

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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CHAPTER 34

State Printing

5671 to 5675. [Repealed.]

Repealed. Laws 1941, c. 381.

Editorial note.—Act Apr. 22, 1941, c. 381, §4, repealing Mason's Statutes of 1927, Chapter 34, does not mention Mason's Statutes, 1940 Supplement and it is very possible that laws appearing therein are not repealed.

Affidavit of state printer is not necessary before paying for legal printing for county. Op. Atty. Gen. (107B-4), Sept. 18, 1941.

5676. Advertisement for bids. [Repealed.]

Repealed. Laws 1941, c. 381.

Editorial note.—Act Apr. 22, 1941, c. 381, §4, repealing Mason's Statutes of 1927, Chapter 34, does not mention Mason's Statutes, 1940 Supplement and it is very possible that laws appearing therein are not repealed.

Mason's Minn. Stat. 1927, c. 34, is still controlling law regarding letting of printing contracts except where inconsistent with Laws 1939, c. 431, and this is true as to such items as letterheads and envelopes. Op. Atty. Gen. (340a), Feb. 2, 1940.

5677 and 5678. [Repealed.]

Repealed. Laws 1941, c. 381.

5679. Legislative manual—Standing appropriation. [Repealed.]

Repealed. Laws 1941, c. 381.

Repealed. Laws 1943, c. 337, §3.

MANUAL TO BE PRINTED

5680. Distribution. [Repealed.]

Repealed. Laws 1941, c. 381.

Repealed. Laws 1943, c. 337, §3.

5680-½ a. Secretary of state to prepare legislative manual.—The Secretary of State shall prepare, compile, edit, and distribute for use at each regular legislative session, a convenient manual, properly indexed, and containing: The Federal and State Constitutions; the acts of Congress relating to the organization of the territory and state; the rules of order and joint rules of the two houses, and lists of their members, committees and employees; the names of all state officials, whether elected or appointed, and of all persons holding office from this state under the national government, including postmasters appointed by the president; the places where the said several officials reside, and the annual compensation of each; and statistical and other information of the kind heretofore published in the legislative manuals. (Act Apr. 7, 1943, c. 337, §1.)

[5.08]

5680-½ b. Distribution of manual.—25,000 copies of the legislative manual shall be printed and distributed as follows:

- (1) 50 copies to the president of the Senate;
- (2) 50 copies to each member of the legislature;
- (3) 50 copies to the state historical society;
- (4) 25 copies to the state university;
- (5) 60 copies to the state library;

(6) Two copies each to the library of Congress, the Minnesota Soldiers' Home, the state teachers colleges, the state high schools, the public academies, seminaries, and colleges of the state, and the free public libraries of the state;

(7) One copy each to the state institutions not hereinbefore mentioned, the elective state officials, the appointed heads of departments, the officers and employees of the legislature, the justices of the supreme court, the judges of the district court, the senators and representatives in Congress from this state, and the county auditors;

(8) One copy to each public school, to be distributed through the county superintendent of schools;

(9) 275 copies retained for distribution to members of the next succeeding legislature; and

(10) The remainder may be disposed of as the secretary of state deems best. (Act Apr. 7, 1943, c. 337, §2.)

[5.08]

5680-½ c. Laws repealed.—Mason's Minnesota Statutes of 1927, Sections 5679 and 5680 are hereby repealed. (Act Apr. 7, 1943, c. 337, §3.)

5680-3. Dairy slogan.—On all printed matter hereafter printed, used, and distributed by the State of Minnesota and all departments and officials thereof there shall be printed thereon wherever practical, in as conspicuous a place, and in as prominent a type as may be consonant with good taste, the following words or slogan:

"DRINK MORE MILK
EAT MORE BUTTER

FOR YOUR HEALTH AND PROSPERITY"

(As amended Act Apr. 17, 1943, c. 483, §1.)

5680-4. Printed matter.—The term, printed matter, as herein used, shall include all letterheads, vouchers, motor vehicle application blanks, income tax blanks, all circulars, pamphlets, booklets, reports, literature and other like printed material used by the State of Minnesota and all departments and officials thereof. (As amended Act Apr. 17, 1943, c. 483, §2.)

5680-5. On what matter printed.—It shall be within the direction of the state expert printer, after consultation with the appropriate department heads, to determine upon what printed matter, as herein defined, it is reasonably and practicably possible to print said slogan and shall be the duty of said state expert printer to carry out the provisions of this law. (As amended Act Apr. 17, 1943, c. 483, §3.)

5680-6. Dairy slogan for duration of war.—Until the termination of the present war, as declared by proper Federal authority, the following slogan shall be used as herein provided:

"MINNESOTA PRODUCES
MORE MILK AND BUTTER
FOR VICTORY"

(Act Apr. 17, 1943, c. 483, §4.)

Section 4 of Laws 1943, c. 483, adds the above new section to this chapter.

5681 to 5684. [Repealed.]

Repealed. Laws 1941, c. 381.

CHAPTER 35

Employments Licensed by State Boards or Officials

ATTORNEYS AT LAW

5685. Board of law examiners—Examinations.

Office of attorney is not an office in the constitutional or statutory meaning, but is in nature of a franchise or privilege. La Belle v. H., 206M290, 288NW788. See Dun. Dig. 664.

Control of court over conduct of an attorney does not extend to conduct outside his professional capacity, including political activities and supporting or opposing candidates for judicial office. Id. See Dun. Dig. 664.

Employees of State Board of Law Examiners held not in classified service. Op. Atty. Gen. (644b), Oct. 14, 1942.

5687-1. Unauthorized practice of law—Penalty.

"Unauthorized practice of law," discussed and defined. *American Automobile Ass'n. v. M.*, (AppDC), 117F(2d)23, modifying 31FSupp876.

Injunction will lie to restrain illegal practice of law without a license. *Cowern v. N.*, 207M642, 290NW795. See Dun. Dig. 664.

Judicial branch of state government, as a matter of comity, accepts legislative declaration of public policy relative to unauthorized practice of law insofar as it relates to drafting by brokers, in transactions involving sale, trade or leasing of property or a loan thereon where they represent parties or a party thereto, of instruments incident to such transactions where no charge is made for drafting such instruments; but making of a charge therefor is disapproved. *Id.* See Dun. Dig. 664.

It is unlawful for persons not admitted to the bar to engage in the practice of law. *Trovatten v. Minea*, 213M 544, 7NW(2d)390, 144ALR263. See Dun. Dig. 675d.

The unauthorized practice of law by laymen is inimical to public welfare and frequently results in serious loss to those who engage such service, and it is vigorously condemned. *Calich's Estate*, 214M292, 8NW(2d)337. See Dun. Dig. 675d.

A voter who is not an attorney is eligible to position of city attorney of Waseca, though it is doubtful that he may personally represent city in any matter in court. *Op. Atty. Gen.* (59A-5), Mar. 27, 1942.

Representation by laymen and hearings before referee or industrial commission in workmen's compensation proceedings. 24MinnLawRev565.

Unauthorized practice of law by lay insurance adjusters. 25MinnLawRev613.

(c).

Unauthorized practice of law—drawing of legal instruments. 24MinnLawRev563.

5687-5. Attorneys shall not employ solicitors.

Advertising by bar association. 25MinnLawRev788.

5687-8. Certain statements shall be presumed to be fraudulent.

Weight of statement procured on day of accident where admitted without objection. *Aide v. Taylor*, 214M212, 7NW(2d)757, 145ALR530. See Dun. Dig. 3227a, 3409a, 3428.

Section is not violative of Const. Art. 4, §27. *Blanton v. Northern Pac. Ry. Co.*, 215M442, 10NW(2d)382. See Dun. Dig. 3409a.

5688. General duties.

It would outrage ethical proprieties of practice of law for attorney to present a verification of a complaint for signature and oath before he drew the complaint or talked to client about collision involved. *Brusletten v. R.*, 207M375, 291NW608. See Dun. Dig. 675c.

It is improper and unlawyerlike to accept a retainer as an attorney in a case by an attorney who knows that his testimony is essential to his client's success. *Stephens' Estate*, 207M597, 293NW90. See Dun. Dig. 10306a.

An attorney is to be criticized for bringing an action and appealing when law is settled that no cause of action exists, especially where any recovery would be small. *Mani v. E.*, 209M65, 295NW506. See Dun. Dig. 664.

Appearance by county attorney in automobile accident case for defendant whom he had prosecuted for criminal negligence in killing plaintiff's decedent is not looked upon with favor, but plaintiffs are in no position to challenge his conduct where he consulted and got the consent of counsel for plaintiff before making his appearance. *Lee v. Zaske*, 213M244, 6NW(2d)793. See Dun. Dig. 667a.

Where specific instructions relative to a legal matter given to an attorney are subsequently withdrawn and the matter left to the attorney's judgment, liability of the attorney for negligence in failing to carry out the original instructions depends upon whether attorney acted in good faith and with reasonable care and mere error of judgment will not create liability. *Sjoberck v. Leach*, 213M360, 6NW(2d)819. See Dun. Dig. 674.

Evidence held insufficient to establish negligence on part of attorneys in failing to file client's petition for discharge in bankruptcy. *Id.*

An attorney at law is liable in damages for gross negligence. *High v. Supreme Lodge of the World*, 214M164, 7NW(2d)675, 144ALR810. See Dun. Dig. 674.

Those interested in an estate of a deceased person are entitled to a full measure of honesty, diligence, and zeal as a matter of course when they engage a lawyer, and likewise when he becomes administrator. *Simmons' Estate*, 214M388, 8NW(2d)222. See Dun. Dig. 671, 699.

An attorney, who was a cotrustee and had charge of books and records of trust and managed the property thereof, by an agreement to obtain for the beneficiary additional income, was agreeing to do that which his trust obligation already required of him, and if there were doubtful questions presented as to whether a part of the estate should constitute the corpus or income of the trust property, it was his duty to call upon the court for an interpretation of trust provisions in order to carry out the intentions of the trustor, and by his conduct in entering into the agreement with the beneficiary in consideration of an interest in what might be obtained for them he forfeited his right to compensation. *Lee's Estate*, 214M448, 9NW(2d)245. See Dun. Dig. 700.

An attorney is an officer of the court, sworn to aid in the administration of justice and to act with strict fidelity to both his clients and the courts. *Id.* See Dun. Dig. 664, 665, 671.

Unquestioned fidelity to their real interests is the duty of every attorney to his clients. *Id.* See Dun. Dig. 671.

When a breach of faith occurs, an attorney's right to compensation is gone. *Id.* See Dun. Dig. 700.

An attorney at law who is unfaithful in the performance of his duties forfeits his right to compensation. *Id.* See Dun. Dig. 700.

Attorney who sold stolen bonds for client was not liable for conversion where bonds were negotiable and attorney acted in belief that client was legitimate owner. *First Nat. Bank of Blairtown v. G.*, 17Atl(2d)(Pa)377.

County attorney representing doctors in private practice should not take claim against villages, cities and townships for treatment for transient poor, when if paid the county will be asked to reimburse the municipality. *Op. Atty. Gen.* (121a-7), May 19, 1943.

5690. Authority.

In suit to recover taxes paid to state of Minnesota on lands lying beyond northern boundary of United States, stipulation of fact that neither plaintiff nor defendant had knowledge or means of knowledge of location of boundary line between United States and Canada until filing in Land Office of official plat in 1934 was not binding where evidence showed that plaintiff had constructive notice of making of the survey, and could have acquired knowledge of true boundary line as located thereunder through inquiry at state department. *Pettibone v. C.*, (DC-Minn), 31FSupp881.

An infant cannot sustain relationship of client and attorney, but attorney represents the guardian. *Fiske's Estate*, 207M44, 291NW289. See Dun. Dig. 667.

Stipulation for judgment in district court on a formal award approving workmen's compensation settlement held not obtained by fraud or misrepresentation. *Connors v. U.*, 209M300, 296NW21. See Dun. Dig. 9003c.

Valuable consideration is not essential to validity of a stipulation in judicial proceedings. *Id.*

A party may settle a controversy without advising his attorney of it, but rule is inapplicable where action has already proceeded to judgment, reason for rule being found in policy that there should be an end to litigation and that compromises and settlements should be encouraged. *Weikert v. Blomster*, 213M373, 6NW(2d)798. See Dun. Dig. 675a.

5691. Proof of authority.

There is a firmly established presumption in favor of an attorney's authority to act for any client whom he professes to represent. *Goodman v. Ancient Order of United Workmen*, 211M181, 300NW624. See Dun. Dig. 685.

On motion to dismiss appeal for lack of authority of attorneys for appellant to take the appeal and for want of a proper appeal bond, it is unnecessary for court to enter into question of proper parties on appeal bond until proper authority of attorneys is decided by proper motion. *Larson v. Dahlstrom*, 213M595, 6NW(2d)37. See Dun. Dig. 688.

Without a prior determination of question of authority vel non of attorneys who represent appellant, Supreme Court cannot entertain a motion to dismiss appeal on ground of want of authority. *Id.*

On hearing of an order to show cause questioning authority of attorneys for appellants to take an appeal in which proper authority was found to exist, motion by appellants' attorneys for costs and disbursements was denied. *Larson v. Dahlstrom*, 213M595, 6NW(2d)636. See Dun. Dig. 685.

On hearing of an order to show cause, affidavit of interested party held to establish that attorneys for appellants had authority to take the appeal. *Id.*

5692. Consultation with persons restrained.

Sheriff is not required to permit one confined to jail to marry. *Op. Atty. Gen.* (300), March 22, 1943.

5693. Change of attorney.

Client may terminate relation of attorney and client at any time, with or without cause, and be liable only for reasonable value of services then rendered. *Anderson v. High*, 211M227, 300NW597. See Dun. Dig. 669a.

Where an attorney is employed for a particular litigated controversy, with an agreement for a fixed compensation in the event of a successful termination of the case, and thereafter the client without cause or justifiable reason, discharges the attorney and employs another who proceeds with the matter to a successful end, the attorney is entitled to the agreed compensation, as where an attorney is employed to bring personal injury action for one-third of amount recovered and obtains judgment and later client employs another attorney to make settlement with the judgment debtor. *Weikert v. Blomster*, 213M373, 6NW(2d)798. See Dun. Dig. 669a, 699a.

5695. Lien for attorneys' fees extended.

Judgments will not be set off upon motion if it will defeat attorney's right to a lien, and this applies as to a judgment for defendant for costs, especially where de-

pendant is without funds and attorney has advanced cost of printing brief. *Exsted v. O.*, 206M644, 287NW602. See Dun. Dig. 708.

In fixing attorney's fees for plaintiff in a stockholders' action, court should take into consideration fact that corporation appeared by competent counsel and took an active part in the action, recovering in trial court all that it was entitled to recover. *Risvold v. G.*, 207M359, 292NW 103. See Dun. Dig. 699.

Simple fact of benefit without more does not impose contractual liability for services. *High v. Supreme Lodge of World, Loyal Order of Moose*, 210M471, 298NW723. See Dun. Dig. 698a.

In action to recover money held by an attorney under claim of lien for services rendered, evidence held to sustain verdict for plaintiff. *Anderson v. High*, 211M227, 300 NW597. See Dun. Dig. 705.

Lien of attorney upon funds in his hands does not cover future services contemplated between parties. *Id.*

Notice of lis pendens could not be given effect of a notice of intention to claim an attorney's lien where it was not verified and did not specify amount of lien claimed. *Melin v. Mott*, 212M517, 4NW(2d)600. See Dun. Dig. 704, 5669.

5697. Removal or suspension of attorney.

Disbarment will follow where accused has been found guilty of a felony, grand larceny in the first degree. *Turquist*, 206M104, 287NW795. See Dun. Dig. 678.

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

Findings showing that over long period attorney has displayed persistence in dilatoriness, with such inattention to client's affairs as to result in damage to them and disrepute for the profession, require his disbarment. *Gennow*, 206M389, 289NW887. See Dun. Dig. 678.

Disbarment will follow where accused attorney has been found guilty of felony of indecent assault. *Van Wyck*, 207M145, 290NW227. See Dun. Dig. 678.

Evidence held to sustain finding that attorney willfully and knowingly testified falsely when he testified that he and not his wife signed her name to a note and mortgage. *Priebe*, 207M97, 290NW552. See Dun. Dig. 678.

For repeated conversions of clients' funds (restitution made under compulsion) with wilful deception practiced on the board of law examiners and court, judgment of disbarment ordered. *Smith*, 208M23, 292NW620. See Dun. Dig. 678.

Disbarment must follow where attorney converts property of his client to his own use. *Clover*, 208M238, 293 NW300. See Dun. Dig. 678.

Disbarred attorney who paid \$7500 costs as required by original judgment was reinstated. *McDonald*, 208M 330, 294NW461. See Dun. Dig. 682a.

An attorney convicted of impersonating an officer of the Federal Bureau of Investigation and thereby obtaining money from various people was disbarred. *McCabe*, 209M166, 295NW906. See Dun. Dig. 678.

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

In proceeding for disbarment, when personal service has been made upon accused attorney and he defaults, an order of discipline will be entered upon assumption that he is guilty as charged. *Petri*, 209M247, 296NW10. See Dun. Dig. 679a.

One convicted of compounding a crime on plea of guilty cannot question the conviction in a disbarment proceeding. *Wallace*, 209M465, 296NW534. See Dun. Dig. 678.

Deliberate false statements to client in respect to matters left to attorney for professional attention, coupled with failure to respond to letters from bar association committees and board of law examiners, held to constitute unethical and unprofessional conduct requiring discipline. *Larson*, 210M414, 298NW707. See Dun. Dig. 678.

Misappropriation of funds and misconduct with jurymen warranted disbarment. *Pluto*, 211M308, 300NW897. See Dun. Dig. 678.

On order to an attorney to show cause why he should not be disbarred as an attorney following conviction of crime of grand larceny in second degree, court, being convinced by record in criminal case that respondent was guilty as charged, determined that no useful purpose would be served by a reference by reason of an answer asserting that conviction was due to mismanagement of defense and that attorney was in fact innocent of charge of which he was convicted. *Hokenson*, 211M516, 1NW(2d) 843. See Dun. Dig. 679a.

Petition for reinstatement of disbarred attorney was granted pursuant to provision in judgment that application might be made for reinstatement after one year. *In re Priebe*, 213M75, 5NW(2d)396. See Dun. Dig. 682a.

Disbarment or discipline of judges for misconduct. 27 MinnLawRev317.

(1) (A).

An attorney convicted on his plea of nolo contendere of crime of embezzlement in United States District Court, with a suspended sentence and probation for two years, was disbarred, since crime involved "moral turpitude," notwithstanding evidence of extenuating circumstances which resulted in embezzlement of money. *In re Sutton*, 5 N W. (2d) 396. See Dun. Dig. 678.

ARCHITECTS, ENGINEERS AND SURVEYORS

5697-1. Registration required.

A contractor may not use for construction of a building plans which are not prepared by a registered architect when cost of building or structure exceeds \$7500. *Op. Atty. Gen.*, (10a-3), Dec. 22, 1939.

Clause permitting erection or enlargement of building by a firm or employee exclusively for his or its own occupancy does not permit erection of building or structures except in compliance with this act where they are to be accessible to the public generally. *Id.*

A county fair association is not required to engage an architect in order to construct a recreation hall, unless the cost thereof exceeds \$7,500 and the fair association places some person in responsible charge of the preparation of plans or specifications for the job. *Op. Atty. Gen.* (10a-3), July 8, 1941.

5697-2. Persons required to register—Titles which may be used.

Engineer who draws plans and specifications for enlargement of power house must be registered, but elective officers discharging duties of their office are exempt. *Op. Atty. Gen.*, (10a-3), Jan. 2, 1940.

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

Requirement that there be a certificate by a registered land surveyor applies to all classes, except where work or service is that usually done or performed by a person holding an elective office, such as a county surveyor. *Op. Atty. Gen.* (373B-15), Feb. 18, 1941.

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

Omission of \$1 in title of Laws 1933, c. 404, would not affect amendment of this section, which was referred to in title. *Id.*

A county may not continue to draw state aid for construction and maintenance of state aid roads if it has no county engineer, though it has an employee designated as Superintendent of Maintenance. *Op. Atty. Gen.* (229f), Sept. 16, 1942.

County building a new highway shop and garage need not employ an architect, but if it does employ anyone in responsible charge of preparation of plans or specifications or for supervision of building, then he must be an architect, engineer or land surveyor registered as provided by this section. *Op. Atty. Gen.* (10a), March 2, 1943.

A person preparing plans or specifications of an engineering character or in responsible charge or supervision of engineering work must be a registered engineer, and such work cannot be done by a registered land surveyor, and a contract of a city with an individual who is registered as a land surveyor, but not as an engineer or architect, to do both surveying and engineering work in connection with a proposed airport, is void in part. *Op. Atty. Gen.* (10a), May 26, 1943.

City engineer of Brainerd registered as "Municipal Engineer" may not do surveying work for the city in the laying out of streets across unplatted land. *Op. Atty. Gen.* (10a), Sept. 22, 1943.

5697-9. Certificates of registration.

Board may require a reasonable and nonreturnable examination fee to cover cost and expense of giving examination for purpose of determining qualifications, or require applicants to take such examination at the University of Minnesota where a reasonable charge will be made. *Op. Atty. Gen.*, (10a-3), Dec. 22, 1939.

Penalty provision in case of registrants in active service of armed forces of United States who failed to pay their renewal fees within limit fixed by statute may not be waived by board, but act does not require that such fees be paid for each year in which certificates have not been renewed, and board must renew upon payment of one fee. *Op. Atty. Gen.* (10A-3), Feb. 19, 1942.

(3).

This subsection is no longer in effect, since it could not have been availed of since July 1, 1933. *Op. Atty. Gen.* (10A-3), Oct. 20, 1941.

5697-13. Persons exempt from registration.

(2).

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

5697-14. Corporations and partnerships.

City may make a contract with a partnership or corporation for engineering work in the construction of an airport even though no officer or director of the corporation or no member of the partnership may be a registered engineer, provided the work is carried on under the responsible charge of a registered engineer employed by the corporation or partnership. *Op. Atty. Gen.* (10a), Sept. 30, 1943.

5697-17. Effective July 1, 1933.

Op. Atty. Gen. (10A-3, Oct. 20, 1941; note under §5697-9(3).

CERTIFIED ACCOUNTANTS

5698. Board of accountancy.

Person employed by a city to audit its books need not be a certified public accountant. Op. Atty. Gen. (373b), July 1, 1943.

5701. Certificate without examination, to whom.

It is within the discretion of the board to issue a certificate to one holding a certificate from a state having complete reciprocal relations with Minnesota, though such certificate was obtained, through reciprocity, from a state not having reciprocal relations with Minnesota. Op. Atty. Gen. (882i), Sept. 7, 1940.

5703. Fee for examination and certificate.

Board might adopt a rule allowing applicants who have passed two subjects out of three re-examined in third without payment of an additional fee, but where he fails a second time in same subject and desires to be re-examined, he would be required to pay another fee of \$25, for which he would be entitled to examination in all subjects. Op. Atty. Gen. (882f-1), Oct. 23, 1940.

Board may refund fee if application is rejected and person not permitted to take examination or given a certificate, and board may therefore adopt practice of holding checks of applicants attached to application and returning them in event they are rejected. Id.

5704. Revocation and reinstatement of certificates of certified public accountants.

There is no authority for attendance of attorney general at a preliminary hearing. Op. Atty. Gen., (882B), Jan. 6, 1940.

While there is no provision for a preliminary review of the facts, accountant should not complain of a preliminary informal hearing which might avoid necessity of filing a formal complaint, though there can be no formal hearing without twenty days' written notice. Id.

BASIC SCIENCES AND PRACTICE OF HEALING

5705-6. Applications for examinations of persons desiring to practice healing—Etc.

Board may entertain new application for examination from doctor whose license was revoked and may prescribe such examination as deemed suitable, and may take into consideration fact that applicant has previously been licensed. Op. Atty. Gen., (303B), Jan. 3, 1940.

Fees paid by applicants to state board of examiners in basic sciences can be refunded only by legislature where it is later discovered that applicant is not eligible for entrance to examination or individual subsequent decides not to take examination. Op. Atty. Gen. (303b), July 16, 1943.

5705-9. Certificates without examination to practitioners from other states, etc.

Where examinee failed his examination and applied for admittance to and passed examination of another state, with whom reciprocity has been established, board may refuse to accept reciprocity, in its discretion. Op. Atty. Gen., (303a-11), April 18, 1940.

Once reciprocity is arranged, secretary of board may issue certificate without waiting for board in session to act on application, upon proof of age and moral character. Op. Atty. Gen. (303b), Dec. 2, 1941.

5705-11. Fees—Disposition of and reports as to, etc.

Fees paid by applicants to state board of examiners in basic sciences can be refunded only by legislature where it is later discovered that applicant is not eligible for entrance to examination or individual subsequently decides not to take examination. Op. Atty. Gen. (303b), July 16, 1943.

UNFAIR PRACTICES AFFECTING PUBLIC HEALTH

5705-31. Unfair competition and trade practices prohibited.

Creamery company operating locker system is not a public utility, and it is not unlawful for a creamery to furnish locker service to farmers who sell their cream to it and not to other farmers. Op. Atty. Gen. (681a), Dec. 7, 1943.

5705-32. Application—Rules.

Minnesota, Wisconsin and New Mexico Acts are similar, and there is not sufficient distinction between them to influence holding contrary to court construction by Minnesota and Wisconsin courts of Minnesota and Wisconsin Acts in New Mexico courts as to New Mexico Acts. Arnold v. B., 109Pac(2d)(NM)779.

5705-34. Assessments for expense.

Members of hairdressing board permitting its funds to be used for trade commission purposes are personally liable for unlawful disbursement. Op. Atty. Gen., (33B-2), May 14, 1940.

A person who has a beauty operator's and a barber license is subject to code assessment for barbers, though he is cutting only women's hair. Op. Atty. Gen., (33b-5), June 11, 1941.

PHYSICIANS AND SURGEONS

5707. Examination and license—Revocation.

Recovery from a malpracticing physician must rest on negligence and proof thereof. McGough v. M., 206M1, 287NW857. See Dun. Dig. 7488.

One injured by malpracticing physician is entitled to recover all compensatory damages naturally and proximately flowing from the negligence. Id. See Dun. Dig. 7493.

Uncontradicted evidence tending to show that a doctor's habitual method of diagnosis has no scientific basis and is a species of quackery, held sufficient to justify board of medical examiners in suspending his license. Minnesota State Board of Medical Examiners v. Schmidt, 207M649, 292NW255. App. dism'd and cert. den. 61SCR135.

Where hearing before board of medical examiners was adjourned without taking testimony of three witnesses for doctor and there was no showing that testimony would have been relevant to his methods of diagnosis, there was no prejudicial error in denying a continuance in order to take it. Id. See Dun. Dig. 7483.

Proper foundation held not laid for opinion given at trial by physician to effect that defendant in malpractice case did not exercise proper skill in treating varicose veins by an injection. Simon v. L., 207M605, 292NW270. See Dun. Dig. 7494.

Since act makes provision for notice and opportunity to be heard, with right of review by appeal to district court on questions of both law and fact so that any error may be corrected, injunctive relief will not be granted at suit of one who has as his basis for such relief merely fear that proceedings to discipline him may be brought. Fisch v. S., 208M102, 292NW758. See Dun. Dig. 7483.

A fraternal organization employing and paying physician to care for members cannot interfere by injunction with any proceedings that may be brought by board of medical examiners to revoke license of physician for unprofessional conduct in being employed by a corporation. Id.

Mere fact of occurrence of injury in connection with surgical operations does not prove negligence of surgeon. Simon v. Larson, 210M317, 298NW33. See Dun. Dig. 7491.

There may be some force to contention that medical authority is not always necessary in malpractice cases, but where certain facts of medical science have been established by uncontradicted testimony of experts, those facts cannot be ignored in passing upon question whether plaintiff can make case for jury. Id. See Dun. Dig. 7494.

One undergoing treatment of varicose veins by the ligation method did not establish negligence of surgeon in manner of injecting sodium morrhuate by simply showing extensive sloughing of flesh. Id. See Dun. Dig. 7496.

Res ipsa loquitur doctrine does not ordinarily apply in malpractice cases. Johnson v. Colp, 211M245, 300NW 791. See Dun. Dig. 7044, 7496.

In malpractice case plaintiff could not recover in absence of a showing either lack of skill or reasonable care, since recovery cannot be based upon results alone. Id. See Dun. Dig. 7488.

A physician or surgeon is obliged to use ordinary skill in diagnosis and method of treatment, and also to use reasonable care in manner in which treatment is applied or operation performed, and is liable for damages if he fails in either. Id. See Dun. Dig. 7488.

Though a physician or surgeon does not insure a good result, he must exercise skill and care that an ordinary member of his school would exercise in his locality. Id. See Dun. Dig. 7488.

An operating surgeon is liable for negligent acts of assisting nurses during an operation, though the nurses and general employees of the hospital, being under the direct control of the surgeon at the time. St. Paul-Mercury Indemnity Co. v. St. Joseph's Hosp., 212M558, 4 NW(2d)637. See Dun. Dig. 7488.

A doctor is liable for negligence of a nurse in his employ under the doctrine of respondeat superior. Id.

Disciplinary proceedings for offenses committed before adoption of Business and Professions Code and simultaneous repeal of Medical Practice Act, held not barred since the provisions of the old act were reenacted and restated in the new act. Sobey v. M., 104Pac(2d)(Cal)868.

CHIROPRACTORS

5726. Appointment.—The governor shall appoint a state board of chiropractic examiners consisting of five resident chiropractors who shall have practiced chiropractic in this state for at least three years immediately prior to the time of appointment, all of whom shall be graduates of a course of chiropractic, but no two of whom shall be graduates of the same school or college of chiropractic; one to be appointed each year to serve five years and until his successor is appointed and qualifies to the end that each member shall serve five years after the first appointment. The

board shall have the authority to prescribe rules and regulations relative to the examination of applicants for license to practice chiropractic and for the annual renewal of licenses. Vacancies caused by death or otherwise shall be filled by the governor within 60 days. No member of the board shall be financially interested in any chiropractic school or college or be in any way affiliated with the practice of other methods of healing as are not regulated by law in this state. (As amended Mar. 19, 1943, c. 155, §1.)

5730. Renewal fees put in fund—Report—Amount.
—Subdivision 1. All persons practicing chiropractic within this state, or licensed so to do, shall pay, on or before the first day of September of each year after a license is issued to them, as herein provided, to the board of chiropractic examiners a renewal fee of \$5.00 or such sum as may be fixed by the board, but not exceeding \$10.00 in any one year, and upon payment of the renewal and upon compliance with all the rules and regulations of the board, shall be entitled to an annual renewal license. The secretary-treasurer shall, 30 days or more before September first of each year, mail to all chiropractors of this state a notice of the fact that the renewal fee will be due on or before the first of September. Nothing in Mason's Minnesota Statutes of 1927, Sections 5724 to 5734 shall be construed so as to require that the renewal receipts shall be recorded as original licenses are required to be recorded.

Subdivision 2. **Disposal.**—All fees received by the board under Mason's Minnesota Statutes of 1927, Sections 5724 to 5734 shall be paid to the secretary-treasurer, who shall forthwith deposit the same with the state treasurer in a separate fund of the state board of chiropractic examiners for their use, and shall pay the same out only upon written orders issued and signed by the secretary-treasurer and president of the board. All expenses incurred and authorized by the board in carrying out the provisions of Mason's Minnesota Statutes of 1927, Sections 5724 to 5734 shall be paid out of this fund and not otherwise.

Subdivision 3. **Report.**—The secretary-treasurer shall, on the first Tuesday of October of each year, file with the governor a report of all receipts and disbursements and proceedings of the board for the fiscal year. He shall give bond in such sum and with such sureties as the board shall deem necessary. Each member of the board shall receive a fee of \$10.00 per day and mileage at the rate of three cents per mile, and other necessary incidentals, in attending the meetings of the board. (As amended Mar. 19, 1943, c. 155, §2.)

5731. Recording of licenses—Rules and regulations—Chiropractics not practice of medicine, surgery, or osteopathy.

Osteopaths and chiropractors may be excluded by regulation of governing board of public hospital. Op. Atty. Gen., (1001a), Jan. 30, 1940.

OSTEOPATHY

5736. Practice of osteopathy, etc.

Osteopaths may practice optometry without a license. Op. Atty. Gen. (329c), Feb. 11, 1943.

5737. Application for license—Examination, etc.

Osteopaths may practice optometry without a license. Op. Atty. Gen. (329c), Feb. 11, 1943.

NURSES

5741. Registration.

Nurse registered in another state but not registered in this state may not hold herself out to public as registered nurse. Op. Atty. Gen. (905e), June 15, 1943.

5742. Nurses—Board of Examiners.

Board does not have the right to use funds for projects not specifically set forth in the statute. Op. Atty. Gen. (905h), July 19, 1943.

5744. Officers—Bond.

Member of board cannot serve as educational director. Op. Atty. Gen. (905h), July 19, 1943.

5745. Compensation.

Member of board cannot be compensated for services on advisory council on rural nursing service. Op. Atty. Gen. (905h), July 19, 1943.

Compensation of board is limited to duties specified in the statute. Id.

The issuance of a "license" under this section is equivalent to the issuance of a certificate of registration under the other sections of the act. Op. Atty. Gen. (905e), July 21, 1943.

5747. Examinations — Notices — Fees—Qualifications.

Former Minnesota graduates applying for first time for registration must meet present requirements, take present Minnesota examination. Op. Atty. Gen., (905d), June 17, 1941.

5751. Applicants registered in other states.

Where nurse, after failing in her Minnesota state board examination, passed state board examination of another state having equivalent qualifications, board has no authority to refuse a license. Op. Atty. Gen., (905E), Oct. 23, 1939.

On application for registration without examination by persons who have graduated and registered in other states, board is to consider present qualifications required in state in which applicant originally registered, rather than qualifications existing at time of registration in other state. Op. Atty. Gen., (905d), June 17, 1941.

5754. Registered nurse.

Nurse registered in another state but not registered in this state may not hold herself out to public as registered nurse. Op. Atty. Gen. (905e), June 15, 1943.

DENTISTS

5759. Practicing dentistry—Exceptions.

It is the duty of a dentist administering gas to a patient to exercise such reasonable care and skill in their behalf as is usually exercised by dentists of good standing in the community where he practices. *Harris v. Wood*, 214M492, 8NW(2d)818. See Dun. Dig. 7488.

A dentist is guilty of negligence if he persists in the use of an anesthetic on a patient after a warning which would impel a reasonable person to desist, and is liable for his resulting death. Id. See Dun. Dig. 7488d.

Evidence held to sustain finding that administration of a gas anesthetic to prepare patient for extraction of teeth was a cause of his death. Id. See Dun. Dig. 7488d.

CHIROPODY

5772. Eligibility requirements; etc.

There is no provision which authorizes board to issue licenses, or renewals thereof, without payment of prescribed fee, though registrant is called into active military service. Op. Atty. Gen. (546G), Feb. 23, 1942.

5774. False registration—Practice without license—Advertising as practitioner—Penalties.

There should be no prosecution for mere technical violations as to advertising. Op. Atty. Gen., (546f), Jan. 9, 1940.

Advertisement of free foot test and treatments by licensed chiropodist and fitting service held not violation of this section. Op. Atty. Gen. (546a), Sept. 22, 1942.

OPTOMETRISTS

5789. Who are optometrists.

Ownership and possession by an unlicensed dealer in eyeglasses of eye testing apparatus for exclusive use of a duly licensed optometrist employed by him to conduct his business of selling eyeglasses is fairly and properly incident to such business and not unlawful. *State v. Goodman*, 206M203, 288NW157.

One not licensed as an optometrist may engage in business of selling eyeglasses at retail, provided a duly licensed optometrist is placed in charge and personally attends to sales. Id.

A person who is not registered as an optometrist and who does not employ an optometrist is permitted to sell or replace focus or ophthalmic lenses. Op. Atty. Gen., (329c), Oct. 6, 1939.

Osteopaths may practice optometry without a license. Op. Atty. Gen. (329c), Feb. 11, 1943.

5790. Who may practice optometry.

Board may not rule requiring applicant from another state to have had five years practice. Op. Atty. Gen. (329b), Nov. 21, 1941.

(d). Board may require applicant to be or to become a resident of the state. Op. Atty. Gen. (329b), Oct. 30, 1941.

Examination and renewal fees may not be waived in case of a prospective draftee. Op. Atty. Gen. (329B), Mar. 3, 1942.

5792. Annual fees.

It is optional with board to revoke certificate of non resident licensee because of failure to pay annual fee,

and in such case there is no provision for reinstatement, except under §5790. Op. Atty. Gen., (329B), March 6, 1940. Examination and renewal fees may not be waived in case of a prospective draftee. Op. Atty. Gen. (329B), Mar. 3, 1942.

5796-1. Not to affect persons engaged in practice.
Osteopaths may practice optometry without a license. Op. Atty. Gen. (329c), Feb. 11, 1943.

WATCHMAKING

5796-11. Definitions.—(1) The term "watchmaking", for the purpose of this act, includes and means the repairing, replace, rebuilding, readjusting or regulating of the mechanical parts of watches, and the repairs thereof and the manufacturing and fitting of parts designed for use or used in watches. Such statements shall not include or mean the manufacturing or repairing of watch cases, but shall include the repairing of all winding mechanisms whether they are parts of such cases or not.

(2) The term "board", as used in such sections, shall mean the "Minnesota Board of Examiners in Watchmaking". (Act Apr. 16, 1943, c. 474, §1.) [326.01(20)(21)]

5796-12. Watchmakers to be registered.—No person shall engage in watchmaking for profit or compensation of any kind, without first obtaining a certificate of registration, as hereinafter provided, which certificate shall at all times be conspicuously displayed in his place of business. (Act Apr. 16, 1943, c. 474, §2.) [326.54]

5796-13. Minnesota Board of Examiners in Watchmaking created—Duties—Officers.—(1) There is created a Board to be known as the "Minnesota Board of Examiners in Watchmaking", whose duties it shall be to administer the provisions of this act. Such Board shall consist of five members, appointed by the Governor within sixty days after the effective date of this act. All persons so appointed shall have been residents of this state and actually engaged in watchmaking, as defined in Section 1, for at least five years immediately preceding the time of their appointment. Each member of said Board shall hold office for four years and until his successor shall be appointed, and qualifies, except that in the first appointments three members shall be appointed for four (4) years, two for two (2) years, and the term of office in such case shall be designated by the Governor at the time of the appointment. The Board of five to consist of not less than two employees.

(2) The Board shall choose annually, one of its members as president and one as secretary, who shall severally have power to administer oaths and take affidavits certifying thereto under the seal of the Board. The Board shall meet not more than four times annually, and each meeting shall not exceed more than two days. A majority of the members of the Board shall constitute a quorum. The secretary shall give such bond as the Board shall determine to be proper. The secretary shall keep a full record of its proceedings, which shall be open to inspection at all reasonable times. The members and officers of the Board shall be compensated as follows: Each member of the Board shall be paid a per diem of Ten Dollars (\$10.00) during session of the Board, not to exceed, however, two days' time at any meeting; also they shall be paid mileage of five (5c) cents per mile. The secretary, in addition to such per diem and expensés, may be paid an annual salary not to exceed \$1,000.00 in the discretion of the Board, providing all expenses connected with the operation of the Board must be defrayed from the revenue derived from the licenses and examination fees. All expenses connected with the operation of this Board must be defrayed from the resources derived from its income as established in this act and not from the general or other state funds.

(3) The board shall establish suitable and proper uniform apprenticeship regulations; may retain administrative or legal counsel, if it deems needed or proper; and to appoint one clerk or assistant to the secretary, exempt from civil service, and to fix the salary therefor.

(4) The secretary shall collect the fees and shall pay the same into the state treasury, to be kept by the State Treasurer in a fund entitled "Watchmakers' Fund". The secretary shall draw by warrant for necessary expenses which shall be paid from said fund. Provided that in no case shall the expenses of the Board be greater than \$5000 annually. All surpluses remaining in said fund annually, after payments above authorized, shall be paid into the general fund of the state. (Act Apr. 16, 1943, c. 474, §3.) [326.541]

5796-14. Examinations—Fees.—Applicants for certificates shall be examined at a time and place fixed by the Board. Applications for examination shall be filed with the Board at least ten days before the date set for the examination and shall be accompanied by an examination fee of Fifteen Dollars (\$15.00). The applicant shall be of good character, at least nineteen (19) years of age, and shall have served an apprenticeship of one (1) years or its equivalent as determined by the Board. (Act Apr. 16, 1943, c. 474, §4.) [326.542]

5796-15. Examinations—Re-examinations.—An applicant to be entitled to a certificate, shall pass an examination before the Board which examination shall be confined to such knowledge, practical ability and skill as is essential in the proper repairing of watches, and shall include a practical demonstration of the applicant's skill in the manipulation of watchmakers tools. The Board shall make rules and regulations for conducting examinations and shall define the standards of workmanship and skill. In the case of failure at any examination, the applicant shall have the privilege of taking another examination at any other examination period upon the payment of a fee of Seven Dollars and Fifty Cents (\$7.50). (Act Apr. 16, 1943, c. 474, §5.) [326.543]

5796-16. Certificates of registration expiration—Renewal.—(1) If the applicant successfully passes the examination, the secretary of the Board shall register such fact and shall issue to him a certificate of registration.

(2) A watchmaker in good standing, registered and licensed in another state or states and having engaged in watchmaking therein for two years immediately preceding his application for a certificate, upon filing with the Board satisfactory proof thereof shall be issued a certificate, without examination upon the payment of a fee of Fifteen Dollars (\$15.00).

(3) Persons actually engaged in watchmaking within the state, upon the date of enactment of this chapter, shall be exempt from taking the examination herein provided upon making application for a certificate within six months after said date accompanied by an application fee of Ten Dollars (\$10.00), or his affidavit setting forth the fact of having so actually engaged in watchmaking, and if the Board shall be satisfied that such applicant is entitled thereto, it shall cause its secretary to so register and issue a certificate of registration.

(4) Watchmakers of this state who are in the armed forces of the United States of America at the time this bill becomes a law, shall be exempt from taking the examination herein provided upon making application for certificate within one (1) year after his discharge from service, accompanied by an application fee of Ten Dollars (\$10.00).

(5) Certificates of registration shall expire on the 30th day of June each year and must be renewed within thirty days for one year upon payment of a

fee of Five Dollars (\$5.00), or less at the discretion of the Board. Application may be made for renewal after the fifteenth day of June of each year.

(6) The Board shall issue a temporary sixty day certificate upon payment of a fee of One Dollar (\$1.00). (Act Apr. 16, 1943, c. 474, §6.) [326.544]

(3). Words "or his affidavit" means "and his affidavit". Op. Atty. Gen. (499), July 8, 1943.

5796-17. Certificates for apprentice watchmakers.—Any person sixteen (16) years of age or over, of good character, apprenticed to a registered watchmaker in accordance with the regulations determined and established by the Board, may pursue the trade of watchmaking upon obtaining from the Board a certificate of registration as an apprentice watchmaker, which certificate shall be conspicuously displayed at all times at the place of employment of such apprentice. Apprentice watchmakers shall pay a fee of Two Dollars (\$2.00) annually. (Act Apr. 16, 1943, c. 474, §7.) [326.545]

5796-18. May revoke certificates.—(1) The Board may revoke a certificate of registration upon the failure of the holder thereof to pay the annual renewal fee, upon giving said holder thirty (30) days' notice in writing of such proposed revocation.

(2) The Board may revoke a certificate of registration obtained through error of the Board or fraud on the part of the applicant, or if the holder is grossly incompetent, guilty of unethical conduct, or obtained or sought to obtain anything of value by fraudulent representations in the practice of watchmaking. The holder of such certificate shall be given thirty days' notice in writing, enumerating the charges and specifying a date for the hearing on such charges. At the hearing he shall have the opportunity to confront witnesses against him and to produce evidence bearing on such charges. A stenographic record of all proceedings shall be made and transcript kept on file with the Board. The holder may within thirty (30) days after revocation file with the secretary of the Board, a written notice of appeal to the District Court of Ramsey County, and the secretary shall transmit to the court and to the Attorney General a certified copy of the record. The appeal shall be tried by the court de novo.

(3) One whose certificate has been revoked, may, upon the expiration of one year after such revocation, apply to the Board for registration and, upon satisfactory proof that the cause of revocation no longer exists, the Board may, in its discretion, issue to said person a certificate of registration upon payment of the fees herein provided.

(4) "Unethical Conduct" shall include and mean any conduct of a character likely to mislead, deceive or defraud the public; advertising of any character in which untruthful or misleading statements are made; advertising of prices on watch repairing or the giving of any watch parts, gratis or at less than cost, performance of any service in pursuance of any such advertising; loaning of certificate of registration to any person, failure to display the certificate of registration conspicuously at all times; representation that a watch has been cleaned although its major parts, train wheels, and mainspring, have not been disassembled and the capped jewels removed and all parts thereof properly cleaned; performance of any work upon a watch, clock, and time-recording instrument in an unworkmanlike or unskilled manner, representation that certain services or parts are necessary or have been or will be used in the repair of a watch, although such services or parts are not necessary and have not been used in such repairs; employing, directly or indirectly, any unregistered watchmaker to perform any watchmaking, or repairs on watches, clocks, and time-recording instruments or non-compliance, within thirty (30) days, with the

directions given in a written notice from the Board to terminate employment with any person who is violating the provisions of this act. (Act Apr. 16, 1943, c. 474, §8.) [326.546]

5796-19. Violations a misdemeanor.—Any one not having a certificate of registration who shall hold himself out as a watchmaker or as qualified to do watchmaking, or any one who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Twenty Dollars (\$20.00), nor more than One Hundred Dollars (\$100.00) or by imprisonment in the county jail not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment. (Act Apr. 16, 1943, c. 474, §9.) [326.53(2)(4)]

5796-20. Provisions severable.—If any section, part, or provision hereof, be found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependable thereon. (Act Apr. 16, 1943, c. 474, §10.)

PHARMACISTS

5808-6. Powers and duties.—The State Board of Pharmacy shall have the power and it shall be its duty:

- (a) To regulate the practice of Pharmacy.
- (b) To regulate the sale of drugs, medicines, chemicals and poisons.
- (c) To regulate the quality of all drugs and medicines dispensed in this state, using the United States Pharmacopeia and the National Formulary, or any revisions thereof, as the standard.
- (d) It may, by its duly authorized representative, enter and inspect any and all places where drugs, medicines, chemicals and/or poisons are sold, vended, given away, compounded, dispensed or manufactured. It shall be unlawful for any persons to refuse to permit or otherwise prevent such representative from entering such places and making such inspection.
- (e) To examine and register as pharmacists all applicants whom it shall deem qualified to be such.
- (f) To suspend or revoke pharmacist or assistant pharmacist licenses issued by it, upon any of the following grounds:
 - (1) Fraud or deception in connection with the securing of such license;
 - (2) Conviction of the holder in any court of a felony;
 - (3) Conviction of the holder in any court of an offense involving moral turpitude;
 - (4) Habitual indulgence in the use of narcotics or intoxicating liquors;
 - (5) Unprofessional conduct or conduct endangering public health;
 - (6) Gross immorality;
 - (7) Employing, assisting or enabling in any manner an unlicensed person to practice pharmacy;
 - (8) For violation of any of the provisions of this act; provided that before the board shall order any such suspension or revocation it shall, on its own motion, cause an investigation to be made and shall issue a citation under the seal of the board and signed by the secretary directing and requiring the holder of the license to show cause on a certain day, why his license should not be suspended or revoked on the grounds specified therein; and the holder of the license shall be given 20 days' notice of the hearing and the licensee shall be entitled to be represented by legal counsel. A certified copy of the conviction of any pharmacist or assistant pharmacist shall be conclusive evidence of the conviction in any proceeding before the board. A stenographic record shall be kept of all proceedings. The action of the board in suspending or revoking a license hereunder shall be subject to review at the election of the licensee by a writ of certiorari brought in the district court of Hennepin county, or by appeal to

said court or the district court of the county in which the licensee resides, in which event the matter shall be tried de novo. The action of the board shall stand until otherwise directed by the district court or the supreme court of the state of Minnesota upon appeal. Any pharmacist or assistant pharmacist whose license has been suspended or revoked may be reinstated or a new license issued to him as the case may be, when in the discretion of the board the action is warranted, provided such pharmacist or assistant pharmacist shall pay all costs of the proceedings resulting in the suspension or revocation of the license and reinstatement of the new license, and in addition thereto pay a fee of \$25.00.

(g) To report its proceedings annually to the governor with such information and recommendations as it deem proper, giving the names of all pharmacists registered during the year, and the items of its receipts and disbursements.

(h) To employ necessary assistants, and make rules for the conduct of its business.

(i) To perform such other duties and exercise such other powers as the provisions of the act may require.

(j) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the act. (As amended Act Mar. 28, 1941, c. 78, §1.)

5808-10. Qualification of applicants.—To be entitled to examination by the board as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, at least 21 years of age, and shall be a graduate of the College of Pharmacy of the University of Minnesota or of a college or school of pharmacy in good standing of which the board shall be the judge, and shall have at least one year of practical experience in a pharmacy. Provided, however, that any person who was qualified and lawfully entitled to be examined by the board as a pharmacist under the laws in force immediately prior to the enactment of Laws of 1937, Chapter 354, and who had filed sworn statement of proof with the board prior to March 29, 1930, but was disqualified from taking such examination because of the enactment of Laws of 1937, Chapter 354, may take such pharmacists' examination up to and including two years after the approval of this act. (As amended Act Mar. 28, 1941, c. 78, §2.)

5808-16. Compounding unlawful under certain conditions.

Permits to fill prescriptions for intoxicating liquors may be issued to druggists as well as pharmacists. Op. Atty. Gen. (156a), June 15, 1943.

5808-20. Pharmacies shall be registered.

Permits to fill prescriptions for intoxicating liquors may be issued to druggists as well as pharmacists. Op. Atty. Gen. (156a), June 15, 1943.

EMBALMERS

5817. License required—what constitutes practice; etc.

Coroner after examination of body had no authority to direct embalming without authority of parents of deceased, and both coroner and undertaker were liable for damages. *Sworski v. S.*, 208M201, 293NW309. See Dun. Dig. 2599.

A funeral director whose license was revoked for improper conduct may not register as an apprentice. Op. Atty. Gen., (225n), Apr. 18, 1941.

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

5821. License—Grounds for denial, suspension and revocation—Certiorari—Rules and regulations.—The Board may refuse to grant, refuse to renew, or may

suspend or revoke a license of any applicant or licensee for the following causes or acts:

(a) The obtaining of, or attempt to obtain, a license by fraudulent representation;

(b) Conviction of a crime involving moral turpitude;

(c) Violation of the laws of this state relative to the burial or disposal of dead human bodies, or of the rules and regulations of the board in relation to the care, custody or disposition of dead human bodies, or the disinfecting of premises where contagion exists;

(d) For incompetency or untrustworthiness in the practice of embalming and/or funeral directing;

(e) The use of misleading advertising;

(f) Upon satisfactory proof that the embalmer and/or funeral director, directly or indirectly, has paid or caused to be paid any sum of money or other valuable consideration for the securing of business or for obtaining authority to dispose of any dead human body;

(g) Upon satisfactory proof that an embalmer and/or funeral director has employed any person not registered or licensed under the provisions of this Act to perform the duties of an embalmer and/or funeral director.

Any action of the board in refusing to grant or renew a license, or in suspending or revoking a license, may be subject to review by a writ of certiorari issued in the District Court of any County.

The board shall make and enforce reasonable regulations not inconsistent with the provisions of this Act for the examination and licensing of embalmers and/or funeral directors, and the registration and regulation of apprentices, and the investigation and hearing for the refusal to renew, suspension or revocation of licenses, and in relation to the sanitary construction, equipment, operation and maintenance of mortuaries, funeral directing establishments, and other places used for the care or the preparation for the burial or disposal of dead human bodies, and for inspection thereof. (As amended Apr. 17, 1943, c. 482, §1.)

BARBERS

5846-2. What constitutes barbering.

Hospital orderlies compensated by salary only shaving and cutting hair of patients are engaged in barbering if purpose is to beautify patients, but not if for health or sanitary reasons. Op. Atty. Gen., (33a-1), March 29, 1940.

5846-6. Who may receive certificate of registered apprentice.

In event an applicant seeks another certificate of registration as an apprentice after expiration of first certificate, board is compelled to issue it if applicant continues to possess original qualifications. Op. Atty. Gen. (33a-1), Jan. 6, 1941.

5846-7. Qualifications of barber school students.

If vocational high school maintaining a course in barbering desires to help its graduates qualify for license, it should ask legislature to amend this section, in view of prerequisite of 1000 hours of instruction to be completed within 6 months. Op. Atty. Gen. (33a-8), Nov. 27, 1940.

Minneapolis board of education operating barbering classes may have permit issued to any person that it designates so long as that person has ten years of continued experience, and provides necessary surety bond. Op. Atty. Gen., (33a-8), June 19, 1941.

5846-16. Causes for revocation.

(g).

If a person who holds a barber license and beauty operator's license signs an affidavit saying that he is not barbering for period of one year or more, board may annul license or refuse to issue or renew license, or suspend certificate of registration. Op. Atty. Gen., (33b-5), June 11, 1941.

HAIR DRESSERS AND BEAUTY CULTURISTS

5846-28. Definitions—Places where taught or practiced.—For the purposes of this act the following definitions shall be adopted and understood to be included with the meaning of the act.

(a) Any person who engages in the practice for compensation or other reward in any one or any combination of the following practices, to-wit: arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work upon the hair of any living person by any means, or hair trimming of women, as a part of women's hairdressing; the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, aided with the hands or mechanical or electrical apparatus, or appliances used in massaging, cleansing, stimulating, manipulating, exercising, beautifying the scalp, face, neck, arms, bust or upper part of the body for the purposes of beautification, shall be defined as and construed to be practicing hairdressing and beauty culture, provided, however, that no provision of this act shall in any manner be construed to apply to manufacturers of cosmetics, or their representatives or employees.

(b) An operator is any person who has secured a license to engage in and engages in the practices as defined in subsection (a) hereof named within this act.

(c) A manager-operator is any person of legal age who owns, operates, conducts or manages a hairdressing and beauty culture shop or school; or who instructs in practical hairdressing and beauty culture work; provided, however, that it shall be lawful for any person to own, operate, conduct or manage a hairdressing and beauty culture shop or school without being licensed as a manager-operator if such person does not instruct in or practice any of the practices as defined in this act but does employ one or more manager-operators in said shop or school to manage same or instruct therein.

(d) Hairdressing and beauty culture shall be practiced only in a room or rooms not used for sleeping or residential purposes, completely partitioned off from living quarters, and shall be equipped with hot and cold running water and with sewer connections. Where water and sewer connections are not available, there must be maintained a proper receptacle for hot water of a capacity of not less than five gallons, and such cesspool or other method for the disposal of sewage and waste matter as may be approved by the local health authorities or local municipal ordinances.

(e) All beauty shops shall be registered with the board by the owners thereof, before commencing operations and annually on or before June 30, upon blanks provided for such purposes by the board showing the names of the owners and the location of such shops, and no such shops shall be permitted to operate without such registration.

(f) Hairdressing and beauty culture shall be taught in a room or rooms not used for sleeping or residential purposes and such rooms must be equipped with sufficient hot and cold running water and with sewer connections to insure sanitation for all students in attendance. Text books and charts and proper equipment necessary to conduct a school efficiently must be maintained by the school.

(g) A school of hairdressing and beauty culture is a place where any person, firm or corporation operates and maintains a class to teach beauty culture as defined under this act. (As amended Act Apr. 28, 1941, c. 490, §1.)

Provision requiring manager-operator of a hairdressing and beauty culture shop to be of legal age is constitutional. Op. Atty. Gen. (33B-1), Aug. 22, 1940.

(e). A woman does not become of legal age when she marries. Op. Atty. Gen. (33B-9), Sept. 28, 1940.

(e). Registration of a shop occurs when entry is made in books of board during interval between receiving applications and forwarding of certificates. Op. Atty. Gen. (33B), Aug. 7, 1941.

(g). Person or firm teaching advance beauty culture to licensed hairdressers is conducting a hairdressing school and must be licensed, whether students hold Minnesota licenses or licenses from other states. Op. Atty. Gen., (33B-10), Dec. 6, 1939.

In event of dissolution of co-partnership holding approval and permit, approval will inure to benefit of re-

maining partner or purchaser. Op. Atty. Gen., (33B-10), March 6, 1940.

Demonstration or exhibition at convention or beauty culture and hairdressing show would not require school license. Op. Atty. Gen. (33B-10), Oct. 28, 1940.

5846-29. Board of hairdressing and beauty culture examiners—Members—Seal.—For the purposes of this act there is hereby created and established a board to be known by the name and style of state board of hairdressing and beauty culture examiners, which shall consist of three members, no more than two of whom shall reside in cities of the first class, and all of whom shall reside in the state of Minnesota, and shall have an official seal. (As amended Act Apr. 28, 1941, c. 490, §2.)

5846-30. Same—Appointment—Qualification—Terms—Removal—Oath of office.—Within 60 days after the passage of this act, the governor shall appoint the members of the state board of hairdressing and beauty culture examiners, each of whom shall have had five years of experience and practice in this state in the occupation and practices as named within this act; one to serve one year, one to serve two years, and one to serve three years, or until their successors are duly appointed and qualified, and thereafter the term of each member shall be three years. The governor may remove any member of the board with or without cause. The board members shall be citizens of this state and shall not be members of, nor affiliated with any school duly approved and teaching the practices as defined herein, while a member of the board, nor shall any two members of said board be graduates of the same school, or system of schools teaching the practices as defined herein. Each member of the board shall take the oath provided by law for public officers. (As amended Act Apr. 28, 1941, c. 490, §3.)

5846-31. Same—Meetings—Officers—Executive secretary—Quorum—Rules—Records.—Said board shall within 30 days after being so appointed, and annually on the second Tuesday of each year thereafter, assemble at the capitol building, at St. Paul, Minnesota, and then and there organize by electing a president and vice-president, to serve until their successors are elected and qualified. Said board shall then appoint an executive secretary and such assistants, inspectors and clerical help as it may deem necessary to perform the work of said board. The appointment of said executive secretary shall be made in accordance with the rules and regulations to be adopted by said board and shall be chosen upon the basis of his experience, training and general qualifications for the work. His salary and necessary expenses incurred in the transaction of the business of said board, and the salaries and necessary expenses of assistants, inspectors and clerical help shall be fixed by the board; provided, however, that the total sum of money to be expended for the salary of the said executive secretary, assistants, inspectors and clerical help and other necessary expenses connected with said work shall not exceed the sum of \$15,000 per annum.

The board shall maintain an office for the conduct of its business, which shall be in charge of the executive secretary.

Said executive secretary and such other persons as are charged with, and actually handle the funds of the board shall provide to the state of Minnesota a corporate surety bond in the amount of \$10,000.

(a) Said board shall meet for the purposes of examining applicants for license and of examining and granting applications for license at the state capitol building in St. Paul not less than four times of each year, said times to be designated by the board, and at such other meetings during each year, the time and place of which the board shall designate.

(b) A quorum for the transaction of business of the board shall consist of at least two-thirds of the members of said board.

(c) It shall have power to formulate rules for the proper administration of its business.

(d) The secretary shall keep a record of all the board's official proceedings and said record shall be prima facie evidence of all matters therein recorded. No meeting of the board shall continue for a period of more than ten days, without the consent of the state department of administration and finance.

(e) The executive secretary of the board shall be charged with the supervision of the records of receipts and disbursements of the board.

(f) No board member shall make routine inspection of shops engaging in the practices herein, but such inspections shall be made by the employees of the board. (As amended Act Apr. 28, 1941, c. 490, §4.)

Inspector of board can perform only such functions as title indicates and may examine permits and make reports, but criticism and reprimand of licensees is a function of the board which cannot be delegated to inspector. Op. Atty. Gen. (33B-11), July 16, 1940.

A special examination may be given in one subject to a pupil who has failed only in that subject, and it is not necessary for entire board to be present. Op. Atty. Gen. (33B6), Feb. 28, 1941.

There may not be both a secretary and an executive secretary, all references to "secretary" meaning "executive secretary." Op. Atty. Gen., (33b), July 14, 1941.

The \$15,000 budget includes items included in payroll and travel and subsistence of employees and not amount to be expended by board in performance of all of its functions. Op. Atty. Gen. (33B), Aug. 7, 1941.

Board has right to make any reasonable rule with respect to operation of schools it deems necessary for proper administration of its business, and may make a rule that a permit to operate, a beauty school will be cancelled if not used within three months. Op. Atty. Gen. (33B-10), Oct. 14, 1941.

Executive secretary is in unclassified service. Op. Atty. Gen. (644B), Jan. 31, 1942.

Records of persons engaged in hairdressing and beauty culture business are public records and anyone has right to inspect and copy the list. Op. Atty. Gen. (8511), July 9, 1943.

(g) Any inspection which might be reduced to a general or regular practice would be a "routine inspection," and any inspection which is extraordinary and could not be reduced to a regular practice would not come within meaning of term. Op. Atty. Gen. (33b-11), July 23, 1941.

5846-32. Same—Secretary-treasurer; etc. [Repealed.]

Repealed. Laws 1941, c. 490. Supervision of employees is vested in secretary-treasurer subject to board. Op. Atty. Gen. (33B-11), July 16, 1940.

5846-33. Same—Compensation and expenses of members.—Each member of the board shall receive the sum of \$10.00 for each day employed in the actual discharge of his official duties, and any necessary expenses incurred incidental thereto. Compensation and expenses of and for the board shall be paid out of the funds of the board deposited in the state treasury and not otherwise. (As amended Act Apr. 28, 1941, c. 490, §6.

Op. Atty. Gen., (33B-2), May 14, 1940; note under §5846-44.

Members may act as inspectors and receive \$10 per diem for this service. Op. Atty. Gen., (33B-2), March 11, 1940.

Full time office of Secretary-Treasurer has been abolished, similarly salary for such office, and fee to be received is same as that to be received by any other member of the Board. Op. Atty. Gen., (33b-2), May 9, 1941.

5846-34. Qualifications of applicants for examinations and licenses—License fees.—(a) The board shall determine the qualifications of each applicant for examination on the following basis:

(1) Such proof as the board by rule may require of good moral character.

(2) Such proof as the board by rule may require that the applicant is free from contagious or infectious disease.

(3) That the applicant is at least 16 years of age.

(4) That the applicant shall provide the board with a certificate from a school of beauty culture, approved by the board, as herein referred to and described showing that the applicant has satisfactorily completed all the courses of instruction provided by said approved school which said certificate shall be signed and verified by the individual owner or owners of said ap-

proved school if owned by an individual or partnership, or the proper and lawful officer if a corporation.

Provided further that in any case, that before such applicant shall be eligible to receive such certificate, such applicant shall have received in accordance with the curriculum established by the said board no less than 1,250 hours of instruction in theory and practice in classes actually attended by him.

(5) Payment of an examination fee of \$5.00.

(b) Upon the determination by the board of the sufficiency of the qualifications of the applicants for examination as an operator, the board shall conduct theoretical examinations and practical examinations in accordance with rules promulgated and prescribed by said board.

Such examination shall include both practical demonstrations and written or oral tests, and shall not be confined to any specific system or method of hairdressing and beauty culture, and such examination shall be consistent with the practical and theoretical requirements as provided by this act. If a student shall fail to pass such examination, he or she shall be required to take further training before being admitted to another examination, such further training time shall be specified by the board but shall not exceed 200 hours, upon compliance with all provisions herein contained referring to schools together with compliance with the rules and regulations lawfully prescribed hereunder.

(c) A manager-operator may be licensed as such under this Act upon the payment of a fee of \$5.00 provided that he or she has practiced as an operator under the supervision of a manager-operator in this state for at least one year, and upon complying with all other requirements applicable to a manager-operator as provided for in this Act.

(d) Renewal license fees shall be as follows:

For operator \$1.00
For manager-operator \$1.50

(As amended Act Apr. 28, 1941, c. 490, §7; Apr. 22, 1943, c. 573, §1.)

Though there is no statutory requirement that a manager-operator be free from contagious or infectious diseases, a person should not be permitted to continue as a manager-operator in a beauty parlor if suffering from active tuberculosis, following arrested tuberculosis which is not contagious or infectious. Op. Atty. Gen., (33B-9), May 13, 1940.

There is no provision in the law requiring any training whatsoever in any beauty school or that applicant has completed any course of study in any beauty school or had attended any beauty school for any number of hours whatsoever. Op. Atty. Gen. (33B-10), Jan. 8, 1941.

A special examination may be given in one subject to a pupil who has failed only in that subject, and it is not necessary for entire board to be present. Op. Atty. Gen. (33B-6), Feb. 28, 1941.

Where student has practical work in one school and theory in another, school giving practical work should give the examination. Op. Atty. Gen. (33B-10), Mar. 21, 1941.

Where manager operator permits renewal period to elapse and is compelled to take an examination, there is an examination fee of \$5.00, and in addition an original license fee. Op. Atty. Gen. (33b-9), Nov. 22, 1941.

Board may establish a curriculum which exceeds minimum 1,250 hours if it deems it necessary to properly prepare student, but requirements must be uniform upon all schools. Op. Atty. Gen. (33B-10), Jan. 17, 1942.

(a).

One without an 8th grade school education or an equivalent is not entitled to take examination under any circumstances. Op. Atty. Gen. (33B-6), Mar. 20, 1941.

(b).

Applicant from another state must have year's practice here as operator before issuance of manager-operator's license, though holding foreign license as manager-operator. Op. Atty. Gen. (33b-9), Sept. 8, 1943.

(d).

When an operator changes to a manager operator during the renewal period, she is required to pay an original license fee of \$10.00 and need not pay a renewal fee until expiration of manager operator license. Op. Atty. Gen. (33b-9) Nov. 13, 1941.

5846-35. Temporary licenses to operators.—The board, through its secretary, shall grant to graduates of approved schools, free of charge, temporary licenses authorizing such graduates to practice as an operator, under the supervision of a licensed manager-operator, in the practice of hairdressing and

beauty culture for a period of not to exceed 90 days, or until the next examination for license is held by the board, which said license shall in no case be renewed. No such temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a duly approved school under the provisions of this Act. (As amended Apr. 28, 1941, c. 490, §8; Apr. 22, 1943, c. 573, §2.)

A temporary license or permit may be granted to out-of-state school graduates, licensed or not, pending results of Minnesota examination, but second temporary permit may not be granted. Op. Atty. Gen., (33B-9), Feb. 7, 1940.

A temporary license may be issued to a delinquent operator or manager operator who has paid penalty and taken examination and is waiting for results of examination. Op. Atty. Gen. (33B-9), Oct. 11, 1940.

If office of Secretary-Treasurer is vacant and unoccupied there is no proper person who may sign a temporary permit. Op. Atty. Gen. (33B-2), Jan. 22, 1941.

Temporary license becomes void when applicant receives results of examination even though results are received prior to ninety days. Op. Atty. Gen. (33B-9), Sept. 24, 1941.

5846-36. Schools—Approval by board—Information—Financial qualifications—Instruction—Separation of school and professional business.—Any person, firm or corporation, desiring to establish a hairdressing and beauty culture school shall apply to the board for a certificate of approval for such school, and to have such school rated by the board as an approved school in hairdressing and beauty culture and placed upon its list of such approved schools, upon complying with the following provisions: each applicant whether individual, firm or corporation, shall prior to the opening of such school, present to such board a verified application containing the following information:

(1) Full name of individual, firm or corporation; including all the members, owners, partners and directors of such firm or corporation, and if the corporation is a foreign corporation, or if the individual persons or partners applying for such certificate of approval are not residents of the state of Minnesota, then said application shall designate a resident agent for service.

(2) The past occupation of such individual or individuals, firm or corporation, and complete information concerning the occupations of the directors in the case of a corporation.

(3) A complete financial statement showing all the assets and liabilities of the applicant, and if the applicant is an individual or partnership a complete financial statement showing all assets and liabilities of the individual or of the individual partners.

(4) A complete plan of operation setting forth such information relating thereto as the board in its application form may lawfully require. Upon such receipt of such application, the board shall, within 45 days set said application for public hearing. At the time set for hearing of said application, the applicant shall show by competent evidence its qualifications. After the duly held hearing and upon proper showing at said hearing of qualifications of the applicant, the board may then issue a certificate of approval to said school.

The board shall take into consideration the financial qualifications of the applicant and in no case shall the board grant a certificate of approval to any applicant if said applicant fails to show sufficient financial worth and responsibility to properly conduct a school and fails to assure the board that the applicant's financial resources will be ample to maintain and operate said school and assure the graduation of students who are registered with and have paid their tuition to said school.

If the applicant, prior to the issuance to it of a certificate of approval, makes any false or fraudulent statements or in any way misrepresents or makes false statements in its application, said applicant shall be disqualified and no certificate of approval shall be granted to it by the board.

Should any applicant after receiving a certificate of approval from the board be found guilty of committing fraud, the board shall have the authority to revoke and cancel said certificate of approval.

Said certificate of approval shall be transferable only to such persons, individuals or corporations who shall make a showing to the board of financial responsibility, in the same manner as required of an original applicant.

An approved school shall maintain upon its staff one competent and qualified instructor for each 30 students or fraction thereof, and such school shall give and require a course of training and instruction of not less than 1,250 hours of classroom work, divided into classified hours conforming with the curriculum issued by the board, said hours not to exceed eight hours per day, to include both practical instruction and study and recitation in sanitation, sterilization, and the use of antiseptic consistent with the practical and theoretical requirements as applicable to and as provided in this act; and shall comply with all rules and regulations relating to schools as in this act contained. Where the registrant in a school is enrolled for the entire beauty course, then the requirements set forth by this act relating to the hours of study in manicuring may be modified at the discretion of the board.

(b) Any approved school shall display in the entrance reception room of its student section, a sign indicating that all work therein is done exclusively by students. Professional departments of any beauty school shall be run as an entirely separate and distinct business and apart from the school and said professional department shall have separate entrances thereto. The foregoing provision as to 1,250 hours shall not apply to students having duly enrolled in schools prior to the passage of this act.

(c) No school, duly approved under this act, shall refuse to teach any student, otherwise qualified, on account of race, creed or color.

(d) All schools shall be inspected by the board at least once each year. (As amended Apr. 28, 1941, c. 490, §9; Apr. 22, 1943, c. 573, §3.)

In granting licenses there must be no unfair discrimination against any particular person or locality or any arbitrary action, and it would be arbitrary to refuse a license solely because business of other citizens who are opposed to grant thereof might be reduced. Op. Atty. Gen., (33B-9), Sept. 18, 1939.

In event of dissolution of co-partnership holding approval and permit, approval will inure to benefit of remaining partner or purchaser. Op. Atty. Gen., (33B-10), March 6, 1940.

Board may not require schools to maintain regular classes, enrolling students on or before certain dates so that entire class may receive instruction as a class and complete course within a time certain. Op. Atty. Gen. (33B-10), Jan. 8, 1941.

It is contemplated that school shall be annually subject to determination of approval and mere approval in first instance is no guarantee of continuing approval and board may refuse to grant an annual certificate of approval, unless there is full compliance with the law. Id.

If school certifies that a student has completed a thousand hours of instruction when student has wholly failed and neglected to attend classes as required, school owner is guilty of false certification and is subject to refusal of a license. Id.

Study and examination of manicuring is optional. Op. Atty. Gen., (33b-10), June 2, 1941.

Board may establish a curriculum which exceeds minimum 1,250 hours if it deems it necessary to properly prepare student, but requirements must be uniform upon all schools. Op. Atty. Gen. (33B-10), Jan. 17, 1942.

5846-39. Practitioners from other states.—(a) The board may dispense with and waive the examination for license upon the application of any person who is able to furnish sufficient documentary evidence and proof of having fully practiced in another state, which other state extends the same privileges to persons of this state, for a period of at least two years prior to the time of such application for license in Minnesota, and where the requirements both moral and educational, if such applicant is licensed in such other state, are substantially equal to the provisions of this act, upon the payment of the fee for license as provid-

ed herein. (As amended Act Apr. 28, 1941, c. 490, §10.)

Board, in exercise of its discretion, may grant reciprocity to applicants from other states if they come from a state which extends reciprocity privileges, have practiced for a period of at least two years, have substantially equal moral and educational qualifications, and pay a license fee. Op. Atty. Gen., (33b-9), June 4, 1941.

5846-41. License displayed—Renewal.—Every holder of a license granted by the said board, as provided in this Act, shall display it in a conspicuous place in his place of business. All licenses shall expire December 31, of the year in which issued, unless renewed as herein provided. The holder of a license issued by the said board shall annually, on or before December 31, renew his license and pay the renewal fee. If such license is not renewed on or before December 31, of the year in which it is issued, but renewed within six months from the date of expiration thereof, such licensee shall pay a penalty of \$1.00, in addition to the renewal fee of an operator's license and \$2.00, in addition to the renewal fee of a manager-operator's license. In the event that such renewal shall be applied for more than one year subsequent to the expiration date of the last license, then such applicant shall be required to take an examination in the same manner as if no license had ever been issued. (As amended Apr. 28, 1941, c. 490, §11; Apr. 22, 1943, c. 573, §4.)

Licenses expiring on Sunday followed by a holiday may be renewed on Tuesday without penalty. Op. Atty. Gen., (33B-9), Feb. 7, 1940.

Renewal fees mailed Dec. 31, should be accepted though not received until next month, and there should be considered no delinquency where failure to pay on or before Dec. 31, was due to negligent failure of board to furnish blank requested in time. Op. Atty. Gen. (33B-9), Feb. 1, 1941.

Those who failed to renew their licenses before December 1 of the year in which they expire may renew them before December 31 of the year following upon payment of the penalty prescribed, and applicants who submit their applications more than 1 year subsequent to the expiration date of the last license shall be required to take an examination. Op. Atty. Gen. (33b-9), June 8, 1943.

5846-42—Refusal of licenses and renewal licenses—Revocation or suspension of licenses—Reissue.—The board shall have the following additional powers:

(a) It may refuse to grant or renew a license to a person guilty of fraud in passing examination, or at any time found guilty of a felony, immorality or grossly unprofessional or dishonest conduct, or to a person found by the board after a public hearing as herein provided for to have engaged in advertising by means of false or deceptive statements, or for the failure to display his license in a conspicuous place in his place of business.

(b) It may revoke or suspend licenses, upon proof of violation of the rules and regulations herein set forth, for practicing while having any contagious or infectious disease, or for gross incompetency; or it may revoke or suspend the license of any manager-operator or operator who permits an unlicensed operator to work upon a customer or patron in any shop or shops.

(c) Provided, however, that before any license shall be revoked, suspended or refused, the holder thereof shall have notice in writing of the charge or charges made and filed against him, and shall at a day specified in the said notice, at least 20 days after the service of said notice, be given a public hearing and full opportunity to produce testimony and evidence in his behalf and to confront the witnesses against him. Said board shall have authority to administer oaths and take testimony. Any person whose license has been so revoked, suspended or refused may on written application to the said board, have the same reissued to him or the suspension lifted upon satisfactory showing that the disqualification has ceased. (As amended Act Apr. 28, 1941, c. 490, §12.)

5846-44. Fees—Disposition of.—All fees as provided in this act, shall be paid in advance to the executive secretary of the board and shall be by him de-

posited in the state treasury and credited to the board. Said funds shall be disbursed by the board only on the order of the president of said board and in payment of expenses lawfully incurred and approved by the board, and with the approval of the State Board of Administration and Finance in these cases set forth heretofore where such approval is required. On the failure to pass an examination for license the fee paid shall not be returned to the applicant, but at any time within one year after such failure such applicant may present himself and take a second examination without the payment of any additional license fee. (As amended Act Apr. 28, 1941, c. 490, §13.)

There is no authority for use of funds for purposes of trade commission, notwithstanding that they may be repaid by monies collected by commission, if and when a code is adopted. Op. Atty. Gen., (33B-2), May 14, 1940.

5846-48. Agent of foreign corporation, etc.—Any person, firm, partnership or corporation, not a resident of Minnesota, who engages in the practices hereinbefore set forth in Minnesota, shall file with the board the name and address of a duly authorized agent for service of legal process, which said agent for service shall be a resident of the state of Minnesota. (Act Apr. 28, 1941, c. 490, §14.)

5846-49. Money available to the Board.—All money available to the board shall be subject to Laws 1939, Chapter 431, Article II, Section 20. (Act Apr. 28, 1941, c. 490, §15.)

Section authorizes deduction of five percent on all income to board, including monies on hand and available to its use on April 28, 1941, date act was approved. Op. Atty. Gen. (33B-2), Aug. 11, 1941.

VETERINARIANS

5851-7. Annual registration.

When a license is renewed before May 1, it covers calendar year from January 1 to December 31, though this causes a period of time from January 1 to May 1 during which licensee apparently does not have a license currently in effect. Op. Atty. Gen. (465C), Mar. 13, 1942.

5851-8. Revocation of license.

License was revoked for unprofessional alliance with a layman and use of him in treating a sick animal and sharing fees with him. Walker v. Corwin, 211M337, 300 NW800. See Dun. Dig. 7487.

Not void for uncertainty. Id.

Power to revoke includes power to suspend. Id.

Court on certiorari cannot modify or remand matter for rehearing where it cannot be said that board proceeded on other than a correct theory or that its action was arbitrary, fraudulent, oppressive or unreasonable. Id. See Dun. Dig. 1397.

5851-12. Definition of practice of veterinary medicine.

Where arrangements were made to call at a pet hospital on a certain day to get a dog and defendant called at 8:30 a.m. on that day and delivery was refused because demand was not made during office hours, court was justified in finding that hospital wrongfully refused to deliver dog and that therefore there could be no valid claim for its care or keep subsequent to that date, and no tender of sum due was necessary since it would have been an idle ceremony. Morgan v. Ibberson, 215M293, 10 NW(2d)222. See Dun. Dig. 7487.

Proper measure of damages for negligence in the diagnosis and treatment of pigs, where there was no market value for the sick and exposed pigs by reason of statute, was the difference between their value as they were on the date of defendant's call, if they were to receive proper treatment, and value of those which survived defendant's treatment. Hohenstein v. Dodds, 215M348, 10NW(2d)236. See Dun. Dig. 2577a, 7493.

In action against veterinarian for damages in diagnosis and treatment of pigs, there was sufficient evidence to go to the jury on the question of negligence in treating pigs for cholera rather than some other disease. Id. See Dun. Dig. 7488c.

STALLIONS

5857. Licenses—Recognized registry associations.

What constitutes a recognized registry association is a question of fact to be determined by stallion board, and list set forth in this section is not exclusive, and board can delete names of associations which no longer exist and change names of associations. Op. Atty. Gen. (630B), June 27, 1940.

Board has authority to add new registry associations to list of those that are recognized, and to license stallions of new breeds registered with these new associations as purebreds. Op. Atty. Gen. (630b), March 19, 1943.

An amendment prohibiting licensing of all non-registered stallions would probably be unconstitutional. Op. Atty. Gen. (630b), Apr. 2, 1943, overruling opinion of Oct. 25, 1926.

5862. How registered.

Term "mongrel" does not include "grade", and board has power to define terms applicable to horse-breeding. Op. Atty. Gen. (630b), March 19, 1943.

5865. Importer must obtain certificate.

Certificate is not necessary where animal is to be used for breeding of importer's own mares, and only if animal is to be used for public service or for sale purposes. Op. Atty. Gen. (630B), Feb. 23, 1942.

5871. Not to issue license for mongrel stallion after Jan. 1, 1928.

Term "mongrel" does not include "grade", and board has power to define terms applicable to horse-breeding. Op. Atty. Gen. (630b), March 19, 1943.

ELECTRICIANS

5872. State board of electricity—Definitions.

Monies referred to in §53-47 and §5872, means license and examination fees collected by board, and not fines which are imposed by courts of competent jurisdiction for violations of act, which should be disposed of in accordance with §9707. Op. Atty. Gen., (188), April 9, 1940.

Board has no power to issue a limited master electrician's license to persons engaged in elevator construction electrical work. If employer operates as an electrical contractor, he must provide a regularly licensed master electrician to exercise general supervision over all work, even though direction of particular jobs may be assigned to special electricians. Op. Atty. Gen. (188c), Nov. 8, 1941.

5873. Electrical contractor—Journeyman or special electrician—Licenses—Temporary practice.

Owner of property may wire it himself without a license, subject to furnishing proof of compliance with regulations. Op. Atty. Gen., (188c), Dec. 18, 1939.

A tenant may do wiring for his own benefit without a license, subject to furnishing proof of compliance with regulations by certificate or affidavit, but must have a license if he is to receive compensation or credit from landlord. Id.

A person holding a bonded master electrician's license and signing affidavits for work done in shops not belonging to him and with which he has no connection, and such other shops are operated by unlicensed persons, is probably guilty of perjury, and persons operating other shops are also violating law. Op. Atty. Gen., (188c), Feb. 21, 1940.

Limited master electricians. Op. Atty. Gen. (188c), Nov. 8, 1941; note under §5872.

5874. Bond of master electrician—Qualifications and licensing of master, journeymen and special electricians—Fees.—Every Master Electrician shall before receiving license as such give Bond to the state in the penal sum of \$1,000, which Bond shall be approved by, and filed with said State Board of Electricity. This Bond to be conditioned upon the faithful performance of all work entered upon or contracted for by said master.

An applicant for a "Master Electrician" license shall furnish written evidence that he is a graduate of a 4 year electrical course of an accredited university or college; or that he is a graduate of an electrical trade school approved by the State Board of Electricity and has had at least three years of practical experience in electrical work; or that he has at least five years of experience in planning, laying out, supervising or installing wiring, apparatus or equipment for electric light, heat and power, and shall pay an examination fee of Five Dollars. After six months' experience had before the date when this Act shall go into effect, any person actually engaged in business as a Master Electrician at the time when this Act shall take effect may, upon filing with said board a verified statement signed by him, reciting said facts, and upon payment of a fee of Five Dollars obtain a license to engage in business as a Master Electrician; provided, however, that said application is filed and said fee paid within six months after the time when this Act shall take effect.

An applicant for "Journeyman Electrician's" license shall furnish evidence in writing that he has had at least four years' experience in writing for, installing and repairing electrical apparatus and equipment for light, heat or power, and shall pay an ex-

amination fee of Three Dollars. After six months' experience had before the date when this Act shall go into effect, any person actually engaged as a Journeyman Electrician at the time when this Act shall take effect may, upon filing with said board a verified statement signed by him, reciting said facts, and upon payment of a fee of Three Dollars, obtain a license to engage as a Journeyman Electrician; provided, however, that said application is filed and said fee paid within six months after the time when this Act shall take effect.

An applicant for a "Special Electrician's" license shall furnish evidence in writing that he has had at least two years' experience in some special class of electrical work, and shall pay an examination fee of Two Dollars. Such special class of electrical work shall be specified on his license. After six months' experience had before the date when this Act shall go into effect, any person engaged as a Special Electrician at the time when this Act shall take effect may, upon filing with said board a verified statement signed by him, reciting said facts, and upon payment of a fee of Two Dollars, obtain a license to engage as a Special Electrician; provided, however, that said application is filed and said fee paid within six months after the time when this Act shall take effect. (As amended Apr. 1, 1943, c. 242, §1.)

Statute gives right of action on bond to a person injured by defective work of a master electrician licensed under bond. Graybar Electric Co. v. S., 208M478, 294NW 654. See Dun. Dig. 6794.

Statute gives a right of action on bond to a person injured by defective work. Op. Atty. Gen., (188), Apr. 23, 1941.

Mere fact that applicant worked under a licensed electrician for four years, or that he was designated as a "lighting inspector" or a "street lamp worker," or by some other title, is not conclusive that he is entitled to apply for examination as a journeyman electrician. Op. Atty. Gen., (188c), May 23, 1941.

Contractor and farm owner must comply with National Electrical Code and Minnesota Farmstead Wiring Regulations, and power may be discontinued on failure to comply therewith, and contractor is liable on his bond. Op. Atty. Gen. (188a), May 1, 1942.

Director of voluntary apprenticeship in industrial commission in issuing certificate of completion of apprenticeship has no authority to qualify the apprentice for a trade at any time. Op. Atty. Gen. (188c), June 25, 1943.

5875. Additional fees after passing examinations.

A new bond is required each year. Op. Atty. Gen. (188c), Nov. 15, 1940.

5876. New examination after failure to renew; etc.

Board may adopt a regulation providing that men entering military service who fail to renew their licenses may be licensed without examination after termination of their military service. Op. Atty. Gen. (188C), Oct. 20, 1941.

5877. Employees excepted.

Whether or not employees of public service corporations or municipal utilities distributing or selling electrical energy for light, heat or power shall not be required to hold licenses while doing electrical work on or in connection with property owned by it is a question of fact. Op. Atty. Gen., (188c), May 23, 1941.

5879. Compliance with rules—Electrical and safety codes as evidence—Etc.

A tenant may do wiring for his own benefit without a license, subject to furnishing proof of compliance with regulations by certificate or affidavit, but must have a license if he is to receive compensation or credit from landlord. Op. Atty. Gen., (188c), Dec. 18, 1939.

Owner of property may wire it himself without a license, subject to furnishing proof of compliance with regulations. Id.

Owner may do electrical work on his own property without a license. Op. Atty. Gen. (788C), May 6, 1940.

Contractor and farm owner must comply with National Electrical Code and Minnesota Farmstead Wiring Regulations, and power may be discontinued on failure to comply therewith, and contractor is liable on his bond. Op. Atty. Gen. (188a), May 1, 1942.

PRIVATE DETECTIVES

5880. License.

Partnership license may not be transferred to new partnership formed by substitution of third person for retiring partner, nor may remaining partner continue business without securing a new license. Op. Atty. Gen., (876B), Oct. 3, 1939.

CHAIN STORES AND MAIL ORDER ESTABLISHMENTS

5887-1. Definitions. [Repealed.]

Suspended by Act July 24, 1937, Sp. Sess., c. 93.
Minnesota v. National Tea Co., 309US551, 60SCR676, rev'g on other grounds 205M443, 286NW360.
National Tea Co. v. State, 208M607, 294NW230; note under §5837-2(b).

5887-2. Rate of tax. [Repealed.]

Suspended by Act July 24, 1937, Sp. Sess., c. 93.
 (b).
 This section is violative of uniformity clause of constitution. *National Tea Co. v. State*, 208M607, 294NW230. See Dun. Dig. 1674, 9140.

5887-3 to 5887-18. [Repealed.]

Suspended by Act July 24, 1937, Sp. Sess., c. 93.

5887-18a. Definition of "person".

Act is constitutional. *C. Thomas Stores Sales System v. Spaeth*, 209M504, 297NW9. See Dun. Dig. 1675.

PART I

5887-18b. Tax imposed on certain chain stores.

Clause excepting from tax persons who produce, manufacture, prepare, distribute and sell food products at retail only, includes only those who are engaged exclusively in business of producing, manufacturing and preparing such products which they sell. *C. Thomas Stores Sales System v. Spaeth*, 209M504, 297NW9.

PLUMBERS

5887-20. Cities or villages may adopt local regulations—State license to control.—Any city or village having a system of water works or sewerage, may, by ordinance, adopt local regulations providing for plumbing permits, bonds, approval of plans, and inspections of plumbing, which regulations are not in conflict with the plumbing standards on the same subject prescribed by the State Board of Health. But no city or village shall prohibit plumbers licensed by the State Board of Health from engaging in or working at the business, except cities and villages which prior to April 21, 1933, by ordinance required the licensing of plumbers. (As amended Act Apr. 22, 1941, c. 367, §1.)

City having license law prior to 1933 may not arbitrarily refuse a license to a nonresident plumber who is successful bidder on a contract. *Op. Atty. Gen.*, (338), Feb. 28, 1940.

5887-22. Plumbers must be licensed in certain cities or villages—Master and journeymen plumbers—Plumbing on one's own premises—Rules for examination.—

(a) In any city or village now or hereafter having 5,000 or more population, according to the last federal or state census, and having a system of water works or sewerage, no person, firm or corporation shall engage in or work at the business of a master plumber or journeyman plumber unless licensed to do so by the state board of health. A master plumber may also work as a journeyman plumber. Provided, that anyone not so licensed may do plumbing work which complies with the provisions of the minimum standard prescribed by the state board of health on premises or that part of premises owned and actually occupied by him as his residence, unless otherwise forbidden to do so by a local ordinance.

(b) In any such city or village no person, firm or corporation shall engage in the business of installing plumbing nor install plumbing in connection with the dealing in and selling of plumbing material and supplies unless at all times a licensed master plumber, who shall be responsible for proper installation, is in charge of the plumbing work of such persons, firm or corporation.

(c) The state board of health shall prescribe rules and regulations not inconsistent herewith for the examination and licensing of plumbers. (As amended Act Apr. 22, 1941, c. 367, §2.)

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

State v. Gottstein, 206M246, 288NW221. See Dun. Dig. 6794.

In determining whether janitors and others who engage in plumbing work incidental to their positions require a license, facts to be determined are whether plumbing is of a minor nature incidental to ordinary duties or of sufficient magnitude as to justify conclusion that person doing work is engaged in business of a master plumber or journeyman plumber. *Op. Atty. Gen.*, (338), Dec. 4, 1939.

State license required even though plumbing is not major occupation. *Op. Atty. Gen.*, (338), Dec. 22, 1939.

5887-25. Applications.—(a) Applications for plumber's license shall be made to the state board of health, with fees. Unless the applicant is entitled to a renewal, he shall be licensed by the state board of health only after passing a satisfactory examination by the examiners showing fitness. Fees for journeyman shall be two dollars for examination and one dollar for renewal, and for the master plumber \$25.00 for examination and \$15.00 for renewal. Licenses shall expire December 31st, but may be renewed upon application made the following January or February, but if in February only upon payment of an additional fee of one dollar for a journeyman and five dollars for a master plumber.

(b) The Board may issue revocable permits pending examination, and to assist in this may appoint, without compensation, and may authorize one of its examiners or plumbing inspectors to hold a special permit examination, the results to be reported in writing.

(c) All persons residing in cities, villages or boroughs which have not heretofore been subject to the provisions of this Act, who shall furnish to the Board within 90 days after the passage of this Act satisfactory evidence that they were actually engaged in the business of a master plumber or journeyman plumber on or before January 1st, 1941, in any city, village or borough of this state, having 5,000 population or more, according to the last Federal or State census, shall be entitled to receive a license as such master or journeyman plumber, respectively, without examination, upon payment of the fees hereinbefore provided. (As amended Act Apr. 22, 1941, c. 367, §3.)

Sec. 4, Act Apr. 22, 1941, c. 367, provides that the act shall take effect from its passage.

5887-29. State license—Examination—Application.

This section merely refers to language in §5887-22 and is not for purpose of minimizing or enlarging upon language in that section. *Op. Atty. Gen.*, (338), Dec. 22, 1939.

STEAMFITTERS

5887-30d. Steamfitters must be licensed.

A person employed by a municipal lighting and heating plant who has a chief engineer's license is not required to secure a steamfitter's license in order to make minor repairs, but is required to secure a license to engage in or work at business of a contracting steamfitter, or journeyman steamfitter, and it is not necessary for employees working under supervision of chief engineer to take out a state license. *Op. Atty. Gen.*, (34f), Oct. 18, 1939.

PAINTERS AND DECORATORS

5887-30k. Industrial Commission of Minnesota to supervise painting. [Repealed.]

Repealed. Apr. 16, 1941, c. 282, §1.

Act Apr. 16, 1941, c. 282, §2, provides for the refundment of license fees paid for the year 1941, and section 3 provides that the act shall go into effect immediately, but authorizes the continuation of the division of painting standards, for the period necessary for making refunds, not to exceed 90 days.

Legislature was not concerned in protecting person furnishing labor or material, and board could not withhold license to contracting painter who had outstanding bills for labor and materials. *Op. Atty. Gen.* (636a-2), Nov. 13, 1940.

Bonds filed by painters are a part of files and records of the state and cannot be returned. *Op. Atty. Gen.*, (636a-2), Apr. 29, 1941.

Manner of refundment of license fees determined. *Id.*
 State treasurer may accept warrants drawn by state auditor upon funds resulting from payment of painters' license fees for refundment under Laws 1941, c. 282, §2, repealing this act. *Op. Atty. Gen.*, (636a-2), May 3, 1941.

Repeal of law became effective on April 18, 1941, and liability ceased to accrue upon bonds of the painters at midnight on April 17, 1941. *Op. Atty. Gen.*, (636a-1), May 9, 1941.

License fee should be refunded only to particular individuals to whom license was issued. Op. Atty. Gen., (636a-2), May 19, 1941.

5887-30l. Cities or villages may adopt rules and regulations—Etc. [Repealed.]

Repealed Apr. 16, 1941, c. 282, §1.

Act Apr. 16, 1941, c. 282, §2, provides for the refundment of license fees paid for the year 1941, and section 3 provides that the act shall go into effect immediately, but authorizes the continuation of the division of painting standards, for the period necessary for making refunds, not to exceed 90 days.

Adoption of act by a city includes adoption of provision allowing only 60 days after passage of law to secure a license without examination, and an additional period may not be allowed by amendment of adopting ordinance. Op. Atty. Gen., (636a-2), Feb. 15, 1940.

5887-30m. Local authorities to report to Industrial Commission. [Repealed.]

Repealed Apr. 16, 1941, c. 282, §1.

Act Apr. 16, 1941, c. 282, §2, provides for the refundment of license fees paid for the year 1941, and section 3 provides that the act shall go into effect immediately, but authorizes the continuation of the division of painting standards, for the period necessary for making refunds, not to exceed 90 days.

5887-30n. Painters must be registered. [Repealed.]

Repealed Apr. 16, 1941, c. 282, §1.

Act Apr. 16, 1941, c. 282, §2, provides for the refundment of license fees paid for the year 1941, and section 3 provides that the act shall go into effect immediately, but authorizes the continuation of the division of painting standards, for the period necessary for making refunds, not to exceed 90 days.

(c).

Legislature was not concerned in protecting person furnishing labor or material, and board could not withhold license to contracting painter who had outstanding bills for labor and materials. Op. Atty. Gen. (636a-2), Nov. 13, 1940.

Journeyman painter taking occasional contract is not required to file a bond. Op. Atty. Gen. (636a-1), Nov. 27, 1940.

5887-30o and 5887-30p. [Repealed.]

Repealed Apr. 16, 1941, c. 282, §1.

Act Apr. 16, 1941, c. 282, §2, provides for the refundment of license fees paid for the year 1941, and section 3 provides that the act shall go into effect immediately, but authorizes the continuation of the division of painting standards, for the period necessary for making refunds, not to exceed 90 days.

5887-30q. Applications—Fees. [Repealed.]

Repealed Apr. 16, 1941, c. 282, §1.

Act Apr. 16, 1941, c. 282, §2, provides for the refundment of license fees paid for the year 1941, and section 3 provides that the act shall go into effect immediately, but authorizes the continuation of the division of painting standards, for the period necessary for making refunds, not to exceed 90 days.

(d).

Adoption of act by a city includes adoption of provision allowing only 60 days after passage of law to secure a license without examination, and an additional period may not be allowed by amendment of adopting ordinance. Op. Atty. Gen., (636a-2), Feb. 15, 1940.

5887-30r to 5887-30t. [Repealed.]

Repealed Apr. 16, 1941, c. 282, §1.

Act Apr. 16, 1941, c. 282, §2, provides for the refundment of license fees paid for the year 1941, and section 3 provides that the act shall go into effect immediately, but authorizes the continuation of the division of painting standards, for the period necessary for making refunds, not to exceed 90 days.

EVERGREEN OR CONIFEROUS TREES

5887-35. Owner to affix tags.

Trees bearing tags which have not been completed by adding name and address of owner are contraband. Op. Atty. Gen. (27a), Dec. 8, 1941.

LIQUIDATION OF DEBTS

5887-51. Who are subject to act.

Applies to all who hold themselves out as a collection agency, even an attorney adopting a trade name, but one as agent may do business for several persons under their respective names without complying with statute, as where a bookkeeper for several firms makes collections for them, using their letterheads and statements. Op. Atty. Gen. (828), Dec. 12, 1941.

Section applies to charitable corporation engaged in adjusting, pro-rating and liquidating debts although no charge is made, and it applies to the Family Welfare Association of Minneapolis. Op. Atty. Gen. (102), June 29, 1942.

5887-52. Application to be filed with Secretary of State.

While the business may be transacted beyond the boundaries of the county of the established business, no branch offices are authorized, and a separate application should be made for each county where proposed business is to be conducted. Op. Atty. Gen. (102), Dec. 6, 1943.

5887-53. Bond.

Secretary of state is obliged to notify those who have secured a permit of fact of expiration of their bond. Op. Atty. Gen., (385a-2), Dec. 20, 1939.

Statute contemplates a continuous bond, rather than one for a fixed term. Op. Atty. Gen. (828E), Sept. 23, 1940.

Personal sureties are legally acceptable but sureties may be required to furnish financial statements periodically. Id.

5887-57. Certain acts a misdemeanor.

Evidence held insufficient to sustain conviction of member of partnership operating a collection agency to defraud a debtor by false representations as to amounts due. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 1566b.

5887-58. Exceptions.—Mason's Supplement 1940, Sections 5887-51 to 5887-59 shall not apply to any attorney-at-law duly authorized to practice in this state and resident herein, nor to any person, co-partnership, association or corporation doing business under and as permitted by any law of this state or of the United States relating to charitable corporations, banks, savings banks, trust companies, building and loan associations or credit unions, and nothing in this act contained shall permit or be construed as authorizing any person not otherwise duly admitted to practice law in this state, to engage in the practice of law. (As amended Mar. 15, 1943, c. 129, §1.)

POULTRY FLOCK INSPECTORS

5887-70. Violations a misdemeanor.

Where funds of board are inadequate for purpose of inspection and investigation, violations and complaints coming to attention of board should be referred to county attorney. Op. Atty. Gen., (294), Jan. 31, 1940.

MEMBERS OF ARMED FORCES IN ESSENTIAL EMPLOYMENT

5887-72. Definitions.—As used in this act: (a) "Employment essential to the prosecution of the present war and to the national defense" means employment by the United States of America, any of its agencies, or any contractor under the United States of America, or subcontractor under such contractor, in work connected with the prosecution of the present war or for the defense of the United States of America and others of the United Nations during such war.

(b) "Outside of the United States" means outside of the territorial limits of the 48 states of the United States and the District of Columbia. (Act Mar. 15, 1943, c. 121, §1.)

[326.55]

5887-73. Members of armed forces need not pay license fees.—Any person required by law to be licensed or registered in order to carry on or practice a trade, employment, occupation or profession in the State of Minnesota who is also required by law to renew his license or certificate of registration at stated intervals and to pay a fee for such renewal on or before a specified date, or be subject to revocation of his license or certificate or other penalties, who has since the enactment by the Congress of the United States of the Selective Service and Training Act of 1940 entered, or shall hereafter enter, the armed forces of the United States of America, or who has since the enactment of said act been engaged, or shall hereafter be engaged, in employment, outside of the United States, essential to the prosecution of the present war and to the national defense, whose license or certificate of registration was effective at the time he entered the armed forces or engaged in the employment aforesaid, is hereby exempted from the payment of all renewal fees and from the filing of any ap-

plication for renewal, which but for this act would have been required of him as a condition of the renewal of his license or certificate, during the time he has been in such armed forces or in such employment, and from any penalties for nonpayment or late payment, and is hereby exempted from further payment of such renewal fees and from the making of any application for renewal during the period he shall remain in such armed forces or is engaged in such employment, and for a further period of six months from his discharge from the armed forces, if a member thereof, or from the date of his return within the boundaries of the United States if engaged in the employment hereinbefore referred to. His license or certificate in the meantime shall remain in full force and effect, and if it has been cancelled or revoked since the date of the enactment of the Selective Service and Training Act of 1940 solely on the ground of nonpayment of renewal fees, or failure to apply for a renewal, it shall be reinstated upon the application of the licensee or registrant or any one on his behalf without the payment of any penalties or costs. Any such person may within six months from the date of his release from the armed forces of the United States, if he has been a member of such armed forces, or from the date of his return within the boundaries of the United States if he has been engaged in employment hereinbefore referred to, make application for a renewal of his license or certificate without penalty and in the same manner as if he had made application therefor at the time or times specified by existing laws. (Act Mar. 15, 1943, c. 121, §2.) [326.55]

Civilian registrant has six months after his return to boundaries of the United States to obtain renewal and pay his registration fee. Op. Atty. Gen. (10a-3), June 18, 1943.

Renewal of electrician's license. Op. Atty. Gen. (188c), July 23, 1943.

State board of electricity may accept renewal fees for license though the same is exempted under this act. Op. Atty. Gen. (188c), Oct. 13, 1943.

PRIVATE TRADE SCHOOLS

5887-80. Definitions.—The following words, terms and phrases when used in this Act shall have the meanings ascribed to them in this section:

(1) "Private trade school" means a school maintained or classes conducted for the purpose of teaching, for profit or for a tuition charge, any trade, technical, mechanical or industrial occupation, but shall not include: private schools engaged exclusively in the teaching of business subjects; schools engaged in teaching medical technology; colleges authorized by the laws of Minnesota to grant degrees; schools of nursing; public schools; private trade schools which are exempt from taxation under Mason's Minnesota Supplement 1940, Section 2394-5(H) of the Minnesota State Income Tax Laws; private schools which are exempt from taxation under Section 1, Article IX, of the Constitution of Minnesota; schools exclusively engaged in training physically handicapped persons for the State of Minnesota; schools engaged in giving instruction by correspondence; schools already or hereafter licensed by duly constituted boards under provisions of Minnesota laws; or schools and educational programs conducted by firms, corporations or persons for the training of their own employees, for which no fee is charged.

(2) "Solicitor" means a person who solicits business for a private trade school, or who offers to sell or sells any instructions or course of instruction by a private trade school. Private trade school as used in this paragraph includes those located within and without the State of Minnesota.

(3) "Person" means any individual, association, partnership, or corporation, and includes any receiver, referee, trustee, executor, or administrator.

(4) "Commissioner" means commissioner of education.

(5) "Board" means state board for vocational education. (Act Mar. 30, 1943, c. 234, §1.)

[141.01]

Act is probably constitutional. Op. Atty. Gen. (170i), Mar. 12, 1943.

Op. Atty. Gen. (170i), Nov. 17, 1943; note under §5887-91. A trade school includes one that charges a "registration fee" which it claims does not cover the cost of instruction but is used only to "offset the cost of materials and texts". Op. Atty. Gen. (170i), Dec. 14, 1943.

5887-81. Minimum standards established.—The following minimum standards for private trade schools are hereby established, and no license shall be granted hereunder unless the board shall determine—

(a) That the school applying for a license has a sound financial structure with sufficient resources for its proper use and support.

(b) That the school has satisfactory training facilities with sufficient tools and equipment and the necessary number of work stations to adequately train the number of students proposed to be enrolled.

(c) That there are a sufficient number of qualified instructors sufficiently trained by experience and education to give the training contemplated.

(d) That the advertising and representations made on behalf of the school to prospective students shall be truthful and free from misrepresentation and fraud.

(e) That the charge made for instruction shall be reasonable based upon the service rendered.

(f) That the premises and conditions under which the students work or study shall be sanitary and healthful and safe, according to modern standards. (Act Mar. 30, 1943, c. 234, §2.)

[141.02]

5887-82. Board to make rules and regulations.—The board shall, with the advice of the commissioner and of the State Advisory Committee of such board as prescribed in the state vocational plan for trade and industrial education, make rules and regulations to carry out the intent and purposes of this Act. Such rules and regulations shall be effective when filed in the office of the Secretary of State and amendments thereof shall be effective twenty days after being so filed. (Act Mar. 30, 1943, c. 234, §3.)

[141.03]

5887-83. Private trade schools must be licensed.—No private trade school shall be operated by any person, or persons, firm, corporation, or by any private organization unless a license is first secured from the commissioner, who is empowered to issue it upon compliance with the terms and provisions of this Act. Application shall be made to the commissioner upon a form prescribed and furnished by him and shall be accompanied by an application fee of \$25.00. A license shall not be issued to any school until the commissioner has approved it as meeting the minimum standards and requirements as provided herein. (Act Mar. 30, 1943, c. 234, §4.)

[141.04]

5887-84. Fees for licenses—Bonds.—If the license is granted, it shall be issued upon the payment of an additional fee of \$25.00 and the filing with the commissioner of a surety bond to the State of Minnesota in the sum of \$1,000.00. Said bond shall be conditioned for the faithful performance of all agreements and contracts with students, as disclosed by the application for license, and the compliance with this Act. Every license shall expire on the 31st day of December following the date of issuance. (Act Mar. 30, 1943, c. 234, §5.)

[141.05]

5887-85. Applications for permits—Fees.—A permit shall only be issued upon written application to the commissioner. The application shall be upon a form prescribed and furnished by the commissioner and shall be accompanied by \$10.00, the fee for such

permit. If the application is granted, the permit shall not be issued until the applicant has filed with the commissioner a continuous surety bond to the state of Minnesota in the penal sum of \$1,000.00, conditioned for the faithful performance of all contracts and agreements with students by the solicitor and the employing private trade school, as disclosed by the application for the permit, and for the compliance by the solicitor with this Act and all rules and regulations prescribed hereunder. Every permit shall expire on the 31st day of December following the date of issuance. (Act Mar. 30, 1943, c. 234, §6.) [141.06]

5887-86. Commissioner may extend permits or licenses.—Upon the filing with the board of charges against the holder of a license or permit issued hereunder, the commissioner may suspend such license or permit pending determination thereof. (Act Mar. 30, 1943, c. 234, §7.) [141.07]

5887-87. Certain designations unlawful.—It is unlawful for any private trade school operating within the State of Minnesota to apply to itself, either as a part of its name or in any other manner, the designation of "college" or "university", unless certificated by the commissioner that the school meets appropriate standards and is entitled to such designation. (Act Mar. 30, 1943, c. 234, §8.) [141.08]

5887-88. Violation a misdemeanor.—Any person who violates any provisions of this Act shall be guilty

of a misdemeanor. (Act Mar. 30, 1943, c. 234, §9.) [141.09]

5887-89. Fees to be paid into State Treasury.—All of the fees collected under the provisions of this Act shall be payable to the general revenue fund of the State of Minnesota. (Act Mar. 30, 1943, c. 234, §10.) [141.10]

5887-90. Effective July 1, 1943.—This Act shall be effective July 1, 1943, except that applications for a license or permit hereunder may be made at any time prior thereto. (Act Mar. 30, 1943, c. 234, §11.)

5887-91. Agents and trade representatives of trade schools subject to provisions of trade school act.—Every solicitor, agent or representative who solicits business for a private trade school as defined by Laws 1943, Chapter 234, engaged in teaching by correspondence any trade, technical, mechanical, or industrial occupation, or who offers to sell or sells any instruction or course of instruction by such a school shall be subject to the provisions for the licensing and regulation of solicitors employed by private trade schools prescribed in Laws 1943, Chapter 234, relating to private trade schools, providing for the licensing and regulation thereof and of solicitors therefor and imposing penalties for violations of that act. (Act Apr. 20, 1943, c. 542, §1.) [141.11]

Those correspondence schools which are not trade schools within the definition of §5887-80 are not subject to this section. Op. Atty. Gen. (1701), Nov. 17, 1943.

CHAPTER 35A

Collection Agencies

5888. To file bond with secretary of state—Conducting agency, etc.

Evidence held insufficient to sustain conviction of member of partnership operating a collection agency to defraud a debtor by false representations as to amounts due. *State v. Burns*, 215M182, 9NW(2d)518. See *Dun. Dig.* 1566b.

Collection agencies are not licensed by the state but need only file a bond. Op. Atty. Gen., (828G), April 10, 1940.

A justice of the peace must file a bond before engaging in collection agency business, but need not be licensed under any state law. *Id.*

Applies to all who hold themselves out as a collection agency, even an attorney adopting a trade name, but one as agent may do business for several persons under their respective names without complying with the statute, as where a bookkeeper for several firms makes collections for them, using their letterheads and statements. Op. Atty. Gen. (828), Dec. 12, 1941.

Neither commissioner of banks nor any other board or officer has supervision over collection agency, and persons defrauded are left to their ordinary remedies at law. Op. Atty. Gen. (828C), Mar. 20, 1942.

5889. Amount and conditions of bond.—Said bond shall be in the sum of five thousand dollars (\$5,000.00) and shall provide that the person, partnership, association or corporation giving the same shall, upon written demand, pay and turn over to or for the person, partnership, association or corporation for whom any account, bill or other indebtedness is taken for collection the proceeds of such collection in accordance

with the terms of the agreement upon which such amount, bill or other indebtedness was received for collection. Said bond shall also provide that the person, partnership, association or corporation giving the same shall, upon written demand, and within ten (10) days after such demand give the person, partnership, association or corporation for whom any account, note, bill or other indebtedness, or evidence thereof, is taken for collection, a statement verified by affidavit, of all monies or things received or collected thereon, such statement showing also the amounts retained or claimed as collection or service charges on each separate item upon which any collection shall have been made; and if so demanded, shall also within said time return, subject to any lien for expenditures or services, all such accounts or statements thereof, notes, bills or other evidence of indebtedness to the person, partnership, association or corporation from whom any of the same shall have been received for collection. Said bond shall be in such form as the attorney general shall prescribe. (As amended Act Apr. 24, 1941, c. 407, §1.)

Legislature did not intend to permit one collection agency bond to cover three partnership names, even though each is composed of same partners. Op. Atty. Gen. (828B), Jan. 31, 1942.

There is no state board or officer empowered to discipline a bonded collection agency for unlawful practices engaged in by it, but victims are left to their ordinary remedies at law. Op. Atty. Gen. (828C), Feb. 10, 1942.

CHAPTER 36

Protection against Fire and Regulation of Hotels and Restaurants

HOTELS, THEATERS AND OTHER BUILDINGS

5903. Definitions.—Every building or structure or enclosure, or any part thereof, kept, used as, maintained as, or advertised as, or held out to the public

to be an enclosure where sleeping accommodations are furnished to the public whether with or without meals and furnishing accommodations for periods of less than one week shall for the purpose of this act be deemed an hotel.