

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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6840-85. Outlets in adjoining states.

This section is only applicable to original establishment of ditch. Op. Atty. Gen. (150-c), Sept. 5, 1940.

6840-88. Systems extending into; etc.

If there is no objection from persons or officials in adjoining states, drainage district in this state may be assessed and pay for deepening of watercourse in adjoining state. Op. Atty. Gen. (150-C), Sept. 5, 1940.

6840-115. Same—Petition—Notice of hearing.

Extension of time for payment of liens. Laws 1943, c. 405.

6840-116. Hearing—Order for extension.

Court has no authority to establish a different plan for payment of the principal than is authorized by statute. Op. Atty. Gen. (921L), May 29, 1942, June 5, 1942.

6840-119. Same—Existing liens not affected.

When land subject to drainage ditch lien was conveyed to county by a poor person and thereafter county board extended time of payment of unpaid installments, drainage lien was not extinguished when land was subsequently resold by the county. Op. Atty. Gen. (921j), Aug. 23, 1943.

TOWN DITCHES

6842. Petition to be filed.

Public drainage proceedings are justified only to serve a public rather than private purposes. Town Ditch No. 1 v. B., 208M566, 295NW47. See Dun. Dig. 2819.

6846. Report of engineer and action of viewers.

Rule of Sheehan v. Flynn, 59Minn436, 61NW462, 26LRA 632, that by reasonable drainage works on his own premises, a landowner may dispose of surface waters as best he can, so long as he does not unreasonably injure his neighbor, applies only to private rights and exercise thereof, and has no application to a public drainage proceeding wherein statute requires compensation to all who suffer damages. Town Ditch No. 1 v. B., 208M566, 295NW47. See Dun. Dig. 2841a, 10165.

6847. Attorney-at-law.

In connection with proceedings to establish a town ditch, town board has no authority to employ an attorney not asked for in the petition. Op. Atty. Gen., (151B), Dec. 18, 1939.

6849. Benefits and damages, how ascertained.

Town Ditch No. 1 v. B., 208M566, 295NW47; note under §6846.

6850. Costs and expenses.

On appeal from action of town board in rejecting petition, town board may employ an attorney, and it is probable that expenses of such attorney to represent town board should be paid by petitioners. Op. Atty. Gen. (434a-1), March 26, 1943.

6854. Appeal from order refusing to establish.

On appeal from action of town board in rejecting petition, town board may employ an attorney, and it is probable that expenses of such attorney to represent town

board should be paid by petitioners. Op. Atty. Gen. (434a-1), March 26, 1943.

6874. Compensation of engineers and viewers.

In town drainage proceedings boards may not pay more than \$5.00 per day for engineer services. Op. Atty. Gen. (148a-10), Aug. 12, 1943.

CURATIVE AND MISCELLANEOUS PROVISIONS

6923-1. Validation of proceedings.—

Where the county board of any county of this state or the judge of any of the district courts of this state in pursuance of any laws of the State of Minnesota governing the establishment, construction or repair of any drainage system or part thereof has established and ordered constructed any drainage system wholly within any county of this state or partly within two or more counties thereof, and such drainage system has been actually constructed and the proceedings for such establishment and construction are in all respects valid and according to law, and assessments or liens have been levied or created by the county auditor, county board, or judge of said court against all of the lands originally assessed for benefits in the proceedings for the establishment of such drainage system, for the purpose of collecting and paying a deficit in any such drainage system due to the increased cost of construction of such drainage system, deficiency in interest payable on bonds issued for construction of such drainage system, the expense of improvement, maintenance and repair of same, or for any other reason, and the time for appeals has expired and no appeals have been taken therefrom or from any such proceedings, or if such appeals have been taken that the same have been determined before the passage of this act, then the said proceedings and all assessments or liens so levied or attempted to be assessed or levied for said purposes are hereby approved, legalized and declared to be valid, and in full force and effect and a lien upon and against said lands benefited by the establishment and construction of said drainage system until paid, at the time and in the manner as set forth in said act and amendments thereto. (Act Apr. 10, 1941, c. 174, §1.) [647.50]

Act Apr. 10, 1941, §2 provides that this act shall not affect any action now pending.

Amount of lien against land benefited by establishment of drainage system cannot be increased beyond total benefit originally assessed, and there is no lien upon land upon which assessments have been paid in full before time of payment required by law, though there is a loss to the county which is unable to earn interests sufficient to cover interests on bonds issued. Op. Atty. Gen. (38c), July 10, 1943.

CHAPTER 44A

Soil Conservation

6932-3. State soil conservation committee established; etc.

(A).

Commissioner of conservation may designate his deputy to serve on committee and exercise all his powers, but commissioner of agriculture may not designate his deputy or any other person to act in his stead and director of agricultural extension service may not substitute the vice-director. Op. Atty. Gen., (705a-2), Apr. 17, 1941.

(D)(1).

State committee may assist district board, but this does not imply the paying of the bills for the district by means of furnishing supplies. Op. Atty. Gen. (705a), Dec. 8, 1943.

(D)(5).

Committee has authority to purchase and furnish to school libraries pamphlets on the subject of soil conservation. Op. Atty. Gen. (705a), Dec. 8, 1943.

6932-4. Creation of soil conservation districts.—

A to G * * * * *

H. (1) Territory annexed—Procedure.—

Petitions for including additional territory within an existing district may be filed with the State soil conservation committee, and the proceedings herein provided for

in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by a majority of the occupiers of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(2) Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the State soil conservation committee by any twenty-five (25) or more occupiers of land within the district or districts affected. In such event, all of the proceedings herein provided for in the case of petitions to organize a district shall be followed in so far as they are applicable. The committee shall prescribe the form for such

petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district.

(3) In the holding of the referendum for consolidation or separation, all land occupiers within the affected district or districts shall be eligible to vote. The committee shall not have authority to determine the administrative practicability or feasibility of consolidating or separating districts unless a majority of the votes cast in the referendum within each and all of the separate districts to be affected, or within each and all of the separate areas sought to be made separate districts, shall be in favor of such consolidation or separation.

(4) In the case of consolidation or separation of districts, the corporate existence and terms of office of the officers of the old district or districts shall expire upon the issuance and recording by the Secretary of State of a certificate of the due organization of the consolidated district, or of the several new districts. Upon consolidation all of the rights and liabilities of the several consolidating districts shall be vested in, and assumed by the consolidated district. Upon separation, the rights and liabilities of the original district shall be vested in and assumed by the new districts in the equitable proportion to be determined by the State soil conservation committee. (As amended Apr. 2, 1943, c. 274, §1.)

(I) * * * * *

District may be organized exactly coinciding with boundaries of a county or township. Op. Atty. Gen., (705a-5), March 28, 1940.

A. Petition.

(3) Where district takes in portions of certain townships, it is necessary to have a definite description by boundaries and metes and bounds. Op. Atty. Gen., (705a-5), April 26, 1940.

B. Notice—hearing—adjournment, etc.

It is not mandatory that state committee hold a public hearing, but it should hold hearings except in those instances where necessary facts and information may be fully obtained in some other manner. Op. Atty. Gen., (705a-7), Mar. 7, 1941.

F. Supervisors, appointment and election, etc.

Certificate of officer authorized to take oath is necessary part of application. Op. Atty. Gen., (605a), May 22, 1940.

H. Annexation of territory—petition—referendum.

Amended. Laws 1943, c. 274, §1. See above text.

If a majority of those petitioning for attachment are not fee owners, it is necessary to first secure consent of the majority of fee owners before attachment may take place, but proposed amendment in 1941 would eliminate necessity for such consent. Op. Atty. Gen., (705a), Jan. 17, 1941.

Both state committee and district supervisors are to proceed in accordance with subsec. (F). Id.

Only land occupiers within proposed addition may vote at referendum. Op. Atty. Gen., (705a-3), Apr. 17, 1941.

6932-5. Three supervisors elected for each district.—(1) Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, or such further time as the state soil conservation committee may allow, nominating petitions may be filed with the State soil conservation committee nominating legal voters as candidates for election as supervisors of such district, one for a term to expire at the time of the next annual town election in March and one to expire at the time of the second succeeding town election, and one to expire at third succeeding town election in March. Each petition must be subscribed by 25 or more legal voters of the district. No person shall sign petitions nominating more than three candidates and if he does his signature shall not be counted on any petition. The committee shall give due notice of the time and place where the election of three supervisors shall be held in the district, and shall specify therein the names of all candidates and the terms for which nominated. The committee shall prepare ballots for such election with the surnames of the candidates printed thereon in alphabetical order for each term and a square before each name and a direction to insert an X mark in the square before three names with different terms to indicate the voter's choice. All

legal voters shall be eligible to vote at such election. The three candidates who shall receive the highest numbers respectively of the votes cast at such election shall be the elected supervisors for the district. In case of a tie, the election shall be determined by lot, under the direction of the committee. The committee shall supervise such election, pay all the expenses thereof, prescribe the regulations governing the same, determine the eligibility of voters and publish the results.

(2) In districts heretofore organized, the present supervisors shall hold their respective offices until the next annual spring town election following the expiration of their present terms. If the term of only one supervisor in the district shall expire in the spring of 1944 one supervisor shall be elected at that time for the term of three years. If the term of two supervisors shall expire in the spring of 1944, one supervisor shall be then elected for three years and one shall be elected for two years. If the terms of three supervisors shall expire at that time, three shall be elected for terms of one, two and three years respectively. Thereafter as such terms expire a successor shall be elected for the term of three years.

(3) After the effective date of this act, all elections except that provided for the organization of the district, in subdivision 1, shall be held at the time and place of holding the annual spring town meeting and the town election officers shall act as the officers of the soil conservation district election. Election of supervisors of the soil conservation district shall be by separate ballot. Nominating petitions conforming to the rules stated in subdivision 1 of this section shall be filed with the secretary of the soil conservation district at least 10 days before the time of holding the town meeting. The ballots for use at the election shall be prepared by the secretary of the conservation district and delivered to the town clerk and shall conform to the rules in subdivision 1 of this section so far as applicable. All laws relating to town elections shall govern. The county auditor shall canvass the returns and certify the result to the state soil conservation committee, and if the soil conservation district embraces land in more than one town the state soil conservation committee shall canvass the results of the election and publish the result.

(4) If a vacancy except by reason of expiration of term shall occur in the office of an elected supervisor, more than 30 days before the next annual town meeting, the governing body of the district shall fill the vacancy by appointment; and the supervisor appointed shall hold office until the next annual town meeting. If the term does not then expire, his successor shall be elected and hold office for the remainder of the term. If a vacancy except by reason of expiration of term shall occur in such office less than 30 days before the next annual town meeting, the governing body of the district shall fill the vacancy by appointment; and the supervisor shall hold office until the expiration of the term or until the second succeeding town meeting, whichever is the shortest term, when his successor shall be elected. (As amended Apr. 2, 1943, c. 274, §2.)

Supervisors must be elected in March even in a town wholly located in a village which only has elections in December. Op. Atty. Gen. (705a-3), Oct. 21, 1943.

(2).

Supervisors holding office on effective date of act, July 1, 1943, continue to hold office until 1944 spring town election, including one holding over from 1943 election, which was not held. Op. Atty. Gen. (705a-8), June 10, 1943.

6932-6. Supervisors—Appointment—Qualifications—Term—Organization.—The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided hereinabove. The two supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties hereunder.

The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of 1 and 2 years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected or appointed and has qualified. Vacancies in the office of supervisor appointed by the state committee, for an entire term or an unexpired term, shall be filled by the state committee. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties if funds are available therefor.

The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The county attorney of the district in which the major portion of said soil conservation district is located, shall be the attorney for said district, and the supervisors thereof, and the said supervisor may call upon said attorney for the necessary legal counsel and advice and service. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the State soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; the State Comptroller shall annually audit the books of said soil conservation district and its supervisors. Any supervisor may be removed by the State soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory

comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. (As amended Apr. 2, 1943, c. 274, §3.)

This section provides procedure for holding elections of supervisors after soil conservation districts have been organized. Op. Atty. Gen. (705a-3), May 8, 1941.

Supervisors may hold meetings at points other than at principal office. Op. Atty. Gen. (705a-3), Dec. 5, 1941.

Postage, stationery and printing expenses are proper items of expense, but all printing expense should be incurred by state committee pursuant to regulations of commissioner of administration. Op. Atty. Gen. (705A-8), Jan. 30, 1942.

Soil conservation district supervisor may be reimbursed for travel expense. No deputy supervisor is authorized. Op. Atty. Gen. (705a-8), Nov. 17, 1942.

District supervisors attending a meeting of Minnesota Soil Conservation Association are entitled to reimbursement for expenses necessarily incurred, if funds are available therefor. Op. Atty. Gen. (705a-8), Jan. 5, 1943. Whether attendance at such a meeting is in "discharge of duties" is a question of fact. Op. Atty. Gen. (705a-8), Jan. 16, 1943.

If no election is held, supervisors hold over. Op. Atty. Gen. (705a-8), June 2, 1943.

Persons elected to office should file an oath of office. Op. Atty. Gen. (705a-3), Oct. 21, 1943.

A district has to provide and pay for surety bond. Op. Atty. Gen. (705a), Dec. 8, 1943.

6932-6a. Effective July 1, 1943.—This act shall take effect July 1, 1943. (Act Apr. 2, 1943, c. 274, §4.)

6932-7. Powers of districts and supervisors.

District may acquire coniferous forest planting stock from commissioner of forestry under Laws 1941, c. 84, §1. Op. Atty. Gen. (203H-9), Mar. 7, 1942.

Chairman of board of supervisors of a soil conservation district has authority to administer oath of office to a newly appointed or elected supervisor. Op. Atty. Gen. (705a-8), July 20, 1942.

A supervisor of a soil conservation district may administer oaths of verification on small claims against district, but secretary has no authority to administer oaths. Op. Atty. Gen. (705a-8), July 20, 1942.

Oath of a supervisor of a soil conservation district for expense incurred by him may be taken by another supervisor, but a supervisor cannot administer an oath to himself. Op. Atty. Gen. (705a-8), July 23, 1942.

District may have stationery printed with the name of the district thereon, and containing other information, and may have envelopes printed, and obtain signs to be displayed in front of the office. Op. Atty. Gen. (705a-8), June 2, 1943.

Court may adopt rule requiring claims to be presented in the same manner as is required by villages. Op. Atty. Gen. (705a), Dec. 8, 1943.

6932-12. Cooperation between districts.

Where a farmer owns land located partly in each of two districts, the two districts may enter into a cooperative arrangement and jointly plan conservation program covering entire farm. Op. Atty. Gen. (705a-3), Sept. 8, 1942.

CHAPTER 45

Seals

6933. Private seals abolished.

Requirement of a sealed instrument for conveying easement. 26 IowaLawRev 41.

CHAPTER 46

Notaries Public

6938. Term—Bond—Oath.

Laws 1943, c. 211, legalizes notarial acknowledgments taken last seven months of 1942, by notaries whose term of office had expired.

The only way a personal surety may be relieved of obligations is for him to prevail on notary to secure and file a new bond. Op. Atty. Gen., (320a), Dec. 2, 1939.