

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

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

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



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## CHAPTER 86

## Actions to Vacate Charters, Etc., and to Prevent Usurpations

**9709. To annul act of incorporation—Fraud.**

179M373, 229NW353.

**9710. To vacate charter, etc.**

179M373, 229NW353.

**9711. For Usurpation of office, etc.**

Action by quo warranto to test title to office in private corporation may be brought in the district court by other officers and stockholders of the corporation without application to, or action by, the attorney general. 179M373, 229NW353.

**9717. Judgment for usurpation—Fine.**

Where a county commissioner accepts an incompatible office and enters upon the performance of the duties of such office, a vacancy as county commissioner exists, and he may not reassume the duties of the office of county commissioner after having resigned the incompatible office before the board of appointment had acted. Op. Atty. Gen., Feb. 8, 1932.

Where office of county commissioner is rendered vacant by officer's acceptance of an incompatible office, such officer may not be reappointed even after he has resigned the incompatible office. Op. Atty. Gen., Feb. 8, 1932.

## CHAPTER 87

## Special Proceedings

## MANDAMUS

**9722. To whom issued.****1. When will lie.**

Where commerce commission suspends sale of registered securities pending a hearing to show cause why registration should not be cancelled, and before the hearing the corporation requests a cancellation of the registration, the commission has no right to compel the production of its records and papers, in the absence of some specific allegation of a violation of the Blue Sky Law. 172M328, 215NW186.

A writ will not be granted where, if issued, it would prove unavailing or where lapse of time has rendered the relief sought nugatory. 173M350, 217NW371.

Petitioner must show he is entitled to relief sought but where he seeks to compel public officials to form a governmental duty they are presumed able to perform and the burden is upon them to show the contrary. 173M350, 217NW371.

Where discretion of town supervisors with respect to the opening of a road has been exercised in an arbitrary and capricious manner, the court may exercise control, but it must be made to appear that there are not only available funds but also sufficient available funds to do whatever else may, in the reasonable judgment of the board, be needful on the other town roads. 175M34, 220NW166.

When an executive or administrative body determines a matter involving the exercise of its discretionary power the courts do not interfere. 175M533, 222NW285.

Mandamus is not the proper remedy to correct an error in fixing the time of trial, but if the trial court refuses to proceed with trial, mandamus is the remedy. State ex rel. Collins v. Dist. Ct. of Ramsey County, 176M636, 222NW931.

Power given by §2609 to town board to determine necessity of cutting down hedges and trees in highway is discretionary and cannot be controlled by mandamus. 177M372, 225NW296.

Mandamus does not issue from this court to review a judgment of the district court entered upon the hearing of a motion to dismiss an action brought by the relator, a resident and citizen of another state, under the Federal Employers' Liability Act to recover damages sustained while in the employ of a railroad engaged in interstate commerce in such other state. State ex rel. Boright v. Dist. Ct. Steele County. 178M236, 226NW569.

The writ will not lie to compel the attorney general to try a civil action brought by the state at the "next term" of court. 178M442, 227NW391.

Will not be granted to compel county to publish annual statement in newspaper unlawfully entering into agreement with other papers to obtain contract. 178M484, 227NW499.

The duties imposed on the governor by Mason's Minn. St., §§6954, 6955, relating to the removal of officers, is discretionary and not ministerial, and mandamus will not lie. 179M337, 229NW313.

Where town board was without funds, and agreement between towns as to allotment of town road for repairs was uncertain, mandamus to compel compliance with contract would not issue. 179M392, 229NW577.

Mandamus may be used to enforce right of a member of an incorporated relief association to be placed on pension roll under its by-laws. 181M444, 232NW797. See Dun. Dig. 5752, 5767.

The granting or withholding the remedy of mandamus rested in the discretion of the trial court, and the granting of the writ was not error. State v. Magie, 183M60, 235NW526. See Dun. Dig. 5752a.

The legal remedy of mandamus is granted on equitable principles, and the relator may be rejected if he has not "clean hands." State v. Magie, 183M60, 235NW526. See Dun. Dig. 5758, 5752(81).

Title to a public office cannot be determined in mandamus proceeding, but temporary possession of the office pending litigation to try title thereto may be controlled thereby. State v. Magie, 183M60, 235NW526. See Dun. Dig. 5763.

Mandamus will lie to direct the district court to finish a trial commenced therein, where upon appeal from probate court it erroneously declines jurisdiction. State v. O'Brien, 186M432, 243NW434. See Dun. Dig. 5766.

Denial of a motion to change place of trial of an action for divorce, brought in proper county, upon ground that convenience of witnesses and ends of justice will be promoted, may be reviewed on mandamus. State v. District Court, 186M513, 243NW692. See Dun. Dig. 5764a.

Mandamus is not proper remedy to review order of court denying a motion to amend a pleading. De Jardins v. E., 189M356, 249NW576. See Dun. Dig. 5754.

Mandamus did not lie to compel trial judge to change place of trial for convenience of witnesses. Fauler v. C., 191M637, 253NW884. See Dun. Dig. 5764a.

Court cannot by mandamus control exercise of discretion vested in a civil service commission, but may determine whether, on a given state of facts and under law and rule applicable thereto, commission has any discretion. State v. Ritchel, 192M63, 255NW627. See Dun. Dig. 5753.

Determination by district court on application for examination of writings within reach of court cannot be controlled by mandamus, but is left to be reviewed on appeal or certiorari after trial. State v. District Court, 192M620, 257NW340. See Dun. Dig. 5754a.

Mandamus may not issue to enforce a moral obligation. State v. Bauman, 194M439, 260NW523. See Dun. Dig. 5756.

Mandamus is an extraordinary remedy and is not to be resorted to where redress may be had in ordinary suit at law, as for enforcement of a promise or contract to pay money. Id. See Dun. Dig. 5754.

Where contracts of employment of public school teachers in special school district of city of Minneapolis stipulate a monthly salary, but provide that board of education, employer, may reduce same whenever it deems necessary, no certain or definite rights spring from such contracts so that mandamus will lie to enforce same, and fact that, when so reducing said stipulated salary, board promised that if more money came from tax collections than estimated when reduction was made, such excess would be distributed pro rata to teachers, and that there is such excess, do not legally obligate board to distribute same. Id. See Dun. Dig. 5756.

Order denying motion of attorney general to strike out return made by the state auditor to the alternative writ of mandamus and to strike names of attorneys appearing for him from record is not appealable; but by certiorari, court may review order on its merits. State v. District Court, 195M169, 264NW227. See Dun. Dig. 5770.

Where employee within civil service provisions of charter of city is wrongfully separated from his employment by discharge or suspension for more than thirty days, mandamus affords a proper remedy. State v. Warren, 195M180, 261NW857. See Dun. Dig. 5763.

Where things to be done are ministerial acts of public officials and right to have them done clearly appears, mandamus is a proper remedy. State v. City of Waseca, 195M266, 262NW633. See Dun. Dig. 5756.

Mandamus does not lie unless, without reference to any writ or order of court, it be plain duty of officer or officers in question to do act sought to be compelled.