

CHAPTER 356

LEGISLATIVE ADVISORY COMMITTEE

356.01-356.14 Obsolete.

356.15 Renumbered 9.28.

356.16 Obsolete.

356.17 LEGISLATIVE ADVISORY COMMITTEE

HISTORY. 1943 c 594 s 1.

Under the provisions of Laws 1943, Chapter 594, the governor, after consultation with the legislative advisory committee, made available to the revenue fund created by Laws 1945, Chapter 575, Section 19, as modified by Laws 1947, Chapter 582, Section 16, the sum of \$100,000 for certain purposes, which amount was to be returned to the governor's contingent fund to the St. Cloud Reformatory revolving fund for the manufacture of license plates. OAG Feb. 19, 1948 (9-A-10).

Appropriations under Laws 1947, Chapter 634, Section 12, is from the trunk highway fund and appropriations to the general contingent fund, Laws 1947, Chapter 634, Section 46, is from the general revenue fund. There is no restrictive language in Laws 1943, Chapter 594, which limits transfers from the general contingent fund to the transfers to appropriations from the general revenue fund; and the governor after consultation with the legislative advisory committee, may make transfer of such moneys in excess of \$5,000 as he may deem proper. As to amounts less than \$5,000, transfers may be made as provided by Laws 1943, Chapter 594, Section 1. OAG March 18, 1948 (9-A-26).

CHAPTER 357

FEES

357.02 CLERK OF DISTRICT COURT

HISTORY. Amended, 1947 c 95 s 1, 2.

Fees in a condemnation proceeding and not enumerated in section 357.02 must be fixed both as to items and amount by the judge in whose court the condemnation proceedings are pending before the clerk of court may legally make a charge. There must be a court order. OAG Aug. 11, 1953 (144-B-18).

357.04 Superseded by section 357.05.

357.06 CLERK'S FEES RETAINED

Standing committees of the county board may be appointed and the members are entitled to the compensation prescribed by section 357.06 in attending committee work which is in furtherance of the duties of the board and specifically delegated thereby. OAG Sept. 7, 1950 (124-J).

357.07 DEPOSIT FOR FEES

HISTORY. Amended, 1949 c 166 s 1.

If a person desires to perfect an appeal to the district court from any action taken by the county board in respect to a county drainage proceeding, section 357.07 requires that before the clerk of the district court shall enter this appeal on his records, he must collect from the appellant the sum of \$5. When the appeal is determined this is a proper item of disbursements when the disbursements are taxed. OAG May 15, 1953 (144-B-10).

357.09 SHERIFFS

HISTORY. Amended, 1951 c 375 s 1.

NOTE: Laws 1953, Chapter 349, applies only to Hennepin county.

The terms "mileage" and "transportation charges" as used in section 357.09, subdivision 22, and the phrase "actual disbursements for travel" used in section 525.54, are not synonymous. "Mileage" is compensation to the officer for travel measured by the miles traveled; "transportation charges" is compensation for the caring of the patient; and "actual disbursements for travel" are moneys paid out. OAG April 28, 1947 (390-C-6).

The sheriff and constable should make proof of service by a certificate or return of service on process and summons in any civil action in a municipal court of the city of St. Cloud. The summons is issued when delivered to an officer authorized to make the service. The fees of the officer serving the process are taxable. The sheriff should account for fees collected by him if he is on a salary basis. The constable receives mileage at the rate of 10c per mile for travel to and from the place of service. The sheriff receives mileage from the place where the court is usually held. OAG Sept. 20, 1949 (390-A-21) (308-D) (847-A-8).

357.11 CORONERS

Under the provisions of Laws 1945, Chapter 440, amending section 357.11, a coroner who is a funeral director is not prohibited from contracting with the county in servicing a funeral of a decedent who was an old age recipient at the time of his death. OAG Jan. 9, 1948 (90-B).

Section 357.11 is not a reimbursement statute. It fixes the compensation of coroners and the coroner is entitled to 10 cents per mile for actual mileage necessarily travelled in connection with performance of his duties and he is entitled to this compensation whether he walks or rides free of charge with the sheriff. OAG March 31, 1949 (103-A).

357.12 CONSTABLES

When transporting juveniles to public institutions sheriffs act as probation officers, and being appointees of the court they do not serve in an official capacity of sheriffs but they are entitled to the same fees as constables are entitled to under section 387.29. OAG May 23, 1947 (390-E-12).

Fees and expenses for transporting delinquent youths to a reception center of the youth conservation commission by a probation officer must be paid by the county upon proper certification by the judge, and in counties of 100,000 or less the fees and mileage for a probation officer is the same as that of a constable. OAG July 8, 1948 (268-F) (145-B-1) (390-C-12).

Where a sheriff is instructed by the court to take a delinquent child to a state institution he may be appointed a probation officer and as such may accept such fees and mileage as a constable would ordinarily draw. OAG July 8, 1948 (390-C-12).

Police officers of cities organized under Laws 1870, Chapter 31, are entitled to fees for performing the duties as constable in addition to their regular salaries. OAG Feb. 4, 1952 (785-D).

The right of a constable to serve process in civil actions is conferred on him by statute. OAG May 7, 1948 (847).

The offices of constable and policeman are incompatible when the two offices are held by the same person. The constable is compensated by fees. OAG Dec. 23, 1952 (847-A-4).

357.17 NOTARIES PUBLIC

A registration fee of 25 cents applies to applications for transfer of registration, applications for duplicate certificates, applications for nonresident permits, and other similar applications required by statute. These fees must be accounted for, reported, and remitted. Many documents to be filed in the registration of a motor vehicle require signatures to be acknowledged. The acknowledgment of the signature is a part of the registration and is not included in the registration fee. There is no requirement in the statutes that the registrar as part of the duties of his office shall take acknowledgments; but if for the convenience of the public the deputy registrar, or one of his employees, is a notary and as such takes acknowledgments, the regular notarial fee as provided for in section 357.17 may be charged by the notary. Such fee would not be reported as a registration fee but would be retained by the notary as a fee for his services as notary. OAG Sept. 24, 1948 (385-B-2).

A notary public employed as a deputy registrar in taking acknowledgments on a document to be filed in registering a motor vehicle may charge a notarial fee which may be retained by him, and this is in addition to the regular registration fee charged by law. OAG Sept. 24, 1948 (385-B-2).

357.18 REGISTER OF DEEDS

HISTORY. RS c 73 s 24; PS 1858 c 63 s 24; GS 1866 c 70 s 24; 1877 c 120 s 4; GS 1878 c 70 s 26; GS 1894 s 5507; RL 1905 s 2706; 1907 c 256 s 1; 1911 c 376 s 1; GS 1913 s 5771; MS 1927 s 7002; 1947 c 458 s 1; 1951 c 484 s 1.

The register of deeds in preparing an abstract should include an old age assistance lien and the legal fee therefor is 40 cents. The \$1 charge for the certificate is allowable as to the correctness of the entries contained in the abstract of title. OAG May 27, 1953 (373-B-10-A).

357.19 HENNEPIN COUNTY, REGISTER OF DEEDS

HISTORY. Amended, 1951 c 624 s 1.

357.21 SERVICES UNDER LEGAL PROCESS, APPRAISERS

HISTORY. RS 1851 c 73 s 25; PS 1858 c 63 s 25; GS 1866 c 70 s 26; GS 1878 c 70 s 29; GS 1894 s 5573; RL 1905 s 2708; 1909 c 17 s 1; GS 1913 s 5773; GS 1923 s 7005; 1925 c 330; MS 1927 s 7005; 1951 c 339 s 2.

No statutory authority exists for payment of compensation to a person assisting the sheriff in dragging for drowned persons. OAG July 28, 1952 (390-A-1).

357.22 WITNESSES

School board members necessarily attending the trial of a lawsuit are entitled to their necessary expenses, but receive no per diem. If they are called as witnesses, they are entitled to witness' fees and mileage. OAG May 9, 1947 (161-A-12).

357.23 WITNESS FEES OF OFFICERS OF MUNICIPALITIES

A county employee testifying in a case in which the county is a party, or in a case wherein the county has an interest, is still serving the county and is entitled to full pay. But if the employee of the county is absent serving as a witness in litigation in which the county is not interested, he would not be serving the county during that time and he will get witness' fees for the time he served as a witness, and probably is not entitled to pay from the municipality during the time he was absent. OAG Aug. 21, 1951 (120).

A coroner testifying in the city of his residence is not entitled to fees. OAG Jan. 19, 1949 (103-L).

357.25 EXPERT WITNESSES

The function of expert testimony is to assist the jury in reaching a correct conclusion from the facts in evidence, based upon the superior knowledge of the expert concerning the subject matter covered by his opinion. Hypothetical questions must be based upon facts admitted or established, or which, if controverted, might be legitimately found by the jury from the evidence. The question should embody substantially all the facts relating to the subject matter and must embody substantially all undisputed facts relating to the subject matter. The opinion of an expert based entirely upon conjecture or speculation should not be admitted. *Smith v Twin City Motor Bus*, 228 M 14, 36 NW(2d) 22.

The weight to be given to the testimony of medical witnesses, whether it be opinion evidence or otherwise, is for the trier of facts, and the opinion of older doctors is not necessarily to be given more weight than that of younger doctors; but the age and experience of witnesses are matters to be considered by the triers of fact. *Freeman v Mattson*, 230 M 261, 41 NW(2d) 249.

The rule that the opinion of a physician as to condition of an injured or deceased person is inadmissible where it is based wholly or partially on the history of the case as told to him by such person in the course of a personal examination made for the purpose of qualifying such physician as an expert medical witness does not apply where the opinion of such physician is based upon a hypothetical question which substantially embodies all relevant symptomatic facts or which might reasonably be found from the evidence inclusive of such injured person's subjective complaints. *Lee v Minneapolis Street Railway Co.*, 230 M 315, 41 NW(2d) 433.

In a malpractice action, photographs showing the patient's injured foot were relevant on the issue of the extent of the patient's damage where there was no indication that the photographs were distorted or not an accurate representation of the foot at the time they were made. Such photographs are helpful as an aid to valuable description of objects and conditions provided they are relevant to some material issue. *Moeller v Hauser*, 237 M 368, 54 NW(2d) 639.

Whether expert real estate witnesses were sufficiently acquainted with the property to qualify them to give their opinions as to its value is a question for determination by the trial court. In the instant case the court did not abuse its discretion. *Marion v Miller*, 237 M 306, 55 NW(2d) 52.

357.26 COMPENSATION OF JURORS

HISTORY. RS 1851 c 73 s 26; 1856 c 5 s 17; PS 1858 c 63 s 26; GS 1866 c 70 s 27; 1870 c 80 s 1; GS 1878 c 70 s 30; 1891 c 83 s 1; GS 1894 s 5574; 1895 c 304; RL 1905 s 2712; 1909 c 129 s 1; GS 1913 s 5778; 1919 c 73 s 1; 1921 c 95 s 1; GS 1923 s 7010; MS 1927 s 7010; 1933 c 123 s 1; 1943 c 483 s 1; 1949 c 101 s 1; 1953 c 478 s 1.

Laws 1949, Chapter 101, increased the per diem allowance of jurors to \$5 per day including Sundays in addition to the ten cents for each mile traveled in going to and returning from court. Where jurors go home each night and return the next morning, they are not entitled to mileage; where the court recesses from Friday to Monday of each week, jurors are entitled to mileage home and return each week. Where the court recesses or adjourns over the week end or for a definite period, jurors are not entitled to per diem compensation for the days during which the court is recessed or adjourned, such jurors not being "in attendance." In any particular case where it is difficult to apply the general rule, the clerk should refer the peculiar facts in the particular case to the presiding judge for direction. OAG April 4, 1949 (260-A-4).

357.27 CORONER AND JUSTICE JURORS

HISTORY. RS 1851 c 73 s 26; 1856 c 5 s 17; PS 1858 c 63 s 26; GS 1866 c 70 s 27; 1870 c 80 s 1; GS 1878 c 70 s 30; 1891 c 83 s 1; GS 1894 s 5574; 1899 c 299; RL 1905 s 2713; GS 1913 s 5779; GS 1923 s 7011; MS 1927 s 7011.

MINNESOTA STATUTES 1953 ANNOTATIONS

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SEALS, OATHS, ACKNOWLEDGMENTS 358.15

357.28 COURT COMMISSIONER

HISTORY. Amended, 1949 c 462 s 1.

The fee of the court commissioner in examining a petition for waiver of the waiting period before issuance of a marriage is \$1.00. The fee for entering the order waiving the period is 50 cents. OAG Nov. 28, 1947 (128-B).

357.39 CLERKS, CITIES OF FIRST CLASS

HISTORY. 1949 c 472 s 1.

357.40 COLLECTIONS CREDITED TO GENERAL FUND

HISTORY. 1949 c 472 s 2.

CHAPTER 358

SEALS, OATHS, ACKNOWLEDGMENTS

358.03 FORM OF OFFICIAL SEALS

HISTORY. Amended, 1947 c 199 s 1.

358.05 OATH OF OFFICE

The official year for the State of Minnesota commences on the first Monday in January of each year and all terms of office terminate at that time. Section 375.07 provides that the county board shall meet at the county seat for the transaction of business on the first Tuesday after the first Monday in January and since January 1 is a holiday and the county offices are closed, the newly elected county officers should present their bond and oath to the county board at its first meeting on January 2 and when the bonds are approved and filed, the new officers take office. OAG Dec. 11, 1950 (104-A-13).

While the provision that an officer of the school board must qualify within 10 days after his election is a mandatory provision only, it is grounds for declaring the office vacant and selecting a successor. The officer, however, may qualify at any time before a successor is selected, even though more than 10 days have elapsed. OAG Sept. 12, 1950 (768-G) (451-A-23).

358.09 BY WHOM AND HOW ADMINISTERED

HISTORY. RS 1851 c 46 s 8; 1856 c 11 s 1; 1856 c 12 s 2; PS 1858 c 7 s 31; PS 1858 c 35 s 8, 75; 1865 c 63 s 2; GS 1866 c 72 s 3, 4; 1868 c 61 s 1; 1871 c 91 s 1; 1877 c 93 s 1; 1878 c 49 s 1; GS 1878 c 72 s 3-7; GS 1894 s 5636-5640; RL 1905 s 2681; GS 1913 s 5737; GS 1923 s 6967; MS 1927 s 6967.

358.10 OFFICIALS MAY ADMINISTER, WHEN

HISTORY. RS 1851 c 46 s 8; 1856 c 11 s 1; 1856 c 12 s 1; PS 1858 c 7 s 31; PS 1858 c 35 s 8, 75; 1865 c 63 s 2; GS 1866 s 72 s 3; 1868 c 62 s 1; GS 1878 c 72 s 3; GS 1894 s 5636; RL 1905 s 2682; GS 1913 s 5738; GS 1923 s 6968; MS 1927 s 6968.

358.15 BY WHOM TAKEN IN THIS STATE

HISTORY. 1851 c 8 art 2; 1851 c 46 s 8; PS 1851 c 8 art 2 s 6; 1856 c 11 s 1, 2; 1856 c 12 s 2; 1858 c 26 s 4; 1858 c 35 s 8; PS 1858 c 5 s 94; PS 1858 c 7 s 31, 124; PS 1858 c 35 s 8; GS 1866 c 8 s 162, 227; GS 1866 c 26 s 4; GS 1866 c 40 s 7; GS 1866 c