

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.

Edited by
the
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shall be deemed authorized securities within the provisions of Mason's Minnesota Statutes of 1927, Section 7714, as amended, and shall be proper for the investment of capital, surplus, or deposits of any savings bank or trust company, and for the investment of funds of any insurance company, and for the investment of any sinking funds held by any public or municipal corporation, and may be pledged by any bank or trust company as security for the deposit of public moneys therein in lieu of surety bonds. Such bonds shall be deemed and treated as instrumentalities of a public government agency, and as such shall be exempt from taxation. (Act Apr. 19, 1943, c. 500, §17.) [360.118]

5494-118. Limit of indebtedness.—The corporation shall never be subject to an indebtedness in excess of \$15,000,000, nor shall it incur any indebtedness except as authorized herein. (Act Apr. 19, 1943, c. 500, §18.) [360.119]

5494-119. Bonds to be guaranteed by municipalities.—Bonds issued pursuant to the provisions of this act by either city shall be secured by the full faith, credit, and resources of the city issuing them, shall be paid from tax levies made in conformity with Mason's Minnesota Statutes of 1927, Sections 1938-7 and 1938-10, and shall be sold in the manner prescribed by Mason's Minnesota Statutes of 1927, Section 1943. No provisions of any existing law or special or home rule charter under which either city may be acting shall be deemed or construed to impair, curtail or limit in amount, form or manner the power to issue any bonds pursuant to this act, and the bonds issued by either city or by the corporation pursuant to this act shall not be included in computing the net

indebtedness of such municipality under any applicable law or charter. (Act Apr. 19, 1943, c. 500, §19.) [360.121]

5494-120. Construction work.—The provisions of Section 15 of Chapter 341, Laws of 1933, shall apply to all construction work and every purchase of equipment, supplies, or materials necessary in carrying out the provisions of this act. The powers there granted to and the duties imposed upon the board of trustees of the corporation there referred to are hereby respectively granted to and imposed upon the commissioners. (Act Apr. 19, 1943, c. 500, §20.) [360.122]

5494-121. Inconsistent acts repealed.—All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. (Act Apr. 19, 1943, c. 500, §21.)

5494-122. Provisions severable.—If any provisions of this act, or the application thereof, is held invalid, such invalidity shall not affect provisions or applications of the act which can be given effect without the invalid provisions or applications and to this end the provisions of this act are declared to be severable. (Act Apr. 19, 1943, c. 500, §22.)

5494-123. Construction of act.—This act shall not be construed so as to abridge any of the powers granted by law to the Minnesota Aeronautics Commission. (Act Apr. 19, 1943, c. 500, §23.) [360.123]

5494-124. Effective July 6, 1943.—This act shall take effect and be in force from and after July 6, 1943. (Act Apr. 19, 1943, c. 500, §24.)

CHAPTER 31C

Aeronautics Code

5494-125. Definitions.—Subdivision 1. For the purposes of laws of this state relating to aeronautics, the following words, terms and phrases shall have the meanings herein given unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires.

Subd. 2. "Aeronautics" means the science and art of flight.

Subd. 3. "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

Subd. 4. "Public aircraft" means any aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

Subd. 5. "Civil aircraft" means any aircraft other than a public aircraft.

Subd. 6. "Airport" means any locality, either of land or water, including intermediate landing fields, which is used or intended to be used for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and also includes any facility used in, available for use in, or designed for use in, aid of air navigation, including, but without limitation, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft, and also

includes, without limitation, access roads, parking areas, railroad siding facilities, such land, contiguous or not, as may be required for installations necessary for safe and efficient operation, buildings, structures, hangars, shops, and any personal property usually used in connection with the operations of such airports, including specifically, but not exclusively, snow removal or impacting equipment, fire and ambulance equipment, motor vehicles and equipment for buildings, structures, hangars, and shops. It includes any area heretofore in the statutes of this state termed an "airport", a "landing field", or a "flying field".

Subd. 7. "Emergency landing strip" means any locality, either of land or water, which is used for the landing and take-off of aircraft but not designed for use as an airport and which shall, except in case of emergency, be used only as provided from time to time by the regulations of the commissioner of aeronautics of the state of Minnesota.

Subd. 8. "Person" means any individual, firm, partnership, corporation, company association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

Subd. 9. "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

Subd. 10. "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state.

Subd. 11. "Commercial aviation" means the carriage by aircraft of persons or property for compensation or hire, or the operation or navigation of aircraft in the conduct of furtherance of a business or vocation.

Subd. 12. "Commercial aircraft" means aircraft engaged in commercial aviation.

Subd. 13. "Noncommercial aircraft" means aircraft not engaged in commercial aviation.

Subd. 14. "Air instruction" means the imparting of aeronautical information in or by any air school, flying club, or by any aviation instructor.

Subd. 15. "Air school" means any person engaged in giving, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give such instruction. It does not include any public school, the University of Minnesota, or any institution of higher learning accredited by the University of Minnesota and approved by it for carrying on collegiate work.

Subd. 16. A "flying club" means any person other than an individual, which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

Subd. 17. "Aviation instructor" means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, without advertising such occupation, without calling his facilities an "air school", or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school of this state, the University of Minnesota, or in any institution of higher learning accredited by the University of Minnesota and approved for carrying on collegiate work, while engaged in his duties as such instructor.

Subd. 18. "Municipality" means a city of any class, including a city organized under a charter framed pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, a county, a town, a village, or a borough, in this state.

Subd. 19. "Governing body" means the council, board of trustees, board of commissioners, board of supervisors, or other body, board, commission, or other authority charged with governing any municipality, and in municipalities in which the board of park commissioners or other body in charge of the park system of the municipality controls airports owned by the municipality includes such board or other body.

Subd. 20. "Airport hazard" means any overhead power line which interferes with radio communication between a publicly-owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

Subd. 21. An airport is "publicly-owned" if the portion thereof used for the landing and taking-off of aircraft is owned by a governmental body, political subdivision, public agency, or other public corporation.

Subd. 22. "Department" means the Minnesota Department of Aeronautics unless otherwise indicated.

Subd. 23. "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke-stacks, and overhead transmission lines.

Subd. 24. "Tree" means any object of natural growth.

Subd. 25. "Administrative agency" means either a governing body of the municipality or an administrative agency under its jurisdiction to which any powers have been delegated by such governing body.

Subd. 26. "Commissioner" means the commissioner of aeronautics of the state of Minnesota unless otherwise indicated.

Subd. 27. For the purposes of Section 20, Subd. 6, a hydroplane, while at rest on the water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation, and otherwise as an aircraft.

Subd. 28. "Pilot" includes aviator, aeronaut, pilot, balloonist, and every other person having any part in the navigation of aircraft while in flight.

Subd. 29. When used in this act with reference to an airport, the term "public utility class" means available to the general public for private flying or otherwise as a point of arrival or departure by air. (Act Apr. 24, 1943, c. 653, §1.) [360.011]

5494-126. Department of Aeronautics created—Officers—Salaries.—Subdivision 1. There is hereby created the department of aeronautics, consisting of the commissioner of aeronautics, his assistants, and such help and employees as may be from time to time appointed or employed.

Subd. 2. There is hereby created the office of commissioner of aeronautics, the incumbent of which shall have the powers and duties and privileges herein set forth. Except for the first term, which shall begin as soon as the governor can reasonably appoint a suitable person and which shall expire January 1, 1947, the term of office shall be 4 years; the governor, with the consent of the senate, shall appoint a suitable person, having a knowledge of aeronautics to said office. The commissioner of aeronautics shall be subject to removal by the governor for malfeasance or nonfeasance in office, and shall be entitled to written notice of the charges against him and allowed a reasonable opportunity to be heard thereon.

Subd. 3. The commissioner shall devote full time to the performance of his official duties and shall receive as compensation therefor a yearly salary of \$6,000, payable semi-monthly.

Subd. 4. The commissioner shall, before entering upon the performance of his official duties, give bond to the state, to be approved by the governor, in the penal sum of \$25,000, conditioned for the faithful performance of his duties. If a surety company bond is given, the premium thereon may be paid from the funds available for the payment of the expenses of the department. The amount of such premium so paid shall be approved as to amount by the state treasurer. The state, the several governmental subdivisions thereof, or any person damaged by any wrongful act or omission of the commissioner in the performance of his official duties, may maintain an action on such bond for the recovery of damages so sustained.

Subd. 5. The commissioner shall have an official seal with which he shall authenticate his official acts. There shall be on the margin thereof the words "Commissioner of Aeronautics—State of Minnesota" and in the center thereof the seal of the state.

Subd. 6. The commissioner may appoint an assistant commissioner of aeronautics, who shall be an experienced and registered engineer and qualified to design and plan all classes of airports. The assistant commissioner shall receive a salary of not to exceed \$5,000 a year as fixed by the commissioner, payable semi-monthly. He shall serve at the pleasure of the commissioner and shall be in the unclassified service of his office. The commissioner may, by written order filed in his office, delegate to him any of the powers or duties vested in or imposed upon said commissioner by this act. Such delegated powers and duties may be exercised by him in the name of the commissioner. Such assistant commissioner shall, before entering upon the performance of his official duties, give bond to the state, in the penal sum of \$10,000 and under the same provisions and conditions as the commissioner's bond.

Subd. 7. The commissioner is authorized to employ such additional skilled and unskilled help and employees as may be needed. Any employee may be re-

quired to furnish a bond at the discretion of the commissioner and such bond shall be under the same provisions and conditions as the commissioner's bond.

Subd. 8. The commissioner shall maintain his offices in the metropolitan Twin City area and maintain offices in any other city in the state that he may designate.

Subd. 9. The salaries and expenses of the department shall be paid from the Airports Fund. (Act Apr. 24, 1943, c. 653, §2.) [360.012]

5494-127. Duties of commissioner. — Subdivision 1. (1) The commissioner shall foster air commerce within the state and have supervision over the aeronautical activities and facilities within the state, which authority shall include supervision and control over all airports, emergency landing strips, air instruction, air marking, air beacons, and all other navigation facilities, and the registration of all pilots and aircraft. (2) The commissioner is empowered to prescribe such reasonable rules and regulations as he may deem necessary and advisable for the public safety and for the promotion of aeronautics, governing the designing, laying out, location, building, equipping, operation, and use of all airports, or emergency landing strips. (3) The commissioner is further empowered to prescribe such reasonable rules and regulations as he may deem necessary governing the curriculum, equipment, personnel, and operation and management of all air instruction for the purpose of protecting the health and safety of students receiving or to receive such instruction, and insuring, so far as may be possible, the public safety through the proper training and instruction of student aviators. (4) The commissioner is further empowered to prescribe such reasonable rules and regulations as he may deem necessary and advisable for the public safety and the safety of those engaged in aeronautics, and for the promotion of aeronautics, governing the establishment, location, maintenance, and operation of all air markings, air beacons, and other air navigation facilities. (5) The commissioner is further empowered to prescribe such reasonable air traffic rules and regulations as he shall deem necessary for the public safety and the safety of those engaged in aeronautics, and for the promotion of aeronautics. (6) All rules and regulations prescribed by the commissioner under the authority of this section shall be as consistent as it reasonable, in view of the interests of the state as a whole, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder, in order that uniformity of regulations and statutes will be maintained. (7) Whenever valid rules and regulations of the commissioner and rules and regulations of a municipality or of a public corporation operating airports are inconsistent, the rules and regulations of the commissioner shall control; provided, however, that nothing herein contained shall be construed to limit any powers specifically granted by Section 7, Subdivision 1 through 16, of the statute creating the Metropolitan Airports Commission to public corporations created in and for contiguous cities of the first class owning and operating airports.

Subd. 2. The commissioner shall, upon organization of the department under this act, prepare plans for an airways system for the state which will best serve the interests of the state as a whole.

Subd. 3. The commissioner shall assist in the development of aviation and aviation facilities within the state for the purpose of safeguarding the interests of those engaged in all phases of the industry and of the general public and of promoting aeronautics. Insofar as the constitution of the state of Minnesota permits at the time, the commissioner is empowered to expend, when the state system will be benefited thereby, any or all of the moneys allocated to, and deposited in, the state airports fund, for the acquisi-

tion or enlargement, by purchase, grant, lease, condemnation, or other means, and for the construction, operation, and maintenance of airports or emergency landing strips within this state, and of other aeronautic facilities or services within the state for the safety and advancement of aeronautics, which authority shall include the joint establishment or provision of such aeronautic facilities or services in cooperation with other states or federal departments, or with political subdivisions of this state.

Subd. 4. The commissioner shall, insofar as is reasonably possible in view of the financial condition and time of the department, offer the engineering or other technical services of the department without charge to any municipality desiring them in connection with the construction or operation or proposed construction or operation or an approved airport in accord with, or a part of, the state system.

Subd. 5. The commissioner shall once each year, in peacetime, publish a map showing the location and status of airports and emergency landing strips, insofar as not objectionable to military departments of the United States or of the state of Minnesota.

Subd. 6. On or before December 31 each year the commissioner shall make to the governor a full report of the proceedings of the department for the preceding year, and a biennial report shall be made to each legislature that convenes in regular session within 10 days after it first convenes, and with such reports the commissioner may submit such recommendations pertaining to the affairs of the department as seem to him to be desirable.

Subd. 7. The commissioner shall be the custodian of and preserve the records of the department and of the official acts and determinations, which shall be denominated orders, made by himself or his predecessors in office. All of the files and records of the department shall, under reasonable regulations, be open to public inspection, and copies thereof certified by the commissioner as being true copies shall be received in evidence in any court in this state with the same force and effect as the originals. The attorney general shall be ex-officio attorney for the commissioner and shall give him such legal counsel, advice, and assistance as he may require from time to time.

Subd. 8. The commissioner shall keep accurate and complete books of account of such character as may be prescribed by the public examiner, the same to show in detail itemized receipts and disbursements of the Airports Fund. The books shall show, and it shall be the duty of the public examiner to so prescribe, the following facts, among others:

(a) The expenses of maintaining the department, including the salaries and expenses of the individual members thereof;

(b) The amounts of money expended in each county of the state for the construction or maintenance of airports or emergency landing strips when, where, and upon what airport or emergency landing strip expended, so that the cost for each such airport or emergency landing strip can be easily ascertained;

(c) The amount of equipment and materials purchased, and when, where, and from whom purchased; these books shall show the price paid for each item; the original invoice shall form a part of the permanent files and records in the department and shall be open to public inspection.

Subd. 9. It shall be the duty of the public examiner to examine the books, accounts, records, and files of the department at least twice each year and oftener if he thinks proper; a copy containing a summarized report of such audit shall be presented to the governor and to the legislature in regular session.

Subd. 10. The commissioner is authorized to cooperate with the government of the United States and any agency or department thereof in the construction, improvement, and maintenance of airports and emergency landing strips in the state of Minne-

sota and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and emergency landing strips.

Subd. 11. The commissioner is authorized to accept federal moneys and other moneys, either public or private, for and in behalf of the state of Minnesota or any governmental subdivision thereof, for the construction, improvement, or maintenance of airports and emergency landing strips upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and is authorized to act as an agent of any governmental subdivision of the state of Minnesota upon the request of such subdivision in accepting such moneys in its behalf for airport or emergency landing strip purposes, and in contracting for the construction, improvement, or maintenance of airports or emergency landing strips financed either in whole or in part by federal moneys, and the governing body of any such subdivision is authorized to designate the commissioner as its agent for such purposes and to enter into an agreement with him prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations, and with this act.

Subd. 12. All contracts for the construction, improvement, or maintenance of airports or emergency landing strips made by the commissioner as the agent of any governmental subdivision shall be made pursuant to the laws of the state of Minnesota governing the making of contracts for the construction, improvement, and maintenance of airports and emergency landing strips involving expenditure of state funds; all contracts for the construction, improvement, or maintenance of airports, or for equipment, materials, or supplies, or for any other purpose, which involve state funds or credit, shall be subject to the provisions of Laws 1939, Chapter 431, Article II, and any amendments thereof; provided, however, where the construction, improvement, or maintenance of any airport or emergency landing strip is financed wholly with federal moneys, the commissioner as the agent of any governmental subdivision may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder, notwithstanding any state law to the contrary.

Subd. 13. All moneys accepted for disbursement by the commissioner pursuant to subdivisions 10 to 14 of this section, both inclusive, shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available to be expended in accordance with federal laws and regulations and with subdivisions 10 to 14, both inclusive. The commissioner is authorized, whether acting for the state of Minnesota or as the agent of any of its governmental subdivision, or when requested by the United States government or any agency or department thereof, to disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

Subd. 14. Nothing in subdivisions 10 to 14, both inclusive, of this section shall be construed as creating any personal liability upon the commissioner or in any way authorizing him to create any liability on the part of the state of Minnesota when he is acting as the agent of any governmental subdivision thereof, or when he is acting at the request of the United States.

Subd. 15. All the rights, powers, and duties by law imposed upon and vested in the Minnesota Aeronautics Commission are hereby transferred to and im-

posed upon the commissioner of aeronautics. The Minnesota Aeronautics Commission shall transfer and deliver to the commissioner of aeronautics all contracts, books, maps, plans, papers, records, and property of every description within its jurisdiction or control, and shall also transfer to him any and all employees engaged in the exercise of such functions, powers, or duties. The commissioner is hereby authorized to take possession of said property, and shall take charge of said employees, and shall employ them in the respective functions, powers, and duties transferred as aforesaid, without reduction of compensation, subject, however, to change or termination of employment or compensation as may be otherwise provided by law. (Act Apr. 24, 1943, c. 653, §3.)

[360.013]

Commissioner may provide instructors for short course in Manual Arts Aircraft Construction at the University. Op. Atty. Gen. (234), Aug. 17, 1943.

5494-128. Airports fund created.—There is hereby created a fund to be known as the Airports Fund. All moneys received, whether from the registration of federal licenses on aircraft and pilots, from the licensing or taxing of aircraft, airports, air schools, or from other licenses, or from any other source including appropriations, shall be paid into the state treasury and credited to such fund, except insofar as subdivision 13 of Section 3 is applicable. (Act Apr. 24, 1943, c. 653, §4.)

[360.014]

Income of the Department of Aeronautics must be deposited in general revenue fund, and balances of appropriation to Aeronautics Commission are not available to the department. Op. Atty. Gen. (234), July 22, 1943.

5494-129. Aircraft to be licensed.—Subdivision 1. It shall be unlawful for any person to operate or navigate, or cause or authorize to be operated or navigated, any civil aircraft within the state unless such aircraft is licensed annually by the commissioner or shall have an appropriate and effective license which was issued by the department of commerce of the United States, and which was registered with the commissioner annually, or unless it is licensed by a foreign country with which the United States has [a] reciprocal agreement covering the operation of such licensed aircraft, or unless the aircraft is principally used outside of Minnesota, and is licensed by any state having similar licensing requirements to those of Minnesota.

Subd. 2. All aircraft engaged in commercial aviation operating within this state shall conform with respect to design, construction, and airworthiness to the standards prescribed by the United States Government with respect to the operation and navigation of civil aircraft subject to its jurisdiction. The commissioner shall, and is hereby empowered as required by Subdivision 1 of this section, to issue commercial licenses to, or register licenses of, such aircraft as may be found airworthy, and in so far as is practicable, the standards prescribed by the department of commerce of the United States with respect to design, construction, and airworthiness shall be applied to aircraft engaged in commercial aviation within this state, and before issuing a commercial license, the commissioner may require that such aircraft shall meet all standards prescribed by the department of commerce of the United States for aircraft subject to its jurisdiction. All applications for a commercial license or registration shall be in writing, signed by the applicant, and shall be accompanied by the filing fee for that class of aircraft. The commissioner shall prescribe filing fees for aircraft in each class he sets up by regulation on the basis of any one, or combination of, the following factors: value, size, load-capacity, passenger-capacity, power, or any other reasonable basis, and such fees shall not exceed \$100 for any class, and a lesser fee may be charged for a registration than is charged for a license in the same class.

Subd. 3. The commissioner shall, and is hereby empowered, to issue restricted licenses or register li-

censes, as required by Subdivision 1 of this section, for the limited operation of non-commercial aircraft, as hereinafter provided. All applications for a non-commercial license or registration shall be in writing, signed by the applicant, and shall be accompanied by the filing fee for that class of aircraft. The commissioner shall prescribe filing fees for aircraft in each class he sets up by a regulation on the basis of any one, or combination, of the following factors: power, size, load-capacity, passenger-capacity, value, or other reasonable basis and such fees shall not exceed \$15.00 for any 2-passenger aircraft nor \$50.00 for any class, and a lesser fee may be charged for a registration than for a license in the same class. When an application for a license is filed, the commissioner shall grant a temporary license to test-fly such aircraft for a designated period, during which period any licensed transport pilot or qualified member of the Department may conduct flying tests of such aircraft; provided that the aircraft shall not be flown over any area prohibited for flight by such aircraft by the regulations of the commissioner during that period. During the time the temporary license is in effect, the commissioner shall designate a transport pilot or inspector to test the aircraft, or otherwise determine whether it is airworthy and may also designate a reasonable place where such tests will be carried on. This designated pilot or inspector may test-fly the aircraft himself or he may require it to be tested within his view by having it subjected to such flying tests as the regulations of the commissioner may require. If an application for registration is filed the commissioner need not test such aircraft unless it is not believed to be airworthy. If the aircraft is determined to be airworthy, then the commissioner shall issue a license or certificate of registration of license authorizing the aircraft to be flown for non-commercial purposes only, and markings prescribed by the regulations of the commissioner shall be placed on the aircraft to show that the same is licensed or registered only for non-commercial purposes.

Subd. 4. The commissioner is hereby empowered to temporarily or permanently revoke any license or certificate of registration issued by him, or by the Minnesota Aeronautics Commission, or refuse to issue a license or certificate of registration when it shall reasonably determine that any aircraft is not airworthy. (Act Apr. 24, 1943, c. 653, §5.)

[360.015]

Section is mandatory. Op. Atty. Gen. (234), Sept. 7, 1943.

5494-130. Pilots to be licensed.—Subd. 1. It shall be unlawful for any person to operate, or cause to be operated, any aircraft in this state unless he is licensed annually by the commissioner or has from the commissioner an annual certificate of registration of an appropriate effective pilot's license issued by the department of commerce of the United States, or unless he is a pilot licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft, or unless he is a pilot licensed by a state having similar licensing requirements to those of Minnesota, or unless he is a pilot in the military or naval services, active or reserve, of the United States or of any state, while operating public aircraft. If such pilot has an appropriate effective license other than from the Department, such license shall be registered with the Department annually.

Subd. 2. The commissioner may prescribe such reasonable rules and regulations for the granting or registration of pilot's licenses as he may deem necessary and advisable for the public safety and the safety of those engaged in aeronautics, and may charge a license fee not to exceed \$5.00 for the original issuance, nor more than \$1.00 for a renewal of a license, nor more than \$1.00 for a registration.

Subd. 3. The commissioner is hereby empowered to temporarily or permanently revoke any license or

certificate of registration issued by him, or by the Minnesota Aeronautics Commission, or to refuse to issue a license or certificate of registration when he shall reasonably determine that any pilot is not qualified to operate aircraft.

Subd. 4. The commissioner is hereby empowered to establish different requirements for such classes of pilots licenses such as private, transport, passenger, freight, or other reasonable class as he may establish.

Subd. 5. The certificate of registration or the license required for pilots shall be kept in the personal possession of the licensee when he is operating aircraft within this state and must be presented for inspection upon the demand of any passenger, or any peace officer, of this state, any authorized official or employee of the commissioner, or any official manager, or person in charge of any airport in this state upon which he shall land or upon the reasonable request of any other person. The aircraft license or certificate of registration must be carried in the aircraft at all times and must be conspicuously posted therein where it may be readily seen by passengers or inspectors, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, any authorized official or employee of the commissioner, or any official, manager, or person in charge of any airport in this state upon which it shall land, or upon the reasonable request of any person. (Act Apr. 24, 1943, c. 653, §6.)

[360.016]

Section is mandatory. Op. Atty. Gen. (234), Sept. 7, 1943.

5494-131. Proposed airports, etc., to be approved by commissioner.—Subd. 1. All proposed airports, or emergency landing strips, air schools, flying clubs, air beacons, or other air navigation facilities shall first be approved by the commissioner before they, or any of them, shall be so used or operated. And municipality acquiring property for the purpose or purposes enumerated in Section 9 and the subdivisions thereunder, shall prior to such acquisition, make application to the commissioner for a certificate of approval of the site or sites selected and the general purpose or purposes for which the property is acquired, to insure that the property and its use shall conform to minimum standards of safety and shall not be detrimental to the state system. It shall be unlawful for any airport, emergency landing strip, air school, flying club, air beacon, or other air navigation facility to be used or operated without the approval of the commissioner; and it shall be unlawful for any aircraft, except in case of emergency, to land upon or take off from any area in the state of Minnesota other than an airport, or emergency landing strip. The commissioner is hereby authorized to issue a certificate of his approval in each case and to make the following charges therefor;

(a) For issuance of each annual license for an airport or air school, not to exceed \$10.00;

(b) For the issuance of each annual license for a flying club, or air beacon, or other navigation facility, no fee shall be charged;

(c) For approval certificate of proposed property acquisition for airport purposes, no charge shall be made. No order granting or denying an original certificate of approval shall be made by the commissioner except after a public hearing in relation thereto, to be held in the municipality applying for the certificate of approval, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in a legal paper of general circulation in the municipality within which the hearing is to be held. In determining whether he shall issue a certificate of approval for the use or operation of any proposed airport, the commissioner shall take into consideration the proposed location; the financial status of the municipality; the relationship of the proposed airport

to a comprehensive plan for state-wide and nation-wide development; the proximity of the proposed site or sites to the municipality; the relationship of the airport to the residential and industrial areas of the municipality; where there is a sufficient area available for expansion purposes; whether the adjacent area is free from obstructions, based on a proper glide ratio; existing transportation facilities; the nature of the terrain; the possibilities for future development, and the balance of public interest and the interests of adjoining property owners. The commissioner is hereby empowered to temporarily or permanently revoke any certificate of approval issued by him or by the Minnesota Aeronautics Commission when he shall determine that an airport, landing field, air school, flying club, air beacon, or other air navigation facility is not being used or operated in accordance with the provisions of this act and the rules and regulations lawfully promulgated pursuant thereto. The provisions of this subdivision shall not apply to airports to be acquired, used or operated by public corporations created in and for contiguous cities of the first class of this state. (Act Apr. 24, 1943, c. 653, §7.)

[360.017]

After obtaining approval of site by commissioner of aeronautics, city may condemn land for an airport and take possession at any time after the filing of the report of the commissioners under the general law, but charter provisions concerning condemnation must control procedure. Op. Atty. Gen. (234b, 817f), July 30, 1943.

A private airport within 25 miles of Minneapolis or St. Paul must be approved by State Department of Aeronautics and probably by the Metropolitan Airports Commission. Op. Atty. Gen. (234b), Sept. 11, 1943.

5494-132. Rejections by commission.—Subd. 1. In any case where the commissioner rejects an application for a pilot's license or a license for any aircraft, or for permission to operate or establish an airport, emergency landing strip, air school, flying club, air beacon, or other air navigation facility, or in any case where the commissioner shall issue any order requiring certain things to be done, or revoking any license on any aircraft or of any pilot, he shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given or such order modified or changed. To carry out the provisions of Sections 5 to 8 the commissioner and any officers, state or municipal, charged with the duty of enforcing Sections 5 to 8 may inspect and examine, at reasonable hours, any premises, and the buildings and other structures thereon, where such airports, emergency landing strips, air schools, flying clubs, air beacons, or other air navigation facilities are operated. Any order made by the commissioner pursuant to Section 5 to 8 shall be served upon the interested person, by registered mail, or in person, before such order shall become effective.

Subd. 2. Any person aggrieved by any order of or by the granting or denial of any license or certificate by the commissioner may appeal to the district court of the county in which any part of the property affected by the order, or the residence of the pilot affected in cases of pilots licenses, is located, or in the district court of Ramsey County in case the pilot is not a resident of the state of Minnesota, for the purpose of having the reasonableness of the order inquired into and determined.

Subd. 3. It shall be the duty of the commissioner and every state, county and municipal officer charged with the enforcement of state and municipal laws, to enforce, and assist in the enforcement of Sections 5 to 8. The commissioner is further authorized, in the name of the state, to enforce the provisions of Sections 5 to 8 by injunction in the district courts of this state. Other departments and political subdivisions of this state are further authorized to cooperate with the commissioner in the development of aeronautics and aeronautic facilities within the state.

Subd. 4. The commissioner or any member of the department designated by him, shall have the power to hold investigations, inquiries, and hearings con-

cerning rules and regulations and matters covered by the provisions of Sections 5 to 8 and all accidents in aeronautics within the state. All hearings so conducted shall be open to the public. The commissioner, and every member of the department designated by him to hold any inquiry, investigation, or hearing, shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers, books and documents. In case of failure to comply with any subpoena or order issued under authority of Sections 5 to 8, the commissioner, or an authorized representative, may invoke the aid of any court in this state having jurisdiction of similar proceedings. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

Subd. 5. In order to facilitate the making of investigations by the commissioner, in the interest of the public safety and the promotion of aeronautics, the public interest requires, and it is therefor provided, that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose except under Section 8. Subdivision (2) of this act, in any suit, action, or proceedings growing out of any matter referred to in the investigations, hearings, or report thereof, nor shall the commissioner or any member of the department except under Section 8, Subdivision (2) of this act, be required to testify to any facts ascertained in, or information gained by reason of, his official capacity. No commissioner or member of the department shall be required to testify as an expert witness in any civil suit, action, or proceeding involving any aircraft.

Subd. 6. The commissioner shall keep on file with the Secretary of State, and at the principal office of the department, a copy of all of his rules and regulations, for public inspection, and shall make available copies thereof to all pilots and all other persons engaged in aeronautics.

Rules and regulations made by the commissioner shall become effective 10 days after publication as hereinafter provided. Publication shall be made as follows:

(a) Copies of rules and regulations of the commissioner issued under authority of Section 3, Subdivision 1-(2) and 1-(4) shall be mailed to all owners and operators or managers of airports or emergency landing strips licensed in the state.

(b) Copies of rules and regulations of the commissioner issued under authority of Section 3, Subdivision 1-(3), shall be mailed to all air schools and aviation instructors licensed or registered in the state.

(c) Copies of rules and regulations of the commissioner issued under authority of Sections 5 to 8, both inclusive, shall be deemed published when filed with the secretary of state.

(d) Copies of rules and regulations of the commissioner issued under authority of Section 3, Subdivision 1-(5), and any other rules and regulations of the commissioner affecting pilots or aircraft or airports or emergency landing strips generally, the publication of which is not otherwise provided for herein, shall be deemed published by making available copies thereof to all pilots and other persons interested in aeronautics, by having a reasonable supply of copies available at the offices of the department and at airports in general use, throughout the state. (Act Apr. 24, 1943, c. 653, §8.)

[360.018]

5494-133. Municipalities may acquire airports, etc.—Subd. 1. Any municipality is hereby authorized, separately or jointly with another municipality, through its governing body, to acquire, establish, construct, expand, own, lease, control, equip, improve,

maintain, operate, regulate, and police one or more airports, either within or without the geographical limits of such municipality.

Subd. 2. Municipalities may use for such purpose or purposes any available property that is now or may at any time hereafter be owned or controlled by such municipality, and to pay therefor out of funds obtained as hereinafter provided, the expense therefor to be a charge on the municipality; provided, however, no county shall exercise the authority hereby conferred outside of its geographical limits except in an adjoining county, and this only jointly with such adjoining county. Any county may exercise such authority in cooperation with any other municipality within its territorial limits, when the governing bodies of the county and such other municipality shall determine it to be in the public interest. Any cooperative agreement entered into between the governing bodies of any two or more municipalities, for the purpose of exercising jointly the powers herein granted, shall be binding upon their respective municipalities.

Subd. 3. The acquisition of property within or without the limits of any such municipality for airports, in any manner, heretofore made by any such municipality, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective.

Subd. 4. Where necessary, in order to provide unobstructed air space for the landing and take-off of aircraft utilizing airports acquired or maintained under the provisions of this act, the municipalities are hereby granted authority to acquire such air rights over private property as are necessary to insure safe approaches to the landing areas of said airports, and such municipalities are also hereby authorized to acquire the right or easement for a term of years, or perpetually, to place and maintain suitable marks for the daytime and to place, operate, and maintain suitable lights for the nighttime, marking of buildings or other structures or obstructions, for the safe operation of aircraft utilizing airports acquired or maintained under the provisions of this act. Such rights or easements may be acquired by grant, purchase, lease, or condemnation in the same manner provided in subdivision 5 of this section for the acquisition of the airport itself or expansion thereof.

Subd. 5. Private property needed by a municipality for an airport, or for the expansion of an airport, or for airport purposes, may be acquired either by grant, purchase, gift, devise, lease, or other means, if such municipality is able to agree with the owners of said property on the terms of such acquisition, or by condemnation proceedings under and pursuant to the provisions of the statutes of this state relating to eminent domain, or under the provisions of the charter of any such municipality giving it the power of eminent domain, full power to exercise right of eminent domain for such purposes being hereby granted every municipality. The title so acquired by condemnation shall be in fee simple, absolute, and unqualified in any way whatsoever.

Subd. 6. Any property acquired, owned, leased, controlled, or occupied by any such municipality for the purpose or purposes enumerated in Section 2 of this act is hereby declared to be acquired, owned, leased, controlled, or occupied for public, governmental, and municipal purposes. (Act Apr. 24, 1943, c. 653, §9.)

[360.019]

After obtaining approval of site by commissioner of aeronautics, city may condemn land for an airport and take possession at any time after the filing of the report of the commissioners under the general law, but charter provisions concerning condemnation must control procedure. Op. Atty. Gen. (234b, 817f), July 30, 1943.

It is not contemplated that airport boards should be set upon in the various municipalities of the state, but that matters should be handled by some public body already in being by some statute or charter, or by the council, and where a city and county desire to act jointly, county commissioners and some city body must act jointly. Op. Atty. Gen. (234), Sept. 7, 1943.

Charter of the city of Worthington with reference to eminent domain conforms to the requirements of the statutes and constitution. Op. Atty. Gen. (234b), Sept. 27, 1943.

City condemning property for an airport outside its boundary must proceed under its charter and not under general law. Op. Atty. Gen. (234b, 817f), Oct. 6, 1943.

A city on state border may acquire an airport in another state, if that state does not object. Op. Atty. Gen. (234b), June 15, 1943.

5494-134. Funds to pay cost—How acquired.—

Subd. 1. The cost of acquiring, establishing, constructing, enlarging, or improving airports, and any constituent parts thereof, may be paid for by appropriation of monies available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of said municipality shall determine.

Subd. 2. Any bonds to be issued by any municipality, pursuant to this act shall be authorized and issued in the manner and within the limits, except as herein otherwise provided, prescribed by the laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof, provided, however, irrespective of any limitation, by general or special law or charter, as to amount of bonds to be issued, a municipality may issue bonds for the purposes defined by this act, in excess of such limitation, in such amount as may be authorized by an ordinance referred to and approved by the voters of such municipality by popular vote.

Subd. 3. The amount of all bonds heretofore or hereafter issued by any municipality, except a city of the first class, shall be included in computing the net debt of the municipality issuing the same for the purpose of computing any limitation of its indebtedness prescribed by law or its charter.

Subd. 4. The amount of all bonds heretofore or hereafter issued by any city of the first class for the purposes defined in this act shall not be counted or included in the net indebtedness of the city or in any computation of the city's outstanding indebtedness for the purpose of determining the limit of net indebtedness of the city.

Subd. 5. It is the intent and purpose of this act that all provisions herein relating to the issuance of bonds and the levying of taxes for airport purposes, and the condemnation for airports and airport facilities, shall be construed in accordance with the general provisions of the law of this state, governing the right and procedure of municipalities to condemn property, issue bonds, and levy taxes, except as herein otherwise specifically provided.

Subd. 6. In all cases where a municipality has heretofore issued any bonds for the purpose of acquiring, establishing, constructing, enlarging, or improving any airport or site therefor, or to meet the cost of purchase or erection of buildings and structures, whether such airport was termed under the law existing at the time of the issuance of such bonds an airport, a landing field, or a municipal flying field, or has incurred any other indebtedness, or entered into any lease or other contract in connection with acquisition, establishment, construction, ownership, control, leasing, equipment, improvement, maintenance, operation, or regulation of any airport, landing field, or municipal flying field, the proceedings heretofore taken in all such cases are hereby in all respects validated and confirmed; any bonds already issued thereunder are validated and made legal obligations of such municipality, and such municipality is hereby authorized and empowered, pursuant to such proceedings, to issue further bonds for such purposes up to the limit fixed in the original authorization thereof, without limitation of the general power herein granted to all municipalities in this state, which bonds when issued shall be legal obligations of such municipality according to their terms. The acquisition of property within or without the limits of any such city, village, or town for airports or landing fields, by purchase or gift, heretofore made by any such mu-

municipality, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective. (Act Apr. 24, 1943, c. 653, §10.) [360.021]

Cost of surveys and engineering to determine whether property is suitable for an airport may be properly considered as a part of the cost of acquisition. Op. Atty. Gen. (234b), Aug. 19, 1943.

5494-135. Municipalities may appropriate money.

—Subd. 1. The governing bodies, having power to appropriate monies within the municipalities in this state acquiring, establishing, developing, operating, maintaining, or controlling airports under the provisions of this act, are hereby authorized, except insofar as Subd. 3 of this Section is more restrictive, to appropriate and cause to be raised by taxation or otherwise in such municipalities, monies sufficient to carry out therein the provisions of this act; also, to use for such purpose or purposes monies derived from said airports; provided, however, irrespective of any limitation, by general or special law or charter, as to the amount or total of taxes that may be levied, a municipality may levy taxes for the purposes authorized by this act, in excess of such limitations, in such amounts as may be authorized by an ordinance referred to and approved by the voters of such municipality by popular vote.

Subd. 2. The revenues obtained from the ownership, control, and operation of any such airport, and the appropriations for such control, operation and ownership shall be used to finance the maintenance and operating expenses thereof, and to make payment of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. That portion of the revenues in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or airports.

Subd. 3. Each city of the first class, acting through its governing body, is hereby authorized and empowered to levy, annually, on real and personal property of the city, a tax, not exceeding one mill on each dollar on the assessed valuation of the city for the purpose of operating and maintaining any airport owned or controlled by it. The provisions of this subdivision shall be in full force and effect, notwithstanding any provisions in the charter of the city to the contrary thereof. No such levy shall be made unless authorized by the board of estimate and taxation of the city, if there be such, according to the provisions of the charter of the city establishing the board of estimate and taxation.

Subd. 4. In any case where by existing law it is provided that the cost of establishing and maintaining an airport shall be paid in whole or in part from the funds of the water and light department of any municipality, the authority granted by such law to make such payments from such funds is continued, without limitation of the general powers herein granted to all municipalities in this state. (Act Apr. 24, 1943, c. 653, §11.) [360.022]

5494-136. Municipalities may create aeronautics boards.—Subd. 1. Municipalities which acquire, establish, develop, operate, maintain, or control airports, or which acquire, lease, or set apart real property for such purpose or purposes, are hereby authorized, consistent with law and the provisions of its charter;

Subd. 2. To vest authority for the construction, equipment, improvement, maintenance, and operation thereof, in a board or body of such municipality;

Subd. 3. To adopt all needful rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or without the municipalities involved; to fix by ordinance penalties for the violations of said rules, regulations, and ordinances, and enforce said penal-

ties; and where said authority shall have been so vested in the board of park commissioners, or other body in charge of the park system of the municipality, either under the provisions of this Act or under the provisions of Chapter 62 of the Laws of Minnesota for 1927 or under the provisions of Chapter 379 of the Laws of Minnesota for 1929, said authority shall continue to be exercised by said body in control of the park system of such municipality, and whichever body shall be vested with such authority shall have full and complete authority to govern said airports so acquired and to regulate by general ordinance the use of land for airports and for other aviation purposes. Rules, regulations, and ordinances shall be published as provided by the charter or other law of the municipality for similar rules, regulations, and ordinances provided that the manner of publication always shall be such to give reasonable assurance that the public concerned will have adequate notice thereof;

Subd. 4. To promulgate, amend, and enforce police regulations and deputize persons as airport guards for such airports, whether within or without the geographical limits of such municipalities;

Subd. 5. To determine the charges for the use of any properties under its control and the terms and conditions under which such properties may be used; provided that such charges shall be reasonable and uniform for the same class of service; to have and enforce liens as provided for in Mason's Minnesota Statutes of 1927, Sections 8507 to 8511, both inclusive and including any subsequent amendments;

Subd. 6. To lease for a term not exceeding thirty years such airports, or real property acquired, leased, or set apart for airport purposes, to private parties, any municipal or state government or the national government or any foreign government, or any department of either thereof, for operation, and to lease or assign for a term not exceeding thirty years to private parties, any municipal or state government or the national government or any foreign government, or any department of either thereof, for operation or use consistent with the purposes of this act, space, area, improvements, or equipment on such airports; to sell any part thereof to any municipal or state government, to the United States or any department or instrumentality thereof for aviation purposes or purposes incidental thereto; provided that in each case that in so doing the public is not deprived of its rightful, equal and uniform use thereof. In the event that any such municipality shall determine that any land so acquired is no longer suitable for the purpose of airports, it may abandon and sell the same, provided, however, that no sale shall be valid unless authorized by the District Court in the county wherein said land or some part thereof is situated, by its order describing the premises to be sold and entered upon the petition of such municipality at a hearing, notice of which has been given to all interested parties by publication or otherwise as such court may prescribe. In the event any land so acquired is sold, the proceeds of such sale shall be deposited in the sinking fund of the municipality from which funds have been authorized to be taken to finance any bonds that were issued by said municipality for the purpose of acquiring such land. In the event all the proceeds of such sale are not needed to pay the principal of said unpaid bonds, the remainder shall be paid into the permanent improvement fund of such municipality. The governing body of the municipality is authorized to determine the terms and conditions of any such leasing or sale or any use of any properties under its control. (Act Apr. 24, 1943, c. 653, §12.) [360.023]

It is not contemplated that airport boards should be set upon in the various municipalities of the state, but that matters should be handled by some public body already in being by some statute or charter, or by the

council, and where a city and county desire to act jointly, county commissioners and some city body must act jointly. Op. Atty. Gen. (234), Sept. 7, 1943.

5494-137. Airport hazards.—It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare. (Act Apr. 24, 1943, c. 653, §13.)
[360.024]

5494-138. Commissioner to adopt airport approach plan.—The commissioner is hereby empowered and directed to formulate and adopt, and from time to time as may be necessary revise, an airport approach plan for each publicly-owned airport in the state and may formulate and adopt such plan for each privately owned airport of the public utility class. Each such plan shall indicate the circumstances in which structures and trees are or would be airport hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be; provided that the zoning and height limits shall in no case be more exacting than is necessary to conform to the current airport approach and turning space standards of any agency of the federal government which may be concerned with the fostering of civil aeronautics. In adopting or revising any such plan, the commissioner shall consider, among other things the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions, and the commissioner may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operation at the airport. (Act Apr. 24, 1943, c. 653, §14.)
[360.025]

5494-139. May adopt airport zoning regulations.—Subd. 1. Every municipality having within its territorial limits an area within which, according to an airport approach plan adopted by the commissioner, measures should be taken for the protection of airport approaches, shall adopt, amend from time to time, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area, which regulations shall divide the area into zones, and within such zones, specify the land uses permitted, regulate and restrict the height to which structures and trees may be erected or allowed to grow, and impose such other restrictions and requirements as may be necessary to effectuate the commissioner's approach plan for the airport; provided that the zoning and height limits shall in no case be more exacting than is necessary to conform to the current airport approach and turning space standards of any agency of the federal government which may be concerned with the fostering of civil aeronautics.

Subd. 2. In the event that a municipality has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this act, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this act.

Subd. 3. Any zoning or other regulations applicable to any area within which, according to an airport approach plan adopted by the commissioner, measures should be taken for the protection of airport approaches, including not only any airport zoning regulations adopted under this act but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by this act, shall be consistent with, and conform to, the commissioner's approach plan for such area, and shall be amended from time to time as may be necessary to conform to any revision of the plan that may be made by the Department.

Subd. 4. All airport zoning regulations adopted under this act shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in Section 16, subdivision 1.

Subd. 5. If any area referred to in Section 14 and subdivision 2 of this section is within the territorial limits of one or more towns and such towns fall within 60 days after notice from the commissioner of the adoption or revision of the airport approach plan provided for in Section 14 hereof to adopt airport zoning regulations, or, having adopted such regulations, shall thereafter fail to administer, enforce or amend them as required by this act, the county having within its territorial limits such area shall, at the request of the commissioner proceed to adopt, amend, administer and enforce airport zoning regulations applicable to such area as in this act provided for and thereafter carry out the provisions of this act with reference to such area; provided that the commissioner may grant such extension of time for the preparation of such regulations by such municipality as it may deem necessary and proper.

Subd. 6. If any municipality fails to adopt within a reasonable time airport zoning regulations, or to amend them, as herein provided, or adopts regulations or amendments which do not conform to the commissioner's approach plans and revisions thereof, the commissioner to determine whether any regulations or amendments do so conform, or shall allow any variance herein provided for which is in substantial conflict with the commissioner's plans or revisions thereof, the commissioner may, for the protection of the public safety, adopt or supplement and from time to time as may be necessary amend, supplement or repeal such regulations for such municipality until airport zoning regulations herein provided for and conforming to the plans and revisions of the commissioner are adopted by such municipality.

Subd. 7. In adopting airport zoning regulations for cities of the first class under the authority of this act, the municipality, or administrative agency thereof, or the commissioner, in case he has acted pursuant to Subdivision 6 of this section, adopting such regulations shall provide and make a part of the ordinance establishing such regulations a map showing the location, extent, and comparative topographical elevation of the airport and landing field, and shall also show on such map the extent of the adjoining areas of lands or waters included under and affected by the regulations of such ordinance. There may also be established from time to time and shown on such maps, and maps of subsequent publication, in appropriate locations, reference monuments for the benefit of owners of land in the areas affected by such regulations, such monuments to show the distance of a point on such monument from the nearest point on the boundary line of the landing field or airport, the comparative topographical elevation of such point in relation to the comparative topographical elevation of the nearest point in the boundary line of the landing field or airport, and the permissible height of structure or other

obstruction at such point under the regulations of such ordinance. (Act Apr. 24, 1943, c. 653, §15.) [360.026]

5494-140. Enforcement of zoning regulations.—Subdivision 1. Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this act, a system may be established for granting permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a non-conforming structure or tree has been abandoned or more than 80 per cent torn down, physically deteriorated, or decayed; (a) no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations, and (b) whether application is made for a permit under this paragraph or not, the said agency may by appropriate action compel the owner of the non-conforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such an order after ten days' notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped, and assess the cost and expense thereof upon the object or the land whereon it is or was located. Unless such an assessment is paid within 90 days from the service of notice thereof on the agent or owner of such object or land, the sum shall bear interest at the rate of 8 per cent per annum until paid, and shall be collected in the same manner as are general taxes. Except as indicated, all applications for permits for replacement, change, or repair of nonconforming uses shall be granted.

Subd. 2. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this act, may apply to the administrative agency authorized to administer and enforce the regulations, for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations.

Subd. 3. In granting any permit or variance under this section the administrative agency may, if it deems such action advisable to effectuate the purposes of this act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the municipality, at his expense, to provide for the installation, operation and maintenance of suitable obstruction markers and obstruction lights thereon, or permit the municipality so to do at its own expense.

Subd. 4. In any case in which: (a) it is desired to remove, lower, or otherwise terminate a non-conforming use; or (b) the approach protection necessary according to the commissioner's airport approach plan cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or (c) it appears advisable that the necessary approach protection be provided by acquisition of

property rights rather than by airport zoning regulations, the municipality within which the property or non-conforming use is located, the municipality owning the airport or served by it, or the commissioner, whenever it shall be authorized so to do by the Constitution, may acquire, by purchase, grant, or condemnation in the manner provided by law by which municipalities or the state are authorized to acquire real property for public purposes, such an air right, easement, or other estate or interest in the property or non-conforming use in question and so may acquire a substitute property, structure and easement and convey the same to anyone whose structures, easements and property are or may be a non-conforming use as may be necessary to effectuate the purposes of this act. In determining the just compensation to be paid for property acquired by condemnation proceedings, there shall be included not only the value of the property and facilities affected but also the cost of any changes in or relocation of such property and facilities.

Subd. 5. No person desiring to continue a non-conforming structure or tree, to change or repair a non-conforming structure or tree, to take any action requiring a variance, or to take any other action in any matter relating to the zoning provisions of this act, shall initiate any action in the courts unless and until he has exhausted the remedies provided by this section. (Act Apr. 24, 1943, c. 653, §16.) [360.027]

5494-141. Zoning regulations to be changed by governing body of municipality.—Subd. 1. No airport zoning regulations shall be adopted, amended or changed under this act except by action of the governing body of the municipality in question, or the commissioner, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in a legal newspaper, or a paper of general circulation, in the municipality or municipalities within which property will be governed by the zoning regulations in question.

Subd. 2. The governing body of any municipality adopting airport zoning regulations under this act may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction. The duties of such administrative agency shall include that of hearing and deciding all permits and variances under Section 16. Wherever in any city of the first class any airport is under the jurisdiction of a board of park commissioners, such board of park commissioners shall have the same powers as the governing body of a municipality under this subdivision.

Subd. 3. In order to effectuate the provisions of any zoning regulations adopted under this act, the administrative agency, within a reasonable time after the adoption of such regulations, may survey the area affected by such regulations, and after determining the location, nature, and extent of any structure or tree not in conformity with the provisions of such regulations, may make in duplicate a certificate showing sufficient evidence of such non-conformity of structure or tree, one copy of such certificate to be deposited with the owner of such non-conforming structure or tree, if known, and one copy to be filed in the office of the administrative agency. Such certificate, if the owner thereof shall not within 60 days request revision thereof, shall constitute the official record of the non-conformity of such structure or tree to such regulations at the time of the adoption of such regulations. (Act Apr. 24, 1943, c. 653, §17.) [360.028]

5494-142. Appeals to District Court.—Subd. 1. Any person aggrieved by any zoning regulation adopted pursuant to this act or by any order or ruling upon an application for a permit or variance, or any officer, department, board, or bureau of the municipal-

ity, may present to the district court a verified petition setting forth that the regulation, order or ruling is illegal, in whole or in part, and specifying the grounds of its illegality. Such petition shall be presented to the court within 30 days after the making of the regulation, order or ruling.

Subd. 2. Upon the presentation of such petition, the court may allow a writ of certiorari directed to the governing body of the municipality, or to the commissioner, if he has made the zoning regulation complained of, to review such regulation, order or ruling. The allowance of the writ shall not stay proceedings upon the regulation, order or ruling appealed from but the court may, on application, on notice to the governing body or the commissioner, as the case may be, and on due consideration shown, grant a restraining order, which may be conditioned upon the filing of such bond as the court may require.

Subd. 3. The governing body of the municipality or the commissioner, as the case may be, shall not be required to return the original papers acted upon, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds and decision appealed from and shall be verified.

Subd. 4. The court shall have exclusive jurisdiction to affirm, modify or set aside the regulation, order or ruling brought up for review, in whole or in part, and, if need be, to order further proceedings by the governing body of the municipality, or the commissioner. The certified findings of fact filed by such governing body, or its administrative agency, or the commissioner, shall be prima facie evidence of the matters therein stated, and the regulation, order or ruling shall be prima facie lawful and reasonable. The burden of proof upon all issues raised by the petition for the writ and return shall be on the petitioner for the writ. If upon the hearing it shall appear to the court that the taking of testimony is necessary for an equitable disposition of the matter, it may take such testimony.

Subd. 5. Costs shall not be allowed against the municipality, the governing body thereof, or the commissioner, unless it appears to the court that such municipality, governing body, or its administrative agency, or the commissioner, as the case may be, acted with negligence, in bad faith, or with malice, in making the regulation, order or ruling appealed from. (Act Apr. 24, 1943, c. 653, §18.) [360.029]

5494-143. Violation a misdemeanor.—Subd. 1. Each violation of this act or of any regulation, order, or ruling promulgated or made pursuant to this act, unless it be of a rule or regulation which prescribes a lesser penalty, shall constitute a misdemeanor, and shall be punishable by a fine of not more than \$100.00 or by imprisonment for not more than 90 days, or both, and each violation, or continuance or repetition of violation after a conviction, shall constitute a separate offense.

Subd. 2. Either the municipality within which the property is located or the commissioner may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or bate any violation of this act, or of airport zoning regulations adopted under this act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of mandatory or other injunction, or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purpose of this act and of the regulations adopted and orders and rulings made pursuant thereto.

Subd. 3. Any person who tampers with an aircraft without the permission of the owner, or who, without authority of the person in charge, climbs up-

on or into any aircraft, whether while the same is in motion or at rest, or hurls stones or any other missiles at an aircraft, or the occupants thereof, or, while such aircraft is at rest and unattended, attempts to manipulate any of the controls, starting devices, brakes or other machinery thereof, or set such aircraft in motion, or otherwise damage or interfere with the same, or shall place upon any portion of any airport any object, obstruction, or other device tending to injure aircraft, or parts thereof, shall be guilty of a misdemeanor.

Subd. 4. Each occupant of any aircraft engaged in acrobatic or stunt flying shall be equipped with a parachute, and any pilot so operating such aircraft without the occupants being so equipped shall be guilty of a misdemeanor.

Subd. 5. Any pilot or passenger or other person who, while in flight over a thickly inhabited area or over a public gathering within this state, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall, except while in landing or taking off, fly at such a low level as to endanger the persons on the surface beneath, or drop any object except loose water or loose sand ballast, or shall engage in advertising through the playing of music, or transcribed or oral announcements, or make noise with any siren, horn, whistle or other audible device which is not necessary for the normal operation of said aircraft, shall be guilty of a misdemeanor.

Subd. 6. Any pilot, a passenger or other person who, while in flight in an aircraft, within this state, shall intentionally kill or attempt to kill any birds or animals excepting those on which the state pays a bounty, or uses any airplane for the purpose of concentrating, driving, rallying or stirring up migratory water fowl, shall be guilty of a misdemeanor. (Act Apr. 24, 1943, c. 653, §19.) [360.031]

5494-144. Sovereignty declared to rest in state.—

Subd. 1. Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state.

Subd. 2. The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in subdivision 3 of this section.

Subd. 3. Flight in aircraft over the lands and water of this state is lawful, unless at such low altitude as to interfere with the then existing use to which the land or water, or the space above the land or water, is put by the owner, or unless so conducted as to be imminently dangerous or damaging to persons or property lawfully in the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent is unlawful, except in the case of a forced landing. For damages caused by the forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable as provided in subdivision 4 of this section.

Subd. 4. The owner of every aircraft which is operated over the lands or waters of this state is absolutely liable for injury or damage to persons or property on the land or water beneath, caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not, unless the injury or damage is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property damaged. If the aircraft is leased at the time of the injury or damage to person or property, both the owner and lessee shall be liable, and they may be sued jointly, or either or both of them may be sued separately. A pilot who is not the owner or lessee shall be liable only for the consequences of his own negligence. The injured person, or owner or bailee of the damaged property, shall have a lien on

the aircraft causing the injury or damage to the extent of such injury or damage caused by the aircraft or objects falling from it.

Subd. 5. The liability of the owner of one aircraft to the owner of another aircraft, or to pilots or passengers or other persons on either aircraft, for damages caused by collision on land or in the air shall be determined by the rules of law applicable to torts occurring on land.

Subd. 6. All crimes, torts, and other wrongs committed by or against a pilot, passenger or other person while in flight over this state shall be governed by the laws of this state; and the question whether damage occasioned by or to an aircraft while in flight over this state constitutes a tort, crime, or other wrong by or against the owner of such aircraft shall be determined by the laws of this state.

Subd. 7. All contractual and other legal relations entered into by pilots, passengers, or other persons while in flight over this state shall have the same effect as if entered into on the land or water beneath. (Act Apr. 24, 1943, c. 653, §20.) [360.032]

5494-145. Provisions severable.—It is the intent of the legislature that the provisions of this act shall be severable with respect to the effect of a declaration of invalidity of any provision or application thereof. (Act Apr. 24, 1943, c. 653, §21.)

5494-146. Interpretation and construction.—This act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and the Federal Government, having to do with the subject of Aeronautics. (Act Apr. 24, 1943, c. 653, §22.)

5494-147. May be cited as Aeronautics Code.—This act may be cited as the "Aeronautics Code". (Act Apr. 24, 1943, c. 653, §23.) [360.033]

5494-148. Laws repealed.—Mason's Minnesota Statutes of 1927, Sections 1626-1 to 1626-3 both inclusive, Sections 1626-4 and 1626-5 as amended by Laws of 1929, Chapter 379, Section 5, Sections 1626-6 and 1626-7, Sections 1627 to 1630 both inclusive, 5494-1 to 5494-6 both inclusive, and Mason's Supplement 1940, Sections 1263-1 to 1263-3 both inclusive, Sections 1626-8 to 1626-19 both inclusive, Sections 5494-7 to 5494-15; Section 5494-16 as amended by Laws 1941, Chapter 386; Sections 5494-17 to 5494-36 both inclusive, Sections 5494-36½, Section 5494-36½a to 5494-36½w, Sections 5494-37, 5494-38 as amended by Laws 1941, Chapter 264, and Sections 5494-39 to 5494-47 both inclusive, are hereby expressly repealed. Act Apr. 24, 1943, c. 653, §24.)

CHAPTER 32

Preservation of Game and Fish

PART I.—TITLE TO WILD ANIMALS: TAKING: TRANSPORTATION

5495. Title to wild animals—Taking.

Laws 1943, c. 105, creates a commission to revise and codify the laws of the state relating to wild animals, and to the protection, preservation and propagation thereof. The commission has authority to hold hearing and take testimony.

In certain cases a state may impose upon nonresidents a larger license fee than it imposes upon residents, as in the case of hunting, fishing, and fur buyer's licenses. *State v. Starkweather*, 214M232, 7NW(2d)747. See Dun. Dig. 3932.

Statutes regulating the taking of wild life are within the police power of the state. *Id.*

Hunting on waters owned by the United States is permissible only under agreement or authority of the owner. *Op. Atty. Gen.* (240r), Aug. 17, 1943.

5496. Ownership in state.

Wild life is a subject of ownership only when reduced to possession. *Minnesota Valley Gun Club v. N.*, 207M 126, 290NW222. See Dun. Dig. 3934.

While title to wild life is in the state as trustee, owner of land has a qualified property interest in that it is he who has exclusive right to reduce game to possession. *Id.* See Dun. Dig. 3933.

Game, fish, and fur-bearing animals when not reduced to possession belong to the state, as a part of its natural resources, which it can protect and save for its own citizens. *State v. Starkweather*, 214M232, 7NW(2d)747. See Dun. Dig. 3933.

Since the state is the owner, in trust for the people, of all wild animals, it may impose upon fur dealers reasonable terms and conditions to protect and preserve its interest in this resource. *State v. Stein*, 215M308, 9NW (2d)763. See Dun. Dig. 3931a-3940a.

Indians may not hunt in violation of game and fish laws on certain lands acquired from the state by the United States. *Op. Atty. Gen.* (240r), Aug. 17, 1943.

5497. Taking of wild animals restricted.

Harboring wolves in an enclosure without any permit is not an offense against game laws, provided they do not propagate, but harboring of wolves might disqualify an individual from collecting bounties on others which he killed. *Op. Atty. Gen.* (210D-8), Aug. 15, 1941.

Statute prohibiting sale of certain fish or wild animals, even though they may have been taken in another country where sale is not prohibited, is constitutional. *Op. Atty. Gen.* (211a-9), June 17, 1941.

Statute prohibits shipment by non-resident, whether licensed or not, from Minnesota of any fish caught outside of Minnesota, even those caught out of the state under a Canada license. *Op. Atty. Gen.* (211a-10), July 10, 1942.

Fish buyer's license is required to authorize purchase of fish roe from Lake Superior commercial fishermen. *Op. Atty. Gen.* (209b); Dec. 5, 1942.

Domestic pigeons and doves are not included within meaning of wild animals. *Op. Atty. Gen.* (210d), Dec. 24, 1942.

Carcass of raccoon and beaver may not be sold, but carcass of muskrats may be sold. *Op. Atty. Gen.* (210d-6). Jan. 13, 1943.

Unprotected animals such as bears may be restrained without permit, provided they are not kept for breeding purposes, and may be bought and sold. *Op. Atty. Gen.* (210d-1), June 29, 1943.

5498. Manner of taking game.

Removal of forearm of shot gun and leaving it partially broken open is not "taking apart". *Op. Atty. Gen.* (208e-3), Oct. 20, 1939.

A "case" means a case especially designed to contain a gun, and a mere wrapping of cloth, clothing or articles does not comply with statute. *Op. Atty. Gen.* (208e-3), Oct. 24, 1939.

A muskrat trapper who goes out half an hour before opening time of opening day of season, digs a hole in several muskrat houses and leaves unset trap there for apparent purpose of claiming possession ahead of others when season opens, does not violate §5542, but may be prosecuted under §5498. *Op. Atty. Gen.* (210a-5), May 16, 1940.

Words "in a motor vehicle" includes persons standing or sitting on running boards or fenders of a car, or on platform of a truck. *Op. Atty. Gen.* (201a-1), Oct. 31, 1941.

5498-1. Use of certain ammunition prohibited.

It shall be unlawful for any person to hunt, pursue, shoot or kill any of the big game animals of this state with a rifle or firearm which discharges a projectile the diameter of which projectile is less than twenty-three one hundredths of an inch; and provided further, that it shall be unlawful for any person to hunt, pursue, shoot or kill any of the big game animals of this state except with cartridges not less than one and three-fourths inches in length and containing a soft point or expanding bullet, said measurement to include the cartridge or shell and the bullet seated in the usual manner; and provided further, that nothing herein contained shall prohibit the use of cartridges less than one and three-fourths inches in length provided such cartridges are at least .35 caliber or larger. (Act Apr. 24, 1941, c. 412, §1.)

[100.053(1)]