in this state, together with the record of such foreclosure, is hereby legalized and made valid as against the objection that no power of attorney to foreclosure, said mortgage, as provided in Section 9606 of Mason's 1927 Minnesota Statutes, was ever given or recorded or registered.

Section 9. Every mortgage foreclosure sale by advertisement heretofore made in this state, prior to the year, 1880, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections, that no notice was served upon the occupant of the premises, if occupied, and that no affidavit of vacancy was filed if the premises were unoccupied.

Section 9½. Every mortgage foreclosure sale made in this state by advertisement prior to January 1, 1938, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes, as against the objection that the mortgage and the foreclosure thereof was barred by the statute of limitations at the time of the foreclosure proceedings and sale.

Section 10. Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form contained in any mortgage duly executed and recorded in the office of the register of deeds or registered with the registrar of titles of the proper county, together with the record of such foreclosure sale, is hereby legalized and made valid and effective to all intents and purposes, as against objections that the foreclosure was made by an assignee of the mortgage and there was not at the time of the foreclosure a valid record of an assignment of the mortgage, although there was of record in the office of the register of deeds or registrar of titles an assignment of record which was not properly attested and acknowledged to entitle the same to record.

Section 11. The provisions of this act shall not affect any action or proceeding now pending or which shall be commenced within six months after the passage thereof, in any of the courts of this state involving the validity of such foreclosure, nor shall the validity of any provision of this act be questioned in any action or proceeding hereafter brought unless such action or proceeding be commenced within six months after the passage of this act.

Section 12. The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act.

21½. Municipal bonds.

Refunding bonds, and proceedings of certain villages and cities, §1946-12a.

Laws 1941, c. 3, legalizes proceedings for funding bonds for liquidating outstanding warrant of indebtedness in certain counties having population of not less than 15,000 nor more than 17,000.

Act Apr. 10, 1941, c. 207, validates bond issues made for purpose of constructing sewers, pursuant to agreement with Works Progress Administration, in villages of 1000 to 2000 population.

Proceedings for authorization and issuance of bridge bonds by certain county. Act Apr. 14, 1941, c. 224, §1.

Outstanding bonds of certain independent school districts. Act Apr. 16, 1941, c. 263, §5.

23. Notices.

Probate proceedings prior to June 1, 1939. Act Mar. 28, 1941, c. 79.

24. Plats.

Vacation of streets or alleys in any plat. Act Mar. 6, 1941, c. 46.

31. Townships and school districts.

Town expenditures and contracts, §1108-15f. Act Apr. 1, 1941, c. 113, validates floating indebtedness of certain school districts comprising more than 60 congressional townships, with an assessed valuation of less than \$3,000,000.

Town expenditures and contracts. Act Apr. 25, 1941, c. 446, §3.

32. Vacation proceedings.

Vacation of streets or alleys in any plat. Act Mar. 6, 1941, c. 46.

40. Conveyances between husband and wife.

Act Apr. 21, 1941, c. 343, Legalizes conveyances made prior to December 29, 1926.