

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.

Edited by  
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**6974. Instruments legalized.**

Acknowledgments of instruments taken by notary after commission expired legalized. Laws 1943, c. 211.

**6977. In other states—By whom taken.**

A deed executed in another state, witnessed, and acknowledged before a notary public of that state, with his seal impressed thereon, is entitled to record without further authentication. Op. Atty. Gen. (373b-9-(a)), Dec. 15, 1943.

**6978. Certificate, how authenticated.**

A deed executed in another state before a notary having no seal, accompanied by certificate of secretary of state to official character of notary, may be recorded. Op. Atty. Gen. (373b-9a), July 30, 1942.

A deed executed in another state, witnessed, and acknowledged before a notary public of that state, with his seal impressed thereon, is entitled to record without further authentication. Op. Atty. Gen. (373b-9-(a)), Dec. 15, 1943.

**6979. In foreign countries.**

Acknowledgments heretofore taken in foreign countries by a judge of a court of law, declared valid. Laws 1941, c. 340.

**6981-1. Validation of foreign acknowledgments.—**

That all acknowledgments to any Deed or other Instrument heretofore taken in any foreign country by a Judge of a Court of Law therein, where the signature of said Judge was written and the stamp or seal of the Court was attached, affixed or impressed on said deed or other instrument are certified to be genuine by a President or Vice President of the Supreme Law Court of the foreign country where the acknowledgment was taken and where the signature of said President or Vice President of said Supreme Law Court and the stamp or seal of said Supreme Law Court on said instrument are certified to be genuine by the Consul or Vice Consul of the United States in said foreign country, be, and the same are hereby declared to be legal and valid and effectual for all purposes. (Act Apr. 21, 1941, c. 340, §1.) [647.51]

**6981-2. Same—Application.—**This act shall not apply to any pending actions and no action shall be maintained questioning the validity of any acknowledgment coming within the purview of Section 1 of this Act unless said action be brought within 6 months after its enactment. (Act Apr. 21, 1941, c. 340, §2.) [647.51]

**6982. Soldiers and sailors abroad.—**Any person enlisted, commissioned, or employed in the armed forces of the United States, in addition to the acknowledgment of instruments in the manner and form and as otherwise authorized by sections 6979 and 6981, may acknowledge the same wherever located before any officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or ensign or higher in the navy, or any commissioned officer in active service of any component of the armed forces of the United States as now or hereafter constituted, which officer shall certify thereto over his official sig-

nature and title in substantially the form applicable as provided in section 6981, omitting reference to an official seal. Such certificate shall state that the person so acknowledging is at the time of acknowledgment enlisted or employed in the armed forces of the United States and that the officer taking the acknowledgment is in the active service of the armed forces of the United States. The authentication of acknowledgments provided by section 6981 is not required. No charge of any character shall be paid to or exacted by any officer taking the acknowledgment. (As amended Act Mar. 2, 1943, c. 95.)

Acknowledgments of soldiers and sailors may be taken before military or naval officers for purposes of motor vehicle registration. Op. Atty. Gen. (310), Dec. 29, 1941.

An unacknowledged instrument relating to conveyance of land, such as a power of attorney, may be proven by the subscribing witnesses, but where there are not subscribing witnesses, but only a certificate that it was subscribed and sworn to, the instrument is not entitled to record. Op. Atty. Gen. (373b-9-a), June 14, 1943.

Power of attorney executed by a soldier must be acknowledged and witnessed to be entitled to record, not merely sworn to. Id.

Laws 1943, c. 95, amending this section, controls taking of acknowledgments within continental United States, while Laws 1943, c. 445, controls taking of acknowledgments outside continental United States. Op. Atty. Gen. (310), Aug. 20, 1943.

Oath attached to application of man in armed service other than Alaska and Island Possessions of the United States may be sworn to before a commissioned officer in active service, and such an officer may also be the attesting witness on ballot envelope. Op. Atty. Gen. (639e), Nov. 26, 1943.

**6982-1. Commissioned officers to take acknowledgments.—**

Commissioned officers in the armed services of the United States, while outside continental United States, are hereby authorized to administer oaths required or authorized by law and to certify acknowledgments of deeds and other instruments required or authorized by the laws of this state. No seal, reference to a seal, nor any other authentication of any act of any such officer authorized under this act shall be required. A statement of the rank and branch of the service by the officer taking such acknowledgment or administering the oath attached to the instrument or affidavit shall be prima facie evidence of the truth thereof and of such officer's authority under this act. (Act Apr. 14, 1943, c. 445, §1.) [358.271]

This act controls taking of acknowledgments outside continental United States. Op. Atty. Gen. (310), Aug. 20, 1943.

**6982-2. Acknowledgments legalized and validated.**

—All acknowledgments heretofore taken and all oaths heretofore administered since December 7, 1941, by any commissioned officer who is authorized to administer oaths and to take or certify acknowledgments under the provisions of this act are hereby legalized and validated. (Act Apr. 14, 1943, c. 445, §2.)

This act controls taking of acknowledgments outside continental United States. Op. Atty. Gen. (310), Aug. 20, 1943.

## CHAPTER 49

## Fees

**6987. Fees of clerk of district court.**

Under Laws 1919, chapter 229, clerk is not entitled to receive fees in personal property tax cases, while clerks governed by Laws 1937, chapter 19, are entitled to receive and retain fees in such cases. Op. Atty. Gen. (144B-21), Sept. 30, 1939.

Salary and compensation of clerk of district court for Wilkin County. Op. Atty. Gen. (144A-4), Mar. 23, 1942.

(48).

Clerk is not entitled to charge 20 cents for indexing each plaintiff and each defendant in actions to quiet title where there are a great number of defendants, without a rule or order of the court. Op. Atty. Gen., (144B-15), Sept. 19, 1939.

Clerk may not charge an indexing fee in absence of a rule or order of court, but an order fixing a fee therefor remains in effect until modified or abrogated. Op. Atty. Gen. (144B-15), Oct. 20, 1941.

**6989. Fees of clerk of district court in certain counties.**

Clerk of district court should charge usual \$3.00 deposit fee for state highway condemnation cases when an appeal is taken from the award of the commissioners, but a second fee should not be charged in case of a second appeal involving same land and same award of damages. Op. Atty. Gen. (144b-12), June 12, 1942.

**6993. Fees of sheriffs.**

Right of justice of the peace and a sheriff or constable to advance payment of their fees when jury trial is demanded in justice court. *State v. Delaney*, 213M217, 6NW(2d)97. See *Dun. Dig.* 5300.

Sheriff can collect regular mileage and fees from each person who pays him delinquent personal property taxes, holding either a warrant or citation, and amount collected over and above the tax, penalty and interest and clerk's fee belongs to the sheriff, and where sheriff attempts but fails to collect personal property tax warrants or citation, such compensation as fixed by county board. *Op. Atty. Gen.* (390c-13), Oct. 21, 1942.

When sheriff has been paid mileage by the county, amount included in personal property tax judgment on that account, when collected, belongs to the county. *Op. Atty. Gen.* (390c-13), Oct. 21, 1942.

(5).

Sheriff selling real estate under execution is entitled to percentage of amount bid, though no cash is paid and property is purchased by judgment creditor. *Op. Atty. Gen.* (390c-11), June 24, 1942.

(8).

Sheriff selling real estate under execution is entitled to percentage of amount bid, though no cash is paid and property is purchased by judgment creditor. *Op. Atty. Gen.* (390c-11), June 24, 1942.

(18).

In absence of a request that service be made on a defendant at some specific address, any travelling which sheriff may do in making "search and inquiry" is upon his own responsibility and he is not entitled to mileage. *Op. Atty. Gen.* (390c-10), Aug. 8, 1942.

(23).

Where a default personal property tax judgment is entered and sheriff returns execution unsatisfied, he is entitled to usual fee, including mileage and percentage, in case taxpayer thereafter voluntarily pays amount of tax judgment to county treasurer. *Op. Atty. Gen.* (390c-13), Nov. 28, 1939.

Sheriff can collect regular mileage and fee from each person who pays his delinquent personal property tax, and amount collected over and above tax, penalty and interest and clerk's fee, belongs to sheriff, and for services in attempting collecting of personal property tax citations, he is to receive such reasonable compensation as county board shall allow him. *Op. Atty. Gen.* (390c-13), Aug. 21, 1941.

If collection of personal property tax citation is made by the sheriff without distress and sale, the compensation is such as is fixed by the county board, but if collection is after distress and sale, fees are 5% on the amount collected. *Op. Atty. Gen.* (390c-13), Oct. 11, 1943.

**6995. 1. Fees of coroners.**—For viewing or examining each dead body ten dollars and mileage at ten cents per mile for necessary travel, and for each additional day required, five dollars.

2. For holding an inquest, ten dollars for each day's necessary attendance after the day on which the body was viewed, and mileage as above, and 15 cents per folio for writing the record, including testimony witnesses.

3. In performing the sheriff's duties a coroner shall receive the fees allowed to the sheriff for like services.

4. Physicians called by the coroner to make autopsies shall be allowed fifteen dollars per day and mileage as above, and, when the county board shall be satisfied that the autopsy was attended by great and unusual difficulties, they may allow such further sum to the physicians as may be just compensation for the services. A coroner or deputy coroner, who is duly licensed and registered to practice medicine and surgery in this State, shall not be disqualified from rendering medical care or hospitalization to a recipient of public relief or being appointed an examiner in insanity or incompetency hearings, or from being compensated therefor, by virtue of holding such office. This act shall apply to all counties now having or hereafter having a population of less than 275,000 but shall not apply to any county where such fees are now fixed by special laws. (As amended Apr. 6, 1943, c. 314, §1.)

Mileage allowed covers entire cost of coroner's transportation, including, if coroner uses his own car, depreciation, rent, repairs, storage and all other expenses incidental to use of car or its injury in a collision. *Op. Atty. Gen.* (103a), June 17, 1941.

Where fees of coroner are fixed by statute, county board may not allow any sum in excess thereof. *Op. Atty. Gen.* (103a), July 23, 1943.

Where fees to coroner are fixed by statute, county board may not allow any sum in excess thereof. *Op. Atty. Gen.* (103a), July 23, 1943.

(4).

Coroner may not charge fee for performing an autopsy himself without assistance of another physician. *Op. Atty. Gen.* (103a), May 14, 1942.

**6996. Fees of constables.**

In a village of less than 5000 with a municipal court, a police officer making an arrest in his capacity as a peace officer, without a warrant, may not collect a fee, but if he makes an arrest upon a warrant he may charge fee allowed constable. *Op. Atty. Gen.* (847a-8), Jan. 14, 1941.

Compensation of officers in Minnetonka Township in Hennepin County. *Op. Atty. Gen.* (439b), June 17, 1941.

Constable may not charge fees when making arrest in private capacity. *Op. Atty. Gen.* (847a-4), Oct. 8, 1943.

Where person is convicted of violating a city ordinance and commitment to county jail is executed by a village officer, county is not liable for transporting prisoner to jail. *Op. Atty. Gen.* (91b), Oct. 19, 1943.

(11).

Mileage fee may not be charged when summons has been sent by mail. *Op. Atty. Gen.* (847a-4), Sept. 22, 1939.

A constable cannot charge separate mileage for each prisoner when he transports three prisoners on same trip. *Op. Atty. Gen.* (847a-5), Oct. 17, 1939.

**6997. Police officers—Fees in state cases.**

Chief of police receiving a warrant from municipal court for a felony against an accused in jail in another county may go to that county and be reimbursed from county funds. *Op. Atty. Gen.* (785), March 26, 1940.

**6998. Fees of justices of the peace.**

Right of justice of the peace and a sheriff or constable to advance payment of their fees when jury trial is demanded in justice court. *State v. Delaney*, 213M217, 6NW(2d)97. See *Dun. Dig.* 5300.

A justice of the peace is not allowed a specific fee of \$2.00 for transferring venue of a case, civil or criminal, to another justice. *Op. Atty. Gen.* (266B-25), Dec. 21, 1940.

(35).

Justice of the peace at Wayzata has no authority to hold court in city of Minneapolis for convenience of parties or an accused, but if he holds court in a town, village, or ward within his county adjoining the town or ward in which he resides, or in any village located within his town, he is entitled to 10 cents a mile for travel to and from place of holding trial. *Op. Atty. Gen.* (266a-13), Oct. 23, 1939.

**6999. Fees in justices courts—Costs and disbursements.**

Where action is settled between parties without any further court action after issuance of summons, it is only where summons asked for costs and disbursements that justice could enter judgment against defendant for costs. *Op. Atty. Gen.* (266B-7), Jan. 17, 1941.

**7002. Fees of register of deeds—Certain counties.**

Section 8365, as amended by Laws 1935, chapter 168, supersedes §7002(c), and register of deeds should receive 25 cents and no more for furnishing a certified copy of chattel mortgage filed with him. *Op. Atty. Gen.* (373B-10(e)), Oct. 18, 1939.

In view of federal law, register of deeds may not disclose or furnish list of old age assistance lien for delivery to a political candidate or for political purpose—fees which may be charged if list may be furnished. *Op. Atty. Gen.* (521t-4, 851e), Aug. 31, 1942, Sept. 23, 1942.

Fee to be charged for filing appointment and oath of deputy sheriff is ten cents. *Op. Atty. Gen.* (373b-10-i), Aug. 31, 1942.

County is to pay fee for filing with register of deeds appointment and oath of deputy sheriff. *Op. Atty. Gen.* (373b-10-i), Aug. 31, 1942.

Where county is not interested in fee collected and register of deeds receives his compensation form fees, he may charge less than statute permits him to charge for the filing of a satisfaction, but if he has compensation under the statute in addition to his fees collected for such services, in the computation of the amount which he receives for filing satisfactions of chattel mortgages, he will be required to compute the full amount which the law provides and enter the amount that he charged less than the law provides, when using this as a basis for additional compensation. *Op. Atty. Gen.* (373b-10-c), Apr. 28, 1943.

Doing business under a trade name in the making of abstracts does not exempt register of deeds from application of the law as to fees therefor, and he cannot charge more for abstracts of title than the legal fees, and abstractor using register of deed's office is limited to fees provided by statute, and county board may charge rent to abstract company using space in court house. *Op. Atty. Gen.* (11), Aug. 10, 1943.

(3).

Register of deeds may collect a fee of 25 cents for certifying as true by rubber stamp and signature a copy of a chattel mortgage filed with him. *Op. Atty. Gen.* (373b-5), Mar. 31, 1941.

(4). Articles of incorporation in the Norwegian language cannot be recorded. Op. Atty. Gen. (373B-17(d)), Dec. 18, 1940.

(5). Where mortgagee has a number of mortgages against one mortgagor, and last mortgage is paid and on satisfaction he sets up mortgage paid and also all other prior mortgages and gives number and date of filing of each instrument, register of deeds is entitled to charge a separate fee for each satisfaction recorded. Op. Atty. Gen., (373B-16), March 19, 1940.

#### 7005. Fees of appraisers, etc.

Where sheriff picks up city police officers and goes to scene of a bank robbery in another town and engage in gun battle and capture and convict the robbers, county board is limited in payment of city officers to three dollars per day and mileage, and is without power to pay reasonable compensation for services rendered. Op. Atty. Gen., (390a-1), Dec. 11, 1939.

#### 7007. Witness fees of officers of municipalities.

Village councilmen of New York Mills attending court in defense of action against village are not entitled to reimbursement for expenses, though they are eligible to receive witness fees and mileage outside of village. Op. Atty. Gen., (469a-8), Jan. 4, 1940.

#### 7009. Expert witnesses.

Fees of all witnesses, expert and otherwise, in a proceeding under the Psychopathic Personality Act are payable by county on order of probate court, and it is immaterial who calls the witnesses. Op. Atty. Gen., (248B-11), April 12, 1940.

A psychiatrist under subpoena as an expert in a psychopathic personality proceeding is entitled to fee

fixed by court under general statute, and it is immaterial that he is employed in the service of the state. Op. Atty. Gen. (248B-11), June 1, 1940.

**7010. Compensation of jurors.**—Each grand and petit juror shall receive \$4.00 per day, including Sundays, for attendance in district court, and ten cents for each mile traveled in going to and returning from court in counties having a population of less than 200,000, and \$3.00 per day in counties having a population of more than 225,000 and less than 350,000 and \$3.00 per day and mileage as above set forth, in counties having a population of over 350,000, the distance to be computed by the usually traveled route, and paid out of the county treasury. The clerk of the district court shall deliver to each juror a certificate for the number of days' attendance and miles traveled for which he is entitled to compensation. Talesmen actually serving upon any petit jury shall receive the sum of \$3.00 per day. (As amended Act Apr. 17, 1943, c. 484, §1.)

#### 7014. Fees for services not rendered—Illegal fees.

Constable is only village officer who may charge a fee for serving justice court warrants or attending on justice court, and enforcement of village ordinances, including appearances in justice court in connection with prosecutions thereunder is a part of regular, official duties of village marshal and village policemen, for which their salaries are full compensation. Op. Atty. Gen. (847-2-4), Jan. 21, 1941.

## CHAPTER 49A

### Trade and Commerce

#### 1. Contracts and written instruments in general.

No particular form of words or of instrument is required to render an assignment valid, but an intent to transfer must be manifested and the assignor must not retain any control over the fund or any power of revocation. *Springer v. J. R. Clark Co.*, (DC-Minn), 46FSupp 54. See Dun. Dig. 554.

There must be an offer and an acceptance and a clear accession on both sides to one and same set of terms. *Young v. St. Paul Publishers*, 210M346, 298NW251. See Dun. Dig. 1742.

A direction by owner's agent to a contractor drilling a well to bore deeper is not an interference with performance and does not authorize the contractor to abandon work. *Yljarvi v. Brockphaler*, 213M385, 7NW(2d) 314. See Dun. Dig. 1790.

#### 2. —Mutual assent.

Mistake in injuries released. *Larson v. Sventek*, 211M 385, 1NW(2d) 608, note 29. See Dun. Dig. 1742.

Relief from a mutual mistake may be granted defensively as well as offensively. *Lawrenz v. L.*, 206M315, 288 NW727. See Dun. Dig. 8337(30).

A statement of intention is not a promise upon which can be predicated a contract. *Sickmann's Estate*, 207M 65, 289NW832. See Dun. Dig. 1726.

On a claim by a son against his mother's estate for improvements made to her farm, evidence held insufficient to sustain a finding of a contract to reimburse him therefor. Id. See Dun. Dig. 1742.

A mistake of one contracting party, with knowledge of it by the other, is as much a ground for relief as mutual mistake. *Rigby v. N.*, 208M88, 292NW751. See Dun. Dig. 1743.

Whether performance by an optionee to purchase land has been made or tendered is a question of fact. *Ferch v. H.*, 209M124, 295NW504. See Dun. Dig. 1749a.

If an offer is so indefinite as to make it impossible for a court to decide just what it means and to fix exactly legal liabilities of parties, its acceptance cannot result in an enforceable contract. *Young v. St. Paul Publishers*, 210M346, 298NW251. See Dun. Dig. 1744.

An expression of mutual and final assent is operation that completes making of a contract. Id. See Dun. Dig. 1742.

Statement in *Enge v. John Hancock Mut. L. Ins. Co.*, 183M117, 123, 236NW207, that a contract "contemplates a meeting of the minds on a proposition" and that "both (parties) must understand the agreement alike" is corrected in so far as it requires that there be a meeting of the minds in all cases in order to establish a contract. *Field-Martin Co. v. Fruen Milling Co.*, 210M388, 298NW 574. See Dun. Dig. 1742.

Where two plans had been prepared for construction by plaintiff for defendant of a building and defendant reasonably interpreted written offer as referring to and incorporating second rather than first of plans, contract covered second plan regardless of intention of plaintiff. Id. See Dun. Dig. 1842.

The undisclosed understanding of the offeror concerning the meaning of his own ambiguous words or conduct is immaterial in so far as offeree, in accepting offer, has, in ignorance of the undisclosed intention of the offeror, reasonably and in good faith construed offer otherwise than as intended. Id. See Dun. Dig. 1742, 1744.

In some cases there may be a contract though the minds of the parties never meet. Id. See Dun. Dig. 1742.

It is not meeting of the minds, but manifestation of mutual assent, which is essential to making of a contract. Id. See Dun. Dig. 1742.

A stockholder authorizing his attorney to offer his stock and that of another at a certain price on condition that purchaser must agree to purchase other stock on the same basis to the extent of a certain number of shares, a letter written by attorney containing the offer and a letter accepting the offer established a contract by such stockholder to sell stock owned by him, though offer was not authorized by the other stockholder. *Haglin v. Ashley*, 212M445, 4NW(2d) 109. See Dun. Dig. 1742, 8499, 8500.

The purpose of confirming oral agreements by writing is to avoid misunderstandings, and all preliminary negotiations are understood to have been waived, abandoned, and merged into the writing. Id. See Dun. Dig. 1723a.

Resolution by a school board providing that a certain system of shorthand should be exclusive system used created no contractual rights in owner of that system, resolution amounting to no more than a statement of policy, and resolution could be reconsidered and rescinded. *Caton v. Board of Education*, 213M165, 6NW(2d) 266. See Dun. Dig. 1742.

The influence must be such that it overcomes the volition of the person influenced. *Hafner v. Schmitz*, 215M 245, 9NW(2d) 713. See Dun. Dig. 9949.

The burden of proof is upon the party asserting undue influence. Id. See Dun. Dig. 9950a.

Unless the evidence is conclusive one way or the other, the question of undue influence is one of fact and, like any other question of fact, is for the jury or trial court. Id. See Dun. Dig. 9952.

#### 3. —Execution and delivery.

A conditional delivery of an insurance policy by the home office of the company to its agent is not a delivery to an applicant. *Rogers v. Great-West Life Assur. Co.*, (DC-Minn), 48FSupp86. See Dun. Dig. 1736, 4654.

A contract to enter into a future contract of guaranty is binding like any other contract to enter into a particular contract in the future, and upon breach of a contract to guarantee a debt, party entitled to guaranty may recover amount of debt remaining past due and unpaid. *Holbert v. Wermerskirchen*, 210M119, 297NW327. See Dun. Dig. 1749.

In action by a realtor to recover commission wherein it appeared plaintiff procured a purchaser for two lots, for a price and on terms agreeable to defendant, and defendant signed and delivered to plaintiff an earnest