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ADMINISTRATIVE BOARDS, DECISIONS, CERTIORARI 606.01

605.16 EXTENT OF STAY

Defendant was convicted of the crime of rape on November 23, 1951. The trial court set December 15, 1951 as the date for the imposition of the sentence. Defendant perfected his appeal to the supreme court and was at liberty under an appeal bond in the sum of \$5,000. Defendant applied for an order staying the imposition of sentence pending his appeal and alleged that he would be unable to procure a transcript of the testimony because of lack of time on the part of the court reporter. It is ordered by the supreme court that the proceedings in the district court be stayed and defendant admitted to bail. *State v Wilson*, 235 M 571, 50 NW(2d) 706.

The provisions of section 60.16 do not prescribe the revocation of the license of an insurance company upon the rendition of a judgment if an appeal has been taken and supersedeas bond executed. OAG Dec. 3, 1947 (249-A-19).

605.18 BOND MAY BE IN ONE INSTRUMENT, HOW SERVED

The provision that bonds in case of designated appeals "shall" be served on the adverse party with notice of the appeal is not mandatory so as to require dismissal of the appeal from a judgment of the district court affirming an order of the probate court allowing the final account of the executrix because the notice of appeal served on respondent did not have a notice of appeal, bond, or notice of a deposit attached thereto, where the notice of the bond was served about one month after the notice of appeal and as soon as the defect was discovered. Appellant acted in good faith and no prejudice resulted. *Gelin's Estate*, 228 M 568, 37 NW(2d) 538.

CHAPTER 606

ADMINISTRATIVE BOARDS, DECISIONS, CERTIORARI

606.01 CERTIORARI, WITHIN WHAT TIME WRIT ISSUED

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.

Judicial control of administrative action. 33 MLR 569.

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

Certiorari; type of administrative action subject to control of. 33 MLR 685.

Scope of review under certiorari. 33 MLR 704.

Procedural aspects of certiorari. 33 MLR 710.

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

Res judicata applies to determination of the court reviewing an administrative holding. 35 MLR 576.

The substantial evidence rule as applied to unfair labor practices enforcement under the National Labor Relations Board upon findings in certiorari. 35 MLR 661.

Declaratory relief reviewing the federal employees alleged wrongful discharge in violation of the Veterans Preference Act. 35 MLR 659.

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 re-

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weigh 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.

Where litigant is party to proceedings so as to qualify for writ of certiorari must be determined from record made and certified by court, board, or commission whose proceedings are under review and a return thereof is conclusive upon appeal. *State ex rel v Minneapolis & St. Paul Airports Commission*, 226 M 272, 32 NW(2d) 560.

In reviewing an order or determination of an administrative board, the supreme court will go no further than to determine whether the evidence was such that the board might reasonably make the order or determination which it made. Where there is any evidence reasonably tending to sustain the finding of the director of the division of employment and security it will not be disturbed by the appellate court on review. In the instant case the decision of the director affirming the findings of fact and decisions of the appeal tribunal is affirmed. *Hamlin v Coolerator Co.*, 227 M 437, 35 NW(2d) 616.

Appeal from an order of the district court quashing a writ of certiorari to review an examination and attempted certification for the position of chief of police for the city of Mankato. In order to limit the time for issuance of a writ of certiorari under MSA, Section 606.01 due notice requires written notice to be served upon the party applying for the writ. Actual knowledge of results of a civil service examination does not preclude writ of certiorari on the ground of laches where it was within power of civil service commission, by compliance with its own rules, to limit time by service of written notice on testee. Mere fact that others may be affected will not make legal an examination which did not substantially comply with law and with rules for holding examination. *State ex rel v Kruse*, 231 M 309, 43 NW(2d) 116.

The industrial commission may, in its discretion, set aside an award and grant a new hearing thereon for cause. Where the time to review the order of the industrial commission has expired, the appellate court may not determine the sufficiency of evidence to sustain award upon review of the commission denying petition for a new hearing. Where the petition to vacate the award and for new hearing discloses no claim of fraud, deceit, or concealment, and no showing of newly discovered evidence, the order of the commission denying such petition, does not constitute an abuse of discretion. *Gartner v Hogstad*, 231 M 419, 43 NW(2d) 798.

Upon a failure to prove that wife was voluntarily living apart from her husband, the conclusive presumption of dependency prevails as a matter of law. Whether the husband and wife are voluntarily living apart within the meaning of section 176.12, and whether the wife was wholly or partially supported by husband is a question of fact; and the findings of the industrial commission on a question of fact cannot be disturbed unless consideration of the evidence and the inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to the one which the commission adopted. The burden rests upon the party asserting voluntary separation to prove it. *Baburic v Butler Bros.*, 233 M 304, 46 NW(2d) 661.

If there is a remedy by appeal certiorari cannot be resorted to for a review of an order or a judgment of an inferior court. *Maloney's Guardianship*, 234 M 1, 48 NW(2d) 313.

Certiorari lies to review the quasi-judicial acts and proceedings of a municipal body to determine, though inspection of the record, if the body had jurisdiction, kept within it, and to examine the evidence, not for the purpose of weighing it, but to ascertain whether it furnished any legal and substantial basis for the action taken. *Beck v Council of the City of St. Paul*, 235 M 56, 50 NW(2d) 81.

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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.

606.02 WHEN SERVED

Appeal from an order of the district court quashing a writ of certiorari to review an examination and attempted certification for the position of chief of police for the city of Mankato. In order to limit the time for issuance of a writ of certiorari under M.S.A., section 606.01 due notice requires written notice to be served upon the party applying for the writ. Actual knowledge of results of a civil service examination does not preclude writ of certiorari on the ground of laches where it was within power of civil service commission, by compliance with its own rules, to limit time by service of written notice on testee. Mere fact that others may be affected will not make legal an examination which did not substantially comply with law and with rules for holding examination. *State ex rel v Kruse*, 231 M 309, 43 NW(2d) 116.

The findings of the commission are entitled to very great weight and the appellate court will not disturb them unless they are manifestly contrary to the evidence. Although the referee erred in not receiving in evidence an application made by the employee for benefits under a group insurance policy, it was not reversible error as the offer was made for impeachment purposes only and the reception of the exhibit would have added nothing to the evidence before the referee. *Jurich v Cleveland-Cliffs Iron Co.*, 233 M 108, 45 NW(2d) 237.

On certiorari to review an order of the industrial commission awarding compensation to claimant, it is not the function of the supreme court to re-try the case on appeal but it will only decide whether there is evidence to sustain the findings of the commission. In proceedings by dependents of an employee who died following a coronary occlusion occurring on July 2 at home after a similar occlusion had occurred while at work, the evidence established that there was a causal connection between both occlusions and the work which employee was doing on March 2. *Simon v Village of Plainview*, 237 M 136, 54 NW(2d) 32.

606.04 COSTS

An actor who participates with or without formal pleading or intervention, as an active contestant on the merits for the determination of issues of law or fact, and who by outcome of the proceeding will be bound and affected either favorably or adversely with respect to an asserted interest peculiar to him as distinguished from an interest common to the public or other taxpayers in general, is a party to the proceeding, and the fact that the relator aviation company is a taxpayer is not alone sufficient to give it a right by certiorari to review the proceedings of the Metropolitan Airports Commission, involving the exercise of a legislative or administrative function, without a showing that the relator possessed an interest not common to all taxpayers. *State ex rel v Minneapolis-St. Paul Airports Commission*, 226 M 272, 32 NW(2d) 561.

The right of appeal, inclusive of the right of review by certiorari, is purely statutory and is subject to such conditions as the legislature may impose. Certiorari is a writ of review in the nature of a writ of error or an appeal; and whether a litigant is a party to the proceedings so as to qualify for a writ of certiorari must be determined from the record made and certified by the court, board or commission whose proceedings are under review, and a return thereof which is responsive to the writ is conclusive upon appeal. *State ex rel v Minneapolis-St. Paul Airports Commission*, 226 M 272, 32 NW(2d) 560.

An order of the district court granting the motion of a defendant charged with the commission of a felony to quash an indictment is not subject to review by the supreme court on a writ of certiorari. The state has no right to appeal in a criminal

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case, and questions of law may not be certified to the supreme court without the consent of the defendant. The state may review a judgment quashing an indictment for an information, or sustaining a demurrer thereto, only when such power is expressly conferred by a constitutional or statutory provision. *State v Ruegemer*, M, 57 NW(2d) 153.

606.05 WHEN DISMISSED, COSTS

The action or decision of a board of appeal created under the provisions of the School Reorganization Act, now sections 122.40 to 122.57, being legislative and not judicial, cannot be reviewed by certiorari. In the instant case the board only modified a recommendation plan and did not attempt to organize the school district. *State ex rel v Schweickhard*, 232 M 342, 45 NW(2d) 657.

Where an employer provides a safe and reasonable means of ingress to and egress from his premises, and an employee, for his own convenience, chooses not to use it but instead finds a ladder and scales a ten-foot fence and is injured in so doing, such injuries are not caused by an accident arising out of the course of his employment. It is common knowledge that a ten-foot high fence located around a building under construction is there to prevent ingress and egress at places where the fence is located. *Corcoran v Fitzgerald Bros.*, M, 58 NW(2d) 744.

Where, on certiorari to review a denial of compensation under the Workmen's Compensation Act, the evidence discloses several possible causes of the employee's condition, and where neither the pleadings nor the findings indicate what facts are alleged or found to be the cause of the condition, the cause is remanded for a hearing de novo with the suggestion that where the evidence indicates several possible causative conditions, the findings indicate which of these conclusions is found to be the true cause. *Manthe v Employers Mutual Casualty Co.*, M, 58 NW(2d) 758.

CHAPTER 607

SUPREME COURT, COSTS AND DISBURSEMENTS

607.01 COSTS AND DISBURSEMENTS

Disbursement for printing used previously in appellate cases. 37 MLR 622.

Costs of verbatim recording. 38 MLR 43.

In condemnation proceedings the state is acting in its sovereign capacity and costs and disbursements cannot be taxed against it, there being no statutory provision permitting it. *State v Bentley*, 225 M 244, 28 NW(2d) 770.

By intervention a third party becomes a party to a suit pending between others. An intervenor is liable for costs if he fails to sustain his claim and is entitled to recover costs if he prevails. *State v Fitzsimmons*, 226 M 557, 33 NW(2d) 854.

By obtaining modification of order relating to alimony, husband defendant is prevailing party, entitling him to his costs and disbursements under the rules; but following the rule in *Colliers v Colliers*, 221 M 343, the supreme court is vested with discretion in awarding costs, but not as to disbursements. *Loth v Loth*, 227 M 387, 35 NW(2d) 542.

The supreme court is authorized to allow costs and disbursements in favor of the prevailing party on appeal. A modification of a judgment entitles the party obtaining the modification to costs on appeal and to disbursements even though the disbursements were made in providing a record and brief on issues on which the party obtaining the modification did not prevail. *Hildebrandt v Hagen*, 228 M 353, 38 NW(2d) 815.