

1934 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1934)

(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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CITER- DIGEST CO.
SAINT PAUL, MINNESOTA.
1934

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, implicitly 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.)

22. District Court Judges.

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

CHAPTER 5B

Public Officers and Employees in General

STATE EMPLOYEES' RETIREMENT ASSOCIATION

254-1. Definitions.—That the following words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meaning:

1. "State Employee" shall mean any person holding a state office or regularly employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor or from the fees or income of any department or agency of the state, excepting court commissioners, district judges, and the president, deans, professors, and instructors in the state university and in the state teachers' colleges, but shall not include temporary employees. Any employee who has been employed for a period of over six months continuously shall become a member, any classification of employees as temporary, permanent, or otherwise, by the head of any department, or any commission or agency of the state notwithstanding.

2. "Head of Department" shall mean the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves and submits salary abstracts of its employees to the state auditor and state treasurer.

3. "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member and the total amount of assessments paid by a member in lieu of such deductions and credited to his or her individual account in the retirement fund, without interest.

4. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, and all other moneys paid into the state treasury or received by the retirement board pursuant to the provisions of this Act, together with all income and profits therefrom and interest thereon. (Act Apr. 15, 1929, c. 191, §1; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

The title of the amendatory act (Laws 1933, c. 326) reads: "An act to amend Laws 1929, Chapter 191, Section 1, Subdivision 1; Sections 2, 4, 9, 10, 11 and 12, as amended by Laws 1931, Chapter 351; Laws 1929, Chapter 191, Sections 13 and 14; Laws 1929, Chapter 191, Sections 15 and 16, as amended by Laws 1931, Chapter 351; and Laws 1929, Chapter 191, Section 19, relating to the State Employees' Retirement Fund." The sections of the amendatory act do not correspond to those of the acts amended.

District boiler inspector from 1905 to 1919 was a state employee. Op. Atty. Gen., Oct. 16, 1933.

Employees in dormitories at state teachers' colleges are "state employees" though their income is from student meals, banquets, etc. Op. Atty. Gen., Oct. 19, 1933.

254-2. State employees' retirement association created.—There is hereby established a state employees' retirement association the membership of which shall consist only of state employees. Membership in such association shall be optional on the part of persons in the employ of the state on July 1, 1929, but all new state employees entering the service of the state after July 1, 1929, except elective state officers shall become members of said association by acceptance of state employment and the head of the department shall thereupon cause deductions to be made from the salary of such new employees. Persons in the employ of the state on July 1, 1929, who apply for membership in the retirement association prior to January 1, 1930, shall pay a membership fee of One Dollar (\$1.00) and persons in the employ of the state on July 1, 1929, who apply for membership therein after January 1, 1930, shall pay a membership fee of Ten Dollars (\$10.00), but no person in the employ of the state on July 1, 1929, shall be eligible to apply for membership in the retirement association after July 1, 1931. In addition to such membership fee, every person in the employ of the state on July 1, 1929, who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employee become a member of the retirement association July 1, 1929, with interest thereon at the rate of four per cent per annum compounded annually. (Act Apr. 15, 1929, c. 191, §2; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

254-3. Board of managers—officers.—The management of said state employees' retirement fund is hereby vested in a board of seven members, who shall be known as the State Employees' Retirement Board. Said board shall consist of the state auditor, the state treasurer, the insurance commissioner and four state employees who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of said board so elected shall hold office for a term of four years and until their successors are elected and qualified; provided that at the first election held after the passage of this act one of said members shall be elected for the term of one year, one member for the term of two years, one member for the term of three years, and one member for a term of four years. Any vacancy in said board caused by the death, resignation or removal of either of the members so elected shall be filled by the retirement board for the unexpired portion of the term in which such vacancy occurs. The members of the retirement board shall serve without compensation,

but shall be reimbursed out of the retirement fund expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and shall appoint a secretary and such other employees as may be necessary and fix their compensation. The board shall from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions of this act and for the transaction of its business. (Act Apr. 15, 1929, c. 191, §3; Apr. 25, 1931, c. 351, §3.)

254-4. Members shall pay into retirement fund.—

1. Every member of the retirement association shall pay into the retirement fund three and one-half per cent (3½%) of his or her regular salary which shall be taken to mean the rate of salary payable to the member on the first day of each regular payroll period and shall be considered as continuing throughout such payroll period, including overtime, such payment shall be made by deduction thereof from such salary. The head of each department is hereby directed to cause such deduction to be made at least once each month from the salary of each member of the retirement association on the department payroll and to approve one voucher payable to the state treasurer for the aggregate amount so deducted from the salaries covered by said payroll, provided that deductions from salaries of employees paid direct by any department, institution or agency of the state shall be made by the officer or employee authorized by law to pay such salaries, and remitted by him to the Secretary of the Retirement Association with a statement showing the amount of each of such deductions and the names of the employees on whose account the same have been made. All such salary deductions shall be credited to a fund to be known as the retirement fund and all interest and other income of said association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from such fund. Under the direction of the Retirement Board the head of each department shall furnish such information and shall keep such records as the Board may require for the discharge of its duties.

2. In computing the length of service of members for retirement purposes, who were required to pay a membership fee as provided by Section 2 of this Act, full credit shall be given for prior service, and in computing the length of service of those entering the state service after July 1, 1929, who have had service prior to July 1, 1929, full credit shall be given for prior service, but no credit for service rendered prior to the date of becoming a member by reason of being a "new state employee" shall be given to any person who was a state employee on July 1, 1929, and did not exercise his option to become a member.

3. In case an employee is laid off, or on leave of absence, without pay for a longer period than one month he shall be entitled to credit for service provided he pays into the retirement fund a sum equal to the deductions that would be made from his salary if he were receiving it, such payment to be made within 90 days from the time such member returns to state service.

4. In case of lay-off or leave of absence of more than one month the head of the department shall, at the beginning of such leave or lay-off, certify to the Secretary of the Retirement Board on forms provided by the Retirement Board that such employee is on leave of absence or lay-off, giving the exact date the leave or lay-off begins and the date it will end, and in the absence of such certification the employee will be deemed to be out of the state service. Provided that no such employee shall be deprived of any

rights under this act by reason of the failure or omission of any other person to make such certification.

5. No credit for service shall be allowed any member for periods such member may have been a state employee after June 30, 1929, unless deductions shall have been made from the salary of such member or he has made payment in lieu thereof.

6. No member shall be entitled to credit for former service upon entering the employ of the state after having received a refund from the retirement fund of accumulated deductions from his salary made pursuant to the provisions of this act, unless he shall restore the amount thereof to said fund as provided by Section 10 of this Act.

7. The final power to determine the status of any individual in the employ of the state for the purposes of this act is hereby vested in the Retirement Board. (Act Apr. 15, 1929, c. 191, §4; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

254-5. State Treasurer to be treasurer of association.—The state treasurer shall be ex-officio treasurer of the retirement funds of said association, and his general bond to the state shall cover all liability for his acts as treasurer of said funds. All monies of said association received by him shall be set aside in the state treasury to the credit of the proper fund. He shall deliver to the secretary of the retirement board each month copies of all payrolls of the state together with the state auditor's warrants covering the deductions made on said payrolls for the retirement fund, whereupon the secretary shall cause to be made in triplicate a list of the auditor's warrants and said warrants shall then be deposited with the state treasurer to be credited to the retirement fund. He shall pay out said fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that vouchers for investments may be signed by the state board of investment. (Act Apr. 15, 1929, c. 191, §5; Apr. 20, 1933, c. 326, §1.)

254-6. Investment board to invest funds.—The retirement board shall from time to time certify to the state board of investment for investment such portions of the retirement fund as in its judgment may not be required for immediate use. The state board of investment shall thereupon invest the sum so certified in such securities as are duly authorized legal investments for savings banks and trust companies, and shall sell any such securities upon request of the retirement board when necessary to provide money for the payment of refunds or annuities to members and/or other lawful obligations. (Act Apr. 15, 1929, c. 191, §6; Apr. 25, 1931, c. 351, §6.)

254-7. Department of Administration and Finance to make list of employees.—Within thirty days after this bill becomes a law, the department of administration and finance shall submit to the retirement board a statement showing the name, age, sex, title, compensation, and length of service as a state employee of every employee of the state as defined in Section 1 of this Act, and shall upon request of the retirement board furnish to said board a like statement of all new officers or employees who have entered the service of the state. (Act Apr. 15, 1929, c. 191, §7; Apr. 25, 1931, c. 351, §7.)

254-8. Attorney General to be legal adviser.—The attorney general shall be the legal adviser of the retirement board. (Act Apr. 15, 1929, c. 191, §8.)

254-9. Amount paid to be refunded in certain cases.—Whenever any member of said association shall cease to be a state employee for any reason other than death or retirement for superannuation, he or she shall be paid, upon making application therefor on blanks furnished by the Retirement Board, the full amount of the accumulated deductions standing to the credit of his or her individual account, provided that any such member who has been in service of the state for not less than five years

may, in lieu thereof, upon application in writing to the retirement board within 60 days from the termination of his or her employment, be permitted to retain membership in the retirement association and to enjoy all the rights and privileges thereof provided he pays into the retirement fund in lieu of salary deductions such amount as is provided in Section 4, subdivision 1, of this Act, such payment to be based upon his or her average salary during the last five years of state service. Any member of the retirement association who has maintained his or her membership after leaving the employ of the state by the payment of such assessments may terminate such membership by notice in writing to the retirement board, whereupon he or she shall be paid, upon making application therefor, the full amount of the accumulated deductions standing to the credit of his or her individual account. (Act Apr. 15, 1929, c. 191, §9; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

254-10. Members may be reinstated.—Whenever a state employe, who has so withdrawn his accumulated deductions shall re-enter the employment of the state within five years and shall restore to the retirement fund his or her accumulated deductions that were withdrawn the annuity rights forfeited at that time shall be restored. If the amount so withdrawn is not restored within 90 days from the date of returning to the state service, the employe becomes a member but not entitled to credit for former service. And in the case of a member returning to the service of the state without restoring a refund and again leaving and having a refund and later returning, such member can only restore the last refund and will not be entitled to credit for service prior to that covered by the last refund. (Act Apr. 15, 1929, c. 191, §12; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

254-11. Retirement annuity.—Whenever any member of the retirement association has been an employe of the state for a period of twenty (20) years and has attained the age of sixty-five (65) years or when any such employe has been in the service of the state for a period of thirty-five years, he shall be eligible for retirement for superannuation, but such retirement shall not be compulsory, provided that in computing such term of service the time during which any member of the association shall have maintained his membership by the payment of assessments after leaving the service of the state, in lieu of deductions, shall be included. Such retirement may be made upon application of the member or of someone acting in his or her behalf, or in case of an employe in active service upon the application of the head of the department in which such member is employed. Upon retirement such member shall receive an annuity for the remainder of his or her life equal to fifty (50) per centum of his or her average salary during the last five years of state service, provided that no such retirement annuity shall exceed the sum of One Hundred Fifty (\$150.00) Dollars per month. If the total of annuities and refundments shall during any month become greater in amount than the monthly deductions from salaries, the Board shall proportionally reduce the amount of annuities. (Act Apr. 15, 1929, c. 191, §11; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

254-12. Disability—annuity.—Whenever any member of the retirement association, who has been an employe of the state for a period of 10 years, or more, or whose term of service added to the period of time during which he has maintained membership in said association by the payment of assessments in lieu of salary deductions as herein provided amounts to 10 years or more, and is under the superannuated retirement age, shall suffer a total permanent disability, as defined in the workman's compensation act, regardless of the cause thereof, such member shall

be entitled to a retirement annuity in an amount bearing the same ratio to the full retirement annuity for superannuation as his term of service augmented by the period during which he has maintained membership as herein provided bears to 20 years, and whenever such member shall suffer a permanent partial disability, regardless of the cause thereof, such member shall be entitled to annuity in such percentage of the amount computed as aforesaid in case of total permanent disability as in the judgment of the retirement board shall measure the decrease in his earning capacity caused by such permanent partial disability. (Act Apr. 15, 1929, c. 191, §12; Apr. 25, 1931, c. 351, §12.)

Act Apr. 20, 1933, c. 326, purports to amend this section, but the matter involved corresponds to §254-14.

254-13. Medical examination to be required by all applicants for disability retirement.—The retirement board shall require the medical examination of all applicants for retirement for disability under such general rules and regulations as it may prescribe, and may provide therein for the discontinuance of any disability annuity and the forfeiture of all rights under this act in case of persistent refusal to submit to such examination. (Act Apr. 15, 1929, c. 191, §13.)

The title of the amendatory act (Laws 1933, c. 326) purports to amend this section, but the subject-matter of the amendment corresponds to §254-15. See title of act set forth in note under §254-1.

254-14. Heirs or legal representatives to receive amount due members.—Whenever a member of said association shall die without having received an annuity, or without having received in annuities an amount equal to the total amount of the accumulated deductions from his or her salary, the full amount of said accumulated deductions, less such annuity payments, if any, as have been paid to such member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or, if none, to the surviving spouse, or, if none, to the legal representatives of such member, upon the establishment of a valid claim therefor. Any annuity payment to which a member is entitled at the time of his death shall be paid in the same manner. (Act Apr. 15, 1929, c. 191, §14; Apr. 20, 1933, c. 326, §1.)

The title of the amendatory act (Laws 1933, c. 326) purports to amend this section, but the subject-matter of the amendment corresponds to §254-16. See title of act set forth in note under §254-1.

This section purports to be amendatory of Section 12 of Act Apr. 15, 1929, c. 191, as amended by Act Apr. 25, 1931, c. 351, but there is no correspondence in subject-matter. The subject-matter introduced by the amendment corresponds to Section 14 of Act Apr. 15, 1929, c. 191.

254-15. To be paid in monthly installments.—All annuities granted under the provisions of this act shall be paid in equal monthly installments, and shall not be increased, decreased, or revoked except as provided in this act. (Act Apr. 15, 1929, c. 191, §15; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

See note under §254-1.

254-16. Date of retirement.—No retirement on account of superannuation shall be granted until July 1, 1931, nor shall any member of the retirement association be entitled to receive an annuity for superannuation until he shall have paid into the retirement fund, either by deductions from salary or otherwise, before such retirement, an amount equal to five years' accumulated deductions from his or her average salary during the last five years of state service, and such additional amount as may be provided by law prior to July 1, 1931, and provided that until July 1, 1931, nothing done hereunder shall create or give any contract rights to anyone, except the right to receive back upon withdrawing from the association, any salary deductions made or assessments paid here-

under. (Act Apr. 15, 1929, c. 191, §16; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1.)

See note under §254-1.

254-17. Funds not subject to process.—None of the moneys, annuities or other benefits mentioned in this act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process nor shall they be subject to any state income tax. (Act Apr. 15, 1931, c. 191, §16; Apr. 25, 1931, c. 351, §1; Apr. 25, 1933, c. 326, §1.)

The subject-matter of §§254-17 to 254-22, inclusive, is re-enacted by Act Apr. 20, 1933, c. 326, without change, except by a slight alteration of the language of §254-19. The sections of the amendatory act do not correspond with the sections of the act purported to be amended. The amendatory act is probably unconstitutional because it is not supported by its title.

254-18. Insurance laws not to apply.—None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. (Act Apr. 15, 1929, c. 191, §18; Apr. 20, 1933, c. 326, §1.)

See note under §254-17.

254-19. May receive gifts and bequests.—The retirement board is hereby authorized and empowered to credit to the fund any moneys received in the form of donations, gifts, appropriations, bequests or otherwise, or derived therefrom, and every member of said retirement association who shall fail to make application for the amount of his accumulated deductions within five years after his separation from the service of the state shall be deemed to have donated the same to the fund, unless he shall have retained his membership in the retirement association as herein provided. (Act Apr. 15, 1929, c. 191, §19; Apr. 20, 1933, c. 326, §1.)

See note under §254-17.

254-20. Provisions separable.—If any provision of this act shall be held to be unconstitutional such unconstitutionality thereof shall not affect the validity of the remaining parts of this act. (Act Apr. 15, 1929, c. 191, §20; Apr. 20, 1933, c. 326, §1.)

See note under §254-17.

254-21. Payments to begin July 1, 1929.—This act shall take effect upon its passage and approval but no deductions from salary for the retirement fund shall be made from any salary earned prior to July 1, 1929. (Act Apr. 15, 1929, c. 191, §21; Apr. 20, 1933, c. 326, §1.)

See note under §254-17.

254-22. Board of directors may make rules and regulations.—Any changes or additions which may be found necessary or advisable for the management of this fund, may be made by a majority vote of the board of directors, provided no increase is made in the amount of deductions from salaries, or decrease in the amount of benefits paid. (Act Apr. 15, 1929, c. 191, §22; Apr. 20, 1933, c. 326, §1.)

See note under §254-17.

254-22a. Rights not affected by this act.—The rights of any member who has prior to the passage of this act filed proof of disability with the retirement board shall not be affected hereby. (Act Apr. 20, 1933, c. 326, §1.)

MUNICIPAL EMPLOYEES' RETIREMENT ASSOCIATION

254-23. Definitions.—That the following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meaning:

1. "Public Employee" shall mean any person holding a position, either by election, appointment or contract in and for any of the several counties, cities, villages or school districts which are now or hereafter may be affected by the provisions of this act, whose

salary is paid, in whole or in part, through taxation, or by fees, assessments or revenue from any one or more of the governmental subdivisions hereinbefore enumerated, irrespective of whether or not such person is directly employed by the authority of, or is under the control and supervision of the governing body of any such county, city, village or school district. The term "public employee" shall also mean any person appointed as a district court reporter in this state; but shall not be construed to include any person, who, by virtue of his employment in the public service is required to contribute any portion of his salary to any other retirement fund or pension system established by or pursuant to the laws of this state and in force and operation at the time of the passage of this act, and neither shall the term "public employee" be deemed to include temporary employees.

2. "Head of Department" shall mean the head of any department, institution, office or branch of service of any governmental subdivision which directly pays salaries out of its revenues or is empowered to authorize the payment of such salaries. (Act Apr. 24, 1931, c. 307, §1; Apr. 21, 1933, c. 374, §1.)

3. "Accumulated Deductions" shall mean the total of the amount deducted from the salary of a member and the total amount of assessments paid by a member in lieu of such deductions and credited to his or her individual account in the retirement fund, without interest.

4. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, and all other monies paid into the state treasury or received by the retirement board pursuant to the provisions of this act, together with all income and profits therefrom and interest thereon. (Act Apr. 24, 1931, c. 307, §1.)

5. "Governmental subdivision" shall mean a county, or a city, or a village, or a school district, as the case may be.

6. "City" shall be deemed to mean and include any incorporated city of this state, whether operating under a home rule charter or otherwise.

7. "Village" shall be deemed to mean and include any incorporated village of this state now or hereafter having a population of more than 5,000 inhabitants.

8. "School District" shall be deemed to mean and include any independent school territory of this state, which is now or hereafter may be wholly or partly within the limits of any such city, or any such village, and shall also mean any unorganized school district governed by any county board of education.

9. "Salary" shall mean the periodical compensation of any public employee and shall also be deemed to mean "wages," and, in case of officers elected to a fee office, shall be deemed to include the term "fees."

10. "Present Public Employee" shall mean any public employee receiving salary from any county, city, village or school district on the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed or from whose funds his salary is paid.

11. "New Public Employee" shall mean any public employee who enters the public service in any county, city, village or school district subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed, or from whose funds his salary is paid. (Act Apr. 24, 1931, c. 307, §1; Apr. 21, 1933, c. 374, §1.)

Judge of district court is not an employee and may not become member. Op. Atty. Gen., Mar. 25, 1933.

Public employees' retirement association is under control of state and must furnish budget. Op. Atty. Gen., Aug. 8, 1933.

(1). Legislature did not intend to bar a public employee from membership in the association because of member-

ship in another association or by reason of possible benefits from some other form of annuity or pension system not connected with his present employment. Op. Atty. Gen., May 23, 1931.

(1) (d).

It was not the intention of the legislature to bar a public employe from membership because of membership in another association or by reason of possible benefits from some other form of pension systems not connected with his present employment. Op. Atty. Gen., June 26, 1931.

The qualifying clauses in paragraph (d) apply with equal force to paragraphs (a), (b) and (c). Op. Atty. Gen., June 26, 1931.

(2).

If city clerk may issue orders or warrants only upon direction of the city council, the council is the only "head of department" within the meaning of the act. Op. Atty. Gen., June 10, 1931.

The "head of any department" means any officer of the city on whose certificate the city clerk is authorized to issue a warrant in payment of salary. Op. Atty. Gen., June 10, 1931.

254-24. Public employes' retirement association established.—There is hereby established a public employes' retirement association, the membership of which shall consist only of public employes and employes of said association. Membership in said association shall be optional on the part of the present public employes, but all new public employes except elective public officers shall become members of said association by acceptance of public employment. In all governmental subdivisions, heretofore operating under and affected by the provisions of this act present employes who apply for membership in the retirement association prior to January 1, 1932, shall pay a membership fee of One (\$1.00) Dollar and present employes who apply for membership therein after January 1, 1932, shall pay a membership fee of Ten (\$10.00) Dollars, but no present employe shall be eligible to apply for membership in the retirement association after July 1, 1933. In addition to such membership fee, every present employe who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employe become a member of the retirement association July 1, 1931, with interest thereon at the rate of five per cent (5%) per annum compounded annually. In all governmental subdivisions not heretofore operating under nor affected by the provisions of this act present employes who apply for membership in the retirement association prior to January 1, 1934, shall pay a membership fee of One (\$1.00) Dollar and present employes who apply for membership therein after January 1, 1934, shall pay a membership fee of Ten (\$10.00) Dollars, but no such present employe shall be eligible to apply for membership in the retirement association after July 1, 1935. In addition to such membership fee every such present employe who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employe become a member of the retirement association July 1, 1933, with interest thereon at the rate of five per cent (5%) per annum compounded annually.

An elected public officer, eligible for membership in said association, may exercise his option to become a member thereof, but such option, once exercised, may not be withdrawn during the incumbency of such officer in the office to which he was elected or re-elected. If holding office at the time of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, the terms and conditions of membership pertaining to a present public employe shall govern the admission of such elected public officer to membership in said association. Any person elected to a public office in any governmental subdivision affected by the provisions of this act, subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, may ap-

ply for membership in said association at any time within a period of two (2) years from the date he first became eligible for membership in said association. Any such public officer, who applies for membership within a period of six (6) months from and after the date he first assumed the office to which he was elected shall be required to pay a membership fee of One (\$1.00) Dollar, and such elected public officer who applies for membership in said association after six (6) months have elapsed from the date he first assumed the office to which he was elected shall be required to pay a membership fee of Ten (\$10.00) Dollars. In addition thereto, any such elected public officer shall pay into the retirement fund a sum equal to all accrued deductions which would have been made had such elected public officer become a member of said association on the first (1st) day of the first (1st) calendar month next succeeding the date he first assumed the office to which he was elected, together with interest thereon at the rate of five per cent (5%) per annum.

Except as in this act otherwise provided, membership in said association may not be terminated by resignation, or in any manner other than by death, or by leaving the employ of the governmental subdivision concerned. On or after the passage of this act, no employe of any governmental subdivision to which this act may now or hereafter apply shall be required to become a member of any retirement fund or relief association, or to contribute to any fund established for such purpose, except the retirement fund established pursuant to the provisions of this act. (Act Apr. 24, 1931, c. 307, §2; Apr. 21, 1933, c. 374, §1.)

Elective officers have the option of joining or not joining the association. Op. Atty. Gen., June 10, 1931.

In determining who are new public employes, April 24, 1931, governs, and not the date of the approval of the act by the head of a department. Op. Atty. Gen., June 26, 1931.

Where a certain employe of the city of St. Paul was given "provisional employment" prior to passage of this act and later passed an examination and was certified for permanent employment, he is entitled to elect whether he will or will not become a member of the association. Op. Atty. Gen., Sept. 3, 1931.

Elective public official cannot withdraw after having elected to become member. Op. Atty. Gen., Aug. 3, 1933.

254-25. Board of directors—membership—terms.—The management of the said public employes' retirement fund is hereby vested in a board of nine (9) members, who shall be known as the Public Employes' Retirement Board. Said board shall consist of the state auditor, the state insurance commissioner, the state treasurer, and six (6) public employes who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of said board so elected shall hold office for a term of three (3) years and until their successors are elected and qualified; provided that at the first (1st) election held after the passage of this act, two (2) of said members shall be elected for a term of one (1) year, two (2) members for a term of two (2) years, and two (2) members for a term of three (3) years. Within thirty (30) days after the passage of this act, at the call of state auditor, said association shall meet and elect the six (6) members to the retirement board. The members of the retirement board shall serve without compensation, but shall be reimbursed out of the retirement fund for expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and shall appoint a secretary and such other employes as may be necessary and fix their compensation. The board shall, from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions

of this act and for the transaction of its business. (Act Apr. 24, 1931, c. 307, §3.)

254-26. Retirement fund.—Every member of the retirement association shall pay into the retirement fund three and one-half per cent ($3\frac{1}{2}\%$) of his salary as a public employee as and when paid. Such payment shall be made by deduction thereof from such salary, provided, however, that under such regulations as the retirement board may by general rule prescribe, any member may, at his option, continue to make contributions to the retirement fund on the basis of his last regular salary, in case said salary is diminished or reduced for any cause and thereby become entitled to the same annuity as though there had been no diminution or reduction in such salary. The head of each department is hereby directed to cause such deductions to be made at least once each month from the salary of each member of the retirement association and to issue or approve one voucher payable to the state treasurer for the aggregate amount so deducted from such salaries and to cause the same to be remitted within fifteen (15) days thereafter to the secretary of the retirement board together with a statement showing the amount of each of such deductions, the amount of salaries from which such deductions have been made and the names of the employees on whose accounts the same have been made. All remittances so received by the secretary of the retirement board shall be promptly deposited with the state treasurer. Deductions from the salaries of district court reporters shall be made by the several county auditors of the state. Each county auditor of the state shall make such deduction from the amount of each warrant issued by him in payment of the salary of a district court reporter and shall on or before the fifteenth (15th) day of each month issue a warrant to the order of the state treasurer for the aggregate amount of all such deductions made by him during the preceding month and shall transmit the same to the secretary of the retirement board with a statement showing the amount of each of such deductions and the names of the district court reporters on whose account the same have been made, provided that the deductions from the salary of a district court reporter in a judicial district consisting of two or more counties shall be made by the auditor of the county in which the bond and official oath of such district court reporter are filed from the portion of his salary paid by such county. All salary deductions shall be credited to a fund to be known as the retirement fund and all interest and other income of said association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from said fund. (Act Apr. 24, 1931, c. 307, §4; Apr. 21, 1933, c. 374, §1.)

254-27. State treasurer to be custodian of funds.—The state treasurer shall be ex-officio treasurer of the retirement funds of said association and his general bond to the state shall be so conditioned as to cover all liability for his acts as treasurer of said funds. If the general bond of the state treasurer, at the time of the passage of this act, shall cover all liability for his acts as treasurer of said funds, no additional bond shall be required. If not, the said state treasurer shall execute to the State of Minnesota for the use and benefit of said State of Minnesota and all persons injured by failure to observe its conditions, a penal bond in such a sum as may be fixed by the retirement board and with such sureties as the governor and the state auditor may approve, conditioned that he will pay over to all persons on demand all monies to which they may be entitled which may have come into his hands in virtue or by reason of his office as such treasurer of said funds. All monies of said association received by him shall be set aside

in the state treasury to the credit of the proper fund. He shall transmit monthly to the secretary of the retirement board a detailed statement of all amounts so received and credited by him to said fund. He shall pay out said fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that vouchers for investment may be signed by the secretary of the state board of investment. (Act Apr. 24, 1931, c. 307, §5.)

The public employees' retirement board, if doubtful as to whether or not the general bond of the state treasurer covers his official acts as treasurer of the retirement fund, should obtain the consent of the sureties to the inclusion of the new liability, and if such consent cannot be had the board would be justified in requiring an additional bond. Op. Atty. Gen., June 26, 1931.

254-28. State board of investment to invest funds.—The retirement board shall from time to time certify to the state board of investment for investment such portions of the retirement fund as in its judgment may not be required for immediate use. The state board of investment shall thereupon invest the sum so certified in such securities as are duly authorized as legal investments for savings banks and trust companies, and shall sell any such securities upon request of the retirement board when necessary to provide money for the payment of refunds or annuities to members and for other lawful obligations. (Act Apr. 24, 1931, c. 307, §6.)

254-29. Heads of departments to make monthly statements.—Within ninety (90) days after the acceptance of the terms of this act by the governing body of any governmental subdivision, the heads of departments affected shall submit to the retirement board a statement showing the name, age, sex, title, compensation, and length of service in his department of every public employee in his department as defined in Section 1 of this act, and on the first (1st) day of each calendar month thereafter shall furnish the retirement board a like statement of all new officers or employees who have entered the public service as public employees in his department, and at the same time shall notify the board of all removals, withdrawals and changes in salaries of any members of the retirement association which have occurred during the preceding month, and shall furnish to said board a like statement of all new officers or employees who have entered the service as public employees. (Act Apr. 24, 1931, c. 307, §7; Apr. 21, 1933, c. 374, §1.)

The department heads need not make the reports required by this section until the act is made applicable by compliance with Section 24 [§254-46], and strict compliance with this section is not required. Op. Atty. Gen., June 26, 1931.

254-30. Attorney General to be legal advisor.—The attorney general shall be the legal advisor of the retirement board. Said board may sue, or be sued, in the name of the Public Employees' Retirement Board of the Public Employees' Retirement Association, and, in all actions brought by it, or against it, said board shall be represented by the attorney general. (Act Apr. 24, 1931, c. 307, §8; Apr. 21, 1933, c. 374, §1.)

254-31. Payments upon retirement.—Whenever any member of said association shall cease to be a public employee for any reason other than death or retirement, he shall be paid, on demand, the full amount of the accumulated deductions standing to the credit of his or her individual account, provided that any such member who has been in the public service for no less than four years may, in lieu thereof, upon application in writing to the retirement board within sixty (60) days from the termination of his or her employment, be permitted to retain membership in the retirement association and to enjoy all the rights and privileges thereof upon such terms and conditions as to his employment and the payment of assessments in lieu of salary deductions as the retirement board may by general rule prescribe. Any member of the retirement association who has maintained his or her

membership after leaving the public service by the payment of such assessments may terminate such membership by notice in writing to the retirement board, whereupon he or she shall be paid on demand, the full amount of the accumulated deductions standing to the credit of his or her individual account. (Act Apr. 24, 1931, c. 307, §9; Apr. 21, 1933, c. 374, §1.)

A public official who has spent twenty years in public service but who retires prior to reaching the age of sixty-five years may continue to make payments into the retirement fund and be eligible to an annuity upon reaching the required age. Op. Atty. Gen., July 24, 1931.

254-32. Forfeited rights shall be restored.—Whenever a public employe, who has so withdrawn his accumulated deductions shall re-enter the public service within five (5) years after such withdrawal, the annuity rights forfeited by such employe at the time of such withdrawal shall be restored upon repayment by such employe to the retirement fund of the full amount so withdrawn, with interest thereon at the rate of five per cent (5%) per annum, compounded annually from the date of withdrawal and in addition thereto an amount equal to the sum that he would have contributed to said fund had he elected to retain membership in said association, together with interest on the same computed at the rate of five per cent (5%) per annum, compounded annually. Unless such public employe shall make the payments as herein provided, with interest thereon at the rate of five per cent (5%) per annum compounded annually from the date he shall have so re-entered the public service, he shall be required, before any retirement is granted to him, to make or to have made contributions to the retirement fund for a period of years equivalent to that originally required of him for the purpose of qualifying for a retirement annuity at the time he first became a member of said association. (Act Apr. 24, 1931, c. 307, §10; Apr. 21, 1933, c. 374, §1.)

254-33. Retirement.—Except as in this act otherwise provided, whenever any member of the retirement association has been a public employe for a period of twenty (20) years and has attained the age of sixty-five (65) years, or when any such employe has been a public employe for a period of thirty-five (35) years, he shall be eligible for retirement, but such retirement shall not be compulsory, provided that in computing such terms of service, the time during which any member of the association shall have maintained his membership by the payment of assessments after leaving the service as a public employe, in lieu of deductions, shall be included. Such retirement shall be made upon application of the member or of someone acting in his or her behalf, or in the case of any employe in active service upon the application of the head of the department in which such member is employed. Except as in this act otherwise provided upon such retirement such member shall receive an annuity for the remainder of his or her life equal to fifty (50) per centum of the average annual salary received for the entire period of his or her membership in said association, provided, that in computing the average annual salary of members who have contributed by assessments, in lieu of salary deductions or otherwise, the average salary received while such member was in the public service shall, for the purpose of construing this section, be considered the salary of such member for that period of his membership in said association during which he made contributions to the retirement fund by assessments, in lieu of salary deductions or otherwise, and provided, further, that in computing the period of past service, employment by or for any of the governmental subdivisions as defined and enumerated by this act shall be counted, irrespective of whether or not the governing body of such governmental subdivision has qualified its public employes for membership in said association, and provided further, that

no such retirement annuity shall, in any event, exceed the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per annum. (Act Apr. 24, 1931, c. 307, §11; Apr. 21, 1933, c. 374, §1.)

254-34. [Repealed.]

Repealed Apr. 21, 1933, c. 374, §2.

254-35. [Repealed.]

Repealed Apr. 21, 1933, c. 374, §2.

254-36. Heirs or legal representatives to receive benefit of funds.—Whenever any member of said association shall die without having received an annuity, or without having received in annuity payments an amount equal to the total amount of the accumulated deductions from his or her salary, and such additional accumulated deductions, if any, as may have been paid into the retirement fund under and pursuant to the provisions of Section 16 of this act, exclusive, however, of any payments representing accrued interest, the full amount of such total accumulated deductions and additional accumulated deductions, if any, less such annuity payments, if any, as have been paid to such member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or, if none, to the legal representatives of such member, upon establishment of a valid claim therefor. Provided, however, if no valid claim is established therefor, the said accumulated deductions shall remain with and become the property of said retirement association. (Act Apr. 24, 1931, c. 307, §14; Apr. 21, 1933, c. 374, §1.)

254-37. Annuities payable monthly.—All annuities granted under the provisions of this act shall be paid in equal monthly installments, commencing one (1) month from the time of retirement and continuing only during the lifetime of the annuitant, and shall not be increased, decreased or revoked, except as provided in this act. (Act Apr. 24, 1931, c. 307, §15; Apr. 21, 1933, c. 374, §1.)

254-38. Retirement to begin July 1, 1935.—No retirement annuity shall be granted under the provisions of this act until July 1, 1935, nor shall any member of the retirement association be entitled to receive a retirement annuity. Until he shall have contributed to the retirement fund either by salary deductions or otherwise for a period of four (4) full years. Provided, however, that if any member who is eligible for retirement has contributed to the retirement fund for a period of less than twenty (20) years, he shall be entitled to receive a pro rata retirement annuity for the remainder of his life in an amount bearing the same ratio to the full retirement annuity that the period of his salary deductions, or assessments in lieu thereof, bears to twenty (20) years, but fractional parts of a year shall not enter into the computation of such pro rata retirement annuity. Provided, further, then whenever any member shall have become eligible to receive a pro rata retirement annuity, as hereinbefore provided, and shall have contributed to the retirement fund for a period of five (5) full years, such member may, if he shall so elect at any time before making application for such pro rata retirement annuity, make application for a full retirement annuity, or for a pro rata retirement annuity based on a greater number of years of contribution to the retirement fund than then stands to his credit on the books of said association, and in either case, the same shall be granted to him upon compliance with the following terms and conditions, to-wit:

(a) In case such member shall make application for a full retirement annuity, the retirement board, before granting said application, shall do the following things, to-wit:

1. Determine the number of full years of contributions required of such member to make a total of twenty (20) full years of contribution by him to the retirement fund.

2. Determine the average annual amount of the accumulated deductions of such member for the period of his membership in said association.

3. Determine the amount of the additional accumulated deductions to be required of such member by multiplying the number of years as determined by the method prescribed in sub-paragraph one (1) hereof by the average annual amount of his accumulated deductions, as determined in the manner prescribed by sub-paragraph two (2) hereof.

4. Require that such member shall pay into the retirement fund, before such full retirement annuity shall be granted, the total amount of his additional accumulated deductions, as determined by the method prescribed by sub-paragraph three (3) hereof, and, in addition thereto, a further amount representing an accrued interest payment, to be determined as follows:

In case of fifteen (15) years of additional contributions required, an amount equal to forty-eight (48%) per cent of the total accumulated deductions required for such period, and in case of fourteen (14) years of additional contributions required, or less, an amount to be determined in like manner, based on percentages of the total accumulated deductions required in each instance, as hereinafter set forth, to-wit: Fourteen (14) years, fifty (50%) per cent; thirteen (13) years, fifty-two (52%) per cent; twelve (12) years, fifty-four (54%) per cent; eleven (11) years, fifty-six (56%) per cent; ten (10) years, fifty-eight (58%) per cent; nine (9) years, sixty (60%) per cent; eight (8) years, sixty-two (62%) per cent; seven (7) years, sixty-four (64%) per cent; six (6) years, sixty-six (66%) per cent; five (5) years, sixty-eight (68%) per cent; four (4) years, seventy (70%) per cent; three (3) years, seventy-two (72%) per cent; two (2) years, seventy-four (74%) per cent; one (1) year, seventy-six (76%) per cent. Provided, that after the total amounts required of such member have been determined, as hereinbefore set forth, credit thereon shall be allowed such member for the amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for a full retirement annuity.

(b) In case such member shall make application for a pro rata retirement annuity based on a greater number of full years of contribution than then stands to his credit on the books of said association, the retirement board, in the manner hereinbefore provided, shall determine the amount of the additional accumulated deductions required under such application and shall require that such applicant shall pay into the retirement fund before such greater pro rata retirement annuity is granted, all additional accumulated deductions required, and, in addition thereto, such further and additional amounts representing accrued interest payments as may be determined in the manner hereinafter set forth, to-wit:

In case of one (1) additional year's credit, an amount equal to that percentage of the total accumulated deductions required for one (1) year as may be determined by multiplying the number of full years such member has contributed to the retirement fund by four (4%) per cent. In case of two (2) additional years' credit, an amount equal to that percentage of the additional accumulated deductions required as in the case of one (1) additional year's credit, and, in addition thereto, a further amount equal to two (2%) per cent of the total accumulated deductions required. In like manner for three (3) additional years' credit, or more, an amount equal to that percentage required as in the case of one (1) additional year's credit, and, in addition thereto, a further amount computed on the following percentages of the total accumulated deductions required in each instance as hereinafter set forth, to-wit: Three (3) additional years' credit, four (4%) per cent;

four (4) additional years' credit, six (6%) per cent; five (5) additional years' credit, eight (8%) per cent; six (6) additional years' credit, ten (10%) per cent; seven (7) additional years' credit, twelve (12%) per cent; eight (8) additional years' credit, fourteen (14%) per cent; nine (9) additional years' credit, sixteen (16%) per cent; ten (10) additional years' credit, eighteen (18%) per cent; eleven (11) additional years' credit, twenty (20%) per cent; twelve (12) additional years' credit, twenty-two (22%) per cent; thirteen (13) additional years' credit, twenty-four (24%) per cent; fourteen (14) additional years' credit, twenty-six (26%) per cent; fifteen (15) additional years' credit, twenty-eight (28%) per cent. Provided that after such total amount required of such member has been determined, as hereinbefore set forth, credit thereon shall be allowed such member for any amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for such greater pro rata retirement annuity. Provided further that until July 1, 1935, nothing done under the terms of this act shall create or give any contract rights to any person, except the right to receive back upon withdrawal from the association, through separation from the public service any salary deductions made or assessments paid hereunder. If total of annuities shall during any year become greater in amount than the annual contributions, the retirement board shall proportionately reduce the amount of annuities. (Act Apr. 24, 1931, c. 307, §16; Apr. 21, 1933, c. 374, §1.)

254-39. [Repealed.]

Repealed Apr. 21, 1933, c. 374, §2.

254-40. Annuities not assignable.—None of the monies, annuities or other benefits provided for in this act shall be assignable, either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, nor shall the same be subject to any state income tax. (Act Apr. 24, 1931, c. 307, §18.)

254-41. Insurance laws do not apply.—None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. The books and accounts of said association and said retirement fund shall be examined and audited annually by the public examiner of the state and a full and detailed report thereof made to the retirement board, without expense to said retirement fund. (Act Apr. 24, 1931, c. 307, §19; Apr. 21, 1933, c. 374, §1.)

254-42. Board may accept contributions, etc.—The retirement board is hereby authorized and empowered to credit to the fund any monies received in the form of contributions, donations, gifts, appropriations, bequests or otherwise; and every member of said retirement association who shall fail to demand the amount of his accumulated deductions within two (2) years after his separation or withdrawal from the public service shall be deemed to have donated the same to the retirement fund, unless he shall have retained his membership in the retirement association, as hereinbefore provided. (Act Apr. 24, 1931, c. 307, §20.)

254-43. Provisions separable.—If any provision of this act shall be held to be unconstitutional, such unconstitutionality thereof shall not affect the validity of the remaining parts of this act. (Act Apr. 24, 1931, c. 307, §21.)

254-44. Board may make regulations.—Any changes or additions which may be found necessary or advisable for the management of this association, may be made by a majority vote of the retirement board, provided that no increase is made in the amount of deductions from salaries, nor decrease in the amounts of benefits authorized under and pursuant to this act. (Act Apr. 24, 1931, c. 307, §22.)

254-45. Penalties for false information.—Any person who shall give any false information to the retirement board or any officer or agent of the said retirement association for the purpose of obtaining membership in such association, or any person, who shall wilfully fail or refuse to perform or discharge any duty prescribed by this act, shall, upon conviction thereof, be guilty of a misdemeanor. (Act Apr. 24, 1931, c. 307, §23.)

254-46. Application of act.—The provisions of this act shall not apply to any county, city, village or school district, or the employees thereof, until and unless the governing body of any such county, city, village or school district, shall have duly approved by a majority vote and by a resolution in writing of salary deductions for public employees, as contemplated by Section 4 of this act, and shall have filed a duly certified copy of such resolution of approval with the proper officials of the county, city, village or school district, whose duty it is to pay or authorize the payment of salaries, and one (1) such certified copy with the secretary of the retirement board. Salary deductions for present public employees in all governmental subdivisions not heretofore affected by the provisions hereof, who shall become members of the retirement association after the passage of this act shall be computed from the first (1st) day of July, 1933. (Act Apr. 24, 1931, c. 307, §24; Apr. 21, 1933, c. 374, §1.)

MISCELLANEOUS PROVISIONS

254-47. Auto hire for municipal employees.—The maximum amount which shall be paid by the State, any department or bureau thereof, or any county, city, village, town or school district, to any officer or employee as compensation or reimbursement for the use by such officer or employee of his own automobile in the performance of his duties shall not exceed five cents per mile. (Act Apr. 24, 1931, c. 307, §24; Feb. 6, 1933, c. 13.)

This law does not apply to trips made prior to its approval. Op. Atty. Gen., April 27, 1931.

It is lawful to allow additional compensation of one cent per mile to a state officer or employee for the use of his car where another state officer or employee travels with him. Op. Atty. Gen., April 27, 1931.

This act applies to mileage allowance to sheriff for use of his car in county work, but it has no application to his permissible fees for serving civil papers, and generally speaking county may make an additional allowance to sheriff for transporting prisoner in his car where such an allowance is otherwise authorized. Op. Atty. Gen., May 6, 1931.

County commissioners are only entitled to be reimbursed at the rate of seven cents per mile for the use of automobile in the performance of their official duties. Op. Atty. Gen., May 18, 1931.

Law applies to a sheriff driving his own automobile in criminal cases, and to a deputy sheriff, where the deputy received no salary. Op. Atty. Gen., May 13, 1931.

Law does not affect rights of a sheriff under the old law where he employs a taxi or automobile livery of a third person. Op. Atty. Gen., May 18, 1931.

This act does not affect Section 657. Op. Atty. Gen., May 23, 1931.

This act affects mileage allowance of sheriffs of some counties under Section 693. Op. Atty. Gen., May 23, 1931.

The limitation of seven cents per mile for use of automobile applies to Section 5353-2 if the county nurse furnishes her own automobile and bills the county for use thereof, but not if the county furnishes the automobile and gasoline and repairs. Op. Atty. Gen., May 23, 1931.

This act modifies Section 962 so as to limit allowance for use of automobile to seven cents per mile. Op. Atty. Gen., May 23, 1931.

This act is not applicable to the city of Minneapolis where employees are paid a specific sum per month as automobile allowance. Op. Atty. Gen., June 2, 1931.

In the absence of a special statute applicable to a particular county, this act is applicable and limits allowance for use of sheriff's own automobile. Op. Atty. Gen., June 4, 1931.

If a county attorney is entitled to receive reimbursement for the use of his own car on county business, it is limited to seven cents per mile by this act. Op. Atty. Gen., June 4, 1931.

Expense allowances of county commissioner governed by Section 657 are affected by this act, but if the county is governed by Section 656, allowance for reimbursement for use of car is limited by this act. Op. Atty. Gen., June 4, 1931.

Allowance for traveling expenses of members of county child welfare board is limited specifically by Laws 1931, c. 242. Op. Atty. Gen., June 4, 1931.

This act does not prevent sheriff collecting taxes pursuant to Section 2090 from charging mileage at the rate of ten cents and adding it to the tax. Op. Atty. Gen., June 8, 1931.

A sheriff transporting a feeble-minded person to a state institution is entitled to reimbursement for his actual expenses in transporting the person mentioned, and where he uses his own car the expense may exceed seven cents per mile while the feeble-minded person is in the car. Op. Atty. Gen., June 15, 1931.

This act only limits the amounts which may be paid by the state or any governmental subdivision thereof, and does not limit the mileage which a public officer may charge to an individual in connection with official services rendered. Op. Atty. Gen., July 2, 1931.

Where the statute allows a certain sum per mile as mileage without any statement that it is as reimbursement for automobile or other expenses of traveling, the allowance is not affected by this law. Op. Atty. Gen., July 7, 1931.

This act does not affect the mileage allowance provided in §657 to county commissioners. Op. Atty. Gen., Jan. 22, 1932.

This section does not affect the mileage allowance provided for in §854 to county commissioners. Op. Atty. Gen., Jan. 22, 1932.

County attorney may not collect mileage for use of his personal automobile, but he may be reimbursed for gas and oil. Op. Atty. Gen., June 14, 1932.

Assessor is not entitled to charge for use of his automobile while actually assessing property. Op. Atty. Gen., July 6, 1932.

No provision is made for compensation when sheriff uses his own automobile in transporting prisoner to state prison or state reformatory, but sheriff is entitled to allowance of amount equivalent to railroad fare for himself, prisoner and guards. Op. Atty. Gen., July 6, 1932.

This act does not supersede Mason's Stats., 1927, §6995. Op. Atty. Gen., Oct. 14, 1932.

Act does not affect mileage of jurors or witnesses. Op. Atty. Gen., Jan. 25, 1933.

Mileage allowed county commissioners of Lake County with valuation below \$3,000,000 is governed by this act. Op. Atty. Gen., Feb. 15, 1933.

This section supersedes §822-1, to extent that members of county board are entitled to 7c mileage when they use their own cars, and Laws 1933, c. 13, further reduces it to 5c per mile. Op. Atty. Gen., Feb. 23, 1933.

This section does not affect §657. Op. Atty. Gen., Feb. 25, 1933.

Laws 1933, c. 13, is not applicable to mileage of members of county board whose salaries are determined by general statutes, §656. Op. Atty. Gen., Mar. 4, 1933.

This act does not prevent allowance of 1c per mile on each additional passenger, not exceeding total of 10c per mile. Op. Atty. Gen., Mar. 10, 1933.

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.

Sworn monthly statements by county commissioners presenting bills for mileage on a monthly basis are sufficient. Op. Atty. Gen., May 20, 1933.

Laws 1927, c. 220, does not place Hennepin County in different class than other counties as far as mileage allowance is concerned. Op. Atty. Gen., May 22, 1933.

County commissioner must itemize monthly mileage statement. Id.

Sheriff may not receive mileage for use of automobile in transporting other county officials in the performance by them of their official duties. Op. Atty. Gen., May 24, 1933.

State, and not county, pays mileage fee to sheriff for transportation of prisoners to state institution. Id.

This act has no application to rights of a sheriff under old law employing taxi or automobile livery of third person. Op. Atty. Gen., May 26, 1933.

Mileage of constable in transporting a prisoner to county jail is not affected by this section, as amended by Laws 1933, c. 13. Op. Atty. Gen., Sept. 22, 1933.

Sheriff is not entitled to compensation for mileage but to a reimbursement in proceedings to collect delinquent motor vehicle taxes where no collections are made. Op. Atty. Gen., Sept. 29, 1933.

Fees for transporting convict prisoner to jail are not affected by this act as amended by Laws 1933, c. 13. Op. Atty. Gen., Oct. 2, 1933.

254-48. Construction.—This act shall be construed as amending all existing laws authorizing such allowances or reimbursements by imposing the maximum limit above set forth, and shall not be construed as permitting the payment of such allowance or the making of such reimbursement to any officer or employee where it is not now permitted or hereafter authorized by law, or by authority of the governing body of any municipality above named or by any commis-

sion or board of any county. (Act Apr. 24, 1931, c. 307, §24; Feb. 6, 1933, c. 13.)

This act as amended by Laws 1933, c. 13, does not affect mileage provisions in §§657 and 2051. Op. Atty. Gen., May 16, 1933.

254-48½. * * *

DECISIONS RELATING TO OFFICERS IN GENERAL

1. In General.

Two attorneys associated together in same office but not partners may respectively hold offices of county attorney and city attorney. Op. Atty. Gen., May 6, 1933.

2. De facto officers.

There can be no de facto officer unless there is a de jure office for him to fill, but where there is a legislative act or municipal ordinance in form creating an office

and an officer is elected or appointed to such office, then, though legislative act or ordinance is unconstitutional or invalid, officer is an officer de facto until act or ordinance is declared unconstitutional or invalid. State v. City of Eveleth, 249NW184. See Dun. Dig. 8014.

3. Officials not to be interested in contracts.

A county is not authorized to pay rent to a surveyor for his use of instruments belonging to him personally. Op. Atty. Gen., Jan. 9, 1932.

4. Term of office.

The term of office of a city employee, appointed by city council without term, does not expire at expiration of term for which members of council appointing him were elected, unless employee was appointed for a fixed term. State v. City of Eveleth, 249NW184. See Dun. Dig. 7988.

Payments to retirement fund by regular state employees shall be based upon their regular salary schedule without considering emergency reduction in salaries. Op. Atty. Gen., May 11, 1933.

CHAPTER 6

Elections

255-1. Cities may change date of municipal elections.—That the governing body of any city of the first class operating under a home rule charter be and is hereby authorized to change, by resolution adopted by the majority vote of said governing body, the date of the biennial municipal election from the first Tuesday in May to the last Tuesday in April of even-numbered years, in the event that the charter under which such city is operating provides for such biennial election on the first Tuesday in May of even-numbered years. (Act Mar. 9, 1933, c. 71, §1.)

255-2. Resolution to be filed with County Auditor and Secretary of State.—A copy of any resolution so passed and approved by the majority of the members of such governing body shall, before it becomes effective, be filed with the county auditor and the Secretary of State of the State of Minnesota not later than sixty days preceding such election. (Act Mar. 9, 1933, c. 71, §2.)

Sec. 3 of Act Mar. 9, 1933, cited, provides that the act shall take effect from its passage.

255-3. City election in certain cities.—The regular city election in all cities in this state, operating under Laws 1895, Chapter 8 [Masons Minn. Stat. 1927, pp. 439 to 466], and having a population of less than 3500 inhabitants, shall be held on the first Tuesday after the first Monday in November of each even-numbered year. (Act Apr. 8, 1933, c. 181, §1.)

Held unconstitutional. See note in Mason's Minnesota Annotations, Feb. 1934, Vol. 6, No. 1.

255-4. Officers to hold over in certain cases.—There shall not be any city election in such cities in the year 1933, and elective and appointive officers, now holding office in said cities, shall continue to hold their respective offices until the first Tuesday after the first Monday in the year 1935, or until their successors are elected or appointed and have qualified, unless such officers are removed in the manner provided by law. (Act Apr. 8, 1933, c. 181, §2.)

256. Definition of terms.

Gen. Stat. 1923 (1 Mason, 1927) §§488-492, providing for contest of elections, does not apply to towns. Danculovic v. Z., 184M370, 238NW695. See Dun. Dig. 2915, 9660a.

Child over 21 years of age upon entering United States does not become citizen of United States on naturalization of parent. Op. Atty. Gen., Mar. 3, 1933.

258. Election districts.

Laws 1929, c. 95, repealed and reenacted by Laws 1929, c. 344, provides for setting apart unincorporated platted territory within a township as a separate election district. The act is so restricted as to territorial operation as to require its exclusion from this compilation as a local or special act.

262. Special elections in certain cases.—Whenever any vacancy occurs in any office, the filling of which is not otherwise provided for, the governor, within ten days after he is informed of such vacancy, shall issue a proclamation directing a special election to

be held at a time therein specified not more than twenty days from the date of such proclamation, to fill such office. One copy of such proclamation shall be mailed to the auditor of each county wherein such special election is to be held. But if the vacancy occurs in the office of representative in congress, or members of the legislature, and there be no session of the congress or legislature between the happening thereof and the next general election, or in case of vacancy in the state legislature such vacancy occurs during a session of the legislature at such a time that a special election cannot be held until more than one-half of the legislative days of such session have elapsed, such special election may be held as hereinbefore provided, and if not so held, shall be held on the next general election day. Such special election shall be called, held and conducted, and the returns thereof made and canvassed in the same manner as in the case of general election; and within fifteen days thereafter the auditor shall transmit a statement of the vote cast thereat to the secretary of state. The primaries therefor shall be held in the same manner and the same time as provided for in Section 263. (R. L. '05, §160; G. S. '13, §305; '25, c. 420, §1; Mar. 2, 1933, c. 48.)

This section and Sections 263 to 270 were repealed by Laws 1929, c. 297, §13, post, §270-13. The above amendment was made without reference to and in disregard of such repeal.

Governor has no authority to fill vacancy in federal house of representatives by appointment. Op. Atty. Gen., Feb. 18, 1933.

263 to 270. [Repealed.]

Repealed by Laws 1929, c. 297, §13, post, §270-13. See §401-1, as to hours of opening and closing of polls.

270-1. Election to fill vacancies in congress or legislature.—Every vacancy in the office of representative in Congress or member of the State Legislature or in any other elective public office the filling of which is not otherwise provided for shall be filled for the unexpired term by election upon the writ of the governor as provided by this act; provided, that if there will be no session of the congress or the legislature or other occasion for the exercise of the functions of the office, as the case may be, before the expiration of the term in which the vacancy exists or will occur, it shall not be necessary to fill the vacancy. (Act Apr. 23, 1929, c. 297, §1.)

270-2. Same—governor to direct election—special election.—In any case where a vacancy in such an office has occurred and the governor is informed thereof a sufficient time before the next general election to permit the giving of notice and the nomination of candidates therefor as hereinafter provided, and where there will be no session of the congress or the legislature or other occasion for the exercise of the functions of the office, as the case may be, before the time fixed by law for the final canvass of