

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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CHAPTER 28A-1

Telephone Companies

5290. Schedule of rates, etc.

No approval by railroad and warehouse commission is required of initial schedule of rates filed by a telephone company. *Tri-State Tel. & Tel. Co. v. Intercounty Tel. Co.*, 211M496, 1NW(2d)853. See Dun. Dig. 9583a.

5291. Commission to fix reasonable rates.

Section impliedly authorizes commission to sanction new rates proposed by a telephone company without formal notice of hearings and taking of testimony, if satisfied that rates are just and reasonable. *Lenihan v. T.*, 208M172, 293NW601. Cert. den. 311US711, 61SCR392. See Dun. Dig. 9583a.

Parties to pending rate litigation commission representing public, and defendant telephone company had right to compose and end controversy by superseding schedule of rates fixed by order sustained by supreme court by schedule of rates promulgated by subsequent order. *Id.*

Penalties paid by telephone subscribers were not part of "excess sums" required to be refunded by judgment of court requiring company to refund difference between amount charged under old rate and amount charged under new rate authorized by commission, and telephone company was not required to set off amount of excess charge under old rate against subsequently accruing bills so as to entitle subscribers to discounts for prompt payment thereof. *State v. Tri-State Tel. & Tel. Co.*, 209M86, 295NW511. See Dun. Dig. 9583a.

Where initial rates filed are unreasonable, commission on its own motion or complaint may prescribe reasonable rates. *Tri-State Tel. & Tel. Co. v. Intercounty Tel. Co.*, 211M496, 1NW(2d)853. See Dun. Dig. 9583a.

5295. Connections between telephone companies not discontinued.

An order of commission for continuance of physical connection of lines of companies whose lines connect at different points, which directs routing of messages so that one company must turn over to other at first point of connection messages which it has received for transmission and for which it has facilities, in effect deprives such company of use of its property for its own business as to part of transmission which it can make over its own lines and gives that part of its business to company to which such transfer is ordered, and is to that extent confiscatory and unreasonable. *Tri-State Tel. & Tel. Co. v. Intercounty Tel. Co.*, 211M496, 1NW(2d)853. See Dun. Dig. 9583a.

Function of prescribing reasonable terms and conditions for continuance of physical connection is for commission. *Id.*

It is mandatory duty of commission to order continuance of physical connection where facts found show, or in absence of explicit finding, statutory presumption is, that public convenience will be promoted. *Id.*

Mere fact there was prior connection of lines of companies under contract gives rise to no rights with respect to continuance of such connections, nor does it operate as a dedication of telephone properties to joint use for which contract provided. *Id.*

There is a presumption that, where application is made therefor, public convenience will be promoted by physical connection of lines of telephone companies. *Id.*

5298. Commission given power to delegate authority to employees.

Lenihan v. T., 208M172, 293NW601; notes under §5291.

5299. Commission to grant authority for constructing telephone lines.

Mere fact there was prior connection of lines of companies under contract gives rise to no rights with respect to continuance of such connections, nor does it operate as a dedication of telephone properties to joint use for which contract provided. *Tri-State Tel. & Tel. Co. v. Intercounty Tel. Co.*, 211M496, 1NW(2d)853. See Dun. Dig. 9583a.

A telephone company is not required to obtain from commission a certificate of public convenience to authorize it to reroute messages by use of existing lines and equipment. *Id.*

5302. Municipalities given right to operate telephone exchanges.

Act is limited to a telephone exchange within borders of municipality. *Op. Atty. Gen.* (98a), June 10, 1940.

5307. Expense of furnishing transcribed copy of records.

Lenihan v. T., 208M172, 293NW601. Cert. den. 311US 711, 61SCR392. *Reh. den.* 61SCR448.

5308. Mode of procedure for appeals, etc.

Court may enter order which law compelled and with respect to which neither commission nor court had any discretion. *Tri-State Tel. & Tel. Co. v. Intercounty Tel. Co.*, 211M496, 1NW(2d)853. See Dun. Dig. 9583a.

Where railroad and warehouse commission was not guided by applicable rules of law in arriving at its decision, its decision is illegal. *Id.*

5311-2a. Same—Investigation fund—Appropriation.

Minnesota Telephone Rate Investigation Fund, abolished. *Act Apr. 28, 1941, c. 548, §43.*

5312. Town boards may construct; etc.

Statutes relating to town telephone lines do not apply to villages. *Op. Atty. Gen.* (98a), June 10, 1940.

5319. Town boards to manage.

Management of township telephone line is vested in town board, and where it is required to move line because of installation of high power line it may contract with a private telephone company for the use of the latter's poles and pay a pin rental therefore without having such contract approved by voters of the town. *Op. Atty. Gen.* (98a-3), Apr. 2, 1943.

Passage of a motion that township board will not make any contract in future without consent of the majority of the voters of township could not deprive supervisors of their power of management of telephone lines. *Op. Atty. Gen.* (98a-3), Nov. 26, 1943.

CHAPTER 28B

Department of Banking—Division of Banking in Department of Commerce

5323. Commissioner—Powers, authority, and privileges.—The commissioner of banks is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, Chapter 201, were conferred by law upon the public examiner, and he shall take over all duties in relation to state banks, savings banks, trust companies, building and loan associations, and other financial corporations within the state which, prior to the enactment of Chapter 201, were imposed upon the public examiner. The commissioner of banks shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, building and loan associations, and other financial corporations doing business within the state; and shall, through examiners, visit at least twice each year such state banks,

savings banks, trust companies, building and loan associations, and other financial corporations, inspecting and verifying the assets and liabilities of each, and so far investigate the character and value of the assets of each such corporation as to ascertain with reasonable certainty that the values are correctly carried on its books; provided that from May 1, 1943, to June 30, 1945, inclusive, these visits shall be made at least once each year, notwithstanding any other provisions of law, but this provision shall not limit the commissioner in making additional visits as he deems necessary or advisable. He shall investigate the methods of operation and conduct of these corporations and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. He may examine, or cause to be examined by these examiners,

on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any such financial corporations touching the affairs and business thereof, and may, issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued by him or under his direction, the refusal may at once be reported to the district court of the district in which the bank or other financial corporation is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to his official duties, the commissioner of banks has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, building and loan associations, and other financial corporations within the state, and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make such returns and reports to the commissioner of banks as he may require; attend and answer, under oath, his lawful inquiries; produce and exhibit such books, accounts, documents, and property as he may desire to inspect, and in all things aid him in the performance of his duties. (As amended Act Feb. 5, 1943, c. 12, §1.)

This section supersedes §7640. Op. Atty. Gen., (29a-6), April 12, 1940.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. Op. Atty. Gen. (29a-15), Nov. 13, 1940.

5327. Employees in office of superintendent of banks.—Subdivision 1. **Employees.**—The commissioner of banks may appoint a deputy commissioner, such examiners, assistant examiners, one chief clerk, such assistant clerks, stenographers and other employees as are needed to discharge in the proper manner the duties imposed by law upon the commissioner of banks. Such deputy and examiners shall each give bond to the state in the sum of Ten Thousand (\$10,000.00) Dollars, and the clerks and other employees, whenever so provided, shall each give bond to the state in such sum as may be designated by the commissioner of banks; all such bonds to be approved by the commissioner of banks and filed in the office of the secretary of state. During the absence or disability of the commissioner of banks, said deputy commissioner shall have charge of the office and administer its affairs. The deputy commissioner, the examiners and assistant examiners so to be appointed shall have had at least three years active experience in the banking business, or at least five years experience in the Department of Banking of the State of Minnesota, and shall furnish such evidence of their qualifications as expert accountants and general fitness for their duties as may be demanded by the commissioner of banks. Such examiners shall confine their work to the examination of state banks, savings banks, trust companies and other financial corporations located within the districts to which they shall be appointed as herein-after provided, save and except that any such examiner may be temporarily transferred from his district to some other district by the commissioner of banks when it shall appear that the interest of the department shall be better served by so doing; and whenever it shall appear that the number of such banks and other financial corporations within any such examiner's district is more than can be properly examined twice during each year by the examiner, he shall be provided with such clerks or assistants as may be considered necessary by the commissioner of banks.

Subd. 2. May appoint examiner in charge of liquidation.—The commissioner of banks may appoint an examiner in charge of liquidation and such special deputy examiners and other employees as are needed

by him in the liquidation of banks. The certificates of appointment of the examiner in charge of liquidation, and of such special deputy examiners shall be filed in the office of the commissioner of banks and a certified copy thereof shall be filed in the office of the secretary of state and in the office of the clerk of the district court of the county in which the principal office of the bank concerned was located. The qualifications of such examiner in charge of liquidation and special deputy examiners shall be the same as prescribed in subdivision 1 of this section for examiners. The commissioner of banks may from time to time authorize any such special deputy examiner to perform such duties connected with such liquidation and distribution as he may deem proper. The commissioner of banks shall require from the examiner in charge of liquidation and each special deputy examiner such bond for the faithful discharge of his duties as he may deem proper. The commissioner of banks may procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such bank and may retain such of its officers or employees as he may deem necessary.

Subd. 3. Examiners not to examine institutions in which they have a financial interest.—No examiner shall have the right to examine any bank, savings bank or other financial corporation in which he may have an interest, either directly or indirectly. (As amended Act Apr. 14, 1943, c. 442, §1.)

5332. Fees for examination of financial institutions.—Each bank, trust company, savings bank, local or general building and loan association and credit union organized under the laws of this state, shall pay into the state treasury for each authorized regular or special examination made at any time by the commissioner of banks of such institution, a fee to be determined as follows:

In the case of state banks, trust companies or savings banks, for the first examination in each calendar year a minimum fee of \$60.00 plus an amount equal to three cents for each \$1,000 of assets in excess of \$25,000, and not exceeding \$200,000; where the assets exceed \$200,000 and do not exceed \$400,000, a minimum fee of \$80.00 plus three cents for each \$1,000 of assets in excess of \$25,000; where the assets exceed \$400,000 and do not exceed \$600,000, a minimum fee of \$100.00 plus three cents per \$1,000 of assets in excess of \$25,000; where the assets exceed \$600,000 and do not exceed \$1,000,000, a minimum fee of \$125.00 plus three cents for each \$1,000 of assets in excess of \$25,000; where the assets exceed \$1,000,000 and do not exceed \$2,000,000, a minimum fee of \$150.00 plus three cents for each \$1,000 of assets in excess of \$25,000; where the assets exceed \$2,000,000 and do not exceed \$3,000,000, a minimum fee of \$200.00 plus three cents for each \$1,000 of assets in excess of \$25,000; where the assets exceed \$3,000,000, a minimum fee of \$300.00 plus three cents for each \$1,000 of assets in excess of \$25,000, and in the case of trust companies an additional amount equal to two cents for each \$1,000 value of properties held in trust for the benefit of others.

For a second examination within the same calendar year the examination fee shall be computed on the above basis except that the amount of the minimum fee shall be reduced by 75 per cent.

In the case of local building and loan associations, for each examination, a minimum fee of \$25.00, plus an amount equal to ten cents per \$1,000 of assets in excess of \$15,000 and less than \$5,000,000 plus an amount equal to five cents per \$1,000 of assets in excess of \$5,000,000.

In the case of credit unions a fee of \$10.00 of assets up to and including \$2,000; where the assets exceed \$2,000 and do not exceed \$10,000, a fee of \$12.50 plus an amount equal to \$1.00 per \$1,000 of assets over \$2,000; where the assets exceed \$10,000 and do not exceed \$100,000 a fee of \$15.00 plus a sum of \$1.00 per \$1,000 of assets over \$2,000 and less than

\$100,000; where the assets are \$100,000 or more a fee of \$15.00 plus an additional amount equal to \$1.00 per \$1,000 of assets over \$2,000 and less than \$100,000, plus an amount equal to 50 cents per \$1,000 of assets of \$100,000 or over; except that in the case of credit unions with assets over \$50,000 the fee shall be based on the above schedule, or on the basis of \$15.00 per diem for the actual time of each person spent in connection with the examination; whichever

is lower. Each new credit union shall pay an application fee of \$25.00.

Said fees shall be paid by the institution examined within 20 days after a statement of the amount thereof shall have been rendered the institution examined by the commissioner of banks, and if not so paid shall bear interest at the rate of six per cent per annum. (As amended Act Apr. 28, 1941, c. 488, §1.)

This section supersedes §7650. Op. Atty. Gen., (23a-16), April 12, 1940.

CHAPTER 29

Public Health

5339. General duties of board—Reports.

Powers of State Board of Health in enforcement of laws relating to water pollution and sewage disposal stated. Op. Atty. Gen. (225m), Nov. 23, 1940.

It is duty of state board of health to refuse to consider any plan for public water supply or waste disposal system prepared by person not holding license as engineer or architect. Op. Atty. Gen., (225m), Mar. 29, 1941.

5345. State board of health, general and special rules.

City may not expend money for development of a swimming beach in a river if project has been condemned by state department of health pursuant to regulations. Op. Atty. Gen., (63B-1), April 29, 1940.

Powers of State Board of Health in enforcement of laws relating to water pollution and sewage disposal stated. Op. Atty. Gen. (225m), Nov. 23, 1940.

State Board of Health may properly and legally accept for examination and approval or disapproval plans for water, sewer and refuse disposal system prepared by architects and engineers of other states who do not hold Minnesota licenses. Op. Atty. Gen. (225M), Feb. 21, 1941.

Section gives board power to require licenses or permits from both public and private institutions in manner of construction and equipment, in respect to sanitary conditions, and authority to issue such licenses carries with it right to charge licensee for cost of issuing license, and reasonable compensation for additional expense or supervision, but Laws 1941, c. 548, §48, requires that all fees be deposited with state treasurer for benefit of general revenue fund. Op. Atty. Gen. (1001A), Mar. 3, 1942.

In order to transport body of one dying from tuberculosis from place of death to funeral home, it must be in charge of a licensed embalmer because tuberculosis is a communicable disease, truck must be either driven by or accompanied by a licensed embalmer, and body must be embalmed, and it may then be turned over to any one for transportation by truck after signing transportation permit, and after body reaches place of burial, funeral must be conducted by a licensed funeral director. Op. Atty. Gen. (225c-2) May 6, 1942.

Private individuals and corporations are subject to regulation 200 of the state board of health, as amended, and must submit plans for approval before constructing a system of water supply, sewerage, or refuse disposal, which affects or tends to affect the public health, though it is not for the use of any considerable number of persons. Op. Atty. Gen. (225m), June 24, 1943.

5348. Local boards—Health officers.

County is not liable for any part of local health officer's salary, even though a part of it might be earned while establishing, enforcing, or releasing quarantine of communicable diseases. Op. Atty. Gen., (2251-2), Dec. 6, 1939.

Section 5348 and §5351 do not contemplate county paying any part of money expended by town for services of regular medical health officer, whether he be physician member of town board or one appointed by chairman to fulfill duties of former. Op. Atty. Gen., (2251-2), Dec. 22, 1939.

A village health officer must be a licensed physician, but need not be a resident of the village. Op. Atty. Gen., (2251-6), March 8, 1940.

There is no rule requiring a permit from health officers for every pupil who may return to school after being absent more than 2 days, but certain permits must be obtained where illness appears. Op. Atty. Gen. (169L), Mar. 14, 1941.

There is no authority permitting a county board to appropriate the sum of \$200.00 to a county health officer or county medical association for a health program consisting of immunization against diphtheria and smallpox. Op. Atty. Gen., (611-a), July 7, 1941.

There is no statute providing qualifications of an assistant health officer. Op. Atty. Gen. (2251-1), Nov. 18, 1941.

A town supervisor who is a physician and who has been designated as local health officer can draw compensation as health officer in addition to maximum

provided for a member of town board, but a town supervisor who is not local health officer is not entitled to additional compensation for health services performed by him, and compensation to supervisors for acting as members of local health board may be paid out of general township funds, while compensation to local health officers should be paid out of health fund if town has one. Op. Atty. Gen. (2251-4), Apr. 21, 1942.

5351. Powers of health officer in assuming jurisdiction over communicable diseases.

County is not liable for any part of local health officer's salary, even though a part of it might be earned while establishing, enforcing, or releasing quarantine of communicable diseases. Op. Atty. Gen., (2251-2), Dec. 6, 1939.

Section only contemplates that county shall pay one-half of expenses for establishing, enforcing, and releasing quarantine for purpose of combating an epidemic of a communicable disease in a particular locality when additional medical help is necessary, whether or not town has appointed a regular medical officer under either of methods provided in §5348. Op. Atty. Gen., (2251-2), Dec. 22, 1939.

Section 5348 and §5351 do not contemplate county paying any part of money expended by town for services of regular medical health officer, whether he be physician member of town board or one appointed by chairman to fulfill duties of former. Id.

Where services of doctor and nurse are rendered for a pauper family ill with scarlet fever, any part thereof that could reasonably be necessary to protection of public from contagion should be paid for in accordance with §5352, but any portion inuring solely to benefit and care of patients would be chargeable to poor relief. Op. Atty. Gen., (611a-6), Feb. 29, 1940.

Township clerk has no authority to bind township supervisor for expenses of control of communicable disease. Op. Atty. Gen. (611a-5), Feb. 25, 1941.

Procedure for payment of bill of doctor treating and controlling a communicable disease in a family receiving direct relief from another county where it has settlement. Op. Atty. Gen. (611A-6), Feb. 13, 1942.

5352. Allowance and payment of expenses, etc.

A bill for control of contagious disease should be paid from county revenue fund and not welfare fund. Op. Atty. Gen. (107b-8), Dec. 30, 1942.

5353-1. Public health nurses in counties, cities, villages, towns, etc.

Village council may pay pro rata share of salary of county nurse. Op. Atty. Gen., (905a), Nov. 28, 1939.

Public health nurse may not be paid from county welfare fund. Op. Atty. Gen., (905B), May 14, 1940.

Whether or not several school districts may join in hiring a school nurse, each school board is authorized to hire a public health nurse for such period of a week or month as it deems necessary and other school boards in area may hire same nurse for remaining periods of time. Op. Atty. Gen. (905F), Sept. 18, 1941.

5353-4. Same—Lists of nurses furnished by state board of health.

A program of social hygiene concerned primarily with instruction in social hygiene and with class room work on social hygiene is a responsibility of the department of education and not the department of health, and duties of school nurses should not involve instruction of pupils except perhaps to a very limited extent. Op. Atty. Gen. (170b), July 7, 1943.

5353-6. Same—County nurses detailed to act with county board, etc.

County nursing committee must serve without compensation or reimbursement for expenses. Op. Atty. Gen. (905b), Nov. 17, 1943.

5354. Vital statistics—State board to have charge.

War time, daylight saving or standard time, whichever may be in effect, shall be followed in making out