

MINNESOTA STATUTES 1953 ANNOTATIONS

1177

RIGHTS, POWERS 465.01

back line on property, but compensation must be paid the landowner for any damage suffered. OAG Jan. 13, 1948 (59-A-9).

The city of Austin may not establish a building set-back line in the commercial district except by paying damages to realty owners. OAG April 29, 1948 (59-A-9).

463.02 GRANT, CONDEMNATION, OR DEDICATION

Reasonable set-back lines may be adopted as a part of zoning ordinances, or separately in the absence of a general zoning ordinance, and the violation of an ordinance by others than the defendant does not preclude its enforcement against the defendant. Where the defendant has knowingly and wilfully violated a city ordinance, plaintiffs will not be denied a mandatory injunction to compel the undoing of defendant's wrong merely because it will cause defendant hardship or expense. *McCavic v De Luca*, 233 M 372, 46 NW(2d) 873.

463.08 Repealed, 1949 c 119 s 110.

GENERAL PROVISIONS

CHAPTER 465

RIGHTS, POWERS

465.01 RIGHT OF EMINENT DOMAIN

HISTORY. 1883 c 73 s 23-28; 1885 c 145 s 23-28; GS 1878 Vol 2 (1888 Supp) c 10 s 226-231; 1889 c 123 s 1; 1889 c 65 s 1; 1891 c 146 sc 8 s 1; GS 1894 s 1240-1245, 1322; 1895 c 8 s 128, 214, 225; 1903 c 388; RL 1905 s 766; GS 1913 s 1784; 1917 c 424 s 1.

Right of a licensee under a city ordinance to challenge constitutionality of the ordinance. 35 MLR 664.

The right-of-way for a new road may be acquired by a village through purchase, gift, or condemnation. OAG Feb. 10, 1949 (377-D).

The city of Austin may acquire by condemnation a site outside its limits for a sewage disposal plant but if the site costs more than \$5,000, the city may not acquire it until authorized by a vote of the electorate. OAG March 29, 1949 (387-B-9).

The city of Owatonna may acquire property outside its limits for the purpose of constructing a drainage ditch disposing of canning waste. A vote of the people is not necessary where cost of the property to be acquired is not in excess of \$3,000. OAG June 6, 1949 (387-B-9).

Where a village has an easement only, the fee being in the abutting owners, if it wishes to vacate the alley and retain the land it must acquire title by purchase or condemnation. OAG Nov. 4, 1947 (396-G-1).

If a village desires to acquire a tract of land as an addition to a park, the council must first determine public need and necessity. Having done so it may acquire the land by condemnation. OAG April 2, 1947 (469-C-8).

In order to furnish heat to private owners a village operating through a water, light, power, and building commission, may condemn private property to run a heat line. OAG Sept. 5, 1947 (817-F).

A city in condemning land for park purposes may include a non-navigable body of water. OAG July 30, 1948 (817-F).

MINNESOTA STATUTES 1953 ANNOTATIONS

465.03 RIGHTS, POWERS

1178

465.03 GIFTS TO MUNICIPALITIES

HISTORY. Amended, 1949 c 294 s 1.

A devise of land to a village "to be used for a public park," creates a valid charitable trust. The village council's acceptance created a charitable trust effective by common law rules and not under the provisions of section 465.03. Acceptance of a charitable trust need not be express, but may be inferred from the conduct of the trustee. *Schaeffer v Newbury*, 235 M 282, 50 NW(2d) 477.

A city may accept a gift of corporate stock and, if no restrictions are imposed by the donor, may convert same into cash and use the proceeds for purchase of lands for municipal airport or municipal park system. OAG April 19, 1950 (59-A-22).

Money realized by a city from the operation of a theater conveyed to the city upon a condition may be used only for the purpose stated in the condition. OAG Oct. 13, 1947 (59-A-40).

The village of Kenyon may accept a gift of housing units from the federal government. OAG Sept. 23, 1949 (430).

A town may not accept gifts of money for the purpose of building roads. OAG Sept. 7, 1948 (434-A-7).

A village may not acquire property and lease it back to a private corporation. A village may not acquire property subject to a covenant to pay off the obligations of a private corporation. OAG Dec. 15, 1950 (469-A-12).

The village of Deer River, having received a donation of 2,200 acres of tax-forfeited land for a recreational park, game refuge, forest improvement area, and other outdoor recreational purposes, has authority through its village council to manage said lands for the purpose for which same was acquired, to perform selective cutting of trees growing thereon provided that such cutting does in fact improve the area for park and recreational purposes. As no application has been made to the commissioner of conservation for a municipal forest, as required by law, the village does not have authority to cut timber thereon for municipal forests or other purposes. OAG Dec. 23, 1948 (469-C-8).

Where village funds are insufficient to employ a policeman, private contributions may be accepted to meet the emergency. OAG June 30, 1947 (785-S).

Under section 465.035 a county may, for public use, convey real estate to a village pursuant to a resolution of the board of county commissioners without meeting the requirements of section 373.01. *County of Hennepin v City of Hopkins*, M, 58 NW(2d) 851.

465.035 PUBLIC CORPORATIONS, CONVEYANCE OF LAND

HISTORY. 1947 c 34 s 1; 1951 c 73 s 1.

Under the provisions of section 465.035, as amended by Laws 1951, Chapter 73, the city of Chisholm, operating under a home rule charter, may sell real estate not needed for municipal purposes and owned by the city in fee and not held in trust, to the Minnesota state building commission for a nominal consideration or upon such terms and conditions as the city council may deem reasonable and proper. No plebiscite is required. OAG May 8, 1951 (59-A-40).

The city of Rochester may sell to a school district for location of high school property purchased by the city from general funds without restriction for park purposes but for many years used as such, if the city council determines that the property is no longer needed for park or municipal purposes. Approval of the sale by the park board is not necessary. OAG July 30, 1953 (59-A-40).

A village council may sell and dispose of real estate of the village, including the village hall located thereon, to the county without a vote of the electors, reserving the right to use rooms therein for village purposes. OAG July 21, 1952 (469-A-15).

The county board has authority to sell blocks 7, 8, 9, as shown on the original plat and the streets intervening between those blocks now vacated, and the school

MINNESOTA STATUTES 1953 ANNOTATIONS

1179

RIGHTS, POWERS 465.09

board in its discretion and provided the school needs the property, may acquire the land which the county is willing to convey to it without an authorizing election. OAG Nov. 8, 1951 (622-I-1).

Except as authorized by section 465.035 a school district may not convey its real estate to a grantee without consideration. OAG Aug. 11, 1952 (622-I-7).

A conveyance under the authority of section 465.035 by a school district need not be authorized by a vote of the people but must be authorized by the school board. OAG April 30, 1953 (622-I-7).

Laws 1951, Chapter 73, permits a school district to convey a school building and site to a town without any restriction as to consideration. Laws 1951, Chapter 76, permits the transfer of personal property by a school district to a town without consideration. OAG Aug. 3, 1951 (622-I-8).

A school board may convey surplus school real estate to another public corporation without securing the approval of the electors. OAG Jan. 7, 1954 (622-I-8).

A village may convey to the county its interest in the village-county hospital. OAG March 16, 1951 (1001-B).

465.036 GIFTS, HOSPITALS

HISTORY. 1949 c 152 s 1.

465.04 ACCEPTANCE OF GIFTS

Where a trust is created by bequest and accepted by a city as trustee, the trust must be executed in accordance with the terms of the trust, and the trust fund may not be diverted to a purpose not intended by its creator. OAG June 29, 1950 (59-A-22).

465.09 DAMAGES; NOTICE OF CLAIM; LIMITATION

Notice of claim of personal injury; waiver and estoppel. 31 MLR 751.

The statutory notice of claim against a municipality is sufficient if the place of the accident is so described therein that proper municipal officers may, through the exercise of reasonable diligence, locate the place of the accident even though the notice may contain some inaccuracies. *Louko v Village of Hibbing*, 222 M 463, 25 NW(2d) 234.

Where the municipality's removal of ice and snow from the public street caused the formation of an icy slope extending into the street a distance of two or three feet from the curb at a point where pedestrians were required to travel; and where plaintiff, a six-year-old boy, while walking over such icy slope after being discharged from a school bus, slipped and fell under the wheels of the bus, such evidence gave rise to a reasonable inference that the plaintiff slipped because of such icy slope and justified a finding that such defective condition was the proximate cause of the accident. *Squillace v Village of Mountain Iron*, 223 M 8, 26 NW(2d) 197.

Evidence authorized a finding that the city of Duluth was liable for the death of a child for negligence in creating a dangerous condition, by steaming holes through the ice on a children's playground on private property for the purpose of protecting the street during spring thaws, which action on the part of the city resulted in the death of a child. *Harning v City of Duluth*, 224 M 299, 28 NW(2d) 659.

Where a dangerous condition on the sidewalk in a residential district, due to an accumulation of ice and snow, existed for ten days or more, the evidence relating thereto was sufficient to sustain the finding that the city had constructive notice of the condition so as to render it liable for injuries sustained by pedestrian falling on the sidewalk. *Woodring v City of Duluth*, 224 M 580, 29 NW(2d) 484.

Where varying inferences may be drawn from testimony, the case is for the jury. A motion for directed verdict presents a question of law only. A verdict may be directed only where the court's manifest duty would clearly be to set aside a contrary verdict as not justified by the evidence or contrary to law. On motion for a directed

MINNESOTA STATUTES 1953 ANNOTATIONS

465.09 RIGHTS, POWERS

1180

verdict, the view most favorable to the adverse party must be taken. *Olson v Evert*, 224 M 528, 28 NW(2d) 753.

A verdict directed for defendant on sole ground of plaintiff's contributory negligence will be upheld, though finding of contributory negligence as a matter of law is not sustained, if there is nothing to sustain finding of defendant's negligence. *Olson v Evert*, 224 M 528, 28 NW(2d) 753.

The legislature determines whether a city is liable for the torts of a city department or whether the department is solely liable, or whether both the city and the department are liable. *Mitchell v City of St. Paul*, 228 M 64, 36 NW(2d) 132.

An action for nuisance based on violations of statute enacted for benefit of public generally does not necessarily rest on negligence since violation of the statute may be treated as trespass, conversion, fraud, nuisance, or other torts separate and distinct from negligence. *Christiansen v City of Duluth*, 225 M 475, 486, 31 NW(2d) 270.

A judgment to be appealable must be a final determination of the rights of parties in the action, but only in the sense of terminating the particular action. Neither the plaintiff nor the court is authorized to dismiss an action without prejudice after final submission. Where action for damages against a municipality is founded on nuisance or trespass and no allegations of negligence are set forth in the complaint, the complaint need not allege that written notice was given to the city as required by statute as prerequisite to action against municipality based on negligence. *Christiansen v City of Duluth*, 225 M 475, 486, 31 NW(2d) 270.

The board of water commissioners of the city of St. Paul is liable for torts committed by it, and the city under the provisions of its home rule charter is not liable. The adoption of a home rule city charter is an exercise of legislative power and constitutes a local statute. Section 465.09 applies to the board of water commissioners of the city of St. Paul and operates to repeal and supersede that part of the city charter, prescribing a special local regulation governing the presentation of notice of claim against the board; and in the instant case presentation of notice of claim for trespass is not required. *Mitchell v City of St. Paul*, 228 M 64, 36 NW(2d) 132.

If a person had no reasonable ground to anticipate that a particular act would or might result in an injury to anybody, then the act would not be negligent. *Callahan v City of Virginia*, 230 M 55, 40 NW(2d) 841.

In determining whether a municipality maintaining public walks and the owners of property adjoining are liable for injuries sustained by reason of defective entryways, coal holes, or like facilities placed therein for the convenience of the building owner, the applicable test is whether the defendants exercised reasonable care in the creation or maintenance of the facility involved, having in mind the risks which might reasonably be anticipated with respect thereto. *Callahan v City of Virginia*, 230 M 55, 40 NW(2d) 841.

A store occupant is not required to remove ice from a sidewalk in front of a store forming as a result of negligence of the owner in maintaining a building cornice unless some act of negligence on the part of occupant prevents dripping water from flowing off sidewalk into street and in an action against a tenant occupying premises adjacent to public sidewalk for injuries sustained as result of fall on ridge of ice on sidewalk, evidence was insufficient to support finding that any negligent acts of the tenant had caused such ice to form or accumulate. *Benston v Berde*, 231 M 451, 44 NW(2d) 481.

Where a motion is made to change the venue to promote the ends of justice the court should consider, among other relevant factors, where the cause of action arose, which venue will best facilitate a jury view where necessary, the state of the court calendars in the two venues, and whether the opposing party will be inconvenienced by the proposed change of venue. *Miller v Anchor Casualty Co.*, 233 M 87, 45 NW(2d) 705.

Plaintiff tripped and fell over a ridge in the sidewalk. The sidewalk had been raised by the force of roots of a tree growing on the lot adjoining the sidewalk.

MINNESOTA STATUTES 1953 ANNOTATIONS

1181

RIGHTS, POWERS 465.13

The duty of keeping the sidewalk in a reasonably safe condition for travel is placed upon the city and not upon the abutting property owners or occupants. *Sand v City of Little Falls*, 237 M 233, 55 NW(2d) 49.

Notice to a municipality is required only when an action is predicated upon negligence. *Hahn v City of Ortonville*, M, 57 NW(2d) 254.

In an action to recover damages resulting from the fall of plaintiff's wife on an icy crosswalk the notice of claim was sufficient to comply with the statute; the evidence supported the finding that the dangerous condition existed for more than ten days immediately prior to the accident and the evidence was sufficient to support a finding of negligence on the part of the city of Mankato. *Larson v City of Mankato*, M, 59 NW(2d) 312.

An agency for the United States purchased and stored wool for immediate availability and was the real party in interest in an action to collect damages from the city of Minneapolis for loss through alleged negligence of the city in failing, after notice, to shut off the water in the building in which the wool was stored, with the result that the pipes froze and burst. The United States was acting in its sovereign capacity, so that its action could not be barred for failure to comply with the Minnesota statute requiring a notice to the city of a claim for damages before bringing the action. *United States v City of Minneapolis*, 68 F Supp 585.

The demurrer to the complaint was sustained because the trustee of the Inland Waterways Inc. failed timely to file with the Navy Department a written request for relief as required by the War Contracts Relief Act, 41 USCA, section 106. *Fogarty v United States*, 176 F(2d) 599.

In a claim for damages resulting from the operation of a municipal liquor store notice of claim is necessary within 30 days if the claim is based upon negligence, otherwise not. OAG Sept. 29, 1949 (218-R).

A village is liable to persons injured on its streets while serving a lawful purpose, if the street is in such dangerous condition that the village officers knew or should know its dangerous condition. OAG May 21, 1947 (480-B).

A village is under obligation to keep the streets safe for use and must maintain a barricade along the sidewalk in close proximity to a dangerous excavation. It has no obligation to enter upon property to correct an open cesspool or cistern that is in so close to the traveled portion of the sidewalk as to make the walk dangerous. OAG April 22, 1948 (480-396-G).

Where an employee in the village liquor store sold liquor to minors who became intoxicated and committed crimes causing substantial damages to various persons, the village had a legal right to settle such lawsuits that were brought against it on account of the facts stated. OAG July 7, 1947 (844-B-1).

As a general rule a municipality is not liable for injuries to persons patronizing a municipally owned and operated bathing beach. OAG July 11, 1947 (844-B-1).

465.10 CLAIMS BASED ON RELATION OF MASTER AND SERVANT

Municipal immunity from tort liability is confined to acts performed in a sovereign, as distinguished from liability attaching to acts performed in an individual, corporate or proprietary role; and in the instant case where the city owned and operated a small boat harbor for primary benefit of boat owners and operation of the harbor involved not only substantial charges for certain services but also certain special corporate benefits, such operation was "proprietary" for the purposes of tort liability. *Heitman v Lake City*, 225 M 117, 30 NW(2d) 18.

465.13 JUDGMENT AGAINST MUNICIPALITY; PAYMENT

HISTORY. 1883 c 73 s 39; 1885 c 145 s 39; 1885 s 196 s 1; GS 1878 Vol 2 (1888 Supp) c 10 s 242, 314; GS 1894 s 1257, 1499; 1895 c 8 s 352; 1903 c 123 s 1.

Where the district court in an election contest ordered the village to pay the attorney's fee for the contesting parties, the village either had to appeal or pay the judgment. OAG May 31, 1951 (218-C-1).

465.18 STATE'S OWNERSHIP OF BED OF NAVIGABLE RIVER

Ownership of beds under navigable waters; mines and minerals; power to convey when the state has title. 32 MLR 484, 534.

Under Laws 1889, Chapter 22; Laws 1901, Chapter 104; Laws 1909, Chapter 45; Laws 1911, Chapter 291, Section 1; Laws 1917, Chapter 110; Laws 1931, Chapter 286; and MSA, Section 93.351 et seq., relating to navigable waters, the legislature manifested an intent of reserving in the state the title and beneficial ownership of navigable lake beds and the mineral deposits therein. *State v Longyear*, 224 M 451, 29 NW(2d) 657.

Although title of a riparian owner on navigable or public waters extends to the ordinary low-water mark, his title is not absolute, except to ordinary high-water mark. As to the intervening space, his title is limited or qualified by the right of the public to use the same for purposes of navigation or other public purposes. A riparian owner is entitled to recover damages for such overflow caused by trespass as may occur above what is known as the ordinary high-water mark. *Mitchell v City of St. Paul*, 225 M 390, 31 NW(2d) 46.

Navigable waters are waters which are used or usable as highways of commerce. States organized as was Minnesota, in public domain, became vested upon admission to the Union with title to beds of all waters then navigable. The fact that ponds were not meandered does not establish that the waterway was not in fact navigable at the time of the survey. A waterway which, when the state was admitted to the Union, had capacity for floating logs only at high water, impounded from spring thaws and freshets, and then only with the aid of dams and sluiceways and then only with difficulty, for three days in a normal year, was not "navigable" when the state was admitted to the Union, and title to its bed did not vest in the state by virtue of its admission to the Union. *Bingenheimer v Diamond Iron Mining Co.*, 237 M 332, 54 NW(2d) 912.

465.26 DIVERSION OF UNNAVIGABLE STREAMS; RAISING WATERS OF LAKES

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 it 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).

465.50 OBSERVANCE OF MEMORIAL DAY

There is no statute specifically authorizing a city of fourth class to appropriate money for building a gate or entrance over a cemetery, but the end probably could be reached under section 416.01 or section 465.50 as those sections are intended to commemorate the noble deeds of the soldier dead. OAG July 21, 1949 (59-B-9).

The village council may spend public money of a village to install brackets on lamp posts to hold flags to be displayed on holidays and may make provision that such flags be placed and removed. OAG Dec. 28, 1951 (476-B-13).

465.54 MAY PAY EXPENSES FROM GENERAL FUND OF VILLAGE

Where a child injured herself when using a properly constructed recreational floor skating rink, neither the municipality nor the school district are liable for medical costs incurred through an injury. OAG April 13, 1948 (844-F-3).

MINNESOTA STATUTES 1953 ANNOTATIONS

1183

RIGHTS, POWERS 465.62

465.56 CITIES, VILLAGES, AND BOROUGHES MAY LEVY TAXES FOR ADVERTISING PURPOSES

The city council may not expend the proceeds of a tax levy under Laws 1933, Chapter 270, to help defray the cost of sending kittenball team which represents South St. Paul to a state tournament. OAG Aug. 7, 1951 (59-A-21).

The city of Alexandria, under its charter, may not expend public funds for Christmas street decorations. OAG Dec. 11, 1951 (59-A-22).

A city may not buy real estate to be given away in a radio contest intended to advertise the area. OAG Oct. 26, 1948 (59-A-40).

A village may not expend moneys from the operation of a municipal liquor store or from any other liquor fund to sponsor a bowling team. OAG Aug. 15, 1951 (218-R).

A village may not spend money for advertising the village until a tax levy for that purpose has been approved by the electorate. OAG June 1, 1949 (519-Q).

Within the limitation fixed by sections 275.11 to 275.16, a village council by authority of section 465.56, may, when authorized by the electors as provided in section 465.57, levy the tax there specified for the purpose of advertising the village and its resources and advantages. The proceeds may be used only as specified in section 465.56. OAG Oct. 8, 1953 (519-Q).

465.57 VOTE AT ELECTION

A city of fourth class may not expend public funds to celebrate the city's seventy-eighth anniversary or to contribute to a local organization for celebration purposes. OAG June 13, 1947 (59-A-3).

The village of Alexandria may not expend public funds for Christmas donations of its stores. OAG Dec. 11, 1951 (59-A-22).

A village may not expend moneys from the municipal liquor store funds or other funds to sponsor a bowling team. OAG Aug. 15, 1951 (218-R).

465.58 LEAGUE OF MUNICIPALITIES

HISTORY. Amended, 1951 c 259 s 1.

465.60 Renumbered 413.135

465.61 PURCHASES BY CITY OF THE FOURTH CLASS UNDER SPECIAL LAW

HISTORY. 1949 c 352 s 1, 2.

In some jurisdictions, the necessity of competitive bidding depends upon the amount involved in the contract to be let. If applicable, such a requirement must be observed in good faith by the acting municipal authorities. Where a municipality is prohibited from letting contracts involving an expenditure of more than a specified sum without submitting same to competitive bidding, it cannot divide the work and let it be under several contracts, the amount of each falling below the amount for competitive bidding. OAG April 29, 1952 (707-A-4).

By the enactment of section 465.61 the legislature intended to lift the limitation with respect to the maximum amount of public works which could be performed by the city without awarding a contract therefor by competitive bidding. OAG April 29, 1952 (707-A-4).

465.62 CITIES, LIABILITY INSURANCE

HISTORY. 1953 c 136 s 1, 2.

MINNESOTA STATUTES 1953 ANNOTATIONS

465.63 RIGHTS, POWERS

1184

465.63 MUNICIPAL RECORDS, DESTRUCTION AUTHORIZED

HISTORY. 1953 c 324 s 1-3.

465.64 FLOOD EMERGENCY FUNDS, CITIES SECOND CLASS

HISTORY. 1953 c 697 s 1.

465.65 CERTIFICATES OF INDEBTEDNESS; AUTHORITY TO ISSUE

HISTORY. 1953 c 697 s 2.

465.66 CERTIFICATES OF INDEBTEDNESS; SALE; FORM AND CONTENTS; RECORDS; PROCEEDS

HISTORY. 1953 c 697 s 3.

465.67 CANCELANON OF CERTIFICATES

HISTORY. 1953 c 697 s 4.

465.68 LIMITATION ON AMOUNT OF CERTIFICATES OUTSTANDING

HISTORY. 1953 c 697 s 5.

MUNICIPALITIES

CHAPTER 470

MUNICIPALITIES EMERGENCY ACT

470.01-470.11 Repealed, 1949 c 297 s 1.

CHAPTER 471

SEVERAL POLITICAL SUBDIVISIONS

471.01 PUBLIC BUILDINGS IN CERTAIN SUBDIVISIONS; RECORDS OF WORK; PUBLICATION

Right of a licensee under a city ordinance to challenge constitutionality of the ordinance. 35 MLR 664.

Municipalities possess only those powers granted in express words or necessarily or fairly implied in the powers granted. The city of Rochester is without authority to enter into a contract providing for progress payments in advance of delivery. OAG Sept. 11, 1951 (707-B-1).

471.02 CONTENTS OF RECORDS AND ACCOUNTS

A school district may employ day labor to accomplish improvements and repairs on a school building. Materials purchased in excess of \$1,000 in value must be purchased on bids. Where any day labor is involved, section 471.01 must be observed. OAG June 29, 1951 (707-D-4).