

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 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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So far as state law is concerned, municipal liquor store may be located within 500 feet of a church or school. Op. Atty. Gen. (218g-13), Dec. 15, 1938.

#### 3238-4 to 3238-9.

Sections are still in force. Op. Atty. Gen., June 21, 1933.

#### 3238-4. Persons to whom sales, etc., illegal.

This section was not amended or changed by Laws 1939, c. 248, amending §3200-33, and sale of intoxicating liquor to a minor is still a gross misdemeanor, though a sale of non-intoxicating malt liquor is a misdemeanor under §3200-7 and §3200-9. Op. Atty. Gen. (218j-12), July 10, 1939.

#### 3238-9. Sales, etc., to minors, habitual drunkards, or persons under guardianship after notice.

A person of Indian blood is one having Indian blood in his veins regardless of whether it is from father's side or the mother's side. Op. Atty. Gen., Feb. 26, 1934.

A mayor of a city has right in certain cases to post notices in places dispensing intoxicating liquor to prevent sale to certain persons, but 3.2 beer is not intoxicating. Op. Atty. Gen. (218e), August 24, 1939.

#### 3238-10. Giving to, or procuring or purchasing for, minors, etc.

Gift of liquor to minor is a gross misdemeanor under Laws 1911, c. 290, and not a felony. Op. Atty. Gen., Apr. 10, 1933.

One making gift of intoxicating liquor to minor is guilty of gross misdemeanor and not felony. Op. Atty. Gen., Apr. 10, 1933.

Section still in force. Op. Atty. Gen., June 21, 1933.

#### 3238-11 to 3238-25.

Sections are still in force. Op. Atty. Gen., June 21, 1933.

#### 3238-16. Duties of officers.

While primary duty of enforcing state laws rests upon local authorities, liquor control commissioner may act independently of local officials, or report violation to local officers and render it their positive duty to prosecute

violator, but sole duty of enforcing city ordinances is imposed on local authorities. Op. Atty. Gen. (218h-2), Dec. 21, 1937.

**3238-18½. Sale by employee.**—Any sale of liquor in or from any public drinking place by any clerk, barkeeper, or other employee authorized to sell liquor in such place shall be deemed the act of the employer as well as that of the person actually making the sale; and every such employer shall be liable to all the penalties provided by law for such sale, equally with the person actually making the same. (1565) [3191]

This section is still in force and effect. Op. Atty. Gen. (218j), June 2, 1939.

This section has no application to prosecutions for violation of a city ordinance. Op. Atty. Gen. (218J), June 10, 1939.

This section has no application to sale of 3.2 beer. Op. Atty. Gen. (218j-12), July 7, 1939.

### CIVIL ACTIONS

#### 3239. Action for injuries caused by intoxication.

Makers and sellers of moonshine are liable to wife of buyer for injury to her support. *Benes v. C.*, 186M578, 244NW72. See Dun. Dig. 4928a.

Where tavern keeper unlawfully sold intoxicating liquors to a minor, resulting in his intoxication and death, cause of action, if any, accrued to parents of minor, and not to special administrator of minor under death act. *Sworski v. C.*, 204M474, 283NW773. See Dun. Dig. 4928a.

Complaint alleging that tavern keeper unlawfully sold intoxicating liquor to a minor, that minor was arrested by a police officer, and was handed over to private individuals to be taken to jail, and by them beaten so that he died by reason of his intoxicated and weakened condition, held not to present proper basis for joint tort liability on part of tavern keeper, police officer and others. *Id.* See Dun. Dig. 4928a.

There was no cause of action at common law against a vendor of liquor in favor of those injured by intoxication of a vendee. *Id.* See Dun. Dig. 4928a.

## CHAPTER 16A

### Cigarettes

#### 3242. Licensing of sale of cigarettes, etc.

This statute does not require that a department of the State, such as the State University obtain a license before selling cigarettes. Op. Atty. Gen., Nov. 10, 1931.

Owners and operators of machines vending cigarettes purchased by them in wholesale lots must have retailer's license. Op. Atty. Gen., Apr. 2, 1934.

Representatives, agents and employees of large tobacco companies going about the state and decorating windows may be required to obtain licenses where they carry cigarettes along with them to supply dealers who are short on orders or whose cartons have dried out. Op. Atty. Gen. (829c-6), June 26, 1935.

License is unnecessary for sale on trains. Op. Atty. Gen. (829e-6), July 10, 1935.

License cannot be refused municipal liquor store on ground that it is competition with private business and municipality is entitled to 90% refund. Op. Atty. Gen. (829e-4), Dec. 17, 1937.

Person having two separate places of business in a building that is devoted to separate and independent uses not related to his business must obtain two licenses. Op. Atty. Gen. (829c), Feb. 18, 1938.

**3243. Licenses for sale and manufacture of cigarettes.**—License for the manufacture, sale, exchange, barter, disposition of or giving away or keeping for sale of cigarettes, cigarette paper or cigarette wrappers for the making of cigarettes may be granted by the state dairy and food commissioner, who shall provide a suitable blank form of application for the use of applicant. The fee for such license shall be twelve (12) dollars and shall expire on December 31, next after its issue, and no license shall be issued for a longer term than one year, and shall not be transferable from one person to another person or from the ownership to whom issued to another ownership. Provided, that a license issued for less term than one year, the fee for same shall be computed at the rate of one dollar for each calendar month or fractional part of such month. A penalty of fifty per cent of the license fee shall be imposed if license is not applied for within the same calendar month that first

sale of cigarettes is made. Each store where such cigarettes, cigarette paper or cigarette wrappers for the making of cigarettes are sold at retail shall pay the license fee herein provided for; provided, that any duly licensed manufacturers, jobber or wholesaler, may, under his license as such, sell and deliver from his established place of business or otherwise, cigarettes, cigarette paper or cigarette wrappers for the making of cigarettes, to any person within the State of Minnesota then having a license as herein provided. Provided further, that a license fee due either in January or February, 1936, may be paid prior to April 1, 1936, without a penalty, and provided further, that any penalties heretofore paid, on account of the fee imposed herein, shall be refunded to the parties who made such payment or payments. ('19, c. 348, §4; Mar. 16, 1933, c. 86; Apr. 10, 1933, c. 187; Feb. 27, 1935, c. 25; Jan. 24, 1936, Ex. Sess., c. 86.)

Under Laws 1933, c. 187, one license is sufficient when sale is made in two buildings joined by an archway, one side being operated as a tavern and other as hotel, if both are considered as one business. Op. Atty. Gen., Aug. 25, 1933.

Traders in cigarettes on Indian reservations must have license if they are white men or Indians who have given up their tribal relations, but not if they are tribal Indians. Op. Atty. Gen., Sept. 15, 1933.

Laws 1933, c. 187, amending this section, was not repealed by Laws 1925, c. 25, and such amendment is still in effect. Op. Atty. Gen. (829b), Apr. 8, 1935.

License must be obtained by owner of store where cigarettes are sold by vending machine owned by another company. Op. Atty. Gen. (829c), Mar. 16, 1936.

Calendar month provision does not modify penal provisions of §§3242, 3249, and sale without a license is a misdemeanor. Op. Atty. Gen. (829c-6), Mar. 20, 1937.

Blind person operating a place of refreshment in a court house in connection with a rehabilitation project for blind must obtain a license. Op. Atty. Gen. (290j-1), Jan. 19, 1939.

Commissioner may in his discretion extend time for payment of license without penalty. Op. Atty. Gen. (829d), Feb. 2, 1939.

**3244. Written application to be filed.**

A licensee having several stands for the sale of cigarettes in a building designed for a single purpose and under a single control is not required to obtain more than one license; and in the case of a club the same rule would apply whether sales were made to members of the club or to outsiders. Op. Atty. Gen., Mar. 1, 1930.

**3245. When license is not to be granted.**

Cigarette license should not be granted to an exclusive liquor store. Op. Atty. Gen., Mar. 26, 1934.

**3247. Dairy and food commissioner to enforce provisions of act.**

**Editorial note.**—The function and powers of the commissioner of agriculture and dairy and food conferred by this chapter of the statutes are transferred to the commission of taxation by Act Apr. 22, 1939, c. 431, Art. 6, §5, ante §2362-5.

**3248. Disposition of cigarette license fees.**—The fees collected under the provisions of this act shall be paid into the state treasury by the dairy and food commissioners. The state treasurer shall transmit ninety per cent of such license money annually to the treasurer of the city, village or township from which

the license is issued. The remaining ten per cent shall be credited to the General Revenue fund. ('19, c. 348, §9; Apr. 23, 1929, c. 291, §1.)

Refunds cannot be made to persons who obtained and paid for cigarette licenses and went out of business before the end of the current year for which the license was paid, unless money is appropriated for that purpose. Op. Atty. Gen., Nov. 24, 1931.

A municipality selling cigarettes at amusement centers is not obliged to obtain a license. Op. Atty. Gen., Jan. 29, 1932.

Penalties remain in state treasury and only fee should be distributed to local municipalities. Op. Atty. Gen., Apr. 6, 1932.

Refunds on licenses issued on state fair grounds should be credited to general revenue funds. Op. Atty. Gen. (196h), Nov. 17, 1936.

License cannot be refused municipal liquor store on ground that it is competition with private business and municipality is entitled to 90% refund. Op. Atty. Gen. (829e-4), Dec. 17, 1937.

**3249. Violation a misdemeanor.**

Where one is vending cigarettes by machine without retailer's license, inspector may take entire machine and its contents as evidence, but must return it after trial. Op. Atty. Gen., Apr. 2, 1934.

## CHAPTER 16B

## Athletic Commission

**3251 to 3260 [Repealed.]**

Repealed by Act Jan. 28, 1933, c. 7, §16, post, §3260-16, effective May 1, 1933.

**Annotations under 3252.**

State Athletic Commission could not validly give a bonus to the secretary of the commission as reimbursement for expenses incurred nor "in recognition of the efficiency in which he has handled the affairs of the commission." Op. Atty. Gen., June 2, 1931.

**Annotations under 3253.**

Since the enactment of this act contract for management of prize fighter is not illegal. *Safro v. L.*, 184M336, 238NW641.

**Annotations under 3259.**

The word "year" means the calendar year commencing on the first of January, and not commencing on the first day of June when members of the Athletic Commission are appointed. Op. Atty. Gen., Feb. 8, 1932.

**3260-1. State Athletic Commission created.**—There is hereby created The State Athletic Commission, to consist of five commissioners, citizens of this state, who shall be appointed by the governor and shall hold office for a term of three years, except as hereinafter provided, and until their successors are appointed and qualified. (Act Jan. 28, 1933, c. 7, §1.)

**3260-2. Governor to appoint.**—Within thirty days after the passage of this act the governor shall appoint as members of such commission one commissioner for a term of one year, two commissioners for a term of two years, and two commissioners for a term of three years, such term to commence on the first day of the month following such appointments. Any vacancy in office shall be filled by appointment by the governor for the unexpired portion of the term. No commissioner shall directly or indirectly promote any boxing or sparring exhibition or shall directly or indirectly engage in the managing of any boxer or be interested in any manner in any proceeds from any boxing match. (Act Jan. 28, 1933, c. 7, §2.)

**3260-3. Compensation—expenses.**—The commissioners shall serve without compensation but shall be reimbursed from the fund of the commission for their expenses actually and necessarily incurred in the performance of their duties. (Act Jan. 28, 1933, c. 7, §3.)

**3260-4. Commission to appoint boxing Commissioner and prescribe powers—compensation—assistants.**—The State Athletic Commission shall have power to appoint and at its pleasure remove a boxing commissioner and prescribe his powers and duties. The boxing commissioner shall be the secretary of the State

Athletic Commission but such commissioner shall not be a member of the commission. The salary of such commissioner shall be fixed by the commission at the sum not to exceed Thirty-six Hundred Dollars (\$3,600.00) per annum, in addition to expenses actually and necessarily incurred by such commissioner in the performance of his duties. Subject to the provisions of Laws 1925 Chapter 426 [§§53-1 to 53-52], the commission shall have the power to provide necessary office quarters, equipment, and supplies, and employ such assistants, clerks and other employees as may be necessary, provided that such assistants, clerks and other employees shall be employed and discharged only in accordance with Laws 1919, Chapter 192 as amended [§§4368, 4369]. All salaries and expenses shall be paid out of the funds of the commission as hereinafter provided. (Act Jan. 28, 1933, c. 7, §4.)

Athletic commission has no authority to borrow money. Op. Atty. Gen., Feb. 27, 1934.

Employees of State Athletic Commission are subject to state civil service act. Op. Atty. Gen. (596a), July 18, 1939.

**3260-5. Duties of Commission.**—The State Athletic Commission shall have charge and supervision of all boxing and sparring exhibitions held in the State of Minnesota and shall have power:

(1) To make and publish rules and regulations governing the conduct of boxing and sparring exhibitions and the time and place thereof.

(2) To issue licenses to individuals or organizations desiring to promote or conduct boxing or sparring exhibitions, and to suspend or revoke such licenses at its pleasure; every application for such license shall designate the territory in which the individual or organization intends to operate, and the license granted shall entitle the licensee to conduct such exhibitions in such territory and in no other. Provided that no person licensed to promote or conduct boxing or sparring exhibitions shall directly or indirectly engage in the managing of any boxer.

(3) To collect ten per cent (10%) of the gross receipts from admission to every boxing and sparring exhibition held within the state. All complimentary tickets presented at any entrance gate shall likewise be assessed for the tax herein provided, ten per cent of the value thereof. All moneys so collected shall be paid into the state treasury and are hereby appropriated for the purposes specified in this act. (Act Jan. 28, 1933, c. 7, §5.)