

Judicial Remedies
Declaratory, Corrective, and Administrative Remedies

CHAPTER 555

UNIFORM DECLARATORY JUDGMENT ACT

555.01 COURTS TO CONSTRUE RIGHTS.

HISTORY. 1933 c. 286 s. 1; M. Supp. s. 9455-1.

NOTE: The uniform declaratory judgments act has been adopted by the following states: Alabama, Arizona, Colorado, District of Columbia, Florida, Idaho, Indiana, Iowa, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

SEE: Anderson on Declaratory Judgments, 1940 Edition, West Publishing Company; Borchard on Declaratory Judgments, 1941 Edition, Banks-Baldwin Law Publishing Company; Uniform Laws Annotated, Volume 9, Page 213, Pocket part page 23, West Publishing Company, publisher.

SEE: *Petergime v Bundy*, 135 F(2d) 580; *Caldwell v Travelers*, 133 F(2d) 649; *Atlas v Johnston*, 140 F(2d) 282; *Selser v City of Stuart*, 135 F(2d) 211; *Spence v Cole*, 137 F(2d) 71; *Whisler v City of West Plains*, 137 F(2d) 938; *Monroe v Marchant*, 48 F. Supp. 84; *Associated Indemnity v Davis*, 51 F. Supp. 835; *Allen Bradley v Lacs*, No. 3, 51 F. Supp. 36; *West Publishing Co. v McCalgan*, 138 F(2d) 320.

The declaratory judgments act was held, following the supreme court of the United States, to authorize a proceeding which amounts to a justiciable controversy. *Reed v Bjornson*, 191 M 254, 253 NW 102.

Affirmed judgment for defendant in proceedings brought by petitioner for a declaratory judgment to construe a matter relating to levying and collection of taxes for school purposes. *Board of Education v Borgen*, 192 M 367, 256 NW 894.

In an appeal from a declaratory judgment satisfactory to both parties, for the purpose of obtaining a review of the judgment and to have it sustained, it was held the case was not justiciable. In a proceeding brought under the uniform declaratory judgments act, it is essential that there be adversary interests and parties, and a real issue for determination; that it is not a moot case but that there is an actual and legal issue; and that the decision rendered will be such as to finally settle and determine the controversy. *County Board of Education v Borgen*, 192 M 512, 257 NW 82; 193 M 525, 259 NW 67.

Construction of a trust agreement determined in action brought under the declaratory judgments act. *Towle v First Trust Co. of St. Paul*, 194 M 520, 261 NW 5.

Action under the declaratory judgments act to determine the validity of a contract for the furnishing by defendant of electric current to a city for the operation of its municipal plant. *City of Staples v Minnesota Power & Light Co.* 196 M 303, 265 NW 58.

Two actions consolidated for trial brought under the declaratory judgments act to determine the validity and construction of the so-called corporate excess tax act, when applied in one case to a domestic corporation and the other to a foreign corporation. *Bemis Bros. Bag Co. v Wallace*, 197 M 216, 266 NW 690.

Action by plaintiffs, in behalf of themselves and all other persons similarly situated and affected by the matters set out in the complaint, under the declaratory judgments act, brought to determine as between plaintiffs and defendant,

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riparian owners of lands bordering on a navigable lake, whether the use by defendant of the waters of said lake, was excessive and unlawful. *Mayers v Lafayette Club, Inc.* 197 M 241, 266 NW 861.

Action under the declaratory judgments act for a construction of a portion of the state income tax law. *Hall Hardware Co. v Gage*, 197 M 619, 268 NW 202.

In a suit brought under the declaratory judgments act for a determination of the status of certain accounts of the plaintiff association in valuing its stock for repurchase by it according to its by-laws, one H and another intervened asking an accounting and distribution of association profits. Held, the intervenors' request introduced issues new and foreign to the issues raised by the complaint and answer in the original action, and that the court's order striking allegations upon which the requests were based, was proper. *Twin City Milk Producers Assn. v Oase*, 199 M 124, 271 NW 253.

In an action for a declaratory judgment to determine the rights of judgment creditors to certain real estate, judgment for plaintiff was affirmed. *Lowe v Reirson*, 201 M 280, 276 NW 224.

In an action under the declaratory judgments act for a construction of the terms of a partnership agreement between plaintiff and defendant and for a determination of their rights to certain partnership funds, judgment for plaintiff was affirmed. *Grimes v Toensing*, 201 M 541, 277 NW 236.

In an action under the declaratory judgments act for a determination of the status and rights of the parties based on the will of one W, and a certain letter written by W to defendant subsequent to the making of the will but prior to his death, judgment for defendant affirmed. *Ives v Pillsbury*, 204 M 142, 283 NW 140.

Mandamus was held proper remedy to be pursued by landowner to secure from county auditor official certificate of amount required to be paid county treasurer in redemption of land sold for taxes, and that such remedy has not been supplanted by the uniform declaratory judgments act. *Farmers & Merchants Bank v Billstein*, 204 M 224, 283 NW 138.

In an action, under the declaratory judgments act for a determination of the validity of Laws 1939, Chapter 444, and a declaration of plaintiff's status and rights thereunder, his contention being that a material variance between the act as passed by the legislature and the bill approved by the governor rendered the act unconstitutional and void, judgment for plaintiff affirmed. *Freeman v Goff*, 206 M 49, 287 NW 238.

In an action under the declaratory judgments act for a construction of a will and a declaration of the rights of plaintiffs and defendants thereunder, judgment for defendant affirmed. *Radintz v Northwestern Nat. Bank & Trust Co.* 207 M 56, 289 NW 777.

Plaintiff, employed by defendant, brought action under the declaratory judgments act for a determination of the constitutionality of a provision of the unemployment act, wherein the attorney general intervened on behalf of the state, adopting the allegations of the answer. Held, plaintiff having no present rights to unemployment benefits, his claims were based on a hypothetical state of facts and the complaint demanded only an advisory opinion; there was no justiciable controversy between the parties, therefore no basis for a declaratory judgment, lack of which the appellate court would determine although that point had not been raised; the fact that the attorney general had intervened did not make a justiciable controversy out of what was not one as between the original parties; and that the proceeding must be dismissed for lack of jurisdiction of any subject matter for the exertion of judicial power. *Seiz v Citizens Pure Ice Co.* 207 M 277, 290 NW 802.

In an action by plaintiff under the declaratory judgments act, for a determination of plaintiff's status and rights under her teacher's contract entered into in accordance with the "teachers continuing contract law," judgment for plaintiff affirmed. *Downing v Independent School District No. 9*, 207 M 292, 291 NW 613.

Affirmed judgment for plaintiff in an action under the declaratory judgments act for a determination of the validity of an ordinance of the city of Minneapolis authorizing the city to lease to plaintiff a portion of its river terminal property not needed for use as part of the terminal facilities, and for a construction of the

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lease executed in pursuance of said ordinance. *Penn-O-Tex Oil Co. v City of Minneapolis*, 207 M 307, 291 NW 131.

Under the uniform declaratory judgments act courts of record are given power within their respective jurisdictions "to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *State Farm Mutual Auto Ins. Co. v Skluzacek*, 208 M 443, 294 NW 413.

While the act is of recent adoption in this jurisdiction, its historic background furnishes proof that in its principles it is as old as law itself; it is but a new procedural means to more speedily accomplish judicial relief; it has become another established remedy. *State Farm Mutual Auto Ins. Co. v Skluzacek*, 208 M 443, 294 NW 413.

A real controversy was presented where plaintiff, an employe of the state highway department, on his own behalf and all others similarly situated brought action against the commissioner of highways and the state director of civil service, for a declaratory judgment construing the civil service law with reference to the application of a rule of the civil service board to employees of the highway department in respect to vacation with pay prior to the promulgation of the rule. *Nollet v Hoffmann*, 210 M 88, 297 NW 164.

Suit under the declaratory judgments act for a determination of the respective interests of the parties in an award made in condemnation by the state of certain lands for highway purposes. *Hockman v Lindgren*, 212 M 321, 3 NW(2d) 492.

Plaintiff was licensed under a city ordinance relating to vending machines; subsequently another ordinance was passed which plaintiff claimed was invalid but to avoid risk of summary proceedings for its enforcement, he brought action under the declaratory judgments act for a judicial determination of its validity. Defendant claimed since the complaint contained no allegation "that immediate destruction of property is involved" plaintiff could not proceed under the act. Held, a declaratory judgment suit is not like a suit in equity in which the absence of an adequate remedy at law is requisite; the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate; and that the situation was one that afforded good reason for making use of the act. *Barron v City of Minneapolis*, 212 M 566, 4 NW(2d) 622.

Under application for a declaratory judgment it is held that a portion of Section 221.02 is unconstitutional for indefiniteness because it requires or forbids in terms so vague that men of common intelligence must guess at its meaning and differ as to its application. *Anderson v Burnquist*, 216 M 49, 11 NW(2d) 776.

Declaration as to rules of statutory interpretation. *Mattson v Flynn*, 216 M 354, 13 NW(2d) 11.

Will submitted to the probate court to settle difference between decedent's son and the executor of decedent's estate. *Estate of Lund*, 217 M 622, 15 NW(2d) 426.

Section 555.01 bestows upon courts of record, "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed". *Montgomery v Minneapolis Fire Relief Association*, 218 M 27, 15 NW(2d) 122.

Where the terms of a writing are clear and unambiguous, the construction thereof is a question of law for the court; and if the trial court determines that language is ambiguous and permits the introduction of extrinsic evidence to aid in construction and such extrinsic evidence is disputed, construction then becomes a question of fact. *Leslie v Minneapolis Teachers Retirement*, 218 M 369, 16 NW(2d) 313.

A Minnesota district court judgment obtained by an executor of an estate, in declaratory proceedings, against certain legatees, is, in the absence of fraud, binding on the federal court in tax proceedings. *Janes v Reynolds*, 57 F. Supp. 609.

Constitutionality of declaratory judgment statutes. 16 MLR 559.

The uniform declaratory judgments act. 18 MLR 239.

Declaratory judgments. 19 MLR 716.

Scope of declaratory judgment procedure in federal courts. 21 MLR 424.

555.02 MAY HAVE INSTRUMENTS CONSTRUED.

HISTORY. 1933 c. 286 s. 2; M. Supp. s. 9455-2.

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A promissory note executed by plaintiff to defendant for \$80.00 due 18 months from date providing for interest the first six months at four per cent, the second six months at five per cent, the last six months at six per cent, "and after maturity until paid at the highest rate per annum enforceable under the statutes of the state in such case made and provided", does not stipulate for a higher rate of interest after maturity than before. *Myhre v Severson*, 211 M 189, 300 NW 605.

Under section 555.02 any person whose rights, status, or legal relations are affected by a statute (or municipal ordinance) may have determined any question of construction or validity arising under the statute or ordinance and may obtain a declaration of rights, status, or other legal relations thereunder. *Barron v City of Minneapolis*, 212 M 566, 4 NW(2d) 622; *Montgomery v Minneapolis Association*, 218 M 27, 15 NW(2d) 122; *Gerlich v Sanger*, 217 M 510, 15 NW(2d) 12.

555.03 CONTRACT MAY BE CONSTRUED.

HISTORY. 1933 c. 286 s. 3; M. Supp. s. 9455-3.

555.04 WHO MAY ASK FOR CONSTRUCTION.

HISTORY. 1933 c. 286 s. 4; M. Supp. s. 9455-4.

555.05 ENUMERATION NOT EXCLUSIVE.

HISTORY. 1933 c. 286 s. 5; M. Supp. s. 9455-5.

The court is not restricted in the exercise of the broad general powers conferred by Section 555.01, since it is provided by Section 555.05 that "in any proceeding where declaratory relief is sought, in which judgment or decree will terminate the controversy or remove an uncertainty" the court's authority comes into play. The act provides machinery for removal of "legal clouds which create peril, insecurity, fears, and doubts". *Montgomery v Mpls. Relief Ass'n*, 218 M 31, 15 NW(2d) 122.

555.06 DISCRETIONARY.

HISTORY. 1933 c. 286 s. 6; M. Supp. s. 9455-6.

Historically it has been the constant policy of the state to place in the hands of the attorney general, in the name of the state, to bring appropriate proceedings to vacate the charter or annul the existence of any corporation violating its corporate powers. The federal act creating Minnesota's territorial status vested its legislature with broad powers in the field of legislation. It bestowed on the legislature adequate authority to create Hamline University with all functions necessary to effectuate its objects. *Trustees v Peacock*, 217 M 409, 14 NW(2d) 773.

555.07 REVIEW.

HISTORY. 1933 c. 286 s. 7; M. Supp. s. 9455-7.

Trial court's construction of a trust agreement affirmed. *Towle v First Trust Co. of St. Paul*, 194 M 520, 261 NW 5.

In a taxpayer's action for a determination of the rights of a city and a public utilities company under two city franchise ordinances, on motion of the city, the court filed an order amending the complaint so as to make the city a party plaintiff instead of a party defendant; the company appealed from an order denying its motion to vacate the order amending the complaint. Held, the order amending the complaint was not an order involving the merits of the action or some part thereof, and was not appealable; neither was the order denying the motion to vacate the order. *Gilmore v City of Mankato*, 198 M 148, 269 NW 113.

555.08 SUPPLEMENTAL RELIEF.

HISTORY. 1933 c. 286 s. 8; M. Supp. s. 9455-8.

555.09 ISSUES OF FACT MAY BE TRIED.

HISTORY. 1933 c. 286 s. 9; M. Supp. s. 9455-9; 1943 c. 25 s. 1.

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Plaintiff issued to defendant an automobile insurance policy, which by its terms provided that plaintiff should not be liable for bodily injury to any employee of the assured while engaged in the assured's business; a boy employed by defendant to weed onions about a quarter of a mile from defendant's home after riding to the onion patch with defendant, was injured by the backing of defendant's truck. In an action under the declaratory judgments act for a determination of the rights and obligations of the parties under the policy and adjudging that the policy did not afford coverage to the defendant for the accident to the boy, the court held that the boy was not engaged in the business of the assured. Held, there was an issue of fact, which under Minnesota Statutes 1941, Section 555.09, the court had power to determine; and affirmed judgment for defendant. *State Farm Mutual Auto Ins. Co. v Skluzacek*, 208 M 443, 294 NW 413.

555.10 COSTS.

HISTORY. 1933 c. 286 s. 10; M. Supp. s. 9455-10.

In an action brought against the trustee by the beneficiaries under a trust created in a will, alleging negligence and wrongdoing in the administration thereof and requesting a new interpretation of a provision of the will and a surcharging of the trustee's account, the trustee prevailed in every respect. It was held that the trustee was entitled to recover reasonable attorneys' fees paid by it in the conduct of its defense. *Andrist v First Trust Co.* 194 M 209, 260 NW 229.

555.11 PARTIES.

HISTORY. 1933 c. 286 s. 11; M. Supp. s. 9455-11.

Where plaintiffs, in behalf of themselves and all other persons similarly situated and affected by the matters set out in the complaint, under the declaratory judgments act brought action to determine as between plaintiffs and defendant, riparian owners of lands bordering on a navigable lake, whether the use by defendant of the waters of said lake was excessive and unlawful. Held, since plaintiffs could not show any unlawful or unreasonable taking of the lake water or show themselves entitled to any relief, whether they could maintain the action under Minnesota Statutes 1941, Section 555.11, was not to be decided. *Meyers v Lafayette Club, Inc.* 197 M 241, 266 NW 861.

Where in a taxpayer's action under the declaratory judgments act for determination of the rights of a city and of a public utilities company under two franchise ordinances passed by the city, the court on motion of the city, filed an order amending the complaint so as to make the city a party plaintiff instead of a party defendant. The order was held not appealable. *Gilmore v City of Mankato*, 198 M 148, 269 NW 113.

Upon an ex parte application for a declaratory judgment for unpaid alimony and for an execution thereon, the trial court may, in its discretion, require notice of the application to be given to the other party to the proceedings even though the provisions of Minnesota Statutes 1941, Section 543.16, do not require the giving of notice in such cases. *Kumlin v Kumlin*, 200 M 26, 273 NW 273.

Courts do not hesitate to declare unconstitutional a statutory provision which arbitrarily and without reasonable justification prohibits a person from pursuing a lawful calling; the declaratory judgments act so provides. *Johnson v Ervin*, 205 M 84, 285 NW 77.

Necessary parties. 18 MLR 264.

555.12 REMEDIAL.

HISTORY. 1933 c 286 s. 12; M. Supp. s. 9455-12.

A tax statute, like any other statute, will not be given a retroactive effect, unless it is expressly provided by the legislature or demanded by necessary implication. *Board of Education v Anderson*, 205 M 80, 285 NW 80.

When favorably exercised. 18 MLR 262.

555.13 PERSON.

HISTORY. 1933 c. 286 s. 13; M. Supp. s. 9455-13.

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Jurisdiction and procedure. 18 MLR 248.

555.14 PROVISIONS SEPARABLE.

HISTORY. 1933 c. 286 s. 14; M. Supp. s. 9455-14.

555.15 UNIFORMITY OF INTERPRETATION.

HISTORY. 1933 c. 286 s. 15; M. Supp. s. 9455-15.

555.16 CITATION.

HISTORY. 1933 c. 286 s. 16; M. Supp. 9455-16.