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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
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Editorial Staff

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PREFACE

This 1941 Supplement to Mason's Minnesota Statutes makes its appearance to simplify the work of the Minnesota lawyer in his use of the Minnesota Statutes. Mason's Minnesota Statutes, 1927, in two volumes, the 1940 Supplement and this Supplement constitute a complete presentation of the Minnesota law down to the close of the 1941 session of the Legislature.

This Supplement although not cumulative is more desirable from an economic standpoint to Minnesota lawyers and in its compact form covers all laws and annotations since the last (1939) Legislature, also annotations to the court rules including the new revised probate rules.

The annotations are derived from the U. S. Supreme Court Reports, the Federal Reporter, the Minnesota Reports, the Northwestern Reporter, all Law Review articles and the Opinions of the Attorney General.

Laws of a temporary or local nature, as well as City Charters and Municipal Ordinances, which could not be properly included in a general statute but which are the subject of litigation, are annotated in Appendices Nos. 2 and 3.

The Rules of the Minnesota Supreme Court, District courts, Municipal courts and Probate courts are brought to date in Appendix No. 4.

Stalland's Minnesota Curative Acts are brought to date by Appendix No. 5.

The table of Statutes indicates the disposition of the various laws contained in this Supplement.

All annotations from Minnesota cases have references to Dunnell's Digest (now owned by this company); thus permitting the use of the two services as an invaluable unit, opening several doors to the law where only one existed before.

A table to Minnesota reports is set out at end of this volume.

The index is complete in its scope, not only directing you to the subject matter of the statutes contained herein, but also to the common law decisions which have been set forth at the end of appropriate chapters.

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Table of Contents

	PAGE
1. Act authorizing a State Government	1
2. Constitution of the State of Minnesota	1
3. Mason's Minnesota Statutes	7
4. Appendix No. 2—Session Laws	457
5. Appendix No. 3—City Charters and Ordinances	459
6. Appendix No. 4—Court Rules	464
7. Appendix No. 5—Stalland's Curative Acts	469
8. Table of Statutes	472
9. Table of Minnesota Reports	480
10. General and Common Law Index	482

What your files should contain

Mason's Minnesota Statutes, 1927, and the 1940 and 1941 Supplements; no other published parts need be examined.

Reports Included in this Supplement

Minnesota Reports, to end of current volume.

Northwestern Reporter	287	NW	338	to	296	NW	927
Opinions Attorney General	Oct.	1,	1939	to	Mar.	28,	1941
Supreme Court Reporter	60	SCR	1	to	61	SCR	844
Federal Reporter, Second Series	106	(2d)	473	to	118	(2d)	192
Federal Supplement	28	FSupp	453	to	37	FSupp	624
Federal Rules Decisions	1	FRD	1	to	1	FRD	585
Minnesota Law Review	24	MLR	1	to	25	MLR	666
Minnesota Board of Tax Appeals	Jan.	1,	1940	to	Apr.	17,	1941
U. S. Board of Tax Appeals	40	BTA	1	to	43	BTA	516

Law Review Articles.

Table of Abbreviations

M—Minnesota Reports.
 NW—Northwestern Reporter.
 Op. Atty. Gen.—Opinions of Attorney General.
 US—United States Supreme Court, official edition.
 SCR—Supreme Court Reporter.
 F(2d)—Federal Reporter, Second Series.
 FSupp—Federal Supplement.
 FRD—Federal Rules Decisions.
 MinnLawRev—Minnesota Law Review.
 MBTA—Minnesota Board of Tax Appeals.
 BTA—U. S. Board of Tax Appeals.

Act Authorizing a State Government

82. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

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 a command under the police power. *Bybee v. C.*, 292NW617. See Dun. Dig. 6925.

Constitution of the State of Minnesota

ARTICLE 1.—BILL OF RIGHTS.

1. Object of government.

Nothing which is a direct burden upon interstate commerce can be imposed by state without assent of Congress, and silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be forever free. *City of Waseca v. B.*, 288NW229. See Dun. Dig. 4895.

Neither the state nor any of its subdivisions may regulate or restrain that which from its nature should be under control of national authority and as such should be free from restriction save as it is governed in the manner that the Congress constitutionally ordains. *Id.* See Dun. Dig. 9956.

2. Rights and privileges of citizens.

Editorial Note.—Remedies against soldiers and sailors, including draftees, are affected by the Selective Training and Service Act of 1940, §13 and the new Soldiers' and Sailors' Civil Relief Act of 1940. See Mason's U. S. Code, October, 1940 Pamphlet, Title 50.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. *Dimke v. F.*, 295NW75. See Dun. Dig. 1699.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. *El-dred v. D.*, 295NW412. See Dun. Dig. 1671.

3. Liberty of the press.

Some object lessons on publicity in criminal trials. 24 MinnLawRev453.

Freedom of speech and of the press—municipal power of license and censorship. 24MinnLawRev570.

4. Trial by jury.

Where plaintiff as a matter of law was not entitled to recover, court need not consider any error in denying plaintiff a jury trial. *Gilbertson v. I.*, 293NW129. See Dun. Dig. 5227.

Care should be taken not to permit any mere label, which counsel in their pleadings attempt to put upon a law suit, to result in denial of constitutional right of jury trial, if real nature of action is such as to give a litigant that right. *Id.*

6. Rights of accused.

1. Speedy and public trial.

Some object lessons on publicity in criminal trials. 24 MinnLawRev453.

4. Trial by jury of county or district.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 237NW297.

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

7. Same—Due process of law—Bail—Habeas corpus.

1/2. In general.

Constitutionality of moratorium law although challenged and argued by counsel, need not be determined where it is apparent from record that holder of sheriff's certificates does not wish to obtain possession of mortgaged property if some other reasonable means can be found to liquidate his claim. *Shumaker v. H.*, 288NW 839. See Dun. Dig. 1644.

1. Twice in jeopardy.

Double jeopardy. 24MinnLawRev522.

2. Self-incrimination.

Compulsory bodily action or exhibition as violating privilege against self-incrimination. 24MinnLawRev444.

4. Due process of law defined.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

The police power, which is about all the power that sovereign government has, aside from its powers of eminent domain and taxation, is not limited to protection of public health, morals, and safety, but also extends to economic means. *McElhone v. G.*, 292NW414. See Dun. Dig. 1603.

By establishment of a county ditch pursuant to Laws 1905, c. 230, land benefited and assessed acquired a property right, appurtenant to land, not to be taken away or impaired, except by due process, but where only relief sought in construction was to so enlarge outlet as to more effectually drain slough lands lying adjacent to outlet and to control sudden rises and floods that overflowed low lands lying adjacent to shores of a lake, landowners' rights are limited to benefits accruing within stated purposes and subsequent erosion of the lake outlet whereby natural water level was much lowered cannot be claimed to be a barrier against state in now seeking restoration of lake level to its natural and normal height. *Lake Elysian High Water Level*, 293NW140. See Dun. Dig. 1619.

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

5. Held due process of law.

Illinois Cent. R. Co. v. Minnesota, 309US157, 60SCR419, aff'g 205Minn1, 284NW360; 205Minn621, 286NW359. Reh. den., 60SCR585.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 237NW297.

Sig Ellingson & Co. v. M., 286NW713. Cert. den., 60SCR 130. Reh. den., 60SCR178.

Holding judgment recovered by a claimant against indemnity in action, pendency of which he gave due notice to indemnitor and which he requested him to defend, conclusive against indemnitor in action by indemnitee, to recover indemnity is not a denial of due process of law. *State Bank v. A.*, 288NW7. See Dun. Dig. 1646.

Exclusion of the bag cleaning industry from light industrial zone cannot be held unreasonable, arbitrary or discriminatory or violative of constitution. *State v. Miller*, 288NW713. See Dun. Dig. 1646.

Revocation of license of a doctor was not a denial of due process because board of medical examiners acted both as prosecutors and judges, doctor being given ample notice of nature of charges against him with an opportunity for hearing, and having statutory right of court review. *Minnesota State Board of Medical Examiners v. Schmidt*, 292NW255. See Dun. Dig. 1641. App. dismd and cert. den. 61SCR135.

A fair trade act prohibiting sales below cost for purpose or with effect of injuring competitors and destroying competition, held promotion of a policy within police power of state, and fixing of minimum prices in retail trade, because a reasonable means of furthering such policy, is not violative of due process, regardless of intent. *McElhone v. G.*, 292NW414. See Dun. Dig. 1646.

There having been a full and complete hearing by labor conciliator, participated in by employer without objection, before certification of a labor union as representative of employees, absence of notice of hearing is unimportant. *State v. Haney*, 292NW748. See Dun. Dig. 1642.

Statute giving administrative board discretionary power to release an insane, inebriate, feeble-minded, or epileptic patient if bond be given for safe-keeping was not unconstitutional as attempting to confer upon an administrative body power which belongs to probate court, hearing at time patient was committed having

provided judicial determination and due process. *State v. Carlgren*, 296NW573. See Dun. Dig. 1642.

6. Held not due process of law.

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. 1639, 9144.

8. Remedies for wrongs.

This section does not guarantee or command continuation of a specific remedy, and a war veteran employee of state could not complain of his loss of right to maintain mandamus following his discharge and subsequent passage of civil service act providing different remedy. *State v. Stassen*, 294NW647. See Dun. Dig. 1656.

10. Unreasonable searches and seizures.

Intoxicating liquor is admissible in evidence though it has been seized unlawfully. *Op. Atty. Gen.*, (218f-3), Oct. 31, 1939.

11. Attainder—Ex post facto laws—Impairment of contracts.

Constitutionality of moratorium law although challenged and argued by counsel, need not be determined where it is apparent from record that holder of sheriff's certificates does not wish to obtain possession of mortgaged property if some other reasonable means can be found to liquidate his claim. *Shumaker v. H.*, 288NW839. See Dun. Dig. 1628.

1. Ex post facto laws.

What sovereign power can authorize in prospect it can adopt or validate in retrospect. *Vorbeck v. C.*, 288NW4. See Dun. Dig. 1651.

2. Held to impair contract.

The provision of a bond of a contractor for a public improvement, and the statute under which it was given, that suit on the bond must be brought within 60 days after accrual of cause of action, gave the surety on the bond a vested right in the limitation provided, and the repeal of the statute could not destroy such right and permit the claimant to bring the action within the time prescribed by the general limitations statute. *Nat'l Sur. Corp. v. Wunderlich*, (CCA8), 111F(2d)622, rev'g 24FSupp 640.

3. Held not to impair contract.

Contract of a teacher whose tenure rights have matured under Minn. L. 1927, c. 36, 1 Mason's Minn. St. 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.*, 206M649, 289NW784, 785. Aff'd 60 SCR 1102. See Dun. Dig. 1622.

A pensioner or beneficiary has no vested right in a pension granted by government except as payments become due him absolutely under the law. *Johnson v. S.*, 292NW767. See Dun. Dig. 1622.

12. Imprisonment for debt—Exemption from execution.

2. Exemption of property.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. *Dimke v. F.*, 295NW75. See Dun. Dig. 3680.

Homestead exemption is a creature of statute. *Id.* See Dun. Dig. 4195.

Purpose of an exemption is to protect a debtor and his family against absolute want by allowing them out of his property some reasonable means of support and education and maintenance of decencies and proprieties of life. *Poznanovic v. M.*, 296NW415. See Dun. Dig. 3680.

3. —Proviso.

An action may now be maintained in district court against representatives and heirs of a deceased person to enforce a lien or charge for work and materials furnished for improvement of homestead at request of deceased, without presenting claim therefor to probate court for allowance, it appearing that deceased left no property other than homestead. *Anderson v. J.*, 293NW 131. See Dun. Dig. 3593k.

13. Private property for public use.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

Mere failure of railroad to obtain consent of government to building of its embankment along Mississippi River did not defeat its right to compensation under Fifth Amendment for damages from dam built by the government which raised the waters of the river above their natural level and flooded the embankment between the ordinary high-water mark and ordinary low-water mark of the river. *U. S. v. Chicago, M. St. P. & P. R. Co.*, (CCA8), 113F(2d)919. Cert. gr., 61SCR318.

Towns and counties, being charged with highway construction and maintenance, are liable in damages to property owners if and when such owners' property rights are invaded, to protect owners against illegal exercise of power of eminent domain. *Westerson v. S.*, 291NW900.

Rule of *Sheehan v. Flynn*, 59 Minn. 436, 61 N.W. 462, 26 L.R.A. 632, that by reasonable drainage works on his

own premises, a landowner may dispose of surface waters as best he can, so long as he does not unreasonably injure his neighbor, applies only to private rights and exercise thereof, and has no application to a public drainage proceeding wherein statute requires compensation to all who suffer damages. *Town Ditch No. 1, v. B.*, 295NW47. See Dun. Dig. 2841a, 10165.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. *Dimke v. F.*, 295NW75. See Dun. Dig. 1646.

15. Tenure of lands.

An instrument granting a profit a prendre in form of an exclusive right to hunt and construct a club house was not a violation of this section. *Minnesota Valley Gun Club v. N.*, 290NW222. See Dun. Dig. 3155.

18. No license to peddle.

Village may regulate sale of farm produce and other products sold periodically in a sales pavilion, even when sold by farmer producing them. *Op. Atty. Gen.* (290j-9), Oct. 7, 1939.

Meat from animals and turkeys and chickens raised on land occupied by a farmer are "products of the farm or garden" within this section. *Op. Atty. Gen.*, (290J-12), Dec. 7, 1939.

ARTICLE 2.—NAME AND BOUNDARIES.

1. State name and boundaries.

Root-Bryce Treaty of 1908 pursuant to which boundary between United States and Canada was established in 1929, was a public statute, of which all persons were charged with notice, and tax payments made to state of Minnesota in 1933 and 1934 on lands lying within Dominion of Canada could not be said to have been made under a mistake of fact, where taxpayer made no attempt to learn location of lands, notwithstanding that official plat of survey was not filed in government office until August 15, 1934. *Pettibone v. C.*, (DC-Minn), 31FSupp881.

Boundary locations and disputes belong to the sovereign power of the nation, and are not for a state, county or taxpayer to determine. *Id.*

3. Acceptance of enabling act.

Title, points and lines in lakes and streams. 24Minn LawRev305.

ARTICLE 3.—DISTRIBUTION OF THE POWERS OF GOVERNMENT.

1. Departments of the government.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.

Sig Ellingson & Co. v. M., 286NW713. Cert. den., 60SCR 130. Reh. den., 60SCR178.

Where a plain statute controls, it is duty of court to obey, however much of economy or other desirable result might follow disobedience. *Midland Loan Finance Co. v. T.*, 288NW853. See Dun. Dig. 1595.

Judicial branch of state government, as a matter of comity, accepts legislative declaration of public policy relative to unauthorized practice of law insofar as it relates to drafting by brokers, in transactions involving sale, trade or leasing of property or a loan thereon where they represent parties or a party thereto, of instruments incident to such transactions where no charge is made for drafting such instruments; but making of a charge therefor is disapproved. *Cowern v. N.*, 290NW 795. See Dun. Dig. 1587.

It would be an unconstitutional delegation of legislative power to authorize tax commission in its discretion to impose a penalty without a legislative definition of conditions which it must find to exist before such penalty could be assessed, and if imposition of penalty be left to uncontrolled discretion of commission and resulted in discrimination it would be a violation of constitutional uniformity clause and of 14th amendment. *State v. Oliver Iron Min. Co.*, 292NW407. See Dun. Dig. 1597. Cert. den., 61SCR439, 440. See also 292NW411.

Courts do not make the laws but only give them interpretation, and it is their duty to follow apparent and definite mandate of a statute without consideration of their views on merits, providing legislature acted within its power. *State v. Gravin*, 293NW257. See Dun. Dig. 1589.

It is not for the court to question legislative policy or wisdom. *State v. Weed*, 294NW370. See Dun. Dig. 1594.

It is for court to determine whether or not a train speed ordinance is void for unreasonableness or want of necessity. *Lang v. C.*, 295NW57. See Dun. Dig. 1589.

There is no unlawful delegation of legislative power to executive in statute relating to liens on real property of old age recipients. *Dimke v. F.*, 295NW75. See Dun. Dig. 1599.

A doctor appointed by a court commissioner to act as examiner in an insanity proceeding and to report his findings to court is a quasi-judicial officer and as such immune from civil suit for acts performed by him in connection with such proceeding. *Linder v. F.*, 295NW 299. See Dun. Dig. 4959.

A court commissioner is a judicial officer and as such is not liable in a civil action to anyone for his judicial acts. *Id.*

Legislature may delegate legislative power over education to electorate of a city, but legislature's plenary power of legislating is not thereby limited or impaired. *Board of Education v. Erickson*, 295NW302. See *Dun. Dig.* 1597.

Courts are not concerned with wisdom of legislative enactments. *Eldred v. D.*, 295NW412. See *Dun. Dig.* 1589.

Public policy, where legislature has spoken, is what it has declared that policy to be. *Park Const. Co. v. I.*, 296NW475. See *Dun. Dig.* 1589.

Statute giving administrative board discretionary power to release an insane, inebriate, feeble-minded, or epileptic patient if bond be given for safe-keeping was not unconstitutional as attempting to confer upon an administrative body power which belongs to probate court, hearing at time patient was committed having provided judicial determination and due process. *State v. Carlgren*, 296NW573. See *Dun. Dig.* 1590.

Judicial review of administrative orders—doctrine of "negative orders" abolished. 24MinnLawRev379.

ARTICLE 4.—THE LEGISLATIVE DEPARTMENT.

3. Election—Quorum.

House of Representatives is sole judge of qualifications of its members and can seat or unseat a member as it sees fit, and its power of action is in no way restrained by circumstance that a certificate of election has been issued. *Op. Atty. Gen.*, (280E), Jan. 14, 1941.

7. Compensation.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.

9. Members not to hold certain offices.

A person may file for office of state representative and clerk of court at the same time, but if elected can only hold one office. *Op. Atty. Gen.*, (184), Aug. 5, 1940.

Members of legislature are not eligible for membership on judicial council. *Op. Atty. Gen.*, (280h), Nov. 16, 1940.

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

23. Census—Apportionment.

Computation of population of cities or villages for purpose of determining number of liquor licenses is governed by last official state or federal census, and no effect may be given a private census. *Op. Atty. Gen.*, (218g-1), Feb. 6, 1940.

25. Qualifications of members.

One who will have been in district for less than six months at time of general election is not eligible to file. *Op. Atty. Gen.*, (184i), Aug. 6, 1940.

27. Laws to embrace but one subject.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.

Laws 1939, c. 137, a curative act, does not violate this section solely because it embraces means of financing a utility as well as processes of acquiring it in the first instance. *Vorbeck v. C.*, 288NW4. See *Dun. Dig.* 1684.

Apparent omissions from title of act as printed was immaterial where title was proper as passed and approved. *Fredricks v. B.*, 292NW420. See *Dun. Dig.* 8904.

32a. Submission of laws for taxation of railroads.

Tax imposed upon corporations by Laws 1933, c. 405, §2, (§2394-2) is a property tax upon right or franchise of corporations to exist and to transact business in this state, measured by corporations' net taxable income as defined in that chapter, and in so far as c. 405 assumes to impose a franchise tax, measured by income, upon a railroad based upon its ownership or operation for railroad purposes provisions of c. 405 are contrary to const. art. 4, §32a, and invalid since c. 405 has never been approved by a vote of people as required by that section. *State v. Duluth, M. & N. Ry. Co.*, 292NW401. See *Dun. Dig.* 9570d. *Cert. den.*, 61SCR439. See also 292NW411.

Gross earnings tax imposed upon a railroad by §2246 under authority of Const., Art. 4, §32a, is a property tax upon all railroad property owned or operated for railroad purposes, including its franchise to exist as a corporation and to transact railroad business in this state. *Id.* See *Dun. Dig.* 9541.

33. Special legislation prohibited.

Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727. *Judgment aff'd*, 308US506, 60SCR92. *Reh. den.*, 60SCR135.

2. Subsequent to amendment of 1892.

A state by virtue of its police power can require those selling soft drinks to procure a license. *State v. Comer*, 290NW434. See *Dun. Dig.* 1608.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. *Dimke v. F.*, 295NW75. See *Dun. Dig.* 1675.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal

Social Security Act, is constitutional as against objection of discrimination and improper classification. *Eldred v. D.*, 295NW412. See *Dun. Dig.* 1680.

Statute rendering wages of a recipient of public relief for a period of 6 months after his return to private employment is constitutional. *Op. Atty. Gen.*, (843k), Oct. 2, 1940.

Office of attorney-general has held that a village could not grant a perpetual franchise to a light and power company, but law is so uncertain that there should be a judicial determination of the question. *Op. Atty. Gen.*, (204a-5), Dec. 10, 1940.

34. General laws.

A state by virtue of its police power can require those selling soft drinks to procure a license. *State v. Comer*, 290NW434. See *Dun. Dig.* 1608.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. *Eldred v. D.*, 295NW412. See *Dun. Dig.* 1680.

Statute rendering wages of a recipient of public relief for a period of 6 months after his return to private employment is constitutional. *Op. Atty. Gen.*, (843k), Oct. 2, 1940.

36. Cities and villages may adopt charters—Etc.

Amendment proposed as to publication of suggested charter amendments, to be submitted at the 1942 general election. *Act Mar. 14, 1941*, c. 555.

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.

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.

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.* 6539.

Cities or villages adopting home rule charter may provide therein for maintenance of existing library and manner of control. *Op. Atty. Gen.*, (285a), Dec. 27, 1939.

If amendment proposed by Laws 1939, chapter 447, is adopted, publication will be required in only one qualified newspaper of proposition of amending home rule charter. *Op. Atty. Gen.*, (86a-38), Feb. 5, 1940.

Statement by attorney general of purpose and effect of amendment to constitution proposed by Laws 1939, chapter 447. *Id.*

Validity of charter not submitted within 6 months after appointment of commission is so doubtful that a judicial determination of question is advised. *Op. Atty. Gen.*, (58-L), July 25, 1940.

State statutes take precedence over municipal ordinances where there is a conflict. *Op. Atty. Gen.*, (83f), Nov. 7, 1940.

ARTICLE 5.—THE EXECUTIVE DEPARTMENT.

4. Powers and duties of governor.

Provision vesting in governor appointment of state and "district officers" does not include county officers, who are governed by §659. *State v. Erickson*, 294NW373. See *Dun. Dig.* 2273.

ARTICLE 6.—THE JUDICIARY.

1. Courts.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.

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.* 8010.

Judicial power does not extend to giving advisory opinions to other departments of the government. *Seiz v. C.*, 290NW802. See *Dun. Dig.* 1589.

An act to establish a municipal court is required to have a favorable two-thirds vote of each house of legislature, otherwise it is a nullity. *State v. Welter*, 296NW582. See *Dun. Dig.* 6899a.

6. Judges of supreme and district courts—qualifications; etc.

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, 6899a.

Salaries of district court judges are subject to income tax. *Op. Atty. Gen.*, (531-h), June 21, 1940.

7. Probate courts.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.

Within its sphere the original jurisdiction of probate court is exclusive, and a court of general jurisdiction has only appellate jurisdiction in such matters. *Shapiro v. L.*, 289NW48. See *Dun. Dig.* 7770c(60).)

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

Probate court's denial of petition to reopen estate does not constitute res judicata on issue of fraud in inducing a party not to file a claim against estate of a deceased person because probate court did not have jurisdiction to determine such issue. *Id.* See Dun. Dig. 5194a.

Judge of probate is an elective county officer who must file annual statement of fees collected pursuant to §976. *Op. Atty. Gen.*, (347E), Jan. 9, 1940.

8. Justices of the peace.

Justice of peace has no right to specify type of labor to be performed by prisoner. *Op. Atty. Gen.*, (266E-20), March 6, 1940.

If principal amount of claim is less than one hundred dollars and interest in addition is demanded which increases claim to more than one hundred dollars, justice has no jurisdiction. *Op. Atty. Gen.*, (266E-11), March 20, 1940.

9. Election of other judges.

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

10. Vacancies.

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

Where appointment to fill office of municipal judge was made less than 30 days before approaching city election, no successor should be elected at that election. *Op. Atty. Gen.*, (307K), March 25, 1940.

13. Clerk of district court.

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

ARTICLE 7.—ELECTIVE FRANCHISE.

1. Persons entitled to vote.

Absent treaty or statute to contrary, a minor child who is a citizen of this country by our municipal law acquires, when taken by its parents to a country under laws of which it is deemed a citizen, a dual nationality, and his United States citizenship is not lost unless upon attaining majority child either fails to elect to retain that citizenship and to return to United States to assume its duties or voluntarily renounces or abandons his United States nationality and allegiance. *Doyle v. R.*, 293NW 614. See Dun. Dig. 1487.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. *Dimke v. F.*, 295NW75. See Dun. Dig. 1699.

Enlisted man in army retains his right to vote and proceed under absent voter's act. *Op. Atty. Gen.* (639-E), Aug. 5, 1940.

A person accepting an appointment to state office and moving to St. Paul may retain his residence in district in which he lived at time he entered state service, and ownership or occupancy of a home in such district is not necessary. *Op. Atty. Gen.* (639J), Aug. 23, 1940.

Indian rights and the federal courts. 24MinnLawRev 145.

2. Persons not entitled to vote.

Where proper affidavit of candidacy for office is filed, county auditor must receive application and place name upon official ballot, notwithstanding that applicant has been convicted of a felony and has not been restored to citizenship, but a court in a proper proceeding might enjoin placing of name upon ballot, since election of one ineligible to hold office would be a felony. *Op. Atty. Gen.* (184i), Aug. 8, 1940.

A commutation of sentence to a term of 4½ months, with reservation of right to revoke commutation for misconduct, does not restore civil rights. *Op. Atty. Gen.*, (68h), Sept. 13, 1940.

A person pleading guilty to a federal felony under the Federal Anti-Narcotic Act cannot hold office or vote, and his office is automatically vacated, though his sentence is suspended. *Op. Atty. Gen.* (490d), Jan. 20, 1941, overruling *Op. Atty. Gen.* (490d), Aug. 21, 1934.

4. Soldiers and sailors.

State veterans' preference act does not give a veteran a vested right in his employment and such employment may be abolished by legislative act. *State v. Stassen.* 294NW647. See Dun. Dig. 1618.

7. Eligibility to office.

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, 6899a.

State highway patrolmen are not eligible to be appointed deputy sheriffs. *Op. Atty. Gen.* (229a-7), Sept. 27, 1939.

Offices of justice of the peace and village assessor are not incompatible. *Op. Atty. Gen.* (266a-1), Nov. 8, 1939.

Offices of village mayor and village assessor are incompatible. *Op. Atty. Gen.* (358E-2), Dec. 11, 1939.

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

Offices of village trustee and school board member are incompatible. *Op. Atty. Gen.*, (358f), Dec. 27, 1939.

Offices of village assessor and school board member are not incompatible. *Id.*

Office of municipal judge or special municipal judge is not incompatible with that of probate judge as a matter of law. *Op. Atty. Gen.*, (358B-2), Jan. 15, 1940.

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

Test of eligibility to hold office in a certain place is right to vote there and this applies to all elective offices. *Op. Atty. Gen.*, (12c-2), Feb. 13, 1940.

Offices of clerk of village council and treasurer of school board are incompatible. *Op. Atty. Gen.*, (358f), March 11, 1940.

Offices of city justice and city assessor are not incompatible. *Op. Atty. Gen.*, (358d-5), March 25, 1940.

Offices of city treasurer and secretary-treasurer of municipal hospital board of Lake City are compatible. *Op. Atty. Gen.*, (358E-1), March 28, 1940.

Positions of member of school board and district boiler inspector are not incompatible, but a district boiler inspector, being under civil service, cannot while holding his position conduct a campaign for membership on school board without forfeiting his civil service rating. *Op. Atty. Gen.*, (358f), May 3, 1940.

Offices of city assessor and member of school board are not incompatible. *Op. Atty. Gen.*, (358f), May 14, 1940.

Offices of mayor and member of school board are not incompatible unless city charter prescribes duties which are inconsistent. *Op. Atty. Gen.*, (358f), June 3, 1940.

A person may file for office of state representative and clerk of court at the same time, but if elected can only hold one office. *Op. Atty. Gen.* (184), Aug. 5, 1940.

Offices of a member of school board and town supervisor, in a township whose area includes all or a part of school board, are incompatible. *Op. Atty. Gen.*, (358f), Sept. 16, 1940.

A candidate defeated for nomination at primary may be elected to the same office by sticker at general election. *Op. Atty. Gen.*, (28a-8), Sept. 26, 1940.

Person pleading guilty to federal felony cannot vote or hold office though sentence is suspended. *Op. Atty. Gen.* (490d), Jan. 20, 1941, overruling *Op. Atty. Gen.* (490d), Aug. 21, 1934.

Offices of assistant county attorney and city attorney are incompatible, and one accepting appointment as assistant county attorney automatically vacates former office of city attorney. *Op. Atty. Gen.*, (358a-1), Jan. 20, 1941.

Offices of town clerk and justice of the peace are not incompatible. *Op. Atty. Gen.*, (358d-4), Mar. 5, 1941.

Offices of village recorder and town clerk are not incompatible. *Op. Atty. Gen.*, (358E-7), Mar. 6, 1941.

9. Official year—Terms of office—General elections.

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

Term of office of all state and county officers, including county commissioners, expires on first Monday of January. *Op. Atty. Gen.*, (126-e), Jan. 8, 1941.

ARTICLE 8.—SCHOOL FUNDS, EDUCATION AND SCIENCE.

1. Uniform system of public schools.

Word "resides" used in statute was construed in its broadest sense with a view to providing a free education for every child in the state, regardless of domicile. *State v. School Board of Consol. School Dist. No. 3*, 287NW625. See Dun. Dig. 8660.

"Residence" differs from "domicile" in that "residence" simply requires bodily presence as an inhabitant in a given place, while "domicile" requires bodily presence in that place and also an intention to make it one's domicile. *Id.*

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. E.*, 295NW302. See Dun. Dig. 6579.

British refugee children have privilege of attending public schools free of tuition in district where they are residing. *Op. Atty. Gen.* (180-G), July 24, 1940.

2. School and swamp lands—School funds from sale of.

Bonds of another state payable solely from state gasoline tax are not authorized investments for state trust fund. *Op. Atty. Gen.*, (928E), April 2, 1940.

3. Public schools in each township—Etc.

Word "resides" used in statute was construed in its broadest sense with a view to providing a free education for every child in the state, regardless of domicile. *State v. School Board of Consol. School Dist. No. 3*, 287NW625. See Dun. Dig. 8660.

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. E.*, 295 NW302. See Dun. Dig. 6579.

Where a school district discontinues its school and transports its pupils to another district, attorney general is inclined to sanction practice of transporting parochial school children along with public school children where no additional expense is involved. *Op. Atty. Gen.* (166a-7), Nov. 10, 1939.

Statute permitting school districts to contract with public library and establish branch libraries does not apply to parochial schools, and they cannot be given library service free, but like any other private party may contract for service upon payment of fair and reasonable compensation. *Op. Atty. Gen.* (285B), Oct. 29, 1940.

4. University of Minnesota.

Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727. Judgment aff'd, 60SCR92. Reh. den., 60SCR 135.

Administration of university permanent trust fund lands by Department of Conservation may not be transferred to the university under existing law. *Op. Atty. Gen.* (618c-2), Feb. 17, 1941.

6. Investment of school funds.

Act Apr. 10, 1941, c. 171 proposes an amendment to this section reading as follows: Section 1. "The permanent school, permanent university and swamp land funds of this state may be loaned to or invested in the bonds of any county, school district, city, town, or village of this state and in first mortgage loans secured upon improved and cultivated farm lands of this state, but no such investment or loan shall be made until approved by the board of commissioners designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 per cent of the assessed valuation of the taxable property of the county, school district, city, town, or village issuing such bonds; nor shall any such farm loan or investment be made when such investment or loan would exceed 30 per cent of the actual cash value of the farm land mortgaged to secure said investment; nor shall such investment or loans be made at a lower rate of interest than two percent per annum, nor for a shorter period than one year nor for a longer period than 30 years and no change of the town, school district, city, village, or county lines shall relieve the real property in such town, school district, county, village, or city in this state at the time of issuing such bonds from any liability for taxation to pay such bonds."

Section 2. This amendment shall be submitted to the people for their approval or rejection at the general election for the year 1942.

State board of investment may not invest in bonds if a school district if total indebtedness of district will exceed 15% of actual assessed valuation, and legislature is powerless to provide otherwise. *Op. Atty. Gen.* (928a-11), March 21, 1940.

ARTICLE 9.—FINANCES OF THE STATE AND BANKS AND BANKING.

1. Power of taxation.

1. In general.

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. 1639, 9144.

Constitutional exemption of public hospitals from taxation applies to moneys and credits. *Op. Atty. Gen.* (614G), Nov. 28, 1940.

2. Special assessments.

While legislature may authorize assessment of school property for local improvements, such authorization must be explicit, otherwise it is deemed to be withheld. *Ind. School Dist. v. C.*, 292NW777. See Dun. Dig. 9151.

Land acquired by Hamlin 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.

4. Equality and uniformity.

It would be an unconstitutional delegation of legislative power to authorize tax commission in its discretion to impose a penalty without a legislative definition of conditions which it must find to exist before such penalty could be assessed, and if imposition of penalty be left to uncontrolled discretion of commission and resulted in discrimination it would be a violation of constitutional uniformity clause and of 14th amendment. *State v. Oliver Iron Min. Co.*, 292NW407. See Dun. Dig. 9140. Cert. den., 61SCR439, 440. See also 292NW411.

It does not offend our tax law that affiliated or related corporations which have no tax status in this state are not joined in consolidated return. If all affiliated corporations which are taxable in this state are joined in con-

solidated return it is a sufficient compliance with our law, although there may be other affiliated corporations having no tax status here. *Id.*

5. Classification.—Uniformity.

Minnesota v. National Tea Co., 309US551, 60SCR676, rev'g on other grounds 205Minn443, 286NW360.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. *Dimke v. F.*, 295NW75. See Dun. Dig. 9142.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. *Eldred v. D.*, 295NW412. See Dun. Dig. 9140.

Taxpayer seeking benefits of statute permitting apportionment of tax between years when rates are changed cannot attack its constitutionality when construed as inapplicable to him. *Byard v. C.*, 296NW10. See Dun. Dig. 9130.

8. Particular property, persons or institutions.

Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727. Judgment aff'd, 60SCR92. Reh. den., 60SCR 135.

A cemetery association or public cemetery is not a "charitable corporation," within meaning of unemployment compensation law. *Christgau v. W.*, 293NW619. See Dun. Dig. 1386.

Property turned over to church and used for religious purposes for many years without payment of rent or interest was not exempt from taxation while owned by individual, but commissioner of taxation could grant reduction or abatement of tax after owner conveyed it to church. *Op. Atty. Gen.* (414d-6), Dec. 12, 1939.

In order to be exempt a hospital must be devoted to a public use and operated for charitable purposes, and it is not enough that it is a corporation organized under charitable statutes. *Op. Atty. Gen.* (414d-10), Feb. 8, 1940.

Land conveyed to a cemetery association for burial purposes is exempt from taxation, even though part of it is leased annually for farm purposes on a cash rental basis, and association has never filed articles of incorporation. *Op. Atty. Gen.* (414d-4), May 1, 1940.

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 Hamlin 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.

Cases cited on point whether beauty and hairdressing school personal property is exempt from taxation. *Op. Atty. Gen.* (414B-3), May 7, 1940.

Mere fact that private hospital records articles of incorporation setting forth that it is of a charitable nature does not necessarily make its property exempt. *Op. Atty. Gen.* (414d-10), July 29, 1940.

Land leased to United States government creates and establishes a recreational area for an indefinite period, in consideration of \$1 and other valuable consideration, may be considered "public lands," and its taxability would depend upon, exclusive use, by the government without any substantial use reserved by lessor. *Op. Atty. Gen.* (414a-2), Oct. 18, 1940.

Personal property exemption provided in §1975(8) is applicable to any personal property which taxpayer may own and is not limited to household goods described in §1993(2). *Op. Atty. Gen.* (421B-5), Dec. 6, 1940.

3. Property subject to taxation.

2. Exemptions.

Trustees of Pillsbury Academy v. State, 204Minn365, 283NW727. Judgment aff'd, 60SCR92. Reh. den., 60SCR 135.

9. Payments out of treasury.

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

ARTICLE 13.—IMPEACHMENT AND REMOVAL FROM OFFICE.

2. Removal.

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.

ARTICLE 14.—AMENDMENTS TO THE CONSTITUTION.

1. Submission to the people.

Laws 1941, c. 135, appropriates the sum of \$12,900.00 for publishing of proposed amendments to the constitution in newspapers during October, 1940.

ARTICLE 15.—MISCELLANEOUS SUBJECTS.

2. Residents on Indian lands.

Indian rights and the federal courts. 24MinnLawRev 145.

ARTICLE 16.—TRUNK HIGHWAY SYSTEM.

1. Creation.

Sections 311 and 357 of Title 25 Mason's United States Code Annotated, offer two methods for acquisition by state of land for public highway, and hence in a proceeding by the state of Minnesota pursuant to the former section to condemn land allotted in severalty to Indians for highway purposes consent of Secretary of Interior was not necessary. U. S. v. State, (CCA8), 113F(2d)770.

2. Fund.

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. Westerson v. S., 291NW900. See Dun. Dig. 8452.

Highway fines do not arise under or by virtue of Constitution, Art. 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. See Dun. Dig. 8452.

Laws 1939, c. 431, Art. 2, §20, imposing upon highway fund a charge to be used to defray general cost of government, is by that much unconstitutional. Cory v. K., 296NW506. See Dun. Dig. 8452.

Refunds by telephone company to highway department should be credited to trunk highway fund. Op. Atty. Gen., (229a), March 5, 1940.

3. Taxation of motor vehicles.

Exacting a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State v. Holm, 295NW297. See Dun. Dig. 9140a.

Gasoline tax paid on gasoline used to operate highway construction machinery is not in lieu of personal property taxes on such equipment. Op. Atty. Gen., (325), Mar. 3, 1941.