

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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spelled word "beer," was a gambling device, though there was no proof that any one ever succeeded in getting such combination. *State v. La Due*, 198M255, 269 NW527. See Dun. Dig. 3943.

Conviction of violating ordinance providing that: "No person shall keep or set up any gambling device whatever," held sustained by evidence. *Id.* See Dun. Dig. 3944.

A vending machine which delivers small package of mints valued at 5c and at irregular intervals chips which can only be used to insert in machine again and merely produce amusement is a gambling machine. *Op. Atty. Gen.*, May 23, 1933.

A slot machine that pays nickels or chips for a jackpot is a gambling device though it pays a package of gum each time it is played. *Op. Atty. Gen.*, June 6, 1933.

Games consisting of a board and slot for the deposit of a coin upon which balls are released for the purpose of attempting to place them in certain slots, the idea being to get a large score, are not gambling devices unless the proprietor offers prizes in the form of cash or merchandise for certain scores obtained. *Op. Atty. Gen.* (733), July 3, 1934.

#### 10223-1. Contracts for future delivery of wheat, grain or other farm produce, etc.

Transactions wherein options on wheat were purchased and sold held to constitute gambling. *Deterling v. G.*, 192M60, 256NW484. See Dun. Dig. 1126.

Evidence held to show that transaction out of which arose alleged guaranty in grain transaction sued upon was a gambling transaction and not a contract by which parties contemplated actual delivery of grain. *Becher-Barrett-Lockerby Co. v. H.*, 197M541, 267NW727. See Dun. Dig. 3941.

### RIGHTS OF SEPULTURE

#### 10227. Dissection—When permitted.

Insurer, held entitled to disinterment of body of insured for autopsy, where demand was seasonably made; and refusal to grant consent to such autopsy, held to defeat right to recover on policy. *Clay v. Aetna Life Ins. Co.*, (DC-Minn), 53F(2d)689. See Dun. Dig. 2599, 2599a.

Coroner possesses considerable discretion in performance of his duties and is the only person that can hold an inquest, though mandamus might lie to compel him to

hold an inquest in a proper case. *Op. Atty. Gen.* (103f), Jan. 29, 1935.

### SABBATH BREAKING, ETC.

#### 10234. Definitions.

There is no statutory provision prohibiting distribution of campaign cards on Sunday. *Op. Atty. Gen.* (627f-2), May 11, 1934.

**10235. Things prohibited—Exceptions.**—All horse racing, gaming and shows; all noises disturbing the peace of the day; all trades, manufacturers, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day:

Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community, including the usual shoe shining service; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played between the hours of one p. m. and six p. m. on the Sabbath day. (R. L. '05, §4981; '09, c. 267, §1; G. S. '13, §8753; Apr. 23, 1929, c. 308, §1; Apr. 5, 1935, c. 129.)

Farmers may sell products on their properties near highways on Sundays. *Op. Atty. Gen.*, Aug. 8, 1933.

## CHAPTER 99

### Crimes Against Public Health and Safety

#### 10241. Public nuisance defined.

Act making possession of foul, offensive or injurious substance, compound or gas with wrongful intent a gross misdemeanor. *Laws 1931, c. 86.*

Logging railroad over highway under Mason's Minn. Stat. 1927, §25553-1, etc., is not a public nuisance under this section. 174M305, 219NW172.

A newspaper business conducted in violation of §§10123-1 to 10123-3 is a public nuisance. 174M457, 219 NW770.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098. 177M454, 225NW449.

Landowner removing rock on land supporting embankment for state highway is guilty of maintaining a public nuisance and is guilty of a misdemeanor. *State v. Nelson*, 189M87, 248NW751. See Dun. Dig. 7240n, 58.

Patch of ice on walk formed by melting of snow on cornice was not a public nuisance, for which building owner would be liable. *Mesberg v. C.*, 191M393, 254NW 597. See Dun. Dig. 6345.

Section 5015-4 giving railroad and warehouse commission authority to require auto transportation company to maintain suitable depots, does not oust a city or village of jurisdiction to enjoin maintenance of a depot if it constitutes a nuisance. *Village of Wadena v. F.*, 194M146, 260NW221. See Dun. Dig. 6752.

A truck warehouse and depot, located in Wadena, Minn., a block and a half from main business street and within a block of a public garage, a smaller truck depot, a large warehouse, a furniture store and undertaking parlor, and on street running directly from railroad depot to main business street, is not a nuisance, either public or private. *Id.* See Dun. Dig. 7244.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. *Op. Atty. Gen.*, Sept. 26, 1929.

A misdemeanor. *Op. Atty. Gen.*, June 20, 1930.

Village may refer buildings which are life and limb hazards to persons on sidewalks to state fire marshal or deal with owners thereof under nuisance statute. *Op. Atty. Gen.* (477b-20), Mar. 23, 1937.

Nuisance maintained by tenants by throwing of refuse on property forfeited to state for delinquent taxes may not be abated in proceedings against the state or tax commission, but may be corrected by criminal or civil proceedings against tenants. *Op. Atty. Gen.* (133b-2), May 22, 1937.

(3).

*Op. Atty. Gen.*, Jan. 24, 1934; note under §2615(1).

#### 10242. Itinerant carnivals prohibited.

174M457, 219NW770.

#### 10245. Maintaining or permitting building as a nuisance.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. *Op. Atty. Gen.*, Sept. 26, 1929.

#### 10250. Adulteration or imitation of foods, etc.

Whether milk was free from adulteration held question for jury. 174M320, 219NW159.

#### 10255. Deadly weapons.

There was no fatal variance where information charged carrying of a revolver and proof showed weapon to be an automatic pistol. 176M238, 222NW925.

There was no error in refusing to hold that weapon was not loaded nor admitting it in evidence against objection that, because the prosecuting witness had by force taken it from defendant, it would virtually be compelling defendant to furnish evidence against himself. 176M238, 222NW925.

The question of criminal intent of defendant in carrying automatic pistol, held so far doubtful as to require new trial. 176M238, 222NW925.

Does not prohibit the use or possession of a pistol in the absence of an intent to use it against another. *Clarine v. A.*, 182M310, 234NW295. See Dun. Dig. 10200a (2).

A father who furnished him with the pistol cannot be held liable for an accidental shooting by his son, in the absence of evidence that, because of youth, mental deficiency, recklessness, or other cause, it was unsafe to intrust the son with the weapon, and that the father was chargeable with knowledge of that fact. *Clarine v. A.*, 182M310, 234NW295. See Dun. Dig. 10200.

A village constable has right to carry firearm. Op. Atty. Gen., Feb. 10, 1933.

Agent of Minnesota society for the prevention of cruelty is a public officer who may carry a concealed weapon. Op. Atty. Gen. (201a-2), July 6, 1934.

There is no provision of law providing for permit to motor express service to carry guns for protection of cargo. Op. Atty. Gen. (201a-1), Aug. 2, 1934.

**10255-1. Definitions.**—(a) Any firearm capable of loading or firing automatically, the magazine of which is capable of holding more than twelve cartridges, shall be a machine gun within the provisions of this Act.

(b) Any firearm capable of automatically reloading after each shot is fired, whether firing singly by separate trigger pressure or firing continuously by continuous trigger pressure; which said firearm shall have been changed, altered or modified to increase the magazine capacity from the original design as manufactured by the manufacturers thereof, or by the addition thereto of extra and/or longer grips or stocks to accommodate such extra capacity, or by the addition, modification and/or attachment thereto of any other device capable of increasing the magazine capacity thereof, shall be a machine gun within the provisions of this Act.

(c) A twenty-two caliber light sporting rifle, capable of firing continuously by continuous trigger pressure, shall be a machine gun within the provisions of this Act. But a twenty-two caliber light sporting rifle, capable of automatically reloading but firing separately by separate trigger pressure for each shot, shall not be a machine gun within the provisions of this Act and shall not be prohibited hereunder, whether having a magazine capacity of twelve cartridges or more. But if the same shall have been changed, altered, or modified, as prohibited in section one (b) hereof, then the same shall be a machine gun within the provisions of this Act. (Act Apr. 10, 1933, c. 190, §1.)

**10255-2. Application.**—This Act shall not apply to sheriffs, coroners, constables, policemen or other peace officers, or to any warden, superintendent or head keeper of any prison, penitentiary, county jail or other institution for retention of any person convicted of or accused of crime, while engaged in the discharge of official duties, or to any public official engaged in the enforcement of law; nor to any person or association possessing a machine gun not useable as a weapon and possessed as a curiosity, ornament or keepsake; when such officers and persons and associations so excepted shall make and file with the Bureau of Criminal Apprehension of this state within 30 days after the passage of this Act, a written report showing the name and address of such person or association and the official title and position of such officers and showing a particular description of such machine gun now owned or possessed by them or shall make such report as to hereinafter acquired machine guns within 10 days of the acquisition thereof; nor to any person legally summoned to assist in making arrests or preserving peace, while said person so summoned is engaged in assisting such officer; nor shall this Act apply to the armed forces of the United States or of the State of Minnesota. (Act Apr. 10, 1933, c. 190, §2.)

**10255-3. Machine guns prohibited.**—Any person who shall own, control, use, possess, sell or transport a machine gun, as herein defined, in violation of this Act, shall be guilty of a felony. (Act Apr. 10, 1933, c. 190, §3.)

**10256. Selling to minors.**

There is no prohibition against sale of firearms except to minors. Op. Atty. Gen., Jan. 25, 1934.

**10259. Negligence in respect to fire.**

For civil liability, see §4031-28.

**10263. Failure to ring bell, etc.**

Liabilities for death resulting from failure to give signals. 173M7, 216NW245.

Failure to give crossing signal as proximate cause of collision at crossing. 178M322, 227NW45.

Evidence of failure to give signal. 179M480, 229NW 797.

Statutory signals for trains approaching crossing are immaterial when and where train is actually occupying crossing when automobile runs into side thereof. Crosby v. G., 187M263, 245NW31. See Dun. Dig. 8175.

**10267-1. Walkathons, etc., prohibited.**—It shall be unlawful for any person or persons, firm or corporation, to advertise, operate, maintain, attend, promote or aid in the advertising, operating, maintaining or promoting any mental or physical endurance contest exhibition, performance or show in the nature of a "marathon," "walkathon," "skatathon," or any other such endurance contest of a like or similar character or nature, whether under that or other names, whether or not an admission is charged, for a period longer than 24 hours. Nothing in this Act shall apply to the continuance of bicycle riding contests of no longer duration than six days, the ordinary amateur or professional athletic events or contests, or high school, college, and intercollegiate athletic sports. (Act Apr. 22, 1935, c. 228, §1.)

Whether or not endurance contest violates act is question of fact. Op. Atty. Gen. (802a-24), June 24, 1936.

"Roller Derby" in which prizes are based upon distance, speed and skill rather than upon actual endurance are not prohibited. Op. Atty. Gen. (802c), June 11, 1937.

**10267-2. Violations a misdemeanor.**—Any person or persons, firm or corporation participating in, attending or promoting any such contest and violating any of the provisions of this Act, shall be guilty of a misdemeanor. (Act Apr. 22, 1935, c. 228, §2.)

**10269-1. Throwing or scattering garbage; powers of municipalities.**—It shall be unlawful for any person to cause or permit garbage or tin cans to be thrown or scattered upon any street, alley, highway, parkway, boulevard, or upon any vacant or occupied real estate, or to fail, neglect or refuse to remove the same from any such real estate. The term "garbage" shall be construed to mean kitchen offal and all other refuse matter composed of either animal or vegetable substance. The governing body of any county, city, village or town shall have authority by ordinance, resolution or by-law to prohibit any such acts and to prescribe penalties for violation thereof as herein provided. (Apr. 21, 1937, c. 325, §1; July 14, 1937, Sp. Ses., c. 46, §1.)

**10269-2. Same; municipal powers not limited; misdemeanor.**—Nothing in this act shall limit or abrogate any of the existing powers of the governing body or board of any county, city, village or town. Any person violating any of the provisions hereof shall be guilty of a misdemeanor. (Apr. 21, 1937, c. 325, §2; July 14, 1937, Sp. Ses., c. 46, §2.)

Sec. 3 of act July 14, 1937, cited, provides that the act shall take effect from its passage.

**10278-1. Peyote declared illegal.**—No person shall use, sell, transport or have in possession any peyote or preparation of peyote. (Act Apr. 20, 1933, c. 333, §1.)

**10278-2. Violation a misdemeanor.**—The violation of this act shall be a misdemeanor. (Act Apr. 20, 1933, c. 333, §2.)

Sec. 3 of Act Apr. 20, 1933, cited, provides that the Act shall take effect from its passage.

**10278-2a. Possession of certain drugs prohibited (Cannabin, Marijuana, Hashish).**—No person shall in the state of Minnesota produce or possess the drug Cannabin, otherwise commonly known as Marijuana, Hashish, and other colloquial names, or sell or have in possession for sale or distribution, or manufacture, or cause to be prepared or manufactured, any compound, salt, derivative, or mixture thereof for use in cigarettes, cigars, liquid, confection, or in any other manner, or use or induce any person to use any such product or preparation so manufactured or prepared, or have the drug Cannabin in his possession or control for use or distribution for such purposes.

Nothing herein contained shall prohibit a duly licensed pharmacist from having Cannabis or any compound, salt, derivative, or mixture thereof, in his

possession and from selling and distributing the same for medicinal purposes only; nor shall anything herein contained prohibit a wholesale dealer of drugs from having in his or its possession, and from selling and distributing, Cannabis, or any compound, salt, derivative, or mixture thereof, provided that such sale and distribution shall be made to duly licensed pharmacists only. (Act Apr. 29, 1935, c. 321, §1.)

Saved from repeal by §10455-28.

**10278-2b. Violation a gross misdemeanor.**—Any person who shall violate any provision hereof shall be guilty of a gross misdemeanor and upon conviction shall be punished as follows: for the first offense, by a fine not exceeding \$1,000.00, or by imprisonment for not exceeding one year, or by both such fine and imprisonment, and for any subsequent offense, by imprisonment for not less than one year. (Act Apr. 29, 1935, c. 321, §3.)

**10278-2c. Who may enforce act.**—Sheriffs, constables, and other police officers shall enforce the provisions of this act with or without the cooperation of the Department of Agriculture, Dairy and Food, and the Departments of Health of Cities of the First Class. (Act Apr. 29, 1935, c. 321, §4.)

Sec. 5 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

**10278-3. Definitions.**—A public bathing beach as the term is used in this act, shall be taken to mean any public land, road or highway adjoining public waters, which have been or may be used for bathing or swimming, or any privately owned place which the public is permitted to frequent or use for bathing. (Act Apr. 21, 1933, c. 364, §1.)

**10278-4. Unlawful to bathe at public beaches at certain times.**—In all counties which now have or shall hereafter have a population of 450,000 or more, it shall be unlawful for any person to frequent a public bathing beach or public waters upon which the same

immediately borders for the purpose of swimming or bathing, or congregating with others, or to swim or bathe or congregate thereat, between the hours of 10:30 p. m. and 5:00 a. m. of the day following. (Act Apr. 21, 1933, c. 364, §2.)

**10278-5. Ordinances to regulate beaches.**—The governing bodies or boards of all counties having a population of more than 450,000, and all cities, villages and towns situated within such counties, shall have authority by ordinance, resolution or by-law, to regulate the use of public bathing beaches and public waters immediately bordering thereon for the purpose of bathing or swimming or congregating with the others thereat, within their respective territorial limits not inconsistent herewith. (Act Apr. 21, 1933, c. 364, §3.)

**10278-6. May close beaches.**—If any such body or board shall reasonably determine that the safety, health, morals or general welfare of the public shall so require, it may by ordinance, resolution or by-law, provide that any such public bathing beach shall be closed to bathing, swimming and congregating after the hour of 9:00 p. m. or after any time between 9:00 p. m. and 10:30 p. m. of any day. (Act Apr. 21, 1933, c. 364, §4.)

**10278-7. Act not restrictive.**—Nothing in this act shall limit or abrogate any of the existing powers of any body or governing board of any county, city, village or town. (Act Apr. 21, 1933, c. 364, §5.)

**10278-8. Provisions separable.**—If any part or section of this act shall be held to be invalid, it shall not invalidate any of the other provisions hereof. (Act Apr. 21, 1933, c. 364, §6.)

**10278-9. Violation a misdemeanor.**—Any person violating any of the provisions hereof shall be guilty of a misdemeanor. (Act Apr. 21, 1933, c. 364, §7.)

## CHAPTER 100

### Crimes Against The Public Peace

#### 10279. Disturbing meetings—Disorderly conduct.

Person picketing residence of foreman of an employer whose employees were on strike, carrying a banner, "A scab lives here" constituted disorderly conduct under city ordinance. *State v. Perry*, 196M481, 265NW302. See *Dun. Dig.* 2751a.

Conviction of disorderly conduct held sustained by evidence of attempt to pick up girls. *State v. Birdseye*, 198 M231, 269NW459. See *Dun. Dig.* 2751a.

#### 10280. "Riot" defined.

*Strutwear Knitting Co. v. O.* (USDC-Minn), 13FSupp 384.

#### 10281. Riot, how punished.

*Strutwear Knitting Co. v. O.* (USDC-Minn), 13FSupp 384.

#### 10282. Unlawful assembly.

*Strutwear Knitting Co. v. O.* (USDC-Minn), 13FSupp 384.

#### 10283. Remaining after warning.

*Strutwear Knitting Co. v. O.* (USDC-Minn), 13FSupp 384.

#### 10285. Combination to resist process.

*Strutwear Knitting Co. v. O.* (USDC-Minn), 13FSupp 384.

#### 10286. Prize fighting—Aiding—Betting or stake-holding.

Repealed by Act Jan. 28, 1933, c. 7, §17, effective May 1, 1933, so far as inconsistent with the repealing act (§§3260-1 to 3260-18).

Since the enactment of Laws 1915, c. 363, contract for management of prize fighter is not illegal. *Safro v. L.*, 184M336, 238NW641.

#### 10287. Fight out of the state.

*Safro v. L.*, 184M336, 238NW641; note under §10286.

#### 10288. Apprehension of person about to fight—Bail, etc.

*Safro v. L.*, 184M336, 238NW641; note under §10286.

#### 10280. Forcible entry and detainer.

One moving back day following his removal under writ of restitution and using seed and grain belonging to owner is not guilty of trespass but may be prosecuted for larceny and also for unlawful entry. *Op. Atty. Gen.* (494b-20), Nov. 26, 1934.

#### 10290. Aiming or discharging firearms, etc.

*Strutwear Knitting Co. v. O.* (USDC-Minn), 13FSupp 384.

A landlord who shot windows out of house with shot gun for sole purpose of forcing tenants to move, without intent to hit anyone, could be prosecuted under this section, but would not be guilty of assault. *Op. Atty. Gen.* (494b-4), Aug. 29, 1934.

#### 10291. Use of firearms by minors.

A father who furnished him with the pistol cannot be held liable for an accidental shooting by his son, in the absence of evidence that, because of youth, mental deficiency, recklessness, or other cause, it was unsafe to intrust the son with the weapon, and that the father was chargeable with knowledge of that fact. *Clarine v. A.*, 182M310, 234NW295. See *Dun. Dig.* 4466, 10200.

Since a minor under fourteen can hunt protected game only on home premises of his parent or guardian, he can have a bag limit of game only if it was taken on such premises. *Op. Atty. Gen.* (209g), Sept. 19, 1934.