

## CHAPTER 488

## MUNICIPAL COURTS

## 488.01 EXISTING COURTS CONFIRMED

Judicial responsibility. 32 MLR 1.

Fluid nature of prosecution for violations of municipal ordinances. 36 MLR 143.

Offenses against the city. 36 MLR 143.

Concurrent jurisdiction created by statutes and ordinances. 36 MLR 146.

Doctrine of double jeopardy as it relates to ordinances and statutes. 36 MLR 147.

Pre-trial procedure in municipal courts. 36 MLR 150.

Municipal courts may be classified into three groups: (1) those organized and existing under RL 1905, as amended, now chapter 488; (2) those organized and existing under Laws 1895, Chapter 429, as amended; (3) those organized and existing under special laws as from time to time amended. The Minneapolis municipal court was established by Special Laws 1874, Chapter 141. The St. Paul municipal court was established by Special Laws 1875, Chapter 2. 36 MLR 151.

Trial by jury in municipal courts. 36 MLR 152.

The Municipal Court Act of Minneapolis, Special Laws 1889, Chapter 34, as amended by Laws 1917, Chapter 407, gives jurisdiction of an action in unlawful detainer whether the title to the real estate is involved or not. The purpose of an unlawful detainer action is to determine the right to present possession of property and such an action is not a bar to a subsequent action involving title to the property. *Henschke v Young*, 226 M 339, 32 NW(2d) 854.

The statute does not authorize the disqualification of a municipal court judge by the mere filing of an affidavit of prejudice. OAG Aug. 28, 1950 (307-B).

The municipal court of the city of Winona, organized under Special Laws 1885, Chapter 115, is without power in criminal cases to compel the attendance of witnesses outside the county but within the state. OAG June 20, 1952 (306-B).

Where a municipality under the provisions of section 488.03 has adopted the resolution, a court is established as a state court, control of which is restricted to that power specifically conferred by the legislature, and therefore where the municipality has determined that the municipal court consists of one judge there is no authority for the council thereafter to provide that it shall have two judges. OAG April 17, 1952 (307-I).

Municipal courts created under Minnesota Statutes 1949, Chapter 488, are limited to one municipal judge and one special judge and, in case of the absence or disability of both, the mayor or president of the council is authorized to designate a practicing attorney to preside as judge. OAG Aug. 14, 1950 (307-J).

A judge of a municipal court is not prohibited from holding the office of commissioner on the state veterans service building commission. OAG July 12, 1948 (358-B-2).

## 488.03 MUNICIPAL COURTS ESTABLISHED

Under the provisions of section 481.03 a village may establish a municipal court by a resolution. The adoption of an ordinance is not necessary. OAG July 23, 1947 (306-A-4).

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## 488.05 MUNICIPAL COURTS

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If the municipal judge in question did not resign from his position when entering the war service but took a leave of absence, and after the completion of such military or naval service made written application for reinstatement and was reinstated, such judge is entitled to have all retirement compensation rights accrued up to the time of taking his leave and thereafter accruing as if he had been actually employed during the time of such leave. OAG Feb. 27, 1953 (141-D-5).

The procedure in drawing a jury in the municipal court of Baudette is that prescribed by law with reference to district courts. OAG Sept. 21, 1949 (260-A-8).

A county may permit use, by the municipal court, of space in the courthouse with or without payment of rental by the city, but only for such time as this space is not needed for county business. OAG Feb. 20, 1951 (306-A).

The municipal court established in Baudette continues to exist as such even though its population should fall below 1,000 according to the 1950 census. OAG June 26, 1950 (306-A-4).

An appropriation to pay the expenses of judges of the municipal court to an annual conference is discretionary with the city council. OAG Nov. 5, 1951 (307-I).

Fees allowed by statute may be retained by the clerk of the municipal court unless he receives a salary in lieu thereof. OAG April 17, 1952 (308-C).

### 488.05 JUDGES; ELECTION, TERM, SALARY

Prohibition is the proper remedy to restrain a judge from acting in a matter where he is disqualified by an affidavit of prejudice, but there is no statute authorizing the disqualification of a judge of the municipal court of South St. Paul by the mere filing of an affidavit of prejudice. Section 488.16 has no application to a prosecution for a violation of a city ordinance and is applicable only to civil actions. *State ex rel v Beaudoin*, 230 M 186, 40 NW(2d) 885.

The statute forbids a village or city council to diminish the salary of a municipal judge during his term of office, but does not forbid increasing his salary. OAG May 1, 1947 (307-I).

A special municipal judge may act only in the absence or disability of the municipal judge. "Disability" should not be limited to physical disability but must be construed so as to include any disqualification. OAG Dec. 29, 1952 (307-J).

Where a charter changes the date of a city election the term of the municipal judge is not altered. OAG Nov. 16, 1951 (307-K).

Where a vacancy occurred in the office of the judge of municipal court of the city of St. Paul more than 30 days prior to the regular city election, the vacancy should be filled at the general city election. The only way in which the name of a nominee to fill the vacancy can be placed on the ballot is through the filing with the city clerk of a certificate of nomination signed by at least 500 electors residing in the judicial district involved. Such certificate must be filed on or before the third Saturday preceding the date of election. OAG March 22, 1948 (307-L).

The offices of special municipal judge and village attorney are incompatible. OAG Jan. 17, 1952 (358-B-2).

Where a village includes territory in two counties the jurisdiction of its municipal court is co-extensive with and includes both counties. OAG Sept. 29, 1947 (847-A-8).

### 488.06 JURISDICTION

Although the Minneapolis municipal court has jurisdiction over actions of forcible entry and unlawful detainer, whether involving title to realty or not, such jurisdiction does not embrace the power to entertain or consider a defense which is insufficient per se and which could be asserted only with the aid of affirmative equitable relief. *Gallagher v Muffett*, 233 M 330, 46 NW(2d) 792.

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Where the motorist brought an action against a cartage corporation for damages to his automobile in a collision, and the defendant had another motorist brought into the case, and such motorist sued for damages in the district court in a sum in excess of the jurisdiction of the municipal court where the first action was brought, the bringing of a second action in the district court was necessary, as affecting right of plaintiff in a second action to a continuance of the case in the municipal court. *Baker v Connolly Cartage Corp.*, ..... M ....., 57 NW(2d) 657.

## 488.07 JURISDICTION LIMITED

Statutory abolition of the right to recover damages for breach of promise to marry. 35 MLR 396.

An action for breach of promise to marry is in form on contract, but in respect to damages, it is governed by the law applicable to tort actions; and the jury in assessing damages could consider defendant's financial worth, social position, the pecuniary and social advantages plaintiff would have enjoyed if defendant performed his contract, and the mental pain and anguish suffered by the plaintiff. *Kugling v Williamson*, 231 M 135, 42 NW(2d) 534.

## 488.09 CRIMINAL JURISDICTION, JUSTICES OF THE PEACE

Municipal courts lack uniformity of practice and jurisdiction. Generally, they have exclusive jurisdiction of violations of municipal ordinances. Such violations are generally disposed of summarily without a jury. 36 MLR 143.

In a village in Mower county having no municipal court the justices of the peace of the city of Austin and its municipal court have concurrent jurisdiction over all criminal cases within the county except in any municipality wherein there exists a municipal court. The city justices of the village in question have like jurisdiction and any justice of the peace in Mower county has jurisdiction to hear cases involving violation of any ordinance of the village in question for which violation and penalty is prescribed. OAG Sept. 24, 1952 (266-B-24).

## 488.11 CLERKS AND DEPUTIES, PROCESS

The judge of the municipal court may appoint a clerk thereof without a resolution of the city council establishing the office. OAG April 17, 1952 (307-I).

Where the clerk of the municipal court of the city of Duluth entered military service, his absence under the provisions of section 192.261 did not break the continuity of his term of office, and the person appointed as acting incumbent was merely a substitute under the provisions of section 192.263. OAG Oct. 23, 1947 (308-A).

## 488.12 CLERK SHALL REPORT WEEKLY

A municipal court clerk pays over to the treasurer such sums received at the time of filing his report, less such commission as he keeps as his own fees. He is not an auditing officer and cannot retain the fees of the court reporter or any other court officer. OAG June 17, 1952 (308-D).

## 488.13 CLERK TO DEPOSIT MONEY RECEIPTS WITH TREASURER

It is within the discretion of the governing body of a municipality to appropriate money for the payment of the expenses of a municipal judge in attending a meeting of the municipal judges association, but they are not required to make such appropriation. OAG Nov. 5, 1951 (307-I).

## 488.14 COURT OFFICERS

The positions of city justice and municipal court officer of the city of South St. Paul are incompatible. OAG Aug. 30, 1951 (358-D).

**488.16 POWERS AND DUTIES, PRACTICE, RULES, FEES**

Where a note of issue stated that the action would be placed on the calendar for trial by the court, and counsel for both parties were notified and had knowledge of such fact, and the defendant allowed two years to elapse before demanding a jury trial, and when such demand was made the parties were in court prepared for trial, and the court was ready to commence, the trial judge properly denied the defendant a jury trial. *Culhane v Burness*, 236 M 256, 52 NW(2d) 451.

Any method on the part of the court to bring about a plea of guilty merely to get a case disposed of as a matter of expediency or convenience of the court is criticized and condemned. *State v Boulton*, 229 M 576, 40 NW(2d) 417.

Prohibition is the proper remedy to restrain a judge from acting in a matter where he is disqualified by an affidavit of prejudice, but there is no statute authorizing the disqualification of a judge of the municipal court of South St. Paul by the mere filing of an affidavit of prejudice. Section 488.16 has no application to a prosecution for a violation of a city ordinance and is applicable only to civil actions. *State ex rel v Beaudoin*, 230 M 186, 40 NW(2d) 885.

**488.20 JURY TRIALS**

The procedure in drawing a jury in the municipal court of Baudette is that prescribed by law with reference to district courts. OAG Sept. 21, 1949 (260-A-8).

**488.22 CRIMINAL CASES; PROSECUTION; FEES; CIVIL CASES**

Where a motorist was convicted in municipal court of reckless driving and he appealed to the district court it was the city attorney's duty to handle the appeal in the district court. OAG Sept. 15, 1948 (59-A-5).

It is the duty of the village attorney to prosecute misdemeanors in the municipal court occurring within the village limits; but it is not his duty to prosecute misdemeanors occurring outside the village limits. OAG April 28, 1949 (59-A-5).

In the matter of traffic violations, including reckless driving, where the misdemeanor is committed within city limits, the city attorney may prosecute in the municipal court and in the district court on appeal. OAG Sept. 15, 1948 (59-A-5).

Where a judgment in a conciliation court is docketed in the municipal court by an order of the conciliation judge, clerk's fees and law library fees are not collectible. OAG Aug. 1, 1952 (285-B).

The sheriff and constable 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 ten cents 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).

There is no prohibition against the city attorney of Waseca acting as the village attorney of New Richland. OAG March 30, 1948 (358-E-3).

In an arrest by a highway patrol officer of a person for breach of highway regulations and the prosecution is in the name of the state, the witness fees are paid out of designated state funds, and if paid by the county, the state treasurer pays the county upon the verified claim of the county made by the county auditor. If the arrest is made by other persons, the witness fees in the municipal court are paid by the city and there is no reimbursement from the state. OAG April 1, 1949 (989-A-6).

An appeal from a conviction in a prosecution under a village ordinance is handled in the district court by the village attorney. OAG Feb. 2, 1948 (772-A-5).

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## 488.25 APPEALS TO DISTRICT COURT

Where an appeal is taken from the municipal court to the district court stay provisions apply to Acts required by section 169.95 of the Highway Traffic Regulation Act and section 171.16 of the drivers license law. OAG Aug. 4, 1952 (291-F).

## 488.26 COURTS IN CITIES OF THIRD OR FOURTH CLASS

Where defendant voluntarily entered a plea of guilty to a charge of assault in the third degree in municipal court and paid a fine before any attempt was made to appeal to the district court, judgment was discharged and appeal could not be taken therefrom. State v Boulton, 229 M 576, 40 NW(2d) 417.

Where the city council provided for the payment of the salary to a judge of the municipal court organized under Laws 1895, Chapter 229, the council may provide that fees and fines collected be paid into the city treasury; but collections in cases prosecuted involving violation of the statute should under section 574.34 be paid into the county treasury. OAG Jan. 6, 1948 (307-I).

Section 488.26 does not apply to municipal courts located in a village. The section applies only to cities of the third and fourth class. OAG Nov. 13, 1950 (308-B).

## 488.27 FEES TO BE CHARGED BY MUNICIPAL COURTS

In criminal cases in the municipal court of the village of Baudette, the costs prescribed by section 488.27 must be added where the statute prescribes the inclusion of costs; and in taxing costs the sheriff and constable fees should be included. OAG May 3, 1949 (306-B-3).

## CHAPTER 489

### COURT COMMISSIONERS

#### 489.01 ELECTION; TERM

HISTORY. 1858 c 48 s 1; PS 1858 c 7 s 80; 1860 c 43 s 1, 6; GS 1866 c 8 s 193, 197; 1867 c 12; 1868 c 18; 1872 c 16; 1877 c 41, 42; GS 1878 c 8 s 224, 228; 1885 c 26 s 1; 1885 c 163; 1891 c 35; GS 1894 s 823, 827; 1897 c 311 s 5; RL 1905 s 147; GS 1913 s 228, 809; 1915 c 168 s 1, 2.

A revision of an existing statute is presumed not to change its meaning, even if there be alterations in the phraseology, unless such intention to change the law clearly appears from the language of the revised statute. In re-enacting a statute, however, intention to change the meaning may as clearly appear from the omission of old as by adding new language. Enactment of statutes lies wholly within the legislative field, and what the legislature has authority to enact it has like authority to amend or even repeal. When in 1945 the legislature adopted and enacted the compilation and revision of the general statutes of this state as the "Minnesota Revised Statutes," it thereby recognized and declared the same to be an official compilation, revision, and code. As such, the language chosen and used in the revised statutes must be given effect as the latest expression of the legislative will. Where the statutory language is clear and unambiguous, there is no room for construction or interpretation. State ex rel v Washburn, 224 M 269, 28 NW(2d) 652.

In drafting and adopting sections 489.01 to 489.05 in the 1945 revision of the Minnesota statutes it was the intention of the legislature to continue the election of court commissioners during the same years as other county officials may be elected. State v Fitzsimmons, 227 M 557, 33 NW(2d) 854.

The next general election at which a court commissioner may be elected is not in 1948 but in 1950; and the present holder of the office appointed by the court holds the office until the first Monday in January, 1951. OAG June 4, 1948 (128-D).