

MINNESOTA STATUTES 1953 ANNOTATIONS

11.08 STATE BOARD OF INVESTMENT

72

11.08 ESCHEATED PROPERTY; REPORT, SALE

Section 94.09 pertains specifically to the sale of real estate that escheats to the state and was first enacted in 1909. Section 11.08, enacted in 1941, applies to escheated property other than money and was not enacted to repeal section 94.09. The purpose of section 11.08 was to authorize the sale of escheated assets consisting of securities, bonds, mortgages, and property other than real property or money. OAG April 29, 1948 (700-D-28).

Conveyance of land by state, title to which was acquired by escheat, carries with it no obligation on the part of the state to furnish abstract of title. OAG Aug. 12, 1949 (700-D-28).

11.10 INVESTMENT OF MONEY IN STATE TREASURY NOT CURRENTLY NEEDED

HISTORY. 1949 c 110 s 1-3.

Like other funds created by the constitution, the state road and bridge fund is inviolate. Moneys in that fund may only be used for the purposes set forth in the Constitution, Article IX, Section 16, and may not lawfully be comingled with other moneys of the state. The constitution neither authorizes nor prohibits the investment of such moneys pending the time when they will be needed for distribution as provided by the constitution and the statutes. The legislature by Laws 1949, Chapter 110, lawfully set forth a proper method of investment. OAG Mar. 22, 1950 (454-E).

STATE DEPARTMENTS AND AGENCIES

CHAPTER 15

DEPARTMENTS OF STATE IN GENERAL

15.01 DEPARTMENTS AND AGENCIES OF THE STATE

Federal reorganization act of 1947. 32 MLR 150.

Bias of administrative officers. 32 MLR 199.

The administrative procedure act. 32 MLR 217.

Administrative discretion in insurance matters. 32 MLR 259.

15.04 POWERS CONTINUED

While an employee's civil service rights are not property, they are rights entitled to protection of the law. On certiorari it is not the province of the court to reweigh the evidence and to determine which of conflicting versions of the facts should be adopted; but where the evidence as a matter of law compels a certain finding and the administrative finding is to the contrary, the finding so made constitutes error of law, which it is the duty of the court to reverse. Where on certiorari an administrative agency's determination is reversed, the court's decision as to the rule governing the rights of the parties is final and conclusive upon the agency. Certiorari may be used as ancillary to mandamus, and where mandatory rights are established on certiorari they will be enforced by mandamus. *State ex rel v. Civil Service Board*, 226 M 240, 32 NW(2d) 574.

An appeal under Section 43.12 to the state civil service board from an allocation of an employee to a position by the civil service director entitles the employee-appellant to a public trial de novo before the state civil service board with all the incidents of a trial before a court of law, including the right of subpoena, production of witnesses and documents, or taking of testimony, examination and cross-examina-

MINNESOTA STATUTES 1953 ANNOTATIONS

73

DEPARTMENTS OF STATE IN GENERAL 15.042

tion of witnesses, representation by counsel, hearing, argument, decision on the merits, and the like. The meaning of "appeal" when used in granting a right of appeal depends upon the legislative intention. Strictly speaking, it is a proceeding by which a case is removed from a lower court to a higher court for a trial *de novo* either upon the record made in the lower court, or upon evidence newly introduced. An appeal in a civil action from the district court to the supreme court is governed by principles applicable to a writ of error and is, in substance, a writ of error. *State ex rel v Civil Service Board*, 226 M 240, 32 NW(2d) 574.

Mandamus is the proper remedy to compel the state civil service board to perform duties which the law clearly and positively requires. An administrative determination with respect to a matter of which the administrative agency had no jurisdiction is void and subject to collateral attack in a judicial proceeding. A decision of the state civil service board, in the exercise of its power under section 43.24, to reinstate a discharged civil service employee under such conditions as it deems proper, ordering the employee to be reemployed in a position different from the one to which he was legally entitled when he was discharged and to be placed on a waiting list for possible future employment contingent upon creation of the position in which he was ordered reemployed and funds being made available therefor, is not a reinstatement at all and as such is in excess of the board's statutory jurisdiction and void. Where an employee's right to a position having a particular classification in the civil service is established in a *certiorari* proceeding, mandamus will lie to compel the appropriate officers to allocate the employee thereto. Where an issue is settled as a matter of law by the record, this court will determine the question accordingly and thereby avoid the delay and expense of a retrial. *State ex rel v Civil Service Board*, 226 M 253, 32 NW(2d) 583.

15.041 DEFINITIONS

NOTE: Repeals, by implication, section 43.06 insofar as it relates to the promulgation of rules of the civil service board.

15.042 RULES AND REGULATIONS

Power of administrative board to suspend an attorney from practicing before it. 32 MLR 63.

Administrative law; judicial review; administrative orders under Federal Administrative Procedure Act. 32 MLR 807.

Administrative law; scope of judicial review; substantial evidence rule under the administrative procedure act and labor management relations act. 32 MLR 812.

Hearings required in insurance rate making to constitute due process. 33 MLR 771.

Requirements of a reviewable order made by an administrative agency. 34 MLR 464.

Evidence reform; the administrative process leads the way. 34 MLR 581.

Administrative law, investigatory power. 34 MLR 696.

Administrative practices. 34 MLR 586.

Incompetent evidence, when reliable, probative and substantial. 34 MLR 592.

Res judicata effect of an administrative determination in a subsequent judicial proceeding. 35 MLR 576.

Federal court jurisdiction to review the discharge of government employees. 35 MLR 659.

The scope of review under the administrative procedure act relating to labor-management relations. 35 MLR 661.

Necessity for a new hearing when trial examiner becomes unavailable. 36 MLR 90.

MINNESOTA STATUTES 1953 ANNOTATIONS

15.042 DEPARTMENTS OF STATE IN GENERAL

74

Judicial control of administrative action by means of the writ of prohibition. 36 MLR 434.

Identification of "interpretative rules" under the Administrative Procedure Act as applied to alcoholic products. 36 MLR 520.

Administrative law. 36 MLR 823.

Type of administrative action subject to control by a writ of quo warranto. 37 MLR 1.

Judicial review of federal trade commission findings. 37 MLR 620.

In determining whether facts and reasonable inferences drawn from them sustain findings of the industrial commission, evidence must be reviewed in the light most favorable to such findings. *Miller v Peterson*, 229 M 22, 38 NW(2d) 48.

Where an employee, a resident of Minnesota, and employed under a Minnesota contract of employment by an employer having its principal place of business in Minnesota, was injured while at work in North Dakota and awarded compensation under the Workmen's Compensation Act of North Dakota, he has the right to seek recovery under the more liberal provisions of Minnesota Workmen's Compensation Act, full credit being given for all payments so received by the employee in the North Dakota proceeding. *Cook v Minneapolis Bridge Co.*, 231 M 432, 43 NW(2d) 719.

Litigants in appearing before an administrative agency must take notice that the rules adopted by such agency have the force and effect of law. *Senske v Fairmont Canning Co.*, 232 M 350, 45 NW(2d) 640.

Where the alleged employers, in an employee's widow's compensation proceeding, appeared specially to object to the jurisdiction of the industrial commission over their persons, but the commission set the proceeding for hearing on the merits, special appearance would not be waived by hearing on the merits, and the alleged employers would have adequate remedy to review all matters involved by certiorari after determination on the merits, and a writ of prohibition to restrain the commission from proceeding with the hearing on the merits would not issue. *State ex rel v Industrial Commission*, 234 M 567, 48 NW(2d) 42.

In certiorari proceedings to review the determination by the commissioner of agriculture that certain business of a licensed Minnesota wholesale produce dealer was not transacted in whole or in part in Minnesota, within the statute authorizing an action against dealer's bond, the issue was not whether the commissioner's action was arbitrary and unreasonable, or whether the evidence sustained his determination, but rather was whether his findings were controlled by an erroneous theory of law in applying such statute to the facts. *Bozied v Edgerton*, M, 58 NW(2d) 313.

The power to issue a certificate of public convenience and necessity for motor carrier service is legislative and administrative in character. *Rock Island Motor Transit Co. v Murphy Motor Freight Lines*, M, 58 NW(2d) 723.

It is difficult to imagine any satisfactory ground for deciding that evidence which is admissible before the federal trade commission is inadmissible before a judge sitting without a jury in a civil anti-trust case brought by the government. *United States v United Shoe Machinery Corporation*, 89 F.Supp. 349.

The state board of education has general supervision over public schools. It has the right to establish rules relating to examinations, reports, acceptance of schools, courses of study, and other proceedings in connection with elementary and secondary schools applying for state aid. Under the provisions of section 128.13, as amended by Laws 1949, Chapter 442, certain rules were promulgated. A rule relating to the manner of conducting special classes and the supervision thereof is now in effect and binding until it is repealed or amended by the state board in accordance with the requirements of section 15.042. OAG Jan. 24, 1950 (397).

Rules of the commissioner of aeronautics, prescribing standards to be complied with before a permit would be issued to an aircraft owner or operator to fly into the wilderness area, have the force and effect of law. OAG June 2, 1950 (234-A).

MINNESOTA STATUTES 1953 ANNOTATIONS

75

DEPARTMENTS OF STATE IN GENERAL 15.17

The provisions of section 15.042 relating to the adoption of rules and regulations control over section 27.14. OAG Oct. 5, 1950 (136-D).

An employee subject to the state welfare merit system may not actively participate in party politics. OAG May 9, 1952 (125-A-64).

15.043 PETITION FOR RECONSIDERATION

The state livestock sanitary board has authority, in case of an emergency, to waive the 30-days notice and may supervise conditions under which the waiver is granted. Any amendment to a rule must follow the procedure found in section 15.042, subdivision 4. OAG Oct. 30, 1953 (293-B-21) (650).

15.044 CERTAIN BOARDS EXCEPTED

NOTE: Repeals by implication section 43.06 insofar as it relates to the promulgation of rules and regulations of the civil service board.

15.045 RULES OF ADMINISTRATIVE AGENCIES

The rules of the state board of examiners of nurses need not be submitted to the attorney general for approval, but one copy of each rule must be filed with the clerk of the district court in each county for public inspection, with the secretary of the state bar association, with the revisor of statutes, and with each district judge. OAG July 26, 1950 (905-H).

15.046 PUBLICATION BOARD

Requirements of a reviewable order made by an administrative agency. 34 MLR 464.

15.048 EFFECT OF PUBLICATION OF RULES OR ORDERS

Appeal by an administrative agency from judicial reversals of its orders. 34 MLR 550.

15.05 Renumbered 16.011.

15.08 AUDITOR, COMMISSIONER OF ADMINISTRATION; ACCESS TO RECORDS

Privilege against self-incrimination. 34 MLR 1, 34.

15.17 OFFICIAL RECORDS

Worksheets, research memo, exhibits, etc., which may be later used in court or before a commission, are not public records and may be held in confidence until used, presented, or printed. OAG Aug. 7, 1947 (371-A) (851-F).

The railroad and warehouse commission may furnish certified copies of its public records. OAG Jan. 26, 1948 (371-A).

No authority exists under which a municipality may destroy verified claims, canceled checks, old license applications, building, water and sewer permits, paid-up bonds, and interest coupons. These are official records which within the meaning of the statute must be preserved. Expired insurance policies, old receipts and old water bills of no apparent use may be destroyed. The same rule applies to old letters and correspondence of ancient date which are of no interest or value. OAG Aug. 24, 1949 (851-F).

The superintendent of licenses, weights, and measures in Minneapolis must permit examination, copying, and photographing of records relating to liquor licenses in his office. The records kept in his office are public records. OAG Nov. 30, 1950 (851-I).

MINNESOTA STATUTES 1953 ANNOTATIONS

15.19 DEPARTMENTS OF STATE IN GENERAL

76

The books and records of the Minnesota Society for Prevention of Cruelty are public records to which every member has access. OAG Dec. 21, 1950 (851-I).

Fees for the issuance of certificates issued by the village clerk and based upon village records belong to the clerk and not to the village. OAG Feb. 17, 1953 (470-B).

The statutory provision that public records be easily accessible for examination is not satisfied by requiring such inspection to be made either at a storage place separate from the official's office or by examination of projection of microfilm. OAG Apr. 17, 1953 (851-I).

The publication of legal transactions on record in the office of the register of deeds and the selling of subscriptions to such service is not prohibited by statute. OAG July 20, 1953 (373-A-4).

15.19 Obsolete.

15.21 BASIC SALARY RATES AND ECONOMIC ADJUSTMENT INCREMENTS

HISTORY. 1951 c 713 s 1.

15.22 AVERAGE COST OF LIVING INDEX; SALARY ADJUSTMENTS

HISTORY. 1951 c 713 s 2; 1953 c 510 s 1.

15.23 COST OF LIVING INDICES; OLD TYPE, NEW TYPE

HISTORY. 1951 c 713 s 41; 1953 c 510 s 2.

15.31 STATE EMPLOYEES, LIABILITY INSURANCE, PAYMENT OF PREMIUM

HISTORY. 1953 c 676 s 1.

Laws 1953, Chapter 676, makes it the duty of persons operating state-owned motor vehicles to carry liability insurance and makes it the duty of the commissioner of administration to execute the law. When a law is enacted and immediately effective, it cannot be implemented until there has been sufficient time for the state official responsible to complete all steps required by law in execution of such law. OAG June 15, 1953 (980-A-8).

15.35 STATE EMPLOYEES INSURANCE BOARD

HISTORY. 1953 c 696 s 1.

15.36 COMPENSATION; OFFICERS; RULES AND REGULATIONS

HISTORY. 1953 c 696 s 2.

15.37 GROUP INSURANCE; PREMIUMS

HISTORY. 1953 c 696 s 3.