

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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CHAPTER 103

Miscellaneous Crimes

10452. Drunkenness—Successive offenses; etc.

Power of justice of the peace to suspend a sentence must be exercised at the time of imposition. There is no power to suspend on conviction for a third offense. Op. Atty. Gen. (266b-21), Nov. 6, 1941.

An officer with a warrant may arrest a man for drunkenness in his own home, but cannot arrest him without a warrant and merely on verbal complaint of wife. Op. Atty. Gen. (785b), Dec. 3, 1942.

Temporary reprieve to do farm work on condition that prisoner lead a law abiding life was violated by becoming intoxicated and he was not entitled to credit on his sentence. Op. Atty. Gen. (328a-9), Sept. 22, 1943.

UNIFORM NARCOTIC DRUG ACT

10455-4. Definitions.

Adopted by Alaska, 1943.

The purpose of act was to parallel and supplement federal laws. *People v. Gennaro*, 26NYS(2d)336, 261AppDiv 533.

10455-11. Application of act.—Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

Administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, not more than one grain of codeine or of any of its salts.

The exemptions authorized by this section shall be subject to the following conditions:

(a) That the medicinal preparation administered, dispensed, or sold, shall contain in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(b) That such preparation shall be administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this act.

Nothing in this section shall be construed to limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this act.

(c) No person shall administer, dispense or sell, under the exemption of this section, any preparation included within this section, when he knows, or can by reasonable diligence ascertain, that such administering, dispensing or selling will provide the person to whom or for whose use such preparation is administered, dispensed or sold, within any 48 consecutive hours, with more than six grains of codeine or any of its salts. (As amended Apr. 9, 1941, c. 157, §1.)

Both §2551 of Title 26 of Mason's U.S.C.A., and this act exempt the same medicinal preparations from their prohibitions. *People v. Gennaro*, 26NYS(2d)336, 261AppDiv 533.

10463. Trusts and combinations in restraint of trade prohibited.

Anti-Trust Laws have been adopted in Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia,

Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. (1940).

Action by owner of a motion picture theatre against the only other theatre in town for conspiracy and attempt to obtain a monopoly upon all the feature films for "first run" showing in order to drive plaintiff out of business presented a matter of sufficient general public interest to make a case of violation of §2 of the Sherman Act (15 Mason's U. S. Code Ann. §2) upon which an action for treble damages would lie under §4 of the Clayton Act (15 Mason's U. S. Code Ann. §15). *White Bear Theatre Corp. v. State Theatre Corp.*, (C.C.A.8) 129 F. (2d) 600. See Dun. Dig. 8437.

In a civil action in federal court under the Sherman Anti-Trust Law [15USC1, et seq.] the fact of damage to the plaintiff must be established by clear and satisfactory evidence, while the amount of damage may be approximated if the fact of damage appears with reasonable certainty and definiteness. *Twin Ports Oil Co. v. Pure Oil Co.*, (DC-Minn), 46FSuppl149. See Dun. Dig. 8437.

The labor injunction in Minnesota. 24MinnLawRev757. Monopolies—restraint of trade—price and production control through trade associations. 25MinnLawRev208.

The Apex and Hutcheson cases, 25 MinnLawRev 915.

10500. Peace officers to be voters—Penalty.

The mayor of the city of Minneapolis could not appoint a police chief who was not at the time of his appointment a legal voter of the state of Minnesota. Op. Atty. Gen., (785d), June 30, 1941.

Right of adjoining villages to maintain a joint policing service is doubtful, because of residential requirement. Op. Atty. Gen. (785-s), June 9, 1942.

10503. Indians located on reservations—Crimes, etc. [Repealed.]

Repealed. Laws 1943, c. 583.

Maintenance of gambling devices and slot machines on land to which United States holds title in trust for an Indian tribe cannot be prosecuted under state law if maintained by a tribal Indian (one under guardianship of United States government), but any other Indian or person is subject to prosecution. Op. Atty. Gen. (733D), Sept. 17, 1941.

Indian rights and the federal courts. 24MinnLawRev 145.

10509. Unlawful use of Red Cross.

Adopted in Arizona, Louisiana, Maine, Maryland, Michigan, Minnesota, South Dakota, Tennessee, Virginia, Vermont, Washington and Wisconsin.

10523. Protection to motormen.

Industrial commission has authority to determine necessity of automatic windshield wipers on one-man streetcar, but any requirement that two men operate streetcar is a matter for city to determine. Op. Atty. Gen. (270c-4), Dec. 29, 1942.

10536-5. Visitors at tourist camps, etc., to register.

A group of 10 cabins on one 50-foot lot conducted as rental property where overnight guests or guests for 2 or 3 days or by week were registered and accommodated was a tourist camp and not a "place of residence" within meaning of building restriction, registers being kept as provided by this act. *Cantiery v. E.*, 209M407, 296NW491. See Dun. Dig. 2393.

10536-17 and 10536-18. [Repealed.]

Repealed. Laws 1941, c. 495.

CHAPTER 104

Criminal Procedure

SEARCH WARRANTS

10537. When issued.

"Magistrates" does not include district judges, but a district judge has inherent power to issue a search warrant for gambling devices, keeping of which is a gross misdemeanor, upon sworn warrant, and then have grand jury indict persons. Op. Atty. Gen. (141f), Dec. 5, 1941.

EXTRADITION

10542. Warrant of extradition, service, etc. [Repealed].**3. Who is a fugitive from justice.**

Abandonment of a child is a continuing offense, and limitation does not run during time father is outside state, and he is a fugitive from justice if offense charged is a few days prior to date of leaving state, and same