

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

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

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proceeds as provided by Mason's St. 1927, §§89-92, as amended, and expenditures authorized by will should be made under direction of director of social welfare, and remainder upon death of feeble-minded person, left to state board of control to be used "for its general corporate purposes" should be handled as might be agreed between director of social welfare and director of public institutions, and in absence of agreement between them should be divided equally between division of social welfare and division of public institutions. Op. Atty. Gen. (88A-4), Jan. 5, 1942.

Gifts may be accepted by Treasurer with approval of Governor and Auditor for benefit of Division of Forestry and in order to permit it to employ an additional fire control protector. Op. Atty. Gen. (454F), Mar. 6, 1942.

Loan and scholarship funds donated to state teachers' colleges should be turned over to state treasurer. Op. Atty. Gen. (316), Nov. 10, 1942.

**90. Same—Administration.**

Loan and scholarship funds donated to state teachers' colleges should be turned over to state treasurer. Op. Atty. Gen. (316), Nov. 10, 1942.

**92. Same—Expenditures.**—In the event that such gift, bequest, devise or endowment is made or designated by the donor for a certain institution, department, or agency, the state treasurer shall, from time to time, pay out in the usual manner, upon the order of the board, commission or other body charged with the direct and immediate supervision, control or management of the designated institution, department or agency, all money which may become available for such purpose under the terms of such will, deed of gift or other instrument; and the same shall be expended and applied by such board, commission or other body as nearly as may be, in accordance with the terms and conditions of such gift, bequest, devise or endowment. (As amended Act Apr. 1, 1941, c. 353, §2.)

Persons employed in department of administration, division of administrative management and research, are in unclassified service, research being made under a gift which must be expended by June 30, 1943. Op. Atty. Gen. (644B), Jan. 27, 1942.

**ATTORNEY GENERAL**

**113. Advice—Opinions.**

Opinions of Attorney General are controlling only so far as they relate to laws of the state. Op. Atty. Gen. (310), Feb. 18, 1941.

Attorney general will not express an opinion on questions involved in litigation. Op. Atty. Gen. (768k-1), Sept. 8, 1943.

**114. State officers and boards—Special counsel.**

Validity of proceedings to remove an appointive officer pending before state board of education is not affected by its appointment of special counsel to represent it thereat where such appointment was made with consent and acquiescence of attorney general. State v. State Board of Education, 213M184, 6NW(2d)251, 143 ALR503. See Dun. Dig. 8845.

Department of highways is entitled to reimbursement from state teacher's college for mileage expenses and compensation of a special assistant attorney general in highway department while working on condemnation proceedings for the college. Op. Atty. Gen. (640), Oct. 20, 1939.

Attorney general has nothing to do with wisdom or expediency of legislation. Op. Atty. Gen., (399c), Dec. 29, 1939.

**115. Opinion to county, city, village or town attorney, etc.**

The opinion of the attorney general, though not binding upon the courts as to construction of laws relating to school matters, is binding on school officers until reversed by the courts. *Eelkema v. Bd. of Education of City of Duluth*, 215M590, 11NW(2d)76. See Dun. Dig. 8845.

When attorney general has rendered an opinion construing school laws and it has not been reversed by the courts and the law has been reenacted in the same language, it may be assumed in construing the law that the legislative intent was that the reenacted language should have the interpretation which the attorney general had placed upon it, if it is susceptible of that construction. *Id.* See Dun. Dig. 8952.

Attorney general is not permitted to render official opinions to county auditor. Op. Atty. Gen. (412a-10), Sept. 25, 1939.

County attorney is legal advisor of county treasurer, and questions should, in the first instance, be submitted to him. Op. Atty. Gen., (474h), Oct. 6, 1939.

City attorney is legal advisor of city officials on city affairs, and questions on city affairs should not be submitted to attorney general from any other person, though he is a state senator. Op. Atty. Gen. (64d), Oct. 11, 1939.

In giving opinions attorney general will abide by judgment of district court from which no appeal is to be taken. Op. Atty. Gen. (472t), Nov. 14, 1939.

Attorney general may render official opinions on municipal matters only on request of municipal attorney. Op. Atty. Gen., (476B-2), Jan. 18, 1940.

Attorney-general may render his official opinion on questions arising in administration of city government only to the city attorney, and no such opinion may be rendered to city officers where there is no city attorney. Op. Atty. Gen., (59a-40), Apr. 29, 1942.

Attorney general cannot give an official opinion to a county attorney upon any question arising under laws relating to public schools. Op. Atty. Gen. (166a), Sept. 17, 1942.

**GENERAL PROVISIONS**

**121-3. Same—Shall be paid out on legislative appropriations only.**

Even if commissioner of conservation has authority to accept a surrender of lease on Douglas Lodge, there is no authority or fund to purchase equipment in the lodge. Op. Atty. Gen. (333), Mar. 4, 1942.

**124-1. Shall not expend money except for purposes for which it is appropriated.**

Laws 1943, c. 660, §54, repeats this section in substance.

**125. Officials not to exceed appropriation.**

Laws 1943, c. 660, §§1-61, app'ns for expense of government.

Laws of 1943, c. 660, §54, repeats this section in substance.

**125-12. May not hire publicity representative.**

This section has been repeated in substance in c. 660, §56.

**125-14. Certain acts illegal.**

This section has been repeated in substance in c. 660, §54.

**126. Board of relief.**

(1) to (5) \* \* \* \* \*

(6) For the purpose of carrying out the provisions of this act, whenever an emergency exists, the Executive Council, within the limitations hereinafter prescribed, is authorized to borrow such a sum of money as shall in its judgment be necessary and sufficient. The Executive Council shall not expend or borrow, under authority of this act, more than \$200,000 during any fiscal year.

(7) to (10) \* \* \* \* \*. (As amended Act Apr. 15, 1943, c. 457, §1.)

**128-3. Powers and duties.**

(e).

State geographic board is authorized to change name of a lake which it has borne for 50 years, with approval of county board, but it should investigate and weigh reasons for and against change, and decide what action will best serve public interests. Op. Atty. Gen., (273a), April 26, 1940.

**CHAPTER 5**

**Judicial Department**

**SUPREME COURT**

**132. Writs—Process.**

Prohibition is an extraordinary remedy not to be used where there is an adequate remedy by appeal or certiorari. *State v. District Court*, 206M645, 287NW491. See Dun. Dig. 7842.

District court had jurisdiction to enter judgment against village and also to determine and enter judgment in favor of attorney for judgment creditor for a certain sum as a lien upon the first judgment, and to permit village to deposit the amount of the judgment with the clerk of court when a judgment creditor of the first judgment creditor attempted to levy execution on the judg-

## DISTRICT COURT

ment against the village, based upon its judgment, and an assignment of the attorney's judgment, and a receiver of the first judgment creditor was not entitled to prohibition to prevent the court from considering proceedings on order to show cause why money deposited with clerk should not be paid to second judgment creditor. *Id.* See Dun. Dig. 7845.

An order adjudging a husband guilty of civil contempt is reviewable on appeal, but not by certiorari. *Dahl v. D.*, 210M361, 298NW361. See Dun. Dig. 302, 1400, 1708a.

Writ of certiorari from supreme court to review a judgment not reviewable by such court under such writ is improvidently issued and must be quashed. *Warner v. A. G. Anderson, Inc.*, 212M610, 3NW(2d)673. See Dun. Dig. 1404.

A judgment of the municipal court of Duluth may not be reviewed by certiorari. *Id.*

Mandamus issued commanding county auditor to desist from causing name to be printed on ballot as candidate for office of representative in Congress. *O'Brien v. O'Brien*, 213M140, 6NW(2d)47. See Dun. Dig. 5763.

Mandamus may issue out of supreme court to compel judge of district court to comply with a mandate. *Personal Loan Co. v. Personal Finance Co.*, 213M239, 6NW(2d)247. See Dun. Dig. 460, 5765.

While an order of state board of education removing commissioner of education from office may be reviewed by supreme court by certiorari, inquiry in that court is not whether findings of board are sustained by a preponderance of the evidence, but whether there is any evidence whatsoever to sustain the order of removal. *State v. State Board of Education*, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 1402, 1404.

Findings and conclusions of an administrative board must be considered as a whole. *State v. State Board of Education*, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 1402.

In quo warranto by attorney general to test corporate existence of a newly organized village under claim that area sought to be incorporated has no adaptability for village purposes and is not so conditioned as to be subject to village government, burden of proof rests upon respondent. *State v. Village of North Pole*, 213M297, 6NW(2d)458. See Dun. Dig. 8072, (82, 83).

In quo warranto instituted by attorney general to test corporate existence of a newly organized village, proceedings are governed by common law rules in the absence of any legislation or any controlling consideration to the contrary. *Id.* See Dun. Dig. 8068.

In quo warranto instituted by attorney general evidence held to sustain finding that purported organization and incorporation of a village was null and void because territory incorporated was not so conditioned as to be subjected properly to municipal government, a matter which court may determine in quo warranto. *Id.* See Dun. Dig. 8064.

Since quo warranto is an extraordinary legal remedy, procedure is not governed by requirements of service of notice of trial applicable in ordinary civil actions, for reasons that upon respondents in such a case rests burden of showing, before a court of competent jurisdiction at a stated time and place designated in the writ, by what warrant they exercised powers claimed by them. *Id.* See Dun. Dig. 8068.

As authorized by our constitution and statutes, quo warranto is not the old common law writ, but rather the information in the nature of quo warranto as left by the changes brought about by St. 9 Anne, c. 20, and came into this country by adoption in that form as a part of our common law. *Id.* See Dun. Dig. 8059.

Writ of quo warranto is not granted where another adequate remedy is available. *Id.* See Dun. Dig. 8061.

Quo warranto is the proper and, in absence of statute, the exclusive proceeding to determine the legal existence or validity of the organization of a public corporation. *Id.* See Dun. Dig. 8064.

It was for the attorney general to determine whether to proceed in district court or before Supreme Court in quo warranto instituted to test corporate existence of a newly organized village. *Id.* See Dun. Dig. 8069.

Certiorari is a proper method to review judgment of municipal court of Duluth rendered on removal from the conciliation court. *Warner v. A. G. Anderson, Inc.*, 213M376, 7NW(2d)7, overruling 212M610, 3NW(2d)673. See Dun. Dig. 1404.

If a contempt is a criminal contempt, one simply to impose a punishment, it can be reviewed only by certiorari; but if it is one to add enforcement of a civil remedy, as by compelling one adjudged in contempt to deliver property in his possession, it is a civil contempt reviewable by appeal. *Paulson v. Johnson*, 214M202, 7NW(2d) 338. See Dun. Dig. 1400.

An order adjudging a defendant in contempt and fining him \$50 or, in case he does not pay the fine, imprisoning him for 50 days, is an adjudication of criminal contempt and is reviewable only on certiorari and not on appeal. *Id.*

## MINNESOTA REPORTS

150. Printing and binding reports of decisions—  
Etc.

Secretary of state is not required to furnish a copy of Mason's Minnesota Statutes to municipal court. *Op. Atty. Gen.*, (306), Dec. 14, 1939.

## 154. Jurisdiction.

In diversity of citizenship cases, the federal courts must follow the conflict of laws rules prevailing in the states in which they sit. *Klaxon v. Stentor Electric Mfg. Co.*, 313 U. S. 487, 61 Sup. Ct. Rep. 1020, 85 L. Ed. 1477. See Dun. Dig. 3748.

An alien enemy is not precluded from prosecuting action in courts of United States, President not having made any declaration under Trading With The Enemy Act precluding such action. *Kumezo Kawato*, 317US69, 63SCR115. See Dun. Dig. 252.

A duly organized county of Minnesota is a citizen of the state for purposes of jurisdiction of federal courts. *Pettibone v. Cook County*, (CCA8), 120F(2d)850, aff'g (DC-Minn), 31FSupp881. See Dun. Dig. 2300, 3744, 5602, 5609, 9520a, 9530, 9676, 9678a.

Jurisdiction of state district courts is not limited to any particular county but exists throughout the state. *Panzram v. O'Donnell*, (DC-Minn), 48FSupp74. See Dun. Dig. 2345a.

Once a court of competent jurisdiction acquires jurisdiction of subject-matter and parties to a cause its authority continues until matter is finally disposed of, and no court of co-ordinate authority is at liberty to interfere with its action. *Shapiro v. L.*, 206M440, 289NW48. See Dun. Dig. 7774(95).

A state may exercise through its courts jurisdiction over a foreign corporation insofar as latter has consented to exercise thereof whether or not corporation is doing business within state, and whether or not cause of action arose out of business done within state. *Farmers Educational, Etc. v. F.*, 207M80, 289NW884. See Dun. Dig. 2185, 2345a.

Repeal by implication is not favored by the courts, nor is the ousting of jurisdiction of a court. *State v. Weed*, 208M342, 294NW370. See Dun. Dig. 2345.

District court, not probate court, has jurisdiction of an action for damages for fraud in inducing a party not to file a claim against estate of a deceased person. *Bulau v. B.*, 208M529, 294NW845. See Dun. Dig. 2759.

Immunity of judicial officers to civil action for judicial acts cannot be avoided by pleading that acts complained of were results of a conspiracy previously entered into. *Linder v. F.*, 209M43, 295NW299. See Dun. Dig. 4959.

It is fundamental that the United States cannot be sued without its permission, but this sovereign immunity does not extend to its agents, individual or corporate. *Zins v. J.*, 211M1, 299NW685. See Dun. Dig. 9956d.

Administrator of Federal Housing Administration is subject to suit for tort of his agent committed in course and scope of agent's employment. *Id.*

State courts of competent jurisdiction can entertain action to recover liquidated damages for overtime employment without compensation in accordance with Federal Fair Labor Standards Act. *Abroe v. L.*, 211M136, 300NW457. See Dun. Dig. 2350a.

Since district courts virtually constitute one court of general jurisdiction coextensive with boundaries of state, fact that a civil action is brought or tried in wrong county is not jurisdictional. *Claseman v. F.*, 211M266, 300NW818. See Dun. Dig. 2758, 10104.

Question of venue is a matter for local regulation and state authority in an action in state court against a non-resident arising out of an automobile accident, and Congress may not legislate otherwise. *Id.* See Dun. Dig. 10106.

Where half interest in newspaper business was included in inventory and two-thirds of such interest was decreed to children, and they agreed that widow should have the business during her lifetime, district court had jurisdiction of an action after death of widow for an accounting between children, title having passed and probate court's jurisdiction having ended with its decree. *Lewis v. Lewis*, 211M587, 2NW(2d)134. See Dun. Dig. 2759, 7777a.

Fact that probate court did not insert a general blanket clause in its decree of distribution of an intestate estate does not prevent district court, nine years after administration, from determining a child's right to an asset in an action for an accounting between children. *Id.* See Dun. Dig. 2759.

An appeal under a parent union's laws by a local union from a decision of the parent union's general president to its general executive board will not be held futile and illusory in advance of the event, where provision is made for a full hearing on such appeal, but where the general executive board by its conduct renders such an appeal nugatory, the parent union will be held to have waived compliance with the provision of its laws requiring that redress of grievances must be sought by exhaustion of intra-union remedies before there can be recourse to the courts. *Mixed Local Etc. v. Hotel and R. Employees Etc.*, 212M587, 4NW(2d)771. See Dun. Dig. 9674.

Where a voluntary association such as a lodge or trade union proceeds without complying with its laws, its action is a nullity for want of jurisdiction, and redress may be had by direct resort to the courts without exhaustion of remedies within the organization. *Mixed Local Etc. v. Hotel and R. Employees Etc.*, 212M587, 4NW(2d)771. See Dun. Dig. 618b, 9674.

Redress of grievances must be sought by exhaustion of intra-union remedies before there can be recourse to

the court arising out of a controversy between a parent union and a local union. Id. See Dun. Dig. 9674.

The effect of a rule of law may be such as to prevent a court from acquiring jurisdiction of the subject matter, but where the rule relates not to the jurisdiction of the court, but to the rights of the party, it does not affect the jurisdiction of the court. *Robinette v. Price*, 214M521, 8NW(2d)800. See Dun. Dig. 2346, 2351, 2759.

Jurisdiction of the subject matter comprehends the power to decide a particular case wrongly as well as rightly. Id. See Dun. Dig. 2346, 2351, 2759.

Rights in the nature of exemptions and privileges are regarded as relating not to jurisdiction, but simply to rights of the party to be asserted and adjudicated. Id. See Dun. Dig. 2346, 2759.

Jurisdiction is the power to hear and to determine a cause. Id. See Dun. Dig. 2345.

Jurisdiction of the subject matter means authority to hear and determine a particular class of actions and the particular questions which the court assumes to decide. Id. See Dun. Dig. 2346.

Power to try and render judgment on the merits is jurisdiction, and whenever that power is given, jurisdiction is conferred, no matter what terms statute employs. Id. See Dun. Dig. 2345.

Whether state court has jurisdiction of prosecution for crime committed on a C.C.C. camp depends upon whether conveyance, legislative act, or treaty expressly excludes the state's jurisdiction. *Op. Atty. Gen.*, (605B-23), Feb. 24, 1941.

Indian rights and the federal courts. 24MinnLawRev 145.

**156. Writs.**

Writ of quo warranto is not remedy for official misconduct, and is not to be employed to test legality of official action, such as a proposed purchase of material by commissioner of administration without competitive bidding. *State v. Gravin*, 209M136, 295NW654. See Dun. Dig. 8060.

A relator in quo warranto claiming an office against an incumbent can prevail only on strength of his, not the weakness of the incumbent's right thereto. *State v. Turnbull*, 212M382, 3NW(2d)674. See Dun. Dig. 8066.

Attorney general is the official to whom the right of instituting quo warranto is confided as the representative of the public. Id.

As authorized by our constitution and statutes, quo warranto is not the old common law writ, but rather the information in the nature of quo warranto as left by the changes brought about by St. Anne, c. 20, and came into this country by adoption in that form as a part of our common law. *State v. Village of North Pole*, 213M297, 6NW(2d)458. See Dun. Dig. 8059.

Quo warranto is the proper and, in absence of statute, the exclusive proceeding to determine the legal existence or validity of the organization of a public corporation. Id. See Dun. Dig. 8064.

In quo warranto instituted by attorney general to test corporate existence of a newly organized village, proceedings are governed by common law rules in the absence of any legislation or any controlling consideration to the contrary. Id. See Dun. Dig. 8068.

Since quo warranto is an extraordinary legal remedy, procedure is not governed by requirements of service of notice of trial applicable in ordinary civil actions, for reasons that upon respondents in such a case rests burden of showing, before a court of competent jurisdiction at a stated time and place designated in the writ, by what warrant they exercised powers claimed by them. Id. See Dun. Dig. 8068.

It was for the attorney general to determine whether to proceed in district court or before Supreme Court in quo warranto instituted to test corporate existence of a newly organized village. Id. See Dun. Dig. 8069.

In quo warranto by attorney general to test corporate existence of a newly organized village under claim that area sought to be incorporated has no adaptability for village purposes and is not so conditioned as to be subject to village government, burden of proof rests upon respondent. Id. See Dun. Dig. 8072, (82, 83).

**TERMS OF COURT**

**162. Times for holding general terms.**

\* \* \* \* \*

**Seventh Judicial District**

The general terms of the District Court in the several counties constituting the Seventh Judicial District of the State of Minnesota shall be held at the times herein prescribed, as follows:

In Becker County, on the first Monday in March, and the second Monday in September.

In Benton County, on the third Monday in February, and the second Monday in September.

In Clay County, on the second Monday in April, and the second Monday in November.

In Douglas County, on the first Monday in March, and the second Monday in September.

In Mille Lacs County, on the third Monday in March, and the second Monday in October.

In Morrison County, on the second Monday in May, and the first Monday in December.

In Otter Tail County, on the second Monday in April, and the second Monday in November.

In Stearns County, on the second Monday in April, and the second Monday in November.

In Todd County, on the third Monday in March, and the second Monday in October.

In Wadena County, on the third Monday in February, and the second Monday in September. (As amended Mar. 15, 1943, c. 137, §1.)

\* \* \* \* \*

**Thirteenth Judicial District**

The general terms of the District Court shall be held each year in the several counties constituting the 13th Judicial District of the State of Minnesota at the times prescribed as follows:

Cottonwood County: On the fourth Tuesday in April and the second Tuesday in November.

Murray County: On the second Tuesday in April and the first Tuesday in December.

Nobles County: On the second Tuesday in February and the second Tuesday in October.

Pipestone County: On the second Tuesday in January and the first Tuesday in June.

Rock County: On the second Tuesday in March and the second Tuesday in September. (As amended Feb. 15, 1943, c. 38, §1.)

\* \* \* \* \*

**Nineteenth Judicial District.**

The general terms of the district court to be held each year in the several counties constituting the nineteenth judicial district of the state of Minnesota shall be held commencing on the days hereinafter set forth, as follows, to-wit:

In Chisago County on the third Monday in April and the second Tuesday in October;

In Kanabec County on the third Monday in January and the third Monday in June, but no petit jury shall be drawn or summoned in Kanabec County unless the court shall so direct on written order made and filed with the clerk of said court at least 20 days before the dates herein fixed for holding said court;

In Pine County on the third Monday in March and the third Monday in September;

In Washington County on the second Tuesday in May and the fourth Tuesday in November. (Act Apr. 15, 1941, c. 232, §1.) [484.27]

Act Apr. 15, 1941, c. 232, §3, repeals all acts and parts of inconsistent acts. Section 4 of such act makes it effective and in force from and after July 1, 1941.

**163. Nineteenth Judicial District—Special terms in Washington County.**—In addition to the general terms of the district court in Washington County, special terms of said court shall be held in said county on the second Monday of each month for the trial of issues of fact by the court, the trial of issues of law, the hearing of motions and applications, and all matters except the trial of issues of fact by a jury. (Act Apr. 15, 1941, c. 232, §2.) [484.27]

See note to §162.

**172. Same—Summons—Place of trial.**

*Strom v. Linstrom*, 201Minn226, 275NW833, followed as to the effect of failing to note on the summons in an action brought in St. Louis county that the plaintiff desires the action "to be tried at the village of Hibbing". *Merchants & Miners State Bank v. Manner*, 215M575, 10 NW(2d)770. See Dun. Dig. 2766, 7805, 10103 to 10130.

Preponderance of the showing as to convenience of witnesses was so greatly in favor of trial at Duluth that it was an abuse of discretion to change venue to Hibbing. Id. See Dun. Dig. 10127.

## CLERK

**193. Deputies.**

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

**193-6. Salaries of clerks of district court of certain counties.**—In each county of the state having a population of less than 45,000 the clerk of the district court thereof shall receive an annual salary in lieu of all fees provided by law for official services rendered by him for the county. (Act Apr. 21, 1909, c. 335; Mar. 26, 1943 c. 191, §1.) [485.011]

**193-7. Classification of counties.**—For the purpose of fixing said salary such counties are hereby classed as follows:

Counties having a population of less than 7,500 shall be known as Class A; counties having a population of 7,500 and less than 12,500 shall be known as Class B; counties having a population of 12,500 and less than 20,000 shall be known as Class C; counties having a population of 20,000 and less than 30,000 shall be known as Class D; counties having a population of 30,000 and less than 40,000 shall be known as Class E; counties having a population of 40,000 and less than 45,000 shall be known as Class F.

The county auditor, in determining the population of the county for the purpose of ascertaining the compensation to be paid to the clerk of the district court, shall take the latest federal or state census and add two per cent to the population, as shown by the census last taken, for each year expiring after the year in which such census was taken, unless the last census shall show a decrease in population from the preceding census. (Act Apr. 21, 1909, c. 335; Mar. 26, 1943, c. 191, §2.) [485.012]

**193-8. Compensation of Clerks.**—Such clerks of the district court shall receive, in full compensation for all services rendered by them for their respective counties, except in real estate tax proceedings, in lieu of the fees now provided by law, a yearly salary, payable monthly out of the county revenue fund by the treasurer of the county upon the warrant of the county auditor, as follows: Clerk of court of any county in Class A, \$650.00; in Class B, \$750.00; in Class C, \$800.00; in Class D, \$900.00; in Class E, \$1,000; in Class F, or in any county with a taxable valuation of more than \$6,000,000 wherein during the preceding year indictments and informations have been returned against at least ten defendants or wherein the district court shall have been held for 20 days or more, \$1,100. For all services rendered by such clerks, except as included in this act, they shall receive the same fees and compensation as now provided by law. At the end of each year, in each county having less than 45,000 inhabitants, upon a showing by the clerk of court to the county auditor by a sworn statement that the salary herein provided, together with all fees and emoluments for official services, has not equaled \$2,000.00, the auditor shall issue to such clerk a warrant for an amount sufficient to make all the returns from said office equal the sum of \$2,000.00. In counties having an assessed valuation of less than \$7,000,000, where the salary, fees, and emoluments have not equaled \$1,500 the auditor shall issue a warrant for an amount sufficient to make all returns from said office equal the sum of \$1,500. When it appears to the county board of any county having a population less than 45,000, upon a showing made by the clerk thereof, that the salary provided in this act is inadequate for the services performed by such clerk for such county, the county board may increase such salary at any regular meeting of such board to a just and reasonable salary for the services of such clerk. If dissatisfied with the action of the county board, such clerk may appeal to the district court within 30 days by filing with the auditor a notice thereof. The court, either in term or vacation and upon eight days' notice to the chairman of the county board, shall hear such

appeal and determine the amount of such salary for the term of office by its order, copy of which shall be filed with the county auditor. In any county with a taxable valuation less than \$6,000,000, the clerk shall be allowed no fees, in excess of 1,000 descriptions, for entering the annual real estate tax judgments, but such fees shall be included in every case in entering said judgments. (Act Apr. 21, 1909, c. 335; Mar. 26, 1943, c. 191, §3.) [485.013]

**193-9. Inconsistent acts repealed.**—All acts and parts of acts, either general or special, except Special Laws 1891, Chapters 423 and 424, and Revised Laws 1905, Section 2694, Subdivision 49, inconsistent herewith are hereby repealed. (Act Apr. 21, 1909, c. 335; Mar. 26, 1943, c. 191, §4.) [485.014]

**106. Index to records.**

Clerk is not entitled to charge 20 cents for indexing each plaintiff and each defendant in actions to quiet title where there are a great number of defendants, without a rule or order of the court. Op. Atty. Gen. (144B-15), Sept. 19, 1939.

**197. Return in criminal cases to county attorney.**

There is no statutory requirement that any judge or officer of the municipal court file certificate of conviction in same manner as a justice of the peace. Op. Atty. Gen., (306a), Aug. 9, 1940.

## CLERK

**200. Vacancy.**

Where clerk of district court was elected at 1940 general election and died in February, 1942, appointee to fill vacancy holds office until next general election in November, 1942, and person elected at that election will hold office for full four years and not merely for unexpired portion of term of deceased clerk. Op. Atty. Gen. (144a-5), May 15, 1942, May 19, 1942.

**SALARIES OF CLERKS AND DEPUTIES AND CLERK HIRE IN CERTAIN COUNTIES**

Special Laws 1887, c. 358, §7, relating to compensation clerk district court Otter Tail County, repealed by Laws 1943, c. 131, §1.

Laws 1909, c. 335, §1. Amended. Laws 1943, c. 191, §1.  
Laws 1909, c. 335, §2. Repealed. Laws 1943, c. 191, §2.  
Laws 1909, c. 335, §3. Amended. Laws 1943, c. 191, §3.  
Laws 1909, c. 335, §4. Repealed. Laws 1943, c. 191, §4.  
Laws 1921, c. 133, §14. Amended. Laws 1943, c. 471.  
Laws 1933, c. 76, as amended by Laws 1935, chs. 70 and 278 as amended by Laws 1939, c. 286. Amended. Laws 1941, c. 208.  
Laws 1933, c. 143. Amended. Laws 1943, c. 52.  
Laws 1933, c. 166. Repealed. Laws 1941, c. 295.  
Extra Session 1935, c. 27, §3. Amended. Laws 1941, c. 10.

Act Feb. 13, 1941, c. 10, §1, amends Acts Ex. Sess. 1935, c. 27, §3.

Laws 1941, c. 311. Repealed. Laws 1943, c. 15, §12.  
Laws 1943, c. 15, §5, provides that in counties with 46 to 49 full or fractional congressional townships, and population of 20,000 to 27,500, that clerk of district court shall receive salary of \$1,800 to \$2,200 annually. Repealing c. 311 of the Laws of 1941.

Laws 1943, c. 52, amends Laws 1933, c. 143, to provide clerk district court shall receive salary of \$3,000.

Laws 1943, c. 97, amends c. 337, Laws of 1941, which amended c. 491, Laws 1937, in respect to salaries of clerk hire, in counties having not less than 44 nor more than 45 congressional townships, whole or part, an assessed value of \$8,000,000 to \$14,000,000.

Laws 1943, c. 139, provides that "in counties having not less than 35 nor more than 55 full and fractional congressional townships and an assessed valuation of not more than \$2,000,000, and a population of 5,000 to 7,000, the clerk of district court shall receive a salary of \$1650 per annum, in addition to fees".

Laws 1943, c. 214, provides that in counties having an area of not less than 490 square miles and not more than 510 square miles, a population of 18,000 to 23,000 the salary of clerk of court shall be \$1,500 per year.

Laws 1943, c. 219, authorizes county board in counties with population of 60,000 to 75,000, and 35 to 49 congressional townships to fix by resolution the salary of the clerk of district court and clerk hire in the office of the clerk of district court.

Laws 1943, c. 262, provides that in counties having population of 16,000 to 18,000 and 56 to 58 full and fractional townships, the salary of the clerk of district court shall be \$1,100 per year.

Laws 1943, c. 302, provides that in counties having population of 8,000 to 10,000; an assessed valuation of \$1,000,000 to \$1,500,000; 16 to 17 full and fractional congressional townships and a land area of 350,000 to 400,000 acres, the judge of probate and the clerk of district court may be employed as deputy or clerk for each other

or by other county officials during such time as their services are not required in the discharge of the duties of the respective offices to which they have been elected, and paid in the same manner as other employees, and such payments heretofore made are validated.

Laws 1943, c. 358, provides: In counties having 40 to 42 full or fractional congressional townships, assessed valuation of \$6,500,000, in addition to fees collected clerk of district court shall receive \$1,500 salary and \$1,300 to pay deputy clerks.

Laws 1943, c. 411, provides: Counties containing not less than 19 nor more than 21 organized townships, and having a population of not less than 35,000 nor more than 42,000 inhabitants, according to the last federal census, and having an assessed valuation of not less than \$28,000,000 and not more than \$45,000,000.

Laws 1943, c. 471, §1, amends Laws 1921, c. 133, §14, amended by Laws 1923, c. 419, §14, amended by Laws 1925, c. 398, §2, as amended by Laws 1929, c. 359, as amended by Laws 1937, c. 290, §1.

**Notes of Decisions**

Under Laws 1919, chapter 229, clerk is not entitled to receive fees in personal property tax cases, while clerks governed by Laws 1937, chapter 19, are entitled to receive and retain fees in such cases. Op. Atty. Gen. (144B-21), Sept. 30, 1939.

Salary paid to clerk under Laws 1919, chapter 229, is in full compensation for all services rendered county, except in real estate tax proceedings, naturalization and board of audit matters, and issuance of passports, fees for which services are to be retained by clerk. Op. Atty. Gen. (144B-15), Nov. 9, 1939.

Fees earned by clerk in confession of judgment matters under §2176-14 should be included by clerk in his report of fees under Laws 1919, chapter 229. Op. Atty. Gen. (144B-3), Feb. 6, 1940.

Fees received for confessions of judgments are to be disposed of as are other fees received by officers, under Laws 1933, c. 143. Op. Atty. Gen., (144B-3), May 28, 1940.

Where salary of clerk is governed by Laws 1919, ch. 229, court's determination of salary on an appeal from adverse action of county board is only "for the term of office" during which salary was so fixed, and for new term of office it is necessary that clerk make another showing that salary fixed by law is inadequate. Op. Atty. Gen., (144a-4), Dec. 9, 1940.

Monies and credits are to be included in determining classification of counties for salary purposes where assessed valuation is a factor in such determination. Op. Atty. Gen. (104a-9), Dec. 31, 1942.

Under Laws 1939 chapter 99, §§10, 18, any excess of total compensation of clerk of district court over \$36.00 would be deducted from the salary of \$12,081, and if his fees alone exceeded \$36.00, he would receive no salary but would retain all fees collected. Op. Atty. Gen. (144a-4), Jan. 5, 1943.

County board in its discretion may increase clerk hire for clerk of district court above the amount specified in Laws 1917, c. 476, relating to particular counties. Op. Atty. Gen. (144a-1), Feb. 9, 1943.

Laws 1943, c. 15, is constitutional and applies to judge of probate and must be put into effect at once. Op. Atty. Gen. (104a-9), Mar. 22, 1943.

Under Laws 1919, c. 229, clerk is not required to refund to county fees in excess of a total income of \$2,000. Op. Atty. Gen. (144a-4), April 1, 1943.

In Isanti County which is a class C county under Laws 1917, c. 476, and in which clerk of court is paid a yearly salary of \$800, as provided by Laws 1919, c. 229, the 15% increase in compensation provided by Laws 1943, c. 283, should be calculated on the basis of the \$800 salary, and not on the basis of the \$1500 minimum guaranteed income provided for in Laws 1919, c. 229. Op. Atty. Gen. (144a-4), May 22, 1943.

Judge of district court of Isanti County has the appointing authority to appoint an acting incumbent to perform the duties of the office of clerk of court during the time that the regular clerk is on leave in the military service. Op. Atty. Gen. (144a), June 3, 1943.

Construing Laws 1943, c. 411, and Laws 1943, c. 531, together, officers of Mower County were not entitled to increased salaries between the approval dates of the two acts, in view of Laws 1941, c. 492, §31. Op. Atty. Gen. (104a-9), June 7, 1943.

Laws 1943, c. 302, §1, is valid and probate judge may act as deputy clerk of district court, and clerk of district court may act as clerk of probate court, and county auditor may issue warrants to pay for services rendered by those officers previous to enactment of this law. Op. Atty. Gen. (358b-1), June 23, 1943.

Clerk hire in the office of the clerk of the district court in Stevens County was changed as of the date that the tax commissioner determined that assessed valuation of the county exceeded six million dollars, causing a change in rate of clerk hire as fixed by Laws 1937, c. 76. Op. Atty. Gen. (104a-9), Oct. 20, 1943.

**STENOGRAPHIC REPORTERS**

**201. Appointment—Duties—Bond.**

Laws 1923, c. 77, §9, amended by Laws 1943, c. 269, provides that salary of chief reporter and each of the other reporters shall be uniform and shall be fixed by the

judges of the district court not exceeding \$3,500 per year.

Laws 1943, c. 215, provides that the judge of the district court in any judicial district with only one judge and composed of three counties in each of two of which counties there is a city with a population in excess of 10,000 inhabitants and in which the aggregate population of said three counties is more than 75,000, may fix and establish the salary of the court reporter for such district in an amount not exceeding \$3,300.00.

Laws 1943, c. 365, provides that in judicial districts with only one judge and composed of four counties, with population of 50,000 to 100,000, assessed valuation of \$35,000,000 to \$60,000,000, judge may fix salary of court reporter not to exceed \$3,400 per year.

Laws 1943, c. 379, amends Laws 1923, c. 77, §§1, 3.

**205. Compensation of court reporters in certain districts.**—The judges, by an order filed with the county auditors annually on or before the first Monday in May, 1939, and on or before the first Monday in January, annually thereafter, shall fix and establish the salary of the court reporter at an amount not exceeding \$2,700.00 per year, but in judicial districts comprised or hereafter comprised of not less than ten counties, the salary shall be fixed and established at \$3,300.00 per year, and in such order shall apportion the salaries of the reporters in their respective districts among the several counties, and each county shall be required by such order to pay a specified amount thereof in monthly installments which amount shall be such proportion of the whole salary as the number of days work actually done by the reporter in the trial of cases in said county during the preceding year bears to the whole number so performed in the district. Each reporter shall have and maintain his residence in the district in which he is appointed, but if any reporter be appointed in two or more districts he may reside in either or any of them.

The reporter, in addition to his salary, shall be paid such sums as he shall pay out as necessary railway, traveling and hotel expenses while absent from the city or village in which he resides in the discharge of his official duties, such expenses to be paid by the county for which the same were incurred upon presentation of a verified, itemized statement thereof approved by the judge; and the county auditor of such county, upon presentation of such approved statement, shall issue his warrant in payment thereof. (As amended Act Apr. 25, 1941, c. 442, §1; March 1, 1943, c. 89.)

Laws 1923, c. 77. Amended. Laws 1943, c. 379.

Laws 1923, c. 77, §9. Amended. Laws 1943, c. 269.

Court reporter's salary not to exceed \$3,200, annually, in judicial districts with only one judge and composed of four counties having an aggregate population of not less than 72,000 nor more than 75,000 inhabitants. Laws 1941, c. 80.

Laws 1943, c. 194, provides that the judges of the district court in any judicial district in this state, with three judges, composed of nine counties and containing an area of more than 15,000 square miles, and not containing a city of the first class, shall fix and establish the salary of their respective court reporters for such district in the amount of \$3,300.00 per annum.

**Notes of Decisions**

Laws 1943, c. 89, fixes salaries of court reporters in the 7th Judicial District at \$3300 per year, and the only function of the court is to fix by order the proportion thereof that should be paid by each county respectively. Op. Atty. Gen. (129), May 7, 1943. See Op. Atty. Gen. (129), May 24, 1943.

Laws 1943, c. 89, amending this section, should be construed with Laws 1941, c. 442, also amending this section, and should not be construed as reducing salary of court reporters to not exceed \$2700. Op. Atty. Gen. (129), May 28, 1943.

Laws 1943, c. 89, sets salary of court reporters at \$3300 per year, and the only function of the court is to fix by order the proportion thereof that should be paid by each county, but a county auditor cannot ignore an order of one judge denying the court reporters any increase. Op. Atty. Gen. (129), May 7, 1943. See Op. Atty. Gen. (129), May 24, 1943.

**SALARIES**

**211-10. Retirement of Justices of the Supreme Court in certain cases.**—When a justice of the supreme court arrives at the age of 70 years and has served at least one term or becomes incapacitated for the performance of his official duties to the extent that the public

service suffers therefrom, and makes written application to the governor for his retirement, the governor, if he determines that such justice has arrived at such age and has served at least one term or that such disability exists, shall direct his retirement by written order which shall effect a vacancy in the office to be filled as provided by law. (Act Apr. 24, 1943, c. 595, §1.) [490.025]

**211-11. Compensation upon retirement.**—Such justice shall receive the compensation allotted to his office for the remainder of the term for which elected. If such justice be retired for disability and, at the time of his retirement, has served as such justice or as a judge of a court of record for 12 years or, if retired for age, has served as such justice for 12 years or as such justice or as a judge of a court of record for 15 years, he shall, after the expiration of the term for which elected or appointed, receive one-half the compensation allotted to his office for the remainder of his life. All such retirement pay shall be paid in the manner judicial salaries are paid. (Act Apr. 24, 1943, c. 595, §2.) [490.025]

**211-12. May be appointed Commissioner.**—Upon retirement of a justice of the supreme court, the court may appoint him a commissioner of that court to aid and assist in the performance of such of its duties as may be assigned to him with his consent. (Act Apr. 24, 1943, c. 595, §3.) [490.025]

**211-13. Retirement compensation.**—Each justice and commissioner of the supreme court who has heretofore retired under the statutes in force at the time of his retirement shall, from the date of retirement, receive retirement compensation at the rate and for the time provided in the statutes in force at the time of retirement. (Act Apr. 24, 1943, c. 595, §4.) [490.025]

#### MUNICIPAL COURTS

##### 212. Existing courts confirmed.

There is no specific statute requiring a city to furnish Mason's Minnesota Statutes for use of municipal court, but that is the general practice. Op. Atty. Gen. (306), Dec. 14, 1939.

Court organized under Laws 1895, c. 229, continued thereunder until a change is made by city council, and fact that population has increased to more than six thousand does not operate as substitute for action by council nor require council to make a change. Op. Atty. Gen. (306a-4), Apr. 21, 1941.

#### MUNICIPAL COURTS IN CITIES AND VILLAGES

##### 215. Municipal courts.

**Municipal court of Duluth.** Laws 1941, c. 300.

Laws 1923, c. 238, §52; as amended by Laws 1925, c. 85, §7; as amended by Laws 1929, c. 45, §1; as amended by Laws 1941, c. 300, §10, is amended by Laws 1943, c. 524, §1.

**Municipal court for village of Gaylord.** Act Apr. 10, 1941, c. 187.

**Municipal court of Minneapolis.**—

Special Laws 1889, c. 34, §6, as amended by Laws 1917, c. 407, §6. Amended. Laws 1941, c. 156, §2.

Special Laws 1889, c. 34, §8. Amended by Laws 1943, c. 147, §1.

Special Laws 1889, c. 34, §18, as amended by Sp. Laws 1901, c. 387, §2; Sp. Laws 1903, c. 412, §1; Laws 1907, c. 465, §2; Laws 1911, c. 126, §1; Laws 1917, c. 482, §1; Laws 1919, c. 303, §1; Laws 1921, c. 201, §1; Laws 1923, c. 413, §1; Laws 1927, c. 424, §3; and Laws 1929, c. 129, §1; Laws 1937, c. 273, §1. Amended. Laws 1941, c. 156, §1.

Special Laws 1889, c. 34, §20 as amended by Laws 1927, c. 424, amended. Laws 1941, c. 91.

Special Laws 1889, c. 351, §52, as amended by Laws 1907, c. 302, Laws 1913, c. 430, §1, Laws 1919, c. 308, §2, Laws 1921, c. 362, §4, Laws 1927, c. 317, §2 and Laws of 1929, c. 423, §2. Amended. Laws 1941, c. 536.

Laws 1909, c. 225, §1, as amended by Laws 1913, c. 517, §1, by Laws 1919, c. 331, §1, and by Laws 1929, c. 128, §1, as affecting the appointment, compensation, and duties of stenographic reporters, is amended by Act Feb. 27, 1941, c. 30.

Laws 1909, c. 225, §1 as amended by Laws 1913, c. 517, §1, Laws 1919, c. 331, §1, Laws 1929, c. 128, §1 and Laws 1941, c. 30, §1 is amended by Laws 1943, c. 461.

Laws 1923, c. 238, §52 as amended by Laws 1925, c. 85, §7, Laws 1929, c. 45, §1 and Laws 1941, c. 300, §10 is amended by Laws 1943, c. 524.

Laws 1923, c. 370, §§6, 7, 8, are amended. Laws 1943, c. 250.

Act Mar. 28, 1941, c. 91, §1 amends Special Laws 1889, c. 34, §20 as amended by Gen. Laws 1909, c. 20; 1917, c. 407; 1927, c. 424.

Laws 1941, c. 156, §6a, provides for a traffic violations bureau in the municipal court for Minneapolis and for clerk hire therein.

**Municipal court of St. Cloud.**—Established in counties of Stearns, Benton and Sherburne. Laws 1941, c. 223.

**Municipal court of St. Paul.** Sp. L. '89, c. 351, revises former laws.

Act Apr. 28, 1941, c. 536, §1, amending Special Laws 1889, c. 351, §52, as amended by Laws 1907, c. 302, Laws 1913, c. 430, §1, Laws 1919, c. 308, §2, Laws 1921, c. 362, §4, Laws 1927, c. 317, §2, Laws 1929, c. 423, §2.

#### Notes of Decisions

Judge of a municipal court need not be an attorney at law and legislature cannot so require. State v. Weiter, 208M338, 293NW914. See Dun. Dig. 4953.

Laws 1933-1934, Ex. Sess. c. 35, establishing a municipal court for village of Perham, was not passed by two-thirds vote of each house and it is a nullity. State v. Weiter, 209M499, 296NW582. See Dun. Dig. 6899a.

A judgment of the municipal court of Duluth may not be reviewed by certiorari. Warner v. A. G. Anderson, Inc., 212M610, 3NW(2d)673. See Dun. Dig. 6908.

Certiorari is a proper method to review judgment of municipal court of Duluth rendered on removal from the conciliation court. Warner v. A. G. Anderson, Inc., 213M376, 7NW(2d)7, overruling 212M610, 3NW(2d)673. See Dun. Dig. 6908.

Laws 1937, c. 143, was inspired by someone not interested in economy or convenience to litigants or the distribution of the work of the courts, in taking away right of appeal to district court and compelling appeal to be made direct to the supreme court. Duff v. Ustak, 215M33, 9NW(2d)319. See Dun. Dig. 6905, 6908.

Municipal judge appointed by governor to fill vacancy in municipal court of Tower established by Laws 1929, chapter 4, holds office only until next regular election. Op. Atty. Gen. (307I), Jan. 11, 1940.

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

Judgments of a municipal court attempted to be established by unconstitutional law are valid. Op. Atty. Gen. (306a-4), Feb. 21, 1941.

Municipal court fines in Mankato are to be paid into general fund and sinking fund and not into municipal court fund. Op. Atty. Gen. (306b-6), May 23, 1941.

Payment of salary to a municipal judge appointed under an act later held not validly passed by legislature was lawful and salary could not be recovered. Op. Atty. Gen. (307I), Aug. 25, 1941.

Municipal court organized under 1895 or 1905 act is a "court of record" and judge is deferred by law under Selective Service Regulations. Op. Atty. Gen. (310e), Nov. 10, 1941.

Municipal court of Little Falls. Laws 1915, c. 10. Op. Atty. Gen. (121B-17), Jan. 21, 1942.

Jury fee is a part of disbursements of a prosecution which municipal court of Faribault may add to and include in penalty in criminal prosecution. Op. Atty. Gen. (192a-3), Sept. 28, 1942.

Under Laws 1927, c. 61, §22, Mason's Stat. 1927, §9219, Minn. Stat. 1941, §542.14, applies to the municipal court of Mankato. Op. Atty. Gen. (306b-11), Dec. 30, 1942.

Judge of municipal court of Luverne, when acting as conciliation judge, cannot tax costs against either party, other than disbursement to prevailing party, and cannot require a fee from plaintiff upon entering a claim, to be retained by him, or tax a fee against the losing party as and for costs, which he retains. Op. Atty. Gen. (307e), June 1, 1943.

##### 216. Application to existing courts.

Council may fix a salary for clerk in lieu of all fees and provide for payment of all fees into city treasury. Op. Atty. Gen. (308c), Jan. 2, 1940.

City council bringing court organized under Laws 1895, c. 229, within general statutes cannot dispense with office of clerk of court and confer upon judge powers and duties of clerk. Op. Atty. Gen. (306a-4), Apr. 21, 1941.

##### 217. Municipal judges—Election—Term—Salary.

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

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

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

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



If court was organized under Laws 1895, c. 229, and city council by resolution adopted provisions of 1905 act pursuant to §216, mayor or president of council may designate a practicing attorney to sit from day to day during absence or disability of municipal judge, but if city council has never abolished position of special municipal judge and none has been elected and city is operating solely under provisions of Laws 1895, c. 229, there is a vacancy in office of special judge which can only be filled by appointment by governor. Op. Atty. Gen. (307j), July 29, 1941.

Term of judge of municipal court in Brainerd is four years, notwithstanding that city charter provides for a two year term. Op. Atty. Gen. (307k), Apr. 21, 1942.

Where both municipal judge and special municipal judge are on leave in service of military service of the United States, their positions should be filled by the Governor, but in the meantime Mayor should appoint a practicing attorney from day to day. Op. Atty. Gen. (307j), Nov. 2, 1942.

Justice of the peace cannot sit as municipal judge, and vacancies are filled by appointment by governor. Op. Atty. Gen. (266b-14), Oct. 7, 1943.

Where special municipal judge was reelected to office on November 2nd and died on November 11th, one appointed to fill the vacancy will hold office only until the next general city election, and in the city of Eveleth his compensation is on a per diem basis. Op. Atty. Gen. 307(J), Dec. 20, 1943.

### 218. Jurisdiction.

Judgments of a municipal court attempted to be established by unconstitutional law are valid. Op. Atty. Gen., (306a-4), Feb. 21, 1941.

Police officer of a city has right to serve warrant out of municipal court in any part of county. Op. Atty. Gen. (306b), Apr. 17, 1942.

### 221. Criminal jurisdiction; etc.

Alexandria being a home-rule charter city and its charter providing for justice of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. State v. Weed, 294NW370. See Dun. Dig. 5263.

Where village had fewer than 5000 inhabitants with both municipal and justice courts, cases arising under village ordinances may not be prosecuted in justice court. Op. Atty. Gen., (847A-8), Jan. 14, 1941.

Municipal court has no power to issue search warrant for search of premises in another county. Op. Atty. Gen. (306b), Apr. 12, 1941.

Justice of the peace cannot sit as municipal judge, and vacancies are filled by appointment by governor. Op. Atty. Gen. (266b-14), Oct. 7, 1943.

### 223. Clerks and deputies—Process.

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

City council bringing court organized under Laws 1895, c. 229, within general statutes cannot dispense with office of clerk of court and confer upon judge powers and duties of clerk. Op. Atty. Gen. (306a-4), Apr. 21, 1941.

### 224. Clerk to receive and pay over fines; etc.

Op. Atty. Gen., (199B-4), Aug. 12, 1940; note under §225.

### 225. Weekly report of clerk.

Each week clerk is to file with city treasurer a weekly report and pay over all sums collected from fines, except those he is entitled to retain as part of his compensation, and it is then duty of city treasurer to pay over such fines to state or county, whichever is entitled thereto, and there is no requirement that clerk of municipal court shall pay such sum into either county or state treasury. Op. Atty. Gen., (199B-4), Aug. 12, 1940.

### 226. Court officers.

If none of named officers was reasonably available for service of a warrant of arrest involving a village ordinance, it is probable that a police officer other than chief of police could properly act as officer of court. Op. Atty. Gen., (847a-8), Jan. 14, 1941.

In a village of less than 5000 with a municipal court, a police officer making an arrest in his capacity as a peace officer, without a warrant, may not collect a fee, but if he makes an arrest upon a warrant he may charge fee allowed constable. Op. Atty. Gen., (847a-8), Jan. 14, 1941.

### 227. Reporter—Duties—Fees, etc.

Laws 1943, c. 461, §1, relating to the appointment, tenure of office, and salary of stenographic reporters of the municipal court of the city of Minneapolis, and amending Laws 1909, c. 225, as amended by Laws 1913, c. 517, §1, by Laws 1919, c. 331, §1, by Laws 1929, c. 128, §1, and by Laws 1941, c. 30, §1.

### 228. Powers and duties—Practice—Rules—Fees.

Salaries of clerks and employees in cities having a population of 450,000. Laws 1943, c. 450.

Council may fix a salary for clerk in lieu of all fees and provide for payment of all fees into city treasury. Op. Atty. Gen., (308c), Jan. 2, 1940.

Section defines powers and duties of municipal court of Little Falls and that court is not required to make reports of criminal actions to county attorney as is required of a justice of the peace. Op. Atty. Gen. (121B-17), Jan. 21, 1942.

Judge of a municipal court, who has no clerk, is not required to report to superintendent of bureau of criminal apprehension, at least in all municipal courts organized since March 1, 1906. Op. Atty. Gen. (985F), Mar. 10, 1942.

### 232. Drawing jury—Fees—Special venire.

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

### 233. Fees in criminal cases, etc.

Municipal court of Willmar is governed by §233 or §237, and not by §239, as to fees to be charged. Op. Atty. Gen., (308c), Jan. 2, 1940.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k) Apr. 15, 1943.

### 235. Lien of judgments—Transcripts—Execution, etc.

Municipal court judgment docketed by transcript in district court ceases to be a lien 10 years after its entry, rather than 10 years after docketing in district court. Op. Atty. Gen., (520d), Jan. 25, 1940.

### 236. Appeals to district court.

Laws 1937, c. 143, taking away right of appeal from municipal court of Duluth to the district court and compelling appeals to be made directly to the supreme court, was inspired by someone not interested in economy or convenience to litigants and the distribution of the work of the courts. Duff v. Usiak, 215M33, 9NW(2d)319. See Dun. Dig. 6905, 6908.

Provision that time for appeal shall not start to run until notice of judgment is served upon adverse party applies only to civil cases. Op. Atty. Gen., (6h), Feb. 25, 1941.

Right to appeal from conviction is waived by payment of fine. Op. Atty. Gen. (208C), Feb. 27, 1942.

On appeal to district court by a person convicted of a violation of a city traffic ordinance, case is tried in district court as if originally commenced therein, if upon questions of law and fact, but only upon return of justice or municipal court if appeal was on questions of law only. Op. Atty. Gen. (6h), May 12, 1942.

### 237. Courts in cities of third and fourth class, etc.

Apparently the last paragraph of this section regulates clerk fees in criminal cases in the municipal court of Willmar. Op. Atty. Gen., (308c), Jan. 2, 1940.

Municipal court of Willmar is governed by §233 or §237, and not by §239, as to fees to be charged. Id.

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

Municipal judge of the city of Ortonville is not entitled to retain fees paid into court in addition to his monthly salary fixed by city council "in lieu of all fees". Op. Atty. Gen. (307i), Feb. 8, 1943.

### 239. Fees to be charged by municipal courts.

Council may fix a salary for clerk in lieu of all fees and provide for payment of all fees into city treasury. Op. Atty. Gen., (308c), Jan. 2, 1940.

Municipal court of Willmar is governed by §233 or §237, and not by §239, as to fees to be charged. Id.

A charge of 15 cents per folio for testimony taken at a preliminary hearing is a proper charge, but an additional charge of 15 cents per folio for a copy of the transcript to accompany return to district court is not proper. Op. Atty. Gen., (306B-4), May 13, 1940.

## COURT COMMISSIONER

### 247. Qualification and powers.

A court commissioner is a judicial officer and as such is not liable in a civil action to anyone for his judicial acts. Linder v. F., 295NW299. See Dun. Dig. 4959.

### 250. Vacancy.

Acting incumbent is appointed by judges of district court when court commissioner is on military leave. Op. Atty. Gen. (310h-1-a), Sept. 16, 1943.

## JUDICIAL COUNCIL

### 251-2. Membership in judicial council.

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



## REVISOR OF STATUTES

**251-14. Duties. [Repealed.]**

Repealed. Laws 1943, c. 545, §5.

**251-15. Commission of administration and finance to make publication. [Repealed.]**

Repealed. Laws 1943, c. 545, §5.

**251-19. Printing and distribution of Minnesota Statutes.**—On receipt of printer's copy described in Mason's Supplement 1940, Section 251-14, the commissioner of administration shall print and distribute, as soon as possible, an edition sufficient to supply the demand. (Act Apr. 16, 1941, c. 254, §1.) [648.02]

**251-20. Same—Binding—Style of printing.**—Minnesota Statutes shall be bound in one volume. Each full page of printed matter shall be eight and one-half inches high and five inches wide, and shall be printed in such style, on such paper, and with such type as the commissioner of administration shall determine. (Act Apr. 16, 1941, c. 254, §2.) [648.03]

**251-21. Same—Purchase of copies.**—Subdivision 1. The commissioner of administration shall purchase 1,000 copies of Minnesota Statutes, to be distributed by him as follows:

- 3 copies to each justice of the supreme court;
- 1 copy to each judge of a district court;
- 1 copy to the clerk of each district court for use in the court room of the district court of his county, and where there is more than one district court room, in the court-house of his county, as many copies as there are court rooms, one copy for each court room;
- 50 copies to the state law library;
- 50 copies to the law school of the university of Minnesota;
- 20 copies to the office of the attorney general;
- 1 or more copies, as they may be required, to the various executive officers, heads of departments, administrative boards and societies of the state government;
- 1 copy to each member of the legislature;
- 1 copy to each legislative committee as required;
- 4 copies to the secretary of the senate;
- 4 copies to the chief clerk of the house of representatives;
- 1 copy to each judge, district attorney, clerk of court of the United States and the deputy clerk of each division of the United States district court in this state, the secretary of state of the United States, the library of congress, and the state historical society.

Subdivision 2. Each county shall purchase from the commissioner of administration one copy each for the use of the judge of probate, county attorney, auditor, treasurer, register of deeds, and superintendent of schools.

Subdivision 3. Each city, village, borough, and town shall purchase from the commissioner of administration, for use of each justice of the peace, judge of the municipal court, clerk of the municipal court, and clerk of the city, village, borough, or town, as the case may be, such number of copies as the city, village, borough or town shall determine is needed. (Act Apr. 16, 1941, c. 254, §3.) [648.04]

**251-22. Same—Marking volumes.**—All volumes of Minnesota Statutes distributed to any state or other public officer, except members and officers of the legislature and officers of the United States, shall have stamped or written thereon the name of the office, together with the words, "state property," and shall be kept for the use of such office. (Act Apr. 16, 1941, c. 254, §4.) [648.05]

**251-23. Same—Ownership of type, matrices, plates, etc.**—The type, stereotype matrices, electrotypes, or stereotype plates and the linotype matrices thereof

of the Minnesota Statutes shall be and remain the property of the state of Minnesota. The commissioner of administration shall store and safely keep all type, matrices, electrotypes or stereotype plates and the linotype matrices thereof of the Minnesota Statutes in such manner that they may be readily accessible at all times. (Act Apr. 16, 1941, c. 254, §5.) [648.06]

**251-24. Same—Sale of statutes.**—The commissioner of administration may sell the Minnesota Statutes to the state or any political subdivision thereof or to any person at the estimated cost thereof. The estimated cost of Minnesota Statutes shall not include any cost of revision, nor shall it include the original cost of the metal type, matrices, electrotypes or stereotype plates, or the cost of storage thereof. (Act Apr. 16, 1941, c. 254, §6.) [648.07]

**251-25. Same—Pamphlets for public officers and departments.**—The commissioner of administration is required to print and deliver in pamphlet form such editions or parts of the Minnesota Statutes as may be necessary for the use of public officers and departments. Such printing shall be discretionary, shall be limited to the actual needs as shown by experience or other competent proof, and the printing shall be done from the plates from which the Minnesota Statutes have been printed, so far as can be done. (Act Apr. 16, 1941, c. 254, §7.) [648.08]

**251-26. Same—Codes and parts of statutes—Pamphlets and separate books.**—When there is a sufficient demand for the printing of codes or parts of the Minnesota Statutes in separate book or pamphlet form the commissioner of administration may print and sell such books or pamphlets. (Act Apr. 16, 1941, c. 254, §8.) [648.09]

**251-27. Correction of typographical errors.**—In the Minnesota Statutes the revisor of statutes shall cause all words and names to be correctly spelled as printed, and shall also correct such words as "previous" for "previously", "consequent" for "consequently", "is" for "are," "affect" for "effect," and the like, where such errors occur in any enrolled act; and no such correction shall be deemed an alteration of or a departure from the enrolled copy. On questions of orthography Funk & Wagnalls New Standard Dictionary of the English Language shall be taken as the standard. (Act Apr. 16, 1941, c. 255, §1.) [648.01]

**251-28. Revisor of statutes to prepare copy for session laws.**—It shall be the duty of the Revisor of Statutes, as soon as may be after the close of each session of the legislature, to prepare and deliver to the commissioner of administration printer's copy containing the laws and joint resolutions passed thereat, with suitable headlines and index. (Act Apr. 20, 1943, c. 507, §1.) [482.055]

**251-29. Revisor to receive two engrossed copies of each bill.**—Immediately upon the passage of any bill by the legislature the secretary of the Senate or the chief clerk of the House of Representatives, as the case may be, shall furnish the revisor of statutes two engrossed copies of such bill. (Act Apr. 20, 1943, c. 507, §2.) [482.055]

**251-30. Revisor of statutes to prepare supplement to Minnesota Statutes 1941.**—Subdivision 1. As soon as practicable after the close of the 1943 session of the legislature, the revisor of statutes shall prepare a supplement to Minnesota Statutes 1941 containing the following:

(a) Tables showing what provisions of Minnesota Statutes 1941 are amended, repealed, or otherwise affected by Laws 1943, and assigning to the provisions of Laws 1943, so far as practicable, appropriate section numbers in the decimal numbering system of Minnesota Statutes 1941, with such cross references and explanatory notes or devices as the revisor deems proper;

(b) Tables designating all provisions of Minnesota Statutes 1941 which differ from the enacted laws from which the same were derived with respect to language, order of arrangement, or any other matter except spelling of words or the substitution of numerals for words expressing figures, or the reverse, with such cross references and explanatory notes or devices as the revisor deems proper;

(c) Tables citing all provisions of enacted laws in force at the time of publication of Minnesota Statutes 1941 which were omitted therefrom, with such cross references and explanatory notes or devices as the revisor deems proper, so far as not covered by any previous report or publication by the revisor.

Subd. 2. The revisor may include in the supplement such revision of any part of Minnesota Statutes 1941 as he deems necessary to conform with the enacted laws in force at the time of publication of the statutes, also such provisions of such enacted laws which were omitted from the statutes as he deems proper. He may assign to the provisions so included in the supplement appropriate section numbers in the decimal numbering system of the statutes, and append such cross references and explanatory notes or devices as he deems proper.

Subd. 3. So far as not already done, the revisor shall compare all the provisions set forth in Minnesota Statutes 1941 with the provisions of the enacted laws from which the same were derived, respectively, or with the corresponding provisions of prior compilations of the statutes which have been authenticated as prima facie evidence by law, or shall cause such comparison to be made under his direction and supervision, and shall append to the supplement his certificate that such comparison has been made and that all the provisions of Minnesota Statutes 1941 set forth correctly and completely the provisions of the enacted laws or of such prior authenticated compilations of the statutes from which the same were derived, respectively, except as otherwise indicated in the supplement. The revisor shall make or cause to be made like comparisons and append a like certificate with respect to the additional provisions of law set forth in the supplement.

Subd. 4. The revisor shall submit the supplement, when completed and certified by him, to the attorney general, who shall examine it as soon as practicable, and, if he approves it, shall append his certificate of such approval. The revisor shall prepare such additional copies of the supplement as may be necessary for printing or other purposes, and any copy may be certified in like manner and with like effect as the original. The original shall be filed with the secretary of state.

Subd. 5. Upon the filing of the original supplement with the secretary of state, certified by the revisor and the attorney general as herein provided, all statutes and acts set forth in the supplement shall be prima facie evidence of the provisions therein contained without further proof or authentication.

Subd. 6. The commissioner of administration shall cause the supplement to be printed in accordance with the laws relating to the printing of the Minnesota Statutes, so far as applicable. The revisor shall compare the printer's copy with the original or a certified copy of the supplement, making any necessary corrections, or shall cause this to be done under his direction and supervision, and shall thereupon certify that such comparison has been made and that the printed

copy contains the complete supplement correctly printed. Thereupon such printed copy and every duplicate thereof printed from the same type or plates shall have like effect for the purposes of prima facie evidence as the original filed with the secretary of state.

Subd. 7. The commissioner of administration shall cause as many copies of the supplement to be printed as there were sets printed of Minnesota Statutes 1941, with such additional copies as the revisor of statutes, with the approval of the commissioner, shall deem necessary. The commissioner shall furnish a copy of the supplement free of charge to every public officer or agency and to every person or corporation to whom a set of Minnesota Statutes 1941 was delivered, and shall furnish a copy of the supplement with each set of the statutes subsequently delivered without extra charge above the regular price of the statutes. He may sell additional copies of the supplement at the estimated cost thereof. Except as otherwise provided the proceeds of such sales shall be credited to the same funds as the proceeds of sales of Minnesota Statutes 1941, and the cost of printing and distribution of the supplement may be paid from such funds. (Act Apr. 20, 1943, c. 545, §1.) [482.041]

**251-31. Revisor of statutes to prepare a revised codification of all laws.**—Subdivision 1. After completing the supplement to Minnesota Statutes 1941, the revisor of statutes shall prepare the text for a revised codification of all the general laws of the state in force at the close of the 1943 session of the Legislature, based in general on Minnesota Statutes 1941 and the supplement thereto, and incorporating the session laws of 1943. The revisor shall make such changes in language and arrangement as he deems necessary to consolidate, clarify, simplify, and codify the statutes, and to express and give effect to the intent of the Legislature in respect of the laws embraced therein.

Subd. 2. The revisor shall prepare a report to the Legislature, to accompany the codification, containing cross-reference tables showing the sections of the codification corresponding with the sections of Minnesota Statutes 1941, the supplement thereto, and other prior laws, also indicating the differences between the provisions of the codification and the prior laws with respect to changes, additions, or omissions, with such explanations, comments, and recommendations as the revisor may deem proper.

Subd. 3. Immediately upon completion of the codification and report, the revisor shall file the originals with the secretary of state and deliver a copy of each to the attorney general. The attorney general shall examine the same and shall prepare such report and recommendations for the Legislature with respect thereto as he deems proper. The original of such report shall be filed with the secretary of state. (Act Apr. 20, 1943, c. 545, §2.) [482.043]

**251-32. Shall prepare bill for the enactment of the codification.**—The revisor, with the advice and assistance of the attorney general, shall prepare a bill for the enactment of the codification, which may refer for the text thereof to the original on file with the secretary of state, also bills for the printing and publication of the codification and the session laws and for the maintenance of a continuous system for the compilation, revision, and annotation of the statutes, for the printing and publication thereof, and for the drafting of bills for the Legislature in conformity with such system. Such bills, together with copies of the codification and the reports of the revisor and the attorney general, shall be submitted to both houses of the Legislature as soon as practicable after the opening of the 1945 session. (Act Apr. 20, 1943, c. 545, §3.) [482.045]

**251-33. Revisor shall complete annotations.**—The revisor shall complete the preparation of annotations of the constitution and statutes in force at the close of the 1943 session of the Legislature, and the same

shall be printed and sold or otherwise distributed as now provided by law. (Act Apr. 20, 1943, c. 545, §4.) [482.047]

## CHAPTER 5A

### Salaries of Certain State Officers and Employees

#### 252. Amount—Payment \* \* \* \* \*

##### 1. Office of Governor

Effective July 1, 1945, Governor, \$8,500; private secretary, \$5,000; executive clerk, \$3,000; recording clerk, who shall be also clerk of the pardon board, \$2,000; executive messenger, \$2,000; assistant executive messenger, \$1,200; notary clerk and stenographer, \$1,800. (As amended Apr. 24, 1943, c. 664, §1.)

2 to 21. \* \* \* \* \*

##### 22. District Court Judges

The judges of the District court, six thousand dollars each from the state and fifteen hundred dollars additional, payable monthly from each county in their respective districts having a population of seventy-five thousand or more and three hundred dollars additional in each judicial district having an area of more than fifteen thousand square miles, payable monthly from the counties comprising such judicial district in

such proportion as the assessed valuation of each county bears to the total assessed valuation of such judicial district in the preceding year; provided, however, that whenever any district judge shall preside upon the trial or hearing of any cause outside of his resident judicial district, wherein the district judge receives a larger salary, he shall receive as additional compensation during the period of such trial or hearing the difference between his fixed compensation and the compensation of the district judge of the district where he has been so engaged, the same to be paid by the county wherein said trial or hearing was held upon certification of the senior resident district judge thereof. (As amended Act Apr. 10, 1941, c. 195, §1.)

##### (22). District court judges.

Judge is not entitled to receive additional compensation during period of time when he may be traveling from his home to district where he is actually to hold court or conduct a hearing, and correct per diem is to be determined by dividing monthly salary by number of days in month. Op. Atty. Gen. (141d-6), July 29, 1941.

## CHAPTER 5B

### Public Officers and Employees in General

#### STATE EMPLOYEES' RETIREMENT ASSOCIATION

**254-1. Definitions.**—Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases shall, for the purposes of this act, be given the meaning subjoined to them.

**Subd. 2. Definitions.**—(1) "State employee" means any person holding a state office or regularly employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor or from the fees or income of any department or agency of the state, excepting elective state officers, court commissioners, district judges; physicians, dentists, clergymen and other professional people whose employment by the state is incidental to their regular professional duties and whose compensation is paid on a per diem basis; the members of the board of tax appeals, the civil service board, and the members of any other state board or commission who serve the state intermittently and are paid on a per diem basis; and the president, deans, professors, and instructors in the state university and in the state teachers' colleges, and teachers in state institutions who are eligible to membership in the teachers' retirement fund, but shall not include students who secure employment with the state or a state institution incidental to and in furtherance of their education. Temporary employees as defined by the civil service act shall not be eligible to membership, but probationers thereunder and temporary employees in the unclassified service shall become members at the expiration of six months continuous employment, and deductions shall be made from the salaries of such employees beginning on the first day of the calendar month following the completion of six months continuous employment. Permanent employees in the unclassified service shall become members upon acceptance of state employment, and temporary employees in the unclassified service and

all employees in the classified service shall become members on the first day of the calendar month following the completion of six months continuous employment regardless of the classification by any department, commission, or agency of the state. Any former employee who has made contributions under former employment who has not taken a refundment from the retirement fund shall become a member immediately upon returning to the state service, regardless of his classification as temporary, provisional or probationary by any department, commission, or agency of the state, and salary deductions shall be made according to the age at the time of again becoming a state employee. Permanent seasonal employees in either the classified or unclassified service shall in no event be considered temporary employees.

(2) Employees of the department of education who are eligible to membership in the Teachers' Retirement Fund shall have the option of electing whether to be a member of the State Employees' Retirement Association or the Teachers' Retirement Fund. (As amended Apr. 23, 1941, c. 391; §1, Apr. 24, 1943, c. 622, §1.)

**Subd. 3.** "Head of Department" shall mean the head of any department, institution, or branch of the state service which directly pay salaries out of its income or which prepares, approves and submits salary abstracts of its employees to the state auditor and state treasurer.

**Subd. 4.** "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member, and the total amount of assessments paid by a member in lieu of such deductions prior to July 1, 1939, and credited to his individual account in the retirement fund, without interest.

**Subd. 5.** "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions