

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special 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 digest of all common law decisions.



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Part V. Construction of Statutes and Express Repeals

CHAPTER 107

Statutes

THE REVISED LAWS AND THEIR EFFECT

10922. Continuation of former laws.

An intent to change the law will not be lightly inferred from a mere change of phraseology in a revision. *Gilroy's Estate*, 193M349, 258NW584. See Dun. Dig. 8961.

CONSTRUCTION

10928. When to take effect.

Act takes effect the beginning of the day following its approval. Op. Atty. Gen., Apr. 9, 1929.

Laws 1933, c. 251, approved on April 15, became operative on April 16. Op. Atty. Gen., June 24, 1933.

10929. Revision to operate as repeal, when.

State v. Schmelmpfenig, 192M55, 255NW258; note under §§297, 10933(21).

Section 1538-1 does not repeal or modify the provisions of the charter of the City of St. Paul providing for condemnation of land for street and highway purposes. 177M146, 225NW86.

When two legislative acts are not expressly repugnant, but later act covers entire subject-matter of earlier and does not purport to amend it, and if it plainly appears that later act was intended as a substitute for earlier, it will operate as a repeal of former. *Board of Education v. B.*, 192M367, 256NW894. See Dun. Dig. 8926.

10930. Effect of repeal.

Sheriff agreeing to pay detective \$25 for each conviction for violation of liquor laws could pay such amount in pending cases for convictions occurring after effective date of Laws 1933, c. 130. Op. Atty. Gen., Apr. 28, 1933.

10932. Rules of construction.**1/2. Rules of construction in general.**

Prima facie effect of similar South Dakota law construed. *Berlin v. K.*, 183M278, 236NW307. See Dun. Dig. 8821, 8937a(99), 8956.

As between a statutory provision with special and limited application, and another, general in scope, special controls general within former's limited field. *Rosenquist v. O.*, 187M375, 245NW621. See Dun. Dig. 8970.

Ambiguity will be resolved in favor of state. *State v. Walsh*, 188M412, 247NW523. See Dun. Dig. 8990.

Literal meaning of statute is not always conclusive, and there must be resort to construction when words, otherwise plain, result in ambiguity when applied to their subject-matter. *State v. Walsh*, 188M523, 247NW523. See Dun. Dig. 8938.

Strict construction of statutes in derogation of common law must not be used as cover for extraconstitutional limitations on legislative power. *State v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 190M162, 251NW275. See Dun. Dig. 1602.

However radical its change, a statute is not to be so narrowed by construction as to defeat its purpose, simply because it is an innovation on common-law principles. *Id.* See Dun. Dig. 8958.

Rules of judicial construction require that so far as possible conflicting provisions of a city charter be harmonized in conformity with announced legislative policy of state. *State v. Erickson*, 190M216, 251NW519. See Dun. Dig. 8951.

Fundamental rules of construction of statutes is to give effect to intention of legislature as expressed in language used. *Id.* See Dun. Dig. 8940.

Where there is a conflict, law later in point of original enactment will control. *Id.* See Dun. Dig. 8961.

Where facts are undisputed and provisions of ordinance are unambiguous and stated in clear language, we cannot, by construction, change its terms or result of its application to facts. *Zalk & Josephs Realty Co. v. S.*, 191M60, 253NW8. See Dun. Dig. 1595.

The maxim *expressio unius* does not apply to constitutions with the same force that it does to statutes. *Reed v. B.*, 191M254, 253NW102. See Dun. Dig. 1576.

Ordinances and statutes must be given a reasonable and practical construction in accordance with intention of law makers. *State v. Witt's Market House*, 191M425, 254NW596. See Dun. Dig. 8939, 8943.

Rule of practical construction of statutes is not entitled to much weight against state in determining taxability of property. *Board of Education v. B.*, 192M367, 256NW894. See Dun. Dig. 8952.

It will be presumed that legislature intended an amendment to make some change in the law. *State v. City of Eveleth*, 194M44, 260NW223. See Dun. Dig. 8997.

Common usage can be resorted to in interpreting statute. *Bennett Commission Co. v. N.*, —M—, 261NW593. See Dun. Dig. 8968.

Provision in legislative act declaring all provisions to be inseparable and that if any clause is invalid, then whole act shall be invalid will be considered by the court to determine intent of legislature but court is not necessarily controlled thereby. Op. Atty. Gen. (724r), Feb. 21, 1935.

1. Judicial duty and policy.

A court will pass upon the constitutionality of a law only when necessary. 181M427, 232NW737. See Dun. Dig. 8930a.

Court must consider act valid until satisfied to contrary beyond a reasonable doubt. *Sweet v. R.*, 189M489, 250NW46. See Dun. Dig. 8931.

Every presumption is in favor of constitutionality of act of legislature and an act should not be declared unconstitutional except when court is satisfied, after most careful consideration, that it conflicts with some provision of state or Federal Constitution. *Reed v. B.*, 191M254, 253NW102. See Dun. Dig. 8929.

When a statute is challenged for unconstitutionality, it is the duty of the court to so construe it as to render it constitutional if it is possible to do so, though it may not virtually rewrite an unambiguous law. *Moses v. O.*, 192M173, 255NW617. See Dun. Dig. 8931.

Rules of statutory construction should not be enforced inflexibly, not being masters but rather servants of courts as aids in determining legislative intent. *Board of Education v. B.*, 192M367, 256NW894. See Dun. Dig. 8937.

Construction of bankruptcy act by United States Supreme Court prevails over any contrary interpretation by state courts. *Landy v. M.*, 193M252, 258NW573. See Dun. Dig. 738.

An intent to change the law will not be lightly inferred from a mere change of phraseology in a revision. *Gilroy's Estate*, 193M349, 258NW584. See Dun. Dig. 8961.

Court must take statute as it finds it and is not at liberty to add to it by a process which would be an amendment, and, in effect, judicial legislation. *Ross v. S.*, 193M407, 258NW582. See Dun. Dig. 8940.

Where evidence showed that defendant deliberately pointed gun at wife and shot her, court did not err in refusing to submit manslaughter. *State v. Norton*, 194M410, 260NW502. See Dun. Dig. 2486.

Courts will not declare a law unconstitutional unless it clearly appears that it violates one or more provisions of constitution. *State v. Scott County*, —M—, 261NW 863. See Dun. Dig. 8929.

2. Who may question validity.

A litigant may be heard to question the constitutionality of a statute only when it is about to be applied to his disadvantage. 181M427, 232NW737. See Dun. Dig. 8935(79).

Public officials who have no personal pecuniary interest in the matter involved will not be permitted to raise the question of the constitutionality of a statute to avoid the performance of a ministerial duty which it clearly imposes upon them. 181M427, 232NW737. See Dun. Dig. 8935(78).

3. Repeal.

Where two inconsistent statutes are enacted at same session of Legislature, first must give way to last as latest expression of lawmaking power. *State v. Schmelmpfenig*, 192M55, 255NW258. See Dun. Dig. 8927.

10933. Particular words and phrases.

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6.

Act to establish October 12th as Columbus Day. Laws 1931, c. 175, ante, §2883-2.

Act to establish October 9 as Leif Erikson Day. Laws 1931, c. 120, ante, §2883-1.

14. Published and posted notices.—Unless otherwise specially provided, the words "Published notice," when used in reference to the giving of notice in any proceeding or the serving of any summons, order or process in judicial proceedings, shall mean the publication in full of the notice or other paper referred to, in the regular issues of a qualified newspaper, once in each week, and at uniform intervals, for the number of weeks specified. Provided, however, that when one of the regular publication days for such notice, summons, order or process shall fall upon Thanksgiving Day or upon any legal holiday then and in that

case it shall be a compliance with the law to have said notice, summons, order or process published either the day before or the day after Thanksgiving Day or such legal holiday. And a "qualified newspaper" shall be one published in the county wherein the action or proceeding is pending or in which the thing to which such notice relates is to occur or be done, and conforming to the requirements of §10935; or, if there be none in such county, then in an adjoining county. The term "posted notice," when similarly used, shall mean the posting, at the beginning of the prescribed period of notice, of a copy of the notice or document referred to, in a manner likely to attract attention, in each of three of the most public places in the town, city, district or county to which the subject matter of the notice relates, or in which the thing of which notice is given is to occur or be performed; provided, however, that in any town in which there is located within its geographical limits a city or village, one or more such notices may be posted in such city or village. (As amended Apr. 16, 1931, c. 181, §1.)

* * * * *

(2). The word "town" contained in par. 2 of this section is not broad enough to authorize the treasurer of a village to take steps relative to depositaries of village funds as provided for in Laws 1931, c. 216, secs. 1 to 4. Op. Atty. Gen., Jan. 24, 1933.

(6). Farmers' Implement Co. v. Sandberg, 132Minn389, 157 NW642, holding that the service of summons on a legal holiday confers no jurisdiction on the court, followed. Chapman v. F., 184M318, 238NW637. See Dun. Dig. 4191 (32).

State legislature may legally transact business on Good Friday only if it brings itself within the exception of this section. Op. Atty. Gen., Apr. 12, 1933.

Legislature may legally transact business on Good Friday only in cases of necessity. Op. Atty. Gen., Apr. 12, 1933.

Depositors' meeting should not be called on Good Friday. Id.

Proceedings to vacate highway had upon Nov. 11, were valid. Op. Atty. Gen., May 3, 1933.

Board of basic science may conduct examination on New Year's day, a legal holiday. Op. Atty. Gen. (303b), Oct. 5, 1934.

(11). A corporation may be owner of an exclusive liquor store. Op. Atty. Gen. (218g-13), May 22, 1934.

(12). Section 1266 governs in computation of population in cities for purpose of issuing intoxicating liquor licenses. Op. Atty. Gen., Jan. 30, 1934.

(14). Under section 31 of the Brainerd City Charter, requiring clerk to advertise in official newspaper of the city for one week for sealed proposals, one publication of the notice in the newspaper at least one week prior to the opening of the bids is sufficient. Op. Atty. Gen., June 24, 1931.

Under a statute providing that "two weeks' published notice" shall be given that bids will be received and opened, bids could be opened one week from the date of the last publication, excluding the date of publication, and including the date of opening the bid. Op. Atty. Gen., June 30, 1931.

Notices published on a legal holiday are valid. Op. Atty. Gen. (276d), June 8, 1935.

(17). 180M241, 230NW572.

(19). The word "year" in §3259, forbidding more than twelve boxing exhibitions during any one year, means calendar year commencing January 1st. Op. Atty. Gen., Feb. 8, 1932.

(21). 179M349, 229NW312.

In computing the three-day period in which a bill is to be returned by the Governor in order to effect a veto thereof under Const., Art. 4, §11, Sunday, but not a holiday, is to be excluded. 172M162, 215NW200.

Liability of the bank stockholder making a transfer on November 23rd, 1925, continued to and included November 23rd, 1926. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

A cause of action alleging items of deposit received in an insolvent bank, the last one on March 7, 1924, is not barred as to such last item on March 7, 1930. The first day is excluded and the last included in the computation of time. Olesen v. R., 184M624, 238NW12. See Dun. Dig. 9625(98).

Where twentieth day after suit is commenced falls on Sunday or legal holiday, demand for change of venue under §9215 may be made on following Monday. State v. Mills, 187M287, 245NW431. See Dun. Dig. 9625, 10123.

First day was excluded and last day included in determining time of cancellation of workman's compensa-

tion insurance policy. Olson v. M., 188M307, 247NW8. See Dun. Dig. 9625.

Where an act is required to be done a specified number of days before an event, required number of days is to be computed by excluding day on which act is done and including day on which event is to occur. State v. Schmeipfenig, 192M55, 255NW258. See Dun. Dig. 9625.

Publication of summons, order or process is not illegal because first publication falls on a holiday. Op. Atty. Gen., Mar. 14, 1929.

House of Representatives could not legally adjourn in the afternoon of Feb. 11, 1931, until the forenoon of Feb. 16, 1931, without the consent of the Senate, it being immaterial that February 12th is holiday. Op. Atty. Gen., Feb. 10, 1931.

In computing the five day period between the making of application for marriage license and the issuance of the license, the day on which the application is made is to be excluded and the day the license is issued is to be included. Op. Atty. Gen., Apr. 29, 1931.

Fractions of days may not be considered in determining five days after which a marriage license may be issued. Op. Atty. Gen., May 9, 1931.

General rule prescribed by this subdivision does not apply to §§386 and 387, relating to registration of voters. Op. Atty. Gen., Feb. 23, 1933.

(22). The word "towns" in Soldier's Preference Act includes villages. 173M485, 217NW681.

The word "village" in the proviso in Laws 1929, c. 179, does not include a "town." Op. Atty. Gen., June 6, 1929.

Village assessor should be paid same compensation as town assessor. Op. Atty. Gen., Dec. 22, 1933.

10934-2. Certain publications validated.—All newspaper publications of notices, required by law to be published in legal newspapers, which have been published between dates of June 27, 1927 and June 27, 1928 in a daily newspaper which conforms in all respects to the statute defining legal newspapers with the exception that the newspaper had not been published for the requisite length of time, and where said daily newspaper attempted to purchase a weekly newspaper and combine and continue the existing legal weekly paper with the daily newspaper but in fact failed to do so because of a failure to adopt certain characteristics of the existing legal newspaper, are hereby legalized and declared to be valid and sufficient for all purposes. (Act Mar. 11, 1929, c. 72, §1.)

10934-3. The provisions of this act shall not affect any action or proceeding now pending in any courts in this state. (Act Mar. 11, 1929, c. 72, §2.)

10934-4. Certain newspapers qualified and publications validated.—Any daily newspaper which was issued only five days each week during the weeks ending December 31, 1932, and January 7, 1933, respectively, and which was not issued on December 26, 1932, or January 2, 1933, shall be qualified as a medium of official and legal publications under the laws of this State, notwithstanding any failure to issue the same at least six days during each of said weeks, or failure to issue the same on December 26, 1932, or January 2, 1933, provided such daily newspaper be otherwise qualified as a medium of official and legal publications under Section 10935 Mason's Minnesota Statutes for 1927; and any official and/or legal publication or publications published in any such newspaper on or after December 26, 1932, and prior to the passage of this Act are hereby legalized and validated and given the same legal force and effect as if published in a daily newspaper, issued daily at least six days during each of said weeks. (Act Jan. 10, 1933, c. 2.)

10934-5. Certain newspapers legalized.—No newspaper in this state, which conforms in all respects to the statutes defining a legal newspaper, except that it was not heretofore published for one week at some time since it became a legal newspaper, shall be deprived of its standing as such legal newspaper by reason of such omission; but such newspaper shall be deemed to be a legal newspaper notwithstanding such omission of its publication for one week. (Act Jan. 11, 1933, c. 4.)

10935. Qualifications of legal newspaper.—A newspaper in order to be qualified as a medium of official and legal publications, shall: (1) Be printed in the English language from its known office of publication

within the city, village or town from the place from which it purports to be issued and in column and sheet form equivalent in space to at least 450 running inches of single column, two inches wide.

(2) It shall be issued at least once each week, and if a daily at least six days each week, from a known office, established in such place for publication and equipped with skilled workmen and the necessary material for preparing and printing the same; except in any week in which a legal holiday or Thanksgiving day is included, not more than five issues of a daily paper shall be necessary, which provision shall also apply when the legal holiday falls upon Sunday. Provided that the press work on that part of the newspaper devoted to local news of interest to the community which it purports to serve, shall be done in its known office of publication, except in cities of the first class when the press work may be done elsewhere, within that same city.

(3) In its makeup twenty-five per cent of its news column must be devoted to local news of interest to the community which it purports to serve. It may also contain general news, comment and miscellany, and must not wholly duplicate any other publication, and be not entirely made up of patents, plate matter and advertisements.

(4) Be circulated in and near its place of publication to the extent of at least two hundred and forty copies regularly delivered to paying subscribers and have entry as second class matter in its local post-office. Any person interested in the legality of any publication may request of the county auditor of the county in which such publication is made proof of the legal standing of the newspaper in which such publication is contained. The county auditor shall then demand of the publisher of such newspaper as a public record proof of these qualifications, together with a list of the two hundred forty paying subscribers. Failure of such publisher to comply with this demand within ten days after receipt of such request shall then forfeit the legal standing of such newspaper.

All the foregoing conditions shall have existed for at least one year last past, provided, however, that any newspaper which shall have been a duly qualified medium of legal publication under requirements of Section 10935, Mason's General Statutes of Minnesota, 1927, for at least one year immediately preceding the passage of this act as amended, or which shall at any time prior to the time this act shall take effect conform to the requirements herein provided for, shall not affect the qualification or validity of such newspaper as a medium of official and legal publication, and such newspaper shall be deemed to be a legal newspaper, provided that suspension of publication for a period of not more than three months within said year, resulting from the destruction of its office by the elements of unforeseen accident to the equipment thereof shall not affect the qualification of such newspaper after it shall have resumed; nor shall the consolidation of one newspaper with another published in the same county, nor any change in the name or ownership thereof, disqualify it or invalidate any publication continuously made therein, before and after the change; provided further that any newspaper located in a county of more than 150,000 and less than 250,000 population, which shall have been published daily or weekly, regularly and without suspension of publication, fifteen years or more immediately prior to the date this act goes into effect, in one city or village; or any newspaper located in a county of over 250,000 population, which shall have been published daily weekly, regularly and without suspension of publication, three years or more immediately prior to the date this act goes into effect, in one city or village, and having a regular office and editorial rooms, shall be deemed to be a legal newspaper, notwithstanding that it is not printed at the place from which it purports to be issued, and notwithstanding that it is not equipped with skilled workmen and the necessary material for preparing and

printing the same, or that it is not printed in the English language, providing it shall conform to all the other requirements of said Section 10935, Mason's General Statutes of Minnesota, 1927: Provided further that all legal notices shall be printed in the English language.

Neither the change of the day of publication or the change of office or place of publication from one place to another within the same county shall deprive it of standing as a legal newspaper, and it shall be deemed to be a legal newspaper notwithstanding such change of the day of publication or change of office and place of publication within the same county. (R. L. '05, §5515; '07, c. 3; '11, c. 379, §1; G. S. '13, §9413; '21, c. 484, §3; subsec. (1), '23, c. 203; subsec. (2), '27, c. 28, §1; subsec. (2), Apr. 4, 1933, c. 151, §1; Apr. 21, 1933, c. 373; Apr. 13, 1935, c. 166, §1.)

The title of Act Apr. 21, 1933, cited, purports to amend only subdivision 4 of this section. The amendment of the other subdivisions of the section is probably unconstitutional. The title of the act reads: "An act amending Mason's Minnesota Statutes of 1927, section 10935, subdivision 4, relating to legal newspaper qualifications."

Sec. 2 of Act Apr. 4, 1933, cited, provides that the act shall take effect from its passage.

Sec. 2 of Act Apr. 13, 1935, cited, repeals Laws 1933, chapters 151 and 373.

St. Paul Legal Ledger giving information affecting credit and other news of official proceedings, held to "contain local and general news, etc." Legal Ledger, Inc., v. H., 176M120, 222NW646.

Newspaper publisher, having no mechanical equipment whatever, but letting it to job shop, does not publish legal newspaper. Op. Atty. Gen., July 21, 1932.

Laws 1933, c. 373, amending this section, operates as a curative act only, and does not permit legal newspapers complying with law at time of passage to consolidate their shops and have various papers issued from one shop. Op. Atty. Gen., Oct. 31, 1933.

If some of present work is done at place of publication and if newspaper office at that place is equipped with skilled workmen and necessary materials for preparing and printing the paper, balance of paper may be printed in the adjoining village. Op. Atty. Gen. (314b-19), Dec. 28, 1934.

County board proceedings cannot be published in a newspaper that is not legally qualified, such as one which has not been in circulation for a year. Op. Atty. Gen. (314b), Dec. 31, 1934.

Laws 1933, c. 373, is unconstitutional insofar as provisions thereof purport to amend subd. (1), (2), (3), of this section, and a newspaper is a legal paper providing it has qualified under requirements of this section for at least one year preceding passage of Laws 1935, c. 166. Op. Atty. Gen. (314b-3), May 17, 1935.

(1). A legal newspaper need not be of any specified size, but it must be equivalent in space to at least four pages with five columns to the page, each seventeen and three-fourths inches long. Op. Atty. Gen., Dec. 3, 1931.

(4). On change from weekly to semi-weekly, new edition is not legal newspaper until it has been published for at least one year. Op. Atty. Gen., Dec. 11, 1933.

Printer's affidavit, Form 67 in Appendix 1 (Mason's 1934 Supp.), should be modified so as to conform with requirements as to qualification of a legal newspaper as stated in Laws 1933, c. 373. Op. Atty. Gen., Feb. 1, 1934.

Where proof is not furnished county auditor within the required 10 days, the legal standing of the newspaper is forfeited, and is not reinstated by furnishing such proof 25 days after notice. Op. Atty. Gen. (314b-5), June 28, 1934.

10937. Published notice.

Op. Atty. Gen., Mar. 14, 1929; note under §10933.

10939-1. Fees for publication of legal notices.

Publication of wheat production and acreage statements of members of association of county, made in compliance with regulations of agricultural adjustment administration, is not a legal publication as respects rates. Op. Atty. Gen., Nov. 8, 1933.

Publisher was not entitled to extra compensation for printing tabular matter. Op. Atty. Gen., Nov. 9, 1933.

This section does not take precedence over Laws 1895, c. 8, §146. Op. Atty. Gen., Dec. 13, 1933.

10950-4. Mason's Minnesota Statutes to be prima facie evidence.—Mason's Minnesota Statutes of 1927 shall be prima facie evidence of the statutes therein contained, in all the courts of this state, without further proof or authentication. (Act Feb. 1, 1929, c. 6.)

10950-5. 1931 supplement to Mason's Statutes to be prima facie evidence of the statutes therein contained.—The 1931 Supplement to Mason's Minnesota Statutes of 1927 shall be prima facie evidence of the statutes therein contained, in all the courts of this state, without further proof of authentication. Act. Apr. 15, 1933, c. 254.)

10950-6. 1934 Supplement to Mason's Minnesota Statutes of 1927 to be prima facie evidence of the statutes therein contained. The 1934 Supplement to Mason's Minnesota Statutes of 1927 shall be prima facie evidence of the (Statutes therein contained. (Act Feb. 27, 1935, c. 24.)

CHAPTER 108

Express Repeal of Existing Laws

10963. Session Laws of 1876.

Repeal of ch. 23 is modified by the provisions of §7429 herein. Op. Atty. Gen., May 3, 1930.

10970. Session Laws of 1885.

This repealer is modified as to villages organized and operating under the village code of 1885, by §1109 herein. Op. Atty. Gen., Jan. 16, 1930.

10975. Session Laws of 1895.

This repealer is modified as to villages organized and operating under the 1885 village code, by §1109 herein. Op. Atty. Gen., Jan. 16, 1930.

Laws 1895, c. 257, authorizing villages to purchase or rent fire apparatus was not repealed by this section. Op. Atty. Gen., Oct. 6, 1931.

10978. Session Laws of 1901.

This section repeals Law 1901, c. 252. Op. Atty. Gen., Apr. 27, 1933.