

MINNESOTA STATUTES 1953 ANNOTATIONS

615.10 OFFENSES AGAINST PUBLIC PEACE

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615.10 USE OF FIREARMS BY MINORS

HISTORY. Amended, 1949 c 358 s 2.

615.15 LANGUAGE PROVOCATIVE OF ASSAULT

Assault and battery; provocation by words. 37 MLR 199.

A grocery store proprietor and the owner of a restaurant may compel a person who has antagonized, and persists in antagonizing, the proprietor by calling him names to stay off the premises. OAG Nov. 19, 1951 (605-B).

615.17 BRAWLING OR FIGHTING, DISORDERLY CONDUCT

HISTORY. 1953 c 661 s 1.

CHAPTER 616

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

616.01 PUBLIC NUISANCE

HISTORY. 1876 c 54 s 1, 2; GS 1878 c 98 s 8, 9; Penal Code s 319; GS 1894 s 6613; RL 1905 s 4987; GS 1913 s 8759.

Attractive nuisance doctrine in Minnesota as compared with reinstatement of the law. 32 MLR 526.

Because the common subject matter of sections 160.34, 616.01, and 219.383, is the prohibition of the obstruction or closing of public highways, the three statutes are in pari materia and should be construed together; and, because that is true, the provisions of section 219.383, to the extent that they prohibit a railroad from stopping a train across a street for not more than ten minutes, modify the provisions of the other two statutes and legalize any obstruction of a public highway incident to such a stop. There can be no violation of sections 160.34 and 616.01 by stopping a train across a public highway unless the stop exceeds ten minutes, in violation of section 219.383; but where the ten minutes is exceeded all three statutes are violated. *Mlenek v Fleming*, 224 M 38, 27 NW(2d) 800.

Statutes prohibiting obstruction or closing of public highways contain specific provisions which taken together constitute general provisions which may or may not establish a public nuisance. *Mlenek v Fleming*, 224 M 38, 27 NW(2d) 800.

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. 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*, M, 55 NW(2d) 49.

A city council may expend public funds for the purpose of surveying the probable cost of dikes to restrain the overflow of flood water of a river passing through said city and to engage upon the erection of a system of dikes, if upon research and survey it is deemed advisable. OAG June 20, 1952 (59-A-22).

Operation of a speed boat so as to endanger the safety of others is unlawful. OAG Aug. 23, 1951 (273-D-2).

A town board has control and jurisdiction over town roads. A party whose land abuts a public rural highway may use a portion thereof not needed for public travel and seed the same to grass within one rod of the center, but such work must not interfere with travel or improvement of the road. The privilege of the abutting owner is subject to the public easement. The maintenance of a fence by the abutting owner

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encroaching upon the road may constitute a public nuisance under section 616.01. OAG April 10, 1951 (377-D-10-J).

The purpose of section 616.01 is to assure to every citizen the enjoyment of his public rights. OAG April 10, 1951 (377-B-10-J).

Municipalities do not have power to abate private nuisances by ordinance. A private nuisance may be abated only upon suit of the person wronged. The village health officer lacks authority to cause the removal of a building. Within the cost limitation of \$25, under certain circumstances, there might be a removal. If a building is a nuisance as a fire hazard, the matter should be referred to the state fire marshal who has authority to condemn buildings and cause their removal. OAG Oct. 28, 1948 (477-B-20).

616.02 MAINTAINING OR PERMITTING A NUISANCE

Municipalities cannot regulate travel and commerce on the Mississippi river. Racing thereon with speed boats and other water craft to the discomfort and annoyance of any persons might constitute a public nuisance. OAG Aug. 12, 1952 (273-D-2).

If the evidence indicates that a speed boat is being operated so that the noise injures or endangers the safety, health, comfort or repose of any considerable number of persons or offends public decency, or unlawfully interferes with or obstructs or tends to obstruct passage on a lake, navigable river, bay, stream, or any public water, or any way renders a considerable number of persons insecure in life or the use of the property, the operator offends the prohibition contained in section 616.01 and is guilty of being a public nuisance. OAG Aug. 23, 1951 (273-D-2).

616.05 ADULTERATION OR IMITATION OF FOODS

HISTORY. RL 1851 c 108 s 1-3; 1852 Amend p 25 s 118; PS 1858 c 97 s 1-3; GS 1866 c 101 s 1-3; 1871 c 32 s 1; GS 1878 c 101 s 1-4; Penal Code s 331, 332, 347; GS 1894 s 6625, 6626, 6641; 1901 c 117; RL 1905 s 4993; GS 1913 s 8765.

Implied warranty, liability of restaurateur for defective food. 34 MLR 156.

616.13 Repealed, 1953 c 431 s 5.

616.15 THROWING OR SCATTERING GARBAGE

No charge can be made to householders using their own garbage disposal unit, nor may a charge be made for the period when householders are absent from the city and not using the municipal garbage disposal service. OAG Aug. 22, 1952 (59-B-4).

616.16 DEPOSIT OF UNWHOLESOME SUBSTANCES

HISTORY. 1866 c 32 s 1; GS 1878 c 101 s 2; Penal Code s 348; GS 1894 s 6642; RL 1905 s 5007; GS 1913 s 8782.

616.17 DISPOSITION OF CARCASSES

HISTORY. Amended, 1949 c 484 s 1.

616.20 EXPOSING PERSON WITH CONTAGIOUS DISEASE

HISTORY. RS 1851 c 108 s 4; PS 1858 c 97 s 4; GS 1866 c 101 s 4; GS 1878 c 101 s 5; Penal Code 349; GS 1894 s 6643; RL 1905 s 5008; GS 1913 s 8783.

616.21 WILFULLY POISONING FOOD OR BEVERAGES

HISTORY. RS 1851 c 100 s 44; PS 1858 c 89 s 43; GS 1866 c 94 s 44; GS 1878 c 94 s 54; Penal Code s 310; GS 1894 s 6604; RL 1905 s 5175; GS 1913 s 9007.

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616.22 GUARDING ICE-CUTTING

HISTORY. 1866 c 31 s 1, 2; GS 1878 c 94 s 56, 57; Penal Code s 346; GS 1894 s 6640; RL 1905 s 5006; GS 1913 s 8781.

616.23 DOORS OF PUBLIC BUILDINGS TO SWING OUTWARD

Section 616.23 does not apply to banks, restaurants, or retail stores. Application to any place of business or recreation or entertainment is a question of fact. OAG Oct. 2, 1947 (59-A-9).

Doors of public buildings must open outwardly during all hours of the day. OAG Sept. 28, 1948 (59-A-9).

616.25 NEGLIGENCE IN RESPECT TO FIRE

HISTORY. 1877 c 36 s 5; GS 1878 c 95 s 71; Penal Code s 336; GS 1894 s 6630; RL 1905 s 4997; GS 1913 s 8772.

616.253 SETTING FIRE TO HOTEL BELONGINGS

HISTORY. 1951 c 103 s 1, 2.

616.26 KEEPING GUNPOWDER UNLAWFULLY

Under the provisions of section 616.26 any person who makes or stores or transports gunpowder, nitro-glycerine, or other explosive or combustible material in a quantity or manner prohibited by statute or ordinance, is guilty of a misdemeanor. OAG July 14, 1947 (201-A-4).

616.27 Obsolete.

616.34 FAILURE TO RING BELL

Requirement that locomotive be equipped with bell or whistle does not extend to railroad section gas motorcar. *Lee v Moiter*, 227 M 557, 35 NW(2d) 801.

In determining whether a railroad was negligent in a case involving a collision between a train and an automobile at a crossing, located in a sparsely settled lake and woods region, over a town road, which ascended 12 feet in a distance of 100 feet before it crossed the tracks and then descended on the other side, on which road there was very little traffic and from which the operator of a motor vehicle had a clear view of the crossing itself when 400 feet therefrom and a view of approaching trains on the tracks for 600 to 700 feet when 50 feet therefrom and for 900 feet when 25 feet therefrom, the trier of fact may not consider, in addition to such factors as compliance with statutory requirements as to installing warning signs and the sounding of the bell and whistle on the locomotive, those of the railroad's omission to take other precautions for the safety of travelers upon the highway such as the maintenance of a flagman, gates, automatic signalling devices, and the like. Precautions in addition to statutory requirements must be exercised by railroads at extra-hazardous or peculiarly and unusually dangerous crossings. In the instant case the crossing was not extra-hazardous. *Leisy v N. P. Ry. Co.*, 230 M 61, 40 NW(2d) 626.

If the evidence permits inference of fact as to whether reasonable care required that in addition to the statutory requirements for precautions for the protection of travelers at grade crossings to satisfy the requirements of due care, the question is one of fact for the jury; but where the evidence permits only the inference that such additional precautions were not necessary in the exercise of due care, such question is one of law for the court. *Leisy v Nor. Pac. Ry. Co.*, 230 M 61, 40 NW(2d) 626.

Negligence of the railroad employees in not sounding the warning signal when the train approached the place where railroad tracks crossed the street did not excuse the truck driver approaching the intersection from negligence for failure to see the train, which was in view of the driver, in time for the driver to have safely stopped the truck. *Dahlquist v Minneapolis & St. Louis Ry. Co.*, 230 M 201, 203, 41 NW(2d) 587.

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Evidence that train signals were not heard by those who could and probably would have heard them if the signals had been given is, in Minnesota, held to be substantial evidence that the signals were not given. *Northern Pacific Ry. Co. v Haugen*, 184 F(2d) 472.

The failure of a railroad employee to ring a bell, as prescribed in section 616.34, while approaching a railroad crossing is negligence per se. *Northern Pacific Ry. Co. v Haugen*, 184 F(2d) 472.

616.37 DANGEROUS EXHIBITIONS

A person who maintains grounds to which the public is invited to witness hockey or baseball games is required to use the care and precaution of the ordinarily prudent person to protect spectators against danger, but he is not an insurer against the dangers incident to witnessing such games; and in the instant case the plaintiff assumed the risk of injury from a flying puck while attending a hockey game as a spectator where she was familiar with the general purpose of the game and with the surroundings in the arena where the game was played. *Modoc v City of Eveleth*, 225 M 556, 29 NW(2d) 453.

616.40 ENDURANCE CONTESTS

The county board may license "hot rod" races. OAG Oct. 14, 1948 (290-B).

616.41 DEADLY WEAPONS

The law does not prohibit the sale of tear gas pencils. OAG Feb. 7, 1950 (201-A-8).

616.42 SALE OF ARMS OR AMMUNITION

HISTORY. 1917 c 244 s 1, 2; 1949 c 358 s 3.

An express agency is not negligent in delivering a shipment of fireworks to a 13-year-old consignee who is not the holder of the requisite permit required under state law. *Bruskas v Railway Express*, 172 F(2d) 915.

616.434 SALE OF FIREWORKS PROHIBITED

While the statute does not prohibit shipping of fireworks into the state of Minnesota from beyond its borders, if the police department is in a position to prove the contract of sale is a Minnesota contract, and if the sale was consummated in Minnesota, there is a violation of section 618.434 and under section 616.437 the fireworks may be seized. OAG May 17, 1948 (201-B).

616.437 OFFICERS MAY SEIZE ILLEGAL FIREWORKS

While the statute does not prohibit shipping of fireworks into the state of Minnesota from beyond its borders, if the police department is in a position to prove the contract of sale is a Minnesota contract, and if the sale was consummated in Minnesota, there is a violation of section 618.434 and under section 616.437 the fireworks may be seized. OAG May 17, 1948 (201-B).

Unless fireworks are offered for sale, exposed for sale, stored or held in violation of sections 616.433 to 616.438, section 616.437 does not authorize their seizure or removal. OAG May 28, 1951 (201-B).

Fireworks in possession of the postoffice or express company may not be seized by a village police officer. OAG April 8, 1952 (201-B).

616.44 SETTING SPRING GUNS

The injuries of a waitress who when reaching for a towel accidentally tripped the mechanism of a spring gun used as a burglar alarm arose out of her employment. *Breimhorst v Beckman*, 227 M 409, 35 NW(2d) 719.