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authorized by law; and that it will result in injury for which there is no other adequate remedy at law. *Bellows v Ericson*, 233 M 320, 46 NW(2d) 654.

Reasonable setback 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.

585.03 NOTICE OF APPLICATION; RESTRAINING ORDER

Nationality Act of 1940 not an exclusive procedure for vacating naturalization orders. 35 MLR 483.

Where a public drainage ditch system has been established and constructed and thereafter lands not assessed for benefits caused by the construction are drained into this system, thereby imposing a burden upon the system not contemplating, if damage or injury result to private landowners they may bring action in their own name as parties in interest; and the county attorney on behalf of the public may bring action if the public health is endangered or the public roads flooded. The circumstances may warrant injunction proceedings. OAG Dec. 20, 1948 (361-B).

Jurisdiction of the court to issue a restraining order, ex parte, must be tested by the complaint and record made at the time of the issuance, and where it appeared that the court lacked jurisdiction, subsequent proceedings could not validate the void restraining order. *Norris Grain Co. v Nordaas*, 232 M 91, 46 NW(2d) 94.

585.04 BOND REQUIRED; DAMAGES, HOW ASCERTAINED

Prohibition is not a writ of right, but, in the absence of another legal remedy which is reasonably efficient and adequate, issues in the discretion of the court to prevent an inferior tribunal from proceeding in a matter in which it is exceeding its legitimate power and authority. The district court did not have jurisdiction to issue temporary mandatory injunction where plaintiff failed to give a bond as required by section 585.04. *Bellows v Ericson*, 233 M 320, 46 NW(2d) 654.

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586.01 TO WHOM ISSUED, JUDICIAL DISCRETION NOT CONTROLLED

Judicial control of administrative action. 33 MLR 569.

Judicial control of administrative action by means of extraordinary remedies in Minnesota. 33 MLR 569.

History of the Minnesota statutes pertaining to the extraordinary remedies in general. 33 MLR 571.

Type of administrative action subject to control by mandamus. 33 MLR 575.

Unavailability of mandamus in the presence of another adequate remedy. 33 MLR 595.

Powers of the court in mandamus proceedings. 33 MLR 601.

Procedural aspects of mandamus proceedings. 33 MLR 604.

Statutory mandamus. 33 MLR 607.

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Administrative officers may be compelled by mandamus to do their duty, even though the manner of their doing may be within the official's discretion. Application of Minneapolis Street Ry., 225 M 425, 37 NW(2d) 533.

When the supreme court reverses an order of judgment with directions as to the order of judgment to be entered, upon remittitur it is the duty of the trial court to execute the mandate of the supreme court precisely according to its terms without alteration, modification, or change in any respect. The court may not give one party an unfair advantage over another by seizing upon and adopting a narrow and technical admission in pleadings without regard to significance and import of pleadings as a whole. *Holden v Farwell*, 226 M 243, 34 NW(2d) 920.

Certiorari may be used as ancillary to mandamus, and, where so used, mandatory rights established on certiorari may be enforced by mandamus. *State ex rel v Civil Service Board*, 226 M 253, 32 NW(2d) 574.

The exercise of the power to permit amendments to pleadings rests in the sound discretion of the trial court, and as a rule this discretion will not be controlled or disturbed by a higher court, and this is especially true where the appellate court's intervention is sought by way of mandamus. *Allum v Federal Cartridge*, 226 M 363, 32 NW(2d) 589.

Mandamus will not lie to force a person to do an act which in his discretion he may or may not do. *State ex rel v Mangni*, 230 M 518, 43 NW(2d) 775.

Prior to the adoption of civil service by St. Louis county in November, 1942, the relator, an honorably discharged veteran of World War I, had a permanent five day a month position with the county. After its organization, the civil service commissioner of the county placed him on the civil service rolls as a permanent appointee and gave him a classification. For more than one year after January, 1946, he was not on the payroll of the county and the civil service commission, under its rules, dropped his name from the rolls. In an action in mandamus against the county and its commissioners for his reinstatement under the Veterans Preference Act, it is declared that the relator was a civil service employee of the county and whatever rights he might have reinstatement must be procured before the civil service commission, under its rules and regulations, and not by mandamus. *State v St. Louis County*, 234 M 128, 47 NW(2d) 776.

Mandamus is an extraordinary legal remedy awarded not as a matter of right, but in the exercise of a sound judicial discretion and upon equitable principles. In determining whether a writ of mandamus should issue, the court is not limited to a consideration of the facts and conditions which existed at the time a proceeding is commenced, but should take into consideration the facts and conditions existing at the time it determines whether a peremptory writ should issue. Mandamus lies only to enforce a clear present duty. The authority of a civil service commission, being wholly based on statute and the civil service rules adopted by the city, must be exercised in conformity therewith. Where civil service rules require as a prerequisite to certification of eligible appointees that the city request certification in writing and designate in the request the rate of pay available for the position, an attempted certification by the commission in the absence of such request is ineffective. *State v Hodapp*, 234 M 365, 48 NW(2d) 519.

An action in mandamus to compel a corporation to transfer into name of buyer the ownership of shares of stock in a corporation, and to issue a new certificate evidencing such ownership, was improperly dismissed on the erroneous theory that the sale of stock was subject to a restriction imposed by the bylaws of the corporation of which buyer allegedly had knowledge, though such restriction was not stated on the certificate of stock. *State ex rel v Pepsi Cola Bottling Co.*, 234 M 466, 48 NW(2d) 564.

The action in ejectment involved defendant's right to possession of real estate located in the city of Virginia. The situation arose under an alleged oral agreement with plaintiff wherein plaintiff's title to the realty was admitted. Defendant was entitled to a peremptory writ of mandamus requiring the district court to remand the cause for trial to the district court in Virginia where the defendant resided. *Fitger Brewing Co. v Cupoletti*, 235 M 599, 49 NW(2d) 584.

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In a mandamus proceeding to compel the board of regents of the University of Minnesota to adopt rules and regulations prohibiting the use of university property and facilities for teaching religious doctrine, except for purely sectarian use essential to understanding of literature, science and the arts, the doctrine of exhaustion of administrative remedy was not applicable. *State ex rel v University of Minnesota*, 236 M 452, 54 NW(2d) 122.

Where, in the return and answer to an alternate writ of mandamus, ordering the Minneapolis Street Railway Co. to restore certain schedules in effect on a certain date, or show cause, the company pleaded that the order was unreasonable and confiscatory in the light of present conditions affecting its business, setting out facts to show such unreasonableness, the court erred in granting judgment on the pleadings and ordering the issuance of the writ. The pleaded unreasonableness is a question of fact to be determined on the evidence. *State v Minneapolis Street Ry. Co.*, M, 56 NW(2d) 564.

In a mandamus to compel the municipal court to proceed to trial, an alternate writ was quashed where the relators failed to show that the order granting a continuance was arbitrary and capricious. *Baker v Connolly Cartage Corp.*, M, 57 NW(2d) 657.

A judgment mandamus the state, as a remedy for condemnation of land omitted in an original condemnation proceeding, involves a final adjudication upon the issue of whether the land has actually been taken and as such it is appealable.

Although the judgment herein is appealable it must be vacated for want of jurisdiction to enter a judgment in mandamus on a petition for intervention. *State v Anderson*, M, 58 NW(2d) 257.

In an action for mandatory relief in connection with ditch obstruction, the appellate court held that under the circumstances it was error to permit the complaint to be amended to demand substantial damages, including treble damages, at the close of the trial and that defendants were prejudiced thereby, and in the interest of justice a new trial must be had on the question of damages. The general effect of a saving clause is to preserve the status quo of something existing at the time of its enactment. It relates to accrued rights. Where the right under controversy has not accrued prior to the repeal, a saving clause cannot preserve the repealed statute until the right is acquired nor can it operate to hasten the acquisition of the right. *Marquardt v Stark*, M, 58 NW(2d) 273.

586.02 ON INFORMATION, REMEDY AT LAW

Judicial review by means of extraordinary remedies. 33 MLR 570, 685.

Where a municipality caused a change of grade to be made without instituting an action for condemnation of the abutting property, the owners of such property are not entitled to a writ of mandamus compelling the municipality to institute condemnation proceedings to fix the amount of damages suffered, since they have a plain, speedy and adequate remedy at law. *Collins v Village of Richfield*, M, 55 NW(2d) 628.

586.03 ALTERNATE OR PEREMPTORY, CONTENTS OF WRIT

Where the effect of an order cutting off a stay of proceedings was to foreclose defendant from making a motion for a new trial and depriving defendant of the advantages of a broader review scope afforded by an appeal from an order denying a new trial, as compared with an appeal from an adverse judgment, defendant was sufficiently prejudiced by action of the court in entering such order to be entitled to an alternate writ requiring its vacation. *Crawford v Woodrich*, 236 M 547, 51 NW(2d) 822.

Under the charter of the city of Rochester the mayor may maintain an action of mandamus against any delinquent officer of the city, and it is the duty of the city attorney to represent the mayor in such action. OAG Jan. 28, 1949 (59-A-5).

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586.05 WRIT, COURT ORDER, SERVICE

While proper practice at the time of the acceptance of the bid of a contractor for the construction of a school building is for the board, by motion or resolution, to instruct the chairman and the clerk to enter into a contract with the successful bidder, nevertheless if the minutes of the meeting clearly show that a duty was imposed upon the chairman and clerk, performance of that duty will be compelled by mandamus; but if the duty does not clearly appear, the remedy would be that a special meeting be again called upon due notice and the board then makes specific directions to the chairman. OAG June 22, 1948 (161-A-8).

586.06 ANSWER

In an action in mandamus to compel the mayor and the city council of Mankato to appoint relator in the court below as chief of police of said city, the action was not yet at issue when the trial court signed its findings of fact, conclusions of law, and order for judgment.

Where on the return day and while a motion was still pending by respondents below for a stay of two or three days to enable them to interpose an answer, the court signed findings of fact in favor of relator, no testimony having been given or offered in support of the facts set out in the alternative writ, the section was not at issue and there was no evidence to sustain said findings. *State v Hodapp*, 230 M 208, 41 NW (2d) 188.

A writ of mandamus to command the commissioner of highways to take appropriate action to bring about condemnation proceedings relative to certain land owned by petitioners was a "civil action" which gave the commissioner an opportunity to answer and set up either that the land was not damaged or that the state proposed to remedy or had remedied the construction which caused the damage and therefore it did not seek to acquire an easement or title. *State ex rel v Hoffman*, 233 M 186, 46 NW(2d) 468.

586.08 PLEADINGS, ISSUES, TRIAL

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. An administrative agency has no power or jurisdiction to make findings, for which there is no evidentiary support, that a position has been abolished, and such findings are void for lack of jurisdiction. 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.

The exercise of the power to permit amendments to pleadings rests in the sound discretion of the trial court and as a rule this discretion will not be controlled or disturbed by a higher court, especially where the court's intervention is sought by way of mandamus. *Allum v Fed. Cartridge*, 226 M 363, 32 NW (2d) 589.

Evidence established that relator's delay in bringing mandamus action to compel the city attorney in Minneapolis to requisition a first assistant to fill the vacancy and compel him to appoint relator to such position pursuant to certification by the civil service commission was justified and that relator was not barred by laches. *State ex rel v Sawyer*, 231 M 457, 43 NW(2d) 775.

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The evidence established that the relator's delay in bringing a mandamus action to counsel the city attorney in Minneapolis to requisition a first assistant city attorney to fill a vacancy and counsel him to appoint relator to such position pursuant to the certification by the city civil service commission was justified and that relator was not barred by laches from bringing the action. *State ex rel v Mangni*, 231 M 457, 43 NW(2d) 775.

586.09 JUDGMENT FOR PLAINTIFF, APPEAL

A judgment mandamus the state, as a remedy for condemnation of land omitted in an original condemnation proceeding, involves a final adjudication upon the issue of whether the land has actually been taken and as such it is appealable. Although the judgment herein is appealable it must be vacated for want of jurisdiction to enter a judgment in mandamus on a petition for intervention. *State v Anderson*, M, 58 NW(2d) 257.

586.10 FINES FOR NEGLIGENCE OF DUTY

HISTORY. RS 1851 c 83 s 16; PS 1858 c 73 s 16; 1862 c 18 s 2; GS 1866 c 80 s 11; GS 1878 c 80 s 11; GS 1894 s 5984; RL 1905 s 4565; GS 1913 s 8275.

586.11 JURISDICTION OF DISTRICT AND SUPREME COURTS

The exercise of the power to permit amendments to pleadings rests in the sound discretion of the trial court and as a rule this discretion will not be controlled or disturbed by a higher court, especially where the court's intervention is sought by way of mandamus. *Allum v Fed. Cartridge*, 226 M 363, 32 NW(2d) 589.

Where the council of a city of the first class created a residential district embracing relator's property providing that on petition of 50 per cent of the owners of realty in the district a city may upon condemnation proceedings redistrict the district to residence structures only, and thereafter the city passed a comprehensive zoning ordinance authorizing commercial structures on relator's property, without making any reference to the original zoning provision, the adoption of the ordinance did not remove the earlier restrictions and did not entitle the relator to a building permit to erect a commercial structure. *State ex rel v City of Minneapolis*, 235 M 174, 50 NW(2d) 296.

Under section 586.11 the district court has exclusive original jurisdiction in all cases of mandamus except where such writ is to be directed to a district court or a judge thereof in his official capacity. Where change of venue is sought, a party cannot ask this court for a writ of mandamus to direct the transmission of files and records in an action to another county until the district court or its judge has been requested to act. The refusal of the clerk of the district court to transmit the files when such change is demanded cannot be construed to be the refusal of the court or its judge. *Hassing v Zahalka*, M, 60 NW(2d) 86.

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