

1936 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 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.



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1936

or stolen bond, certificate of indebtedness, or other written obligation of the state, in any special case where it deems that the person entitled to a duplicate is unable to furnish such indemnity bond without hardship and that it is improbable that the original obligation will ever be found or presented for payment. Such waiver shall be certified to the state treasurer. (Act Apr. 15, 1929, c. 192, §4.)

125-11. Certificates of indebtedness to pay warrants on revenue fund.—Whenever it becomes necessary in order to meet the current demands upon the revenue fund for the payment of warrants issued or to be issued against said fund for the payment of appropriations, the executive council at any time prior to June 30, 1937, upon adopting a resolution determining such necessity, may issue and sell certificates of indebtedness of the state payable out of said revenue fund in such amount as may be necessary to pay such warrants, such certificates to be numbered serially and to be of such denomination and bear such dates of issue and of maturity and such rate of interest as the said council shall determine, provided that no such certificate shall mature more than six (6) months after the date of its issuance or sale, whichever is later, and providing further that the aggregate amount of such certificates at any time outstanding shall never exceed \$9,000,000. If funds are not available to retire any such certificates at maturity, the same may be refunded by the issuance of new certificates or may be extended by agreement with the holders thereof. Certificates issued and sold pursuant to the authorization of this act shall be retired out of the receipts of the revenue fund appropriated to the payment of the warrants issued against said fund but taken up with the proceeds of such certificates. \$200,000 or so much thereof as may be necessary is hereby appropriated and made available for the biennium ending June 30, 1937, to pay the interest upon such certificates. (Act Jan. 6, 1934, Ex. Ses., c. 52; Apr. 24, 1935, c. 255.)

125-12. May not hire publicity representative.—No state department, bureau or division, whether the same operates on funds appropriated or receipts or fees of any nature whatsoever, including, but not limited to, the Department of Rural Credits, Highway Department and Game and Fish Division, shall use any of such funds for the payment of the salary or expenses of a publicity representative. The head of any such department, bureau or division shall be personally liable for funds spent contrary to this provision.

This shall not be construed, however, as preventing any such department, bureau or division, from sending out any bulletins or other publicity required by any state law or necessary for the satisfactory conduct of the business for which such department, bureau or division was created. (Act Apr. 29, 1935, c. 391, 538.)

125-13. Reimbursement of employees compensation revolving fund.—In all cases where any state department owes the Employees Compensation Revolving

Fund created by Laws 1933, Chapter 161 [§§ 4337-6 to 4337-10], for claims paid its employees and no direct appropriation is made therefor, such department shall reimburse said Revolving Fund from the funds available to it for supplies and expense. (Act Apr. 29, 1935, c. 391, §39.)

126. Board of Relief. * * * * *

2. Certificates of indebtedness for relief of distress authorized.—The state board of relief is hereby authorized to take any measures necessary to prevent or avert any impending disaster which threatens to destroy life or property in this state, to grant relief or temporary assistance to communities in this state stricken by disease, flood, storm, fire (or) action of the elements, or extreme economic distress causing destitution of families or individuals or disabled persons, or prevent the occurrence or spread of any such calamity or disaster which might entail loss of life or property or result in great suffering and hardship among the people of this state, and in any such event, it shall have the authority to commandeer and take for use, in any such emergency, any property, vehicle, motor car or any means of transportation by rail or water or any means of communication or any public service, which in the opinion of the said board might be necessary to save life or property or prevent and avert any such impending disaster or furnish assistance or relief to communities in this state, so stricken, or for the prevention of any such calamity. The owner of any property so taken shall be given a receipt for the same and shall be paid for the use of such property or for any damage which might be caused to the same while in the service of the state board. (As amended Apr. 21, 1933, c. 355.) * * * * *

6. Loan Authorized.—For the purpose of carrying out the provisions of this act, whenever an emergency exists, the board of relief hereby created is authorized to borrow such a sum of money, not exceeding seven hundred fifty thousand dollars (\$750,000), as shall in its judgment be necessary and sufficient. (As amended Apr. 21, 1933, c. 355.) * * * * *

This act does not authorize the State Board of Relief to take a note for seed grain furnished by the state to a farmer without such grain or means to procure it, because of the excessive floods which occurred in Marshall county in the year 1919. 172M344, 215NW510.

By receiving the grain from the state and by giving his note therefor, defendant held not to have become estopped from denying liability on the note. 172M344, 215NW510.

2. Authority.

Executive council has power to place unemployed persons upon farms and furnish them with animals, machinery, feed and furniture to get them started. Op. Atty. Gen., May 20, 1933.

Act permits executive council to grant relief to be disbursed by Soldiers' Home Board. Op. Atty. Gen., Aug. 1, 1933.

Responsibility for administration of fund appropriated by executive council for relief of disabled veterans and their families rests with state board of control and not state soldiers' home board. Op. Atty. Gen., Oct. 6, 1933.

Act creating Lincoln-Lyon tornado relief commission, defining powers respecting relief to tornado swept district. Laws 1931, c. 130.

CHAPTER 5

Judicial Department

SUPREME COURT

132. Writs—Process.

Deduction of inheritance tax because of disallowance of claims against estate cannot be reached by certiorari. 179M233, 228NW920.

Appeal and not mandamus is proper remedy to compel making of findings of fact. 180M580, 230NW472.

Where mandamus is used to review an order of trial court on motion to change place of trial to promote convenience of witnesses and ends of justice, only matters presented to trial court can be considered. State v. District Court of Brown County, 261NW701. See Dun. Dig. 5764a, 10126, 10127, 10129.

133. Power—rules.

Rules governing attorneys in the practice of their profession. 16MinnLawRev270.

COMMISSIONERS

135 to 137. [Superseded.]

Superseded by amendment of art. 6, §2, of the constitution, promulgated Nov. 20, 1930.

DISTRICT COURT

154. Jurisdiction.

The federal district court has no discretion to refuse to hear and determine cases removed from a state court and

based on the Federal Employers' Liability Act and arising out of injuries received in another state; and comity does not require the court to respect an injunction granted by the foreign court. *Beem v. Illinois Cent. Ry. Co.*, (DC-Minn), 55F(2d)708; *Doyle v. Northern Pac. Ry. Co.*, (DC-Minn), 55F(2d)708. See Dun. Dig. 1530.

Suit to enjoin railroad from abandoning a line as authorized by interstate commerce commission, was not within the jurisdiction of the state court, although it was alleged that the order violated a contract between the railroad and a municipality, and the federal district court acquired no jurisdiction of the cause upon its removal. *Village of Mantorville v. C.* (USDC-Minn), 8F Supp791. See Dun. Dig. 8400.

Act of president of a national bank in receiving money of another and misapplying it was a violation of a federal statute (Mason's Code, Tit. 12, §592), and he could not be prosecuted in state court for grand larceny. 171M466, 214NW279.

District court has jurisdiction of action by nonresident against foreign corporation based on Federal Employers' Liability Act, and it is the duty of such court to assume jurisdiction. 180M52, 230NW457.

District court, in equity suit, had jurisdiction to determine whether widow had elected to take under will. 180M134, 230NW575.

Court in Minnesota may grant injunctions by default against the prosecuting of a cross-action in Texas in a case therein to foreclose a mortgage on Texas land, all parties being domiciled in Minnesota. *Child v. H.*, 183M 170, 236NW202. See Dun. Dig. 1554(29).

Public policy of this state does not forbid recovery here against estate of deceased tortfeasor for surviving liability for tort committed extraterritorially, though liability does not survive under our statutes. *Chubbuck v. Holloway*, 182Minn225, 234NW314, 868, adhered to. *Kerston v. J.*, 185M591, 242NW329. See Dun. Dig. 1531.

Discretion to dismiss actions between non-residents on causes of action arising outside of state. 15MinnLawRev 83.

156. Writs.

The position of general superintendent and engineer of the water department of the city of St. Paul is an employment and not an office, and quo warranto does not lie to determine the right to hold it. 174M410, 219NW 760.

Quo warranto to test right of corporate directors to act. 180M486, 231NW197.

A district judge, exercising power of court itself, has jurisdiction to vacate an order of court commissioner for a writ of habeas corpus and to quash writ if issued, merits of matter not having been decided by commissioner. *State v. Hemenway*, 194M124, 259NW687. See Dun. Dig. 2331.

Petition to test validity of incorporation of a village should name officers of newly incorporated village and the defendants in the proposed proceedings. *Op. Atty. Gen.* (361e-4), Dec. 14, 1934.

161. District courts to be open at all times.

District court is held, within meaning of Gen. Stats. 1913, §238, as amended by Laws 1919, c. 229, when judge is sitting for the determination of questions of fact or of law, and there is no distinction between general and special term days. *Op. Atty. Gen.*, Dec. 24, 1931.

Sections 161 and 178 are not inconsistent but merely provide two different methods of calling special grand juries. *Op. Atty. Gen.* (494a-3), June 15, 1934.

162. Times for holding general terms.

Third Judicial District

The general terms of district court in the several counties constituting the Third Judicial District of the State of Minnesota shall be held each year at the times prescribed as follows:

Houston County on the third Monday in May and the fourth Monday in October;

Olmsted County on the third Monday in January, April and September;

Wabasha County on the third Monday in May and the second Monday in November;

Winona County on the second Monday in January and the third Monday in April and September;

Provided, however, that when any general term in any of said counties shall be adjourned for a period of more than thirty days, and issues of fact in any action are joined more than eight days before the first day of any such adjourned term, then and in that case such action may be brought on for trial at such adjourned term upon notice of trial served eight days or more before the beginning of said adjourned term; such notice of trial shall be filed with the clerk at least six days before the beginning of such adjourned term and shall serve as a note of

issue. ('17, c. 2, §1; '21, c. 103, §1; '23, c. 14, §§1, 2; '25, c. 84, §§1, 2; Mar. 20, 1935, c. 62, §1).

Fifth Judicial District

The general terms of the district court in the several counties constituting the Fifth Judicial District of the State of Minnesota shall be held at the times herein prescribed, as follows:

In Dodge County, the first Monday in April and the third Monday in September.

In Rice County, the first Monday in May and the first Wednesday after the first Monday in November.

In Steele County, the first Monday in June and the first Monday in December.

In Waseca County, the first Monday in March and the second Monday in October.

Provided, however, that where any general term in any of said counties has been or shall hereafter be adjourned for a period of more than thirty (30) days, and issues of fact in any action are joined more than eight (8) days before the first days of any such adjourned term, then and in that case such action may be brought on for trial, at such adjourned term upon notice of trial served eight (8) days or more before the beginning of said adjourned term. (R. L. '05, §97; '09, c. 244, §1; '13, c. 326, §1; '25, c. 99, §1; Feb. 9, 1933, c. 15, §1.)

Sec. 2 of Act Feb. 9, 1933, cited, repeals inconsistent acts and §3 provides that the act shall take effect from its passage.

Seventh Judicial District

The general terms of the District Court in the several counties constituting the Seventh Judicial District of the State of Minnesota shall be held at the time herein prescribed, as follows:

In Becker County, on the first Monday in March, and the second Monday in September.

In Benton County, on the first Monday in March, and the second Monday in September.

In Clay County, on the second Monday in April, and the second Monday in November.

In Douglas County, on the first Monday in March, and the second Monday in September.

In Mille Lacs County, on the third Monday in March, and the second Monday in October.

In Morrison County, on the second Monday in May, and the first Monday in December.

In Otter Tail County, on the second Monday in April, and the second Monday in November.

In Stearns County, on the second Monday in April, and the second Monday in November.

In Todd County, on the third Monday in March, and the second Monday in October.

In Wadena County, on the first Monday in March, and the second Monday in September. (R. L. '05, §97; '09, c. 244, §1; '13, c. 9, §1; '15, c. 90; '17, c. 37, §1; '25, c. 9, §1; Apr. 6, 1931, c. 117, §1; Feb. 15, 1933, c. 28, §1; Mar. 23, 1933, c. 108, §1; Mar. 15, 1935, c. 46, §1.)

Act Mar. 15, 1935, cited, provides that the act shall take effect from its passage.

Ninth Judicial District

The general terms of the district court in the several counties constituting the Ninth Judicial District of the State of Minnesota shall be held at the time herein prescribed, as follows:

Brown County: On the third Monday in May and the fourth Monday in November.

Lincoln County: On the fourth Monday in March and the fourth Monday in September.

Lyon County: On the fourth Monday in April and the third Monday in November.

Nicollet County: On the first Tuesday in May and the second Tuesday in October.

Redwood County: On the second Monday in April and the fourth Monday in October.

Sec. 2. **Effective March 1, 1931.**—This act shall take effect and be in force from and after March 1,

1931. (R. L. '05, §97; '09, c. 244, §1; '15, c. 67, §1; superseded '25, c. 102, §1; Mar. 9, 1931, c. 50, §1.)

Tenth Judicial District

That the General Terms of the District Court shall be held each year in the several counties constituting the Tenth Judicial District of the State of Minnesota at the time herein prescribed as follows:

Freeborn County: First Monday in February; second Monday in May, and third Monday in September;
Mower County: Second Monday in March and second Monday in October;

Fillmore County: Third Monday in April and second Monday in November. ('17, c. 367, §1; '19, c. 29; Apr. 15, 1935, c. 182, §1.)

Sec. 2. **Effective July 1, 1935.**—This Act shall take effect and be in force from and after July 1, 1935. (Act Apr. 15, 1935, c. 182, §2.)

§3, repeals inconsistent acts.

Eleventh Judicial District

Carlton County, second Tuesday in February, first Tuesday in June, Third Tuesday in October.

St. Louis County, first Wednesday after the first day in January, the first Wednesday in March, May, September and November.

Lake County, first Wednesday in June and December.

Cook County, third Monday in June. (Jan. 27, 1936, Ex. Ses., c. 111.)

[Special provisions as to places for holding court, see §164 et seq.]

Twelfth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Twelfth Judicial District of the State of Minnesota at the same time herein prescribed as follows:

Chippewa County: First Monday in June; fourth Monday in November;

Kandiyohi County: Third Monday in March; first Monday in October;

Meeker County: Second Monday in June; first Monday in December;

Renville County: Second Monday in May; second Monday in November;

Swift County: Third Monday in May; second Monday in November;

Yellow Medicine County: First Monday in April; third Monday in September;

Lac qui Parle County: First Monday in May; second Monday in December. (R. L. '05, §97; '09, c. 244, §1; '23, c. 290, §1; '27, c. 55, §1; Feb. 2, 1933, c. 11, §1; Apr. 29, 1935, c. 356, §1.)

Thirteenth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Thirteenth Judicial District of the State of Minnesota at the times herein prescribed as follows: In Cottonwood County on the second Tuesday in May and the second Tuesday in November; in Murray County on the second Tuesday in April and the second Tuesday in December; in Nobles County on the second Tuesday in February and the second Tuesday in October; in Pipestone County on the second Tuesday in January and the second Tuesday in June; and in Rock County on the second Tuesday in March and the second Tuesday in September. (R. L. '05, §97; '09, c. 244, §1; '13, c. 52, §1; '21, c. 57, §1; Jan. 22, 1929, c. 3; Feb. 11, 1933, c. 22.)

Fourteenth Judicial District

The general terms of the District Court in the several counties constituting the Fourteenth Judicial District of the State of Minnesota shall be held, each year, at the times herein prescribed as follows:

Pennington County: On the fourth Monday in February and the first Monday in October.

Mahnomen County: On the fourth Monday in May.

Kittson County: On the fourth Monday in March, and the second Monday in November.

Roseau County: On the second Monday in April, and the fourth Monday in October.

Marshall County: On the first Monday in May, and the fourth Monday in November.

Norman County: On the third Monday in May, and the fourth Monday in October.

Polk County: On the first Monday in June, and the first Monday after the first day of January.

Red Lake County: On the second Monday in April, and the second Monday in October. (R. L. '05, §97; '09, c. 244, §1; '15, c. 43, §1; '17, c. 67, §1; '21, c. 135, §1; '25, c. 8, §1; '25, c. 34, §1; '27, c. 67, §1; Jan. 17, 1929, c. 2; Apr. 21, 1931, c. 285, §1; Mar. 3, 1933, c. 51, §1.)

Sec. 2 of Act Mar. 3, 1933, repeals inconsistent acts. Sec. 3 provides that the act shall take effect from and after Apr. 1, 1933.

Fifteenth Judicial District

The general terms of the district court shall be held each year in the several counties constituting the Fifteenth Judicial District of Minnesota, at the times herein prescribed, as follows:

Aitkin County, on the second Tuesday in May and the first Tuesday in December.

Beltrami County, on the third Tuesday in February and the second Tuesday in September.

Cass County, on the second Tuesday in May and the first Tuesday in December.

Clearwater County, on the third Tuesday in April and the first Tuesday in November.

Crow Wing County, on the third Tuesday in February and the second Tuesday in September.

Hubbard County, on the third Tuesday in April and the first Tuesday in November.

Itasca County, on the third Tuesday in February and the second Tuesday in September.

Koochiching County, on the second Tuesday in May and the first Tuesday in December.

Lake of the Woods County, on the third Tuesday in April and the first Tuesday in November.

In years when the first Tuesday in November is general election day the November terms shall be held on the first Wednesday of that month.

All Acts and parts of Acts inconsistent herewith are hereby repealed.

This Act shall take effect and be in force from and after February 1, 1934. (R. L. '05, §97; '09, c. 244, §1; '21, c. 143, §1; '23, c. 222, §2; '25, c. 344; '27, c. 197, §1; Dec. 23, 1933, Ex. Sess. c. 15.)

Seventeenth Judicial District

The general terms of the district court, to be held each year in the several counties constituting the Seventeenth Judicial District, of the State of Minnesota, shall be held commencing on the day hereinafter described, as follows, to-wit:

In Jackson county on the second Monday in February and the second Monday in September.

In Martin county, on the second Monday in March and the second Monday in October.

In Faribault county, on the second Monday in April and the second Monday in November. (R. L. '05, §97; '09, c. 244, §1; '21, c. 174, §1; Feb. 13, 1929, c. 16, §1.)

Sec. 2 of Act Feb. 13, 1929, c. 16, repeals Laws 1921, c. 174, and all inconsistent acts. Sec. 3 provides that the act shall be in force on and after June 1, 1929.

164. Eleventh Judicial District—St. Louis County.

—In addition to the general terms of the district court held at the county seat of St. Louis County as now provided by law, general terms of the district court for the county of St. Louis are hereby established, to be held in the city of Virginia, in said county, on the first Tuesday in April, on the second Tuesday in September, and on the first Tuesday in

December, in each year, and in the village of Hibbing, in said county, on the first Tuesday in February, on the third Tuesday in May, and on the fourth Tuesday in October in each year, and at the city of Ely, in said county, on the first Tuesday in March and on the first Tuesday in October in each year, for the trial, hearing and determination of all actions, civil and criminal; with the same force and effect as though held at the county seat of said county; and all proceedings of whatsoever kind, that can be heard and determined in the district court of this state, may be tried, heard and determined at the said city of Virginia, the said village of Hibbing, or the said city of Ely with the same force and effect as though held and determined at the county seat of said county.

Provided, that all proceedings for the registration of title to real estate shall be tried at the county seat of said county as now provided by law.

Provided, further, that all other actions to determine title to real estate shall be tried at the county seat of said county, except that by written consent of all the parties thereto any such action may be tried at the said city of Virginia or village of Hibbing, or city of Ely.

Provided, further, that no officer having in his custody any of the public records of St. Louis County shall be required to produce any of said records at the trial of any action herein provided for, save on an order of said court providing for the immediate return of any such records to the proper office. ('09, c. 126; '11, c. 368, §1; G. S. '13, §176; '15, c. 93, §1; '21, c. 302, §1; '25, c. 218; Mar. 30, 1929, c. 118.)

A party who goes to trial at Virginia in a case involving title to real estate without objection, cannot complain that there was no written consent to trial of a case involving title to real estate. 171M475, 214NW469.

166. Same—deputy sheriff and clerk.—There shall be at all times a chief deputy sheriff of said county and a chief deputy clerk of said district court and such other deputies as may be necessary, resident at said city of Virginia, or said city of Ely or the village of Hibbing and their appointment shall be made in the same manner as other deputy sheriffs and deputy clerks of the district court in said counties. The salaries of such deputies shall be fixed and paid in the same manner as other such deputies. The office of said deputy sheriff at Virginia, Hibbing and Ely shall not in any sense be considered or deemed the office of the sheriff for any purpose except the performance of his duties relating solely to proceedings tried or to be tried at said places; but the office of said deputy clerk at said places shall be equally deemed the office of the Clerk of Court for all purposes except the filing of papers in actions or proceedings to be tried at Duluth. Marriage licenses and naturalization papers may be issued by said deputy clerk. ('09, c. 126; '11, c. 368, §1; '15, c. 93, 371; '17, c. 225; '21, c. 284, §1; Apr. 15, 1931, c. 160, §1.)

171. Same—Trial of actions.

Denial of motion for change of venue held not abuse of discretion. Desjardins v. E., 189M356, 249NW576.

172. Same—Summons—Place of trial.—Any party wishing to have any appeal from an order of the Railroad and Warehouse Commission, any election contest, a lien foreclosure, or any civil cause or proceeding of any kind commenced or appealed by him in said Court, tried in said City of Virginia, shall in the summons, Notice of Appeal in such matters, or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the City of Virginia," and any party wishing any such matter commenced or appealed by him in said Court tried at the Village of Hibbing, shall in the summons, Notice of Appeal in such matters or other jurisdictional in-

strument issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the Village of Hibbing," and any party wishing any such matter commenced or appealed by him in said Court tried at the City of Ely, shall in the summons, Notice of Appeal in such matters, or other jurisdictional instrument issued therein, in addition to the usual provisions, print, stamp or write thereon the words, "to be tried at the City of Ely," and in all cases where any summons, Notice of Appeal in such matters, or other jurisdictional instrument contains any such specifications, the case shall be tried at said City of Virginia or the Village of Hibbing or City of Ely, as the case may be, unless the defendant shall have the place of trial fixed in the manner hereinafter set out.

If the place of trial designated is not the proper place of trial, as specified in this act, the cause shall nevertheless be tried in such place, unless the defendant, in this answer in addition to the other allegations of defense, shall plead the location of his residence, and demand that such action be tried at the place of holding said court nearest his residence as herein provided; and in any case where the answer of the defendant pleads such place of residence and makes such demand of place of trial, the plaintiff in his reply, may admit or deny such allegations of residence, and if such allegations of residence be not expressly denied, such case shall be tried at the place so demanded by the defendant, and if the allegations of residence be so denied, then, the place of trial shall be determined by the Court on motion.

If there are several defendants, residing at different places in said county, the trial shall be at the place which the majority of such defendants unite in demanding, or if the numbers are equal, at the place nearest the residence of the majority.

Provided, that the venue of any such action may be changed from any one of said places to any other, by order of the Court, in the following cases:

1. Upon written consent of the parties.
 2. When it is made to appear, on motion, that any party has been made a defendant for the purpose of preventing a change of venue as provided in this section.
 3. When an impartial trial cannot be had in the place where the action is pending; or
 4. When the convenience of witnesses and the ends of justice would be promoted by the change.
- Application for such change under subdivisions 2, 3, or 4, shall be made by motion which shall be returnable and heard at the place of commencement of the action. ('09, c. 126; '11, c. 368, §1; G. S. '13, §184; '15, c. 93; '21, c. 302, §6; Apr. 18, 1931, c. 195, §1.)

Desjardins v. E., 189M356, 249NW576; note under §171.

177. Absence of judge—who may act.

Where trial judge has become incapacitated and motion for new trial is heard by another judge, the latter has no power to amend findings of fact but he may amend the conclusions of law and may grant a new trial for the same causes which the trial judge may grant it. 175M346, 221NW424.

Motion for new trial must be heard before judge who tried action unless he is out of office or disabled. State v. Qvale, 187M546, 246NW30. See Dun. Dig. 7085.

178. Adjourned and special terms.

Sections 161 and 178 are not inconsistent but merely provide two different methods of calling special grand juries. Op. Atty. Gen. (494a-3), June 15, 1934.

182. Rules of practice.

District court rule permitting objections to language of closing arguments to be seasonably taken at close thereof, is reasonable. Jovaag v. O., 189M315, 249NW676. See Dun. Dig. 2773.

183. Several judges—division of business.—In districts having more than one judge, the one longest in continuous service, or, if two or more be equal in such service, the one senior in age, shall be the presiding judge thereof. The business of the court may be divided between the judges, and otherwise

regulated as they by rule or order shall direct. Each may try court or jury causes separately during the same term and at the same time, or two or more of them may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail. In districts composed of not less than ten counties, the senior judge, at least 30 days before the time appointed by law for the holding of a general term of the court in each county, by order filed in the office of the clerk of the court in that county, shall designate and assign one or more of the judges of such district to preside at the term so appointed, and the clerk forthwith shall mail a copy of such order to each judge of the district. If any judge assigned to hold a term of court as herein provided is incapacitated by illness or otherwise to preside at such term, another judge shall be designated and assigned in like manner to take his place. The same judge shall not be designated or assigned to hold two consecutive general terms in the same county. (R. L. '05, §105; G. S. '13, §168; Mar. 9, 1931, c. 51.)

CLERK

191. Election—bond—duties.

Clerk of the district court may practice in the probate court and may transact other legal business so long as it is not necessary for him to transact any business in the district court. Op. Atty. Gen., Feb. 15, 1932.

192. Money paid into court—Fees.

A clerk of court depositing money in national bank and taking certificate of deposit therefor is personally liable for loss sustained by failure of bank. Op. Atty. Gen., Apr. 23, 1933.

District Court clerk is not entitled to commission for receiving and paying back cash balance. Op. Atty. Gen. (144b-15), Apr. 19, 1934.

193-4. Deputy clerks in certain counties.—In all counties in the state, now or hereafter having a population of more than 150,000 and wherein regular terms of the District Court are held in three or more places, the Clerk of the District Court therein by an instrument in writing, under his hand and seal, and with the approval of the District Judge of the Judicial District in which said county is situated, or if there be more than one such District Judge with the approval of a majority thereof, may appoint deputies for whose acts he shall be responsible, such deputies to hold office as such until they shall be removed therefrom, which removal shall not be made except with the approval of the said District Judge or Judges. The appointment and oath of every such deputy shall be filed with the Register of Deeds. (Act Apr. 15, 1935, c. 179.)

197. Return in criminal cases to county attorney.

Amount paid attorney appointed by court to represent a defendant in justice court in a criminal case should not be included as part of costs in action. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

198. To enter unregistered cases.

A decree in equity may create a lien independently of this section, and this is true with respect to a decree for the separate maintenance of a wife justifiably living apart from her husband. 178M531, 227NW895.

200. Vacancy.

SALARIES OF CLERKS AND DEPUTIES AND CLERK HIRE IN CERTAIN COUNTIES

Laws 1929, c. 69, fixes salary of Clerk of Court at \$2,400 in counties of more than 60 and less than 80 townships with population between 45,000 and 75,000. Sp. Laws 1891, c. 423, is repealed.

Act Feb. 9, 1933, c. 16, provides that in counties having 81 to 85 congressional townships and 18,000 to 30,000 population, the county board shall fix the clerk hire in the office of the clerk of the district court. Laws 1925, c. 7, repealed. See §§997-4a to 997-4h.

Act Mar. 1933, c. 76, §4, effective Jan. 1, 1933, provides that in counties having area of 35 to 55, inclusive, congressional townships, with assessed valuation of \$2,000,000, exclusive of moneys and credits, the clerk of the district court shall receive \$1,200 out of fees, county to

make up deficiency, and a salary of \$600 per annum, to be considered a portion of his fees. Salary payable monthly. County board to fix clerk hire. See §§997-4a to 997-4h.

Act Mar. 20, 1933, c. 96, provides that in counties having 55,000 to 70,000 population and 35 to 45 congressional townships, the county board may fix the salary of clerk of district court at not to exceed \$3,500, and require that fees be paid into the general fund. See §§997-4a to 997-4h.

Act Jan. 15, 1936, Sp. Ses., 1935-36, c. 27, amends Laws 1933, c. 96.

Act Apr. 1, 1933, c. 143, amends Laws 1929, c. 69, §1, to provide that the clerk of district court shall receive \$2,000 per annum. See §§997-4a to 997-4h.

Act Apr. 10, 1933, c. 166, §5, provides that in counties having 76 to 80 congressional townships and assessed valuation of \$3,000,000 to \$5,000,000, clerk of district court shall receive \$1,500 per annum and clerk hire of not over \$100 per annum, all fees and revenue to be paid into county treasury. See §§997-4a to 997-4h.

Act Apr. 11, 1933, c. 212, effective May 1, 1933, authorizes county board in counties having 50 to 70 congressional townships and assessed valuation, exclusive of moneys and credits of less than \$1,500,000, to fix salaries of county officers and require their fees to be paid into the county treasury.

Act Apr. 13, 1933, c. 219, §1, provides that in counties having assessed valuation of not more than \$6,000,000 and population of not more than 12,500 the county board shall fix the salaries of subordinate county employees. This section seems to be invalid as not expressed in the title of the act. Section 2 authorizes the county board, in counties having assessed valuation, excluding moneys and credits, of \$2,500,000 to \$3,000,000, population of 9,000 to 10,000, and area of 29 to 31 congressional townships, to fix the salaries of all subordinate county employees.

Act Apr. 15, 1933, c. 281, provides that in counties having 100 or more townships and assessed valuation, including moneys and credits, the clerk of the district court shall receive \$990 per annum and clerk hire to be fixed by the county board. See §§997-4a to 997-4h.

Act Apr. 15, 1933, c. 284, §10, amending Laws 1921, c. 437, Laws 1927, c. 225, and Laws 1931, c. 192, provides that in counties having 24 or 25 congressional townships and assessed valuation, exclusive of moneys and credits, of \$9,000,000 to \$12,000,000, the clerk of the district court shall receive \$1,263 per year and fees, with maximum of \$2,880, except in real estate tax proceedings. See §§997-4a to 997-4h.

Act Apr. 21, 1933, c. 432, §5, effective May 1, 1933, amends §7 of Laws 1925, c. 91, by making the salary of the clerk \$1,281 per year, with not exceeding \$400 for clerk hire; 18½% of fees to be paid into county treasury; total compensation not to exceed \$2,800 per year. See §§997-4a to 997-4h.

Act does not affect right of Clerk of Court to receive and retain the per diem allowed for services on board of audit. Op. Atty. Gen., May 23, 1929.

Duties and compensation in counties of over 380,000 population. See Laws 1923, c. 419, as amended by Laws 1927, c. 125, and Laws 1929, c. 152.

Additional fees allowed clerks for completing records neglected by prior incumbent of office. See Laws 1929, c. 207.

In counties with population between 240,000 and 330,000, clerk's salary is \$4,500; chief deputy, \$2,800; one deputy clerk, \$2,150; one deputy, \$2,050; one deputy, \$1,950; nine deputies, \$1,620, to be increased to \$1,800 after 10 years' service; one assignment clerk, \$1,920. See Laws 1929, c. 306, which amends prior statutes.

Laws 1929, c. 341, §2, fixes salary at \$6,500 in counties of 415,000 population or over, but only at \$4,000 if act cannot be held to apply to fees received from federal government.

Counties having population of 380,000 or over, Laws 1929, c. 359, §1 (amending Laws 1925, c. 398, §2, which amended Laws 1923, c. 419, §14, which amended Laws 1921, c. 133, §14), fixes salaries as follows: Chief deputy, \$3,600; head counter deputy, \$2,205; assignment deputy, \$2,700; two deputies, each, \$1,870; one deputy, \$2,060; six deputies, \$1,700 each; 12 deputies, \$1,800 each; two deputies, \$1,600 each; one deputy, \$1,700; one deputy, \$2,200; one deputy, \$2,205; two deputies, \$2,000 each; three deputies, \$1,600 each.

Counties with 41 to 43 congressional townships and population of 25,000 to 30,000, Laws 1929, c. 161, §4, amends §15, c. 91, Laws 1925, and authorizes additional clerk with salary not to exceed \$80 per month.

Counties having area of not more than 23 and not less than 20 congressional townships, and assessed valuation of not more than \$6,000,000, Laws 1931, c. 15, §3, permits clerk to retain \$1,500 out of fees, any deficiency to be paid to him by the county, and fixes his salary at \$800 to be considered as portion of fees. He is also allowed \$200 per annum for clerk hire. Effective Jan. 1, 1931.

Counties of 44 to 45 congressional townships and assessed valuation of \$12,000,000 to \$18,000,000, Laws 1931, c. 192, amends Laws 1921, c. 437, §1, to make amended act applicable to counties as above.

Act Feb. 27, 1935, c. 23, amends Laws 1933, c. 96, by adding thereto §3-1, empowering county board to fix

clerk hire of clerk of district court at not more than \$3,300 per year.

Where clerk of district court was elected for four year term in 1930 and died after June primary in 1932, one appointed to fill vacancy will hold office only until November 1932 election, and nominations may be made by petition, in which candidate need not state his political party or affiliation. Op. Atty. Gen., July 16, 1932.

Legislature possesses right to change salaries of county officers at any time. Op. Atty. Gen., Feb. 21, 1933.

Clerk of Court is not entitled to additional compensation for indexing and keeping vital statistic records pursuant to Section 5365. Op. Atty. Gen., Mar. 24, 1933.

County officers whose terms expire on first Monday of January are entitled to compensation for days of service rendered in month of January up to time that their successors qualify and take office. Op. Atty. Gen. (104a-9), Dec. 1, 1934.

Salary of clerk of district court is determined in accordance with classification provided for in Laws 1909, c. 335, as amended by Laws 1919, c. 229, while clerk hire is controlled by classification found in Laws 1917, c. 476, and if Goodhue County comes within classification F as to clerk's compensation but within classification E as to clerk hire, judge of district court may allow such additional sum for deputy clerk hire as may be reasonable and necessary. Op. Atty. Gen. (144a-1), Dec. 13, 1934.

Laws 1933, c. 219, does not apply to Clearwater County and §1 thereof is not within title of act. Op. Atty. Gen. (104a-3), Feb. 5, 1935.

Clerk of court in county governed by Laws 1933, c. 166, §12, must turn naturalization fees into county treasury. Op. Atty. Gen. (144b-15), July 19, 1935.

Laws 1925, c. 5, §3.

The additional compensation of the clerk cannot be paid until allowance by the county board. Op. Atty. Gen., Jan. 15, 1930.

STENOGRAPHIC REPORTERS

201. Appointment—Duties—Bond.

Laws 1929, c. 385, amends Laws 1921, c. 460, §5, and fixes salary of court reporters in St. Louis county at \$4,000 and \$10 per day while attending sessions of district court in other counties of the Eleventh Judicial District.

202. Duties as to reports.

Provision of District Court Rule 27, requiring party requesting reporting, as distinguished from transcribing argument, to pay reporter therefor, is invalid. Jovaag v. O., 189M315, 249NW676. See Dun. Dig. 2773.

Court reporter is entitled to charge against county cost of notebook paper. Op. Atty. Gen., Feb. 23, 1933.

205. Salaries of court reporters.

Court reporter is entitled to charge 5c per mile for use of automobile, but not for week-end trips home. Op. Atty. Gen., May 2, 1933.

PROBATION AND INVESTIGATION DEPARTMENT

208-1. Probation and investigation department established.—There is hereby established in all counties of this state now or hereafter having a population of more than 415,000 inhabitants and constituting a single judicial district a probation and investigation department in connection with the district court of any such county. (Act Apr. 24, 1929, c. 326, §1.)

208-2. Officers and employees.—Such department shall consist of one chief probation officer and such other probation officers, investigators, clerical help and other employees as the judges of the said court shall from time to time appoint.

Such probation officers, investigators, clerical help and other employees shall be appointed and removed by the judges of the district court in any such county. They may be appointed either for a definite period of time or for an indeterminate period in the discretion of the court. The salaries of all such persons shall be fixed by the judges of said court, subject to approval thereof by the board of county commissioners of such county.

The said judges may by order determine the necessary qualifications of applicants for positions in said department and may in their discretion provide that applicants shall undergo certain tests as to their qualifications.

The chief probation officer shall have general supervision of such department, subject to the direction

of the judges of said court. The court may divide the duties of said department into branches or divisions, and appoint from such probation officers or investigators the heads of such branches or divisions. A juvenile division and a division for the administration of the law in reference to the support of dependent children in their own homes may be established distinct from all other divisions of such department. (Act Apr. 24, 1929, c. 326, §2.)

208-3. Duties.—The duties of such department shall be:

(a) To undertake the supervision of all persons placed on probation or parole by any of the judges of said court, to keep accurate records of such supervision, and to report to the court as to such probation or parole as directed by any of the judges of the court.

(b) To be present when court is in session and so directed by any one of said judges.

(c) To perform the duties required of probation officers by the juvenile court act, as contained in Chapter 73A, Mason's Minnesota Statutes 1927.

(d) To assist in administering the law providing for all allowances to mothers of dependent children, and to perform the duties of investigation and supervision, as found in Sections 8671, to 8689, Mason's Minnesota Statutes 1927.

(e) To provide for mental and physical examination of persons coming under the juvenile court law, and to provide for necessary mental, dental, surgical and nursing care for such persons.

(f) To make such investigation as the court may direct concerning the circumstances of the offense, criminal record and social history of any person convicted of crime, and when deemed appropriate to obtain a physical and mental examination of such defendant and report thereon.

(g) To make collections of support money in divorce actions when ordered by a judge of said court for the benefit of children or indigent mothers and children jointly; to collect money ordered to be paid in desertion and abandonment cases; and to make collections of money or property when ordered to be paid as restitution or reimbursement and to turn over such money or property to the person or persons entitled thereto.

(h) To make investigations in divorce cases of children and home conditions when directed by a judge of said court, and also to exercise supervision over children in such divorce cases as the court may direct.

(i) When directed by a judge of said court and when the person having custody of children is indigent, to take such steps as may be necessary to compel persons ordered to pay money for the support of children when in default; to take such steps as may be necessary to compel persons to make reimbursement to comply with the order of court when in default; to institute, if necessary, contempt proceedings in behalf of such person or persons to whom money or property is ordered to be paid or delivered. It shall be the duty of the county attorney to conduct such contempt proceedings when directed by one of the judges of said court.

(j) To perform such other duties for the protection of children and indigent mothers and children as may be directed by the court. (Act Apr. 24, 1929, c. 326, §3.)

208-4. County Board to furnish office room.—The county commissioners of such county shall provide said department with suitably furnished office rooms, record books, stationery, postage, expenses of investigation and transportation, and such other actual expenses as are required for the proper execution of the purposes of this act. (Act Apr. 24, 1929, c. 326, §4.)

208-5. Probation officers—Powers.—Probation officers shall have the power of peace officers in the execution of their duties. Each probation officer, before entering on the duties of his office shall take an oath of office to be administered by one of the judges making the appointment. Each probation officer or employee who collects or has the custody of money shall execute a bond with appropriate sureties in a penal sum to be fixed by said judges, at the expense of the county, conditioned for the true accounting of all money received by him as probation officer. (Act Apr. 24, 1929, c. 326, §5.)

208-6. Records to be in custody of the court.—The records of all cases in said office may be withheld from indiscriminate public inspection at the discretion of the judges of said court. (Act Apr. 24, 1929, c. 326, §6.)

208-7. Action by majority of judges.—Any act, order or thing required or permitted to be done by the judges of said court by the provisions hereof may be done by a majority of said judges. (Act Apr. 24, 1929, c. 326, §7.)

208-8. Census governing.—For the purpose of determining what counties in the state come under the classification contained in this act reference shall be made to the last complete state or national census. (Act Apr. 24, 1929, c. 326, §8.)

208-9. Repeal; municipal court.—All acts or parts of act inconsistent herewith are hereby repealed, in so far as they apply to counties affected by this act. In counties in which there is a separate municipal court probation officer, the probation department established by this act is hereby relieved of any of the duties specified in Sections 10910, 10911 and 10912, Mason's Statutes of Minnesota 1927, with references to attendance in municipal courts and with references to representing the interests of minors in said courts. (Act Apr. 24, 1929, c. 326, §9.)

SALARIES

211. Retirement of supreme court and district court judges.—When a justice or commissioner of the supreme court or a judge of the district court shall be retired under the provisions of Section 210, General Statutes 1923, as amended by Chapter 337, General Laws 1927, he shall receive the compensation allotted to his office for the remainder of his said term, or, if then past sixty-eight years of age, having served as a judge of the district court and as a justice of commissioner of the Supreme Court, or in any one or more of such capacities, for more than twenty-three years, or if then past seventy-five years of age, having served as judge of the district court for ten or more years and having served as members of Congress, and county attorney, or in any one or more of such capacities, an additional ten or more years, he shall receive the compensation allotted to his office for the remainder of his said term and thereafter he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time, and the manner provided by law. (G. S. '13, §255; '13, c. 269, §2; '23, c. 79; '27, c. 337, §1; Apr. 16, 1929, c. 201; Apr. 26, 1929, c. 408.)

211-7. Same—compensation of retired judge.

Laws 1931, c. 228, provides for retirement pay of supreme court and district judges under certain circumstances. The act is omitted as special and temporary.

211-8. Retirement of judges of probate court.—Whenever a probate judge shall become incapacitated physically or mentally from performing his judicial duties during the remainder of his term of office and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such

investigation as he shall deem advisable and if he shall thereby determine that such disability exists, and the public service is suffering and will continue to suffer by reason of such disability, he shall thereupon by written order, to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which retirement shall create a vacancy in said office, which shall be filled by appointment, as provided by law. (Act Apr. 20, 1931, c. 253, §1.)

211-9. To receive half pay.—When a judge shall be retired under the provisions of section 1 of this act, he shall receive the compensation allotted to his office for the remainder of his term, or, if then past 70 years of age, having served as such probate judge continually for more than forty years, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time and in the manner provided by law. (Act Apr. 20, 1931, c. 253, §2.)

MUNICIPAL COURTS IN CITIES AND VILLAGES

212. Existing courts confirmed.

This section supersedes any inconsistent home rule charter provision. Op. Atty. Gen., Jan. 25, 1934.

215. Municipal courts.

Municipal Court of Tower, Laws 1929, c. 4.
Municipal Court of Minneapolis. Laws 1919, c. 331, §1, relating to salaries of stenographic reporters, is amended by Laws 1929, c. 128. Laws 1929, c. 129, amends Sp. Laws 1889, c. 34, §18, as amended, relating to salaries of judges and clerks.

Municipal Court of Ely. Sp. Laws 1891, c. 59, §19, as amended by Laws 1915, c. 66, is amended by Laws 1929, c. 134. Laws 1931, c. 251, amends Sp. Laws 1891, c. 59, §1.

Municipal Court of Hibbing. Establishment, etc., by Laws 1929, c. 253.

Municipal Court of Duluth. Laws 1923, c. 238, §§20, 48, is amended by Laws 1929, c. 241. Laws 1923, c. 238, §52, as amended by Laws 1925, c. 85, §7, is further amended by Laws 1929, c. 45. Laws 1923, c. 238, §§9, 17, 35, 43, as amended by Laws 1925, c. 85, §5, is further amended by Laws 1931, c. 57.

Municipal Court of Village of Hibbing. Laws 1931, c. 13, amends §§8, 22, 24 of c. 253, Laws 1929.

Act Feb. 17, 1933, c. 32, amends Laws 1925, c. 120, as amended by Laws 1927, c. 81, §4a.

Act Ex. Ses., Dec. 31, 1933, c. 35, establishes a municipal court in the village of Ferham, Otter Tail County. Omitted as local.

Laws 1935, c. 253. Municipal court for village of New York Mills.

Municipal Court of the City of St. Cloud. Laws Sp. Ses. 1935-36, c. 88.

Municipal Court of St. Paul. Jurisdiction of forcible entry and detainer action under Sp. Laws 1889, c. 351.

A decree in equity may create a lien independently of this section, and this is true with respect to a decree for the separate maintenance of a wife justifiably living apart from her husband. 178M531, 227NW895.

In suit brought on a check, given as cash or earnest money, upon delivery of a contract to convey land, evidence did not involve or raise any issue as to title of land so as to deprive municipal court of city of Minneapolis of jurisdiction. Little v. D., 181M487, 233NW7, See Dun. Dig. 6906.

Municipal court organized under this section, as it read in 1916, cannot be abolished by the municipality. Op. Atty. Gen., Dec. 10, 1929.

Where municipal court exceeded its jurisdiction and convicted one of unlawfully killing a deer, and on his failing to pay fine confined him in jail, and conviction was held void on habeas corpus, he could be tried again for the offense with which he was charged. Op. Atty. Gen., Feb. 20, 1931.

Municipal court established under general act is a state court and judge thereof a state officer, and judge cannot be legislated out of office nor his term of office shortened by municipality. Op. Atty. Gen. (307d), Sept. 28, 1934.

It is optional with governing body of municipality at time of establishment of municipal court whether or not provision shall be made for a special municipal judge. Op. Atty. Gen. (213f), May 1, 1935.

217. Municipal judges—election—term—salary.—The judges of such courts shall be elected at the regular city or village elections, for the term of four years, beginning on the first Monday of the month next following their election, and until their successors qualify. When a new court is organized more

than 90 days prior to a regular election, the Governor shall appoint a judge or judges thereof to serve until they are elected and qualified, and vacancies shall be filled by like appointment for the unexpired term. Provided, that in the absence or disability of the municipal judge and special municipal judge of such court, if there be one, the mayor or president of the council may designate a practicing attorney to sit in place of such municipal judge from day to day. All municipal judges and special municipal judges shall be men learned in the law and residents of the city or village. The salary of each shall be paid monthly by the city or village, and shall be fixed by resolution adopted by a four-fifths majority of the council of such city or village, and approved by the mayor or president, and shall not be diminished during his term. Provided, however, that where there shall be a municipal judge and a special municipal judge, the special municipal judge shall act only in the absence or disability of the municipal judge, and receive as compensation therefor an amount per diem to be fixed and paid by the council of such city or village; and provided, further, that any such special municipal judge shall not be prohibited from practicing in the said municipal court or in any other court, but he shall not sit in the trial of any cause or proceeding wherein he may be interested, directly or indirectly, as counsel or attorney, or otherwise. Provided that in all cities over 7,000 population and having an assessed valuation of more than \$10,000,000, the city council may pay the special municipal judge a salary of \$50.00 per month in lieu of compensation on a per diem basis. (R. L. '05, §127; G. S. '13, §261; '13, c. 104, §1; '27, c. 276, §1; Apr. 18, 1929, c. 223; Apr. 15, 1933, c. 269.)

Sec. 2 of Act Apr. 18, 1929, c. 223, repeals inconsistent acts.

Provision authorizing Governor to fill vacancies by appointment "for the unexpired term" conflicts with Const., art. 6, §10. Vacancy cannot be filed at special election. Op. Atty. Gen., May 23, 1929.

Since amendment by Laws 1929, c. 223, municipal judge of Buhl may act as secretary or treasurer of the school board and be paid a salary for such service. Op. Atty. Gen., July 30, 1930.

Neither a municipal judge nor special municipal judge elected or appointed need be admitted to practice law. Op. Atty. Gen., Feb. 13, 1932.

Statute is valid in so far as it requires that a person designated by the mayor to act in place of a judge shall be a practicing attorney. Op. Atty. Gen., Feb. 13, 1932.

This section is not applicable to judge of municipal court of Stillwater. Op. Atty. Gen., Jan. 23, 1933.

Municipal judges need not be attorneys. Op. Atty. Gen., Feb. 9, 1933.

Offices of special municipal judge and school director are not incompatible. Op. Atty. Gen., Aug. 1, 1933.

In view of Const., art. 6, §10, appointee to fill vacancy would hold only until next general election and not for the full unexpired term of the predecessor. Op. Atty. Gen., Oct. 14, 1933.

Village council has authority to pay salary of municipal judge, although he has been inactive and unable to perform the duties of his office due to illness. Op. Atty. Gen., Mar. 16, 1934.

Judges of municipal court are state officers and not officers of the municipality electing them, and where a municipal judge was elected to a term commencing on the first secular day of February, 1928, his term of office did not expire until four years thereafter, and his term of office could not be changed by adoption of home rule charter changing dates of election, and where the only proper general election of a city next preceding first secular day of February, 1932, was in November, 1930, at which the same judge was elected, his four-year term of office under the second election began the first secular day of February, 1932. State v. Benschel, 194M55, 259NW389. See Dun. Dig. 6900a.

Term of village municipal judge may not be changed by electors in incorporating as a city of fourth class. Op. Atty. Gen. (307k), Sept. 13, 1934.

Term of office of one appointed to fill vacancy in office of municipal judge expires at first annual village election, and not with expiration of term of former judge. Op. Atty. Gen. (307L), Sept. 27, 1934.

Municipal judge holds over until his successor is elected and qualified at the next regular city election, and a judge may not be elected at a special election. Op. Atty. Gen. (307d), Sept. 28, 1934.

Term of municipal judge may not be changed by home rule charter, and salaries are to be fixed in accordance with this section. Op. Atty. Gen. (307k), Dec. 1, 1934.

Where no special municipal judge was elected at last municipal election, it cannot be said that there is a vacancy which may be filled by the governor. Op. Atty. Gen. (213f), May 1, 1935.

Where regular judge is disqualified or is absent from city or ill, a practicing attorney may be appointed by the mayor or president of council to sit in place of the regular judge from day to day. Op. Atty. Gen. (307j), May 14, 1935.

Municipal judge appointed to fill vacancy in office, holds office only until next annual election. Op. Atty. Gen. (307k), July 30, 1935.

Salary of municipal judge appointed to fill vacancy can neither be increased or diminished during term for which deceased judge was elected. Id.

218. Jurisdiction.

Removal of forcible entry case to district court not warranted by answer putting in issue the title, but there must be evidence putting title in issue. 178M282, 226NW 847.

Municipal court of Minneapolis had jurisdiction of an action against an investment company for money had and received. Goodell v. A., 185M213, 240NW534. See Dun. Dig. 6906.

County attorney need not prosecute ordinary misdemeanors and city attorney is under no duty to prosecute misdemeanors arising outside of corporate limits. Op. Atty. Gen. (121b-7), May 8, 1935.

(5).

Municipal court of Minneapolis had jurisdiction of unlawful detainer action, though title was involved. Cook v. L., 191M6, 252NW649. See Dun. Dig. 6906.

221. Criminal jurisdiction, etc.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of \$100, or by imprisonment in excess of three months. State ex rel. v. Morical, 182M159, 234N W453. See Dun. Dig. 6900b(63).

A municipal judge has practically unlimited authority in the exercise of his duties as regards sentencing of defendant, suspending sentences and imposing fines. Op. Atty. Gen., June 26, 1933.

223. Clerks and deputies—Process.—

The clerk of each municipal court, and his deputies, shall be appointed by the judge thereof, who may remove any of them at pleasure. If there be two judges, the senior in office shall exercise such power. Every clerk and deputy shall give bond to the state, in at least the sum of \$1,000.00 to be approved by the appointing judge, conditioned for the faithful discharge of his official duties, and for the payment as required by law or by order of the court of all moneys coming into his hands. All process shall be tested in the name of the judge, or the senior in office if there are two, be signed by the clerk, issued under the seal of the court, and be directed for service to any police officer, court officer, marshal or constable of any town, city or village, in the county, to the sheriff of the county, or all of them. No judge or other officer of such municipal court, excepting the special municipal judge, if any, shall prepare or draw any pleadings or other papers in any civil actions in said municipal court, nor shall they institute, for another, any civil action in such court. (R. L. '05, §133; G. S. '13, §267; '13, c. 104, §1; Feb. 21, 1931, c. 23, §1.)

It would be unethical for municipal judge to prepare proceedings or to advise in connection with civil action in his court. Op. Atty. Gen., May 25, 1932.

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

Appointment of municipal court clerk need not be approved by village council. Op. Atty. Gen., Apr. 8, 1933.

Court officer of municipal court of Virginia may serve papers any place in county, even where issued out of another municipal court in county. Op. Atty. Gen., May 17, 1933.

224. Clerk to receive and pay over fines, etc.

Fines and cost in state cases in municipal courts, such as misdemeanors, are to be paid to county treasurer. Op. Atty. Gen. (306b-6), Apr. 6, 1934.

226. Court officers.

Not applicable to municipal court of St. Cloud. See Laws Sp. Ses. 1935-36, c. 88, §5.

A municipal court officer is not a policeman and so is not under civil service; and in cities of over 5,000 population mayor has power to appoint such officer without approval of city council; city council's only power in premises being to reject as legally insufficient or to approve bond put up by such officer. State v. City of Eveleth, 194M44, 260NW223. See Dun. Dig. 6900a.

Position of municipal court officer is subject to soldiers' and sailors' preference law. *Id.* See Dun. Dig. 7986.

Salaries of municipal court of Virginia is entitled to collect fees for serving papers, but is not entitled to retain them. *Op. Atty. Gen.*, May 17, 1933.

Op. Atty. Gen. (273d-1), Aug. 25, 1934; note under §6996.

This action supersedes any inconsistent home rule charter provision. *Op. Atty. Gen.*, Jan. 25, 1934.

227. Reporters—Duties—Fees, etc.

Applicability to municipal court of St. Cloud. See Laws Sp. Ses. 1935-36, c. 88, §6.

228. Powers and duties—Practice—Rules—Fees.

Right of defendant to appeal after plea of guilty in municipal court. *Op. Atty. Gen.*, Dec. 9, 1930.

This section does not apply to constables, marshals and village officers in cities and villages of less than 5,000 population, but rather to court officers appointed in cities and villages of 5,000 population or more under §226. *Op. Atty. Gen.* (273d-1), Aug. 25, 1934.

229. Costs and disbursements.

Where defendant prevailed on his counter claim in amount equal to plaintiff's recovery, defendant was entitled to costs. 179M461, 229NW579(2d).

"Costs" refers to disbursements where no statutory costs are involved. *Id.*

231. Jury trials.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. *Op. Atty. Gen.* (260a-13), Feb. 5, 1935.

One prosecuted for violation of a village ordinance is not entitled to a jury trial and city is not liable for jury fees. *Op. Atty. Gen.* (605a-11), Feb. 25, 1935.

233. Fees in criminal cases, etc.

It is not the duty of a city attorney to prosecute violators of state laws within the city limits in justice court, and in assisting in such a prosecution he is not entitled to compensation from the city, but county attorney might allow compensation out of his contingent fund. *Op. Atty. Gen.*, Feb. 18, 1931.

This section refers to prosecutions in municipal courts and does not apply to justice courts. *Op. Atty. Gen.*, Sept. 26, 1932.

Neither village nor city attorneys are under any obligation to prosecute violators of state laws in justice court. *Op. Atty. Gen.*, Sept. 26, 1932.

City of So. St. Paul must pay expense trial in municipal court of criminal cases arising outside city limits. *Op. Atty. Gen.*, July 14, 1933.

If misdemeanor case is not one which county attorney is specifically directed by law to prosecute, it is duty of city attorney to conduct prosecution. *Op. Atty. Gen.*, Dec. 21, 1933.

Op. Atty. Gen. (306b-6), Apr. 6, 1934; note under §224.

Where instituted in municipal court, all misdemeanors and violation of ordinances shall be prosecuted by the city or village attorney, except where statute for particular crimes imposes such duty upon the county attorney and even in such cases these prosecutions should be carried on by city or village attorney where complaint is made directly to him. *Op. Atty. Gen.* (121b-7), July 17, 1934.

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. *Op. Atty. Gen.* (260a-13), Feb. 5, 1935.

County attorney need not prosecute ordinary misdemeanors and city attorney is under no duty to prosecute misdemeanors arising outside of corporate limits. *Op. Atty. Gen.* (121b-7), May 8, 1935.

236. Appeals to district court.

The district court is not required to make findings of fact in an appeal upon questions of law alone from judgments of the municipal courts in cities of the class of Worthington. *Iowa Mortgage Corp. v. K.*, 181M477, 233NW18. See Dun. Dig. 6905.

Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. *Pandolfo v. S.*, 183M336, 236NW483. See Dun. Dig. 486(74).

In prosecution for violation of city ordinance, defendant is not entitled to a jury trial either in municipal or district court on appeal, and city attorney is to try appeals as well as original proceedings in municipal court. *Op. Atty. Gen.* (260a-13), Feb. 5, 1935.

237. Courts in cities of third and fourth class, etc.

Whenever the common council of any city of the third or fourth class, where any municipal court heretofore has been or hereafter shall be organized, shall fail to fix the salary of the municipal judge, as provided for by law, or the mayor shall not approve the salary fixed by the council, such judge shall re-

ceive as his compensation until such salary shall be so fixed and approved the same fees as is provided for in Laws 1895, Chapter 229, Section 32, and shall, in addition to his duties as such judge perform the duties incumbent on the clerk of such municipal court, and jurors in such municipal court may by resolution adopted by its common council or governing body and approved by its mayor, be compensated in the same manner as in justice court.

The common council in cities of the fourth class, having a population of less than 5,000 inhabitants, which heretofore has been or hereafter may be incorporated under the laws of this state, and which have not organized a municipal court at the time of the passage of this act, may by resolution adopted by its common council or governing body and approved by its mayor, organize such a court under and by virtue of and with such jurisdiction and powers as are conferred by Laws 1895, Chapter 229 and amendments thereto, and the judge of any court so organized shall, in addition to his duties as judge, perform the duties otherwise incumbent or imposed by law on the clerk of such municipal court.

In addition to the other powers now granted to the common council of any city of the third or fourth class by law, which powers are not abridged or impaired by anything herein contained, such common council shall have the power to fix the salary of and such judge, which salary may be fixed by resolution adopted by such council and approved by the mayor and shall not be diminished during his term.

Any municipal court to which the provisions of this act shall apply shall be governed as near as may be under and pursuant to the provisions of law applicable to municipal courts, and contained in Revised Laws 1905, and the jurisdiction thereof, the practice and procedure therein shall conform as near as may be to the provisions of law applicable to municipal courts contained in the Revised Laws 1905, provided, however, that any municipal court in any city of the third or fourth class may adopt and follow the practice and procedure prescribed by Laws 1895, Chapter 229, and all proceedings, order and judgments of such municipal courts which have followed the procedure prescribed by Laws 1895, Chapter 229, and which are otherwise jurisdictional are hereby legalized and validated.

Any common council of any city of the third or fourth class having a municipal court now organized, or which shall hereafter organize a municipal court to which the provisions of this act may apply, shall have power to fix such reasonable sum, in lieu of all judges' and clerks' fees, to be charged to litigants in civil actions therein, and provide for the collection thereof and the payment of the sum so fixed into the city treasury of such city, and may provide for the collection of fees and the payment thereof into the city treasury, or shall have power to determine that the fees provided for in this act shall be in lieu of and in place of all salary, and shall have power to and may require in cases where salary is paid by the city that such judges collect such fees and pay same into the city treasury and be responsible for such collection.

When fees shall be taxed they shall be taxed and paid as in ordinary cases in courts of justices of the peace and shall be the same in amount as are provided in Laws 1895, Chapter 229, as hereinbefore stated. ('09, c. 306, §1; '11, c. 10, §1; G. S. '13, §281; Apr. 5, 1935, c. 114.)

Judge of municipal court, organized under this section, may also hold the office of member of school board of an independent school district. *Op. Atty. Gen.*, Apr. 15, 1931.

If there is no special act of the legislature requiring justices, a particular city may abolish the office on drafting a home rule charter. *Op. Atty. Gen.*, Oct. 3, 1931.

Judge of municipal court, also discharging duties of clerk of court on failure of council to appoint clerk, must give bond. *Op. Atty. Gen.*, Mar. 1, 1933.

Fees of judge of municipal court are the same as those of a justice of the peace under §6998. *Op. Atty. Gen.* (306b-4), Feb. 16, 1935.

Special Laws 1891, c. 59, §19, as amended by Laws 1915, c. 66, and Laws 1929, c. 134, governs the matter of reduction of salary of municipal court judge in the city of Ely, and judge in such city may have his salary reduced during his term. Op. Atty. Gen. (3071), Mar. 23, 1935.

Laws 1895, c. 220.

Council of city of Waterville cannot abolish municipal court created by legislative act, though organized by resolution of council. Op. Atty. Gen., July 13, 1933.

Laws 1895, c. 209, §6.

Where city council of Marshall adopted provisions of Mason's Stats., §§215 to 240, summons in actions in municipal court should be subscribed by plaintiff, or his attorney, and such summons may be served by any disinterested person. Op. Atty. Gen., Mar. 28, 1932.

Laws 1895, c. 209 * * * * *

Sec. 30. Lien not to attach unless judgment is filed in District Court.—No judgment rendered in said municipal court shall attach as a lien upon real estate until a transcript thereof shall have been filed in the district court, as hereinafter provided; but writs of execution thereon may issue against the goods and chattels of the judgment debtor, at any time after the entry of judgment, returnable within 30 days. The provisions for renewals of executions in district court shall apply to this court, except that such renewal shall extend the life of the execution for only 30 days from the date of such renewal, and except that no renewal of such execution shall be made by the clerk until the fee of 25c therefor shall have been paid.

Every person in whose favor a judgment is rendered, in said municipal court for an amount exceeding \$5.00 besides costs, may, at any time after the entry of such judgment, upon paying the fee therefor, demand and shall receive from such clerk a transcript of the docket entries of such judgment, duly certified, and may file the same in the office of the clerk of the district court in and for the county in which said city is situated, who shall file and docket the same, as in the case of transcripts of judgments from other district courts in the state.

And every such judgment, after being so transcribed and docketed in the district court, shall become a lien upon the real estate of the debtor from the time of filing such transcripts to the same extent as a judgment

of said district court, and shall thereafter be exclusively under the control of said district court and carried into execution by its process as if said judgment had been rendered in district court, the clerk of said municipal court shall not issue such transcript while a writ of execution is outstanding, in the hands of an officer, or otherwise, and shall note on the record of said judgment the fact that such transcript has been given; and shall not thereafter, issue any writ of execution on the same judgment, but may, at any time after the first transcript is issued, give to any party applying therefor, upon such party paying the clerk's fee therefor, a new transcript, and the clerk shall note the record of each transcript given upon such judgment. (As amended Mar. 27, 1933, c. 119.) * * * * *

240. Form of summons in municipal court.

Where city council of Marshall adopted provisions of Mason's Stats., §§215 to 240, summons in actions in municipal court should be subscribed by plaintiff, or his attorney, and such summons may be served by any disinterested person. Op. Atty. Gen., Mar. 28, 1932.

COURT COMMISSIONER

246. Election—Term of office.

Laws 1929, c. 341, §2 (§997-4), fixes salary at \$3,500 and marriage fees in counties of 415,000 population.

247. Qualification and powers.

A district judge, exercising power of court itself, has jurisdiction to vacate an order of court commissioner for a writ of habeas corpus and to quash writ if issued, merits of matter not having been decided by commissioner. State v. Hemenway, 194M124, 259NW687. See Dun. Dig. 2331.

A court commissioner has power to waive five-day waiting period for marriage license, and express desire of judge of district court that court commissioners do not exercise such power is of no force and effect. Op. Atty. Gen. (128b), June 21, 1935.

250. Vacancy.

Section 250, and not Section 822, governs an appointment to fill a vacancy in the office of court commissioner. Op. Atty. Gen., Jan. 26, 1931.

CHAPTER 5A

Salaries of Certain State Officers and Employees

Act limiting amount which may be paid state officer or employee for use of automobile. Laws 1931, c. 331, §§254-47, 254-48.

252. Amount—Payment.

2. Judicial Department.

Salary of chief justice, associate justices and commissioners.—The annual salary of the chief justice of the supreme court shall be \$9,000.00 and that of each associate justice and each commissioner of the supreme court \$8,500.00. (G. S. '13, §294; '13, c. 400, §1; Ex. Sess. '19, c. 30; '21, c. 504; '23, c. 377; '25, c. 268; Apr. 24, 1929, c. 322, §1.)

The above provision amends this paragraph with respect to the salaries of the chief justice, associate justices, and the commissioners.

6. Office of Attorney General.

Salary of attorney general and assistants.—The annual salary of the attorney general is hereby fixed at \$7,000.00 and of the deputy attorney general at \$6,000.00, and of the several assistant attorneys general, other than the assistant attorney general who is a member of the rural credit bureau, at \$5,000.00. (G. S. '13, §294; '13, c. 400, §1; '21, c. 324; Apr. 25, 1929, c. 382, §1.)

The above provision amends this subdivision "so as to read as" above. As to whether it amends the provisions of the former law which are not embraced in the amendatory act may be open to question.

8. Office of State Librarian.

The salary of the assistant state librarian is hereby fixed at twenty-one hundred dollars annually, payable in semi-monthly installments. (G. S. '13, §294; '13, c. 400, §1; Ex. Sess. '19, cc. 30, 31, §1.)

Explanatory note—Laws Ex. Sess. 1919, c. 31, §1, impliedly amended Laws Ex. Sess. 1919, c. 30, by increasing the salary of the assistant librarian to the amount above stated.

9. Office of Commissioner of Banks.

Commissioner of Banks, forty-five hundred dollars; one deputy commissioner of banks, four thousand

dollars; one bank examiner assigned to examination in cities of the first class, thirty-seven hundred fifty dollars; ten bank examiners thirty thousand dollars; eleven assistant examiners, twenty-seven thousand five hundred dollars; three second assistant examiners fifty-four hundred dollars; three examiners' clerks, forty-five hundred dollars; four examiners' clerks, at an amount not to exceed fifty-six hundred dollars; one chief clerk, twenty-four hundred dollars; one first assistant clerk, fifteen hundred dollars; seven stenographers and clerks, eighty-two hundred eighty dollars; one extra clerk hire for contingencies, one thousand dollars. (As amended '21, c. 499; '23, c. 252; Apr. 13, 1933, c. 232, §1.)

Commissioner to fix salary of Examiner in charge of Liquidation.—The Commissioner of Banks shall fix the salary of the Examiner in Charge of Liquidation appointed by him, but not to exceed four thousand dollars, and the same shall be paid out of funds of banks in the hands of the Commissioner of Banks for liquidation. (Act Apr. '13, 1933, c. 252, §2.)

19. Office of Board of Control.

Salary increases for certain employees.—That the salaries of all employees of the various institutions of the state under the jurisdiction of the State Board of Control amounting to \$20 to \$50 a month exclusive of maintenance they may receive, be increased \$5 to \$10 per month, and the said State Board of Control is hereby authorized and directed to increase such salaries in said manner, using their own discretion as to the rate of increase in the individual case. (Act Apr. 15, 1935, c. 183, §1.)

Sec. 3 of Act Apr. 15, 1935, cited, provides that the act shall take effect from its passage. Sec. 2 of such act is set forth as §10834-1.

22. District Court Judges.

Governor attempted to veto this bill but did not return it in time. See State v. Holm. 172M162, 215NW200.