

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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such bond the state auditor shall issue to such applicant for such license a certificate of such filing and approval which shall be by such applicant filed in the office of the commission with its application for such license; and no such license shall be issued until such certificate shall be so filed.

The secretary of the commission shall, before entering upon his duties, furnish a bond in the sum of not less than \$5,000.00, to be approved as to form and sufficiency of the sureties thereof, by the state auditor, conditioned upon the faithful performance of the duties of his office. (Act Jan. 28, 1933, c. 7, §12.)

3260-13. Penalties for non-licensed exhibitions.—Any person or persons who shall send or cause to be sent, published, or otherwise made known any challenge to fight what is commonly known as a prize fight, or shall engage in any public boxing or sparring match, exhibition, or contest, with or without gloves, for any prize, reward or compensation, or at which any admission fee is charged either directly or indirectly, or shall go into training preparatory for such fight, exhibition or contest, or shall act as a trainer, aider, abetter, backer, umpire, second surgeon, assistant or attendant at such fight, exhibition or contest, or in any preparation for the same, and any owner or lessee of any grounds, buildings, or structure of any kind permitting the same to be used for such fight, exhibition, or contest, shall be deemed guilty of a misdemeanor; provided that this section shall not apply to boxing or sparring exhibitions held or to be held under license issued by the state athletic commission and in compliance with the rules and regulations issued by it. (Act Jan. 28, 1933, c. 7, §13.)

Whether church can give boxing exhibition without paying license is dependent upon whether boxers received compensation and whether charge is made to see it. Op. Atty. Gen. (596b-3), June 24, 1936.

3260-14. Commission to make report.—The State Athletic Commission shall biennially make to the legislature a full report of its proceedings ending the first day of the preceding December and may submit with such report such recommendation pertaining to its affairs as it shall deem desirable; if at the time of the making of such biennial report by the commission, the moneys collected by the commission and

placed in the fund for the use of the commission and its expenses, shall exceed the sum of Two Thousand Dollars (\$2,000.00), all moneys in excess thereof shall be paid to the State Board of Control and used in accordance with the provisions of Section 6 of this act. (Act Jan. 28, 1933, c. 7, §14.)

3260-15. Failure to report to commission.—Whenever any individual or organization shall fail to make a report of receipts of any contest at the time prescribed by the State Athletic Commission or to pay the fee herein provided, or whenever such report is unsatisfactory to the state auditor, the state auditor may examine, or cause to be examined, the books and records of such individual or organization, and subpoena and examine under oath officers and other persons as witnesses for the purpose of determining the total amount of the gross receipts for any contest and the amount due pursuant to the provisions of this act, which amount he may, upon and as the result of such examination, fix and determine. In case of default in the payment of any amount so ascertained to be due, together with the expense incurred in making such examination, for a period of twenty days after notice to such delinquent individual or organization of the amount at which the same may be fixed by the state auditor, such delinquent shall, ipso facto, forfeit and shall be thereby disqualified from receiving any new license or any renewal of license; and shall in addition forfeit to the state of Minnesota the sum of Five Hundred Dollars (\$500.00), which may be recovered by the Attorney General in the name of the state of Minnesota in the same manner as other penalties are by law recovered. (Act Jan. 28, 1933, c. 7, §15.)

3260-16. Acts repealed.—Mason's Minnesota Statutes of 1927, Sections 3251 to 3260, inclusive, are hereby repealed. (Act Jan. 28, 1933, c. 7, §16.)

3260-17. Acts repealed.—Mason's Minnesota Statutes of 1927, Section 10286 so far as inconsistent with this Act is hereby repealed. (Act Jan. 28, 1933, c. 7, §17.)

3260-18. Effective May 1, 1933.—This act shall take effect and be in force from and after May 1, 1933. (Act Jan. 28, 1933, c. 7, §18.)

CHAPTER 17

Illegitimate Children—Bastards

3261. Complaint—Where filed—Warrant.

At common law the father was not charged with the support of his illegitimate child, and the bastardy statute charges the father with the support of such child and furnishes the only remedy. 175M547, 221NW911.

Husband and wife are competent to give evidence that the former is not the father of a child of the wife conceived before the dissolution of the marriage by divorce. State v. Soyka, 181M533, 233NW300. See Dun. Dig. 10312.

Bastardy proceeding is civil in character rather than criminal. State v. Hanson, 187M235, 244NW809. See Dun. Dig. 827.

Bastardy proceedings are civil in nature rather than criminal. State v. Thompson, 193M364, 258NW527. See Dun. Dig. 827.

Bastardy proceeding is civil in essence, though presenting a criminal aspect in some of its forms. State v. Oslund, 199M604, 273NW76. See Dun. Dig. 827.

A filiation proceeding is, in substance, a civil action or proceeding governed in the main by rules of practice in civil cases. State v. Rudolph, 203M101, 280NW1. See Dun. Dig. 827.

District court of county where mother placed child to be cared for for a consideration had jurisdiction of proceedings, though mother had residence in another county, and court properly refused to give requested instruction concerning settlement under poor relief statutes. Id. See Dun. Dig. 833a.

Defendant in bastardy is entitled to change of venue, but mother may file complaint in any justice or municipal court in the state, and district court of county to which justice or municipal court binds defendant over

has jurisdiction to determine paternity, unless defendant moves for change of venue before trial. Id. See Dun. Dig. 833a, 10116, 10117, 10118.

An illegitimacy proceeding is civil in nature rather than criminal and state is not liable for costs to a defendant receiving a favorable verdict. Op. Atty. Gen. (199a-1), Oct. 9, 1935.

Extradition may not be secured on a charge of illegitimacy, but may be secured for absconding from the state with intent to evade proceedings to establish paternity. Op. Atty. Gen. (193b-20), Jan. 28, 1939.

Venue of paternity proceedings is set by statute, but act of absconding from state with intent to evade proceedings to establish paternity determines venue for prosecution of felony. Id.

If motion for change of venue is based solely on ground of residence of defendant in another county, and affidavit supporting motion does not negative nonresidence of woman and child in county where action is brought, court should properly deny motion. Op. Atty. Gen. (840c-5), May 8, 1939.

3262. Action, how entered—Proceedings.

A bastardy proceeding is a civil proceeding, not a criminal action, and defendant may be called by prosecution for cross-examination. State v. Jeffrey, 188M476, 247NW692. See Dun. Dig. 827(76).

3265. Trial—Exclusion of public, etc.

State v. Strong, 192M420, 256NW900; note under §3268. Verdict in bastardy case held not sustained by evidence. 173M294, 217NW118.

Evidence held sufficient to sustain a conviction. 173M 627, 218NW110.

Where defendant was adjudged father of illegitimate child and was directed to pay certain sums for its support to a child welfare board which agreed to pay such sums to the plaintiff for boarding and caring for the child, plaintiff could sue the welfare board for sums received by it. *Saivas v. R.*, 175M484, 221NW719.

Exclusion of evidence of intercourse with third person at indefinite prior time, held proper, and evidence of promise to marry during period of illicit relation was admissible. 179M80, 228NW335.

Evidence held to support conviction. 179M436, 229NW 564.

Defendant in filiation proceeding held not entitled to dismissal for lack of speedy trial because of his own conduct contributing to delay. *State v. Hanson*, 187M 235, 244NW809. See Dun. Dig. 842, 2469.

Mother of illegitimate is not entitled to recover from adjudged father money expended by her in care and support of child, father having been ordered by district court to make periodical payments to a county welfare board. *Lawson v. M.*, 189M93, 248NW658.

Evidence in bastardy proceeding held to sustain verdict that defendant was father of child. *State v. Rasmussen*, 193M374, 258NW503. See Dun. Dig. 840.

Delay in telling of pregnancy and who is father of child is only a fact to be considered by jury in judging the truth of the charge. *State v. Thompson*, 193M364, 258NW527. See Dun. Dig. 840.

In a bastardy case state need not prove its case beyond a reasonable doubt, but only by a fair preponderance of evidence. *Id.* See Dun. Dig. 837.

In bastardy proceeding, evidence held to sustain jury's finding of defendant's guilt. *Id.* See Dun. Dig. 840.

Credibility of witnesses in bastardy case is for jury. *State v. Thorson*, 193M382, 258NW575. See Dun. Dig. 840.

Weight to be given testimony of witnesses in bastardy proceeding is for jury. *Id.*

Although a bastardy proceeding has some of the features of a criminal trial, it is substantially a civil action, and, after a verdict of not guilty, court may grant a new trial. *State v. Reigel*, 194M308, 260NW293. See Dun. Dig. 827, 2425.

A defendant in a bastardy proceeding is entitled to prove good character as to chastity and morality. *State v. Oslund*, 199M604, 273NW76. See Dun. Dig. 839.

Evidence held to sustain a verdict against defendant. *Id.* See Dun. Dig. 840.

Where there is conflicting evidence upon issue of paternity, question is for jury. *State v. Hanke*, 202M47, 277NW364. See Dun. Dig. 840.

Number of witnesses does not establish weight of evidence and a verdict may be based upon testimony of a single witness. *Id.*

Conviction in bastardy supported by adequate and ample evidence will not be disturbed. *State v. Bergeson*, 203M88, 279NW837. See Dun. Dig. 388, 852.

A judgment obtained in a competent court of this state for payments due under a judgment entered by a competent court of a sister state under the illegitimacy statutes of the latter may be enforced, when so ordered by our court, by the same means as if the judgment had been originally obtained in this state and under our laws. *Ladd v. M.*, 285NW281. See Dun. Dig. 850.

Guardian of illegitimate child may claim payments after death of father but only those that had matured at time of death. *Op. Atty. Gen.*, AUG. 21, 1933.

County attorney cannot charge for his services in suing on bonds in bastardy proceedings. *Op. Atty. Gen.* (121b-11), May 31, 1935.

County is responsible for lying in expenses and doctor bills of mother of illegitimate child. *Op. Atty. Gen.* (339d-3), July 6, 1936.

3266. Father to pay all expenses.

Lawson v. M., 189M93, 248NW658; note under §3265. Paternity proceedings should be instituted regardless of property settlement between mother and father of illegitimate. *Op. Atty. Gen.* (121b-11), Sept. 3, 1935.

3267. Application for discharge from imprisonment.

State v. Strong, 192M420, 256NW900; note under §3268.

3268. Hearing—Judgment.

Conviction of bastardy, held free from error. 181M 374, 232NW624. See Dun. Dig. 827.

Father of a bastard cannot be punished for contempt in not obeying an order to pay money which it is not in his power to obey. *State v. Strong*, 192M420, 256NW900. See Dun. Dig. 850, 1703.

Finding of paternity held sustained by evidence. *State v. Van Guilder*, 199M214, 271NW473. See Dun. Dig. 890.

3269. Who may make complaint.

Defendant in bastardy is entitled to change of venue, but mother may file complaint in any justice or municipal court in the state, and district court of county to which justice or municipal court binds defendant over has jurisdiction to determine paternity, unless defendant moves for change of venue before trial. *State v. Rudolph*, 203M 101, 280NW1. See Dun. Dig. 833a, 10116, 10117, 10118.

3270. Procedure—Warrant.

Indication by court that instructions given were requested by one of the parties, held error. 181M374, 232 NW624. See Dun. Dig. 9776(13).

3272.

3219 [1913 Stats.] is the same as 3266 [1927 Stats.]. *Lawson v. M.*, 248NW658; note under §3265.

A judgment of a sister state entered in pursuance of its illegitimacy statutes and intended for the support of the mother and child will be enforced by the courts of this state. *Ladd v. M.*, 285NW281. See Dun. Dig. 5207.

(a). State board of control or guardian may make settlement.

Paternity proceedings should be instituted regardless of property settlement between mother and father of illegitimate. *Op. Atty. Gen.* (121b-11), Sept. 3, 1935.

(c). Records private.

Confidential information given to child welfare board should be classed as privileged and its disclosure would be contrary to public interest. *Op. Atty. Gen.*, Dec. 29, 1933.

Justice of peace records are open to inspection of public except illegitimacy proceedings. *Op. Atty. Gen.* (851), July 1, 1935.

CHAPTER 18

Public Examiner

3274. Department established—Powers and duties.

Editorial note.—The powers and duties conferred by §§3274 to 3284, 3286, and 3286-1 to 3286-7, are transferred to the newly created office and department of public examiner. Section 3285 is the only section expressly repealed. See §53-1a, ante, and §§3286-8 to 3286-16, post. The old and the new provisions must be construed together.

Comptroller has no authority to comply with request to make audit of tally sheets of election. *Op. Atty. Gen.*, May 19, 1932.

Counties, cities, villages, towns, or school districts, except municipalities expressly or impliedly authorized by their charters, may not validly incur expense for examination of accounts and affairs by anyone other than the state comptroller. *Op. Atty. Gen.*, Mar. 31, 1933.

3275. Public examiner to be appointed by governor—Bond.

See note under §3274.

Since the office of public examiner was abolished by §53-44, no part of §3275 is longer in effect, and amount of bond of comptroller is to be fixed by commission of administration and finance pursuant to §53-46. *Op. Atty. Gen.* (980a-8), May 6, 1937.

3276. Duties—State offices, institutions, properties, etc.

See note under §3274.

3277. Reports of examinations—Violations of law.

See note under §3274. Petition for audit of affairs of city is not part of audit made by state examiner, and is not public record as defined in this section, but public examiner is not prohibited from divulging matter contained in such petition. *Op. Atty. Gen.*, May 28, 1932.

3278. Fees for examination of counties.—All the powers and duties conferred and imposed upon the public examiner in the foregoing sections shall be exercised and performed by him in respect to the offices, institutions, public property and improvements of the several counties of the state of Minnesota. At least once in each year, the public examiner shall visit, without previous notice, each of such counties and make a thorough examination of all accounts and records relating to the receipt and disbursement of the public funds and the custody of the public funds and other property. He shall prescribe and install systems of accounts and financial reports, that