

1938 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

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

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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MASON PUBLISHING CO.  
SAINT PAUL, MINNESOTA  
1938

fund, in the proportion authorized by the Laws of 1931, Chapter 295, Section 32 [§7297-32], provided that such claims are presented to said board prior to January 1st, 1936. (Act Apr. 24, 1935, c. 243, §1.)

**7297-40. Limitation in amount of payments.**—No claims shall be paid by said county board pursuant

to this act which will exceed the total sum transferred from the livestock indemnity fund to the general revenue fund after deducting therefrom the amount of claims theretofore paid by such county under the provisions of this act or any heretofore existing law. (Act Apr. 24, 1935, c. 243, §2.)

## CHAPTER 54

### Unclaimed Property

#### COMMON LAW DECISIONS RELATING TO CHAPTER IN GENERAL

**1. Lost property in general.**  
Rights of finder and owner of locus in quo in lost personal property. 21MinnLawRev191.

## CHAPTER 55

### Hotels and Public Resorts

#### **7312. Hotel and innkeepers to have safes.**

Where a hotel accepted ring for delivery to a guest, a manufacturing jeweler who had long been one of its regular patrons, well known to the management, resulting bailment was for benefit of both bailor and bailee. Peet v. R., 191M151, 253NW546. See Dun. Dig. 732, 4511.

Guest having delivered a valuable ring to hotel, claim that no contract of bailment resulted because of hotel's ignorance of value of article was untenable. Id. See Dun. Dig. 728, 4511.

#### **7316. Lien of inn keeper.**

Right to lien upon baggage is not predicated on license. Op. Atty. Gen., Mar. 19, 1934.

#### **7318. Violation a misdemeanor.**

There is no law making registration at a hotel under assumed name a crime. Op. Atty. Gen. (494a), Aug. 3, 1934.

#### **7321. Equal rights in hotels, etc.**

A complaint, charging that the plaintiff, on entering a cafeteria for the purpose of being served food, was told that he was too dirty to be served and would have to get out, and was refused service, when in fact his clothing and person were clean, does not state a cause of action either for slander or for deprivation of any civil rights. Larson v. W., 183M28, 235NW393. See Dun. Dig. 4509.

## CHAPTER 56

### Auctioneers

**7322. Licenses—Persons entitled to.**—The county board or auditor may license any voter in its county, or any person from another state, as an auctioneer. Such license shall be issued by the auditor and shall authorize the licensee to conduct the business of an auctioneer in the state of Minnesota for the period of one year. It shall be recorded by the auditor in a book kept for that purpose. Before such license is issued the licensee shall pay into the county treasury a fee of ten dollars (\$10.00), provided, however, that for a nonresident the license fee shall be \$25.00. Provided, that any person may be licensed as an auctioneer for the purpose of making sales of pure-bred or grade livestock only upon the payment of the fee and the giving of the bond as above provided. Provided, further, that any person resident in an adjoining state which issues auctioneers' licenses to residents of Minnesota on the same basis as to the residents of such adjoining state, may be licensed as an auctioneer upon payment of the fee required therefor in such adjoining state and giving an approval of a bond as provided in the next succeeding section. (As amended Apr. 21, 1937, c. 313, §1.)

An ordinance for regulating of auctions and auctioneers, imposing a minimum license fee of \$250, is so unreasonable as to be invalid. Orr v. C., 193M371, 258NW 569. See Dun. Dig. 716, 6794.

Specific delegation to a municipal corporation of power, by ordinance, to license and regulate auctions and auc-

tionneers does not include, by implication, power to prohibit an established retail jeweler from selling his own merchandise at auction. Id.

Any person may be licensed as an auctioneer to make sales of livestock without regard to his residence. Op. Atty. Gen., Dec. 10, 1929.

Minnesota cannot license a resident of Iowa. Op. Atty. Gen., Feb. 27, 1931.

Non-residents from an adjoining state which does not issue auctioneers' licenses to residents of this state on the same basis as to residents of such adjoining state cannot be licensed to conduct auction sales of goods other than live stock. Op. Atty. Gen., Feb. 3, 1932.

The holder of a void auctioneer's license could not rely upon such license as a defense to a criminal action. Op. Atty. Gen., Feb. 3, 1932.

Resident of Iowa is not entitled to a license in this state. Op. Atty. Gen. (16c), Dec. 31, 1935.

License held by Iowa resident in this state being void, it would constitute defense to criminal prosecution. Id.

Resident of another state may be licensed in any county to conduct sales of pure bred and grade livestock upon paying fee and putting up bonds. Op. Atty. Gen. (16c), Mar. 8, 1937.

A nonresident auctioneer cannot legally be teamed up with Minnesota licensed auctioneer and conduct sales as agent of Minnesota licensee under his license. Id.

License may cover both pure bred and grade livestock. Id.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

#### **7327. Unlicensed sales.**

Owner of goods may not sell them at auction without license. Op. Atty. Gen., Oct. 5, 1929.

## CHAPTER 56A

### Hawkers, Peddlers, and Transient Merchants

#### HAWKERS AND PEDDLERS

#### **7328. Engaging in business without license, etc.**

Op. Atty. Gen., June 5, 1933; note under §4367.  
A salesman representing a wholesaler dealing exclusively with retail merchants and not consumers is not a "peddler." Op. Atty. Gen., July 2, 1930.

One holding a wholesale produce dealer's license is not thereby relieved from the necessity of taking out a peddler's license. Op. Atty. Gen., Mar. 12, 1931.

Persons who sell to dealers only are not peddlers. Op. Atty. Gen., July 8, 1933.

#### **7332. Right of municipalities, etc., to regulate.**

Ordinances regulating hawkers and peddlers and solicitors must be reasonable and not prohibitory. Op. Atty. Gen. (477b-21), Sept. 30, 1935.

A municipality may ordain that practice of peddlers and solicitors in going upon private premises and homes and soliciting orders without an invitation by occupants thereof is a nuisance. Op. Atty. Gen. (477b-21), Oct. 16, 1935.

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell product may be exercised, so long as no

license is required, and conditions are reasonable. *Id.*  
Validity of municipal legislation imposing a tax on solicitation of orders for future delivery. 18MinnLaw Rev475.

#### TRANSIENT MERCHANTS

**7337. Engaging in business without license.**  
175M374, 221NW428.

**7338. License, how applied for and issued—Fees.**

A transient merchant who has obtained a license in compliance with city ordinance is also compelled to obtain a license from county auditor under this section. *Op. Atty. Gen.*, Oct. 6, 1932.

**7340. Transient merchant defined.**

A farmer who buys products from other farmers in the vicinity and sells them must take out a peddler's license. *Op. Atty. Gen.*, Oct. 14, 1931.

A farmer who occupies a stand on a public highway and sells the products of his garden and also products which he does not raise is a transient merchant who must have a license. *Op. Atty. Gen.*, Oct. 23, 1931.

City of Pipestone has authority to regulate "transient merchants" but not "transient dealers." *Op. Atty. Gen.*, Oct. 9, 1933.

A dry cleaner and dyer having a place of business in some other city and soliciting in neighboring towns is

not a hawker, peddler or a transient merchant. *Op. Atty. Gen.* (477b-8), Apr. 25, 1935.

One who shipped furniture in car load lots to a local merchant for purpose of sale by the merchant at public auction is a transient merchant required to have a license if he does not part with title to the merchandise and no bona fide contract is made that would in any way bind local merchant to take goods. *Op. Atty. Gen.* (477b-21), May 16, 1935.

**7342. Not applicable to certain sales.**

A farmer who occupies a stand on a public highway and sells the products of his garden and also products which he does not raise is a transient merchant who must have a license. *Op. Atty. Gen.*, Oct. 23, 1931.

A person selling goods by sample for future delivery is neither a peddler nor a transient merchant and his business is not subject to a regulation by a village. *Op. Atty. Gen.* (59a-32), May 9, 1934.

**7343. Right of municipalities, etc., to regulate.**

Transient merchant obtaining license under city ordinance must also obtain one from county auditor. *Op. Atty. Gen.*, Oct. 6, 1932.

A village may not, under guise of licensing, adopt an ordinance which is prohibitive. *Op. Atty. Gen.*, May 18, 1933.

### CHAPTER 56B

#### Trade and Other Names

**7346. Commercial business—Trade and individual names, etc.**

Generally there can be no exclusive appropriation of a family surname so as to constitute it a valid technical trade-mark, and a person is entitled to honestly use his own name in connection with any business open to him but not in such a way as to deceive public and pass off his goods as those of owner of established trade name. *Brown Sheet Iron & Steel Co. v. B.*, 198M276, 269NW633. See *Dun*, Dig. 9670.

Although courts will protect use of a name that is so identified with a product that it has become well known and respected in trade, protection need not be any greater than is reasonably necessary to accomplish desired purpose. *Id.*

Effect of non-compliance with statute regulating use of trade names. 15MinnLawRev824.

**7352-1. Lodge and society emblems may be registered.**—That any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the Constitution and Laws of the United States or this State, may register, in the office of the Secretary of State, a facsimile, duplicate, or description of its name, badge, motto, button, decoration, charm, emblem, rosette or other insignia, and may, by re-registration alter or cancel the same. (Act Apr. 17, 1933, c. 295, §1.)

**7352-2. Application for registration.**—Application for such registration, alteration or cancellation, shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, upon blanks to be provided by the Secretary of State; and such registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, and the individual members and those hereafter to become members thereof, throughout this state. (Act Apr. 17, 1933, c. 295, §2.)

**7352-3. Secretary of State to keep record and index.**—The Secretary of State shall keep a properly indexed record of the registration provided for by this Act, which record shall also show any altered or cancelled registration. (Act Apr. 17, 1933, c. 295, §3.)

**7352-4. Not to register duplicates.**—No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, or any other name, badge, button, decoration, charm, emblem, rosette, or other insignia whatsoever, already registered pursuant to the provisions of this Act. (Act Apr. 17, 1933, c. 295, §4.)

**7352-5. Secretary of State to issue certificates.**—Upon granting registration as aforesaid, the Secretary of State shall issue his certificate to the petitioners, setting forth the fact of such registration. (Act Apr. 17, 1933, c. 295, §5.)

**7352-6. Penalty for unlawful use of registered insignia.**—Any person who shall wilfully wear, exhibit, display, print, or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insignia of any such association or organization herein mentioned, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and by-laws, rules and regulations of such association and organization, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding \$100.00, and in default of payment, committed to jail for a period of not to exceed 60 days. (Act Apr. 17, 1933, c. 295, §6.)

**7352-7. Fees.**—The fees of the Secretary of State for registration, alteration, cancellation, searches made by him, and certificates issued by him, pursuant to this Act, shall be the same as provided by law for similar services. The fees collected under this Act shall be paid by the Secretary of State into the state treasury. (Act Apr. 17, 1933 c. 295, §7.)

**7352-8. Inconsistent acts repealed.**—All Acts or parts of Acts inconsistent herewith are hereby repealed. (Act Apr. 17, 1933, c. 295, §8.)