

1938 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 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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CHAPTER 24

Soldiers' Home, Relief, Etc.

4344. Soldiers' Home—who may be admitted.—The Minnesota Soldiers' Home shall be maintained at Minneapolis, under the management of seven Trustees, one of whom shall be a woman, to be known as the "Soldiers' Home Board," as a home for honorably discharged soldiers, sailors and marines of the United States who served in the Mexican War, the War of the Rebellion, the Spanish-American War, or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal Service in 1916, and served on the Mexican border, or the war of 1917 and 1918 commonly called the "World War," and for persons who actually served in any campaign against the Indians in this state in the year 1862, whether as soldiers of the United States or not. But no person shall be admitted to the Home who has not been a resident of the state for three years next preceding the date of his application, unless he served in a Minnesota regiment, or was credited to the state, or served in the Indian Campaign as aforesaid. Nor shall any person be admitted unless he is without adequate means of support, and is unable, by reason of wounds, disease, old age or infirmity to properly maintain himself. (R. L. '05, §1835; G. S. '13, §3953; Apr. 16, 1931, c. 176.)

4345. Persons who may be admitted to the soldiers' home.—The object of the soldiers' home shall be to provide a home for all honorably discharged ex-soldiers, sailors and marines who served in the army or navy of the United States during the War of the Rebellion, or the Mexican War, or in the war begun in the year 1898 between the Kingdom of Spain and the United States or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal service in 1916 and served on the Mexican Border, or the war of 1917 and 1918 commonly called "The World War", who now are or may hereafter become citizens of the State of Minnesota. All persons who are otherwise entitled under the provisions unable to earn their living, who, by reason of wounds, disease, or old age or infirmities are unable to earn their living, and who have no adequate means of support. No applicant shall be admitted to the soldiers' home who has not been a resident of the State of Minnesota for three years next preceding the time of having his application, unless he served in a Minnesota regiment or was accredited to the State of Minnesota. All persons who are otherwise entitled under the provisions of this section to admission to said soldiers' home who actually served in any campaign against the Indians within the United States shall be entitled to admission to such soldiers' home, notwithstanding such person was not regularly enlisted, mustered into or discharged from the military service of the United States.

The board of trustees are hereby authorized to admit wives with their husbands, and the widows or mothers to those who are, or if living, would be, eligible to admission under this act, but no wife or widow of a soldier of the war of the Rebellion, or of a soldier who actually served in any campaign against the Indians within the United States shall be admitted unless she shall have been married to her soldier husband prior to the year 1905 and no wife or widow of an honorably discharged ex-soldier, sailor or marine, who served in the army or navy of the United States in the war begun in the year 1898 between

the Kingdom of Spain and the United States or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal service in 1916 and served on the Mexican Border, shall be admitted unless she shall have been married to her soldier husband prior to the year September 1, 1922 and then only in the event that by reason of physical disabilities, infirmities or old age she is unable to support herself and has no other adequate means of support; and no wife, widow or mother shall be admitted unless she shall have been a resident of the State of Minnesota no less than five (5) years next preceding the date of her application, and no wife, widow or mother shall be admitted unless she shall have attained the age of fifty-five (55) years at the time of making such application, provided however that a widow eligible to admission, except that her soldier husband did not serve in a Minnesota regiment or was not a resident of Minnesota at time of his death, may be admitted, who has resided in this state not less than fifteen years next preceding the date of her application for admission.

Provided, however, that in case such widow had been married to her soldier husband who was a veteran of the Civil War, since prior to January 1, 1870 and had lived with her husband until his death in 1919, and such widow is now past eighty years of age and has been a bona fide resident of the State of Minnesota for more than six years last past and is otherwise eligible to admission, is hereby declared to be eligible to admittance to the soldiers' home of the State of Minnesota.

Provided further that in case such wife, widow or mother who had previously been a resident of Minnesota for not less than ten years, and who has lost her residence in this state by removal therefrom for the benefit of her health or the health of her husband or son and who has returned to this state for the purpose of making it her home, may be admitted to said soldiers' home after having been a resident of this state not less than one year next preceding the date of her application, provided such applicant is otherwise eligible to admission under the provisions of this section, and provided further, that all soldiers of the Minnesota National Guard and who heretofore have lost or hereafter may lose an arm or leg or his sight or may become permanently disabled from any cause while in the line and discharge of duty and are not able to support themselves, may be admitted to the home under such rules and regulations as the board of trustees may adopt, and any soldier of the Minnesota National Guard suffering from illness or injury sustained from any cause in the line and discharge of military duty shall be admitted to the soldiers' home hospital for medical treatment and hospital service until recovery from such illness or injury under such rules and regulations as the board of trustees may adopt. ('87, c. 148, §3; '99, c. 166, §1; '05, c. 222, §1; G. S. '13, §3954; '15, c. 259, §1; '17, c. 205, §1; '19, c. 79, §1; '25, c. 163, §1; Apr. 24, 1929, c. 333; Apr. 25, 1931, c. 349; Mar. 9, 1933, c. 66, §1.)

Sec. 2 of Act Mar. 9, 1933, cited, provides that the act shall take effect from its passage.

One reporting for military service under draft and discharged on account of physical disability is not eligible to admission to Minnesota Soldier's Home. Op. Atty. Gen., May 17, 1932.

Common-law wife of soldier may be admitted as widow. Op. Atty. Gen. (300f), Jan. 29, 1935.

4350. Officers of Soldiers' Home—Secretary, etc.

Board of Minnesota Soldiers' Home may require inmates to suffer physical examination and to desist from driving automobiles if physically or mentally incapable. Op. Atty. Gen., Dec. 5, 1931.

Profits made from canteen operated at soldiers' home do not belong to the state and may be extended by board of trustees with consent of members to provide recreation facilities. Op. Atty. Gen. (394k), June 4, 1937.

4351. Meetings—executive committee.

Executive committee may exercise only such powers of the board as the by-laws permit. Op. Atty. Gen. (394d), June 7, 1935.

4365. Soldiers' Home relief extended.—In addition to the persons to whom the Soldiers' Home Board is now authorized to extend relief outside the Minnesota Soldiers' Home from the soldiers' relief fund, the board is hereby authorized to extend relief, outside the home, to the widow, deserted wife or any minor child under fourteen years of age of any honorably discharged ex-soldier, ex-sailor, or ex-marine who served in the army or navy of the United States during the War of the Rebellion, War with Spain, Philippine Insurrection, China Relief Expedition, or World War, provided any such widow or deserted wife is more than fifty-five (55) years of age and shall have married her soldier husband prior to the year 1903; provided, further, that no such relief shall be granted under the provisions of this act to any person unless he or she shall have been a resident of the state of Minnesota for at least five (5) years next preceding his or her application for such relief. The granting of such relief and the extent and character thereof shall in all cases be in the discretion of the board and subject to such terms as it may prescribe. (G. S. '13, § 3973; '13, c. 186, § 1; '27, c. 285; Mar. 22, 1929, c. 79.)

4366. Personalty of inmates—Will.

Where sole and residuary legatee predeceased inmate of Minnesota Soldiers' Home, lapsed legacy should be disposed of in accordance with this section and go to the state of Minnesota. Op. Atty. Gen. (394e), Jan. 24, 1935.

MISCELLANEOUS PROVISIONS

4367. Exemption from license fee—Veterans, etc.—regulations.—No license fee or other charge provided by any law of the State of Minnesota shall be required of any honorably discharged soldier, sailor or marine who served the United States in the Civil War, in the Spanish-American War, in the Philippine Rebellion or in the Boxer uprising, or in the recent war against the German Empire and its allies, for the privilege of hawking or peddling goods and merchandise, not prohibited by law or ordinance, in the county where he has established a bona fide residence, solely upon his own account, providing that nothing herein contained shall prevent any city, village, borough or other municipality from levying and collecting such license fees for hawking or peddling within its corporate limits. Upon application therefor, accompanied by proof of such discharge to any clerk or other officer authorized to issue such license, the same shall forthwith be granted. Every such clerk or other officer issuing such license shall ascertain that the applicant is entitled thereto; and any such clerk or other officer issuing a license to any person who is not entitled to receive one under the provisions of this act shall be guilty of a misdemeanor. Every violation hereof shall be deemed a misdemeanor, the minimum punishment whereof shall be a fine of ten dollars. (R. L. '05, § 1849; '07, c. 393, § 1; G. S. '13, § 3975; '17, c. 230, § 1; '19, c. 415; '21, c. 434, § 1; '25, c. 236; Apr. 24, 1935, c. 281.)

This section does not exempt veterans from payment of fees for licenses for hotels, restaurants, lodging houses, boarding houses or places of refreshment. Op. Atty. Gen., May 25, 1932.

Service with militia in federal service on Mexican border in 1916-1917 did not entitle one to exemption. Op. Atty. Gen., Feb. 23, 1933.

Veterans are not required to pay license fee imposed under state law and only under state law for privilege of hawking or peddling goods not prohibited by law or ordinance outside corporate limits of municipalities and solely upon their own account, but a veteran may be re-

quired to pay to take out license inside a municipality. Op. Atty. Gen., June 5, 1933.

Discharged soldier is not entitled to wholesale produce dealer's license without payment of license fee. Op. Atty. Gen. (832i), Nov. 13, 1934.

4368. Preference to war veterans in public appointments.—That in every public department and upon all public works in the state of Minnesota and the counties, cities and towns thereof honorably discharged soldiers, sailors and marines from the army, navy or marine corps of the United States in the Civil War, Spanish-American War, Philippine Insurrection, China Relief Expedition, or World War wherein the United States of America and the allied nations of England, France, etc., were engaged in war against the Imperial German Government and its allies, who are citizens and have been residents of the state of Minnesota five years immediately preceding their application, or enlisted from the State of Minnesota, shall be entitled to preference in appointments, employment and promotion over other applicants therefor, and the persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of his age or by reason of any physical disability, provided such age and disability does not render him incompetent to perform properly the duties of the position applied for and when such soldier, sailor or marine shall apply for appointment or employment under this act, the officer, board or person whose duty it is, or may be, to appoint or employ such person to fill such position or place, shall before appointing or employing anyone to fill such position or place, make an investigation as to the qualifications of said soldier, sailor or marine for such place or position, and if he is a man of good moral character, and can perform the duties of said position applied for by him, as hereinbefore provided, said officer, board or person shall appoint said soldier, sailor or marine to such position or place of employment.

A refusal to allow the preference provided for in this and the next succeeding section to any such honorably discharged soldier, sailor, or marine, or a reduction of his compensation intended to bring about his resignation or discharge, shall entitle such honorably discharged soldier, sailor or marine to a right of action therefor in any court of competent jurisdiction for damages, and also for a remedy for mandamus for righting the wrong. ('07, c. 263, § 1; C. L. '13, § 3976; '17, c. 499, § 1; '19, c. 14; '19, c. 192, § 1; '37, c. 121; June 24, 1937, Sp. Ses., c. 6, § 1.)

Sec. 2 of Act Mar. 31, 1937, c. 121, provides that the act shall take effect from its passage. Sec. 3 of such act provides: "The amendatory matter constituting this Act shall be considered severable from the original act amended and if found to be invalid shall not render section 4368 invalid."

Where civil service rules required appointment to be made from three highest on eligible list, one within preference act, but not one of the three, was not entitled to appointment. 171M164, 213NW738.

This act does not prescribe or require formal notice to employer of status of employe. 173M485, 217NW681.

The word "towns" includes villages. 173M485, 217NW 681

It is only when there is a failure on the part of the council to act or a manifest by arbitrary action on its part that a court may interfere. 178M277, 226NW841.

Does not apply to school districts. Holmquist v. I., 180 M550, 231NW406(1).

The appointment of an assistant public examiner is at the pleasure of the comptroller, and an honorably discharged soldier was not entitled to a preference. State v. Rines, 185M49, 239NW670. See Dun. Dig. 7986.

Laws 1929, c. 57 (sections 1933-23 to 1933-41), is complete of itself and controlling, and the provision of this section that age shall not prevent a preference if the applicant is qualified is not effective. State v. MacDonald, 185M194, 240NW361. See Dun. Dig. 6560, 6600, 7986.

A county highway engineer under § 2569 is not within the operation of §§ 4368, 4369, known as the Soldiers' Preference Employment Act. State v. Walleen, 185M329, 241NW318. See Dun. Dig. 7986(9).

The purpose of Laws 1931, c. 347, was to make operative §§ 4368, 4369, and it operated as an amendment to Laws 1929, c. 57. State v. McDonald, 188M157, 246NW900.

Findings that city council, for political or personal reasons, appointed another person to same position and

employment that plaintiff had theretofore held, held sustained by evidence. *State v. City of Eveleth*, 189M 229, 249NW184.

Court was justified in holding that position of deputy city clerk held by plaintiff prior to Jan. 5, 1932, was not one of a "strictly confidential relation to the appointing officer." *Id.*

Rejection by a city council of application of one claiming under soldier's preference law on adequate evidence having been found not arbitrary, will not be disturbed on appeal. *State v. Barker*, 190M370, 251NW673. See *Dun. Dig.* 6560.

Finding of a jury that a village council arbitrarily rejected a veteran's application for employment held not justified by evidence. *State v. Village of Bovey*, 191M 401, 254NW456. See *Dun. Dig.* 7986.

Soldiers' preference acts are not controlling in respect of appointment to position of inheritance tax examiner by attorney general. *State v. Peterson*, 194M60, 259NW 696. See *Dun. Dig.* 7986.

Position of municipal court officer is subject to soldiers' and sailors' preference law. *State v. City of Eveleth*, 194M44, 260NW223. See *Dun. Dig.* 7986.

Act does not give a service man right to remain in employment as against another competent employee, in same grade of service, who is senior to service man, where for lack of funds employment of one of them must be and is terminated. *State v. City of Duluth*, 195 M563, 262NW681. See *Dun. Dig.* 6560.

Soldiers' Preference Act is not applicable to school districts. *Op. Atty. Gen.*, May 21, 1929.

The Soldiers' Preference Act did not apply to school districts, and the situation was not changed by Laws 1931, c. 347. *Op. Atty. Gen.*, May 4, 1931.

The Soldiers' Preference Act was not applicable to school districts and was not enlarged as to its application by the 1931 Act. *Op. Atty. Gen.*, May 20, 1931.

Laws 1931, c. 347, makes no change in the rule laid down in *State v. Scott*, 163Minn190, 171Minn208, and does not affect the seniority right of members of a fire department coming under Laws 1929, c. 57. *Op. Atty. Gen.*, Sept. 29, 1931.

Veterans preference law is applicable to any regularly enlisted or commissioned member of the army nurse corps during the late World War. *Op. Atty. Gen.*, Jan. 21, 1932.

Veteran is entitled to preference to a city position only when he appears as one of the eligibles. *Op. Atty. Gen.*, Aug. 26, 1932.

An honorable discharge from the national guard does not give preference as honorably discharged soldier from army of United States. *Op. Atty. Gen.*, Feb. 1, 1933.

Clerk of municipal court does not come within provisions of Soldiers' Preference Law. *Op. Atty. Gen.*, Mar. 13, 1933.

Soldiers' Preference Law applies to the office of village marshal. *Op. Atty. Gen.*, Apr. 5, 1933.

Act does not prohibit a town board from abolishing a position held by an honorably discharged soldier. *Op. Atty. Gen.*, May 4, 1933.

Preference act does not apply to appointment as temporary road overseer. *Op. Atty. Gen.*, May 4, 1933.

Soldiers' Preference Act applies only to those world war veterans who served between Apr. 6, 1917, and Nov. 11, 1918. *Op. Atty. Gen.*, Aug. 3, 1933.

Township road overseer comes within statute. *Op. Atty. Gen.*, Sept. 25, 1933.

Non-soldier appointee may not be removed to make place for temporary soldier employee. *Op. Atty. Gen.*, Dec. 9, 1933.

Village "pumpman" within Soldiers' Preference Act. *Op. Atty. Gen.*, Mar. 16, 1934.

Act is not applicable to school districts. *Op. Atty. Gen.* (85f), June 9, 1934.

Facts of former judgment determining incompetency govern only as to conditions existing at that time, and if, in opinion of appointing power, and with lapse of time, former objections may have been removed, then a present and another investigation should be made. *Op. Atty. Gen.* (85d), Jan. 8, 1935.

If appointing body knows that applicant for employment is a veteran, it is immaterial that applicant does not mention that he is a soldier and is claiming appointment under preference law. *Id.*

This act applies to employees of bureau of criminal apprehension. *Op. Atty. Gen.* (618a-2), July 27, 1935.

Soldiers' preference is not waived by indefinite leave of absence. *Op. Atty. Gen.* (85e), Sept. 26, 1935.

4369. Removal forbidden; right of mandamus; certiorari; burden of proof.—Any person whose rights may be in any way prejudiced contrary to any of the provisions of this section, shall be entitled to a writ of mandamus to remedy the wrong. No person holding a position by appointment or employment in the state of Minnesota or in the several counties, cities or towns thereof, who is an honorably discharged soldier, sailor or marine, having served as such in the army and navy of the United States in the late Civil and Spanish and Philippine Insurrection wars and the China relief expedition, and the late World War

wherein the United States of America and the allied nations of England, France, etc., were engaged in war against the Imperial German Government and its allies, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employe or appointee to review by writ or certiorari. The burden of proving incompetency or misconduct shall rest upon the party alleging the same. Nothing in this act shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer. ('07, c. 263, §2; C. L. '13, §3977; '17, c. 499, §1; '19, c. 14; '19, c. 192, §2; '37, c. 121; June 24, 1937, Sp. Ses. c. 6, §2.)

171M164, 213NW738; note under §4368.
State v. Rines, 185M49, 239NW670; note under §4368.
State v. Walleen, 185M329, 241NW318; note under §4368.
State v. City of Eveleth, 194M44, 260NW223; note under §4368.

Op. Atty. Gen., Feb. 1, 1933; note under §4368.

Op. Atty. Gen., Mar. 13, 1933; note under §4368.

Op. Atty. Gen., Apr. 5, 1933; note under §4368.

Employment of village fireman held not for a fixed term and he was protected by this act. 173M485, 217NW 681.

The position of Superintendent of Waterworks in the City of Eveleth is within this act, such officer not being the head of a department. 179M99, 228NW447.

This act is constitutional. *Moses v. O.*, 192M173, 255 NW617.

Section does not apply to position of assistant chief of fire department of city of Duluth. *State v. Fisher*, 194M75, 259NW694. See *Dun. Dig.* 7986.

Does not apply where office itself is terminated or suspended and its occupant let out for that reason alone rather than for incompetence or misconduct. *State v. City of Duluth*, 195M563, 262NW681. See *Dun. Dig.* 6564.

Mandamus will not lie to compel re-employment of a veteran who was temporarily suspended "on account of necessity of curtailment of expenditures," the position remaining unfilled and vacant. *State v. City of Duluth*, 195M563, 263NW912. See *Dun. Dig.* 6560, 7986.

Civil service rules attempting to make rule of relative efficiency a test is without effect to extent that it runs counter to this law. *Id.*

On review of judgment of district court affirming county board, finding discharged veteran incompetent, supreme court is limited to a determination of whether there is evidence reasonably sufficient to sustain finding, and it does not weigh evidence or pass upon credibility of witnesses. *State v. Eklund*, 196M216, 264NW682. See *Dun. Dig.* 6560, 7986.

Where evidence was heard by county board on two hearings, it was not error for board to consider evidence received on both hearings in arriving at its findings. *Id.*

Evidence held sufficient to sustain findings that plaintiff was not qualified by ability, judgment, or experience to properly fill position of road patrol foreman in road maintenance department of St. Louis County. *Id.*

Where city police civil service commission classified all police employees of city, and classification made is alleged to be erroneous, and in violation of soldiers' preference act, proper remedy is certiorari to review the classification made and not mandamus to compel a re-classification. *State v. Ernest*, 197M599, 268NW208. See *Dun. Dig.* 6560.

Discharged soldier employed as road overseer by town board at first meeting in April, 1932, may not be discharged when new board meets in April, 1933, without giving veteran a hearing. *Op. Atty. Gen.*, Mar. 21, 1933.

Town board may not remove veteran, holding position of road overseer, and replace him with another veteran without a hearing. *Op. Atty. Gen.*, Mar. 21, 1933.

Statute is applicable to chief of police of Nashwauk. *Op. Atty. Gen.*, Aug. 3, 1933.

Deputy clerk of district court is not entitled to soldiers' preference. *Op. Atty. Gen.*, Jan. 15, 1934.

On incorporation of city of fourth class with home rule charter right of those holding position under soldier's preference law in village to retain their positions depends upon whether departments in which they are employed are continued or discontinued under the new government. *Op. Atty. Gen.* (484a-2), Nov. 7, 1934.

Whether secretary of Itasca County Poor and Hospital Commission who is an ex-service man may be removed "except for incompetency and misconduct" shown after a hearing on stated charges depends upon details of work performed by him, and he cannot be removed without a hearing unless it can be said that he is a private secretary or deputy of the board, or unless he occupies a strictly confidential relation to such board. *Op. Atty. Gen.* (85e), Feb. 26, 1935.

Veteran may not be discharged without cause for purpose of retirement under state retirement fund act. *Op. Atty. Gen.* (85e), June 27, 1935.

Soldiers' preference is not waived by indefinite leave of absence. *Op. Atty. Gen.* (85e), Sept. 26, 1935.

It is not necessary to have new man appear to go to work in order to file charges and to have a hearing. Op. Atty. Gen. (85e), Jan. 31, 1936.

4369-1. Veterans preference act.—The provisions of Mason's Minnesota Statutes of 1927, sections 4368 and 4369, known as the Veterans' Preference Law, and acts amendatory thereof, shall apply to and govern the appointment, employment, promotion, and removal of all employees of the state and of all other governmental agencies within the state enumerated in said sections and amendatory acts, notwithstanding any provision to the contrary in any other existing law or in any city charter relating thereto. (Act Apr. 25, 1931, c. 347, §1.)

Act is not retroactive and does not aid honorably discharged soldier who was refused employment prior to its enactment. State v. Rines, 185M49, 239NW670. See Dun. Dig. 7986.

This act is not retroactive and does not affect a case where the facts arose prior to its enactment. State v. MacDonald, 185M194, 240NW361. See Dun. Dig. 6560, 6600, 7986.

This act is constitutional. State v. McDonald, 188M 157, 246NW900. See Dun. Dig. 6560.

The purpose of Laws 1931, c. 347, was to make operative §§4368, 4369, and it operated as an amendment to Laws 1929, c. 57. Id.

Veteran taking examination under Laws 1929, c. 57 (Mason's 1931 Supp., §1933-23 et seq.), was entitled to preference under this act, which took effect prior to determination of result of examination. Id. See Dun. Dig. 7986.

Soldiers' preference acts are not controlling in respect of appointment to position of inheritance tax examiner by attorney general. State v. Peterson, 194M60, 259NW 696. See Dun. Dig. 7986.

This act was intended to apply to state departments only. Op. Atty. Gen., Mar. 13, 1933.

Clerk of municipal court does not come within provisions of Soldiers' Preference Law. Op. Atty. Gen., Mar. 13, 1933.

4369-2. Applications of act.—No provision of any subsequent act relating to any such appointment, employment, promotion, or removal shall be construed as inconsistent herewith or with any provision of said Mason's Minnesota Statutes of 1927, sections 4368 and 4369, or any act amendatory thereof, unless and except only so far as expressly provided in such subsequent act that the provisions of said sections or amendatory acts shall not be applicable or shall be superseded, modified, amended, or repealed. Every city charter provision hereafter adopted which is inconsistent herewith or with any provision of said sections or of any act amendatory thereof shall be void to the extent of such inconsistency. (Act Apr. 25, 1931, c. 347, §2.)

4369-3. Laws amended.—All acts, parts of acts, and city charter provisions inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act. (Act Apr. 25, 1931, c. 347, §3.)

4370. Burial of soldiers.—The adjutant general shall cause to be decently buried, within or without the state, at a cost to the state of not more than one hundred dollars, the body of any soldier, sailor, marine or nurse who served the United States as such in the Civil or Spanish American War, the Philippine Insurrection, Boxer Rebellion, Mexican Border Campaign or the recent war with the German Empire and its Allies, and of any person not a soldier who actually served in this state, or is a resident thereof, in the Indian war of 1862, and who dies within the state or is brought thereto for interment, and has not left sufficient means to defray the expenses of suitable burial. Such interment shall not be made in any place used exclusively for the burial of the pauper dead, and the relatives or comrades of the deceased, if they so desire, shall be permitted to conduct the burial service. The adjutant general shall furnish at a cost or not to exceed seven dollars a United States flag for each such veteran. All funds appropriated for the purposes of this act shall be disbursed by the adjutant general in the same manner which other funds of the department are disbursed. The adjutant general shall promulgate such regulations as are

necessary to carry out the provisions of this act. (R. L. '05, §1850; '07, c. 129; G. S. '13, §3978; '19, Ex. Ses., c. 37, §1; Apr. 25, 1931, c. 363, §1.)

County board discharges responsibility of making funeral arrangements, but may approve arrangements made for the funeral where first presented to it after the funeral. Op. Atty. Gen., Sept. 6, 1930.

Expenditure for funeral is authorized where deceased leaves no property, even though there may be relatives with sufficient means to pay the funeral expenses. Op. Atty. Gen., Sept. 6, 1930.

Expenses of administration and other allowances under the laws are to be paid before estate may be said to have sufficient funds for a funeral. Op. Atty. Gen., Sept. 6, 1930.

Adjutant general could not pay burial allowance for veteran who was entitled to federal aid but did not apply therefor, in view of Laws 1931, c. 395, §5. Op. Atty. Gen., Jan. 14, 1932.

4371. Headstones.—The adjutant general shall cause to be placed a headstone at the grave of every such person, bearing his name, and if ascertainable, the date of his birth and death, and the designation of the organization to which he belonged or in which he served. The cost of such headstone shall not exceed fifteen dollars, finished and in place. It shall not be furnished by the state until the adjutant general shall have applied unsuccessfully to the federal government therefor. When the federal government furnishes such stone, without a base, the adjutant general, at a cost to the state of not more than seven dollars and fifty cents, shall cause the same to be properly placed. When such headstone heretofore has been furnished and erected other than by the state or the federal government and does not bear the designation of the organization to which such person belonged or in which he served, upon written request of the next of kin of such person or of the state commander of the Grand Army of the Republic, the board, at a cost to the state of not more than seven dollars and fifty cents, shall cause to be graven thereon the designation of the organization to which such person belonged or in which he served. (R. L. '05, §1851; G. S. '13, §3979; '25, c. 418; Apr. 25, 1931, c. 363, §2.)

State is warranted in making an allowance of \$15 for purchase of headstone which cannot be secured for \$15. Op. Atty. Gen. (2b), Oct. 25, 1935.

4372. Expense.—The expense of such interments, of headstones not furnished by the federal government, and of base stones shall be borne by the state. The person in charge of the interment shall report all expenditures, with vouchers approved by the adjutant general, and the state auditor shall issue his warrant for the amount. The sum of twenty-five hundred dollars is hereby appropriated annually for the defraying of such expenses. (R. L. '05, §1852; G. S. '13, §3980; Apr. 25, 1931, c. 363, §3.)

4373. May provide markers.—That the adjutant general shall upon the petition of any five reputable freeholders of any township or municipality, or of any patriotic or ex-service men's organization procure for and furnish to said petitioners some suitable and appropriate metal socket for the grave of each and every soldier, sailor, marine or nurse who served with honor in the forces of the United States and who is buried within the limits of the state, to be placed on the grave of such soldier, sailor, marine or nurse for the purpose of permanently marking and designating said grave for memorial purposes. ('09, c. 299, §1; G. S. '13, §3981; Apr. 25, 1931, c. 363, §4.)

Laws 1931, c. 363, §4, purports in its body to amend this section, but the section is not included in the title.

4374. Petitions to state names.—That in all petitions to the adjutant general the petitioners shall state in said petition the names of soldiers buried and number of such graves in their said township or municipality at the time of petitioning. ('09, c. 299, §2; G. S. '13, §3982; Apr. 25, 1931, c. 363, §5.)

4384-2. State to provide office building for veteran organization.—The governor of this State shall set

apart a suitably furnished room in the State Capitol Building, or other state office building, for the use of each of the following Veteran organizations: the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars of the United States, and the Disabled American Veterans of the World War, incorporated, or when incorporated, under the laws of the State of Minnesota. Such room shall be under the charge of the Minnesota State Commander of the Department of Minnesota of the Veteran organization assigned thereto, and such person as he may in writing designate, and shall be used for the purpose of keeping therein, records, archives, trophies, supplies and other Veteran property of said organization and as its general headquarters office for the Department of Minnesota. (Act Apr. 27, 1929, c. 434.)

4385. Preservation of flags.—The flags and colors carried by Minnesota troops in the Civil War, Spanish American War, Mexican Border Campaign and World War shall be preserved in the capitol, under the especial care of the adjutant general. They shall be suitably encased and marked, and, so far as the adjutant general may deem it consistent with their safety, shall at all times be publicly displayed. (R. L. '05, §1856; G. S. '13, §3993; Apr. 25, 1931, c. 363, §6.)

4394. Membership of Board of Governors of recreation and recuperation camps.—There is hereby established a Board of Governors who shall have and exercise supervision, care, control, and management of such recreation and recuperation camp, which board shall consist of ten members who shall be selected and appointed as follows: Two members thereof shall be selected and appointed by the State Department of the American Legion, two members thereof shall be selected and appointed by the State department of the Veterans of Foreign Wars of the United States, two members thereof shall be selected and appointed by the state department of the United Spanish War Veterans, two members thereof shall be selected and appointed by the state department of the Disabled American Veterans of the World War, one member thereof shall be selected and appointed by the state department of the American Red Cross, and one member, who shall act as the chairman of the said Board of Governors, shall be selected and appointed by the State Board of Control. The members of said Board of Governors shall be appointed in the first instance for the term ending on the first Monday in January, 1925, and thereafter for the term of two years, ending the first Monday of January of the odd numbered year next after the appointment and qualification of their successors. Any vacancies at any time occurring in said Board of Governors shall be filled by appointment in like manner as hereinbefore provided for members of said board. If any organization fails to make the appointments hereinbefore provided within thirty days from the passage hereof, the State Board of Control is hereby authorized and required to make appointments for and on behalf of such organization. ('23, c. 309, §2; Apr. 3, 1929, c. 130.)

4397-1. Appropriation for operation of veteran rest camps.—The board of public welfare or similar welfare body of any city and county in this state, may annually expend an amount not in excess of \$9,000.00 in the operation and maintenance of a rest camp now being operated or which hereafter may be located or operated within such county or outside the limits thereof, for disabled or needy American War Veterans and their families having a legal settlement in such county, and for such other disabled and needy veterans and their families, whose cost of maintenance while at said camp is paid by the state or some other person or agency. (Apr. 24, 1929, c. 312, §1; Mar. 19, 1937, c. 73, §1.)

4397-2. County boards may appropriate money for rest camps in certain counties.—That the Board of

County Commissioners of any county having a population of over 500,000 in which a rest camp for disabled American War Veterans is being operated, may annually expend an amount not in excess of the sum of \$3,000.00 to assist in the operation and maintenance of said rest camp. (Act Apr. 24, 1931, c. 324.)

Laws 1931, c. 405.

Act Apr. 25, 1931, c. 405, makes an appropriation for relief of veterans of Spanish American War, Philippine Insurrection and China Relief Expedition. The act creates a board for administration of the fund, and provides that its functions shall cease June 30, 1935. The act is omitted as temporary.

Laws 1931, c. 405, §9. Amended. Laws 1935, c. 193.

Act Apr. 17, 1935, c. 204, repeals §10 of Laws 1931, c. 405.

Act Jan. 27, 1936, Sp. Ses. 1935-36, c. 94, appropriates \$42,500 from fund created by Laws 1931, c. 405, for payment of claims under Laws 1935, c. 213.

Laws 1937, c. 228. makes appropriation to carry out **Laws 1931, c. 405.**

Minnesotans who served after Spanish American War in regular army or navy at point far distant and in manner wholly disconnected with Philippine Insurrection or China Relief Expedition are not entitled to relief. *State v. Walsh*, 188M412, 247NW523.

4397-3. Definitions.—The term "Council" as used in this Act shall refer to the State Executive Council.

The term "Board" as used in this Act shall refer to the State Board of Control.

The term "Division" as used in this Act shall refer to the State Division of Soldiers' Welfare. (Act Feb. 28, 1935, c. 33, §1.)

4397-4. Executive council may extend direct relief.—The Council is authorized to extend direct relief to disabled veterans of all wars and their families who are residents of the State of Minnesota. (Act Feb. 28, 1935, c. 33, §2.)

4397-5. Who may receive relief.—The Council, within the limits of the appropriation provided herein, is authorized to appropriate to the Board to be used and expended by the Division such sums as may be necessary to provide necessary direct relief to disabled veterans of all wars and their families who are residents of the State of Minnesota. (Act Feb. 28, 1935, c. 33, §3.)

4397-6. Appropriations for relief.—To provide funds necessary to carry out the provisions of this act there is hereby appropriated to the Council out of any funds in the State Treasury not otherwise appropriated, the sum of Two Hundred Thousand Dollars (\$200,000.00). (Act Feb. 28, 1935, c. 33, §4.)

4397-7. May issue certificates of indebtedness.—If sufficient funds, as needed, are not available in the State Treasury, the Council is hereby authorized and directed to issue and sell certificates of indebtedness at not less than par value thereof, earning interest after the issuance and sale thereof, payable annually at a rate not greater than 4% per annum, which certificates shall become due within not more than one year from the date of issuance. The Council is hereby authorized and directed to redeem and pay such certificates of indebtedness as may be issued under authority of this act out of any funds which may hereafter be made available to the Council for direct relief. (Act Feb. 28, 1935, c. 33, §5.)

4397-8. May sell certificates.—The Council shall sell such certificates to such persons, associations and corporations, including the State of Minnesota, as it deems advisable. (Act Feb. 28, 1935, c. 33, §6.)

4397-9. Provisions severable.—The various provisions of this act shall be severable. Should any provision of this act be held invalid by any court of competent jurisdiction the remaining portions of this act shall remain in full force and effect. (Act Feb. 28, 1935, c. 33, §7.)

4397-11. Definitions.—The word "soldier" as used in this act shall mean any officer, soldier, sailor, marine, nurse, student nurse, or dietitian who was in the military or naval forces of the United States and who was a bona fide resident of the state of Minnesota at

the time he was commissioned, enlisted, inducted, appointed or mustered into the military or naval service of the United States, and who entered such service prior to November 11, 1918, or who, having enlisted or been inducted prior to November 11, 1918, acquired an active duty status on or after such date, and who has received an honorable or ordinary discharge, or release from such service; or who may still be in such service under honorable conditions, at the time of making application for the benefits of this act; provided, however, that the word "soldier," as used in this act shall not be construed to mean, and shall not include any person in such service during a period of enlistment, reenlistment, extended enlistment, or other service which began after November 10, 1918, provided, that where discharge was given for the purpose of allowing promotion and acceptance of a commission and continuous service was performed thereunder, such subsequent service shall not be deemed to be a period of service beginning after November 10, 1918. Any person who, while in such service, received pay as a civilian employee shall not be entitled to the benefits of this act for the period of such employment. (Act Apr. 18, 1935, c. 213, §1.)

Appropriation, '37, c. 228.

4397-12. Soldier's bonus.—That any soldier shall be entitled to receive, as funds are made available, from the State of Minnesota as herein provided the sum of \$15.00 for each and every month or fraction thereof of service given by him as such soldier subsequent to April 6, 1917 and prior to July 31, 1920, provided that the amount received hereunder by any such soldier shall not be less than \$50.00. (Act Apr. 18, 1935, c. 213, §2.)

4397-13. Must file application.—That before receiving any such sum under the provisions of this act, said soldier shall file with the adjutant general application therefor on forms provided by the adjutant general. Such application shall state facts sufficient to establish the status of such applicant as a soldier as defined herein, and shall be duly verified. (Act Apr. 18, 1935, c. 213, §3.)

4397-14. Widow or dependents may receive bonus.—Where any soldier, as herein defined, died and left surviving him a widow, or children now under eighteen years of age, or parent or parents, such widow, if still single, or if there be no widow, or children now under eighteen years of age, or if there be neither such mother, or if there be neither widow, children now eighteen years of age, or mother, then such father shall be entitled to the amount which such deceased soldier would have received hereunder for the period of his active service, if living; provided, that where the parents of such deceased soldier are separated or divorced, then and in that event the parent with whom the soldier last resided and who become responsible for his funeral expenses and the expenses of his last illness shall receive the sum which such deceased soldier would have received for the period of his active service if living. (Act Apr. 18, 1935, c. 213, §4.)

4397-15. Adjutant general to administer act.—The administrative duties hereunder shall be performed by the adjutant general. It shall be the duty of the adjutant general to examine into such applications and he shall make any other examination necessary to establish the facts and approve or disapprove the same, or set apart as held for lack of facts sufficient to establish the right of such soldier to said compensation sixty days after request for such information. No assignment of any right or claim to benefits hereunder made prior to the granting of any relief hereunder and payment of the relief so granted shall be valid, and any transfer or attempt to transfer any such right or claim or any part thereof by any beneficiary prior thereto and the acquiring of or attempting to acquire by any person of any interest in or title to such claim prior to the payment of the relief granted shall be a misdemeanor and punishable as such. (Act Apr. 18, 1935, c. 213, §5.)

4397-16. Adjutant general to promulgate rules.—The adjutant general is hereby authorized and empowered to promulgate such rules and regulations as may be necessary for the administration of this act not inconsistent with the provisions hereof, and there is hereby appropriated out of any moneys in the state treasury the sum of \$10,000, or so much thereof as may be necessary, for the administration of this act, of which \$5,000 shall be available June 1, 1935, and \$5,000 available June 1, 1936, for the use of the adjutant general as herein provided. (Act Apr. 18, 1935, c. 213, §6.)

4397-17. Not to apply to soldiers who have received bonus.—The provisions of this act shall not apply to any soldier who has heretofore received a soldiers' bonus from the State of Minnesota under any law relating thereto. (Act Apr. 18, 1935, c. 213, §7.)

4397-18. Adjutant general to report to legislature.—Any application for relief approved pursuant to the provisions of this act shall be reported by the adjutant general at the next session of the legislature, and no payment of any relief granted or approved pursuant to the provisions of this act shall be paid until the necessary funds for the payment thereof have been made available by the legislature. (Act Apr. 18, 1935, c. 213, §8.)

4397-19. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act. (Act Apr. 18, 1935, c. 213, §9.)

4397-20. Provisions severable.—If any section, part, or provision hereof be found unconstitutional such determination shall not affect the validity of the remaining provisions hereof. (Act Apr. 18, 1935, c. 213, §10.)

4397-21. Appropriation for education of certain children.—The sum appropriated under the provisions of this act shall be used for the sole purpose of providing for matriculation fees, board and room rent and books and supplies for the use and benefit of the children not under 16 and not over 22 years of age and who have for two years had their domicile in the state of Minnesota, of those who were killed in action or died from other causes during the World War, from April 6, 1917, to July 2, 1921, while serving in the Army, Navy or Marine Corps of the United States or as a result of such service; which children are attending or may attend any educational or training institution of a secondary or college grade located within the state of Minnesota and approved by the state board of education. Said children shall be admitted to state institutions of secondary or college grade free of tuition. (Act Apr. 29, 1935, c. 350, §1.)

Fund may be expended for orphan children of veterans who died after they left the service as a result of injury or sickness acquired as a result of service. Op. Atty. Gen. (88a-25), Sept. 20, 1935.

Children may attend university, but tuition must be paid out of appropriation. Op. Atty. Gen. (618a-5), Nov. 13, 1936.

4397-22. Monies to be paid to educational institutions.—The amounts that may be or may become due to any educational or training institution, not in excess of the amount specified in section 3 hereof, shall be payable to such institution from the fund hereby created on vouchers approved by the state soldiers welfare director. Said director shall determine the eligibility of the children who may make application for the benefits provided for in this act; satisfy himself of the attendance of such children at any such institution and of the accuracy of the charge or charges submitted to said director by the authorities of any such institution, on account of the attendance thereof of any such children. (Act Apr. 29, 1935, c. 350, §2.)

4397-23. Appropriation.—The sum of \$4,000.00, or so much thereof as may be necessary, is hereby appropriated for the fiscal year ending June 30, 1936, and annually thereafter until 1942, for carrying out the provisions of this act: Provided, that not more than \$200.00 shall be paid under said provisions for any one child for any one year. (Act Apr. 29, 1935, c. 350, §3.)

4397-24. Unexpended balances reappropriated.—Any unexpended balance remaining at the end of any fiscal year shall be and remain available for expenditure until June 30, 1942, and thereupon all sums in said fund remaining unexpended shall revert to the state treasury. (Act Apr. 29, 1935, c. 350, §4.)

4397-25. Soldiers, sailors and marines entitled to same privileges as other veterans.—That the soldiers, sailors and marines who were disabled in military service during the World War and their dependents, are entitled to the same privileges as are now enjoyed by all other veterans. (Apr. 24, 1937, c. 446, §1.)

4397-26. Appropriations.—There is hereby annually appropriated from the general revenue fund of the State of Minnesota, the sum of ten thousand dollars (\$10,000.00), to be expended by the Disabled American Veterans of the World War of Minnesota for the purpose of assisting World War Veterans in the preparation and presentation of their claims to

the United States Government for compensation and other benefits to which they are entitled as a result of disabilities incurred in military service. (Apr. 24, 1937, c. 446, §2.)

4397-27. Purpose of act.—This act is hereby declared to be in the interest of the preservation of the public peace, health and safety, the support of the State Government and the existing public institutions, and shall take effect and be in force from and after its passage. (Apr. 24, 1937, c. 446, §3.)

4397-28. Insurance benefits of deceased to pass to next of kin on disappearance of wife of veteran.—That whenever a resident of the State of Minnesota shall have died intestate when serving in the military or naval forces of the United States of America during the World War, and whose spouse shall have deserted him prior to his enlistment, and the whereabouts of said spouse shall have been unknown for a period of twenty years or more last past, then such spouse shall be presumed to have pre-deceased him; and any and all benefits due and payable to his estate under and by virtue of any War Risk Insurance Act or Acts amendatory thereof shall descend to the next of kin as of the date of the death of any such enlisted person, and such estate shall be distributed as provided by the Laws of the State of Minnesota for the distribution of the estate of persons dying intestate. (July 14, 1937, Sp. Ses., c. 13.)

CHAPTER 25

Board of Control and Charities Under Its Exclusive Management

THE BOARD

4398. Membership of board of control.—The State Board of Control shall consist of three members at least one of whom shall be a woman, appointed by the Governor, with the consent of the Senate, each for the term of six years and until their successors qualify. Not more than two (2) members shall belong to the same political party. Vacancies shall be filled by like appointment for the unexpired terms. On the second Monday in April, 1931, and biennially thereafter, the board shall elect from its membership a chairman. A vacancy in the office of chairman shall be filled by like election for the unexpired term.

The Governor may remove any member for malfeasance or non-feasance in office or for any cause which renders him incapable or unfit to discharge his official duties. (R. L. '05, §1858; G. S. '13, §4001; '21, c. 381, §1; '23, c. 275, §1; Mar. 24, 1931, c. 84.)

4400. Office, seal, supplies, etc.

State board of control may contract for railroad spur at St. Cloud Reformatory, subject to approval by commission of administration and finance. Op. Atty. Gen. (88a-10), Nov. 5, 1935.

4401. Institutions under exclusive control of State board of control.

State board of control may prohibit the importation of beer into the quarters or homes furnished employes of state institutions under its jurisdiction, and also into the grounds of such institutions. Op. Atty. Gen., Apr. 18, 1933.

State board of control may prohibit sale of beer in homes furnished employes of state institutions on state land. Op. Atty. Gen., Apr. 18, 1933.

4401-1. Definitions.—As used in this Act the term "Board" shall mean the State Board of Control; the term "Municipality" shall mean any county, town, village, borough or city, however organized, charged by law with liability for the support and/or relief of poor persons having a settlement therein; the term "governing body" shall mean the county board, the town board, the village, borough or city council, if any, otherwise the corresponding chief governing body of any such county, town, village, borough or city, as the case may be; the words "poor persons"

shall mean such persons for whose support and/or relief a legal liability is imposed under Mason's Minnesota Statutes of 1927, Chapter 15; the term "work relief" shall mean support and/or relief in wages or other compensation, paid for in cash or in kind; the words, "direct relief" shall mean relief to poor persons in the form of food, clothing, shelter, medical care and supplies, and other necessities of life. (Act Mar. 16, 1933, c. 89, §1.)

The state may loan to a county caring for its poor under the "county system" funds received from the Reconstruction Finance Corporation under par. C of Title 1 of the Emergency Relief and Construction Act. Op. Atty. Gen., Apr. 5, 1933.

4401-2. Acts approved and validated.—The action of the Governor of the state in securing funds from the Reconstruction Finance Corporation for relief purposes under the Act of Congress known as the "Emergency Relief and Construction Act of 1932" is hereby approved. The governor's action in designating the State Board of Control to administer said funds and the administration thereof by the Board is hereby approved. (Act Mar. 16, 1933, c. 89, §2.)

4401-3. Governor may apply for relief funds.—The governor is authorized to continue negotiations for and secure funds from the Reconstruction Finance Corporation for relief purposes under said "Emergency Relief and Construction Act of 1932", upon application of the governing body of any municipality of the state; provided, that such applications shall specify the amount desired for relief purposes, the nature of the relief contemplated and have endorsed thereon the approval of the Board. It shall be the duty of the Board before approving any such application to investigate the relief needs of the municipality making the same and satisfy itself that the amount specified in the application is needed for such purpose. (Act Mar. 16, 1933, c. 89, §3.)

4401-4. State Board of Control to be state welfare body.—The State Board of Control is hereby designated as the State Welfare body responsible for administering such support or relief of the poor and such