1941 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
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PREFACE

This 1944 Supplement to Mason's Minnesota Statutes combines in one volume the 1941 and 1943 sessions of the Legislature. Mason's Minnesota Statutes, 1927, in two volumes, the 1940 Supplement and this Supplement constitute a complete presentation of the Minnesota law down to the close of the 1943 session of the Legislature.

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

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

The Rules of the U. S. Circuit Court of Appeals, U. S. District Court, Minnesota Supreme Court, District courts, Municipal courts and Probate courts are brought to date in Appendix No. 4. Also contained in Appendix 4 are the new Minnesota Bankruptcy Rules and Industrial Commission Rules.

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

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

Two tables preceding the Session Law table show parallel sections of Mason's Statutes to the Minnesota Statutes and Minnesota Statutes to Mason's.

All annotations from Minnesota cases have references to Mason's Dunnell's Digest, thus permitting the use of the two services as an invaluable unit, opening several doors to the law where only one existed before.

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

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Table of Abbreviations

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

Soldiers' and Sailors' Civil Relief Act of 1940

(Oct. 17, 1940, Ch. 888, 54 Stat. 1178 as Am. Oct. 6, 1942, Ch. 581, 56 Stat. 769)

(Mason's U. S. Code preceding §1 of Title 50)

(50 U. S. C. App. §§501 to 585)

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§501. Short title.

Sec. 1. This act may be cited as the Soldiers' and Sailors' Civil Relief Act of 1940.

Notes of Decisions

See 130ALR774.

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Exemption of member of armed forces from service of civil process. 137ALR1372.

Validity and construction of war legislation in nature of moratory statute. 137ALR1380.

Statute of limitations. 137ALR1440, 1454.

Annotations under 1918 Act (Mar. 8, 40 Stat. 440, Chap. 20.)

Not operative to extend redemption period as to sale which occurred before act was passed. Ebert v. Poston, 266US548, 45SCR188, 69LEd435, rev'g 221Mich361, 191NW202.

Does not operate to extend time allowed by statute for redemption from foreclosure sale. Wood v. Vogel, 204Ala692, 87So174; Olson v. Gowan Lenning Brown Co., 47ND544, 182NW929.

This Act does not authorize extension of mortgagor's statutory period for redemption from a foreclosure sale had before he entered military service. Taylor v. McGregor State Bank, 144Minn 249, 174NW893.

State law for soldiers' civil relief extending protection for one year after termination of service was not inconsistent with federal act. Austby v. Yellowstone Valley Mort. Co., 63Mont 444, 207Pac631.

This Act supersedes state law abating mortgage foreclosure or judicial sale, as to lands owned by person in military service, during war and sixty days after its termination. Pierrard v. Hock, 97Ore71, 191Pac328, rev'g on rehearing 184Pac494.

State moratorium Act could not be so applied as to impair obligation of valid contract. Granger v. Luther, 42SD636, 176NW1019.

South Dakota moratorium Act. Granger v. Luther, 42SD636, 176NW1019.

Nor relieve soldier from forfeiture of mining lease for non-payment of rent due 12 days after discharge from military service. Hickernell v. Gregory, 224SW(TexCivApp)691.

A state act conferring a larger exemption upon persons in the military service of the U. S. than is given by the federal act, was held void as being in conflict with the federal Act. Konkel v. State, 168Wis335, 170NW715.

ARTICLE I.—GENERAL PROVISIONS

§510. Purpose of act; suspension of enforcement of civil liberties.

Sec. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

Notes of Decisions

Cool's Estate, 19NJMisc236, 18Atl(2d)(NJ)714; note under §200.

Motion for indefinite stay of sale on a foreclosure of chattel mortgage against a vessel would not be granted on account of owner's military service, where his obligations were not materially affected by his military service, the value of the vessel was decreasing, and he deliberately defaulted in foreclosure action when he had opportunity to present any defense he had. The Sylph, (DC-NY)42FSupp354.

Non-resident Army officer was not immune from service for civil process while temporarily on duty in state. Tulley v. Superior Court, 45CalApp(2d)24, 113Pac(2d)477.

A colonel of the United States Army who was in retirement was not entitled to benefits hereof. Lang v. Lang, 25NYS(2d)775, 176Misc213.

This act did not give one who entered military service after he had given installment note for the purchase of stock, which was held by vendor as security, a right to a decree suspending payment on the note until three months after his discharge and enjoining collection, where at the time of the application there was no note in default. Application of Roossin, 30NYS(2d)(Sup Ct)9.

This act is applicable to all agencies of the government, and therefore to the several lending programs of the Department of Agriculture. 40 OAG 18, June 18, 1941.

Annotations under 1918 Act.

Soldiers & Sailors Civil Relief Act of 1918 was not to be judicially construed so as to stay the running of the period for redemption from sale on mortgage foreclosed before the act was passed. Ebert v. Poston, 266US548, 45SCR188, 69 LEd435, rev'g 221Mich361, 191NW202.

Running of the period within which action must be brought to foreclose a mechanic's lien was suspended while lienor was in military service. Clark v. Mechanics' American Nat. Bank, (CCA8) 282Fed589.

"Court" includes court of a justice of the peace. Mead v. City of Los Angeles, 185Cal422, 197Pac65.

This act is valid and time for bringing action in trespass to try title under Texas statute is suspended during service of plaintiffs' decedent in the navy. Easterling v. Murphey, 11SW(2d)(TexCivApp)329.

§511. Definitions.

Sec. 101. (1) The term "persons in military service" and the term "persons in the military service of the United States", as used in this Act, shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, Women's Army Auxiliary Corps and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act, shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act, shall include the time between the following dates: For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force.

(3) The term "person", when used in this Act with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act, shall include any court of competent jurisdic-

tion of the United States or of any State, whether or not a court of record. (As amended May 14, 1942, c. 312, §19, 56 Stat. 282).

Notes of Decisions

Lang v. Lang, 25NYS(2d)775, 176Misc213; note under §100.

This act does not wholly prevent action and judgment against persons in military service, much less against other persons. Petition of Institution for Savings, 309Mass12, 33NE(2d)526.

Annotations under 1918 Act.

Ebert v. Poston, 266US548, 45SCR188, 69LEd 435, rev'g 221Mich361, 191NW202; note under §532.

Application of this Act ceased upon death of soldier during service. Nelson Real Estate Agency v. Seeman, 147Minn354, 180NW227.

Corporation not entitled to benefit of this Act by reason of its agent or officer being in the military service. Bolz Cooperage Corp. v. Beardslee, 211Mo109, 245SW611.

Time of absence in military service may be deducted by plaintiff in computing limitations. Kosel v. First Nat. Bank, 55ND445, 214NW249.

Captain of steamship, engaged in transporting soldiers and war munitions, was not entitled to benefit of this Act. Greenwood v. Puget Mill Co., 111Wash464, 191Pac393.

§512. Territorial application of act; jurisdiction of courts; form of procedure.

Sec. 102. (1) The provisions of this Act shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, including the Philippine Islands while under the sovereignty of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court.

Annotations under 1918 Act.

Constitutional. Clark v. Mechanics' Am. Nat. Bank, (CCA8), 282Fed589; Erickson v. Macy, 231 NY86, 131NE744, 16ALR1322, rev'g 185NYS926.

Applies to proceedings in State Courts. Kosel v. First Nat. Bank, 55ND445, 214NW249.

§513. Protection of persons secondarily liable.

Sec. 103. (1) Whenever pursuant to any of the provisions of this Act the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act, the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

(3) Whenever by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their obligation the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail.

(4) Nothing contained in this Act shall prevent a waiver in writing of the benefits afforded by subsections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability except that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual unless executed by such individual or dependent during the period specified in section 106. (As amended Oct. 6, 1942, c. 581, §§2(a), 2(b), 3, 56 Stat. 769.)

Act Oct. 6, 1942, chapter 581, section 1, 56 Stat. 769, provides that such act may be cited as the Soldiers' and Sailors' Civil Relief Act Amendments of 1942.

Notes of Decisions

Since a stay in an action for personal injuries because of defendant's induction into the military service of the United States may be for a long duration, it should be granted only, where defendant is covered by insurance, on condition that the insurance carrier execute a bond in the sum of $5,000 conditioned on the payment of whatever judgment not in excess of that amount plaintiff may obtain against the defendant in the event that he is insolvent at the time of entry of judgment against him. Royster v. Lederle, (CCA6), 128F(2d)197.

Trial in action to recover damages for personal injury in automobile accident would not be postponed because of defendant's military service where he was covered by liability casualty insurance, and plaintiff agreed to limit liability to amount of the policy. Swiderski v. M., (DC-Ore), 45FSupp790.

Where wife of one who could have foreclosure proceedings against him stayed was also liable on bond covered by mortgage, she should submit proof as to her income so that court could determine whether action should also be stayed as to her. Jamaica Sav. Bank v. Bryan, 25NYS(2d)17, 175Misc978.

Where wife had a joint liability with her husband, who had entered the navy, as the owner of a car, she was entitled to the same stay of proceedings as that granted to her husband. Griswold v. Cady, 27NYS(2d)302.

Person who signed a joint and several loan contract merely for purpose of accommodating his cosigner, and who received no part of the loan, was, in discretion of the court, entitled to stay of collection of judgment when his principal entered military service. Akron Auto Finance Co. v. Stonebraker, 66OhioApp507, 35NE(2d)585.

A co-maker of a promissory note is not entitled to a stay of action to enforce his liability, on account of the military service of the other maker, even though he was an accommodation maker. Itzkowitz, 30NYS(2d)(SupCt)36. See Dun. Dig. 510b.

(1).

Fact that accommodation party on a note is designated as a co-maker would not prevent exercise of court's power of discretion to grant a stay as to him. Modern Industrial Bank v. Zaentz, 29NYS(2d)(MunCt)969, 177Misc132.

Motion of accommodation maker on a note for a stay of action on the note on account of principal maker's military service could not be granted where there was nothing to show that a stay had been granted to the principal maker. Id.

Annotations under 1918 Act.

Court did not abuse discretion by refusing to stay proceedings against sureties on bail bond, forfeited for nonappearance of principals for trial, where principals, although in military service, could have attended trial but wilfully absented themselves. Allen v. Sweeney, 185Ky 94, 213SW217.

Court did not abuse discretion by denying stay of proceedings against sureties on bond forfeited for nonappearance of principals who, although in military service, could have attended trial but willfully refused to do so. Briggs v. Commonwealth, 185Ky340, 214SW975.

§514. Application to former citizens serving in armed forces of allied nations.

Persons who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act remains in force and who immediately prior to such service were citizens of the United States shall, except in those cases provided for in section 512, be entitled to the relief and benefits afforded by this Act if such service is similar to military service as defined in this Act, unless they are dishonorably discharged therefrom, or it appears that they do not intend to resume United States citizenship. (As added Oct 6, 1942, c. 581, §4, 56 Stat. 770.)

§515. Giving notice of benefits to persons entering military service.

The Secretary of War and the Secretary of the Navy shall make provision, in such manner as each may deem appropriate for his respec-

tive Department, to insure the giving of notice of the benefits accorded by this Act to persons in and to persons entering military service. The Director of Selective Service shall cooperate with the Secretary of War and the Secretary of the Navy in carrying out the provisions of this section. (As added Oct. 6, 1942, c. 581, §4, 56 Stat. 770.)

§516. Application to drafted men.

Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military service under articles I, II, and III of this Act during the period beginning on the date of receipt of such order and ending on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date *upon which he reports for such service.* (As added, Oct. 6, 1942, c. 581, §4, 56 Stat. 770.)

§517. Certain procedure not prohibited by this Act.

Nothing contained in this Act shall prevent—

(a) the modification, termination, or cancelation of any contract, lease, or bailment or any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage, or

(b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment, pursuant to a written agreement of the parties thereto (including the *person in military service* concerned, or the person to whom section 106 is applicable, whether or not such person is a party to the obligation) or their assignees, executed during or after the period of military service of the person concerned or during the period specified in section 106. (As added Oct. 6, 1942, c. 581, §4, 56 Stat. 770.)

ARTICLE II.—GENERAL RELIEF

§520. Default judgments; affidavits; bonds; attorneys for persons in service.

Sec. 200. (1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file *in the court an affidavit setting forth facts* showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that *he may suffer by reason of any judgment* should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act.

(2) Any person who shall make or use an affidavit required under this section, knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any judgment shall be rendered in any action or proceeding governed section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to *defend; provided it is made to appear that the* defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

See Laws of Minnesota 1943, c. 565. [§§2151-1 to 2151-6].

Notes of Decisions

Immunity of soldiers from civil process, see notes under Mason's U.S.C.A., Tit. 10, §610.

In proceeding by mortgagee who had purchased at foreclosure sale to have owner's certificate of title canceled and a new certificate issued, there was no error in not requiring an affidavit that owner of the land was not in military service, where court found that he was in an insane asylum, and was not and had never been in the service. Petition of Institution for Savings, 309Mass12, 33NE(2d)(Mass)526.

A liberal construction should be accorded this act so that in probate court proceedings where there is default of appearance by any interested party, an affidavit as to military service should be filed or other action taken in accordance with this act. Cool's Estate, 19NJMisc236, 18Atl (2d)714.

In a proceeding in probate court, affidavit of military service should as nearly as practical be made contemporaneously with entry of decree and state facts as to military service as of day of judgment, and parenthetically decree should contain recital as to method of compliance with this act. Id.

A default of appearance defined. Id.

An appointment of counsel should be made whenever question arises so that rights of all parties may be protected. Id.

Ordinarily the services rendered by a proctor and counsel appointed are to be regarded as a patriotic duty for which no compensation would be expected. Id.

Where allowances are commonly made according to the usual probate practice reasonable compensation may be awarded an attorney appointed to represent an interest under this act. Id.

No modification of alimony order would be made where civilian employer of husband in military service was paying him difference between military and civilian pay. Clarke v. Clarke, 25NYS(2d)64.

An attorney appointed by court to represent interests of a defendant, in the military service, in an action for foreclosure of a mortgage should be allowed taxable costs as compensation. Weynberg v. Downey, 25NYS(2d)600, 176 Misc196.

An order directing entry of judgment for arrears of alimony would not be opened to protect interests of retired army colonel. Lang v. Lang, 25NYS(2d)775, 176Misc213.

(1).

Law applies to application for adoption of child of one in military service. Op. Atty. Gen. (340b-2), Sept 1, 1942.

Annotations under 1918 Act.

Failure to file affidavit did not entitle defendants, who were not in the service, to have set aside a default judgment. Howie Mining Co. v. McGary, (DC-WVa), 256Fed38.

Affidavit could be filed at any time before judgment. Mader v. Christie, 52CalApp138, 198 Pac45.

Default judgment should not be opened for lack of the required affidavit unless it appear by the record that person against whom rendered was in fact in military service. Harrell v. Shealey, 24GaApp389, 390, 100SE800.

Default judgment entered without the required affidavit is not void. Eureka Homestead Soc. v. Clark, 145La917, 83So190.

Defendant who was not in military service could not have default judgment vacated for lack of affidavit. Alzugaray v. Onzurez, 25NM 662, 187Pac549; Wells v. McArthur, 77Okla279, 188Pac322.

Attorney has no right to serve notice of appearance or answer binding upon the absentee. Davison v. Lynch, 171NYS46, 103Misc311.

Application to open judgment was properly denied where made more than 90 days after end of military service and without setting up facts

constituting alleged meritorious defense. Duffy v. Phipps, 180NC313, 716, 104SE655.

Affidavit required only where default in appearance, and not where defendant personally in court or answer on file. Bulgin v. American Law Book Co., 77Okla112, 186Pac941; Wells v. McArthur, 77Okla279, 188Pac322.

Irregularity in entering interlocutory default judgment without affidavit was cured by filing affidavit before final judgment, and finding that defendant was not in military service. First Nat. Bank v. J. C. Walling & Son, 218SW(Tex CivApp)1081.

§521. Stay of proceedings, etc.

Sec. 201. At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act, unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

Royster v. Lederle, (CCA6), 128F(2d)197; note under §513.

A stay in an action for personal injuries should be granted only where defendant is covered by insurance, on condition that the insurance carrier execute a bond. Royster v. Lederle, (CCA6), 128F(2d)197.

Trial in action to recover damages for personal injury in automobile accident would not be postponed because of defendant's military service where he was covered by liability casualty insurance, and plaintiff agreed to limit liability to amount of the policy. Swiderski v. Moodenbaugh, (DC-Ore), 45FSupp790. See Dun. Dig. 510b.

While this act is to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation, the denial of a stay to one absent from home where absence was due to policy rather than the result of military service, was within the discretion of the trial court. Boone v. Lightner, 63SCR1223, aff'g 222NC205, 22SE(2d) 426.

This act imposes upon a party resisting an application for stay of an action burden of satisfying the court of the absence of material impairment by military service of the defendant's ability to defend himself. Bowsman v. Peterson, (DC-Neb), 45FSupp741.

The purposes of this act were to promote military efficiency by relieving service men of worry about personal responsibilities and to see that litigants obtained no advantage over service men by reason of their service. Id.

Action against one in military service on account of injuries received in automobile accident stayed for duration of defendant's service plus 3 months. Id.

Annotations under 1918 Act.

Appeal proceedings stayed where person who would be solely liable for costs if appellant prevailed was serving in Naval Reserve. Post v. Thomas, 170NYS(2d)227, 183AppDiv525.

Not abuse of discretion to deny stay, after armistice, to ordnance officer residing at home with free time to attend trial without conflict with military duties. Fennell v. Frisch's Adm'r, 192Ky535, 234SW198.

Granting or refusing stay is within sound discretion of court. State ex rel. Clark v. Klene, 201MoApp408, 212SW55.

Where appellate court reversed a decision and ordered trial court to grant a judgment non obstante veredicto in favor of appellant or a new trial, entry of judgment against appellee should be stayed during time he was in military service, under state moratorium law. Thress v. Zemple, 42ND599, 174NW85.

Trial of suit against railway company involving charge of negligence against an employee, who would be liable over to defendant and was defendant's chief witness, should have been stayed while the employee's absence in military service prevented his attendance. Ilderton v. Charleston Consol. R. Co., 113SC91, 101SE282.

§522. Fines and penalties on contracts, etc.

Sec. 202. When an action for compliance with the terms of any contract is stayed pursuant to this Act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired.

Maker of note to bank who failed to make contract payment when he was called into military service could be relieved from fine provided for by state banking law. Modern Industrial Bank v. Zaentz, 29NYS(2d)(MunCt)969, 177Misc132.

§523. Stay or vacation of execution of judgments, attachments, etc.

Sec. 203. In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service—

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act.

Notes of Decisions

Akron Auto Finance Co. v. Stonebraker, 66 OhioApp507, 35NE(2d)585; note under §513.

Whether court should enter judgment in bastardy proceeding for monthly payments against defendant found guilty who has entered military service is a matter of discretion and fact. Minn. Op. Atty. Gen. (310), Oct. 28, 1942.

Annotations under the 1918 Act.

Absence of bankrupt's attorney in military service did not empower court to relieve bankrupt from laches in applying for discharge. In re Weldon, (DC-Ia), 262Fed828.

Applied to relieve appellee from effect of default, while in military service, in paying costs and taking out mandate on reversal of judgment in his favor. Kuehn v. Neugebauer, 216SW(Tex CivApp)259.

Where federal act providing among other things for stay of judgments and a state act providing for stay of judicial actions against person in military service conflict, the federal act governs. Konkel v. State, 168Wis335, 170 NW715.

§524. Duration and term of stays; codefendants not in service.

Sec. 204. Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a codefendant with others the plaintiff may nevertheless by leave of court proceed against the others.

Notes of Decisions

Modern Industrial Bank v. Zaentz, 29NYS(2d)(MunCt)969, 177Misc132; note under section 513 (1).

This act imposes upon a party resisting an application for stay of an action burden of satisfying the court of the absence of material impairment by military service of the defendant's ability to defend himself. Bowsman v. Peterson, (DC-Neb), 45FSupp741.

Action against one in military service on account of injuries received in automobile accident stayed for duration of defendant's service plus 3 months. Id.

Where one in the military service seeks to have mortgage foreclosure proceedings against him stayed, he should furnish proof that he will be handicapped in asserting his defenses or in meeting his obligations. Jamaica Sav. Bank v. Bryan, 25NYS(2d)17, 175Misc978.

Annotations under the 1918 Act.

Not error to proceed with trial against other defendants who were not in military service. White v. Kimerer, 83Okla9, 200Pac430.

§525. Statutes of limitations as affected by period of service.

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment. (As amended Oct. 6, 1942, c. 581, §5, 56 Stat. 770.)

Annotations under the 1918 Act.

This section does not apply to transactions which are effected without judicial action. Ebert v. Poston, 266US548, 45SCR188, 69LEd435, rev'g 221Mich361, 191NW202.

Application of this section not confined to ordinary statutes of limitations, but extends to limitations fixed by statute creating cause of action. Clark v. Mechanics American Nat. Bank, (CCA8), 282Fed589.

Does not apply to statutory period for redemption from foreclosure sale. Wood v. Vogel, 204Ala692, 87So174.

Applies to state limitation laws. Lewis v. Anthony Republican Pub. Co., 111Kan653, 208Pac 254; Erickson v. Macy, 231NY86, 131NE744, 16 ALR1322, rev'g 185NYS926.

Where wife sued in own right for personal injuries and died pending suit while husband in military service, this section did not enlarge time allowed by local law for husband to appear and prosecute suit as executor, but did preserve his right to do so as a beneficiary of wife's estate. Halle v. Cavanaugh, 79NH418, 111Atl 76.

Applies to special period of limitation prescribed by insurance policy. Steinfield v. Massachusetts Bonding & Ins. Co., 80NH39, 112Atl 800.

Does not operate to extend time for service by publication under N. Y. Code Civ. Proc. Erickson v. Macy, 183NYS689, 112Misc660.

Plaintiff may deduct time of absence in military service in computing limitations. Kosel v. First Nat. Bank, 55ND445, 214NW249.

Applies to actions in state courts. Bell v. Baker, 260SW(TexComApp)158.

Valid as applied to state courts, under U. S. Const., Art 6. Bell v. Baker, 260SW (TexCom App)158.

Time within which heirs of soldier could bring action in trespass to try title under Texas statute was suspended during service of deceased in navy. Easterling v. Murphey, (TexCiv App)11SW(2d)329.

This section, held to apply to one who enlisted in the Navy for four years, at the end of which period he was honorably discharged, and some months later accepted a new appointment as paymaster's clerk in the Navy, though, after receiving his discharge it was his intention not to re-enter the military or naval service. Cronin, 62CtCls20.

Soldiers & Sailors Civil Relief Act of 1918 stays the running of the statute of limitations against soldier's claim for wages until six months after presidential proclamation of termination of the war. Bohannon, 83CtCls423.

§526. Interest in excess of 6% prohibited except in certain cases; interest defined.

No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability. (As added, Oct. 6, 1942, c. 581, §6, 56 Stat. 771.)

§527. Non-application of §525.

Section 205 [§525] of this Act shall not apply with respect to any period of limitation prescribed by or under the internal revenue laws of the United States. (Added Oct. 21, 1942, c. 619, Title V, §507(a)(2)(B), 56 Stat. 961.)

ARTICLE III.—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

Act Oct. 6, 1942, chapter 581, section 7, 56 Stat. 771, provides that the title to Article III of this act shall be amended to read as set out above.

§530. Eviction or distress for nonpayment of rent; stay; allotment of pay for payment.

Sec. 300. (1) No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed $80 per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(2) On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this Act, or it may make such other order as may be just.

Where such stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of such premises similar to that granted persons in military service in sections 301, 302, and 500 of this Act to such extent and for such period as may appear to the court to be just.

(3) Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (1) hereof, or attempts so to do shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

(4) The Secretary of War, the Secretary of the Navy, or the Secretary of the Treasury with respect to the Coast Guard, as the case may be, is hereby empowered, subject to such regulations as he may prescribe, to order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or other dependents of such person. (As amended Oct. 6, 1942, c. 581, §8, (a), (b), 56 Stat. 771.)

Notes of Decisions

Act of cutting off the gas and electric service because of failure to pay for past service is not an "eviction" or "distress" contrary to provisions of the Soldiers' and Sailors' Civil Relief Act of 1940. Lesher v. Louisville Gas & Elec. Co., (DC-Ky), 49FSupp88.

Although the act should be liberally construed it is not within the province of the court to extend provisions of any statute beyond the field intended under the guise of liberal construction. Id.

Stay of all proceedings granted while witness necessary to defense was in the military service. Korsch v. Lambing, 28NYS(2d)167.

Annotations under the 1918 Act.

This section does not apply to an action in ejectment by mortgagee against a mortgagor holding an estate by entirety with her husband, who was in military service. Union Labor Life Ins. Co. v. Wendeborn, 21Atl(2d)(NJ)317.

No affidavit that defendant was not in military service should have been demanded before issuing a warrant for rent where defendant had personally appeared and defended the action. People v. Byrne, 189NYS916.

Office tenant who was drafted into military service held to be relieved of liability for rent. Salomon v. Greenfield, 181NYS511, 110NYSMisc 270.

Relief under this section is discretionary with court. Gilluly v. Hawkins, 108Wash79, 182Pac 958.

§531. Installment contracts for purchase of property.

Sec. 301. (1) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of

such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

(2) Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) of this section or in section 107, or attempts so to do shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

(3) Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this Act unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties. (As amended Oct. 6, 1942, c. 581, §9(a), (c), (d), 56 Stat. 771.)

This act did not gve one who entered military service after he had given installment note for the purchase of stock, which was held by vendor as security, a right to a decree suspending payment on the note until three months after his discharge and enjoining collection, where at the time of the application there was no note in default. Application of Roossin, 30NYS(2d)(Sup Ct)9.

Annotations under the 1918 Act.

Not applicable to oil and gas mining lease. Lima O. & G. Co. v. Pritchard, 92Okla113, 218 Pac863.

This section does not apply where holder of purchase money notes and lien does not attempt to rescind or resume possession, but seeks foreclosure by judicial proceedings. Bassham v. Evans, 216SW(TexCivApp)446.

§532. Mortgages, trust deeds, etc.

Sec. 302. (1) The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him, which obligations originated prior to such person's period of military service.

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107, unless upon an order previously granted by the court and a return thereto made and approved by the court.

(4) Any person who shall knowingly cause to be made any sale, foreclosure, or seizure of property, defined as invalid by subsection (3) hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (As amended Oct. 6, 1942, c. 581, §§9(b), (c), 10, 56 Stat. 771, 772.)

Notes of Decisions

Motion for indefinite stay of sale on a foreclosure of chattel mortgage against a vessel would not be granted on account of owner's military service, where his obligations were not materially affected by his military service the value of the vessel was decreasing, and he deliberately defaulted in foreclosure action when he had opportunity to present any defense he had. The Sylph, (DC-NY)42FSupp354.

The fact that the court's finding that no one interested in land was in military service might be wrong, is no ground for refusing to order a new certificate of title issued. Petition of Institution for Savings, 309Mass12, 33NE(2d)526.

Where defendant and her husband held a mortgaged estate by entirety, fact that husband was in military service did not give ground for a stay of an ejectment action by mortgagee in which husband was not made a party. Union Labor Life Ins. Co. v. Wendeborn, 21Atl(2d)(NJ)317.

This section had no application in a proceeding to foreclose a mortgage where defendant was not the owner. Jamaica Sav. Bank v. Bryan, 25NYS(2d)17, 175Misc978.

A nominal defendant whose wife held title to the property was not entitled to have mortgage foreclosure proceedings in abeyance until he was released from military service. Jamaica Sav. Bank v. Bryan, 25NYS(2d)641, 176Misc215.

The court could grant a stay of foreclosure proceedings to one who had been called to active naval service, where his income was reduced and where he had previously kept up his payments on the mortgage. Cortland Sav. Bank v. Ivory, 27NYS(2d)313.

Annotations under the 1918 Act.

Decree for foreclosure of a mortgage may be stayed or otherwise disposed of only if foreclosure suit was commenced after passage of the act and during period of military service. Ebert v. Poston, 266US548, 45SCR188, 69LEd435, rev'g 221Mich361, 191NW202.

It is only foreclosure sales made after passage of this act during military service that are to be invalidated if made without leave of court. Id.

State Moratorium Act would not stay the sale of automobiles attached on money judgment against owner before he entered military service. Studt v. Trueblood, 190 Ia 1225, 181NW445.

Rights hereunder are personal to the soldier and cannot be waived by his representative. Hoffman v. Charlestown Five Cents Sav. Bank, 231Mass324, 121NE15.

Constitutional. Hoffman v. Charlestown Five Cents Sav. Bank, 231Mass324, 121NE15.

Protects equitable as well as legal rights in property. Hoffman v. Charlestown Five Cents Sav. Bank, 231Mass324, 121NE15.

Not necessary that soldier's or sailor's interest appear of record or be known to party procuring sale. Hoffman v. Charlestown Five Cents Sav. Bank, 231Mass324, 121NE15.

Protection not limited to property used by soldier or sailor, or his dependents, for residence or business. Hoffman v. Charlestown Five Cents Sav. Bank, 231Mass324, 121NE125.

On suit for specific performance, a plaintiff tendering title derived from mortgage sale during war under power without order of court, has burden of showing that no person in military service had any interest in the mortgaged land. Morse v. Stober, 233Mass223, 123NE780.

Shareholders by certificate in a real estate trust, who were in military service, were entitled to the protection of this Act as "owners" of the property mortgaged by the trustees. John Hancock Mut. L. Ins. Co. v. Lester, 234Mass559, 125NE594.

Authorized equity courts in Massachusetts to foreclosure power of sale mortgages. John Hancock Mut. L. Ins. Co. v. Lester, 234Mass559, 125 NE594.

Shareholders by certificate in a real estate trust, who were in military service, were entitled to the protection of this Act as "owners" of the property mortgaged by the trustees. John Hancock Mut. L. Ins. Co. v. Lester, 234Mass559, 125NE594.

Where obligation of mortgage, originating prior to this Act, was satisfied by obligation of new mortgage originating after this Act, but old mortgage kept in force as collateral security for new obligation, foreclosure of old mortgage for default on new obligation was not subject to stay. Kendall v. Bolster, 239Mass152, 131NE319.

Time limit on suits for relief because of failure to comply with subdivision (3) of this sec-

tion. See Act of Mar. 4, 1923, Chap. 284, 42Stat 1510. Great Barrington Sav. Bank v. Brown, 239 Mass546, 132NE398.

Mortgage sale within three months after expiration of mortgagor's military service was not invalid where mortgagor knew of it and made no objection. Church v. Brown, 247Mass282, 142 NE91.

Soldier's action for damages for violation of his rights under this section. Bassham v. Evans, 216SW(TexCivApp)446.

§533. Appraisal of property; payment of money for foreclosure of mortgage, rescission of contract.

Sec. 303. Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this Act, the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract. (As added Act Oct. 6, 1942, c. 581, §12, 56 Stat. 772.)

Repealed, Oct. 6, 1942, c. 581, §11, 56 Stat. 772, and added as set out above by section 12 of such act.

§534. Provisions of act applicable to leases; penalty for holding personal property.

Sec. 304. (1) The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes, by such person or by him and his dependents.

(2) Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by the lessee at any time following the date of the beginning of his period of military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

(3) Any person who shall knowingly seize, hold, or detain the personal effects, clothing, furniture, or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000 or both. (Act Oct. 2, 1942, c. 581, §12, 56 Stat. 772.)

§535. Stay of action on insurance policies; storage liens, etc.

Sec. 305. (1) Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure the payment of any obligation of such person, no assignee of such policy (except the insurer in connection with a policy loan) shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during such period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of such assignment unless upon leave of court granted upon an application made therefor by such assignee. The court may thereupon refuse to grant such leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service. For the purpose of this subsection premiums which are guaranteed under the provisions of article IV of this Act shall not be deemed to be due and unpaid.

(2) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of military service and for three months thereafter except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In such proceeding the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act; or

(b) make such other disposition of the case as may be equitable to conserve the interest of all parties.

The enactment of the provisions of this subsection shall not be construed in any way as affecting or as limiting the scope of section 302 of this Act.

(3) Any person who shall knowingly take any action contrary to the provisions of this section, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (As added Oct. 6, 1942, c. 581, §12, 56 Stat. 773.)

§536. Application of act to dependents.

Sec. 306. Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article upon application to a court therefor, unless in the opinion of the court the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent. (As added, Oct. 6, 1942, c. 581, §12, 56 Stat. 773.)

ARTICLE IV.—INSURANCE

§540. Definitions.

Sec. 400. As used in this article—

(a). The term "policy" shall include any contract of life insurance or policy on a life, endowment, or term plan, including any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums if the insured engages in the military service of the United States as defined in section 101, of article I of this Act or which does not contain any limitation or restriction upon coverage relating to engagement in or pursuit of certain types of activities which a person might be required to engage in by virtue of his being in such military service, and (1) which is in force on a premium-paying basis at the time of application for benefits hereunder, and (2) which was made and a premium paid thereon before the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 or not less than thirty days before the date the insured entered into the military service. The provisions of this Act shall not be applicable to policies or contracts of life insurance issued under the War Risk Insurance Act, as amended, the World War Veterans Act, as amended, or the National Service Life Insurance Act of 1940, as amended.

(b) The term "premium" shall include the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated.

(c) The term "insured" shall include any person in the military service of the United States as defined in section 101, article I, of this Act, whose life is insured under and who is the owner and holder of and has an interest in a policy as above defined.

(d) The term "insurer" shall include any firm, corporation, partnership, or association chartered or authorized to engage in the insurance

business and to issue a policy as above defined by the laws of a State of the United States or the United States. (As amended Oct. 6, 1942, c. 581, §13, 56 Stat. 773.)

§541. Application for protection; notice; limitations on amount.

Sec. 401. The benefits and privileges of this article shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article, unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the provisions of this article, and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total amount of insurance on the life of one insured under policies protected by the provisions of this article shall not exceed $10,000. If an insured makes application for protection of policies on his life totaling insurance in excess of $10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article may be extended to include policies for a total amount of insurance not to exceed $10,000, and a policy which affords the best security to the Government shall be given preference. (As amended Oct 6, 1942, c. 581, §13, 56 Stat. 774.)

§542. Forms; agreement to modification.

Sec. 402. Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article, shall be sufficient as an application for the benefits of this article, but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this article and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article full force and effect with respect to such policy. (As amended Oct. 6, 1942, c. 581, §13, 56 Stat. 774.)

Life insurance company could limit its liability on policy insuring one killed in action in France to the net reserve where it had no notice that insured was serving abroad, in the absence of showing that insured brought himself within provisions of §405 of the Soldiers & Sailors Civil Relief Act of 1918. Hanna v. Aetna Life Ins. Co., 217MoApp261, 263SW526.

§543. Determination of what policies are entitled to protection.

Sec. 403. The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest. (As amended, Oct. 6, 1942, c. 581, §13, 56 Stat. 775.)

§544. Payment of dividends, loans, etc., to insured; effect upon right to change beneficiary.

Sec. 404. No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is protected by the provisions of this article except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article except upon approval by the Veterans' Administration. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article. (As amended Oct. 6, 1942, c. 581, §13, 56 Stat. 775.)

§545. Deductions by insurer where policies mature while under protection; report to Veterans' Administration.

Sec. 405. In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article, the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act was issued. The amount deducted by reason of the protection afforded by this article shall be reported by the insurer to the Administrator of Veterans' Affairs. (As amended Oct. 6, 1942, c. 581, §13, 56 Stat. 775.)

§546. Guarantee of payment of interest and premiums by the U. S., liability of insured to U. S. for payment.

Sec. 406. Payment of premiums and interest thereon at the rate specified in section 405 hereof becoming due on a policy while protected under the provisions of this article is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article, the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law. (As amended Oct. 6, 1942, c. 591, §13, 56 Stat. 775.)

§547. Rules of procedure to be prescribed by Administrator of Veterans' Affairs; findings; reports to Congress.

Sec. 407. The Administrator of Veterans' Affairs is hereby authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article shall be final, and shall not be subject to review by any other official or agency of the Government. The Administrator of Veterans' Affairs shall report annually to the Congress on the administration of this article. (As amended Oct. 6, 1942, c. 581, §13, 56 Stat. 775.)

§548. Rights under former application preserved; surrender of policies to U. S.

Sec. 408. (1) The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the approval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this ar-

ticle, as amended. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions. (As amended Oct. 6, 1942, c. 581, §13, 56 Stat. 776.)

§549. Deduction of unpaid premiums from proceeds of policies.

Sec. 409. In the event that the military service of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid.

§550. Lapsing of policy for failure to pay past due premiums upon termination of service.

Sec. 410. If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: Provided, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force.

§551. Accounts stated between insurers and United States.

Sec. 411. At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410, but not in any case a greater amount in any policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans.

§552. Payment of balances due insurers by Secretary of Treasury.

Sec. 412. The balance in favor of the insurer in each case shall be certified by the Administrator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article.

§553. Policies excepted from application of article.

Sec. 413. This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium.

§554. Insurers within application of article.

Sec. 414. This article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service.

ARTICLE V.—TAXES AND PUBLIC LANDS

§560. Taxes; sale of property to enforce collection; redemption of property sold; penalty for non-payment.

Sec. 500. (1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. (As amended Oct. 6, 1942, c. 581, §14(a), 56 Stat. 776.)

Act Oct. 6, 1942, c. 581, §14(b), 56 Stat. 776, repealed subdivision (5) of this section.

See Laws of Minnesota 1943, c. 565. [§§2151-1 to 2151-6.]

Act has no effect upon confession of judgment, and reinstatement of all penalties and interest, but lands should not be listed as delinquent or be sold. Minn. Op. Atty. Gen. (310), Nov. 2, 1942.

Act limits enforcement of personal property tax on personal property assessed when soldier was a civilian. Op. Atty. Gen. (421-1), Apr. 13, 1943.

(1).

Act extends to all property coming within description and is not limited to the home. Iowa OAG, Aug 11, 1943.

(2).

Benefits are not automatic, but depend upon filing of an affidavit either by the person in military service or by some person in his behalf. Iowa OAG, Aug. 11, 1943.

§561. Rights to public lands not forfeited; grazing lands.

Sec. 501. (1) No right to any lands owned or controlled by the United States initiated or acquired under any laws of the United States, including the mining and mineral leasing laws, by any person prior to entering military service shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon or his failure to do any other act required by or under such laws.

(2) If a permittee or licensee under the Act of June 28, 1934 (48 Stat. 1269) [43:315-315n] enters military service, he may elect to suspend his permit or license for the period of his military service and six months thereafter, and the Secretary of the Interior by regulations shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during such suspension.

(3) This section shall not be construed to control specific requirement contained in this article.

§562. Homestead entries and settlement claims; etc.

Sec. 502. If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed, after such entry or application enters military service, or if any person who has a valid settlement claim enters military service, the Department of the Interior shall construe his military service to be equivalent to residence and cultivation upon the tract entered or settled upon for the period of such service. From the effective date of this Act no contest shall be initiated on the ground of abandonment and no allegation of abandonment shall be sustained against any such person, unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases initiated subsequent to the effective date of this Act that the alleged absence from the land was not due to such military service. If such person is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability shall be deducted from the required length of residence, without reference to the time of actual service. No patent shall issue to any such person who has not resided upon, improved, and cultivated his homestead for a period of at least one year.

§563. Same; death or incapacity; etc.

Sec. 503. (1) If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed or who has a valid settlement claim dies while in military service or as a result of such service, his widow, if unmarried, or in the case of her death or marriage, his minor children, or his or their legal representatives, may proceed forthwith to make final proof upon such entry or upon an application which is allowed after the applicant's death, or upon a homestead application thereafter allowed based on a valid settlement claim, and shall be entitled to receive a patent for such land. The death of such person while in military service or as a result of such service shall be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead or claim, notwithstanding the provisions of section 502 of this Act.

(2) If such person is honorably discharged and because of physical incapacities due to such service is unable to return to the land, he may make final proof without further residence, improvement, or cultivation, at such time and place as the Secretary of the Interior may authorize, and receive a patent to the land entered.

(3) The Act of July 28, 1917 (40 Stat. 248) [43:241 and 242] is hereby repealed.

§564. Desert-land entries; suspension of requirements.

Sec. 504. (1) No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into military service shall be subject to contest or cancellation for failure to make or expend the sum of $1 per acre per year in improvements upon the claim or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in military service or during a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of his period of service and the six-months' period and any such period of hospitalization.

(2) If such entryman or claimant is honorably discharged and because of physical incapacities due to such service is unable to accomplish reclamation of and payment for, the land, he may make proof without further reclamation or payments under such rules as the Secretary of the Interior may prescribe and receive patent for the land entered or claimed.

(3)In order to obtain the benefits of this section, such entryman or claimant shall, within six months after the effective date of this Act or within six months after his entrance into military service, file or cause to be filed in the land office of the district in which his claim is situated a notice that he has entered military service and that he desires to hold the desert claim under this section.

§565. Mining claims; requirements suspended.

Sec. 505. (1) The provisions of section 2324 of the Revised Statutes of the United States [30:28], which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor not less than $100 worth of labor shall be performed or improvements made during each year, shall not apply during the period of his service, or until six months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in line of duty, to claims or interests in claims which are owned by a person in military service and which have been regularly located and recorded. No mining claim or any interest in a claim which is owned by such a person and which has been regularly located and recorded shall be subject to forfeiture by nonperformance of the annual assessments during the period of such military service, or until six months after the termination of such service or of such hospitalization.

(2) In order to obtain the benefits of this section, the claimant of any mining location shall, before the expiration of the assessment year during which he enters military service, file or cause to be filed in the office where the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold his mining claim under this section.

§566. Mineral permits and leases; suspension; etc.

Sec. 506. (1) Any person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may, at his election, suspend all operations under his permit or lease for a period of time equivalent to the period of his military service and six months thereafter. The term of the permit or lease shall not run during such period of suspension nor shall any rentals or royalties be charged against the permit or lease during the period of suspension.

(2) In order to obtain the benefit of this section, such permittee or lessee shall, within six months after the effective date of this Act or six months after his entrance into military service, notify the General Land Office by registered mail of his entrance into such service and of his desire to avail himself of the benefits of this section.

(3) This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

§567. Right to take action for perfection, defense; etc.

Sec. 507. Nothing in this article shall be construed to limit or affect the right of a person in military service to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering military service. It shall be lawful for any person while in such service to make any affidavit or submit any proof which may be required by law or the practice or regulations of the General Land Office in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which the person is engaged. Such affidavits shall be as binding in law and with like penalties as if taken before a register of a United States land office. The Secretary of the Interior may issue rules and regulations to effectuate the purposes of sections 501 to 512, inclusive.

§568. Irrigation rights; residence requirements suspended.

Sec. 508. The Secretary of the Interior is hereby authorized, in his discretion, to suspend as to persons in military service during the period while this Act remains in force and for a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in line of duty that provision of the act known as the "Reclamation Act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper.

§569. Distribution of information concerning benefits of article; forms.

Sec. 509. The Secretary of the Interior shall issue through appropriate military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article except as to sections 500, 513 and 514 hereof and shall furnish forms to be distributed in like manner to those desiring to make application for its benefits, except as to said sections. (As amended Oct. 6, 1942, c. 581, §15, 56 Stat. 776.)

§570. Homestead entrymen permitted to leave entries to perform farm labor.

Sec. 510. (1) During the pendency of any war in which the United States may be engaged while this Act remains in force any homestead entryman shall be entitled to a leave of absence from his entry for the purpose of performing farm labor. The time actually spent in farm labor shall be counted as constructive residence, if within fifteen days after leaving his entry to engage in such labor the entryman files a notice of absence in the land office of the district in which his entry is situated, and if at the expiration of the calendar year the entryman files in that office a written statement under oath and corroborated by two witnesses giving the date or dates when he left his entry, the date or dates of his return, and the place where and person for whom he was engaged in farm labor during such period or periods of absence.

(2) Nothing in this section shall excuse any homestead entryman from making improvements or performing the cultivation upon his entry required by law. The provisions of this section shall apply only to persons whose applications have been allowed or filed prior to the effective date of this Act.

§571. Land rights of persons under 21.

Sec. 511. Any person under the age of twenty-one who serves in the military service while this Act remains in force shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over twenty-one now possess under such laws. Any requirements as to establishment of residence within a limited time shall be suspended as to entry by such person until six months after his discharge from military service. Applications for entry may be verified before any officer in the United States or any foreign country authorized to administer oaths by the laws of the State or Territory in which the land may be situated.

§572. Extension of benefits to persons serving with war allies of United States.

Sec. 512. Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act remains in force shall be entitled to the relief and benefits afforded by sections 501 to 511 inclusive, if such service is similar to military service as defined in this Act, and if they are honorably discharged and resume United States citizenship or die in the service of the allied forces or as a result of such service. (As amended Oct. 6, 1942, c. 581, 56 Stat. 776.)

§573. Income taxes; collection deferred; interest; statute of limitations.

Sec. 513. The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the period of military service. The provisions of this section shall not apply to the income tax on employees imposed by section 1400 of the Federal Insurance Contributions Act.

Act Oct. 21, 1942, c. 619, Title 5, §507(b)(2)(A), 56 Stat. 961, provides as follows: "The amendments made by this section (§507 of the Act) shall not be construed to shorten any period fixed under the provisions of section 513 (50:App 573) of the Soldiers' and Sailors' Civil Relief Act of 1940 within which any act may be done, except that any action or proceeding authorized under section 3804(d)(1) of the Internal Revenue Code, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted without regard to the period so fixed."

§574. Absence from state on military duty not to effect domicile for state tax purposes; compensation for military service not taxable in non-domiciliary state.

Sec. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. (Added Oct. 6, 1942, c. 581, §17, 56 Stat. 777.)

ARTICLE VI.—ADMINISTRATIVE REMEDIES

§580. Transfers to take advantage of act.

Sec. 600. Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since the date of the approval of this Act been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this Act to the contrary notwithstanding.

§581. Certificates of service; persons reported missing.

Sec. 601. (1) In any proceeding under this Act a certificate signed by The Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army of the United States, signed by the Chief of the Bureau of Navigation of the Navy Department as to persons in the United States Navy or in any other branch of the United States service while serving pursuant to law with the United States Navy, and signed by the Major General Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate:

That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service.

(2) It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

(3) Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of War or Navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: Provided, That no period herein limited which begins or ends with the death of such person shall be extended hereby beyond a period of six months after the time when this Act ceases to be in force.

Act Jan. 20, 1942, chapter 10, 56 Stat. 10, provides: "Hereafter the office of 'Major General Commandant of the Marine Corps' shall be known as 'Commandant of the Marine Corps'."

§582. Revocation, etc., of interlocutory orders.

Sec. 602. Any interlocutory order made by any court under the provisions of this Act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require.

§583. Separability of provisions.

Sec. 603. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

§584. Termination of act.

Sec. 604. This Act shall remain in force until May 15, 1945: Provided, That should the United States be then engaged in a war, this Act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter: Provided further, That wherever under any section or provision of this Act a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date herein fixed for the termination of this Act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction.

Notes of Decisions

Where one having a cause of action for trespass to land entered the military service in 1917, statute of limitations did not recommence to run against him until he was discharged in 1921. Easterling v. Murphy, 11SW(2d)(TexCiv App)329.

§585. Inapplicability of Soldiers' and Sailors' Civil Relief Act of 1918.

Sec. 605. The provisions of section 4 of the joint resolution approved August 27, 1940 (Public Resolution Numbered 96, Seventy-sixth Congress), and the provisions of section 13 of the Selective Training and Service Act of 1940, shall not be applicable with respect to any military service performed after the date of enactment of this Act.

ARTICLE VII.—FURTHER RELIEF

§590. Application to court; stay of action on installment contracts for purchase of real estate; stay of action on other obligations and tax liabilities.

Sec. 700. (1) A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service, and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted. (Added Oct. 6, 1942, c. 581, §18, 56 Stat. 777.)

Northwest Territorial Government

(ORDINANCE OF 1787)

Ordinance of 1787 for government of Northwest Territory established a policy of equal rights of inheritance by half and whole bloods subject to change by local statute. McDonnall v. Drawz, 212M283, 3NW(2d)419, 141 ALR970. See Dun. Dig. 2722e.

Organic Act of Minnesota

(March 3, 1849, 9 Stat. 403)

§12.

Ordinance of 1787 for government of Northwest Territory established a policy of equal right of inheritance by half and whole bloods subject to change by local statute. McDonnall v. Drawz, 212M283, 3NW(2d)419, 141 ALR970. See Dun. Dig. 2722e.

Death by wrongful act. Cashman v. Hedberg, 215M463, 10NW(2d)388.

Act Authorizing a State Government

§2.

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

Judicial notice can be taken that Mississippi River at Minneapolis is a navigable stream, and that city cannot use public money to alter railroad bridges to make it possible for river traffic to ply the stream following improvements made by federal government, it being the legally enforceable and uncompensable duty of railroad to alter structure pursuant to a command under the police power. Bybee v. C., 208M55, 292NW617. See Dun. Dig. 6925.

Constitution of the State of Minnesota

PREAMBLE

An instrument must always be construed as a whole, and the particular meaning to be attached to any word or phrase is usually to be ascertained from the context, the nature of the subject treated of, and the purpose or intention of the parties who executed the contract, or the body which enacted or framed the statute or constitution. Merritt v. Stuve, 215M44, 9NW(2d)329. See Dun. Dig. 1576.

ARTICLE 1.—BILL OF RIGHTS.

1. Object of government.

Nothing which is a direct burden upon interstate commerce can be imposed by state without assent of Congress, and silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be forever free. City of Waseca v. B., 206M154, 288NW229. See Dun. Dig. 4895.

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

2. Rights and privileges of citizens.

Editorial Note.—Remedies against soldiers and sailors, including draftees, are affected by the Selective Training and Service Act of 1940, §13 and the new Soldiers' and Sailors' Civil Relief Act of 1940. See beginning of this volume.

Action does not lie in federal court under federal statutes authorizing suits to redress deprivation of civil rights, to recover damages resulting from conspiracy by certain persons as individuals to prevent plaintiff's obtaining and retaining employment with the Works Progress Administration, the protection of his rights being within the exclusive province of the state, since the federal statutes authorizing actions to redress deprivation of civil rights and giving the federal court jurisdiction are for redress against state action and not for the protection of private rights against invasion by individuals. Love v. Chandler, (CCA8), 124F(2d)785; Blood v. Pearson, (CCA8), 124F(2d)787. See Dun. Dig. 3744.

The constitutional right of contract may not be invoked in support of a supposed right to make or enter into any contracts which are illegal. Carleton Screw Products Co. v. Fleming, (CCA8), 126F(2d)537, aff'g 37F Supp754. Cert. den. 317US634, 63SCR54. See Dun. Dig. 1630.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. Dimke v. F., 209M29, 295NW75. See Dun. Dig. 1699.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. Eldred v. D., 209M58, 295NW412. See Dun. Dig. 1671.

Standards of equal protection under Minn. Const. Art. 1, §2 and Art. 4, §§33 and 34 and of uniformity of taxation under Art. 9, §1, are the same as the standards of equality required by equal protection clause of the Fourteenth Amendment of the U. S. Constitution, and operators of chain stores are not denied equal protection by excepting from tax retailers selling products of their own production, manufacture, and preparation, and a classification for purposes of taxation which taxes mail order establishments separately from chain stores is not unconstitutional. C. Thomas Stores Sales System v. S., 209M504, 297NW9. See Dun. Dig. 1671.

Statute requiring owner of used car originating outside state to go to expense of purchasing a surety com-

pany bond which not only guarantees the title but representation that may be made as to condition of the car offered for sale is unconstitutional. State v. Ernst, 209M 586, 297NW24, 134ALR643. See Dun. Dig. 1608.

Exercise of the police power of a state is still limited by due process and equal protection clauses of the Fourteenth Amendment to federal Constitution as well as commerce clause and by state constitution and there can be no arbitrary discrimination in exercise of that power. Id. See Dun. Dig. 1604.

Sale of nonintoxicating malt liquors is subject to regulation under police power of state, and delegation to municipal councils of authority to license and regulate sales thereof, is a valid exercise of such power. State v. Ives, 210M141, 297NW563. See Dun. Dig. 1655.

Act requiring retirement of all police and firemen in cities of first class at 65 years of age but which allows those who have reached 65 without pension rights to continue in service until their pension rights have matured, subject to rules of civil service commission, is not unconstitutional as class legislation. Burns v. City of St. Paul, 210M217, 297NW638. See Dun. Dig. 1671.

Statute requiring licenses and bonds from wholesale dealers in farm products, but excluding farmers selling their own produce and certain co-operatives, for protection of producers, is constitutional. State v. Marcus, 210 M576, 299NW241. See Dun. Dig. 1675.

There is no double taxation of earnings received by an express company from a railroad where each pays a gross earnings tax on its own property in lieu of all other taxes, except a tax on motor vehicles. State v. Railway Express Agency, 210M556, 299NW657. See Dun. Dig. 9140a.

Laws 1939, c. 306, making coronary sclerosis an occupational disease of municipal firemen, is not unconstitutional as special or class legislation. Kellerman v. City of St. Paul, 211M351, 1NW(2d)378. See Dun. Dig. 1671, 1683.

Legislation in its very nature involves classification, and a statute will be held unconstitutional on that ground only where class it necessarily establishes has no substantial basis in fact. Id. See Dun. Dig. 1669.

In certain cases a state may impose upon noresidents a larger license fee then it imposes upon residents, as in the case of hunting, fishing, and fur buyer's liecenses. State v. Starkweather, 214M232, 7NW(2d)747. See Dun. Dig. 1695.

An ordinance directly limiting number of filling stations would be invalid, but a city may pass zoning ordinance and prohibit filling stations within certain zones, or prohibit operation of filling stations within certain distances from existing stations or from churches, schools, or other public buildings. Op. Atty. Gen. (62B), Sept. 26, 1941.

Resolution of county board prohibiting hiring of members of labor unions would be unconstitutional. Op. Atty. Gen. (270d), Nov. 9, 1943.

3. Liberty of the press.

In the exercise of freedom of speech secured by the Fourteenth Amendment of the Constitution of the United States, a labor union may peacefully picket the premises, where a person is engaged in building a house for the purpose of sale, to induce him to let work in connection with the construction thereof, done by him with his own hands, to others, who would employ union labor to do the same. Glover v. Minneapolis Building Trades Council, 215M533, 10NW(2d)481, 147ALR1071. See Dun. Dig. 1654, 1701.

Child refusing to salute flag may be excluded from attendance, and parent may be prosecuted for not providing instruction after exclusion. Op. Atty. Gen. (927), Dec. 16, 1942.

Whether certificate to teach should be denied a student who refuses to salute the flag because of teachings of a sect of which she is a member is a matter for state board of education to determine. Op. Atty. Gen. (172b), March 19, 1943.

A city ordinance prohibiting the publication or distribution of anonymous writings which would tend to expose person to hatred, contempt, ridicule or disgrace, would be valid. Op. Atty. Gen. (62b), Nov. 4, 1943.

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

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

Application of license tax to distribution of religious literature. 27MinLawRev90.

Picketing-freedom of speech-false bannering in connection with peaceful picketing. 27MinnLawRev187.

Liberty of expression and contempt of court. 27Minn LawRev296.

4. Trial by jury.

Glidden Co. v. Retail Hardware Mut. Fire Ins. Co., 181 M518, 233NW310, 77ALR616. Aff'd 284US151, 52SCR69, 76 LEd214.

Where plaintiff as a matter of law was not entitled to recover, court need not consider any error in denying plaintiff a jury trial. Gilbertson v. I., 208M51, 293NW129. See Dun. Dig. 5227.

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

Notwithstanding that there has been a verdict for defendant in a negligence case, no constitutional right to a jury trial or any other fundamental right is infringed by a reversal of the case and its remand for new trial on amount of damages only, when the evidence is conclusive that there was no contributory negligence and that defendant was guilty of negligence as a matter of law, there no longer being a jury question. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 5227.

Defendant charged with violating city traffic ordinance is not entitled to a trial by jury. Op. Atty. Gen., (260a-13), May 12, 1942.

6. Rights of accused.

½. In general.

Technicalities required by law as protection to a defendant asked to answer for a crime against the state do not obtain in prosecutions for violation of municipal ordinances, and so long as substantial or constitutional rights of persons charged are not infringed or violated, convictions cannot be reversed for mere irregularity. State v. Wilson, 212M380, 3NW(2d)677. See Dun. Dig. 6801.

The guaranty of the constitutional rights of an accused is not tested exclusively by the result but also by the manner in which such result was reached. State v. Clow, 215M380, 10NW(2d)359. See Dun. Dig. 1662.

1. Speedy and public trial.

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

2. To be informed of the nature of the accusation.

Indictment by a grand jury. 26MinnLawRev153.

3. To be confronted by witnesses.

Cost of subpoening defense witnesses and serving them is not payable by village in prosecution under an ordinance. Op. Atty. Gen. (266b-22), Jan. 20, 1943.

4. Trial by jury of county or district.

State v. Probate Court, Ramsey County, 205M545, 287 NW297. Aff'd 309US270, 60SCR523, 84LEd744, 126ALR530.

Court properly refused to grant a jury trial in a prosecution for selling intoxicating liquor without a license in violation of Minneapolis Intoxicating Liquor Ordinance providing as punishment ninety days in city workhouse. State v. Hope, 212M319, 3NW(2d)499. See Dun. Dig. 5235.

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

Defendant charged with violating city traffic ordinance is not entitled to a trial by jury. Op. Atty. Gen., (260a-13), May 12, 1942.

Under legislation which would authorize municipalities to enact ordinances defining petty larceny as a misdemeanor and providing for punishment thereof by fine or imprisonment, a person accused of petty larceny under an ordinance would be entitled to a jury trial. Op. Atty. Gen. (605a-11), Jan. 12, 1943.

5. Assistance of counsel.

Testimony in support of application for writ of habeas corpus establishing that petitioner's counsel drank throughout the trial and was under the influence of intoxicating liquor during the whole trial did not entitle him to release on habeas corpus after his conviction on the theory that he was denied the assistance of counsel, there being no denial of right to have assistance of counsel even though effective assistance of competent counsel may have been lacking. Hudspeth v. McDonald, (CCA10), 120F(2d)962, rev'g (DC-Kan), 41FSupp182. Cert. den. 62SCR110. See Dun. Dig. 2419e, 4132.

Right to assistance of counsel is not limited to serious offenses and plea of guilty was not a waiver of right where one did not fully understand nature of his act in so doing. Evans v. Rives, 75USAppDC242, 126F(2d)633. See Dun. Dig. 2419e, 2441a.

An inmate in a penal institution may be advanced money deposited with warden to employ attorneys to present case to parole or pardon board in the discretion of the director of division of public institutions, bearing in mind long established policy of giving accused an opportunity to present his case through counsel. Op. Atty. Gen. (342B), Oct. 2, 1941.

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

½. In general.

Glidden Co. v. Retail Hardware Mut. Fire Ins. Co., 181 M518, 233NW310, 77ALR616. Aff'd 284US151, 52SCR69, 76 LEd214.

Constitutionality of moratorium law although challenged and argued by counsel, need not be determined where it is apparent from record that holder of sheriff's certificates does not wish to obtain possession of mortgaged property if some other reasonable means can be found to liquidate his claim. Shumaker v. H., 206M458, 288NW839. See Dun. Dig. 1644.

1. Twice in jeopardy.

A plea of guilty to violation of city ordinance against drunkenness in a public place is not a bar to a prosecution under another city ordinance for driving a vehicle while under influence of intoxicating liquor, two offenses having been committed on same day. State v. Ivens, 210M334, 298NW50. See Dun. Dig. 2426.

Double jeopardy. 24MinnLawRev522.

2. Self-incrimination.
Books and records kept by a fur dealer are quasi public documents, and requiring a dealer to produce them for inspection does not in effect compel him to give evidence against himself in violation of constitution. State v. Stein, 215M308, 9NW(2d)763. See Dun. Dig. 10340.
Compulsory bodily action or exhibition as violating privilege against self-crimination. 24MinnLawRev444.

4. Due process of law defined.
Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.
The police power, which is about all the power that sovereign government has, aside from its powers of eminent domain and taxation, is not limited to protection of public health, morals, and safety, but also extends to economic means. McElhone v. G., 207M580, 292NW414. See Dun. Dig. 1603.
By establishment of a county ditch pursuant to Laws 1905, c. 230, land benefited and assessed acquired a property right, appurtenant to land, not to be taken away or impaired, except by due process, but where only relief sought in construction was to so enlarge outlet as to more effectually drain slough lands lying adjacent to outlet and to control sudden rises and floods that overflowed low lands lying adjacent to shores of a lake, landowners' rights are limited to benefits accruing within stated purposes and subsequent erosion of the lake outlet whereby natural water level was much lowered cannot be claimed to be a barrier against state in now seeking *restoration of lake level to its natural and normal height.* Lake Elysian High Water Level, 208M158, 293NW140. See Dun. Dig. 1619.
A public officer or employee appointed pursuant to statutory authority does not have a vested right to continue in his position, and legislature may abolish and *modify any civil service or preference rights which it* has granted as well as remedies for enforcement of them. Reed v. T., 209M348, 296NW535. See Dun. Dig. 1619.
Notice and hearing are indispensable requirements of due process, but there is no requirement that the same be afforded at any particular stage of the proceedings. Mixed Local Etc. v. Hotel and R. Employees Etc., 212M 587, 4NW(2d)771. See Dun. Dig. 1641.
A statute is not unconstitutional merely because it authorizes a ministerial act by which possession of property is taken before the right to it has been judicially determined. Id.
Neither federal nor state constitution guarantees any particular form of administrative procedure, and all that is required is adherence to basic principles that legislature shall appropriately determine standards of administrative action and that in administrative proceedings of a quasijudicial character liberty and property of citizen shall be protected by rudimentary requirements of fair play. State v. State Board of Education, 213M184, 6NW (2d)251, 143ALR503. See Dun. Dig. 1642.
A tax within the lawful power of a state may not be judicially stricken down under due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 1639.
Possibility of taxation of same property by more than one state is no longer a constitutional objection. Id. See Dun. Dig. 1639.
Decisions of Supreme Court of the United States will be followed in interpretation of the meaning of due process under federal constitution. Id. See Dun. Dig. 1640.
Due process clause of the state constitution was not intended to be more restrictive than that of the federal constitution. Id. See Dun. Dig. 1637.
Division of Employment and Security cannot by regulation invoke a conclusive presumption or estoppel against an employer who has not given notice of separation of an employee from his employment, so as to prevent such employer from establishing actual facts as to such separation in proceedings to determine his rate of contribution of the unemployment compensation fund. Juster Bros. v. Christgau, 214M108, 7NW(2d)501. See Dun. Dig. 1642.
Legislature does not have power to declare what shall be conclusive evidence contrary to the fact. Id. See Dun. Dig. 1637.
Legislature, or its administrative adjunct, may declare that certain things shall constitute prima facie evidence or create a rebuttable presumption which is but the shifting of the burden of proof. Id. See Dun. Dig. 1641.
Requirement of due process cannot be waived or dispensed with either by legislature or by an executive tribunal to which it delegates duty of administering a law. Id. See Dun. Dig. 1637.
Prospect that observance of constitutional limitations will work serious inconvenience in administration of a legislative act does not justify denial of due process of law in making administrative decisions. Id. See Dun.
The requirement of due process under the constitution is not satisfied if the hearing was unfair, though the end might be just. State v. Clow, 215M380, 10NW(2d)359. See Dun. Dig. 1637.
Multi-state taxation of transfers of intangible personal property at death. 27MinnLawRev83.

5. Held due process of law.
Illinois Cent. R. Co. v. Minnesota, 309US157, 60SCR419, aff'g 205Minn1, 284NW360; 205Minn621, 286NW359. Reh. den., 60SCR585.
Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.
Sig Ellingson & Co. v. M., 205M537, 286NW713. Cert. den., 60SCR130. Reh. den., 60SCR178.
The federal Fair Labor Standards Act is not unconstitutional as denying equal protection of the laws under either the fifth or fourteenth amendment to the federal constitution. Carleton Screw Products Co. v. Fleming, (CCA8), 126F(2d)537, aff'g 37FSupp754. Cert. den. 317US634, 63SCR54. See Dun. Dig. 1700.
A trial de novo before the general executive board on appeal from the general president's decision appointing a trustee affords a local union due process. Mixed Local Etc. v. Hotel and R. Employees Etc., 4NW(2d)771. See Dun. Dig. 1641.
Refusal of Interstate Commerce Commission to issue permits under "grandfather clause" of §306, Title 49, Mason's U. S. Code, annotated, to one who forwarded freight through independent motor truck operators did not violate due process clause. Moore v. U. S., (DC-Minn), 41F Supp786. Judgment aff'd 316US642, 62SCR1036.
Holding judgment recovered by a claimant against indemnity in action, pendency of which he gave due notice to indemnitor and which he requested him to defend, conclusive against indemnitor in action by indemnitee to recover indemnity is not a denial of due process of law. State Bank v. A., 206M137, 288NW7. See Dun. Dig. 1646.
Exclusion of the bag cleaning industry from light industrial zone cannot be held unreasonable, arbitrary or discriminatory or violative of constitution. State v. Miller, 206M345, 288NW713. See Dun. Dig. 1646.
Revocation of license of a doctor was not a denial of due process because board of medical examiners acted both as prosecutors and judges, doctor being given ample notice of nature of charges against him with an opportunity for hearing, and having statutory right of court review. Minnesota State Board of Medical Examiners v. Schmidt, 207M526, 292NW255. See Dun. Dig. 1641. App. dism'd and cert. den. 61SCR135.
A fair trade act prohibiting sales below cost for purpose or with effect of injuring competitors and destroying competition, held promotion of a policy within police power of state, and fixing of minimum prices in retail trade, because a reasonable means of furthering such policy, is not violative of due process, regardless of intent. McElhone v. G., 207M580, 292NW414. See Dun. Dig. 1646.
There having been a full and complete hearing by labor conciliator, participated in by employer without objection, before certification of a labor union as representative of employees, absence of notice of hearing is unimportant. State v. Haney, 208M105, 292NW748. See Dun. Dig. 1642.
Statute giving administrative board discretionary power to release an insane, inebriate, feeble-minded, or epileptic patient if bond be given for safe-keeping was not unconstitutional as attempting to confer upon an administrative body power which belongs to probate court, hearing at time patient was committed having provided judicial determination and due process. State v. Carlgren, 209M362, 296NW573. See Dun. Dig. 1642.
Ordinance requiring permit from city council for maintenance of structure for storage of linseed oil does not deny due process. State v. Northwest Linseed Co., 209 M422, 297NW635, App. dism'd 313US544, 61SCR960, 85LEd 1511. See Dun. Dig. 1646, 6794.
'Gross earnings tax on freight line companies furnishing cars to railroad companies is constitutional. Almer Ry. Equipment Co. v. Commr. of Taxation, 213M62, 5NW (2d)637. See Dun. Dig. 1646.
Entire fleet of airplanes of a transport company domiciled in the state is subject to property tax, where all of the airplanes are in the state from time to time during the year carrying passengers, property, and mail, and for purpose of periodic overhauling. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 1639.
That school board decided to review teaching staff and tentatively decided to discharge certain teachers before giving such teachers notice and an opportunity to be heard was not a denial of due process. State v. Board of Education of Duluth, 213M550, 7NW(2d)544. See Dun. Dig. 1600.
That a school board or other administrative tribunal, in discharging an employee, acts in triple capacity of complainant, prosecutor and judge does not subject its decision to attack for lack of due process of law. Id. See Dun. Dig. 1642.
Cutting of timber on private wild land may be regulated for protection of timbered areas and water supply. Op. Atty. Gen. (27b), Feb. 13, 1943.
Freight Line Companies Gross Earnings Tax Law is constitutional. Almer Railway Equipment Co., MBTA(No. 46). Nov. 8, 1941.

6. Held not due process of law.
Judicial notice can be taken that Mississippi River at Minneapolis is a navigable stream, and that city cannot use public money to alter railroad bridges to make it possible for river traffic to ply the stream following improvements made by federal government, it being the legally enforceable and uncompensable duty of railroad to alter structure pursuant to command under the police

power. Bybee v. C., 208M55, 292NW617. See Dun. Dig. 1639, 9144.

Jurisdiction of a foreign corporation may not be acquired by service of summons on a statutory process agent when corporation is not transacting any business in the state and cause of action is upon a contract entered and to be performed in state of corporation's domicile. Babcock v. Bancamerica-Blair Corp., 212M428, 4NW(2d)89. See Dun. Dig. 1647, 1701.

Where a parent union expels or suspends a subordinate one without charges, notice, or hearing, the expulsion or suspension is a nullity. Mixed Local Etc. v. Hotel and R. Employees Etc., 212M587, 4NW(2d)771. See Dun. Dig. 1641.

A tax by a state without jurisdiction to impose it is unconstitutional as a violation of due process. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 1639.

Failure to provide for benefit of defendant in an action for criminal negligence a stenographic transcript of proceedings at locus in quo, at which defendant was not present, recording court's comments to jury relating to objects identified, was a denial of due process. State v. Clow, 215M380, 10NW(2d)359. See Dun. Dig. 1641.

Resolution of county board prohibiting hiring of members of labor unions would be unconstitutional. Op. Atty. Gen. (270d), Nov. 9, 1943.

7. Habeas corpus.

Original jurisdiction of habeas corpus proceeding to determine custody of child is questioned in dissenting opinion. State v. Jensen, 214M193, 7NW(2d)393. See Dun. Dig. 4142, 9070.

8. Remedies for wrongs.

"Alien enemy" is but legal definition of status because of circumstance of birth and existence of a state of war. Ex parte Kumezo Kawato, 317US69, 63SCR115. See Dun. Dig. 252.

Alien enemy may maintain an action in federal court, until President orders otherwise. Id.

This section does not guarantee or command continuation of a specific remedy, and a war veteran employee of state could not complain of his loss of right to maintain mandamus following his discharge and subsequent passage of civil service act providing different remedy. State v. Stassen, 208M523, 294NW647. See Dun. Dig. 1656.

Governmental responsibility for torts in Minnesota. 26 Minn. Law Rev. 293.

10. Unreasonable searches and seizures.

Books and records kept by a fur dealer are quasi public documents, and requiring a dealer to produce them for inspection does not in effect compel him to give evidence against himself in violation of constitution. State v. Stein, 215M308, 9NW(2d)763. See Dun. Dig. 8707.

Evidence obtained by search and seizure is admissible even though the search was unlawful. State v. Siporen, 215M438, 10NW(2d)353. See Dun. Dig. 8708b.

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

Game wardens may enter and inspect locker plants where game and fish are customarily stored, without warrant, or without reasonable grounds for believing illegal wild animals are stored therein. Op. Atty. Gen. (208 I-3), Sept. 18, 1941.

Warehouses and buildings operated in the business of licensed fur dealers are subject to search without warrant. Op. Atty. Gen. (208h-5), May 26, 1943.

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

Constitutionality of moratorium law although challenged and argued by counsel, need not be determined where it is apparent from record that holder of sheriff's certificates does not wish to obtain possession of mortgaged property if some other reasonable means can be found to liquidate his claim. Shumaker v. H., 206M458, 288NW839. See Dun. Dig. 1628.

1. Ex post facto laws.

What sovereign power can authorize in prospect it can adopt or validate in retrospect. Vorbeck v. C., 206M180, 288NW4. See Dun. Dig. 1651.

2. Held to impair contract.

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

3. Held not to impair contract.

Blaisdell v. Home Bldg. & Loan Assoc., 189M422, 249NW 334, 86ALR1507. Aff'd 290US398, 54SCR231, 78LEd413, 88 ALR1481.

Contract of a teacher whose tenure rights have matured under Minn. L. 1927, c. 36, 1 Mason's Minn. St. 1927, §§2935-1 to 2935-14, is subject to the legislative power of city council of St. Paul of amendment in respect to compensation. Doyle v. C., 206M649, 289NW784, 785. Aff'd 60 SCR 1102. See Dun. Dig. 1622.

A pensioner or beneficiary has no vested right in a pension granted by government except as payments become due him absolutely under the law. Johnson v. S., 208M111, 292NW767. See Dun. Dig. 1622.

Statutes permitting reorganization of state banks did not impair obligation of contracts as to a nonconsenting depositor. Baltrusch v. C., 211M77, 300NW201. See Dun. Dig. 1636.

Civil service commission of Minneapolis may compel school janitors and engineers to take promotional examinations, and its action in so doing does not impair obligation of contract. Tanner v. Civil Service Commission, 211M450, 1NW(2d)602. See Dun. Dig. 1631a.

Rule that if Workmen's Compensation insurer exercises right of cancellation for non-payment of premiums and later reinstates policy during the policy year, there must not be a lapse of coverage, is not subject to criticism that it imposes a liability which insurer did not assume and is remaking contract of insurer without his consent. Annala v. B., 213M173, 6NW(2d)37. See Dun. Dig. 1619.

12. Imprisonment for debt—Exemption from execution.

2. Exemption of property.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. Dimke v. F., 209M29, 295NW75. See Dun. Dig. 3680.

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

Purpose of an exemption is to protect a debtor and his family against absolute want by allowing them out of his property some reasonable means of support and education and maintenance of decencies and proprieties of life. Poznanovic v. M., 209M379, 296NW415. See Dun. Dig. 3680.

3. ——Proviso.

An action may now be maintained in district court against representatives and heirs of a deceased person to enforce a lien or charge for work and materials furnished for improvement of homestead at request of deceased, without presenting claim therefor to probate court for allowance, it appearing that deceased left no property other than homestead. Anderson v. J., 208M 152, 293NW131. See Dun. Dig. 3593k.

A judgment by default for recovery of money for a debt for work done and material furnished in construction, repair, or improvement of debtor's homestead may be established by a provision in judgment incorporating a finding made under an amendment of allegations in complaint that work was done and material was furnished in deepening a well on premises constituting her "home" to effect that work was done and material was furnished in deepening a well on premises to constituting her "homestead", describing it by its full legal description, or by extrinsic evidence showing that judgment was for such a debt, or by both. Keys v. Schultz, 212M109, 2NW(2d)549. See Dun. Dig. 4209, 4210, 5068.

A duly docketed judgment for a debt for work done or materials furnished in construction, repair, or improvement thereof is a lien upon a homestead. Id. See Dun. Dig. 4209, 4210.

Lien of a judgment upon a homestead may be enforced by execution unaffected by debtor's discharge in bankruptcy. Id. See Dun. Dig. 749, 4209, 4210, 5068.

13. Private property for public use.

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

Railroad building embankment along Mississippi River below high water mark was not entitled to compensation from federal government for damages from dam built which raised waters so as to flood the embankment. U. S. v. Chicago, M. St. P. & P. R. Co., 312US592, 313US 543, 61SCR772, 85LEd1064, rev'g (CCA8), 113F(2d)919.

Towns and counties, being charged with highway construction and maintenance, are liable in damages to property owners if and when such owners' property rights are invaded, to protect owners against illegal exercise of power of eminent domain. Westerson v. S., 207M412, 291NW900.

Rule of Sheehan v. Flynn, 59 Minn. 436, 61 N.W. 462, 26 L.R.A. 632, that by reasonable drainage works on his own premises, a landowner may dispose of surface waters as best he can, so long as he does not unreasonably injure his neighbor, applies only to private rights and exercise thereof, and has no application to a public drainage proceeding wherein statute requires compensation to all who suffer damages. Town Ditch No. 1, v. B., 208M566, 295NW47. See Dun. Dig. 2841a, 10165.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. Dimke v. F., 209M29, 295NW75. See Dun. Dig. 1646.

Eminent domain is an inherent and essential attribute or prerogative of sovereignty, and is not conferred by the constitution, since private property is held subject to the control of the sovereign power of the state, exercised through the legislature, for public uses, and right rests in public necessity, subject to constitutional requirement of payment of just compensation. State v. Flach, 213M 353, 6NW(2d)805. See Dun. Dig. 3013.

Though a condemnation has been treated as a purchase and sale for various purposes, a condemnation by highway department of land for a highway was not a "sale"

of the property within meaning of act permitting former owners of tax forfeited land to repurchase it if not already sold by the state. Id.

When city charter provides actual payment of compensation is prerequisite to right of possession of land condemned, it must be followed. Op. Atty. Gen. (59a-14), Sept. 18, 1942.

Cutting of timber on private wild land may be regulated for protection of timbered areas and water supply. Op. Atty. Gen. (27b), Feb. 13, 1943.

14. Military subordinate—Standing army.

It is duty of army commanders to turn violators of state laws over to civil authority in peace time, but they are not required to do so in time of war. Op. Atty. Gen. (310), Jan. 13, 1943.

15. Tenure of lands.

An instrument granting a profit a prendre in form of an exclusive right to hunt and construct a club house was not a violation of this section. Minnesota Valley Gun Club v. N., 207M126, 290NW222. See Dun. Dig. 3155.

16. Rights reserved—Religious freedom.

School pupils cannot be compelled or required to gather in schoolhouse just before opening of school in the morning and during noon recess to pray, but if they meet voluntarily for prayers, there is no power able to stop them, and school board may not dismiss school at eleven o'clock in the morning or early in the afternoon to permit religious instruction to be given in schoolhouse, or any other place, though pupils desiring religious instruction outside school may be excused. Op. Atty. Gen. (170F.-4), Jan. 5, 1942.

Persons in charge of schools may require pupils to salute the flag and pledge allegiance thereto. Op. Atty. Gen. (927), Dec. 2, 1942.

Child refusing to salute flag may be excluded from attendance, and parent may be prosecuted for not providing instruction after exclusion. Op. Atty. Gen. (927), Dec. 16, 1942.

Whether certificate to teach should be denied a student who refuses to salute the flag because of teachings of a sect of which she is a member is a matter for state board of education to determine. Op. Atty. Gen. (172b), March 19, 1943.

18. No license to peddle.

Section shows that people of the state have recognized a classification in favor of farmers in licensing vendors of farm products. State v. Marcus, 210M576, 299NW241. See Dun. Dig. 1675.

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

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

A village may not impose a license fee upon any dairy farmers selling their own milk, but may prohibit sale of unpasteurized milk. Op. Atty. Gen. (292E), Feb. 11, 1942.

A village ordinance forbidding sale of unpasteurized milk, regulating packaging and distribution thereof, and forbidding adulteration or misbranding of any milk or cream offered for sale, does not violate this section as applied to one producing milk on a farm within village limits. Op. Atty. Gen., (292e), May 14, 1942.

ARTICLE 2.—NAME AND BOUNDARIES.

1. State name and boundaries.

The location of the International boundary line between the United States and Canada by the Treaty of 1908 had the force of law and constituted the supreme law of the land. Pettibone v. Cook County, (CCA8), 120F(2d)850, aff'g (DC-Minn), 31FSupp881.

Doctrine of accretion applies to states and nations as well as to individuals unless taken away or modified by treaties or stipulations, and applies to both navigable and nonnavigable streams, and to large rivers like the Mississippi and the Missouri, but boundaries are not changed by avulsion where there is a sudden change in course of stream. Conkey v. Knudsen, 4 N. W. (2d) (Neb.) 290. See Dun. Dig. 6953.

3. Acceptance of enabling act.

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

ARTICLE 3.—DISTRIBUTION OF THE POWERS OF GOVERNMENT.

1. Departments of the government.

State v. Probate Court, Ramsey County, 205M545, 287 NW297. Aff'd 309US270, 60SCR523, 84LEd744, 126ALR530.

Sig Ellingson & Co. v. M., 205M537, 286NW713. Cert. den., 60SCR130. Reh. den., 60SCR178.

The powers of the Price Administrator under the Emergency Price Control Act do not constitute an invalid delegation of legislative power by Congress. U. S. v. C. Thomas Stores, (DC-Minn), 49FSupp111. See Dun. Dig. 1597.

Where a plain statute controls, it is duty of court to obey, however much of economy or other desirable result might follow disobedience. Midland Loan Finance Co. v. T., 206M434, 288NW853. See Dun. Dig. 1595.

Judicial branch of state government, as a matter of comity, accepts legislative declaration of public policy relative to unauthorized practice of law insofar as it relates to drafting by brokers, in transactions involving sale, trade or leasing of property or a loan thereon where they represent parties or a party thereto, of instruments incident to such transactions where no charge is made for drafting such instruments; but making of a charge therefor is disapproved. Cowern v. N., 207M 642, 290NW795. See Dun. Dig. 1587.

It would be an unconstitutional delegation of legislative power to authorize tax commission in its discretion to impose a penalty without a legislative definition of conditions which it must find to exist before such penalty could be assessed, and if imposition of penalty be left to uncontrolled discretion of commission and resulted in discrimination it would be a violation of constitutional uniformity clause and of 14th amendment. State v. Oliver Iron Min. Co., 207M630, 292NW407. See Dun. Dig. 1597. Cert. den., 61SCR439, 440. See also 292NW411.

Courts do not make the laws but only give them interpretation, and it is their duty to follow apparent and definite mandate of a statute without consideration of their views on merits, providing legislature acted within its power. State v. Gravlin, 208M148, 293NW257. See Dun. Dig. 1589.

It is not for the court to question legislative policy or wisdom. State v. Weed, 208M342, 294NW370. See Dun. Dig. 1594.

It is for court to determine whether or not a train speed ordinance is void for unreasonableness or want of necessity. Lang v. C., 208M487, 295NW57. See Dun. Dig. 1589.

There is no unlawful delegation of legislative power to executive in statute relating to liens on real property of old age recipients. Dimke v. F., 209M29, 295NW 75. See Dun. Dig. 1599.

A doctor appointed by a court commissioner to act as examiner in an insanity proceeding and to report his findings to court is a quasi-judicial officer and as such immune from civil suit for acts performed by him in connection with such proceeding. Linder v. F., 209M43, 295NW299. See Dun. Dig. 4959.

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

Legislature may delegate legislative power over education to electorate of a city, but legislature's plenary power of legislating is not thereby limited or impaired. Board of Education v. Erickson, 209M39, 295NW302. See Dun. Dig. 1597.

Courts are not concerned with wisdom of legislative enactments. Eldred v. D., 209M58, 295NW412. See Dun. Dig. 1589.

Public policy, where legislature has spoken, is what it has declared that policy to be. Park Const. Co. v. I., 209M182, 296NW475, 135ALR59. See Dun. Dig. 1589.

Statute giving administrative board discretionary power to release an insane, inebriate, feeble-minded, or epileptic patient if bond be given for safe-keeping was not unconstitutional as attempting to confer upon an administrative body power which belongs to probate court, hearing at time patient was committed having provided judicial determination and due process. State v. Carlgren, 209M362, 296NW573. See Dun. Dig. 1590.

Uniform legislative practice, while not binding on the court, is entitled to great weight in construing the constitution. C. Thomas Stores Sale System v. S., 209M504, 297NW9. See Dun. Dig. 1579.

Power of railroad and warehouse commission to issue certificates of public convenience and necessity is legislative and administrative in character, and court can only decide judicial question whether order is reasonably supported by evidence and whether it is lawful and reasonable. Minneapolis & St. L. R. Co., 209M564, 297NW189. See Dun. Dig. 8078e.

Statute providing double penalty for a second offence, even where executive authority has pardoned first offence, is not an interference with executive power, and the court cannot interfere with legislative function of determining punishment. State v. Stern, 210M107, 297NW 321. See Dun. Dig. 1587, 7296.

Though judicial power of a state is by constitution vested in courts, there has grown up a system of courts, which, though charged with administration, necessarily apply law to facts found by them subject always to review by the courts. Steidel v. M., 210M101, 297NW324. See Dun. Dig. 1587.

It is not for administrative officers, or the courts, by forced interpretation, to amend a statute. Arneson v. W., 210M42, 297NW335. See Dun. Dig. 1587.

Within constitutional limits, legislative authority is final and conclusive. Id.

Sale of nonintoxicating malt liquors is subject to regulation under police power of state, and delegation to municipal councils of authority to license and regulate sales thereof, is a valid exercise of such power. State v. Ives, 210M141, 297NW563. See Dun. Dig. 1597.

Legislature, and a city council under a delegated authority, may prescribe definite terms of imprisonment for crimes or violations of city ordinances, as against con-

tention that it deprives judiciary of discretionary power to fix reasonable limits, so long as constitutional rights of citizens have not been violated or invaded. Id. See Dun. Dig. 1661(2).

Descent of property is entirely with legislature, and it is not for courts to question justice or propriety of descent as to any heir or class of heirs or next of kin. Galbraith's Estate, 210M356, 298NW253. See Dun. Dig. 1587.

A court will exercise judicial scrutiny over details of a city ordinance, but power of court to declare an ordinance invalid because it is unreasonable must be exercised carefully. State v. Houston, 210M379, 298NW358. See Dun. Dig. 6755.

Basically, whether particular village incorporation measures up to statutory test is one of fact for people concerned and their judgment is not likely to be ignored, but when facts clearly demonstrate that civic pride of incorporators has exceeded all bounds of practicable reason, it is duty of court to interfere. State v. Village of Leetonia, 210M404, 298NW717. See Dun. Dig. 6527.

Provisions of act delegating to commissioner of agriculture authority to set amount of bond required of dealer at wholesale in farm products is not an unconstitutional delegation of legislative authority. State v. Marcus, 210M576, 299NW241. See Dun. Dig. 1600.

It is not for the courts to pass upon the merits, wisdom, or justice of legislation so long as legislature does not transgress constitutional limits. Olson v. C., 211M64, 300 NW42, 136ALR1365. See Dun. Dig. 1587.

Court does not have right to grant a judgment in defiance of a statute. Eklund v. E., 211M164, 300NW617. See Dun. Dig. 1595.

Absent adequate rule-making power in the court, change in law should come from legislative rather than judicial action. Olson v. N., 211M218, 300NW613. See Dun. Dig. 1595, 8819.

Court has no power to perpetuate a rule of law which legislature has changed or repealed. State v. Tennyson, 212M158, 2NW(2d)833, 139ALR987. See Dun. Dig. 1595.

It is for the legislature and not the court to create exceptions to a statute, if there are to be any. Id. See Dun. Dig. 1589.

Taxation is primarily a legislative function, and steps taken under authority of legislature are administrative in character, in which judicial assistance may be invoked as a matter of convenience, but legislature may authorize such proceedings to be conducted from beginning to end before or by administrative officers or bodies, and their functions are not "judicial" in the strict sense. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 1588.

Mason's St., §2160, requiring county auditor to apportion a tax judgment so that an owner of a specific part of a parcel taxed as a whole can redeem pursuant to §2158, does not impose judicial functions upon an administrative officer in violation of Const. Art. 3, §1. Id. See Dun. Dig. 1590.

City council had authority to adopt ordinance requiring seller of intoxicating liquor to obtain a license and to prescribe definite term of punishment for violation thereof. State v. Hope, 212M319, 3NW(2d)499. See Dun. Dig. 1588.

It is only when there has been a clear departure from fundamental law that courts may interfere with city ordinances on subjects with which they are authorized to legislate. Id. See Dun. Dig. 1589.

Wisdom of legislative provisions are not for the courts to question. O'Brien v. O'Brien, 213M140, 6NW(2d)47. See Dun. Dig. 1595.

Appointment of a referee by an administrative board in proceedings to remove an appointee, with limited power of hearing and reporting testimony, is not a diversion or delegation of "power to remove" from administrative body to referee, acting in strict subordination to board itself and being its alter ego only in a very limited sense. State v. State Board of Education, 213M184, 6NW(2d) 251, 143ALR503. See Dun. Dig. 1600.

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. State v. Village of North Pole, 213M297, 6NW(2d)458. See Dun. Dig. 1589.

Establishing of highways is primarily a legislative function, exercised with respect to local roads by county and town boards, and in respect to county line roads by commissioners appointed by the district court. Highway between Sibley and Renville Counties, 213M314, 6NW(2d) 626. See Dun. Dig. 1588.

Whether or not it is economically wise or fair to impose a tax on certain property is a matter for the legislature which cannot be judicially determined. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 1595.

State may delegate its powers over navigable waters to agents selected by it to act in a representative capacity in performing its public functions. Nelson v. De Long, 213M425, 7NW(2d)342. See Dun. Dig. 1597.

A court cannot write into a statute an exception or saving clause which is not there without usurping legislative powers. Tepel v. Sima, 213M526, 7NW(2d)532. See Dun. Dig. 1595.

Section operates broadly to confine legislative matters to the legislature, executive matters to the executive branch, and those which are judicial in character to the judiciary, though a school board which is part of executive department exercises certain functions of a legislative character and of a quasi judicial character. State v. Board of Education of Duluth, 213M550, 7NW(2d)544. See Dun. Dig. 1587.

Discontinuance of position for lack of pupils having been judicially determined to exist as a ground for discharge of one or more tenure teachers, policy or rules to be followed by board in determining which teacher or teachers are to be discharged is an administrative question, upon which the decision of board is final, absent arbitrariness or capriciusness. Id. See Dun. Dig. 1600.

That a particular policy or set of rules adopted by a school board in determining which of several tenure teachers is to be discharged may be harsh, unwise, inexpedient, or based upon economic rather than on educational considerations does not justify interference therewith by the courts. Id. See Dun. Dig. 1600.

Courts are not at liberty to declare administrative rules and policies invalid on ground that they may afford an opportunity for abuse in manner of application, may create hardships or inconvenience, or may be unfair, oppressive, or mischievous in their effect, and of doubtful propriety. Id. See Dun. Dig. 1600.

Complete jurisdiction cannot, either directly or indirectly, be conferred upon courts in the matter of reviewing acts of a school board in discharging teachers in view of constitutional division of powers of the government. Id. See Dun. Dig. 1600.

Courts of law may review administrative action of an executive or administrative officer or tribunal to determine whether such action is within the law, constitutional or statutory. Juster Bros. v. Christgau, 214M108, 7NW(2d)501. See Dun. Dig. 1593.

What legislature cannot do itself is ultra vires an administrative body with only delegated legislative power. Id. See Dun. Dig. 1600.

Although taxation is primarily a legislative and executive function, the fixing of the value of property for taxation purposes may be properly delegated to courts, by way of appeal, at least as a quasi-judicial matter. Kalscheuer v. State, 214M441, 8NW(2d)624. See Dun. Dig. 1589.

The power to decide and to review may be reposed where the legislature decides, and subordinate officers may be invested with the power of decision, and higher officers may be invested with the power to review on appeal the decisions of their subordinates. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW (2d)6. See Dun. Dig. 1600, 8311.

A delegated legislative power can only be exercised by the body to whom the legislature has delegated it. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722. See Dun. Dig. 1597.

The power to levy an assessment for ditch repairs, being a legislative one delegated by statute to the county board, cannot be redelegated by the county board to the county auditor. Id. See Dun. Dig. 2840, 9238.

State senators and representatives may not constitutionally serve on legislative emergency committee created under Laws 1939, c. 431. Op. Atty. Gen. (280h), Apr. 7, 1941.

Pure food laws are sufficiently definite and provide sufficient standards to warrant delegation to Dairy and Food Commissioner to make rules and regulations as to moisture content of oysters. Op. Atty. Gen. (135B-1), Feb. 18, 1942.

It was not an unlawful delegation of legislatuve power to permit Commissioner of Taxation to select a method of apportionment of income of foreign corporations for purpose of income tax. Wilson & Co., MBTA(No.115), Dec. 23, 1943.

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

Judicial self-limitation in administrative law. 25Minn LawRev730.

ARTICLE 4.—THE LEGISLATIVE DEPARTMENT.

1. Two houses—Sessions.

Only biennial legislative sessions and such as are convened on extraordinary occasions by the governor are now constitutional, and no change to annual sessions or limitations as to length of sessions of succeeding legislatures or the subjects to be considered by them would be binding until a constitutional amendment giving to legislature such power is adopted by the people. Op. Atty. Gen. (280), March 16, 1943.

2. Number of members.

Legislature has power at 1943 session to enact a reapportionment act based on 1940 census. Op. Atty. Gen. (8a), Jan. 21, 1943.

3. Election—Quorum.

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

5. Officers—Journal.

Matters which constitution requires journals of senate and house to contain or state are mandatory, and if such journal entries are lacking the bill does not become a law, but as to matters not so required to be shown in the journal, their absence has no effect on validity of enrolled bill. Minn. Mut. Life Ins. Co. v. Johnson, 212M 571, 4NW(2d)625. See Dun. Dig. 8897.

7. Compensation.

State v. Probate Court, Ramsey County, 205M545, 287 NW297. Aff'd 309US270, 60SCR523, 84LEd744, 126ALR530.

Member of House of Representatives may file for office of Lieutenant Governor though legislature has passed an act increasing salaries of members of the legislature, which would automatically increase the salary of the Lieutenant Governor. Op. Atty. Gen. (213d), Aug. 5, 1943.

9. Members not to hold certain offices.

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

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

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

State senators and representatives may not constitutionally serve on legislative emergency committee created under Laws 1939, c. 431. Op. Atty. Gen. (280h), Apr. 7, 1941.

A member of legislature on July 1, 1929, and who was a member of retirement association on July 1, 1941, has options pursuant to Laws 1941, c. 391, to elect to become a member of retirement association as of July 1, 1929. Op. Atty. Gen. (331A-7), Sept. 3, 1941.

Member of legislature may not, during time for which he was elected, hotel office of mayor of a village. Op. Atty. Gen. (280h), Nov. 18, 1941.

A state legislator may not hold office of deputy register of deeds. Op. Atty. Gen. (280h) Aug. 17, 1942.

A legislator may hold office after one year immediately succeeding term in which legislature created or increased the emoluments of office in question, and the one year period does not mean one year following a newly elected term, and though a member of legislature has a right to resign, he is still prohibited from holding any office during time for which he was elected. Op. Atty. Gen. (280d) Aug. 19, 1942.

Member of legislature cannot hold office of city councilman. Op. Atty. Gen. (280h), Dec. 2, 1942.

Membership in the advisory council for the Division of Employment and Security is not an "office" which a member of the legislature is prohibited from holding. Op. Atty. Gen. (885b), June 16, 1943.

Appointment of district judges as referee of laws and regulations of Office of Price Administration is prohibited by constitution. Op. Atty. Gen. (141), June 24, 1943.

Member of House of Representative may file for office of Lieutenant Governor though legislature has passed an act increasing salaries of members of the legislature, which would automatically increase the salary of the Lieutenant Governor. Op. Atty. Gen. (213d), Aug. 5, 1943.

12. Appropriations, how made.

Gasoline taxes are a direct charge upon "distributor," and a three percent allowance for evaporation and loss fixes total amount of tax, and state cannot require distributor to account for taxes paid to it by retailer in excess of that amount, and such method of taxation is constitutional. Arneson v. W., 210M42, 297NW335. See Dun. Dig. 9142.

13. Enacting clause—Majority vote.

To determine whether or not a law has been duly enacted, court may examine proceedings of legislature filed or deposited in office of secretary of state, including journals of the senate and house, the engrossed bills, the enrolled bills, and the printed proceedings. Minn. Mut. Life Ins. Co. v. Johnson, 212M571, 4NW(2d)625. See Dun. Dig. 8897, 8898.

Failure of engrossing staff of senate to delete words or lines stricken by amendment shown by senate journal was a clerical error which vitiated the law. Minn. Mut. Life Ins. Co. v. Johnson, 212M571, 4NW(2d)625. See Dun. Dig. 8900.

20. Reading bills.

It would seem to be necessary that when, at any stage in either house of the legislature, a bill has been materially amended, it must be engrossed before being read or put to a vote. Minn. Mut. Life Ins. Co. v. Johnson, 212M571, 4NW(2d)625. See Dun. Dig. 8892.

In legislative practice a bill is read "at length" by the reading of its title. Id.

23. Census—Apportionment.

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

Legislature has power at 1943 session to enact a reapportionment act based on 1940 census. Op. Atty. Gen. (8a), Jan. 21, 1943.

24. Senate districts—Term of office.

Legislature has power at 1943 session to enact a reapportionment act based on 1940 census. Op. Atty. Gen. (8a), Jan. 21, 1943.

25. Qualifications of members.

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

27. Laws to embrace but one subject.

Blaisdell v. Home Bldg. & Loan Assoc., 189M422, 249 NW334, 86ALR1507. Aff'd 290US398, 54SCR231, 78LEd413, 88ALR1481.

State v. Probate Court, Ramsey County, 205M545, 287 NW297. Aff'd 309US270, 60SCR523, 84LEd744, 126ALR530.

Laws 1939, c. 137, a curative act, does not violate this section solely because it embraces means of financing a utility as well as processes of acquiring it in the first instance. Vorbeck v. C., 206M180, 288NW4. See Dun. Dig. 1684.

Apparent omissions from title of act as printed was immaterial where title was proper as passed and approved. Fredricks v. B., 207M590, 292NW420. See Dun. Dig. 8904.

The subject of a statute is the matter to which it relates and with which it deals and may embrace all provisions which are germane to it, which may be parts of it, incident to it, or means auxiliary to the end in view, and though subject must be single, provisions by which object is accomplished may be multifarious, and the constitutional provision ought to be practically and liberally construed. C. Thomas Stores Sales System v. S., 209M504, 297NW9. See Dun. Dig. 8910.

A title which recites that act contains a repeal need not refer to a germane saving clause. Id. See Dun. Dig. 8908.

Laws 1925, ch. 185, §18, as amended by Laws 1929, ch. 154, exempting cities of first class from supervision and regulation of transportation of persons and property for hire by the Railroad and Warehouse Commission, was germane to title of act. State v. Palmer, 212M388, 3NW(2d)666. See Dun. Dig. 8920.

Insofar as a section is an exception to or reservation from general application of act, it is germane to the title. Id. See Dun. Dig. 8908.

Amending game and fish law so as to require fur dealers to keep books and records of fur sales which shall be open to inspection by the director of game and fish, does not violate this section, since its subject matter comes directly within the title of the original act. State v. Stein, 215M308, 9NW(2d)763. See Dun. Dig. 8918.

Term "subject" is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having logical or natural connection. Blanton v. Northern Pac. Ry. Co., 215M442, 10NW(2d)382. See Dun. Dig. 8908.

Ordinance is not void because of failure to include in title words "and repealing ordinances inconsistent therewith" or the words "and providing penalties for the violation thereof." Op. Atty. Gen., (218g-13), Apr. 7, 1942.

It seems to be an open question whether section applies to village ordinances. Id.

Title to inheritance tax act permitted amendment to make proceeds of insurance policies taxable. DeCoster, MBTA(No. 111)Nov. 30, 1942.

29. Oath of office.

Qualification of members of legislature for leave of absence on account of military service. Op. Atty. Gen. (280d), Nov. 21, 1942.

32a. Submission of laws for taxation of railroads.

Tax imposed upon corporations by Laws 1933, c. 405, §2, (§2394-2) is a property tax upon right or franchise of corporations to exist and to transact business in this state, measured by corporations' net taxable income as defined in that chapter, and in so far as c. 405 assumes to impose a franchise tax, measured by income, upon a railroad based upon its ownership or operation for railroad purposes provisions of c. 405 are contrary to const. art. 4, §32a, and invalid since c. 405 has never been approved by a vote of people as required by that section. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW401. See Dun. Dig. 9570d. Cert. den., 61SCR439. See also 207M 637, 292NW411.

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

Section does not apply to freight line companies, nonresidents of the state, whose business consists of furnishing special type freight cars such as tank, poultry, refrigerator and beer cars to common carrier railroads and receiving as rental therefor a mileage rate as set by the interstate commerce commission. Almer Ry. Equipment Co. v. Commr. of Taxation, 213M62, 5NW(2d) 637. Appeal dism'd 317US605, 63SCR524. See Dun. Dig. 9544.

Section is applicable only to legislation affecting or changing the taxation of common carrier railroads owning or operating lines of railroads within or through the state. Id.

Freight Line Companies Gross Earnings Tax Law does not amend Railroad Gross Earnings Tax Law and is not therefore invalid because of failure to submit it for ratification to electors. Almer Railway Equipment Co., MBTA, (No. 46), Nov. 8, 1941.

33. Special legislation prohibited.

Blaisdell v. Home Bldg. & Loan Assoc., 189M422, 249 NW334, 86ALR1507. Aff'd 290US398, 54SCR231, 78LEd413, 88ALR1481.

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

Laws 1939, c. 306, making coronary sclerosis an occupational disease of municipal firemen, is not unconstitutional as special or class legislation. Kellerman v. City of St. Paul, 211M351, 1NW(2d)378. See Dun. Dig. 1671, 1683.

That a statute of general application may work an injustice or hardship in a particular case is not a valid objection to its application to a particular case. Tepel v. Sima, 213M526, 7NW(2d)532. See Dun. Dig. 1671.

Constitutionality of bill limiting application of small loans act to cities of first class. Op. Atty. Gen. (53a-18), March 18, 1943.

An ordinance directly limiting number of filling stations would be invalid, but a city may pass zoning ordinance and prohibit filling stations within certain zones, or prohibit operation of filling stations within certain distances from existing stations or from churches, schools, or other public buildings. Op. Atty. Gen. (62B), Sept. 26, 1941.

2. Subsequent to amendment of 1892.

A state by virtue of its police power can require those selling soft drinks to procure a license. State v. Comer, 207M93, 290NW434. See Dun. Dig. 1608.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. Dimke v. F., 209M29, 295NW75. See Dun. Dig. 1675.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. Eldred v. D., 209M58, 295NW412. See Dun. Dig. 1680.

Standards of equal protection under Minn. Const. Art. 1, §2 and Art. 4, §§33 and 34 and of uniformity of taxation under Art. 9, §1, are the same as the standards of equality required by equal protection clause of the Fourteenth Amendment of the U. S. Constitution, and operators of chain stores are not denied equal protection by excepting from tax retailers selling products of their own production, manufacture, and preparation, and a classification for purposes of taxation which taxes mail order establishments separately from chain stores is not unconstitutional. C. Thomas Stores Sales System v. S., 209 M504, 297NW9. See Dun. Dig. 1671.

Act requiring retirement of all police and firemen in cities of first class at 65 years of age but which allows those who have reached 65 without pension rights to continue in service until their pension rights have matured, subject to rules of civil service commission, is not unconstitutional as class legislation. Burns v. C., 210M217, 297NW638. See Dun. Dig. 1671.

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

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

34. General laws.

A state by virtue of its police power can require those selling soft drinks to procure a license. State v. Comer, 207M93, 290NW434. See Dun. Dig. 1608.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. Eldred v. D., 209M58, 295NW412. See Dun. Dig. 1680.

Standards of equal protection under Minn. Const. Art. 1, §2 and Art. 4, §§33 and 34 and of uniformity of taxation under Art. 9, §1, are the same as the standards of equality required by equal protection clause of the Fourteenth Amendment of the U. S. Constitution, and operators of chain stores are not denied equal protection by excepting from tax retailers selling products of their own production, manufacture, and preparation, and a classification for purposes of taxation which taxes mail order establishments separately from chain stores is not unconstitutional. C. Thomas Stores Sales System v. S., 209 M504, 297NW9. See Dun. Dig. 1671.

One who is not discriminated against by a legislative classification does not have an interest entitling him to raise question of unconstitutionality of statute. Id.

Act requiring retirement of all police and firemen in cities of first class at 65 years of age but which allows those who have reached 65 without pension rights to continue in service until their pension rights have matured, subject to rules of civil service commission, is not unconstitutional as class legislation. Burns v. C., 210M 217, 297NW638. See Dun. Dig. 1671.

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

An ordinance directly limiting number of filling stations would be invalid, but a city may pass zoning ordinance and prohibit filling stations within certain zones, or prohibit operation of filling stations within certain distances from existing stations or from churches, schools, or other public buildings. Op. Atty. Gen. (62B), Sept. 26, 1941.

Constitutionality of bill limiting application of small loans act to cities of first class. Op. Atty. Gen. (53a-18), March 18, 1943.

35. Freedom of markets—Monopolies.

An ordinance directly limiting number of filling stations would be invalid, but a city may pass zoning ordinance and prohibit filling stations within certain zones, or prohibit operation of filling stations within certain distances from existing stations or from churches, schools, or other public buildings. Op. Atty. Gen. (62B), Sept. 26, 1941.

36. Cities and villages may adopt charters—classification of cities for legislative purposes.—Any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state, as follows: The legislature shall provide, under such restrictions as it deems proper, for a board of fifteen freeholders, who shall be and for the past five years shall have been qualified voters thereof, to be appointed by the district judges of the judicial district in which the city or village is situated, as the legislature may determine, for a term in no event to exceed six years, which board shall, within six months after its appointment, return to the chief magistrate of said city or village a draft of said charter, signed by the members of said board, or a majority thereof. Such charter shall be submitted to the qualified voters of such city or village at the next election thereafter, and if four-sevenths of the qualified voters voting at such election shall ratify the same it shall, at the end of thirty days thereafter, become the charter of such city or village as a city, and supersede any existing charter and amendments thereof; Provided, that in cities having patrol limits now established, such charter shall require a three-fourths majority vote of the qualified voters voting at such election to change the patrol limits now established. Before any city shall incorporate under this act the legislature shall prescribe by law the general limits within which such charter shall be framed. Duplicate certificates shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of said city or village and authenticated by its corporate seal. One of said certificates shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of the register of deeds for the county in which such city or village lies, shall be deposited among the archives of such city or village, and all courts shall take judicial notice thereof. Such charter so deposited may be amended by proposal therefor made by a board of fifteen commissioners aforesaid, published for at least once each week for four successive weeks in a legal newspaper of general circulation in such city or village, and accepted by three-fifths of the qualified voters of such city or village voting at the next election and not otherwise; but such charter shall always be in harmony with and subject to the constitution and laws of the state of Minnesota. The legislature may prescribe the duties of the commission relative to submitting amendments of charter to the vote of the people, and shall provide that upon application of five per cent of the legal voters of any city or village, by written petition, such commission shall submit to the vote of the people proposed amendments to such charter set forth in said petition. The board of freeholders above provided for shall be permanent, and all the vacancies by death, disability to perform duties, resignation or removal from the corporate limits, or expiration of term of office, shall be filled by appointment in the same manner as the original board was created, and said board shall always contain its full complement of members. It

shall be a feature of all such charters that there shall be provided, among other things, for a mayor or chief magistrate, and a legislative body of either one or two houses; if of two houses, at least one of them shall be elected by general vote of the electors. In submitting any such charter or amendment thereto to the qualified voters of such city or village any alternate section or article may be presented for the choice of the voters, and may be voted on separately without prejudice to other articles or sections of the charter or any amendments thereto. The legislature may provide general laws relating to affairs of cities, the application of which may be limited to cities of over fifty thousand inhabitants, or to cities of fifty and not less than twenty thousand inhabitants, or to cities of twenty and not less than ten thousand inhabitants, or to cities of ten thousand inhabitants or less, which shall apply equally to all such cities of either class, and which shall be paramount while in force to the provisions relating to the same matter included in the local charter herein provided for. But no local charter, provision or ordinance passed thereunder shall supersede any general law of the state defining or punishing crimes or misdemeanors. (Adopted Nov. 3, 1942.)

Justices of the peace are state officers and their courts are state courts and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 206M446, 288NW 845. See Dun. Dig. 8011.

General election law regulating the purchase of voting machines controls over city charter, and city of St. Paul could purchase voting machines under a contract to pay 10 annual installments. Rice v. C., 208M509, 295NW529. See Dun. Dig. 6539.

No emergency power resides in board of education of city of Minneapolis whereby levy limit imposed by charter may be exceeded. Board of Education v. Erickson, 209M39, 295NW302. See Dun. Dig. 6579.

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

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

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

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

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

Provisions of charter with reference to election of a city assessor and city treasurer may be amended in any desired respect by the people. Op. Atty. Gen. (58c), Apr. 3, 1941.

Provision in home rule charter retaining unseparated status of village from township for election and assessment purposes would be valid. Op. Atty. Gen. (58o), Aug. 14, 1941.

Constitutional requirement is satisfied if proposed amendments are published in one daily paper each day for at least thirty days, and in two weekly papers in each edition for at least thirty days. Op. Atty. Gen. (58M), Oct. 21, 1941.

Constitution does not require election of justices of the peace in home rule charter cities. Op. Atty. Gen., (266a-5), Apr. 28, 1942.

Three-fifths vote required of only those voting on an amendment. Op. Atty. Gen. (58c), Oct. 26, 1942.

A four-sevenths vote of all those voting at election is required to adopt a new charter. Op. Atty. Gen. (58b), Jan. 8, 1943.

ARTICLE 5.—THE EXECUTIVE DEPARTMENT.

4. Powers and duties of governor.

Provision vesting in governor appointment of state and "district officers" does not include county officers, who are governed by §659. State v. Erickson, 208M402, 294NW 373. See Dun. Dig. 2273.

Laws governing the National Guard are applicable to the Minnesota Defense Board organized by order of governor when National Guard was called into training service by the United States so far as may be necessary to enable **that force to perform its proper** function, which comprised defense or relief of the state, enforcement of its law, and protection of life and property, under the command of the governor. Op. Atty. Gen. (310h), May 9, 1941.

Vacancy in office of justice of the peace in St. James is to be filled by appointment by city council, and not by governor. Op. Atty. Gen. (266A-12), Feb. 16, 1942.

5. Terms of state officers—Salaries.

Member of House of Representatives may file for office of Lieutenant Governor though legislature has passed an act increasing salaries of members of the legislature, which would automatically increase the salary of the Lieutenant Governor. Op. Atty. Gen. (213d), Aug. 5, 1943.

6. Lieutenant governor.

Contingent fund of lieutenant governor may be used to defray any expenses incurred in connection with discharge of official duties, including automobile mileage expenses. Op. Atty. Gen. (280k), May 27, 1941.

President pro tempore of the Senate does not cease to be a senator when he becomes Lieutenant-Governor by reason of a vacancy in the governor's office. Op. Atty. Gen. (280(k)), May 3, 1943.

ARTICLE 6.—THE JUDICIARY.

1. Courts.

State v. Probate Court, Ramsey County, 205M545, 287 NW297. Aff'd 309US270, 60SCR523, 84LEd744, 126ALR530.

Justices of the peace are state officers and their courts are state courts, and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 206M446, 288NW 845. See Dun. Dig. 8010.

Judicial power does not extend to giving advisory opinions to other departments of the government. Selz v. C., 207M277, 290NW802. See Dun. Dig. 1589.

An act to establish a municipal court is required to have a favorable two-thirds vote of each house of legislature, otherwise it is a nullity. State v. Welter, 209M 499, 296NW582. See Dun. Dig. 6899a.

Decisions of the Supreme Court of the United States, as the final arbiter of the meaning and application of the federal constitution, are binding on state courts even though inconsistent with their prior decisions. Glover v. Minneapolis Building Trades Council, 215M533, 10NW (2d)481, 147ALR1071. See Dun. Dig. 3747.

A city council or municipal court of a city of the fourth class may not establish a traffic court, absent a charter authority. Op. Atty. Gen. (306b), May 15, 1941.

Vacancy in office of justice of the peace in St. James is to be filled by appointment by city council, and not by governor. Op. Atty. Gen. (266A-12), Feb. 16, 1942.

2. Supreme court.

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. State v. Village of North Pole, 213M297, 6NW(2d)458. See Dun. Dig. 8069.

To make effective provisions and original jurisdiction in such remedial cases as may be prescribed by law is given to the Supreme Court, legislature has provided for certain writs. Id. See Dun. Dig. 9070.

Original jurisdiction of habeas corpus proceeding to determine custody of child is questioned in dissenting opinion. State v. Jensen, 214M193, 7NW(2d)393. See Dun. Dig. 4142, 9070.

Supreme court will not entertain questions on appeal which have not received the actual decision of the tribunal from which they come, unless it is quite evident that substantial error has been committed and adequate relief cannot be had from the court below. Whipple v. M., 215M578, 10NW(2d)771. See Dun. Dig. 9069.

3. Same—Election of judges—Term; etc.

Where a vacancy in office of associate justice of the supreme court occurs more than 30 days before the regular election at which the office is to be filled in ordinary course of elections, vacancy is to be filled in the regular course of election and not by election to fill vacancy, term of office to be for full six year beginning with the first Monday in following January. Enger v. H., 213M 154, 6NW(2d)101. See Dun. Dig. 9067.

4. Judicial districts—District court judges.

Where district judge whose term of office would not have expired for a number of years died 33 days before general election, term of office of one elected to fill the vacancy would be a full six year term beginning with the first Monday of January following, and one appointed by governor to fill the vacancy would only hold until that time or until qualification of person elected. Flakne v. E., 213M146, 6NW(2d)40. See Dun. Dig. 4953.

Where justice of Supreme Court whose office would expire first Monday in following year died following primary election in which he was one of the nominees and governor appointed a successor to fill vacancy, appointee held office until first Monday in following year and there was no short term to be filled at election and nomination for two six-year terms for justices of the Supreme Court to be voted on in November was properly filled by candidate at primary receiving next highest number of votes for office involved and persons elected at general election will serve six-year term beginning first Monday in following year. Op. Atty. Gen. (184d), Sept. 21, 1942, Oct. 6, 1942.

Where district judge died after primary and before general election and there was no candidate in primary election for position held by such judge nominating petition signed by any elector could be filed not later than

third Tuesday prior to election day if signed by five percent of entire vote cast in district at preceding general election or not to exceed 500, and term of candidate elected would begin first Monday in following year and term should be 6 years, and not for the unexpired portion of term of deceased judge. Op. Atty. Gen. (184d), Oct. 1, 1942.

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

Judge of a municipal court need not be an attorney at law and legislature cannot so require. State v. Welter, 208M338, 293NW914. See Dun. Dig. 4953, 6899a.

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

Constitution does not require election of justices of the peace in home rule charter cities. Op. Atty. Gen., (266a-5), Apr. 28, 1942.

7. Probate courts.

State v. Probate Court, Ramsey County, 205M545, 287 NW297. Aff'd 309US270, 60SCR523, 84LEd742, 126ALR530.

Within its sphere the original jurisdiction of probate court is exclusive, and a court of general jurisdiction has only appellate jurisdiction in such matters. Shapiro v. L., 206M440, 289NW48. See Dun. Dig. 7770c(60).

District court, not probate court, has jurisdiction of an action for damages for fraud in inducing a party not to file a claim against estate of a deceased person. Bulau v. B., 208M609, 294NW845. See Dun. Dig. 2759.

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

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. Lewis v. Lewis, 211M587, 2NW(2d)134. See Dun. Dig. 7771.

Court having jurisdiction of guardianships of incompetent persons has power to order on behalf of an incompetent ward the revocation of a tentative trust of a savings account. Guardianship of Overpeck, 211M576, 2 NW(2d)140, 138ALR1375. See Dun. Dig. 7771a.

Jurisdiction of probate court includes care, protection, and disposition of property of incompetent wards, and comprehends exercise of any right of ward with respect to his property interests which he might exercise if competent. Id. See Dun. Dig. 7771a.

Original jurisdiction to determine heirship or who may be entitled to take as beneficiaries under a will lies wholly with probate court. Determination of surviving spouse and next of kin for distribution of recovery under death by wrongful act statute lies wholly with the district court. Determination of who are "dependent persons or legal heirs" entitled to accrued compensation due to decedent prior to death lies exclusively with the industrial commission under the Workmen's Compensation Act. Fehland v. City of St. Paul, 215M94, 9NW(2d)349. See Dun. Dig. 7771.

While the representative of a deceased's estate who has obtained possession of the decedent's personal property is accountable to the probate court therefor, the widow may not, in the first instance, bring an action in the district court to recover such property, or its value, since the probate court controls the property through the administrator, and its jurisdiction over him and over the estate is exclusive. Jewell v. Jewell, 215M190, 9NW(2d) 513. See Dun. Dig. 3568, 3669, 7770c, 7770d.

Under this section the probate court is vested with exclusive original jurisdiction of the estates of deceased persons and persons under guardianship, but it has no other jurisdiction except as thereby prescribed. Id. See Dun. Dig. 7770.

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

Where judge of probate elected for term expiring first Monday of January 1943 died in February 1942, and vacancy was filled by appointment, person elected judge at election in November 1943 will hold office for full term of four years, and there may not be any election of a judge to serve for remainder of unexpired term of deceased officer, and filing for such a period should not be accepted. Op. Atty. Gen. (347k) July 20, 1942.

8. Justices of the peace.

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

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

A justice of the peace may not give both a fine and a jail sentence. Op. Atty. Gen. (266b-21), July 15, 1941.

9. Election of other judges.

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

10. Vacancies.

Where district judge whose term of office would not have expired for a number of years dies after primary election and 33 days before general election, any number of nominating petitions could be filed on or before the third Tuesday preceding the general election, those filing less than 30 days as well as those filing more than 30 days before election. Flakne v. Erickson, 213M146, 6 NW(2d)40. See Dun. Dig. 2927a.

Where district judge whose term of office would not have expired for a number of years died 33 days before general election, term of office of one elected to fill the vacancy would be a full six year term beginning with the first Monday of January following, and one appointed by governor to fill the vacancy would only hold until that time or until qualification of person elected. Id. See Dun. Dig. 4954.

Where a vacancy in office of associate justice of the supreme court occurs more than 30 days before the regular election at which the office is to be filled in ordinary course of elections, vacancy is to be filled in the regular course of election and not by election to fill vacancy, term of office to be for full six year beginning with the first Monday in following January. Enger v. Holm, 213M 154, 6NW(2d)101. See Dun. Dig. 4954.

Whether a successor be elected in regular course or to fill a vacancy under this section, election of an associate justice is for the constitutional term of six years. Id. See Dun. Dig. 4954, 9067.

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., (307*l*), Jan. 11, 1940.

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

Vacancy in office of justice of the peace in St. James is to be filled by appointment by city council, and not by governor. Op. Atty. Gen. (266A-12), Feb. 16, 1942.

Where either a district judge or a probate judge has been appointed to fill a vacancy, there is no short term to be filled between November election and first of following year. Op. Atty. Gen. (911s) July 27, 1942.

Where justice of Supreme Court whose office would expire first Monday in following year died following primary election in which he was one of the nominees and governor appointed a successor to fill vacancy, appointee held office until first Monday in following year and there was no short term to be filled at election and nomination for two six-year term for justices of the Supreme Court to be voted on in November was properly filled by candidate at primary receiving next highest number of votes for office involved and person elected at general election will serve six-year term beginning first Monday in following year. Op. Atty. Gen. (184d), Sept. 21, 1942, Oct. 6, 1942.

Where district judge died after primary and before general election and there was no candidate in primary election for position held by such judge nominating petition signed by any elector could be filed not later than third Tuesday prior to election day if signed by five per-cent of entire vote cast in district at preceding general election or not to exceed 500, and term of candidate elected would begin first Monday in following year and term should be 6 years, and not for the unexpired portion of term of deceased judge. Op. Atty. Gen. (184d), Oct. 1, 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.

11. Supreme and district judges not to hold other office.

Appointment of district judges as referee of laws and regulations of Office of Price Administration is prohibited by constitution. Op. Atty. Gen. (141), June 24, 1943.

13. Clerk of district court.

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

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.

15. Court commissioners.

When court commissioner is acting for judge of district court, he is acting for the judge and effect of his acts are same as that of acts of judge, and when he acts

for probate judge, his action has same effect as action of judge when performing same identical duties. Op. Atty. Gen. (128B), Jan. 27, 1942.

ARTICLE 7.—ELECTIVE FRANCHISE.

1. Persons entitled to vote.

Persons in military service. Laws 1943, c. 585.

Proof of membership in communistic organizations and of desire for change in the Constitution of the United States at the time certificate of citizenship was issued did not satisfy requirement of clear, unequivocal and convincing proof which would justify the cancellation of such certificate 12 years after it was issued on the ground that it was fraudulently obtained, there being no showing that accused believed in or advocated overthrow of the government by force and violence. Schneiderman v. U. S., 320US118, 63SCR1333, rev'g (CCA9), 119F(2d)500, which aff'd (DC-Cal), 33FSupp510. See Dun. Dig. 256.

Subchapter III and V of the Nationality Act of 1940 [8 Mason's USCA 701-747, 901-907] had no application to one who filed his petition for naturalization in October, 1940. Skoglund, (DC-Minn)46FSupp434. See Dun. Dig. 253-258.

One who at the time of his petition for citizenship was affiliated with a party dedicated to the revolutionary overthrow of the United States government and confiscation of private property without compensation was not entitled to become a citizen. Id. See Dun. Dig. 256.

Absent treaty or statute to contrary, a minor child who is a citizen of this country by our municipal law acquires, when taken by its parents to a country under laws of which it is deemed a citizen, a dual nationality, and his United States citizenship is not lost unless upon attaining majority child either fails to elect to retain that citizenship and to return to United States to assume its duties or voluntarily renounces or abandons his United States nationality and allegiance. Doyle v. R., 208M321, 293NW614. See Dun. Dig. 1487.

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. Dimke v. F., 209M29, 295NW75. See Dun. Dig. 1699.

That tribal Indians residing on a reservation owned and rode in automobiles or were married by a justice of the peace in the reservation did not establish that they had abandoned their tribal relation and became citizens of the state, subject to its laws. Rogers v. Cordingley, 212M546, 4NW(2d)627. See Dun. Dig. 4347.

In order to acquire a new domicile there must be a union of residence and intention, and residence without intention, or intention without residence, is of no avail, and mere change of residence, although continued for a long time, does not effect a change of domicile, while a change of residence even for a short time, with the intention in good faith to change domicile, has that effect. Quale, 213M421, 7NW(2d)153. See Dun. Dig. 2816.

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

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

Indian rights and the federal courts. 24MinnLawRev 145.

2. Persons not entitled to vote.

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

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

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

Whether one discharged from state hospital for insane is competent to vote is a question of fact. Op. Atty. Gen. (490f), Oct. 22, 1942.

4. Soldiers and sailors.

State veterans' preference act does not give a veteran a vested right in his employment and such employment may be abolished by legislative act. State v. Stassen, 208M523, 294NW647. See Dun. Dig. 1618.

7. Eligibility to office.

Judge of a municipal court need not be an attorney at law and legislature cannot so require. State v. Welter, 208M338, 293NW914. See Dun. Dig. 4953, 6899a.

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

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

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

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

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

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

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

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

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

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

Offices of city justice and city assessor are not incompatible. Op. Atty. Gen., (335d-5), March 25, 1940.

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

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

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

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

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

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

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

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

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

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

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

Offices of village attorney and member and secretary of library board are incompatible. Op. Atty. Gen. (358e), Apr. 30, 1941. See Dun. Dig. 7995.

Offices of member of school board and town supervisor are incompatible though boundaries of school district and township are not co-terminus. Op. Atty. Gen. (358f), May 22, 1941.

Offices of street commissioner and member of board of education in same municipality are not incompatible. Op. Atty. Gen. (358f), June 2, 1941.

Officers of county commissioner and member of the school board are incompatible. Op. Atty. Gen. (358f), June 4, 1941.

Offices of city attorney and member of library board are incompatible. Op. Atty. Gen. (358e-3), June 11, 1941.

Test of incompatibility is not whether same person receives a salary from two different political subdivisions, but whether functions and duties of two offices or employments are inconsistent. Op. Atty. Gen. (358f), July 2, 1941.

There is no incompatibility in being a member of a city charter commission and member of firemen's civil service commission. Op. Atty. Gen. (358e-1), July 14, 1941.

Offices of clerk of common school district and village assessor are not incompatible. Op. Atty. Gen. (358F), July 31, 1941.

Offices of town clerk and school district treasurer are not incompatible. Op. Atty. Gen. (358F), Oct. 2, 1941.

Offices of constable and police officer are not incompatible. Op. Atty. Gen. (358E-8), Oct. 8, 1941.

An officer of a bank which has been designated as a depository of school district funds violates the law if he assumes office of member of school board which designated depository. Op. Atty. Gen. (358F), Oct. 13, 1941.

Offices of president of village council and member of a school board in a school district which embraces village are incompatible. Id.

Offices of member of charter commission and member of public utilities commission created by charter are not incompatible. Op. Atty. Gen. (358E-1), Oct. 16, 1941.

Member of legislature may not, during time for which he was elected, hold office of mayor of a village. Op. Atty. Gen. (280h), Nov. 18, 1941.

Offices of member of city or village council and member or officer of a volunteer paid fire department are incompatible. Op. Atty. Gen. (358e-9), Nov. 28, 1941.

Offices of deputy sheriff compensated solely by fees and president of village council are incompatible. Op. Atty. Gen. (358a-5), Nov. 29, 1941.

Offices of member of school board and mayor of Chisholm are incompatible. Op. Atty. Gen. (358f), Dec. 23, 1941.

Offices of village assessor and member of village planning commission are compatible. Op. Atty. Gen. (358E-2), Mar. 10, 1942.

Offices of town justice of the peace and assessor are not incompatible. Op. Atty. Gen. (358D-4), Mar. 24, 1942.

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.

Offices of city justice and assessor are not incompatible. Op. Atty. Gen., (358d-5), Apr. 29, 1942.

Offices of chief of police and trustee of board of education are not incompatible. Op. Atty. Gen., (358f), May 8, 1942.

Offices of school director and county welfare board member are not incompatible. Op. Atty. Gen., (358f), May 28, 1942.

Owner and proprietor of a liquor store eligible to vote is eligible to hold office of school district director. Op. Atty. Gen., (768h), June 4, 1942.

Offices of town assessor and member of police civil service commission are incompatible. Op. Atty. Gen., (358e-1), June 10, 1942.

Offices of treasurer of independent school district and town supervisor are incompatible. Op. Atty. Gen. (358f), July 28, 1942.

A state legislator may not hold office of deputy register of deeds. Op. Atty. Gen. (280h), Aug. 17, 1942.

Offices of Clerk of District Court and Deputy Register of Deeds are compatible. Op. Atty. Gen. (358b-1), Sept. 25, 1942.

Offices of Register of Deeds and Deputy Clerk of District Court are compatible. Op. Atty. Gen. (358b-1), Sept. 25, 1942.

Mere clerk performing gratuitous services in county auditor's office, or paid personally by the auditor, may continue to so act while he is city assessor on a monthly salary, if it does not interfere with his duties as assessor. Op. Atty. Gen. (358a-2), Oct. 14, 1942.

Offices of probate judge and village clerk are not incompatible. Op. Atty. Gen. (358b-3), Nov. 30, 1942.

Member of legislature cannot hold office of city councilman. Op. Atty. Gen. (280h), Dec. 2, 1942.

Offices of county commissioner and legislative clerk are not incompatible. Op. Atty. Gen. (358a-3), Dec. 3, 1942.

Offices of town clerk and town assessor are compatible. Op. Atty. Gen. **(358e-6), March 1, 1943.**

Offices of city treasurer and city park overseer in city of Chaska are incompatible. Op. Atty. Gen. (358e-1), March 24, 1943.

Offices of township supervisor and township constable are incompatible. Op. Atty. Gen. (358e-6), Apr. 30, 1943.

Offices of village recorder and village assessor are incompatible. Op. Atty. Gen. (358e-2), May 28, 1943, overruling Op. Atty. Gen. Apr. 21, 1943.

It is possible that a city attorney may act for the county in some specific matter without engaging in an incompatible activity. Op. Atty. Gen. (358a-1), Aug. 13, 1943.

Office of county attorney is not incompatible with director of school board and clerk of board. Op. Atty. Gen. (358a-1), Aug. 24, 1943.

Offices of member of State Board of Parole and county attorney are not incompatible. Op. Atty. Gen. 358(G), Dec. 20, 1943.

Offices of city assessor of Lake City and member of Water and Light Commission therein are not incompatible. Op. Atty. Gen. 358E-(1), Dec. 29, 1943.

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

Where district judge whose term of office would not have expired for a number of years died 33 days before general election, term of office of one elected to fill the vacancy would be a full six year term beginning with the first Monday of January following, and one appointed by governor to fill the vacancy would only hold until that time or until qualification of person elected. Flakne v. E., 213M146, 6NW(2d)40. See Dun. Dig. 7988.

Where a vacancy in office of associate justice of the supreme court occurs more than 30 days before the regular election at which the office is to be filled in ordinary course of elections, vacancy is to be filled in the regular course of election and not by election to fill vacancy, term of office to be for full six year beginning with the first Monday in following January. Enger v. H., 213M154, 6NW(2d)101. See Dun. Dig. 7988.

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

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

Where either a district judge or a probate judge has been appointed to fill a vacancy, there is no short term to be filled between November election and first of following year. Op. Atty. Gen. (911s), July 27, 1942.

Where justice of Supreme Court whose office would expire first Monday in following year died following primary election in which he was one of the nominees and governor appointed a successor to fill vacancy, appointee held office until first Monday in following year and there was no short term to be filled at election and nomination for two six-year terms for justices of the Supreme Court to be voted on in November was properly filled by candidate at primary receiving next highest number of votes for office involved and person elected at general election will serve six-year term beginning first Monday in following year. Op. Atty. Gen. (184d), Sept. 21, 1942, Oct. 6, 1942.

Where district judge died after primary and before general election and there was no candidate in primary election for position held by such judge nominating petition signed by any elector could be filed not later than third Tuesday prior to election day if signed by five per-cent of entire vote cast in district at preceding general election or not to exceed 500, and term of candidate elected would begin first Monday in following year and term should be 6 years, and not for the unexpired portion of term of deceased judge. Op. Atty. Gen. (184d), Oct. 1, 1942.

ARTICLE 8.—SCHOOL FUNDS, EDUCATION AND SCIENCE.

1. Uniform system of public schools.

Word "resides" used in statute was construed in its broadest sense with a view to providing a free education for every child in the state, regardless of domicile. State v. School Board of Consol. School Dist. No. 3, 206M63, 287NW625. See Dun. Dig. 8660.

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

No emergency power resides in board of education of city of Minneapolis whereby levy limit imposed by charter may be exceeded. Board of Education v. E., 295 NW302. See Dun. Dig. 6579.

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

Children refusing to give flag salute which is a part of patriotic exercises may be excluded from the school and parents charged with neglecting to provide education. Op. Atty. Gen., (927), Apr. 15, 1942.

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

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

Cost of improvements and not value thereof are to be added to **sale price of land.** Op. Atty. Gen. (983m), May 23, 1941.

3. Public schools in each township—Etc.

Word "resides" used in statute was construed in its broadest sense with a view to providing a free education for every child in the state, regardless of domicile. State v. School Board of Consol. School Dist. No. 3, 206M63, 287 NW625. See Dun. Dig. 8660.

No emergency power resides in board of education of city of Minneapolis whereby levy limit imposed by charter may be exceeded. Board of Education v. E., 209M 39, 295NW302. See Dun. Dig. 6579.

Provision in Minneapolis City Charter giving civil service commission power over employees of board of education does not violate this section. Tanner v. Civil Service Commission, 211M450, 1NW(2d)602. See Dun. Dig. 8656.

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

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

Any school board which provides for transportation of parochial school children acts at its peril. Op. Atty. Gen. (166A-7), Sept. 26, 1941.

School pupils cannot be compelled or required to gather in schoolhouse just before opening of school in the morning and during noon recess to pray, but if they meet voluntarily for prayers, there is no power able to stop them, and school board may not dismiss school at eleven o'clock in the morning or early in the afternoon to permit religious instruction to be given in schoolhouse, or any other place, though pupils desiring religious instruction outside school may be excused. Op. Atty. Gen. (170F-4), Jan. 5, 1942.

Public money cannot be used for support of schools where distinctive doctrines or creeds are taught. Op. Atty. Gen. (622i-8), March 10, 1943.

It is not proper to add the title "religious instruction" upon report cards of high school students and then state grades received by the pupils, since religious instruction cannot be given in a public school or at public expense. Op. Atty. Gen. (169c), July 1, 1943.

Public school buses may not be used in transporting pupils attending parochial schools, but parochial schools may operate transportation system and public school system could hire the transportation of the public school pupils. Op. Atty. Gen. (166a-7), Sept. 10, 1943.

Unused space or classrooms in public schools may not be used for week day religious instructions, or rented for the purpose. Op. Atty. Gen. (170f-4), Oct. 19, 1943.

Validity of appropriations of public funds that inure to the benefit of sectarian schools. 27MinnLawRev311.

4. University of Minnesota.

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

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

Legislature may not constitutionally restrict or limit powers conferred upon university regents, but may grant additional powers not conferred by original law. Op. Atty. Gen. (407Q), Jan. 8, 1942.

University of Minnesota is a constitutional corporation and its board of regents was given right to govern University, and all executive power of University affairs having been put in the regents by the constitution, none of it may lawfully be exercised or placed elsewhere by the legislature, and regents could permit co-operative store for sale of books and school supplies, maintained independently by students and faculty member, to occupy a room in a University building. Op. Atty. Gen. (618a-3), July 27, 1942.

Employment agreement between the University of Minnesota and Public Building Service Employees Union Local. Op. Atty. Gen. (279d), Oct. 23, 1943.

6. Investment of school funds.

The permanent school, permanent university and swamp land funds of this state may be loaned to or invested in the bonds of any county, school district, city, town, or village of this state and in first mortgage loans secured upon improved and cultivated farm lands of this state, but no such investment or loan shall be made until approved by the board of commissioners designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall such loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 per cent of the assessed valuation of the taxable property of the county, school district, city, town, or village issuing such bond; nor shall any such farm loan or investment be made when such investment or loan would exceed 30 per cent of the actual cash value of the farm land mortgaged to secure said investment; nor shall such investments or loans be made at a lower rate of interest than two per cent per annum; nor for a shorter period than one year nor for a longer period than 30 years and no change of the town, school district, city, village, or county lines shall relieve the real property in such town, school district, county, village or city in this state at the time of issuing such bonds from any liability for taxation to pay such bonds. (Adopted Nov. 3, 1942.)

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

State board of investment may not be compelled to accept full payment of bonds before they are due by a county which desired to obtain a lower interest rate by refinancing. Op. Atty. Gen. (37A-7), Aug. 27, 1941.

7. Forests.

Land, soil and contents therein of trust fund lands within state forests are available for use and maintenance of such forests, as in construction of roads, under jurisdiction of director of forestry, and it is not necessary to obtain permission from division of lands and minerals. Op. Atty. Gen. (983m), May 21, 1941.

Where trust fund land was sold under contract and was tax forfeited and classified as state forest land and buildings erected by purchaser were declared fire hazards and sold and removed, money received should be credited to the permanent school fund. Op. Atty. Gen. (454e), Dec. 2, 1941.

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

1. Power of taxation.

1. In general.

Judicial notice can be taken that Mississippi River at Minneapolis is a navigable stream, and that city cannot use public money to alter railroad bridges to make it possible for river traffic to ply the stream following improvements made by federal government, it being the legally enforceable and uncompensable duty of railroad to alter structure pursuant to command under the police power. Bybee v. C., 208M55, 292NW617. See Dun. Dig. 1639, 9144.

Exercise of either taxing power or police power by a state will not be sustained if effect is to establish an economic barrier between the states. State v. Ernst, 209M586, 297NW24, 134ALR643. See Dun. Dig. 9121.

A tax, absent clear expression to the contrary should be construed as prospective in operation, but this does not mean that a tax upon an occupation or the receipts from a business may not be computed after the taxing period according to the statutory rate in effect while taxpayer was engaged in the occupation or in earning the receipts. State v. Casualty Mut. Ins. Co., 213M220, 6NW (2d)800. See Dun. Dig. 9173.

State has power to tax interests and rights acquired under a contract of sale of land from the United States, which agrees to execute and deliver a deed at a certain specified future date if vendee has paid the total purchase price. S. R. A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9126.

Power of taxation is inherent in sovereignty, and, as such, constitutional provisions are not a grant of, but a limitation upon, this power, and except as thus limited, it is exhaustive and embraces every conceivable subject of taxation. Id. See Dun. Dig. 9131.

It is for the legislature to devise the mode, form, and extent of taxation to be imposed. Id. See Dun. Dig. 9115 (23).

The purpose of a tax must pertain to the district taxed. City of Jackson v. Jackson County, 214M244, 7NW(2d)753. See Dun. Dig. 9119.

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

City has no power to appropriate money to assist in maintenance of a private cemetery. Op. Atty. Gen., (59a-3), May 19, 1942.

A city may not appropriate funds to assist in support and maintenance of a private airport. Op. Atty. Gen., (59a-3), May 20, 1942. See Dun. Dig. 6551.

Appropriation to the Minnesota Resources Commission, though created without legislative acts, is for a public purpose and valid. Op. Atty. Gen. (416a), Jan. 20, 1943.

Appropriations must be for a public purpose. Op. Atty. Gen. (9), March 19, 1943.

Professional equipment of dentists serving in the armed forces is not exempt from taxation. Op. Atty Gen. (414a-9), July 1, 1943.

Municipalities are not exempt from excise tax on gasoline. Op. Atty. Gen. (324m), July 26, 1943.

City may make an appropriation for establishment of child care center if it serves a public purpose. Op. Atty. Gen. 59A-(3), Dec. 15, 1943.

Validity of state housing authorities acts. 26MinnLaw Rev81.

2. Special assessments.

School districts and counties may be assessed for local improvements by any village, borough or city, except home rule cities of the first class. Laws 1943, c. 609.

While legislature may authorize assessment of school property for local improvements, such authorization must be explicit, otherwise it is deemed to be withheld. Independent School Dist. v. C., 208M29, 292NW777. See Dun. Dig. 9151.

Land acquired by Hamlin University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-6), May 6, 1940.

City furnishing water service may adopt reasonable rules and regulations to enforce payment of charges, but in absence of authority in charter, may not make a special assessment therefor, and levy against property served. Op. Atty. Gen. (624D-5), Feb. 27, 1942.

Where a drainage system was established after state sold trust fund land under contract and contract was forfeited for failure of performance, an assessment of benefits from drainage system never became a lien and the land could be later sold by the state free of lien. Op. Atty. Gen. (408c), Oct. 5, 1943.

4. Equality and uniformity.

It would be an unconstitutional delegation of legislative power to authorize tax commission in its discretion to impose a penalty without a legislative definition of conditions which it must find to exist before such penalty could be assessed, and if imposition of penalty be left to uncontrolled discretion of commission and resulted in discrimination it would be a violation of constitutional

uniformity clause and of 14th amendment. State v. Oliver Iron Min. Co., 207M630, 292NW407. See Dun. Dig. 9140. Cert. den., 61SCR439, 440. See also 207M637, 292 NW411.

It does not offend our tax law that affiliated or related corporations which have no tax status in this state are not joined in consolidated return. If all affiliated corporations which are taxable in this state are joined in consolidated return it is a sufficient compliance with our law, although there may be other affiliated corporations having no tax status here. Id.

There is no double taxation of earnings received by an express company from a railroad where each pays a gross earnings tax on its own property in lieu of all other taxes, except a tax on motor vehicles. State v. Railway Express Agency, 210M556, 299NW657. See Dun. Dig. 9146.

Multi-state taxation of transfers of intangible personal property at death. 27MinnLawRev83.

5. Classification—Uniformity.

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

Statute requiring a lien on all real property of a recipient of old age assistance is constitutional. Dimke v. F., 209M29, 295NW75. See Dun. Dig. 9142.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. Eldred v. D., 209M58, 295NW412. See Dun. Dig. 9140.

Taxpayer seeking benefits of statute permitting apportionment of tax between years when rates are changed cannot attack its constitutionality when construed as inapplicable to him. Byard v. C., 209M215, 296NW10. See Dun. Dig. 9130.

Standards of equal protection under Minn. Const. Art. 1, §2 and Art. 4, §§33 and 34 and of uniformity of taxation under Art. 9, §1, are the same as the standards of equality required by equal protection clause of the Fourteenth Amendment of the U. S. Constitution, and operators of chain stores are not denied equal protection by excepting from tax retailers selling products of their own production, manufacture, and preparation, and a classification for purposes of taxation which taxes mail order establishments separately from chain stores is not unconstitutional. C. Thomas Stores Sales System v. S., 209M504, 297NW9. See Dun. Dig. 9140.

Gasoline taxes are a direct charge upon "distributor", and a three percent allowance for evaporation and loss fixes total amount of tax, and state cannot require distributor to account for taxes paid to it by retailer in excess of that amount, and such method of taxation is constitutional. Arneson v. W., 210M42, 297NW335. See Dun. Dig. 9140.

Gross earnings tax paid by freight line companies furnishing special cars to common carriers within the state under Mason's Stat., §§2270 to 2276-1, does not violate Minn. Const., Art. 9, §1, or the 14th amendment of the Constitution of the United States on ground that it is not uniform upon property of the same class. Almer Ry. Equipment Co. v. Commr. of Taxation, 213M62, 5NW(2d)637. Appeal dism'd 317US605, 63SCR524. See Dun. Dig. 9140a.

Possibility of taxation of same property by more than one state is no longer a constitutional objection. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 9146.

A tax within the lawful power of a state may not be judicially stricken down under due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses. Id. See Dun. Dig. 9135, 9145.

A nonuniform distribution of taxes is violative of this section, and a statute providing for reimbursement out of funds raised by county taxes of its political subdivisions for a portion of their poor relief expenses under the town system of administering poor relief violated this section. City of Jackson v. Jackson County, 214M244, 7NW (2d)753. See Dun. Dig. 9140.

Mason's St. 1927, §3195, Minn. St. 1941, §263.09, is unconstitutional in its entirety and as applied to any county because it violates uniformity of taxation clause. Id. See Dun. Dig. 9140.

Freight Line Companies Gross Earnings Tax Law is constitutional. Almer Railway Equipment Co., MBTA (No. 46), Nov. 8, 1941.

Mason's St. §2394-6(c)(4), Minn. St. 1941, §290.06(3)(4), relating to credits to corporations doing business in several states and paying income taxes, is constitutional. Montgomery Ward & Co., MBTA, (No. 122), Mar. 24, 1943. Aff'd 12NW(2d)—.

8. Particular property, persons or institutions.

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

A cemetery association or public cemetery is not a "charitable corporation," within meaning of unemployment compensation law. Christgau v. W., 208M263, 293 NW619. See Dun. Dig. 1386.

National banks, as federal instrumentalities, are subject to no inherent power in states to tax them, and banks, their property, and shares of their capital stock are subject to state taxation only as Congress permits, and a tax beyond that permission is void. Irvine v. S., 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9120.

Property owned by a corporation organized as a public charity is not exempt as property of an institution of purely public charity where it is subject to private control and is devoted to substantial use for private profit. State v. Willmar Hospital, 212M38, 2NW(2d)564. See Dun. Dig. 9153.

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

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

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

No land owned by the trustees of Hamline University is subject to taxation, i. e. general taxes. Op. Atty. Gen., (414B-4), May 3, 1940.

Land acquired by Hamlin University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-6), May 6, 1940.

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

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

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

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

Lands of American Red Cross are exempt. Op. Atty. Gen., (414a-10), Nov. 13, 1941.

Land and an apartment house upon it deeded to university as an outright gift is not subject to general real estate taxation, though leased out by university to tenants. Op. Atty. Gen. (407Q), Jan. 8, 1942.

Church parsonage acquired after May 1 is not exempt from real estate taxes for the year. Op. Atty. Gen. (414D-12), Mar. 3, 1942.

A lot adjoining, or across street from, a church, used exclusively for parking purposes for members of church who desire to attend worship, and property used as a playground situated across street from a non-public school, are exempt from taxation. Op. Atty. Gen. (414d-6), Apr. 8, 1942.

Mortgage on church property is exempt from registry tax. Op. Atty. Gen., (418c-3), June 16, 1942.

Rules of law governing public hospitals and institutions of purely public charity stated. Op. Atty. Gen. (414d-10), July 15, 1942.

Lands owned by school district, purchased to fill out full block for school site, was not subject to taxation though houses thereon were leased for the time being. Op. Atty. Gen. (414b-4), Aug. 27, 1942.

Whether mortgage of church building society lending money to a church is subject to registration act is dependent upon whether such society is a purely charitable organization or corporation. Op. Atty. Gen. (418c-3), Dec. 11, 1942.

No registration tax may be charged where mortgagor and mortgagee are both church corporations. Op. Atty. Gen. (418c-3), Aug. 2, 1943.

Hibbing General Hospital was exempt from taxation from the time contract was entered into for its ownership and operation by the Benedictine Sisters Benevolent Association. Village of Hibbing, MBTA (No. 117), Sept. 15, 1943.

3. Property subject to taxation.

2. Exemptions.

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

5. Public debt; gasoline tax; disposition of proceeds.

Gasoline taxes are a direct charge upon "distributor", and a three percent allowance for evaporation and loss fixes total amount of tax, and state cannot require distributor to account for taxes paid to it by retailer in

excess of that amount, and such method of taxation is constitutional. Arneson v. W., 210M42, 297NW335. See Dun. Dig. 9140.

Laws 1925, c. 297, as amended by Laws 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. Hallett Const. Co. v. Spaeth, 212M531, 4NW(2d)337. See Dun. Dig. 9576e.

Word "useful" did not extend purpose of amendment beyond obvious one of taxing only gasoline actually used on highway as compensation for such use. Id.

Constitutionality of appropriation from highway funds to various departments of the state. Cory v. King, 214M 535, 8NW(2d)614; note under Const. Art. 16, §2.

Municipalities are not exempt from excise tax on gasoline. Op. Atty. Gen. (304M), July 26, 1943.

9. Payments out of treasury.

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

10. State credit not to be loaned.

State teachers college may not maintain a book store. Op. Atty. Gen. (90F), Oct. 16, 1941.

Constitutional power of legislature to authorize general obligations of the state, and validity of proposed amendments to rural credit system laws. Op. Atty. Gen. (779b-4), Feb. 26, 1943.

16. State road and bridge fund.

Constitutionality of appropriation from highway funds to various departments of the state. Cory v. King, 8NW (2d)614; note under Const. Art. 16, §2.

ARTICLE 10.—CORPORATIONS HAVING NO BANKING PRIVILEGES.

3. Liability of stockholders.

Liability of stockholder for debts incured by domestic corporation prior to 1930 amendment, which attaches as soon as his relationship is assumed, is fixed by constitution and stands as surety for corporate debts, and cause of action accrues, so as to set statute of limitations running, when corporation is declared insolvent and a receiver has been appointed, and not upon date of order for assessment, and mere fact that there was delay caused to some extent by objecting stockholders did not deprive court of jurisdiction to hear and determine need for assessments, and court in action and withholding decision over a period of six months on application for assessment and leave to sue did not suspend running of statute. Knipple v. L., 211M238, 300NW620, 137ALR783. See Dun. Dig. 2168, 5617.

ARTICLE 13.—IMPEACHMENT AND REMOVAL FROM OFFICE.

2. Removal.

Justices of the peace are state officers and their courts are state courts, and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 206M446, 288NW 845. See Dun. Dig. 8011.

ARTICLE 14.—AMENDMENTS TO THE CONSTITUTION.

1. Submission to the people.

Where two acts of legislature submitted constitutional amendments and each directed that proposition be placed as number one on official ballot, act last passed is controlling. Op. Atty. Gen. (86A-4), Jan. 7, 1942.

ARTICLE 15.—MISCELLANEOUS SUBJECTS.

2. Residents on Indian lands.

Indian rights and the federal courts. 24MinnLawRev 145.

ARTICLE 16.—TRUNK HIGHWAY SYSTEM.

1. Creation of system.

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

Route No. 212

New Route 212 added. Laws 1943, c. 324. See §§2662-2½ to 2662-2½g.

Route No. 213

New Route 213 added. Laws 1943, c. 399. See §§2662-2½h to 2662-2½j.

2. Fund.

Whether Laws 1939, c. 420, violates art. 16, §2 of our constitution, as interpreted in State ex rel. Wharton v. Babcock, 181M409, 412, 232NW718, need not be determined because not essential to decision on demurrer. Westerson v. S., 207M412, 291NW900. See Dun. Dig. 8452.

Highway fines do not arise under or by virtue of Constitution, Art. 16, and fund created by fines is subject to legislative control and may be used for same purposes for which constitutional fund is devoted or put to use for some other purpose, such as is provided by Laws 1939, c. 420, relating to ascertainment of damages caused by construction of improvement of trunk highway. Id. See Dun. Dig. 8452.

Laws 1939, c. 431, Art. 2, §20, imposing upon highway fund a charge to be used to defray general cost of government, is by that much unconstitutional. Cory v. K., 209M431, 296NW506. See Dun. Dig. 8452.

Employees of state highway department working on a purely hourly basis could have no claim to any vacation prior to date of a rule of civil service board giving them right to a vacation since vacation with pay for such period would be a mere gratuity, and one which could not be paid from trunk highway fund. Nollet v. H., 210 M88, 297NW164, 134ALR192. See Dun. Dig. 1672, 8452.

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Test whether an appropriation is toward a highway purpose is not whether each dollar appropriated is earmarked for each particular item of highway expenses, but rather whether the charge upon the highway fund accurately reflects highway expenses, as borne by offices and departments of the state, and does not exceed the amount of expense properly attributable to highway matters. Cory v. King, 214M535, 8NW(2d)614. See Dun. Dig. 8452.

Laws 1941, c. 548, §§13, 14, 19, 22, appropriating moneys from the trunk highway fund to the offices of auditor, treasurer, civil service commision (department of civil service), and commissioner of administration, respectively, to defray expenses reasonably attributable to highway matters does not violate this article. Id. See Dun. Dig. 8452.

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

Trunk highway funds may not be used to enable state highway traffic patrolmen to make inspections and perform other services in connection with enforcing laws relating to the regulation of aeronautics. Op. Atty. Gen. (229a-7), July 9, 1941.

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3. Taxation of motor vehicles.

Exacting a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State v. Holm, 209M9, 295NW297. See Dun. Dig. 9140a.

There is no double taxation of earnings received by an express company from a railroad where each pays a gross earnings tax on its own property in lieu of all other taxes, except a tax on motor vehicles. State v. Railway Express Agency, 210M556, 299NW657. See Dun. Dig. 9146.

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

4. Bonds.

Financial institution acting as fiscal agent in servicing highway department bonds may not be paid for services in absence of a valid contract. Op. Atty. Gen. (229b), June 16, 1941.

ARTICLE 19.—AERONAUTICS.

Laws 1943, c. 666, proposes the following amendment to the constitution:

Section 1. **State may construct airports.**—The state may construct, improve, maintain, and operate and may assist counties, cities, towns, villages, boroughs, and public corporations in constructing, improving, maintaining, and operating airports and other air navigation facilities.

Sec. 2. **State may issue bonds.**—For the purpose of carrying on or assisting in carrying on such work it may expend monies, including such monies as the legislature may see fit to appropriate, may incur debts, and may issue and negotiate bonds to provide money therefor. The provisions of Section 5 of Article 9 of the Constitu-

tion shall not apply to the provisions of this section, and the purposes for which the credit of the state may be given or loaned as herein provided are declared to be public purposes.

Sec. 3. **May levy excise tax.**—The state may levy a state excise tax upon any fluid or other means or instrumentalities, or the business of dealing in, selling, or producing any or all thereof, used in producing or generating power for propelling aircraft of any kind now known or hereafter invented, or for propelling or operating motor or other vehicles, or other equipment used for airport purposes and not used on the public highways of this state.

Sec. 4. **Shall provide for taxation of aircraft.**—The legislature is hereby authorized to provide, by law, for the taxation of aircraft using the air space overlying the State of Minnesota and the airports thereof, including any contrivance, now known or hereafter invented, used or designed for navigation of or flight in the air, on a more onerous basis than other personal property; provided, however, that any such tax on aircraft shall be in lieu of all other taxation thereon, and except that the legislature may impose such tax upon aircraft of companies paying taxes under any gross earnings system of taxation, and upon the right to use suuch aircraft in the air space overlying the State of Minnesota and upon the airports thereof, notwithstanding the fact that earnings from such aircraft may be included in the earnings of such companies upon which such gross earnings taxes are computed. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any aircraft owned by a nonresident of the state and transiently or temporarily using the air space overlying the State of Minnesota or the airports thereof.

Sec. 5. **Inconsistent acts repealed.**—Any and all provisions of the Constitution of the State of Minnesota inconsistent with the provisions of this article are hereby repealed, so far, but only so far, as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized.