

ANNOTATIONS TO MINNESOTA STATUTES

(History and Tables may be found in Volume III)

Preamble

Right of licensee under municipal ordinance to challenge constitutionality of the ordinance; acceptance of benefits; estoppel. 35 MLR 664.

Prohibitive clauses of the constitution are self-executing and require no legislation for their enforcement; and where in a proceeding involving the person of a child the court fails to appoint a guardian ad litem to protect the rights of such child upon whom process may be served, the court acquires no jurisdiction in the proceeding. *Re Wretlind*, 225 M 554, 32 NW(2d) 161.

Where the language of the constitution is clear, resort may not be had to a contrary practical construction placed upon it by the legislature or by public officials. *Leighton v Abell*, 225 M 565, 31 NW(2d) 646.

Although ordinarily a public officer, in the absence of prejudice to a personal right, may not, as a defense for the non-performance of a ministerial duty imposed by statute, assail the constitutionality of the statute, he may do so if a question affected with a public interest is involved. *Loew v Hagerle*, 226 M 485, 33 NW (2d) 598.

49 USC 174, authorizing the President to set apart an airspace reservation, is not an unlawful delegation of power vested in Congress. It is not an attempt to regulate intrastate commerce. It does not deprive airplane pilots, or resort owners of property rights without compensation. The law is not unconstitutional. *Perko v United States*, 108 F. Supp 315; 204 F(2d) 446.

ARTICLE I

BILL OF RIGHTS

Section 1. OBJECT OF GOVERNMENT

The evolution of constitutionalism. 32 MLR 427.

Restrictions on a constitutional revision convention; judicial control of convention procedure. 35 MLR 283.

The charter of the United Nations, as a treaty, is paramount to every law of every state in conflict with it. The provisions of the alien land law restricting ownership of real property by aliens who are ineligible for citizenship, viewed in the light of the fact that expansion by Congress of the classes of persons eligible to citizenship has left only Japanese aliens ineligible to own real property, and the fact that the restrictions are actually referable to race or color, are unenforceable because contrary to the letter and spirit of the United Nations. The fact

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that Japan is not a member of the United Nations does not render its nationals ineligible to the guarantees of the charter. *Sei Fujii v State*, 217 Pac(2d) 481, 218 Pac(2d) 595.

Sec. 2. RIGHTS AND PRIVILEGES

The negro in the supreme court. 34 MLR 289; 35 MLR 625.

Constitutionality of the proposed Minnesota Fair Employment Practice Act. 32 MLR 349.

Federal jurisdiction; diversity of citizenship. 32 MLR 818.

Legal guarantee of civil liberties. 33 MLR 117.

Due process; involuntary servitude; compulsory arbitration of labor disputes. 33 MLR 314.

Due process in the several states. 34 MLR 91.

Racial discrimination, equal protection in urban redevelopment. 34 MLR 334.

Void sentence doctrine. 35 MLR 240.

Unequal protection of the laws; resentence without credit for time served. 35 MLR 239.

Racially restrictive covenants. 35 MLR 625.

Free speech and the clear and present danger test; Smith Act; Communism. 36 MLR 96.

Legal effects of non-recognition of governments. 36 MLR 769.

The constitution does not deprive the states of their police power, which they may exercise for the protection of the public health, welfare, and morals. *Abeles v City of Shakopee*, 224 M 267, 28 NW(2d) 642.

The right of an employee to proper classification within the civil service rules, while not a property right, is a right to the protection of the law, under this section. *Spurck v Civil Service Board*, 225 M 240, 32 NW(2d) 574.

Although the exercise of police power may inconvenience an individual or a group or depreciate the value of property, the rights and liberties of every citizen of the state are subject to such laws, rules, and regulations as do not unreasonably or arbitrarily exceed the needs of the occasion. *Lee v Delmont*, 226 M 101, 26 NW(2d) 530.

Prohibiting the sale of intoxicating liquor for use as a beverage does not constitute a deprivation of liberty or property within the due process clause. Under the rule that a distinction for purposes of legislative classification based on sex does not deny equal protection if it bears some reasonable relation to the object sought to be accomplished by the legislation, one engaged in the business of selling intoxicating liquor at retail to be consumed on the premises where it is sold may be prohibited from employing women as bartenders. *Anderson v City of St. Paul* 226 Minn. 186, 32 NW(2d) 538.

The rights and liberties of citizens are subordinate to such reasonable regulations and restrictions as the legislature prescribes. *Paron v City of Shakopee*, 226 M 222, 32 NW(2d) 603.

In controlling and regulating the sale of intoxicating liquor, the state may make necessary classifications. The legislative power is absolute in the absence of constitutional limitation thereon. Assailant of a legislative classification as violative of the equal protection clause has the burden of showing that the classification is arbitrary. *Benz v Ericson*, 227 M 1, 34 NW(2d) 725.

In the exercise of police power, the vesting by the legislature in the industrial commission of quasi-judicial powers inclusive of power to determine facts and apply the law thereto in employment accident controversies is not in violation of constitutional provision for the division of the powers of government or for

the vesting of judicial power in the courts as long as the commission's awards and determinations are not only subject to review by certiorari but lack judicial finality because not enforceable by any process in the absence of a binding judgment entered thereon by duly established court. *Breimhorst v Beckman*, 227 M 334, 35 NW(2d) 719.

Laws providing a different punishment and a different manner of handling youthful offenders and adult offenders do not violate the constitutional guarantee of due process nor offend against the equal protection of the laws, the classification being reasonable. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

A zoning ordinance which permits, in a residential area, public schools and churches, and schools accessory thereto, and prohibits therein private schools, is unconstitutional as applied to a private school owned and conducted by a non-stock and nonprofit corporation the purpose of which is to train young men for competitive examinations for entrance into schools conducted by the armed services of the United States, and for appointment to a service in certain of the armed services. *State v Northwest Preparatory School*, 228 M 363, 37 NW(2d) 370.

Peaceful picketing to accomplish a lawful purpose is an exercise of the right of free speech; but picketing cannot be used to compel an employer to coerce his employees to join a union contrary to existing law. *Dayton Co. v Carpet & Floor Decorators Union*, 229 M 87, 39 NW(2d) 183.

The statute declaring that combining to cause loss or injury to an employer, for the purpose of coercing him to persuade his employees to join or refrain from joining a labor union is an unlawful act and an unfair labor practice is not unconstitutional as abridging the right of free speech or assembly or the right to petition or as imposing involuntary servitude upon union members. *Dayton Co. v Carpet & Floor Decorators Union*, 229 M 87, 39 NW(2d) 183.

When compensation installments are due and payable in the lifetime of a beneficiary, the right to them is vested in him. Future payments are not vested absolutely but in a defeasible sense. *Todeva v Oliver Iron Mining Co.*, 232 M 422, 45 NW(2d) 782.

The statutory requirement that the copy of a written statement obtained from and signed by injured person must be given to the injured person within 30 days after the statement was procured as a prerequisite to the admissibility of the statement in evidence is not unconstitutional as imposing an unreasonable, oppressive, or arbitrary requirement which denies the equal protection of the law, or gives to one party an unfair advantage over the other, nor does it violate the requirement of due process of law. *Yaeger v Chapman*, 233 M 1, 45 NW(2d) 776.

Due process and equal protection do not impose upon the state any rigid rule of equality of taxation. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 343.

If the classification is reasonable and not arbitrary, and has a reasonable relation to some permitted end of governmental action, the propriety of a statutory classification is within the powers of the legislature. *Thomas v Housing & Redevelopment Authority*, 234 M 221, 48 NW(2d) 175.

Neither the state constitution nor any law of the state requires or authorizes the state to provide expenses of an appeal for an indigent defendant in a criminal case. *State v Lorenz*, 235 M 221, 50 NW(2d) 270.

The police powers a municipality may exercise must be granted by the legislature. A statute which prohibits municipalities from imposing a tax or license fee for the operation of motor vehicles on its streets, if the owner or operator holds a certificate or permit to operate such vehicles issued in connection with the statute, and which provides that the statute shall not apply to vehicles transporting persons for hire, which are operated exclusively within the municipality, is not unconstitutional as constituting class legislation or discriminatory legislation. *City of Duluth v Northland Greyhound Lines*, 236 M 260, 52 NW(2d) 774.

Sec. 3. LIBERTY OF THE PRESS

Freedom of religion, speech, and assembly. 32 MLR 498.

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The right of freedom of the press as qualified by the right of privacy. 33 MLR 534.

Freedom of speech; restrictions of public employment; the Feinberg Act. 36 MLR 961.

Section 179.42 does not violate this section or the U. S. Constitution, Amendment 14. Where the purpose of a strike is to coerce the employer into compelling non-union men to join the union, and where the union agreement does not provide for a closed or union shop, such action seems to change an existing agreement, and compliance with section 179.06 is necessary. In the absence of such compliance a strike was properly enjoined as an unfair labor practice and an unlawful act under section 179.11. *Dayton Co. v Carpet & Floor Decorators Union*, 229 M 87, 39 NW(2d) 183.

The statute declaring that combining to cause loss or injury to an employer, by coercing him to persuade his employees to join or refrain from joining a labor union, is an unlawful act and an unfair labor practice is not unconstitutional as abridging the right of free speech or assembly or the right to petition or as imposing involuntary servitude upon union members. *Dayton Co. v Carpet & Floor Decorators Union*, 229 M 87, 39 NW(2d) 183.

Peaceful picketing to accomplish a lawful purpose is an exercise of the right of free speech, but picketing cannot be used to compel an employer to coerce his employees to join a union contrary to existing law. *Dayton Co. v Carpet & Floor Decorators Union*, 229 M 87, 39 NW(2d) 183.

The right of free speech and the right to remain silent must yield to national interest, justifiably thought to be of larger importance and the excluding of Communists from a bargaining process is legal where the Congress advises that the Communistic influence is a threat of substantive evil to the national interest. *National Maritime Union v Herzog*, 78 F.Supp. 146.

Sec. 4. TRIAL BY JURY

Right to public trial; secret trials constitute denial of due process. 33 MLR 71.

Right to trial by jury in an action for treble damages based upon the Emergency Price Control Act of 1942. 35 MLR 304.

Summary disposition of prosecutions for violation of municipal ordinances; no jury trial. 36 MLR 143,152.

The constitutional provision that the right of trial by jury shall remain inviolate and shall extend to all cases at law preserves unimpaired the right of jury trial as it existed by the laws of the territory at the time the state constitution was adopted and such right is thereby neither extended nor limited; but where new rights and remedies are created which were unknown at common law, the giving or withholding of jury trial is a legislative privilege. "All cases at law" refers to common law actions and is distinguishable from certain other proceedings including causes in equity. An "action at law" does not pertain to proceedings before quasi-judicial bodies such as the industrial commission. The remedy provided by the Workmen's Compensation Act is an adequate substitute for an action at law for damages from personal injuries sustained by an employee. *Breimhorst v Beckman*, 227 M 334, 35 NW(2d) 719.

The "public examiner" is not a court or magistrate and could not under the constitution be given judicial powers to pass upon objection to witnesses directed to witness on the ground that answers thereto would tend to incriminate the witness. The power to rule upon whether there is a reasonable ground to apprehend that the answer will tend to incriminate the witness is a judicial power. *State v Nolan*, 231 M 522, 44 NW(2d) 66.

Sec. 5. NO EXCESSIVE BAIL OR UNUSUAL PUNISHMENTS

Cruel, unusual and excessive punishment. 35 MLR 111.

Sec. 6. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS

Right to public trial; secret trials constitute a denial of due process. 33 MLR 71.

Right to public trial; exclusion of public from federal courtroom. 33 MLR 662.

Right to trial by jury in an action for treble damages based upon the Emergency Price Control Act of 1942. 35 MLR 304.

Objections to the admission of evidence procured by an unreasonable search and seizure must be asserted seasonably or they cannot be considered. 37 MLR 188.

Blood samples obtained without consent as evidence in criminal prosecutions. 37 MLR 208.

The absence of the accused from the court, voluntarily or involuntarily, when sentence is pronounced, results in an illegal sentence without due process of law, requiring a re-sentence when his presence is secured. In a prosecution for felony the accused is entitled to be present in person at all stages of the trial including the pronouncement of sentence. *State ex rel v Utecht*, 228 M 44, 36 NW(2d) 126.

The title of Laws 1947, Chapter 595, expresses only one subject and does not violate the constitution nor does it invade the judicial powers vested in our courts by the constitution, nor does it violate the constitutional power to grant pardons or reprieves now vested in the governor or state board of pardons. The classification of those who come within the provisions of the act is reasonable. Equal protection is secured as the law operates in the same way as to all who are in the same class. There is no constitutional right to notice, hearing, or assistance of counsel in the administration of a sentence after the sentence has been imposed according to law. The commitment to the commission is the judgment and sentence of the court. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

Provided an increase in franchise tax is necessary to defray the cost of police regulation and the ordinance does not impair any regulations of contract, and does not deprive the street railway of property without due process, the Minneapolis city ordinance of 1946 increasing the annual license fee for each streetcar from \$25 to \$100 is a valid exercise of police power. *Minneapolis Street Ry. v City of Minneapolis*, 229 M 502, 40 NW(2d) 353.

Although the trial court in a criminal case may review and analyze the evidence, remarks which take away the free will of the jury to arrive at its own verdict violate the accused's right to an impartial jury. The guarantee of a trial by jury prohibits the court from actually or in effect directing a verdict of guilty in a homicide prosecution. *State v Shetsky*, 229 M 556, 40 NW(2d) 337.

Incompetent or irrelevant questions asked by the prosecuting officer, calculated to prejudice defendant in a criminal case, constitute a violation of defendant's right to a fair and impartial trial guaranteed to him by the Constitution. The fact that the accused took the witness stand to testify did not put in issue his general character or his propensities, but it opens up only the issue of credibility. Where the prosecuting attorney persists in asking prejudicial questions, there is reversible error, although the objections thereto were sustained. *State v Silvers*, 230 M 12, 40 NW(2d) 630.

A "warrant" in a criminal case has the sole function of giving the court jurisdiction over the person of the accused by bringing him in person before the court to answer the charge made against him; and unless the accused is before the court the warrant becomes wholly inoperative and defects therein cease to be material. By entering a plea of guilty or not guilty in a criminal prosecution the criminal waives objection to the jurisdiction of the court over his person. *State ex rel Schwanke v Utecht*, 233 M 434, 47 NW(2d) 99.

The court before arraignment should inform the defendant in precise terms of his constitutional right to the assistance of counsel and such informative action to be made a matter of record. The denial of certain constitutional rights where

the right to due process of the law is left unimpaired is not fatal to the jurisdiction of the court. The error resulting from such denial must be corrected through appeal, and not by resorting to the extraordinary remedy of habeas corpus. *State ex rel Schwanke v Utecht*, 233 M 434, 47 NW(2d) 99.

United States Constitution does not require a state to provide the expense of an appeal for an indigent defendant in a criminal case, and there is nothing in the Minnesota Constitution or in the statutes authorizing such procedure. *State v Lorenz*, 235 M 221, 50 NW(2d) 270.

In an equitable action it is within the discretion of the trial court to submit some questions of fact to a jury, but neither party has the right to trial by jury on equitable matters. *Georgopolis v George*, 237 M 176, 54 NW(2d) 137.

Sec. 7. DUE PROCESS; PROSECUTIONS; SECOND JEOPARDY; SELF-INCRIMINATION; BAIL; HABEAS CORPUS

Criterion of confiscation in judicial review of rate regulation. 32 MLR 60.

Denial of due process by systematic and intentional exclusion of eligible classes from jury panel. 32 MLR 297.

Procedural due process relating to revocation of beer licenses for lack of federal retail liquor dealers special tax stamp. 32 MLR 306.

Due process under the fourteenth amendment; freedom of religion, speech, and assembly. 32 MLR 498.

Claims against the state; immunity of state from suit. 32 MLR 539.

Retrospective loss; portal-to-portal act. 33 MLR 68.

Right to public trial; secret trials constitute denial of due process. 33 MLR 71.

Impairment of contracts; due process of law; state custody of abandoned insurance funds. 33 MLR 309.

United States supreme court's rules of self-limitation as applied to the fundamental rights of the first and fourteenth amendments to the Federal Constitution. 33 MLR 390.

Equal protection; due process; miscegenation. 33 MLR 530.

Hearings required in insurance rate making to constitute due process. 33 MLR 771.

Self-incrimination; confession covered by police; legislative investigations; production of writings; bodily or mental examination; jurisdictional limits of the privilege; waiver by testifying. 45 MLR 1.

Persistence of substantive due process in the states. 34 MLR 91.

Cruel and unusual punishment under the due process clause. 34 MLR 134.

Libel and slander; constitutionality of retraction statutes. 34 MLR 249.

Segregation and the equal protection clause. Brief for the Committee of Law Teachers Against Segregation in Legal Education filed in *Sweatt v Painter*, 358 US 865; 70 SC 153; 34 MLR 290.

Equal protection; racial discrimination in urban redevelopment. 34 MLR 334.

Appeals by the state in criminal cases; trial judges decision after errorless trial is not subject to review. 34 MLR 344.

Due process in the sentencing of a criminal; right of offender to be informed of pre-sentence information in open court. 34 MLR 470.

Double jeopardy. 35 MLR 123.

Recidivist statutes. 35 MLR 135.

Due process. 35 MLR 146.

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Constitutionality of the non-communistic affidavit requirement in the labor relations act of 1947. 35 MLR 200.

The spectre of double jeopardy. 35 MLR 243.

A prior conviction under an ordinance is not a bar to a subsequent prosecution under a statute. 36 MLR 143, 147.

Due process; use of stomach pump to obtain evidence. 36 MLR 527.

Contempt; due process. 36 MLR 965.

Constitutional right of a public utility to judicially enforce "reasonable return" upon the "fair value" of its operating property. 37 MLR 159.

The essential elements of an action for abuse of process are the existence of an illusive purpose, and an act using the process to accomplish a result for which it was not designed. It is a misuse of a process, after it has once been issued, for an end other than that which it was designed to accomplish. *Hoppe v Klapperich*, 224 M 224, 28 NW(2d) 783.

Minors cannot waive their rights to due process or notice nor may counsel for a minor waive such minor's constitutional rights. *Re Wretlind*, 225 M 554, 32 NW(2d) 161.

A court may not rewrite or revoke a will to provide by conjecture what the testator might have said if he had foreseen events occurring subsequent to his death or to escape what seems to be an undesirable result. *Cosgrave's Will*, 225 M 443, 31 NW(2d) 22.

The fourteenth amendment to the federal constitution guarantees both due process of law and equal protection of the laws as separate rights; and the due process of law clause of the state constitution is not more restrictive than the due process of law clause of the fourteenth amendment to the federal constitution; and state and local regulations prohibiting the employment of women in places where intoxicating liquor is sold for consumption on the premises do not deprive women of liberty or property in violation of either federal or state constitution. *Anderson v City of St. Paul*, 226 M 186, 32 NW(2d) 538.

Where partners were refused the privilege of opening a default judgment for delinquent personal property tax for the last half of 1946, such refusal was not a denial of due process of law. The provisions of section 274.01 were available to the aggrieved taxpayers if they cared to avail themselves of that procedure. *State v Castner*, 226 M 422, 33 NW(2d) 35.

Statute authorizing county board to dissolve any town when assessed valuation thereof drops to less than \$40,000 is not invalid, either as being in excess of legislative power or as violative of due process. Municipal corporations have no right, privilege, or immunities within the protection of the usual constitutional guaranties against legislative interference or control. They are merely governmental agencies, and legislation regulating or affecting them does not amount to a contract, the obligation of which may not be impaired by legislative action. *Town of Bridgie v County of Koochiching*, 227 M 320, 35 NW(2d) 537.

The power of the legislature over the property which a municipal corporation has acquired in its public or governmental capacity and which is devoted to public or governmental uses is complete. The legislature may provide for the transfer of property held in a proprietary or private capacity by a municipality in trust for the benefit of its inhabitants for certain designated purposes from the officers of such municipality to different trustees, with or without the consent of the municipality and without compensation to it. *Town of Bridgie v County of Koochiching*, 227 M 320, 35 NW(2d) 537.

Statute authorizing county board to dissolve any town when assessed valuation thereof drops to less than \$40,000 is not invalid, either as being in excess of legislative power or as violative of due process. Municipal corporations have no right, privilege, or immunities within the protection of the usual constitutional guaranties against legislative interference or control. They are merely govern-

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mental agencies, and legislation regulating or affecting them does not amount to a contract, the obligation of which may not be impaired by legislative action. *Town of Bridgie v County of Koochiching*, 227 M 320, 35 NW(2d) 537.

Sick leave with pay rights granted by a city to its employees is the grant of a gratuity, not of a vested right, and is terminable at the will of the city. While the right to sick-leave payments which have become absolutely due is a vested one, the right to payments due in the future is a mere expectancy. An amendatory ordinance striking from the amended ordinance provisions therein granting to unskilled laborers sick leave with pay rights and substituting in lieu thereof a provision granting such rights exclusively to a class of employees which does not include skilled laborers in effect abolishes the sick leave with pay rights of unskilled laborers under the amended ordinance. *Halek v City of St. Paul*, 227 M 477, 35 NW(2d) 705.

Section 154.065 relates to public welfare and deals with the qualifications required of teachers of barbering, and does not interfere with the personal property rights of any individual, or in any way violate the doctrine of due process. *Lee v Delmont*, 228 M 101, 36 NW(2d) 530.

A zoning ordinance which permits in a residential area public schools and churches, and schools accessory thereto, and prohibits therein private schools, is unconstitutional as applied to a private school owned and conducted by a non-stock and nonprofit corporation the purpose of which is to train young men for competitive examinations for entrance into schools conducted by the armed services of the United States, and for appointment to a service in certain of the armed services. *State v Northwest Preparatory School*, 228 M 363, 37 NW(2d) 370.

Under the due process clause of the state constitution a defendant in a criminal prosecution is entitled to be tried without prejudicial remarks by the presiding judge and without any expressions on his part which would point to his guilt or discredit or prejudice him with the jury. *State v Shetsky*, 229 M 44, 40 NW(2d) 337.

An application of a rule that statutory presumption of reasonableness of the full hearing by the railroad and warehouse commission, may be rebutted only by clear and convincing evidence does not impair the constitutional right to due process through an independent judicial review, pursuant to which the reviewing court, after affording parties opportunity to present material additional evidence, determines for itself where the commission's order is lawful or reasonable and whether it is reasonably supported by the evidence at the time of its making. *State v Northern Pacific*, 229 M 312, 39 NW(2d) 752.

Incompetent or irrelevant questions asked by the prosecuting officer, calculated to prejudice defendant in a criminal case, constitute a violation of defendant's right to a fair and impartial trial guaranteed to him by the Constitution. The fact that the accused took the witness stand to testify did not put in issue his general character or his propensities, but it opens up only the issue of credibility. Where the prosecuting attorney persists in asking prejudicial questions, there is reversible error, although the objections thereto were sustained. *State v Silvers*, 230 M 12, 40 NW(2d) 630.

A trial on information is due process of law. *State ex rel v Utecht*, 230 M 579, 40 NW(2d) 441.

Where inference was strong that defendants were real objects of investigation being conducted by public examiner and that they objected for that reason to being required to testify, but they yielded to insistence of public examiner and gave testimony which was asserted to have been false, the constitutional privilege and statutory immunity, if any, was for past offenses, not for such offenses as might be committed while testifying under the immunity, and, hence, defendants could not successfully plead immunity from prosecution for testifying falsely before the public examiner. *State v Nolan*, 231 M 522, 44 NW(2d) 66.

The statutory requirement that the copy of a written statement obtained from and signed by injured person must be given to the injured person within 30 days after the statement was procured as a prerequisite to the admissibility of the statement in evidence is not unconstitutional as imposing an unreasonable, oppressive

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or arbitrary requirement which denies the equal protection of the law, or gives to one party an unfair advantage over the other, or which in any way violates the requirement of due process of law. *Yaeger v Chapman*, 233 M 1, 45 NW(2d) 776.

Due process and equal protection do not impose upon the state any rigid rule of equality of taxation. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 343.

The fundamental purpose in the enactment of section 462.411 is to protect the health, safety, and general welfare of the public. The taking of property for low rent housing constitutes a taking for public use and the exercise of the power of eminent domain is not a violation of Minnesota Constitution, Article I, Section 13. Nor does the removal of the property taken from the tax rolls violate Minnesota Constitution, Article I, Section 7. This is not class legislation, and does not violate Minnesota Constitution, Article I, Section 21, or Article IV, Section 33. *Thomas v Housing and Redevelopment Authority*, 234 M 221, 48 NW(2d) 175.

The General Welfare Clause of the Minneapolis City Charter gives the city council power to license and make regulations governing open air motor vehicle parking lots; and unless a municipal ordinance is manifestly an arbitrary exercise of legislative power the courts will not declare a municipal ordinance void. A requirement that every licensee must post signs at each entrance and exit showing rates charged for automobile parking is a reasonable exercise of the police power of the city. *State v United Parking Stations*, 235 M 147, 50 NW(2d) 50.

Where a representative of the public examiner examined the defendant with the intention of charging him with the crime of bribery for which he was later tried, the defendant was privileged to refuse to testify. *State v Gensmer*, 235 M 72, 51 NW(2d) 680.

A court has no jurisdiction to adjudicate change of a person's legal status unless the method of notification is employed which will reasonably give him knowledge of the attempted exercise of jurisdiction. He must have an opportunity to be heard. This is required by the due process clause of the state and federal constitutions. *Adoption of Anderson*, 235 M 192, 50 NW(2d) 278.

A criminal statute must be definite enough to give notice of the conduct required to anyone who desires to avoid its penalties, and to guide the judge in his application and the attorney in defending a person charged with its violation. A criminal statute is unconstitutional if so indefinite or so uncertain and if what it requires or forbids is set out in terms so vague that people of common intelligence have to guess at what it means and if they differ as to its application. *State v Berkner*, 236 M 174, 52 NW(2d) 409.

Notice and opportunity to be heard is not essential to due process or to jurisdiction, or the power of the probate court to administer an estate, unless made so by statutory enactment. *Vesey v Vesey*, 237 M 10, 53 NW(2d) 809.

Restrictions of the sale of vitamin preparations consisting of pure and concentrated vitamins, natural or synthetic, carried singly or in combination with other vitamins in an excipient, solid or liquid, and offered for sale as tablets, capsules, or in liquid form by pharmacists, is not so foreign to the protection of the public health or welfare as to be violative of Minnesota Constitution, Article I, Section 7, or Article IV, Section 33. *Culver v Nelson*, 237 M 65, 54 NW(2d) 8.

When an investigation by the grand jury embraced evasions of income taxes and the question propounded to the president of the corporation with reference to expenditures made from a certain corporate account indicated that some payments therefrom might have been made to the president, the questions disclose sufficient reasonable cause for the witness to apprehend danger of incrimination if he answered or explained his failure to answer, to entitle the witness to assert his privilege against self-incrimination. *Kiewel v United States*, 204 F(2d) 1.

Sec. 8. REDRESS OF INJURIES OR WRONGS

Immunity of the state from suit. 32 MLR 539.

Right of privacy; uniform act. 32 MLR 734.

A probate judge who is biased is disqualified under the Bill of Rights and the fourteenth amendment even though such bias has not been made a ground for disqualification by statute. The provisions of the fundamental law are self-executing. *Payne v Lee*, 222 M 269, 24 NW(2d) 259.

In the exercise of police power, the vesting by the legislature in the industrial commission of quasi-judicial powers inclusive of power to determine facts and apply the law thereto in employment accident controversies is not in violation of state constitutional provisions for the division of the powers of government or for the vesting of judicial power in the courts as long as the commission's awards and determinations are not only subject to review by certiorari but lack judicial finality in not being enforceable by execution or other process in the absence of a binding judgment entered thereon by duly established court. *Breimhorst v Beckman*, 227 M 409, 35 NW(2d) 719.

The Youth Conservation Act does not deprive an accused of any constituted right to a definite sentence or to a full, complete and speedy trial. The fact that the law provides a different punishment and a different method of handling youthful offenders from those relating to adults does not violate the constitutional guarantees of due process of law and equal protection of the law, if the classification is a reasonable one. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

Sec. 10. RIGHT AGAINST UNREASONABLE SEARCHES

Admissibility in state courts of evidence obtained by unreasonable searches and seizures. 35 MLR 457.

Searches and seizures; the exclusionary rule. 35 MLR 458.

Searches and seizures; the admissibility rule. 35 MLR 464.

Unreasonable service and seizures. 37 MLR 188.

The action by police officers who without a warrant looked into a room in a house where defendant roomed and observed the commission of a misdemeanor by the defendant in promoting a lottery did not constitute an unlawful search; and the officers were justified in demanding entrance, arresting the defendants and seizing the property being used in the commission of the offense charged. *McDonald v United States*, 166 F(2d) 957.

Sec. 11. PROHIBITS EX POST FACTO LAWS, OR LAWS IMPAIRING CONTRACTS

Ex post facto laws; bills of attainder. 35 MLR 136.

Foreign wrongful death action not barred in federal court by state statute. 36 MLR 972.

A modification of a contract does not require a new consideration if it is made while the contract is still executory and there has been no breach, and in such case the original consideration attaches to and supports the modified contract. A written contract may be modified by subsequent oral agreement or by conduct. *Mitchell v Rende*, 225 M 145, 30 NW(2d) 27.

The regulating of municipal corporations by legislative act does not constitute a "contract," the obligation of which may not be impaired by later legislative action. *Town of Bridgie v County of Koochiching*, 227 M 320, 35 NW(2d) 537.

Where a general contractor ordered the electrical subcontractor to perform work not required to be performed by the subcontractor under the subcontract, and the subcontractor performed the work, it could not be said that the subcontractor was a mere volunteer and as such not entitled to compensation for the extra work performed. *Sagl v Hirt*, 236 M 281, 52 NW(2d) 721.

Where one joint owner of a joint and several bank account feloniously causes the death of the other joint owner, the appellate court, in the absence of a controlling statute, will impose a constructive trust upon the balance of the account

for the benefit of the estate of the decedent thereby preventing the surviving joint owner from taking the balance thereof by right of survivorship. *Vesey v Vesey*, 237 M 10, 54 NW(2d) 385.

Sec. 12. IMPRISONMENT FOR DEBT; PROPERTY EXEMPTION

Interest necessary to support an examination claim. 34 MLR 350.

A law making ordinarily exempt property liable to seizure and sale for debts incurred for work or labor in the construction or improvement of homestead property is constitutional and self-executing. *United States v Lucas*, 66 F.Supp. 7.

The provision exempting certain property from attachment for debt, but subjecting realty otherwise exempt to seizure and sale for debts incurred for labor, enlarge the class of realty upon judgment for personal services may operate to include the homestead. The lien for labor performed is acquired on docketing a judgment in personam. *Curran v Nash*, 224 M 571, 29 NW(2d) 436.

Obligation to pay for support of child or to pay alimony under a divorce decree is not a "debt" within the constitutional provision prohibiting punishment for debt. *Wojahn v Halter*, 229 M 374, 39 NW(2d) 545.

The term "debt" as used in the constitutional prohibition against imprisonment for debt has been limited to obligations to pay money or something due and owing from one to another arising out of a contract. An obligation to pay money under a stipulation for settlement is a debt within the meaning of our constitution. *Wojahn v Halter*, 229 M 374, 39 NW(2d) 545.

The preference or exemption against the creditors of the insured which is given to the insured's beneficiary pursuant to sections 61.14 and 61.15 does not create a discretionary classification as to creditors with respect to insurance proceeds. *Fox v Swartz*, 235 M 337, 51 NW(2d) 80.

Sec. 13. PRIVATE PROPERTY FOR PUBLIC USE

The federal government's right to raise the water level and its liability to landowners on non-navigable streams. 32 MLR 844.

Rate making; "eminent domain," "fair value," "just and reasonable" concepts. 37 MLR 159.

In condemnation proceedings by a state to acquire property for a work relief and flood control project across the Minnesota River at the south end of Big Stone Lake, a charge directing the jury to find damages as of the date of completion of the dam was not prejudicial, though the value is usually determined as of the date of the commissioner's report or award. *State v Bentley*, 231 M 531, 45 NW(2d) 185.

Public drainage proceedings under M.S.A., Chapter 106 may invoke the power of eminent domain. Private property taken or damaged is an exercise of that power. An easement for a gas pipe-line is property. Section 106.151 requires compensation to owners of private property damaged by reason of construction of a county ditch. Where a county ditch will cross easement and private right of way of gas pipe-line company, necessitating the relocation of its gas transmission lines at the points of intersection, company is entitled to damages for cost of reconstructing pipe-line to accommodate new ditch. It was error to dismiss the pipe-line company's appeal to the district court from an order of the county board establishing the county ditch and awarding no damages to the pipe-line company. In re *Petition of Dreosch*, 233 M 200, 47 NW(2d) 106.

The fundamental purpose in the enactment of section 462.411 is to protect the health, safety, and general welfare of the public. The taking of property for low rent housing constitutes a taking for public use and the exercise of the power of eminent domain is not a violation of Minnesota Constitution, Article I, Section 13. Nor does the removal of the property taken from the tax rolls violate Minnesota Constitution, Article I, Section 7. This is not class legislation, and does not violate Minnesota Constitution, Article I, Section 21, or Article IV, Section 33. *Thomas v Housing and Redevelopment Authority*, 234 M 221, 48 NW(2d) 175.

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Property owners, who alleged only that the raising of a street grade by defendant municipality caused a flow of water from the street onto their lots, had a plain, speedy, and adequate remedy at law for such consequential damages, and were not entitled to a writ of mandamus compelling the municipality to institute compensation proceedings. *Collins v Village of Richfield, M....., 55 NW(2d) 628.*

The overflowing of land by backing water onto it from dams built below constitutes a taking within the meaning of the Constitution and when real estate is actually invaded by superinduced additions of water, earth, sand, or other material so as to effectually destroy or impair its usefulness, it is a taking within the meaning of the Constitution. The land may be taken not only to the extent of the actual flooding but also as to the additional extent that the flooding water by percolation raised the water table so as to soak the land to a degree and for a sufficient duration to destroy its agricultural value. *Nelson v Wilson, M....., 58 NW(2d) 330.*

Sec. 16. FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP

Separation of church and state under the federal constitution. 33 MLR 494.

Fool's haven. 38 MLR 87.

ARTICLE II

ON NAME AND BOUNDARIES

Sec. 2. JURISDICTION ON BORDERING RIVERS

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

ARTICLE III

DISTRIBUTION OF THE POWERS OF GOVERNMENT

Section 1. DIVISION OF POWERS

Validity of the federal housing and rent act of 1949; delegation of powers. 34 MLR 246.

Dred Scott case, reconsideration. 38 MLR 16.

What the legislature has authority to enact it may amend or repeal. *State ex rel v Washburn, 224 M 269, 28 NW(2d) 652.*

M.S.A., Section 387.21, authorizing the district court on appeal from an order of the county board to fix the salary of a sheriff, is not unconstitutional upon the ground that fixing a public officer's salary involves the exercise of legislative power, which is vested exclusively in the legislature and denied to the court by Minnesota Constitution, Article III, Section 1. *Cahill v Beltrami County, 224 M 564, 29 NW(2d) 445.*

Section 387.21 is not unconstitutional because the sheriff while a member of the executive department of government is also a quasi officer of the court. *Cahill v Beltrami County, 224 M 564, 29 NW(2d) 444.*

The court cannot disturb a determination of a city council merely because the court does not agree with the decision. The court must keep within its own powers. *Anderson v City of St. Paul, 226 M 186, 32 NW(2d) 538.*

Unless the act of a city council is arbitrary or capricious, the courts are without power to control the discretionary decisions of governing agencies called upon

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to consider applications for liquor licenses. *Paron v City of Shakopee*, 226 M 222, 32 NW(2d) 603.

On appeal from orders of the railroad and warehouse commission, the court may exercise judicial but not legislative nor administrative powers. It may not direct the commission to make certain orders. *Arrowhead Bus Service v Black & White Cab*, 226 M 327, 32 NW(2d) 590.

An administrative agency has the powers granted to it by statute and no others. *State ex rel v Civil Service Board*, 226 M 240, 253, 32 NW(2d) 574, 583.

In the absence of a constitutional limitation the power of the legislature is practically absolute. The judiciary will declare a statute invalid only if the statute clearly transcends some constitutional limitation. *Benz v Ericson*, 227 M 1, 34 NW(2d) 725.

In factional controversies within a political organization where there is no controlling statute or clear right based on a statute the courts will not assume jurisdiction. *Democratic-Farmer Labor v Holm*, 227 M 52, 33 NW(2d) 831.

The power of the legislature over the property which a municipal corporation has acquired in its public or governmental capacity and which is devoted to public or governmental uses is complete. The legislature may provide for the transfer of property held in a proprietary or private capacity by a municipality in trust for the benefit of its inhabitants for certain designated purposes from the officers of such municipality to different trustees, with or without the consent of the municipality and without compensation to it. *Town of Bridgie v County of Koochiching*, 227 M 320, 35 NW(2d) 537.

In the exercise of police power, the vesting by the legislature in the industrial commission of quasi-judicial powers inclusive of power to determine facts and apply the law thereto in employment accident controversies is not in violation of state constitutional provisions for the division of the powers of government or for the vesting of judicial power in the courts as long as the commission's awards and determinations are not only subject to review by certiorari but lack judicial finality in not being enforceable by execution or other process in the absence of a binding judgment entered thereon by duly established court. *Breimhorst v Beckman*, 227 M 409, 35 NW(2d) 719.

Where a board or commission has been empowered to make regulations and to conduct examinations in the performance of the police power, the law is to be interpreted as though it conferred only the power and right to make reasonable regulation and to conduct reasonable examinations. Pure legislative power, which can never be delegated, has the authority to make a complete law; complete as to the time it shall take effect and as to how it shall apply; and to determine the expediency of the enactment. If the law furnishes a reasonably clear policy or standard of action which controls and guides the administrative officers in ascertaining the pertinent facts to which the law applies, so that the law takes effect upon these facts by virtue of its own terms, and not according to the whim or caprice of the administrative officers, the discretionary power delegated to the board or commission is not legislative. *Lee v Delmont*, 228 M 101, 36 NW(2d) 530.

The power to fix the punishment for a crime is a legislative function. The judicial function consists of imposing a punishment which the legislature has prescribed. Laws 1947, Chapter 595, the Youth Conservation Act, does not invade the judicial powers vested in our courts by the constitution. The equal protection required by the constitution is secured if the classification is reasonable and the law operates alike as to all who are in the same class. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

The power to pass upon an objection to questions directed to a witness who refused to testify on the ground that answers thereto would tend to incriminate him is a judicial function which cannot be exercised by the public examiner. *State v Nolan*, 231 M 522, 44 NW(2d) 66.

The legislature may confer upon a board or commission a discretionary power to ascertain under and pursuant to a law, some fact or circumstances on

which the law by its own terms makes or intends to make its own action depend. The legislature has prescribed in sufficient detail the standards for exercising power by the local housing authority to determine who may live in housing projects and the rentals to be charged. This is not an unlawful delegation of power. *Thomas v Housing & Redevelopment Authority*, 233 M 487, 48 NW(2d) 175.

Excluding from an incorporated village land already incorporated in an adjoining city and inadvertently included in the petition for incorporation of the village is an exercise of a purely "judicial function" and not a "legislative" function. *State ex rel v So-called Village of Fridley*, 233 M 442, 47 NW(2d) 204.

Without delegating legislative authority, the legislature may delegate legislative functions which are merely administrative or executive. The legislature has large discretion in determining means through which its laws may be administered and may clothe its agents with power to exercise discretion under the law, but not discretion as to what the law should be. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 344.

Where an enactment presents fairly debatable questions as to its reasonableness and propriety and is within the scope of a police power of the state, determination of such questions is not for the courts but is the province of the legislative body. *State v United Parking Stations*, 235 M 147, 50 NW(2d) 50.

The policy of providing additional revenue for municipalities to meet the ever increasing cost of services demanded by the public is not the province of the court to determine. The courts may only survey the acts of the legislation to determine whether such acts controvene the provisions of the constitution. *City of Duluth v Northland Greyhound Lines*, 236 M 260, 52 NW(2d) 774.

Courts must try the law as enacted by the legislature and cannot indulge in judicial legislation. *Hierl v McClure*, M....., 56 NW(2d) 721.

The courts cannot make, amend, or change the law. Their sole duty is to apply it. *American Automobile Insurance Co. v Molling*,M....., 57 NW(2d) 847.

The legislative power is practically absolute and the courts will declare a statute invalid only if it clearly transcends some constitutional limitation. *Benz v Ericson*, 227 M 1, 34 NW(2d) 725.

In legislating relative to the manufacture and sale of intoxicating liquors the legislature has all power not withheld by the state or federal constitutions. *Geo. Benz v Ericson*, 227 M 1, 34 NW(2d) 725.

In the exercise of police power, the vesting by the legislature in the industrial commission of quasi-judicial powers inclusive of power to determine facts and apply the law thereto in employment accident controversies is not in violation of state constitutional provisions for the division of the powers of government or for the vesting of judicial power in the courts as long as the commission's awards and determinations are not only subject to review by certiorari but lack judicial finality in not being enforceable by execution or other process in the absence of a binding judgment entered thereon by duly established court. *Breimhorst v Beckman*, 227 M 409, 35 NW(2d) 719.

ARTICLE IV

LEGISLATIVE DEPARTMENT

Sec. 2. APPOINTMENT OF MEMBERS

Minnesota Constitution, Article IV, Section 2, does not require the election of senators from odd-numbered senatorial districts at the general election to be held November 2, 1948. The Supreme Court must take the language of the constitutional amendment fixing terms and times for election of state senators, as voicing its purpose, regardless of the purpose of the legislature which proposed the amendment. *Kernan v Holm*, 227 M 89, 34 NW(2d) 327.

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Sec. 11. APPROVAL OF BILLS BY GOVERNOR; ACTION ON NON-APPROVAL

Prescribing the compensation of judges is one act. Appropriating money to pay it is another. The governor has the right under the constitution to veto any bill appropriating money. Money must be appropriated to pay the salaries of judges each biennium. Whether the money appropriated for payment of judicial salaries at the 1953 session of the legislature is sufficient to last through the biennium is beside the point. It is hardly conceivable that salaries of judges should go unpaid. *State ex rel v Mrs. Mike Holm et al*, filed by Supreme Court, January 29, 1954.

Sec. 12. MONEY APPROPRIATIONS, HOW MADE

Appropriation of state funds; moral obligation justifying public expenditures. 33 MLR 661.

The United States Constitution does not require a state to provide the expenses of an appeal for an indigent defendant in a criminal case. There is no provision in the state constitution or statutes authorizing such procedure. *State v Lorenz*, 235 M 221, 50 NW(2d) 274.

Sec. 21. ENROLLMENT OF BILLS

An unconstitutional statute, being void and inoperative, cannot repeal or in any way affect an existing one. Where it is contended that an amendatory statute is unconstitutional and the question raised can be decided under the amended statute, the court, in order to avoid deciding the question whether the amendatory statute is unconstitutional, will in effect concede for the purposes of decision, but without so deciding, that the amendatory statute is unconstitutional and decide the question under the amended statute. *State v One Oldsmobile*, 227 M 280, 35 NW(2d) 525.

Sec. 24. SENATORIAL DISTRICTS; TERM OF OFFICE OF SENATORS AND REPRESENTATIVES

Minnesota Constitution, Article IV, Section 24, does not require the election of senators from odd-numbered senatorial districts at the general election to be held November 2, 1948. The Supreme Court must take the language of the constitutional amendment fixing terms and times for election of state senators, as voicing its purpose, regardless of the purpose of the legislature which proposed the amendment. *Kernan v Holm*, 227 M 89, 34 NW(2d) 327.

Sec. 27. SUBJECT AND TITLE OF LAWS

Laws 1945, Chapter 607, Section 8 is unconstitutional, in that the subject thereof is not expressed in the title of the act. The fact that section 8 is invalid does not render the whole act invalid. The provisions of the act are not so connected in subject matter or so dependent upon each other, operating together for the same purpose, or otherwise so related in meaning that it cannot be presumed that the legislature would have passed one without the other. *State ex rel v Burt*, 225 M 86, 29 NW(2d) 655.

The youth conservation act does not violate the provisions of this section. The "subject of statute" is the matter to which the statute relates and with which it deals and which embraces all provisions which are germane to the subject whether that be parts of it, incident to it, or means pertaining to the ends in view. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

The title of Laws 1947, Chapter 595, expresses only one subject and does not violate the constitution nor does it invade the judicial powers vested in our courts by the constitution, nor does it violate the constitutional power to grant pardons or reprieves now vested in the governor or state board of pardons. The classification of those who come within the provisions of the act is reasonable. Equal protection is secured as the law operates in the same way as to all who are in the same class. There is no constitutional right to notice, hearing, or assistance of counsel in the administration of a sentence after the sentence has been imposed

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according to law. The commitment to the commission is the judgment and sentence of the court. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

Although the title of an act is not of decisive significance and might be used to vary the plain import of the statute's explicit language within the scope of the title, the title may be considered in aid of construction of the act or to confirm that the legislative use of certain definitive language was purposeful and deliberate. *LaBere v Palmer*, 232 M 203, 44 NW(2d) 827.

Reorganization of school districts are within title of 1951 Act stating "Act relates to school districts and the organization, reorganization, consolidation and dissolution thereof" and the act is not vitiated by the statement at the end of the title that the act amends certain sections of Minnesota Statutes 1949, relating to school district consolidation proceedings, nor is the act invalid because it amends 1947 and 1949 laws relating to surveys for reorganization of school districts. *State v Common School District No. 65*, 237 M 150, 54 NW(2d) 130.

While the constitution provides that no law shall contain more than one subject, an implied repeal of an act is an effect or result and does not constitute a second subject so as to make the act unconstitutional. When a permanent statutory provision, properly included in an appropriation act, is necessarily inconsistent with an earlier law and so repugnant to the earlier law that the two laws cannot stand together and be operative at the same time, there is an implied repeal of an earlier law. *State v City of Duluth*,M....., 56 NW(2d) 416.

Sec. 33. AGAINST SPECIAL LEGISLATION

The legislature, being the sole arbiter of the purposes for which taxes are levied and of the persons and property upon which the tax for public purposes shall operate, has the power to classify property for taxation, subject only to the restrictions that persons or property within the same class be treated equally and that the classification have a fair relationship to the subject of the legislation. *General Mills v Division of Employment and Security*, 224 M 306, 28 NW(2d) 847.

Classifications based upon numerical distinctions relative to corporate structure, employees, profits, and like matters, have frequently been upheld where the distinctions made have a reasonable relationship to the objects of the legislation, even though some inequality may have resulted therefrom. *General Mills v Division of Employment and Security*, 224 M 306, 28 NW(2d) 847.

The provisions of M.S.A., Section 471.59 are valid and constitutional. *Kaufman v Swift County*, 225 M 169, 30 NW(2d) 34.

M.S.A., Sections 410.23, 410.24, and 410.25 are unconstitutional insofar as those sections purport to authorize the submission and acceptance of a "new charter" or a "revised" home rule charter in any manner other than as prescribed by Minnesota Constitution, Article IV, Section 36, for amendments to home rule charters. Where the language of the constitution is clear, resort may not be had to a contrary or practical construction placed upon it by the legislature or public officials. A charter commission may propose, as an amendment to an existing home rule charter, a complete revision or modification of such charter so long as it respects the limitations contained in section 36 and keeps within the framework prescribed. *Leighton v Abell*, 225 M 565, 31 NW(2d) 646.

The constitutional prohibition against special legislation does not prevent the legislature, with whom the responsibility of classification primarily rests, from dividing a subject into classes, and a classification made pursuant to a public purpose, which has a rational basis upon any conceivable state of the facts, although the court does not perceive all the facts justifying the classification, will be held proper if;

(a) The classification uniformly, without discrimination, applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation;

(b) The distinctions which separate those who are included within the classification from those who are excluded are not manifestly arbitrary or fanciful, but

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are genuine and substantial so as to provide a natural and reasonable basis in the necessity or circumstances of the members of the classification to justify different legislation adapted to their peculiar conditions and needs; and

(c) If the classification is germane or relevant to the purpose of the law, i.e., there must be an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefor which the law purports to provide. *Loew v Hagerle Bros.*, 226 M 485, 33 NW(2d) 599.

Where a statute authorizing payment of compensation from special compensation fund to employees who have been totally and permanently disabled for a period of 20 years prior to the statute, but whose weekly compensation terminated subsequent to July 1, 1939, and prior to January 1, 1940, was applicable only to one individual, the statute violated the constitutional provision against special legislation. Although one alone may constitute a class as well as a thousand, the fewer there are in the class the more closely will the courts scrutinize an act to see if its classification constitutes an evasion of the constitution. *Loew v Hagerle Bros.*, 226 M 485, 33 NW(2d) 598.

Although ordinarily a public officer, in the absence of prejudice to a personal right, may not, as a defense for the nonperformance of a ministerial duty imposed by statute, assail the constitutionality of the statute, he may do so if a question affected with a public interest is involved. *Loew v Hagerle Bros.*, 226 M 485, 33 NW(2d) 598.

In controlling and regulating the sale of intoxicating liquor, the state may make the necessary classifications. The legislative power is absolute in the absence of constitutional limitation thereon. Assailant of a legislative classification as violated of the equal protection clause has the burden of showing that the classification does not rest on a reasonable basis, but is arbitrary. *Benz v Ericson*, 227 M 1, 34 NW(2d) 725.

The fundamental purpose in the enactment of section 462.411 is to protect the health, safety, and general welfare of the public. The taking of property for low rent housing constitutes a taking for public use and the exercise of the power of eminent domain is not a violation of Minnesota Constitution, Article I, Section 13. Nor does the removal of the property taken from the tax rolls violate Minnesota Constitution, Article I, Section 7. This is not class legislation, and does not violate Minnesota Constitution, Article I, Section 21, or Article IV, Section 33. *Thomas v Housing and Redevelopment Authority*, 234 M 221, 48 NW(2d) 175.

Laws 1937, Chapter 387, is unconstitutional as special legislation and in violation of Minnesota Constitution, Article IV, Section 33. It provides that in cities of the fourth class situated in any county having not less than 100 nor more than 110 full and fractional townships and having a population of not less than 13,000 nor more than 15,000, the number of "on sale" licenses shall be determined by the governing body thereof and where such city while operating a municipal liquor store at "off sale" only, "on sale" licenses may be granted to hotels, clubs, restaurants, and exclusive liquor stores. *State ex rel v Kelley*, 235 M 350, 50 NW(2d) 703.

The police powers a municipality may exercise must be authorized by the legislature. A statute which prohibits municipalities from imposing a tax or license fee for the operation of motor vehicles on its streets, if the owner or operator holds a certificate or permit to operate such vehicles issued in connection with the statute, and which provides that the statute shall not apply to vehicles transporting persons for hire, which are operated exclusively within the municipality, is not unconstitutional as constituting class legislation or discriminatory legislation. *City of Duluth v Northland Greyhound Lines*, 236 M 260, 52 NW(2d) 774.

Restrictions of the sale of vitamin preparations consisting of pure and concentrated vitamins, natural or synthetic, carried singly or in combination with other vitamins in an excipient, solid or liquid, and offered for sale as tablets, capsules, or in liquid form by pharmacists, is not so foreign to the protection of

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the public health or welfare as to be violative of Minnesota Constitution, Article I, Section 7, or Article IV, Section 33. *Culver v Nelson*, 237 M 65, 54 NW(2d) 8.

The amount of police supervision of an area is properly used in the classification of the area for liquor regulation. *Cleveland v Rice County*, M, 56 NW(2d) 641.

An ordinance requiring that in the preparation of the plans for the heating installation for a building containing in excess of 100,000 cubic feet the preparation must be made by a Registered Professional Engineer was reasonable and constitutional. *State v Clarke Plumbing & Heating*, M, 56 NW(2d) 667.

Sec. 34. GENERAL LAWS UNDER 1881 AMENDMENTS

A legislative classification founded upon any reasonable basis should be sustained by the courts. *Cleveland v Rice County*, M, 56 NW(2d) 641.

A liquor regulation establishing a classification based upon the difference between the police supervision in a rural or urban area is reasonable. *Cleveland v Rice County*, M, 56 NW(2d) 641.

Sec. 35. AGAINST COMBINATIONS OR POOLS TO AFFECT MARKETS

Monopolies; royalties in compulsory licensing of patents. 32 MLR 309.

Economical considerations in the enforcement of the federal anti-trust laws. 34 MLR 210.

Anti-trust and the new economics. 37 MLR 505.

Legal meaning of monopoly. 37 MLR 539.

Sec. 36. CITY OR VILLAGE MAY FRAME ITS CHARTER; CHARTER SUBMITTED TO VOTERS; CITIES CLASSIFIED

Constitutional debt limitations applying to municipal corporations. What constitutes a debt. 34 MLR 360.

Where the law is susceptible of more than one meaning, the court will not adopt an interpretation defeating its purpose and the consequence of which is to establish a tax limitation not in accord with recognized current needs. The intent of the legislature is not to be defeated by placing a narrow or technical construction upon words if the context and the purpose of the statute as a whole indicate that they were used in a popular sense with a broader meaning. *Governmental Bureau v Borgen*, 224 M 313, 28 NW(2d) 760.

Statutes imposing taxes and providing means for the collection of same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be given a reasonable construction, without bias or prejudice against either the taxpayer or the state, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve. *Governmental Bureau v Borgen*, 224 M 313, 28 NW(2d) 760.

If the language is unambiguous and clearly expressive of a definite meaning or intent, there is no room for construction, and the meaning or intent so expressed must govern. A clearly expressed intent is derived from the natural import of language in conveying a certain and specific meaning to the obvious exclusion of other meanings. *Governmental Bureau v Borgen*, 224 M 313, 28 NW(2d) 760.

The language of a statute will be construed in harmony with the ordinary rules of grammar, unless such construction clearly violates the legislative intent. Where the words are not explicit, the object of the statute, the mischief to be remedied, and the consequences of a particular interpretation may be considered in ascertaining legislative intent. In ascertaining legislative intent, there is a presumption that the legislature did not intend to violate the constitution or to bring

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about a result that is absurd. *Governmental Bureau v Borgen*, 224 M 313, 28 NW(2d) 760.

When citizens of a village elect to adopt a home rule charter, that charter by the terms of Minnesota Constitution, Article IV, Section 36, supersedes the existing charter or general law under which the village had been operating, and the city may be endowed by such home rule charter with only the powers which may be conferred upon it by section 36. Section 7 (d) of the home rule charter of the City of Biwabik, declaring the city and town to be in one assessment and election district, is invalid. *Almquist v City of Biwabik*, 224 M 503, 28 NW(2d) 744.

M.S.A., Sections 410.23, 410.24, and 410.25, are unconstitutional insofar as those sections purport to authorize the submission and acceptance of a "new charter" or a "revised" home rule charter in any manner other than as prescribed by Minnesota Constitution, Article IV, Section 36, for amendments to home rule charters. Where the language of the constitution is clear, resort may not be had to a contrary practical construction placed upon it by the legislature or public officials. A charter commission may propose, as an amendment to an existing home rule charter, a complete revision or modification of such charter so long as it respects the limitations contained in section 36 and keeps within the framework prescribed. *Leighton v Abell*, 225 M 565, 31 NW(2d) 646.

The legislature has express power under the constitution to enact general laws which are paramount to home rule charters. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

A public or municipal corporation de facto exists when there is: (1) Some law under which a corporation with powers assumed might lawfully have been created; (2) A colorable and bona fide attempt to perfect an organization under such a law; (3) User of the rights claimed to have been conferred by the law. The principle of de facto power is equally applicable to a city organized under a home rule charter which makes an abortive attempt to adopt amendments to that charter. The city of Moorhead acquired de facto the powers which it attempted to acquire by the adoption of its revised or "new" charter of 1947, although the advertisement of the proposed amendments to its original charter did not comply with the requirements of Minnesota Constitution, Article IV, Section 36. The ordinances here under consideration, properly approved by subsequent elections for the bond issues, are valid. *Bowman v City of Moorhead*, 228 M 35, 36 NW(2d) 7.

Section 125.03 is not applicable to the special school district of the City of Minneapolis so as to authorize its board of education to fill vacancies on its school board, such power being vested under the provisions of special acts and the home rule charter in the city council in the City of Minneapolis. Through quo warranto proceedings a writ of ouster was issued against the person selected by the board of education by the City of Minneapolis. *State ex rel v Salisbury*, 228 M 367, 37 NW(2d) 444.

A municipality, though operating under a home rule charter is merely a department of the state, a political subdivision created as a convenient agency for the exercise of such governmental powers as may be entrusted to it and pursuant to constitution, the legislature may by enactment of general laws, modify or withdraw any of the powers entrusted to the city. *Mpls. St. Ry. Co. v City of Minneapolis*, 229 M 502, 40 NW(2d) 353.

The control of streets and sidewalks by a municipality is not limited to the surface but includes the space above and beneath the surface; and the common council of the City of Minneapolis may prohibit the maintenance of existing signs projecting over the sidewalks, and an ordinance of said city which requires the removal of such signs from a part of Nicollet avenue, is not violative of any constitutional provisions. *Gustafson v City of Minneapolis*, 231 M 271, 42 NW(2d) 809.

Where the city civil service commission of the city of Minneapolis consolidated the classification of tractor operators with that of construction equipment operators, which in effect discontinued the policy of supplying supplementary or emergency tractor operators from the regular truck drivers list, by being de-

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tailed as supplementary or emergency tractor operators in seasonable work under procedure or working arrangement established, did not acquire a civil service status as supplementary tractor operators and their assignment to tractor work was an assignment to detail that could be terminated at any time. *State ex rel v Mangni*, 230 M 518, 42 NW(2d) 529.

Upon evidence that certain improvements were of a value in excess of \$50 based upon inadequate information is insufficient to support the trial court's finding of defendant's violation of the Minneapolis city charter and ordinances which require permits from the city building inspector for improvements costing in excess of \$50; and the state's assertion, made here for the first time, that the stairway erected by the defendant without a permit constituted a structural change requiring a permit regardless of the cost thereof, is a new theory of the case and cannot be considered as a basis for affirmance by the appellate court. *State v Gustavson*, 234 M 124, 47 NW(2d) 552.

Under its charter the city of Moorhead has the power to levy special assessments for the extension of water mains. Where a petitioner signed and filed with the city clerk a petition for the extension of city water mains as sole owner of the property to be benefited, with the knowledge that it presented a situation in which the ordinance required no notice or hearing, the petitioner waived any right to assert that the action of the city council was void for failure to give the required notice of the proposed improvement, or to hold public hearings thereon. *Nemzek v Clay County*, M, 58 NW(2d) 746.

ARTICLE V

EXECUTIVE DEPARTMENT

Sec. 4. GOVERNOR'S POWERS AND DUTIES

The title of Laws 1947, Chapter 595, expresses only one subject and does not violate the constitution nor does it invade the judicial powers vested in our courts by the constitution, nor does it violate the constitutional power to grant pardons or reprieves now vested in the governor or state board of pardons. The classification of those who come within the provisions of the act is reasonable. Equal protection is secured as the law operates in the same way as to all who are in the same class. There is no constitutional right to notice, hearing, or assistance of council in the administration of a sentence after the sentence has been imposed according to law. The commitment to the commission is the judgment and sentence of the court. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

There is a vital distinction between the exercise of the lawmaking function and the exercise of those functions delegated to the legislature which are not strictly speaking lawmaking. *State ex rel v Mrs. Mike Holm et al*, filed by Supreme Court, January 29, 1954.

ARTICLE VI

JUDICIARY

Section 1. JUDICIAL POWERS

Preliminary report on revision of the judiciary article. 32 MLR 458.

Doctrine of forum non conveniens. 35 MLR 496.

Res judicata effect of administrative determination is subsequent judicial proceeding. 35 MLR 576.

Municipal courts have exclusive jurisdiction of violations of municipal ordinances. There is, however, a lack of uniformity of practice and jurisdiction. 36 MLR 143, 150.

The jurisdiction of the federal courts is self-restricted by their practice of declining to exercise it in favor of state courts because of reluctance to make tentative constitutional decisions or to interfere with domestic policy, inability to afford as convenient an effective relief as are state agencies, and the necessity of avoiding physical conflict between two judicial systems over control of specific property. 37 MLR 46.

On certiorari, the court is not justified in holding that the commission acted arbitrarily and capriciously in refusing to approve the operation of a proposed airport, where there is evidence to sustain a finding by the commission that the operation of the same would be attended with dangers to a public airport owned and operated by it. The mode and extent of police regulation is for the public authority exercising police power, and it is not for courts to determine the wisdom or expediency of such measures. *State ex rel v Minneapolis-St. Paul Commission*, 223 M 175, 25 NW(2d) 718.

To invoke the jurisdiction of a court to determine the constitutionality of a statutory provision by way of a declaratory judgment or otherwise, litigant must be able to show cause that the statute is or is about to be applied to his disadvantage. *Lee v Delmont*, 227 M 101, 36 NW(2d) 530.

Under its police power the legislature may vest in the industrial commission powers inclusive of the power to determine facts and employ a law in employment-accident controversies. This is not a violation of the constitutional provision for the division of powers of government, nor does it encroach upon the judicial powers of the courts as the commission's awards are not only subject to review by certiorari but lack judicial finality in not being enforceable by execution or other process in the absence of a binding judgment entered thereon by duly established court. *Breimhorst v Beckman*, 227 M 409, 35 NW(2d) 719.

The Youth Conservation Act does not invade the judicial powers vested in the courts by the constitution. It merely by statute prescribes the sentence to be imposed. *State v Meyer*, 228 M 286, 28 NW(2d) 3.

The title of Laws 1947, Chapter 595, expresses only one subject and does not violate the constitution nor does it invade the judicial powers vested in our courts by the constitution, nor does it violate the constitutional power to grant pardons or reprieves now vested in the governor or state board of pardons. The classification of those who come within the provisions of the act is reasonable. Equal protection is secured as the law operates in the same way as to all who are in the same class. There is no constitutional right to notice, hearing, or assistance of council in the administration of a sentence after the sentence has been imposed according to law. The commitment to the commission is the judgment and sentence of the court. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

The interpretation placed upon the state constitution by the state supreme court is final but where the state statutes are substantially the same as federal statutes, decisions of the supreme court of the United States will be followed. *Dayton v Carpet, Linoleum, and Floor Decorators' Union*, 229 M 87, 39 NW(2d) 183 (79 SC 570).

Courts, where possible, will adopt an available alternative ground of decision in order to avoid declaring a statute to be unconstitutional. *State v One Oldsmobile Two-door Sedan*, 227 M 280, 35 NW(2d) 525.

Sec. 2. SUPREME COURT; JURISDICTION AND POWERS; REPORTER OF DECISIONS; CLERK OF SUPREME COURT

Right to trial by jury in an action for treble damages based upon the Emergency Price Control Act of 1942. 35 MLR 304.

The power to fix the punishment for a crime is a legislative function. The judicial function consists of imposing the punishment which the legislature has prescribed. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

The supreme court has original jurisdiction of writs of habeas corpus where a final and speedy decision is important to the preservation of the right to liberty

of a citizen improperly restrained; and may exercise such jurisdiction though the prisoner has a remedy by appeal, where lack of authority to commit to prison appears from the face of the record. *Wojahn v Halter*, 229 M 374, 39 NW(2d) 545.

The provisions of section 205.82 that when two or more associate justices of the supreme court are to be nominated at the same primary election or elected at the same general election that each associate justice shall be deemed to hold a separate non-partisan office and requiring candidates for such offices to designate which office they are a candidate for, are not repugnant to the constitutional provision of the supreme court. *Gustafson v Holm*, 232 M 118, 44 NW(2d) 442.

Except in such remedial cases as are prescribed by law the supreme court is vested only with appellate jurisdiction. *Holtberg v Bommersbach*, 235 M 553, 51 NW(2d) 586.

Sec. 3. ELECTION AND TERM OF OFFICE FOR JUDGES. DISTRICT JUDGE MAY ACT WHERE SUPREME COURT JUDGES ARE DISQUALIFIED

The public examiner does not have the judicial powers of a court or magistrate and therefore cannot pass upon the question as to whether or not answers to questions directed to the witness might tend to incriminate him. *State v Nolan*, 231 M 522, 44 NW(2d) 66.

No judge or tribunal should sit in any case in which he is directly or indirectly interested, but when there is no other tribunal authorized to hear and determine the case the court before whom the case is pending must yield to necessity and try the case. The judicial function of courts may not be abdicated even on grounds of interest when there is no other court available. *State ex rel v Mrs. Mike Holm et al*, filed by Supreme Court, January 29, 1954.

Sec. 5. JURISDICTION OF DISTRICT COURTS

In construing a will, the cardinal rule is that the testator's intention is to be gathered from the language of the will itself. The court does not possess the power to, and never should, rewrite or remake a will to provide by conjecture what the testator might have said if he had foreseen events occurring subsequent to his death or to escape what seems to be an undesirable result. *Cosgrave's Will*, 225 M 443, 31 NW(2d) 20.

The power to fix the punishment for a crime is a legislative function. The judicial function consists of imposing the punishment which the legislature has prescribed. *State v Meyer*, 228 M 286, 37 NW(2d) 3.

The probate court has exclusive original jurisdiction to adjudicate and determine whether a person qualifies as an heir, devisee or legatee who may lawfully take a share of a deceased person's estate and the district court is wholly without such original jurisdiction and may not by injunction or otherwise impair or otherwise interfere with the probate court's original jurisdiction. The district court has only appellate jurisdiction although in special cases it may exercise a purely ancillary jurisdiction to aid, but not to obstruct the probate court. It may aid the probate court in special cases where the probate court is unable to afford an adequate remedy for a wrong to the estate, heirs, legatees or creditors. *Vesey v Vesey*, 237 M 10, 53 NW(2d) 809.

Sec. 6. QUALIFICATIONS

Under Minnesota Constitution, Article VI, Section 6, which provides that judges of the district courts of this state "shall receive such compensation at stated times as may be prescribed by the legislature," the signature of the governor is not a necessary prerequisite to the validity of an act of the legislature prescribing such salaries. *State ex rel v Mrs. Mike Holm et al*, filed by Supreme Court, January 29, 1954.

Sec. 7. PROBATE COURT; JUDGES TO BE ELECTED; JURISDICTION

Creation of a guardianship in probate court. 32 MLR 637.

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JUDICIARY ART. 6 s 7

Jurisdiction of the probate court, homestead as part of decedent's estate. 33 MLR 668.

Remedy of a legatee when a will is discovered after the administration of the estate as intestate. 34 MLR 166.

Rights in rem and in personam are within the jurisdiction of persons under guardianship although the original proceedings were in personam. Jasperson v Jacobson, 224 M 76, 27 NW(2d) 288.

Section 7 requiring that jurisdiction in guardianship matters be vested in the probate court; and section 525.54 providing the method whereby such court exercises jurisdiction, in such matters, but specifically providing that nothing therein contained shall diminish the power of any court to appoint a guardian to serve or protect the interest of any minor in any proceedings therein; and section 525.752 authorizing the probate court to give only such notice "to such persons and in such manner as the court may direct" in proceedings relative to the commitment of feeble-minded persons; and notwithstanding the fact that section 525.752 authorized the commitment of feeble-minded or incompetent persons only upon such notice "as the probate court may direct" under the due process clause of both the state and federal constitutions, and is essential in proceeding for the adjudication of incompetency that adequate notice be given to the person involved. In re Wretlind, 225 M 554, 32 NW(2d) 163.

An order of a probate court allowing a settling of guardian's final account is a final and appealable order and cannot be attacked collaterally for want of jurisdiction not affirmatively appearing on the face of the record. Jurisdiction goes to the subject matter, the persons involved, and the right to enter the particular judgment or order entered. Upon the appointment and qualification of a general guardian the power of a special guardian ceases. In re Hudson's Estate, 226 M 532, 33 NW(2d) 848.

Probate courts are courts of record of superior jurisdiction, jurisdiction being limited to certain specified subjects. Proceedings are in rem. Decrees of distribution are binding on all parties interested in the estate if the decree covers a subject over which the court has jurisdiction. A suit for declaratory judgment could be maintained to determine the rights of interested parties under a decree of distribution of the probate court assigning the homestead to the widow in fee contrary to the applicable statute giving the widow only a life estate, since suit was not a collateral attack upon the decree but was to determine whether there was any valid judgment at all that could affect the rights of the parties. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

Although the homestead of decedent in 1888 could be held by decedent's widow for life exempt from debts of the decedent, the fee was nevertheless part of decedent's estate and subject to the jurisdiction of the probate court. The court's decree of distribution assigning the homestead to the widow in fee, although erroneous, was binding on those interested in the estate, and this although the title to all real estate vests in decedent's heirs or devisees immediately upon his death. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

Because of the humanitarian as well as the constitutional doctrines upon which it rests, the requirement of notice is equally applicable in incompetency proceedings involving minors, who are ordinarily totally incapable of asserting or protecting their rights, and, even in the absence of statute or motion, the court must take protective measures adequately to safeguard the person of a minor by appointment of a disinterested party as guardian ad litem, upon whom service of process may be made and who can adequately protect the interest of such minor in an incompetency proceeding. Voluntary appearance by mother and stepfather of minor child, who were petitioners for child's commitment as a feeble-minded person, as well as by the county attorney, who by virtue of Minnesota Statutes 1941, Section 525.751, was then authorized to represent child, did not constitute a waiver of notice or give probate court jurisdiction over minor's person in such proceeding. Mother and stepfather as petitioners for child's commitment were adversary parties and could not appear on behalf of minor or waive any of minor's constitutional rights, since there can be no conflicting interests between

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ART. 6 s 8 JUDICIARY

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a minor involved in such a proceeding and the person designated to represent the minor therein. Minors cannot waive their rights to due process or notice because of want of capacity to do so; and likewise counsel for a minor cannot waive such minor's constitutional rights. In re Wretlind, 225 M 554, 32 NW(2d) 161.

Pursuant to Minnesota Constitution, Article VI, Section 7, the probate court is vested with a plenary and exclusive original jurisdiction over the estates of deceased persons in all matter relating to their complete administration, inclusive of both settlement and the determination of the person to whom property passes by will or descends by statutory inheritance, and this jurisdiction cannot be enlarged or diminished by the legislature.

In the settlement and distribution of the estates of deceased persons, the district court has only appellate jurisdiction, with the sole exception that it may exercise a purely ancillary jurisdiction to aid (but not to controvert or obstruct) the probate court in the performance of its proper functions in those special cases where, without such aid, the probate court would manifestly be unable to afford an adequate remedy for an alleged wrong to the estate, the heirs, legatees, or creditors. Vesey v Vesey, 237 M 295, 53 NW(2d) 810.

An original adjudication of whether a person is disqualified under M.S.A., Section 525.87 from inheriting from a decedent on the alleged ground of having feloniously taken decedent's life is a determination of heirship, or of the right to take a share of a deceased person's estate; as such, it involves an exercise of original jurisdiction, which belongs exclusively to the probate court.

Although a probate court has no general jurisdiction such as is possessed by a district court, it does have all the powers, legal or equitable, essential to a complete exercise of the plenary and exclusive jurisdiction conferred by the constitution; and, in cases arising within that jurisdiction, it may apply the law, whether it be statutory law, the rules of the common law, or principles of equity. Vesey v Vesey, 237 M 295, 53 NW(2d) 810.

Sec. 8. JUSTICES OF THE PEACE TO BE ELECTED; JURISDICTION

The municipal court of St. Paul is without jurisdiction to try an offense where the complaint charged violation of section 340.19(5), a gross misdemeanor. City of St. Paul v Hall, M, 58 NW(2d) 761.

Sec. 11. PROHIBITION, SUPREME OR DISTRICT JUDGE TO HOLD OTHER OFFICES OR TO BE VOTED FOR OFFICE WHILE IN OFFICE

A member of the judiciary is in no position to continue his occupation as a jurist while he is a candidate for a non-judicial office. Dougherty v Holm, 232 M 68, 44 NW(2d) 83.

Sec. 14. LEGAL PLEADINGS

Neither the state nor federal constitution requires the state to provide expense of an appeal for an indigent defendant in a criminal case. State v Lorenz, 235 M 221, 50 NW(2d) 270.

ARTICLE VII

ELECTIVE FRANCHISE

Section 1. ELECTIVE FRANCHISE

Constitutionality of anti-poll tax bill. Poll tax requirements as a voting qualification. 33 MLR 217.

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

Racial restrictive covenants. 37 MLR 65.

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EDUCATION ART. 8 s 1

Where there is no controlling statute or clear right based on statute law involved, the courts will not assume jurisdiction in controversies involving factual controversies within a political party. *Democratic-Farmer Labor Committee v Holm*, 227 M 52, 33 NW(2d) 831.

The statute providing that the county superintendent of schools should cause notice of an election of the proposed school district consolidation to be held "within the proposed district" is not violative of the constitutional provisions requiring 30 days residence in an election district. *Common School District v Barstad*, 231 M 40, 42 NW(2d) 393.

Sec. 2. NON-ELIGIBLE

Disqualification of voters because of conviction of a crime; effect of conviction under federal or foreign law. 32 MLR 642.

Respondent, who was elected in June, 1947, to the office of alderman of the city of Minneapolis after having been in 1930 convicted in the United States district court of Minnesota of a crime which under the federal law was a felony, but which under the laws of Minnesota was only a misdemeanor, was not ineligible to hold the office to which he was elected. *State ex rel v Todd*, 225 M 91, 29 NW(2d) 810.

The office of representative in Congress is a federal office created by the United States Constitution. The qualifications of those who aspire to or hold this office are prescribed by the United States Constitution, and the state may not add to or modify such qualifications. Each house of Congress is the judge of the elections, returns, and qualifications of its own members. *Danielson v Fitzsimmons*, 232 M 149, 44 NW(2d) 484.

Sec. 7. RIGHT TO HOLD OFFICE

Disqualification of voters because of conviction of a crime; effect of conviction under federal or foreign law. 32 MLR 642.

Respondent, who was elected in June, 1947, to the office of alderman of the city of Minneapolis after having been in 1930 convicted in the United States district court of Minnesota of a crime which under the federal law was a felony, but which under the laws of Minnesota was only a misdemeanor, was not ineligible to hold the office to which he was elected. *State ex rel v Todd*, 225 M 91, 29 NW(2d) 810.

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ARTICLE VIII

SCHOOL FUNDS, EDUCATION AND SCIENCE

Section 1. UNIFORM SYSTEM OF PUBLIC SCHOOLS

School districts are public corporations clothed with governmental power to perform the public duty of providing public schools; and the legislature is vested

with discretionary power to prescribe the manner of government of such corporations. *Muehring v School District*, 224 M 432, 28 NW(2d) 655.

Sec. 3. PUBLIC SCHOOLS IN EACH TOWNSHIP TO BE ESTABLISHED

Expenditure of public funds for the benefit of sectarian schools; public transportation of children to sectarian schools. 31 MLR 739.

The legislature is empowered to prescribe the manner and method of government of public corporations including school districts. *Muehring v School District*, 224 M 432, 28 NW(2d) 655.

School districts are public corporations clothed with governmental power to perform the public duty of providing public schools; and the legislature is vested with discretionary power to prescribe the manner of government of such corporations. *Muehring v School District*, 224 M 432, 28 NW(2d) 655.

Sec. 4. UNIVERSITY OF MINNESOTA; LOCATION CONFIRMED

The board of regents of the University of Minnesota is more than an "administrative agency." It is a "body corporate" created by state constitution and endowed by it with power to govern the university, free from interference by either legislature or courts so long as it stays within scope of its constitutional powers, and its charter may be amended only by action of the people. Before a private citizen can seek relief in court to compel board of regents of University of Minnesota to perform those duties required of it by its charter or governing law or to enjoin or restrain it from doing those things forbidden by law, demand must first be made upon the board to grant the relief desired. *State v University of Minnesota*, 236 M 452, 54 NW(2d) 122.

ARTICLE IX

FINANCES OF THE STATE; BANKS AND BANKING

Section 1. POWER OF TAXATION; LEGISLATURE MAY AUTHORIZE

Taxation of a charitable institution; apportionment between exempt and non-exempt uses of indivisible tract. 34 MLR 70.

State tax on exports; continuity of transit. 34 MLR 137.

The standard of protection offered by the United States Constitution, Amendment 14 (the equal protection clause), is the same as that extended by Minnesota Constitution, Article IX, Section 1, requiring that taxes be uniform upon the same class of subjects. Courts are not at liberty to speculate upon considerations motivating the legislature or to declare void legislative classifications where there is some reason therefor, even though the courts may not have the same regard as did the legislature for the reasoning upon which the classification is founded. *General Mills v Division of Employment and Security*, 224 M 306, 28 NW(2d) 848.

The legislature, having in section 268.06, subdivision 24, thus based its classification upon grounds having a reasonable relationship to the objective sought, did not act arbitrarily so as to render such enactment invalid under United States Constitution, Amendment 14, or Minnesota Constitution, Article IX, Section 1. *General Mills v Division of Employment and Security*, 224 M 306, 28 NW(2d) 848.

Classifications based upon numerical distinctions relative to corporate structure, employees, profits, and like matters have frequently been upheld, where the distinctions made for a reasonable relationship to the objects of the legislation, even though some inequality may have resulted therefrom. *General Mills v Division of Employment and Security*, 224 M 306, 28 NW(2d) 847.

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An exemption from taxation is a privilege of such high order and is so rarely granted that it can be established or extended only by, and according to the reasonable and natural import of, clear and explicit language, and not by implication or presumption. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

An institution of purely public charity enjoys tax exemption only with respect to property (and not with respect to the income therefrom) presently exclusively, and directly applied to and actually used in the promotion of its charitable purposes; but such property may in part, without loss of the tax exemption privilege, be devoted to activities which of, and by themselves are normally commercial, if such activities are subordinate to and reasonably necessary in meeting a need integrated with its purely charitable program. *Christian Businessmen's Committee v State*, 228 M 549, 38 NW(2d) 803.

He who seeks tax exemption has the burden of proof. In order for an institution to qualify for tax exemption there must be a concurrence of ownership of the property by an institution of the type prescribed by the Constitution and a use of the property for the purpose for which such institution was organized. A Christian laymen's organization whose general purpose was to promote moral and educational welfare of youth by bringing them under religious influence, and which was the equitable owner of real estate under an executory contract for deed, was an institution of purely public charity and had the requisite ownership of the realty for tax exemption. *Christian Businessmen's Committee v State*, 228 M 549, 38 NW(2d) 803.

The state may constitutionally impose a nondiscriminatory tax upon the interest of a mortgagor in land, the legal title to which is held by the federal government as mortgagee, so long as the rights of the federal government remain unaffected. *Land O'Lakes Co. v Wadena County*, 229 M 263, 39 NW(2d) 164, 70 SC 251, 338 US 897.

A municipality of a foreign state owning and operating a toll bridge located partly in Wisconsin and partly in Minnesota is not entitled under the provisions of Minnesota Constitution, Article IX, Section 1 to exemption from taxation of the portion of such bridge located in Minnesota. *State v City of Hudson*, 231 M 127, 42 NW(2d) 546.

The full and true value of a large block of corporate stock should not be determined for inheritance tax purposes by reference to what the entire block actually could have been sold for on the date of decedent's death, since the application of blockage theory would discriminate against beneficiaries of small estates in violation of the requirement of this section as to uniformity of taxation. *State v Wagner*, 233 M 241, 46 NW(2d) 676.

The taking of property for low-rent housing constitutes a taking for public use, and therefore the provision of the corporation agreement under which the city in which the development was to be constructed agreed that it would not levy any real or personal property taxes, or special assessments under such project, did not constitute a surrender of the power of taxation inasmuch as the contemplated property would be tax-exempt as public property, and removal of the property from tax rolls to be used for public purposes did not constitute a taking of other taxpayers' property without due process of law. *Thomas v Housing & Redevelopment Authority*, 234 M 221, 48 NW(2d) 175.

A private educational institution does not automatically fall within this constitutional exemption merely by designating itself a vocational institute, a college, a seminary of learning, or other like term. To justify a finding that it is exempt, the evidence must establish that it offers courses which may be readily assimilated into those of a publicly supported elementary school, high school, college, seminary of learning, or university.

Where evidence established that private educational institution did not provide courses similar to or capable of being assimilated by those provided in our public educational system, but on the contrary, offered only elementary training in radio

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and electric repair and maintenance service, the trial court properly denied such institution tax exemption as a seminary of learning. *State v NW Vocational Institute*, 232 M 377, 45 NW(2d) 653.

In construing the constitutionality of a legislative act the intent of the legislature must be ascertained from the language of the entire act read in the light of the object in view. The same tax can be sustained as property tax against one taxpayer, as privilege tax against another, and as combination property and privilege tax against a third. Every presumption is in favor of the constitutionality of the act. It is inherent in the exercise of the power to tax that a legislature is free to select the subject of taxation and to grant exemptions. The legislature likewise has a wide discretion in classifying property for the purpose of taxation provided its classifications are based upon differences which furnish a reasonable ground for the resulting distinctions between the several classes. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 343.

A statute providing for augmentation of firemen's relief association special funds by the imposition of a surcharge of two percent of the premium upon fire insurance policies, even if surcharge be treated as tax upon property insured there is no discrimination in favor of self-insurers, since insured property benefits directly and immediately in measurable way from improvements in fire departments, and, as result of those improvements and because of more efficient fire departments, premiums on insurance policies are reduced in considerable amounts. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 344.

In actions to have improved realty declared exempt from real estate taxes on the ground that a seminary of learning was operated thereon, the finding that such school did not offer any substantial part of the branches of learning and educational training which are furnished by the various publicly supported schools, was sustained by the evidence. *Graphic Arts Educational Foundation v State*, M, 59 NW(2d) 841.

Sec. 1a. OCCUPATION TAX

NOTE: Minnesota Constitution, Article XX, Section 1, specifically provides that the provisions of Article IX, Section 5, are inapplicable to the powers conferred by Article XX, Section 1. The limitations made inapplicable (1) limit the state debt to \$250,000; (2) necessitate a vote of two-thirds of the members of each house before a public debt shall take effect; and (3) the levying of sufficient taxes to pay principal and interest within ten years. Article XX, Section 1, empowers the legislature to levy taxes for adjusted compensation to certain persons who have served in the armed forces of the United States, to appropriate moneys therefor, to contract debts, issue and negotiate bonds or certificates of indebtedness or both, to pledge the public credit and to provide money therefor. In doing this the legislature is not to be hampered or controlled by the provisions of Article IX, Section 5. Tax valuation of Minnesota iron ore. 34 MLR 389.

Sec. 1b. PAYMENT OF PORTION OF PROCEEDS OF IRON ORE OCCUPATION TAX INTO VETERANS COMPENSATION FUND

Amendment adopted November 7, 1950.

NOTE: Since 1906 tax amendment, Sections 2, 3, and 4 are obsolete.

NOTE: Notwithstanding the provisions of Section 1a of Article IX of the Constitution, a portion of the proceeds of the occupation tax on the valuation of all ores mined or produced to be paid by every person, copartnership, company, joint stock company, corporation, or association however or for whatever purpose organized, engaged in the business of mining or producing iron ore or other ores in this state, equal to the proceeds of a tax of one percent on such valuation levied in the manner provided by law, shall be paid into the veterans compensation fund before the remaining funds derived from the occupation tax are apportioned as provided by Section 1a of Article IX of the Constitution.

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This amendment when approved by the people and proclaimed, all as provided by law, shall be effective as of the first day of January, 1949. In the event that the provisions of the preceding sentence shall be held to contravene the Constitution of the United States of America, the remaining provisions of this section shall stand as valid and continue in full force and effect.

This section of the constitution shall expire on December 31, 1958, except as to the proceeds of the occupation taxes theretofore levied and thereafter collected. Adopted, general election Nov. 7, 1950.

Sec. 5. STATE DEBT LIMITED; HOW CONTRACTED

Municipal corporations, constitutional debt limitation of the Constitution. 34 MLR 360.

Minnesota Constitution, Article IX, Section 5, does not forbid the imposition of an excise tax on gasoline consumed in municipally owned vehicles operated upon the public streets and highways for the purpose of construction, repair, or maintenance. State ex rel v Spaeth, 223 M 218, 25 NW(2d) 115.

In view of trial court's unchallenged finding that the sum of \$214,330.46 transferred by virtue of Laws 1947, Chapter 634, Section 58, Subdivision 1, to the general revenue fund from the trunk highway and road and bridge funds, to reimburse the general revenue fund for money expended by the department of taxation in collecting taxes on gasoline and gasoline substitutes, did not exceed actual expenditures for such purpose by such department, held that Laws 1947, Chapter 634, Section 58, Subdivision 1, did not violate Minnesota Constitution, Article XVI, Sections 1, 2, restricting use of funds derived from such taxes to the construction, maintenance, and improvement of the public highways of the state. The legislature may provide for transfer of funds from the trunk highway or road and bridge fund to the general revenue fund to cover expenses incurred or special services rendered such highway funds by other state departments, provided the amount transferred accurately reflects expenditures by such department for such expenditures and services. Services rendered by the gasoline tax division in the collection of taxes on gasoline and gasoline substitutes constitute special service rendered solely on behalf of constitutional highway funds. Cory v King, 227 M 551, 35 NW(2d) 807.

ARTICLE XI

COUNTIES AND TOWNS

Section 1. COUNTY ORGANIZATION

Section 368.47 authorizing the county board by resolution to dissolve any town when its assessed valuation drops to less than \$40,000, does not violate the due process clause of the constitution and is not an unlawful delegation of power from the legislature to the county board. Consequently, it is a valid law. Town of Bridgie v County of Koochiching, 227 M 320, 35 NW(2d) 537.

Sec. 3. TOWN ORGANIZATION

Statute authorizing board of county commissioners by resolution to dissolve any town when assessed valuation thereof drops to less than \$40,000 is not invalid either as being in excess of legislative power or as violative of due process. Municipal corporations have no right, privilege, or immunities within the protection of the usual constitutional guaranties against legislative interference or control. They are merely governmental agencies, and legislation regulating or affecting them does not amount to a contract, the obligation of which may not be impaired by legislative action. Town of Bridgie v County of Koochiching, 227 M 320, 35 NW(2d) 537.

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Sec. 6. MONEY DRAWN FROM COUNTY OR TOWN TREASURIES

A statute which authorizes two or more governmental units to enter into a contract to exercise jointly powers common to each does not violate the provision which prohibits the drawing of funds from county or township treasury except as authorized by law. Under the provisions of section 471.59 the city of Benson and the county of Swift may join in establishing a hospital, and bonds of Swift County may be issued to pay the county's share. *Kaufman v Swift County*, 225 M 169, 30 NW(2d) 34.

The provisions of M.S.A., Section 471.59 are valid and constitutional. *Kaufman v Swift County*, 225 M 169, 30 NW(2d) 34.

ARTICLE XIV

AMENDMENTS TO THE CONSTITUTION

Section 1. AMENDMENTS TO CONSTITUTION; MAJORITY VOTE OF ELECTORS VOTING MAKES AMENDMENT VALID

The Bricker resolution. 38 MLR 46.

Sec. 2. REVISION OF CONSTITUTION

State constitutional revision 1950-1951 Book of States. 35 MLR 81.

Constitutional revision by a restricted convention. 35 MLR 283.

ARTICLE XV

MISCELLANEOUS SUBJECTS

Sec. 2. RESIDENTS ON INDIAN LANDS

Indian clouds on land title grants. 32 MLR 28.

How we bought the United States from Indians. 32 MLR 34.

The doctrinal origins of Indian title. 32 MLR 43.

Johnson v McIntosh, and other Indian title cases. 32 MLR 47.

ARTICLE XVI

TRUNK HIGHWAY SYSTEM

Sec. 2. HIGHWAY SINKING FUND

In view of trial court's unchallenged finding that the sum of \$214,330.46 transferred by virtue of Laws 1947, Chapter 634, Section 58, Subdivision 1, to the general revenue fund from the trunk highway and road and bridge funds, to reimburse the general revenue fund for money expended by the department of taxation in collecting taxes on gasoline and gasoline substitutes, did not exceed actual expenditures for such purpose by such department, held that Laws 1947, Chapter 634, Sec-

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tion 58, Subdivision 1, did not violate Minnesota Constitution, Article XVI, Sections 1, 2, restricting use of funds derived from such taxes to the construction, maintenance, and improvement of the public highways of the state. The legislature may provide for transfer of funds from the trunk highway or road and bridge fund to the general revenue fund to cover expenses incurred or special services rendered such highway funds by other state departments, provided the amount transferred accurately reflects expenditures by such department for such expenditures and services. Services rendered by the gasoline tax division in the collection of taxes on gasoline and gasoline substitutes constitute special service rendered solely on behalf of constitutional highway funds. *Cory v King*, 227 M 551, 35 NW(2d) 807.

Sec. 3. MOTOR VEHICLE TAX

An exemption from taxation is a privilege of such high order and is so rarely granted that it can be established or extended only by, and according to the reasonable and natural import of, clear and explicit language, and not by implication or presumption. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

In construing the constitutionality of a legislative act the intent of the legislature must be ascertained from the language of the entire act read in the light of the object in view. The same tax can be sustained as property tax against one taxpayer, as privilege tax against another, and as combination property and privilege tax against a third. Every presumption is in favor of the constitutionality of the act. It is inherent in the exercise of the power to tax that a legislature is free to select the subject of taxation and to grant exemptions. The legislature likewise has a wide discretion in classifying property for the purpose of taxation provided its classifications are based upon differences which furnish a reasonable ground for the resulting distinctions between the several classes. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 343:

A single instance of insignificant occurrence does not constitute "use" within statutes imposing taxes on motor vehicles using public streets or highways in view of all other taxes thereon. New automobiles where the only use of the street is to the dealer's warehouse, where it is stored for sale, is not subject to motor vehicle tax until sold to a user, but is subject to personal property tax. *Stevens Company v Haveland*, 236 M 430, 53 NW(2d) 220.

Sec. 4. SALE OF BONDS

Laws 1947, Chapter 634, Section 58, transferring money to the general revenue fund from the trunk highway and road and bridge funds to reimburse the general fund for money expended by the department of taxation in collecting taxes on gasoline and gasoline substitutes during the 1945 to 1947 biennium is not violative of the constitutional provision restricting the use of funds derived from such taxes to construction, maintenance, and improvement of public highways, in view of the finding that the sum so transferred did not exceed the actual expenditures for collecting taxes on gasoline and gasoline substitutes by the deed. *Cory v King*, 227 M 551, 35 NW(2d) 807.

ARTICLE XVIII

FORESTATION AND REFORESTATION

Section 1. FORESTATION AND REFORESTATION; TAXATION

An exemption from taxation is a privilege of such high order and is so rarely granted that it can be established or extended only by, and according to the reasonable and natural import of, clear and explicit language, and not by implication or presumption. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

ARTICLE XX

VETERANS; BONUS

Section 1. ADJUSTED COMPENSATION TO PERSONS WHO SERVED IN ARMED FORCES; TAXATION; BONDS OR CERTIFICATES OF INDEBTEDNESS

NOTE: The state may at any time pay an adjusted compensation to persons who have served in the Armed Forces of the United States during the period from and including Sept. 16, 1940, through Dec. 30, 1946; may levy taxes and appropriate moneys for such purpose; and if and whenever authorized, and in such amounts and on such terms as may be fixed by the legislature, may expend moneys, may contract debts, may issue and negotiate bonds or certificates of indebtedness, or both, and may pledge the public credit to provide money therefor. The provisions of Section 5 of Article IX of the Constitution shall not apply to the provisions of this section, and the purposes for which the credit of the state may be given or loaned as herein provided are declared to be public purposes. Adopted at the general election Nov. 2, 1948.

Sec. 2. REPEALING INCONSISTENT PROVISIONS

Any and all provisions of the Constitution of the state of Minnesota inconsistent with the provisions of this article are hereby repealed, so far, but only so far, as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized. Adopted at the general election Nov. 2, 1948.