

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

Edited by
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for determination in court after a presentation of all the evidence. *Id.*

4. Enforcement.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesenbrink, 211M114, 300NW398. See Dun. Dig. 8740.

10215. Gambling devices on premises.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesenbrink, 211M114, 300NW398. See Dun. Dig. 8740.

"Suffer", as applied to operation of gambling machines, is synonymous with word "permit", and both imply knowledge of thing suffered or permitted. *State v. Jamieson*, 211M262, 300NW809. See Dun. Dig. 3946a.

"Magistrates" does not include district judges, but a district judge has inherent power to issue a search warrant for gambling devices, keeping of which is a gross misdemeanor, upon sworn warrant, and then have grand jury indict persons. *Op. Atty. Gen.* (141f), Dec. 5, 1941.

10217. Recovery of money, etc., lost.

Recovery of losses from winner by loser. 27 MinnLaw Rev. 94.

10219. Swindling by cards, etc.

Maximum sentence for attempted swindling is 2½ years and minimum sentence is nothing in view of indeterminate sentence law. *Op. Atty. Gen.* (341k-5), July 10, 1940.

1. What constitutes.

Crime of swindling may be committed by means of a trick or scheme consisting of mere words and actions without use of a mechanical device. *State v. Yurkiewicz*, 208M71, 292NW782. See Dun. Dig. 3740.

Fact that transaction took form of a legitimate contract and business deal does not prevent acts from constituting a swindle. *Id.*

2. Indictment.

An indictment for swindling may contain allegations that crime was committed by fraudulent representations of facts relating both to present or past and to future. *State v. Yurkiewicz*, 208M71, 292NW782. See Dun. Dig. 3741.

3. Evidence admissible.

Where evidence of other similar crimes shows a common scheme or related crimes tending to prove present accusation, it is properly received. *State v. Yurkiewicz*, 212M208, 3NW(2d)775. See Dun. Dig. 2459, 3742, 3947.

Where competent proof of defendant's guilt was convincing, any error in admitting self-serving letters written by complaining witness was not prejudicial and did not require a new trial. *Id.* See Dun. Dig. 2490.

RIGHTS OF SEPULTURE

10227. Dissection—When permitted.

Where widow of one involved in automobile accident consented to an autopsy upon condition that decedent's attending physician be present, an autopsy after an unsuccessful effort was made to obtain his presence was a trespass. *Rian v. Hegnauer*, 210M607, 299NW673. See Dun. Dig. 2599.

Interference with a corpse except by consent of person entitled to right of burial is a trespass, but widow has right to consent. *Id.*

SABBATH BREAKING, ETC.

10235. Things prohibited—Exceptions.—All horse racing, except horse racing at the annual fairs held by the various county agricultural societies of the state, 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 on the Sabbath day. (As amended Apr. 21, 1941, c. 336, §1.)

Section is not violated by bowling on Sunday. *Op. Atty. Gen.*, (384d), Jan. 15, 1940.

Word "gaming" does not apply to playing of pool and billiards. *Op. Atty. Gen.*, (384), Feb. 2, 1940.

Section is not violated by playing pool or billiards or bowling on Sabbath day. *Op. Atty. Gen.* (384a), Nov. 16, 1940.

Statute does not render operation of pool or billiard tables on Sunday unlawful, unless accompanied by disorderly conduct or gambling. *Op. Atty. Gen.* (384A), Sept. 2, 1941.

Village assessor should not work on Sundays or holidays, and should not be compensated for work done on those days. *Op. Atty. Gen.* (12B-1), Feb. 13, 1942.

CHAPTER 99

Crimes Against Public Health and Safety

10241. Public nuisance defined.

Fee of an abutting property owner extends to center of street or highway subject only to public easement for public use, and he may use his property for a purpose compatible with free use by public, public authorities determining how much shall be reserved for such use. *Kooreny v. D.*, 207M367, 291NW611. See Dun. Dig. 4182.

County attorney can bring an action in the name of the state to abate an unlicensed drinking place as a public nuisance under this section. *Op. Atty. Gen.*, (133B-40), Sept. 6, 1939.

"Green River Ordinance", making it a nuisance for peddler or solicitor to call at private residences without an invitation, may or may not be valid. *Op. Atty. Gen.*, (59a-32), Dec. 22, 1939.

Sale of 3.2 beer without a license may be restrained by injunction as a nuisance. *Op. Atty. Gen.* (218f-3), May 28, 1940.

Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. *Op. Atty. Gen.* (377a-5), Aug. 14, 1940.

Where a club is selling liquor to its members without a license, injunction proceedings may be had against it as a nuisance. *Op. Atty. Gen.*, (218g-15), Feb. 17, 1941.

Owner of land through which navigable stream flows has no right to put fences across so as to obstruct access to a lake. *Op. Atty. Gen.* (631j), May 1, 1942.

Where there has been continuous and persistent violations of liquor and gambling statutes and repeated convictions have failed to abate them an injunction is properly granted to abate a "public nuisance." *State v. Sportsmen's Country Club*, 214M151, 7NW(2d)495. See Dun. Dig. 7271.

It is doubtful whether a criminal action for violation of public nuisance statute could be sustained against a tavern guilty of continuous and persistent violations of liquor and gambling statutes, in the absence of evidence of disorderly conduct. *Id.* See Dun. Dig. 7292a.

At common law gaming houses and brothels were common nuisances, not because of the noise and disorder but on account of the evil tendency of the business, but it was otherwise as to sale of intoxicating liquor. *Id.* See Dun. Dig. 7292a.

A public alley is not a storeroom for dangerous equipment. *Fjellman v. Weller*, 213M457, 7NW(2d)521. See Dun. Dig. 4175, 6619.

Permitting temporary obstruction in street to aid war work. Op. Atty. Gen. (396c-3), Dec. 28, 1942.

10249. Gasoline, benzine and kerosene cans. [Repealed.]

Repealed. Laws 1941, c. 495.

10255. Deadly weapons.

There is no provision in law providing for a permit to be issued to an individual for purpose of carrying a pistol or revolver, and any informal permit obtained from local sheriff or chief of police has no legal effect other than to aid in overcoming presumption created by this statute. Op. Atty. Gen., (201a-2), Oct. 16, 1939.

Section does not prohibit a person from carrying a concealed weapon, but places upon him burden of proving that he is carrying it for a lawful purpose. Id.

Statute does not prohibit carrying a concealed weapon, but places upon person burden of proving that he is carrying it for a lawful purpose. Op. Atty. Gen., (201a-2), Feb. 15, 1940.

10256. Selling to minors.

Enforcement of act is not a function or duty of division of game and fish or its employees. Op. Atty. Gen. (201a-8), Mar. 18, 1943.

10258. Blank cartridge firearms, certain firecrackers; etc., prohibited.

Sale or use of fireworks, except for supervised public displays, is unlawful. Laws 1941, c. 125.

No person shall manufacture, possess, or deal in explosives without a license. Laws 1941, c. 474.

10263. Failure to ring bell, etc.

Violation of this section could not have been a contributory proximate cause of injury to a passenger who ran into 19th car of train at crossing. Krause v. C., 207M 175, 290NW294. See Dun. Dig. 8197.

Testimony of a passenger in a crowded Ford that he did not hear crossing whistle sounded or locomotive bell rung, it not appearing that such passenger was listening for sounds, or that windows of Ford were open, or that he heard rumbling of freight train running at 25 miles an hour at any moment prior to Ford's collision with 19th car from front, is of no probative value as against positive testimony of several witnesses in a position to know that whistle was sounded and bell rung. Id. See Dun. Dig. 8175.

Slight negative testimony did not overcome the positive affirmative testimony that requisite train signals by bell or whistle were sounded. Engberg v. G., 290NW579. See Dun. Dig. 8176.

Statutory signals for trains approaching a highway crossing are solely for benefit of travelers on highway to warn them of approaching trains, and are immaterial where train is actually upon and occupying crossing when traveler arrives. Rhine v. Duluth, M. & I. R. Ry. Co., 210M281, 297NW852. See Dun. Dig. 8175.

10269-1. Throwing or scattering garbage; etc.

No by-law is needed to prosecute an offense against the statute, and it is therefore unnecessary to determine whether town board or town meeting constitutes the "governing body" of a township. Op. Atty. Gen. (477b-14), May 8, 1942.

CHAPTER 100

Crimes Against The Public Peace

10279. Disturbing meetings—disorderly conduct.

Conviction of disorderly conduct was sustained by evidence of indecent exposure. State v. Mitchell, 207M55, 290NW222. See Dun. Dig. 2751.

CHAPTER 101

Crimes Against Property

10304. Misappropriation, etc., by county treasurer.

A member of village council may not lawfully act as manager of a municipal liquor store, and council is under no obligation to appoint a bookkeeper, and if village recorder is willing to do the work, there is no reason for appointment of any one else, and raising salary of recorder by reason thereof would not constitute violation of law forbidding public officers from being interested in contract. Op. Atty. Gen., (470g), Jan. 15, 1941.

10305. Officer interested in contract.—Every public officer who shall be authorized to sell or lease any property, to make any contract in his official capacity, or to take part in making any such sale, lease, or contract, and every employe of such officer, who shall voluntarily become interested individually in such sale, lease, or contract, directly or indirectly, shall be guilty of a gross misdemeanor; provided, however, that any village or city council, town board, or school board, of any town, village or city of the fourth class, otherwise having authority to designate depository for village, city, town or school district funds, of any town, village or city of the fourth class, may designate a bank in which a member of such board is interested as a depository for village, city, town or school funds of any town, village or city of the fourth class by a two-thirds vote of such board. Provided, further, that any school board is hereby authorized and permitted to contract with co-operative associations in which one or more members of such council or board is a share or stockholder, but not an officer or manager thereof, if such contract is authorized by the unanimous vote of the entire council or board. (As amended Act Apr. 15, 1941, c. 228, §1.)

Possession or sale of any article, material or merchandise by state agencies, officers or employees of the state is unlawful. Laws 1941, c. 58.

Fraud in obtaining approval by depositors of plan for reorganization of a bank. Rien v. Cooper, 211M517, 1NW (2d)847; note under §7690-17. See Dun. Dig. 8028.

Laws 1931, chapter 212, amending this section, is unconstitutional and designation of bank as a depository of which school district board member is an officer is a complete nullity and does not protect school treasurer. Op. Atty. Gen., (90c-2), Oct. 3, 1939.

Member of village council taking part in issuing relief orders violates this section by honoring them at his store, though he charges wholesale price and receives no profit. Op. Atty. Gen., (90a), Oct. 27, 1939.

City cannot enter into a contract with a cooperative society in which councilman is a stockholder, and member of board of directors. Op. Atty. Gen., (90e), Jan. 15, 1940.

Employee of Rural Electrification Association receiving straight salary may be elected to office of city councilman, though city and association are parties to a contract. Op. Atty. Gen., (90e), March 18, 1940.

City treasurer as agent for fire insurance company would violate section by renewing old policy. Op. Atty. Gen., (90c-3), March 19, 1940.

Clerk of an independent school district cannot act as agent for insurance company selling insurance to the district. Op. Atty. Gen. (90c-5), July 12, 1940.

It is not legal for husband of schoolboard member acting as cashier of a local bank to sell insurance to school, though commission goes directly to bank, where cashier draws a salary and as a stockholder participates in dividends at bank and husband supports family. Op. Atty. Gen. (90-C-5), July 30, 1940.

Member of city commission employed at part time work in publishing concern owned by his father does not violate the section if his salary does not depend upon contract between city and publishing concern. Op. Atty. Gen. (90E-5), Aug. 5, 1940.

This section is not applicable in the matter of employment by county commissioners of coroner to examine indigent persons for purposes of hospitalization, but such employment is prohibited by §990. Op. Atty. Gen. (103-E), Aug. 9, 1940.

Member of South St. Paul Sewage Disposal Plant Commission cannot enter into contract with commission for purchase of supplies from his store. Op. Atty. Gen. (90e-5), Aug. 21, 1940.