

REVISED LAWS OF MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
FRANCIS B. TIFFANY

ST. PAUL
WEST PUBLISHING CO.

1910

CHAPTER 4.

EXECUTIVE DEPARTMENT.

THE GOVERNOR.

[27—]1. To have care of state capitol.—Two years from the passage of this act, or at such earlier date as it may be completed, the new capitol building shall be turned over to the governor, and the latter shall assume and thereafter have full control thereof, with the surrounding grounds, and shall care for, operate and maintain the same in the manner and subject to the limitations prescribed in section 1 hereof. ('05 c. 102 § 2)

Historical.—"An act to provide for the care, operation and maintenance of the new state capitol, and to appropriate money therefor."

Section 1 of said act is as follows: "The board of state capitol commissioners heretofore created under and by virtue of chapter 2, of the General Laws of 1893, are hereby authorized, in addition to the powers heretofore given them, to properly care for, operate and maintain the new capitol building and to prepare, adorn and care for the grounds surrounding the same, until such time as said building may be fully completed, not exceeding two years from the passage of this act, and shall hire and employ such engineers, firemen, electricians, elevator operators, janitors and other help as may be needed and discharge the same and hire others in their discretion, and shall, through the board of control of state institutions, purchase necessary fuel and other supplies."

See Laws 1907, c. 281, "An Act to provide for an extension, enlargement and beautifying of the grounds of the new state capitol building in the city of St. Paul, and to provide for a commission with power to acquire lands therefor, either by purchase or by condemnation under the right of eminent domain." Approved April 22, 1907.

[27—]2. Standing appropriation.—There is hereby appropriated for the purposes of this act the following amounts, or so much thereof as may be necessary: Twenty-five thousand dollars for the year ending July 31st, 1905, and sixty thousand dollars annually thereafter. ('05 c. 102 § 3)

SECRETARY OF STATE.

[31—]1. Clerk of government surveys.—That there is hereby created in the office of the secretary of state of Minnesota the position of clerk of government surveys, for the purpose of receiving and for the safe keeping of all the records and archives of the office of United States surveyor general for the State of Minnesota, and as soon as they shall be received from the commissioner of the general land office at Washington, D. C. ('07 c. 416 § 1)

Historical.—"An act to provide for the reception of the records and archives of the office of the United States surveyor general for the district of Minnesota, and for the providing of additional employes in the office of the secretary of state." Approved April 25, 1907.

By section 3 the act took effect June 1, 1907. The preamble of the act is as follows: "Whereas, the commissioner of the general land office at Washington has notified the executive and legislative department of this government, of the early completion of the surveying work by the government in this state, and further, that the office of United States surveyor general for this state is proposed to be closed and discontinued on June 30, 1907, and that under section 2218 of the Revised Statutes of the United States, when such office shall be discontinued the records and archives thereof are required to be turned over to the respective secretaries of state or to such officer as may be authorized to receive them; therefore, be it enacted," etc.

[31—]2. Appointment—Stenographer — Salaries — Appropriation.—That the secretary of state is hereby empowered to appoint some suitable person as such clerk of government surveys, the salary of whom shall be fifteen hundred dollars per year, which sum is hereby annually appropriated out of any funds in the state treas-

ury not otherwise appropriated, and the secretary of state is also empowered to appoint some suitable person as stenographer in such department at a salary of nine hundred dollars per year, which sum is hereby annually appropriated out of any funds in the state treasury not otherwise appropriated. ('07 c. 416 § 2)

STATE AUDITOR.

[35—]1. Auditing claims on certain funds—Payment.—Whenever claims against the state for any purposes are made upon the following named funds, to-wit: Soldiers' Relief, Soldiers' Home Support, Game and Fish Commission, Dairy and Food Commission, Railroad and Warehouse Commission, State Tax Commission, State Highway Commission, Forest Preservation, Bureau of Labor, Public Employment Bureau, Grain Inspection, Hay Inspection, Live Stock Sanitary Board, Oil Inspection, New State Capitol Maintenance, State Board of Health, State Aid to Schools, Teachers' Institutes, County Training Schools, Traveling Libraries, Farmers' Institutes, Bureau of Immigration, Public Examiner, Insurance Commissioner, Adjutant General, Indian War Pensions, Superintendent of Public Instruction, and State Library; the officer or board authorized by law to present or approve such claims shall monthly furnish verified abstracts prepared in triplicate, one of which shall be delivered to the state auditor, one to the state treasurer, and one to be retained by the department, board, officer or institution on account of which such requisition is made; such abstract shall contain the name, residence and amount due each claimant, and shall designate the department, institution and fund on account of which payment is to be made. The copy of the abstracts delivered to the state auditor shall be accompanied by the original voucher or vouchers, together with the proof of claim for each item included in such abstract. And if there be sufficient money in the proper fund, the state auditor shall issue his warrant upon the state treasurer for the gross amount shown by such abstract; and the state treasurer shall deliver checks to the several persons entitled thereto, as shown by such abstracts, and he shall preserve in his office a record of each check and remittance, showing the date of each issue, the name of the payee and any other facts tending to evidence its payment. (Laws 1905, c. 96, § 1, as amended by Laws 1909, c. 120, § 1.)

Historical.—"An act relating to the audit of claims and the payments from certain funds in the state treasury." Approved March 31, 1905. Laws 1905, c. 96, as amended by Laws 1909, c. 120 (approved March 27, 1909), and chapter 169 (approved April 8, 1909).

By Laws 1905, c. 96, § 3, and Laws 1909, c. 120, § 4, all inconsistent acts are repealed.

[35—]2. Same—When audited.—All claims against the state for salaries and expenses, payable from any of the funds enumerated in section one [35—1] hereof, and other like salaries and expenses not enumerated herein, may be audited and paid by the state auditor twice a month. (Laws 1905, c. 96, as amended by Laws 1909, c. 120, § 2, and Laws 1909, c. 169, § 1.)

See note under section [35—]1.

[35—]3. Same—Moneys due to fire companies, etc.—The method provided in section one [35—1] hereof for presenting claims for payment from the state treasury shall be followed as far as practicable whenever requisition is made for the payment of money due on account of apportionment to fire companies and fire department relief associations. (Laws 1905, c. 96, as amended by Laws 1909, c. 120, § 3.)

See note under section [35—]1.

[38—]1. **Promoting sale of state lands.**—The state land commissioner of the state of Minnesota is hereby authorized and empowered to take such measures as he may deem advisable to advertise, both within and without the state, sales of all state lands, and to secure, compile and issue such valuable statistics of the resources of the state as may be useful in securing a desirable class of settlers to purchase and to locate on these lands. ('05 c. 201 § 1)

Historical.—"An act to promote the sale of state lands." Approved April 15, 1905.

[40—]1. **Certificates of indebtedness for capitol.**—To provide for the payment of the certificates of indebtedness issued, according to law, by the board of state capitol commissioners it shall be the duty of the state auditor to set aside from the revenue fund each year a sum equal to a tax levy of two-tenths of a mill upon the assessed valuation of the taxable property in the state. Such transfer by the state auditor shall be made in 1908, and every year thereafter, until all of said certificates of indebtedness have been fully paid. ('07 c. 143 § 1)

Historical.—"An act to provide for the payment of the certificates of indebtedness, issued by the board of state capitol commissioners." Approved April 10, 1907.

Section 2 repeals inconsistent acts.

See sections [35—]1 and [35—]2.

STATE TREASURER.

[48—]1. **Acceptance of certain gifts.**—That the state treasurer shall be and he is hereby authorized to receive and accept, on behalf of the State of Minnesota, any gift, bequest, devise or endowment which may be made by any person, by will, deed of gift or otherwise, to or in aid, or for the benefit, support or maintenance of any educational, charitable or other institution maintained in whole or in part by the State of Minnesota, or for the benefit of students, employes or inmates thereof, and the money, property or funds constituting such gifts, bequest, or devise or endowment. Provided, however, that no such gift, bequest, devise or endowment shall be so accepted unless the governor, the state auditor and the state treasurer shall determine that it is for the interest of the state and such institution to accept the same, and shall approve of and direct such acceptance. ('07 c. 170 § 1)

Historical.—"An act providing for the acceptance and administration of gifts, bequests, devises and endowments in aid of or for the benefit of educational, charitable and other institutions maintained by the state of Minnesota." Approved April 12, 1907.

[48—]2. **How administered.**—That in case any such gift, bequest, devise or endowment is so accepted, the same and the proceeds thereof shall be administered and applied according to the terms of the will, deed of gift, or other instrument defining, providing for, creating or establishing the same; but all such property and funds shall be held by the state treasurer in his official capacity and paid out and disbursed the same as other state funds. ('07 c. 170 § 2)

[48—]3. **Investments—How made.**—That in case it is provided by the terms of such will, deed of gift, or other instrument that the capital of the money, property or fund constituting such gift, bequest, devise or endowment, or any part of such capital, shall be kept invested, the same shall be invested and kept invested in the same manner and by the same officers or body as the school funds of the state are by law required to be invested. ('07 c. 170 § 3)

[48—]4. **Expenditures—How made.**—That the state treasurer shall, from time to time, pay out in the usual manner, upon the order of the board, commission or other body charged with the direct and immediate supervision, control or management of the institution for the account of which such gift, bequest, devise or endowment is made, or designated by the donor, all money which may become available for such purpose under the terms of such will, deed of gift or other instrument; and the same shall be expended and applied by such board, commission or other body as nearly as may be, in accordance with the terms and conditions of such gift, bequest, devise or endowment. ('07 c. 170 § 4)

BOARDS OF AUDIT AND DEPOSIT.

51. [Superseded in part.]

See section next following, and note thereunder.

[51—]1. **Limit of deposit.**—The amount on deposit at any time with any state depository shall not exceed the amount designated by the board of deposit. In case a personal surety bond be given by a depository the board may fix a limit of deposit which shall not exceed one-half the penalty named in such bond. If a corporate surety bond be given by such depository, the board may fix a limit of deposit equal to the penalty named in such surety bond. Provided, however, that the board shall in no case fix a limit of deposit which shall exceed one-half the paid-up capital stock or capital claimed by such depository. (Laws 1901, c. 140, § 4, as amended by Laws 1905, c. 198, § 1.)

Historical.—"An act to amend section four of chapter one hundred forty, Laws of 1901, relating to depositories for state funds." Approved April 15, 1905.

Laws 1901, c. 140, was repealed by R. L. § 5544; the provisions of section 4 thereof being incorporated in part in section 51. So far as the amended section above set forth differs from said section 51, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

[54—]1. **State, county and city depositories—Securities in lieu of bond.**—Whenever any bank authorized to transact a banking business in this state shall be designated as a depository of state, county or city moneys, as provided by law, it may, in lieu of the corporate or personal surety bond provided by law to secure such deposit, furnish or deposit with the state, county or city treasurer, as the case may be, United States government bonds, state bonds of this or any other state, bonds of any county, school district, city, town or village of this state, and county drainage bonds of this state of the classes and kinds in which the permanent school fund of the state may be invested, in an amount equal to the maximum amount of money at any time to be deposited with such bank. Provided, that such securities must have a market value of at least par and shall be approved by the board of deposit if given to secure state moneys, by the county board if given to secure county moneys, and by the common council or city council if given to secure city moneys, and shall be accompanied by a proper assignment to the end that such depository so depositing and assigning such securities shall and will safely keep and pay over to the treasurer, or his order, on demand, free of exchange, all moneys deposited therein at any time while such bonds or securities shall be so deposited, with interest thereon at the rate agreed upon; and provided, that in case of default on the part of such depository, the board of deposit, county board, or common council, or city council, as the case may be, shall have full power and authority to sell such securities or so much thereof as may be necessary to realize the full amount of the funds so deposited in such depository, together with

interest thereon, and to pay the balance or overplus, if any, to the depository entitled thereto. Authority is given to the treasurer to return said securities to the depository so depositing them when the trust so created is terminated, and to exchange upon application, any other securities for the securities so deposited, of equal value and of any of the classes herein permitted to be deposited. The interest on such bonds or securities so deposited and furnished shall, when paid, be turned over to the bank so depositing the same, so long as it is not in default. It is further provided, that if the surety on the bond of any depository of state, county or city moneys is a surety company authorized to do business in this state, said bond shall be in a penal sum to the amount designated by the board of deposit as the limit of deposits in said bank. ('09 c. 362 § 1)

Historical.—"An act relating to the securing of public moneys by state, county, and city depositories." Approved April 22, 1909.
Section 2 repeals all inconsistent acts.

ATTORNEY GENERAL.

56-62. [Superseded.]

See section [62—]1, and note thereunder.

[62—]1. **To appear for state.**—The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in the district courts whenever, in his opinion, the interests of the state require it. Upon request of the county attorney he shall appear in the district court in such criminal cases as he shall deem proper. Whenever the governor shall so request in writing he shall prosecute any person charged with an indictable offense; and in all such cases he may attend upon the grand jury and exercise the powers of a county attorney. ('05 c. 227 § 1)

Historical.—This section, which is substantially the same as R. L. § 56, and the eight sections next following, are sections 1 to 9 of an act entitled "An act relating to the duties and powers of the attorney general and his assistants." Approved April 17, 1905.

Section 10 repeals inconsistent acts. By virtue of R. L. § 5504, the act is to be construed as amendatory of and supplementary to the Revised Laws, and in effect it supersedes sections 56-62.

Common-law powers.—The Attorney General, as the chief law officer of the state, possesses and may exercise, in addition to the authority expressly conferred by statute, all common-law powers incident to and inherent in the office. *State ex rel. Young v. Robinson*, 101 Minn. 277, 112 N. W. 269.

[62—]2. **Assistants—Clerk—Stenographer—Records—Register.**—The attorney general may appoint, and at his pleasure, remove three assistants, a clerk and a stenographer, who shall render such aid as he may require of them in the discharge of his official duty. He shall keep a record of his official correspondence and of all matters placed in his hands by the governor, auditor, secretary of state or treasurer, or any officer or board in charge of any of the business of the state upon which any official action is necessary; he shall also keep a register of all legal proceedings instituted by him or in which he appears, and of the several steps taken therein, and he shall keep copies of all official opinions rendered by his office. Each of said assistants shall, when thereunto authorized in writing by the attorney general, have the same authority as the attorney general, to appear before grand juries, or otherwise, in any court in this state. ('05 c. 227 § 2)

This section increases the number of assistants, and contains other provisions not in R. L. § 57. See note under section next preceding.

[62—]3. **To prosecute delinquent officers and offending corporations.**—He shall cause to be prosecuted all assessors and other

officials for such delinquencies in connection with revenue laws as may come to his knowledge; also all bonds of officers and others upon which any liability to the state has accrued. Whenever any corporation shall have offended against the laws of the state, or misused, surrendered, abandoned or forfeited its corporate authority, or any of its franchises or privileges, he shall cause proceedings to be instituted against it. ('05 c. 227 § 3)

This section follows R. L. § 58. See note under section [62—]1.

[62—]4. Duties as to public lands.—He shall begin and prosecute actions against all persons claiming to own any portion of the school or other public lands adversely to the state, whenever, in his opinion, an action can be sustained, and shall cause an appearance to be entered for the state whenever an application to pre-empt any such land shall come to his notice. In case of any such application he may require the county attorney of the county in which the same is made to enter such appearance, and he may cause witnesses to be subpoenaed, and take such other measures in the premises as the public interests may require. ('05 c. 227 § 4)

This section follows R. L. § 59. See note under section [62—]1.

[62—]5. To give advice and prepare forms.—He shall prepare forms for bonds and other contracts and instruments for the use of state officials, boards and commissions and give legal advice in all matters relating to their official duties, whenever required by the governor, auditor, treasurer or secretary of state, or any board or commission created by law. And whenever required by either house of the legislature he shall give his written opinion upon any question of law. ('05 c. 227 § 5)

This section follows R. L. § 60, with the addition of the words "or any board or commission created by law." See note under section [62—]1.

[62—]6. To act as attorney for state officers and boards, etc.—Special counsel.—The attorney general shall act as the attorney for all state officers and all boards or commissions created by law in all matters pertaining to their official duties, and when requested by the attorney general it shall be the duty of any county attorney of the state to appear within his county and act as attorney for any such board, commission or officer in any court of such county; and when in his judgment the public welfare will be promoted thereby, the attorney general may, upon request in writing, employ a special attorney for any such board, commission or officer and fix his compensation, and when such special attorney is so employed his fees shall be paid from the appropriation made for such board, commission or officer. Except as herein provided no board, commission or officer shall hereafter employ any attorney at the expense of the state. The compensation of any attorney employed by the attorney general to assist in criminal prosecutions shall not exceed twenty (\$20.00) dollars per day. ('05 c. 227 § 6)

This section corresponds to R. L. § 61, but makes some changes. See note under section [62—]1.

[62—]7. To give opinion to county, city, village or town attorney, and to state superintendent of public instruction.—The attorney general on application shall give his opinion in writing to county, city, village or town attorneys, on questions of public importance; and on application of the state superintendent of public instruction he shall give his opinion in writing upon any question arising under the laws relating to public schools, and on all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction. ('05 c. 227 § 7)

This section is new. See note under section [62—]1.

[62—]8. **Annual report.**—The attorney general shall report to the governor annually the number, character and result of all actions and proceedings in which he has appeared for the state, the expense incurred by the state in each, and the amount of fines, penalties and other moneys collected; also the opinions of general interest given by him and his assistants since the preceding report, with such recommendations for amendment of the laws as he may deem necessary or proper, and tables shall be appended showing the offenses reported to him by county attorneys. ('05 c. 227 § 8)

This section follows R. L. § 62. See note under section [62—]1.

[62—]9. **Salaries.**—The yearly salary of the attorney general shall be four thousand eight hundred dollars; each of his assistants shall receive an annual salary of three thousand dollars; the clerk shall receive an annual salary of fifteen hundred dollars; the stenographer shall receive an annual salary of nine hundred dollars; and the money necessary to pay said salaries is hereby appropriated out of any money in the state treasury not otherwise appropriated. ('05 c. 227 § 9)

This section supersedes R. L. § 68, subd. 5. See note under section [62—]1.

GENERAL PROVISIONS.

68. Salaries—Standing appropriation.

The fifth subdivision of this section is superseded by section [62—]9.

As to the salary of the Governor, see section [68—]1.

As to the salary of the Superintendent of the Capitol, see sections [27—]1 and [27—]2.

[68—]1. **Salary of Governor.**—The annual salary for the governor is hereby fixed at the sum hereinafter stated, and an amount sufficient to provide for the payment of the same is hereby annually appropriated from the general revenue fund of the state: Governor, seven thousand dollars. ('07 c. 240 § 1)

Historical.—"An act to fix the salary of the governor and to appropriate money therefor." Approved April 18, 1907.

Section 2 repeals inconsistent acts, thereby repealing section 68, subd. 1, so far as it fixes the salary of the Governor.

[68—]2. **State auditor to cancel all unexpended appropriations—Proviso.**—It shall be the duty of the state auditor, at the close of each fiscal year, to cancel all unexpended appropriations, or balances of appropriations, which shall have remained undrawn for the period of one year after the expiration of the year during which they became available under the law; provided, that the governor, state treasurer and attorney general may continue such appropriations or balances in force, temporarily, on recommendation of the state auditor. Provided further, that nothing in this act contained shall be construed to interfere with or modify any law requiring the surplus in any fund or funds to be covered in the state treasury, at the end of any fiscal year, or at any other specified time. ('07 c. 272 § 1)

Historical.—"An act relating to appropriations made by the Legislature of the state of Minnesota." Approved April 20, 1907.

[68—]3. **Official not to exceed appropriation in incurring indebtedness—Penalty—Exception.**—Whenever there has been an appropriation for any purpose whatsoever, it shall be unlawful for any state board or official to incur indebtedness on behalf of said board, official, or the State of Minnesota, in excess of the appropriation made for such purpose. It is hereby made unlawful for any state board or official to incur any indebtedness on behalf of said board, official, or the State of Minnesota, of any nature whatsoever, until after an appropriation therefor has been made by the legislature. Any official violating the provisions of this act shall

be deemed guilty of a misdemeanor, and the governor of the state is hereby authorized and empowered to remove any such official from office. Provided, that in case of calamity or actions of the elements (such as fire, water, storms, etc.) such board or official may obtain the consent of the governor, the state auditor and the state treasurer, in writing, stating the special amount of expense that may be incurred and such expenditure shall be considered a valid claim against the State of Minnesota. ('07 c. 272 § 2)

[68—]4. Additional compensation from contingent fund prohibited.—In all cases where the compensation of an officer of the state is fixed by law at a specified sum, it shall be unlawful for any such officer or employé to receive additional compensation for the performance of his official services out of the contingent fund of said officer or said department, and it shall be unlawful for the head of any department of the state government to direct the payment of such additional compensation out of the contingent fund, and the state auditor is hereby prohibited from issuing his warrant upon such contingent fund in payment of such additional compensation. ('09 c. 395 § 1)

Historical.—"An act prohibiting the payment of additional compensation to officers and employes of the state out of the contingent fund in certain cases, and providing a penalty for the violation of this act." Approved April 22, 1909.

[68—]5. Same—Penalty.—Every person offending against the provisions of this act shall be guilty of a misdemeanor and punished by a fine of not exceeding \$100.00 or imprisonment in the county jail for not exceeding ninety days. ('09 c. 395 § 2)

CHAPTER 5.

JUDICIAL DEPARTMENT.

SUPREME COURT.

72. Powers concerning writs and processes.

Mandamus.—An election contest, which involves charges of fraud, illegal voting, and the legality of the election, cannot be determined in mandamus proceedings. *Lauritsen v. Seward*, 99 Minn 313, 109 N. W. 404.

Certiorari.—Not the appropriate remedy to review the action of the tax commission. *State ex rel. Foley Bros. & Kelly v. Minnesota Tax Commission*, 103 Minn. 485, 115 N. W. 647.

MINNESOTA REPORTS.

[88—]1. New contract.—That the secretary of state be and is hereby authorized and required on behalf of the state of Minnesota to solicit bids and enter into a contract for the printing and publishing of the number of copies of the supreme court reports of this state now required by law for the period of six years from and after October 1st, 1909, said contract to be awarded to the lowest responsible bidder whose bid shall not exceed \$1.00 per volume, and who shall furnish to said secretary of state a bond in the sum of five thousand dollars conditioned that the said reports and the printing and publishing thereof shall conform to the following specifications, to-wit:

First. That the size of the volumes, the character and quality of the paper used therein, and the binding and the general mechanical execution thereof shall conform to the requirements for the printing