Where the proposed street extended over and across the railroad right-of-way for depot grounds, the burden to show that, if so extended, it would essentially impair and destroy the use of the right-of-way for railway purposes was upon the railway company; but the burden of proof as to the propriety and necessity of the proposed street is upon the municipality. Minneapolis & St. Louis v Village of Hartland, 85 M 76, 88 NW 422.

### 117.38 ACQUISITION OF LAND FOR CERTAIN PURPOSES

Liability to landowners on a non-navigable stream for a raising of the water level. 32 MLR 844.

Where, to facilitate the construction of a federal dam, the order of condemnation required owners of farmlands to deliver possession on April 9, 1948, and where the taking of such lands just prior to the commencement of the crop season created a hardship on the former owners, an amendment to the order authorizing the owners to reside upon, pay rent, and operate the lands until December 1, 1948, was reasonable and legal when the occupation of the lands until December 1, 1948, did not impede the work on the federal project. United States v 6576 Acres of Land, 77 F. Supp. 244.

If a railroad constructs a ditch for its own benefit it must pay the cost of construction of the bridge for the state aid road over the bridge. OAG May 28, 1948 (642-D-9).

A village owns land outside its limits whereon is located a spring, the waters of which constitute a water course flowing into a creek. No use has ever been made of this water course by riparian owners. The right of a riparian owner to the uninterrupted and full use of the water as it flows naturally past his land is a natural but not absolute right, and is qualified and limited by the existence of rights in others, and hence liable to be modified or abridged by the reasonable use of the stream by others. The owner of land upon which the spring arises may use the water but may not divert downstream owners of all use thereof. A municipality may apply the water of a navigable stream to public use but is without right to divert all or part of such water from the stream without returning them thereto. In practice, a village may not divert water unless the right is obtained through the power of eminent domain involving payment to the proprietors as may be determined in such proceedings. OAG July 21, 1948 (273-A-12).

## CHAPTER 118

## DEPOSITORIES OF PUBLIC FUNDS

NOTE: Laws 1925, Chapter 173, Section 1, as amended, supersedes the provisions of Laws 1909, Chapter 362, Section 1; Laws 1919, Chapter 419, Section 6; Laws 1919, Chapter 423; and Laws 1921, Chapter 313.

### 118.01 DEPOSITORY BONDS

Bonds issued by the county for a hospital, payment of which bonds is to come from a special real estate tax levy on real estate, may be accepted as security for the county's deposits in the bank provided the bonds are regularly issued in accordance with the statutes. OAG Jan. 9, 1948 (140-F-4).

The duty of approving collateral furnished by county depositories as security for county deposits in the depositories rests upon the governing board or the county board rather than upon the board of audit. OAG May 7, 1948 (140-F-2).

Statute provides that a duly designated depository bank may in lieu of a bond deposit, such bonds, certificates of indebtedness, or warrants, except bonds secured

by real estate, as are legally authorized investments for savings banks under the law of the state. If the bonds offered do not qualify under the provisions of section 50.14 they should not be accepted as collateral. OAG Dec. 21, 1948 (140-F-2).

The statute does not require that interest be secured on school fund deposits, but good business judgment dictates that the board secure the maximum rate of interest, and the board in designating a depository may accept collateral in lieu of the bond required in section 118.01. OAG Nov. 7, 1951 (140-C-7).

Where the board of an independent school district designates a depository for school funds, the board may accept collateral in lieu of bonds. OAG Nov. 7, 1951 (140-C-7).

As to securities deposited as collateral by a named depository the original security, as well as any substitute therefor, must be approved by the city council, which original securities or any substitutes therefor must be accompanied by a proper assignment as prescribed in section 118.01. The city treasurer must not release any bond except when the trust created by the deposit of the city funds has been terminated. The power to approve any bonds in the first instance or substitutes therefor as collateral to secure city funds is vested in the city council and not in the city treasurer. OAG March 17, 1953 (140-B-3).

A school district may accept as collateral on a depository bond the bonds issued by the district. OAG June 15, 1953 (140-C-3).

The original assignment of securities is sufficient without the necessity of making a new separate assignment for each substituted security. The county board should approve each new substituted security. OAG Nov. 18, 1953 (140-F-2).

No collateral or bond is required when a designated depository in which village funds are deposited is a member of the federal deposit insurance company, except when the deposit is in excess of $10,000. As to such cases, or where the depositor is not a member of the F.D.I.C., the treasurer may not make a deposit in excess of 20 percent of the market value of the securities. OAG Dec. 11, 1953 (140-F-1).

**118.05 DEPOSITORIES IN CITIES FIRST CLASS; SECURITIES IN LIEU OF BONDS**

Fiscal agents named by municipalities to pay public obligations are not authorized by law to perform the duties of treasurer of state or governmental subdivisions and must qualify by giving a bond or other depositor's security. OAG June 9, 1952 (140-F).

**118.10 DEPOSITORIES INSURED UNDER FEDERAL ACT EXCUSED FROM GIVING SECURITY TO EXTENT OF INSURANCE COVERAGE**

Fiscal agents named by municipalities to pay public obligations are not authorized by law to perform the duties of treasurer of state or governmental subdivisions and must qualify by giving a bond or other depositor's security. OAG June 9, 1952 (140-F).

No collateral or bond is required when a designated depository in which village funds are deposited is a member of the federal deposit insurance company, except when the deposit is in excess of $10,000. As to such cases, or where the depositor is not a member of the F.D.I.C., the treasurer may not make a deposit in excess of 20 percent of the market value of the securities. OAG Dec. 11, 1953 (140-F-1).

**118.11 LIMITATION OF DEPOSITS DEPENDENT ON CAPITAL AND SURPLUS; APPLICATION**

The limitations contained in section 118.11 covers the deposits of state, town, city, village, borough and school districts. OAG Jan. 9, 1947 (140-A-1).

The statute places no restriction as to the amount of deposits of state funds in banks or trust companies which have been organized for at least one year, and have been designated by the executive council as a depository, except that the executive

council in designating the bank or trust company as a depository, must prescribe a maximum amount of allowed deposits. OAG May 29, 1947 (454-E).

**118.12 DEPOSIT OF TOWN AND SCHOOL DISTRICT FUNDS WITH COUNTY TREASURER IN CERTAIN CASES**

The school board of the city of Duluth may invest surplus funds in government short term securities. OAG Aug. 31, 1949 (159-A-13).

Surplus school district sinking funds may be temporarily invested in a certificate of deposit. OAG May 22, 1953 (159-A-13).

Town funds not needed during the current fiscal year may be invested in securities authorized by section 118.12. Section 475.66 is not applicable. OAG Sept. 1, 1953 (442-A-14).

Funds derived from the sale of bonds not immediately needed may be invested under the provisions of section 118.12. OAG Oct. 16, 1953 (707-A-14).

## CHAPTER 120

## DEPARTMENT OF EDUCATION

**120.01 STATE BOARD OF EDUCATION**

HISTORY. 1877 c 74 t 3 s 1-3; 1883 c 145 s 1, 2; 1885 c 94; 1887 c 233; 1913 c 550 s 1, 2; 1919 c 334 s 1; 1925 c 426 art 10 s 1; 1941 c 169 art 1 s 1; 1951 c 491 s 1.

A sovereign state cannot be sued by individuals in its own courts or any court without its consent. Unless duly authorized by law, the attorney general may not waive the immunity of the state from suit and thus cannot bind the state by appearing in an action. The vocational education work carried on by the director of vocational education for the state department of education in his official capacity is but a phase of the department's governmental functions within the rule that state agencies vested with performance of governmental functions are immune from suit. Dunn v Schmid, ..... M ....., 60 NW(2d) 14.

**120.023 CONTRACTS WITH FEDERAL GOVERNMENT**

If at the annual meeting a tax was levied for a school lunch program and a revenue has been raised thereunder and if the regulations adopted by the state board of education prescribes rules therefor, a common school district may use the funds so raised to sponsor a school lunch program. OAG Dec. 3, 1948 (159-B-11).

The governor is authorized under section 128.36 to accept the provisions of the act of congress upon the recommendation of the state board of education at any time when the legislature is not in session. By section 128.26 the legislature has accepted the provisions of the act of congress of Feb. 23, 1917. Section 128.27 requires cooperation of the state board for vocational education with the federal agency. This implies application of benefits under section 128.27, regulations and agreements with the federal government are authorized under section 120.023. Under section 120.06 the commissioner of education is the executive officer of the state board and under section 128.29 the state treasurer is custodian of all funds. OAG Feb. 23, 1951 (170-H).

**120.05 COMMISSIONER OF EDUCATION; OFFICES**

HISTORY. 1919 c 334 s 4; 1941 c 169 art 1 s 5; 1949 c 739 s 4; 1951 c 713 s 13.

**120.06 STATE COMMISSIONER OF EDUCATION**

The governor is authorized under section 128.36 to accept the provisions of the act of congress upon the recommendation of the state board of education at any time