

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

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.

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 can-

celled 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, 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.)

CHAPTER 56C

Newspapers

7352-11. Newspapers to register statement of ownership—exceptions.—Every newspaper printed or published within the State of Minnesota excepting legally qualified newspapers shall register in the office of the register of deeds, a statement of the owners, printers and publishers of said paper, and the residence of each, and if the same shall be published by a corporation, the names and residences of the president, secretary and editors thereof. (Act Apr. 21, 1931, c. 293, §1.)

School publications must file their statement of ownership, etc. Op. Atty. Gen., Feb. 8, 1934.

7352-12. Register of deeds to provide book.—The register shall provide a suitable book in which to register the names as herein provided and shall charge therefor a fee of fifty cents. (Act Apr. 21, 1931, c. 293, §2.)

7352-13. Shall not publish paper unless registered.—No newspaper excepting a legally qualified newspaper shall be printed or published within the State of Minnesota without the names of the owners, publishers and editors thereof stated and set forth in said newspaper. (Act Apr. 21, 1931, c. 293, §3.)

Fact that owner of newspaper merely described himself as "publisher and editor" was a technical rather than material violation of statute. Fryberger v. A., 194M443, 260NW625.

7352-14. Violation a gross misdemeanor.—In the event of any newspaper failing to file and register as provided for in Section 1 of this act, the party printing or publishing the same shall be guilty of a gross misdemeanor. (Act Apr. 21, 1931, c. 293, §4.)

7352-15. Court to determine ownership.—In the event of the publication of any newspaper within the

State of Minnesota without the names of the owners and publishers thereof fully set forth in said newspaper, circular or publication, the court or the jury may determine such ownership and publisher on evidence of the general or local reputation of that fact and opinion evidence may be offered and considered by the court or jury in any case arising in connection with the ownership, printing or publishing of any such publication or of any article published therein either in a criminal action for libel by reason of such publica-

tion or in any civil action based thereon. (Act Apr. 21, 1931, c. 293, §5.)

7352-16. Definition.—By the term "newspaper" as expressed herein, shall be included any newspaper, circular or any other publication whether issued regularly or intermittently by the same parties or by parties, one of whom has been associated with one or more publication of such newspaper or circular, whether the name of the publication be the same or different. (Act Apr. 21, 1931, c. 293, §6.)

CHAPTER 57A

Partnership

PART I

PRELIMINARY PROVISIONS

7387. Rules of construction.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

PART II.

NATURE OF A PARTNERSHIP

7389. Partnership defined.

Joint ownership of land does not create a partnership or make the owners joint adventurers. Pratt v. M., 182 M250, 234NW464. See Dun. Dig. 4948b, 7346, 7350.

The evidence is not conclusive that there was a partnership between one of the defendants and a corporation now defunct. Mahlberg v. J., 182M578, 235NW230. See Dun. Dig. 2092, 7346.

A partnership may be legal result of an agreement notwithstanding an expressed intention not to create such a relationship. Randall Co. v. E., 189M175, 248NW 752. See Dun. Dig. 7346.

Contract between manager and prize fighter held one of joint enterprise or adventure and not one of employment. Safro v. L., 191M532, 255NW94. See Dun. Dig. 4948b, 5301.

The law of joint adventures. 15MinnLawRev644.

7390. Rules for determining the existence of a partnership.

One selling diamonds, held not shown to have been the partner of the owner. 180M447, 231NW408.

In action to recover on a printing bill, evidence held to justify finding that defendants were partners. Randall Co. v. B., 189M175, 248NW752. See Dun. Dig. 7349a(37).

In workmen's compensation case evidence held to show that two persons operating an apartment building and dividing the income were partners rather than tenants in common. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 7349a.

Co-ownership of real estate does not create a partnership. Campbell v. S., 194M502, 261NW1. See Dun. Dig. 7346(8).

Bank suing co-owners of a farm as partners on a note purporting to be signed by them as a partnership was not thereafter stopped in a suit by a third party to claim that there was no partnership and that certain co-owner was alone liable on theory of having signed under an assumed name, first action being settled and there being no findings or judgment. Id. See Dun. Dig. 7348.

Profit sharing as a test of existence of partnership, 16MinnLawRev115.

7391. Partnership property.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

7392. Partner agent of partnership.

Where a partnership is a party to a contract, the acts of one member thereof bind the partnership. 174M297, 219NW180.

7393. Conveyance of real property of the partnership.

(3).

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

7396. Partnership bound by partner's wrongful act.

One partner, not guilty of any negligence, is not liable for the negligence of his copartner, in the carrying on of the partnership business, except to the extent that the copartner is liable. Belleson v. S., 185M537, 242NW1. See Dun. Dig. 7370.

7398. Nature of partner's liability.

Belleson v. S., 185M537, 242NW1; note under §7396.

PART IV.

RELATIONS OF PARTNERS TO ONE ANOTHER

7401. Rules determining rights and duties of partners.

Evidence as to conduct of brokerage business, held to support finding that partner's interest was seven-sixteenths and not 44.3%, the basis of his contribution. Burnett v. H., 187M7, 244NW254. See Dun. Dig. 7381.

At common law a partnership is not a person or an entity, and one partner cannot maintain an action at law on a matter arising out of partnership transactions against a copartner or the partnership without a dissolution and accounting. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 7347.

Dependent widow of employee of a partnership could recover compensation from partnership and insurer, notwithstanding that she is a member of the partnership. Id. See Dun. Dig. 7406.

7404. Partner accountable as fiduciary.

Rule that parties negotiating for organization of a partnership or joint adventure deal at arm's length cannot be extended so as to permit a secret share in the profits to be made by an agent in the transaction. 175 M226, 220NW822.

Accounting by surviving partner to representative of deceased partner. 181M156, 231NW916.

PART V.

PROPERTY RIGHTS OF A PARTNER

7407. Extent of property rights of a partner.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

7408. Nature of a partner's right in specific partnership property.

Action in conversion for partnership property cannot be maintained by partner against his copartner where there has been no accounting or no division of such property by agreement. Ruschoff v. W., 185M579, 242 NW296. See Dun. Dig. 1935(33).

A partner's interest in specific partnership property is made nonassignable, and any attempt at such assignment is void. Windom Nat. Bank v. K., 191M447, 254NW 602. See Dun. Dig. 7380a.

Subd. (1).

Evidence does not sustain a finding that plaintiff alone paid the purchase price of furniture used in a hotel operated by plaintiff and defendant as copartners and afterwards sold by them. Stolp v. R., 190M382, 251NW 903. See Dun. Dig. 7381.

Subd. (2) (b).

A creditor of both a partnership and one of partners individually has no right, nothing more appearing, to apply payments made by partnership out of its own funds upon indebtedness of individual partner. Mastley v. M., 193M411, 258NW591. See Dun. Dig. 7368.

One partner cannot without consent of others, use funds of firm for payment of his individual debts. Id.

Subd. (2) (c).

Bond to release garnishment, reciting that there is a stated sum of money in the possession of the garnishee, held to estop the principal and sureties from denying that there was any garnishable property in the hands of the garnishee. 181M404, 232NW631. See Dun. Dig. 3975.

7409. Nature of partner's interest in the partnership.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7411.

7410. Assignment of partner's interest.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.